

24-33-111. Conservation of native species - fund created.

(1) **Legislative declaration.** The general assembly hereby recognizes the importance of conserving native species that have been listed as threatened or endangered under state or federal law, or are candidate species or are likely to become candidate species as determined by the United States fish and wildlife service. The general assembly hereby declares and determines that the Colorado department of natural resources and the division of wildlife are responsible for the development, implementation, or approval of appropriate programs to address the conservation of such species and for negotiating agreements with federal agencies and other states to avoid regulatory conflicts pursuant to section [24-33-103](#).

(2) **Species conservation trust fund - creation.** (a) (I) There is hereby created in the state treasury the species conservation trust fund, which shall be subject to annual authorization by the general assembly to carry out the purposes of this section. There is hereby created within the species conservation trust fund the operation and maintenance account and the capital account. The moneys in the operation and maintenance account shall be for administrative and noncapital expenditures necessary for the implementation of this section. The moneys in the capital account shall be used exclusively for capital expenditures including but not limited to property acquisition and project construction. All income derived from the deposit and investment of moneys in the fund shall be credited to the fund. At the end of any fiscal year, all unexpended moneys in the fund shall remain therein and shall not be credited or transferred to the general fund or any other fund. To the maximum extent practical, only interest from the fund shall be expended for activities pursuant to this section.

(II) Beginning with the state fiscal year commencing on July 1, 2009, the general assembly shall appropriate an amount not to exceed five hundred thousand dollars from the species conservation trust fund to the department of natural resources for the purpose of acquiring water for instream flows. Moneys appropriated for this purpose shall be used to preserve or improve the natural environment of species that have been listed as threatened or endangered under state or federal law, or are candidate species or are likely to become candidate species. The executive director of the department of natural resources, in preparing the species conservation eligibility list pursuant to this section, shall provide a list of the specific instream flow acquisitions that would be financed pursuant to this subparagraph (II). Such list shall include the species that would benefit from each proposed instream flow acquisition. Prior to obligating revenues from the fund, the list of specific instream flow acquisitions is subject to modification and adoption by the general assembly through passage of a bill.

(b) to (e) Repealed.

(3) **Species conservation eligibility list and annual report.** (a) The executive director of the department of natural resources, after consultation with the Colorado water conservation board and its director, the wildlife commission, and the director of the division of wildlife, shall annually prepare a species conservation eligibility list describing programs and associated costs that are eligible to receive funding pursuant to this section. The species conservation eligibility list shall be subject to modification and adoption through passage of a bill. At the same time as

the species conservation eligibility list is submitted, the director of the department of natural resources, after consultation with the Colorado water conservation board and its director, the wildlife commission, and the director of the division of wildlife, shall also provide a detailed report to the general assembly on the progress and status of activities to date and their effectiveness in the recovery of the species and identify proposed future activities. The report shall include an assessment of habitat benefits, both public and private, attributable to such activities.

(b) Funding shall be distributed by the executive director of the department of natural resources among projects included in the species conservation eligibility list for the following purposes:

(I) Cooperative agreements, recovery programs, and other programs that are designed to meet obligations arising under the federal "Endangered Species Act of 1973", 16 U.S.C. 1531, et seq., and that provide regulatory certainty in accordance with subsection (4) of this section;

(II) Studies and programs established or approved by the division of wildlife and the executive director of the department of natural resources regarding:

(A) Species placed on the state endangered or threatened list in accordance with section [33-2-105](#), C.R.S.;

(B) Candidate species in order to assist in the recovery or protection of the species to avoid listing of the species;

(C) Scientific research relating to listing or delisting any species; or

(D) If a species that is not on the federal endangered or threatened species list is proposed to be added to the state endangered or threatened species list, the evaluation of the species pursuant to this sub-subparagraph (D) shall include: Scientific evaluation of genetic data that proves the species is a separate and distinct species in the ecosystem; evaluation of the species habitat that encompasses the entire geographic area of the species habitat not just portions of such habitat; and the reliable scientific baseline data used to ascertain that the number of the species in the habitat is rapidly declining over time.

(c) In no event shall moneys from the species conservation trust fund, created in subsection (2) of this section, be used to acquire any property through the exercise of eminent domain.

(4) **Agreement requirements.** In order to be eligible for funding under subsection (3) of this section, agreements entered into by or on behalf of the state with any person, entity, organization, political subdivision, state, or the federal government relating to the conservation of native species that have been listed as threatened or endangered under federal or state law or that are candidate species or are likely to become candidate species, species at risk and species of special concern, or species the decline or extinction of which may affect the welfare of the citizens of the state, must be voluntary, shall protect private property rights, and shall assist in meeting the regulatory requirements that currently exist or that may become applicable in the future pertaining to the conservation of species. Funds allocated for the purpose of implementing such agreements through the species conservation list process shall be utilized, to the maximum extent possible, for the purchase or construction of capital assets that shall be owned by the state and that may be sold or utilized for other purposes in the event that the agreement is terminated

unless the state elects not to own such assets and for the implementation of activities the division of wildlife has determined may eliminate the need to list a species as threatened or endangered or, in the case of previously listed species, may hasten delisting.

(5) **Maximization of funds.** The Colorado water conservation board and the wildlife commission shall maximize the species conservation trust fund by applying for available grants consistent with the purposes of the fund. Federal grants and voluntary contributions may be accepted and expended as provided in this section. Such grants and contributions shall, upon acceptance, be placed in the species conservation trust fund created in subsection (2) of this section. Nothing in this section shall be construed to limit the authority of the Colorado division of wildlife to manage or regulate game, nongame, or threatened or endangered species. No funding shall be accepted, approved, or used to initiate the listing of species as threatened or endangered under federal law. Nothing in this section is intended to be construed as a mechanism to substitute funding that would otherwise be available for expenditure by the division of wildlife or to replace or reduce the obligation of the division to carry out nongame programs under title [33](#), C.R.S.

Source: **L. 98:** Entire section added, p. 1000, § 1, effective May 27. **L. 99:** (2) amended, p. 624, § 24, effective August 4. **L. 2000:** (1) amended, p. 22, § 4, effective August 2. **L. 2002:** (2) amended, p. 158, § 18, effective March 27; (2)(d) added, p. 671, § 2, effective May 28. **L. 2003:** (2)(e) added, p. 457, § 15, effective March 5. **L. 2004:** (3)(a) amended, p. 692, § 3, effective April 28. **L. 2005:** (3)(a) amended, p. 768, § 39, effective June 1. **L. 2006:** (2)(b), (2)(c), (2)(d), and (2)(e) amended, p. 1049, § 4, effective May 25. **L. 2007:** (3)(b)(II)(D) amended, p. 2034, § 51, effective June 1. **L. 2008:** (2)(a) amended, p. 1579, § 3, effective May 29.

Editor's note: Subsection (2)(b)(II) provided for the repeal of subsection (2)(b), effective July 1, 2007. Subsection (2)(c)(II) provided for the repeal of subsection (2)(c), effective July 1, 2007. Subsection (2)(d)(II) provided for the repeal of subsection (2)(d), effective July 1, 2007. Subsection (2)(e)(II) provided for the repeal of subsection (2)(e), effective July 1, 2007. (See L. 2006, p. 1049.)

Cross references: For the legislative declaration contained in the 2008 act amending subsection (2)(a), see section 1 of chapter 339, Session Laws of Colorado 2008.