
By: **Delegates O'Donnell, Smigiel, Sossi, Walkup, and Weir**

Introduced and read first time: February 10, 2005

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources - Endangered and Threatened Species - Incidental**
3 **Taking - Puritan Tiger Beetle**

4 FOR the purpose of authorizing the Secretary of Natural Resources to issue an
5 incidental taking permit for the endangered puritan tiger beetle if the applicant
6 submits a certain plan and the Secretary makes certain findings; authorizing
7 the Secretary to adopt certain regulations; defining a certain term; and
8 generally relating to the establishment of an incidental taking permit for the
9 puritan tiger beetle.

10 BY repealing and reenacting, with amendments,
11 Article - Natural Resources
12 Section 10-2A-01 and 10-2A-05
13 Annotated Code of Maryland
14 (2000 Replacement Volume and 2004 Supplement)

15 BY adding to
16 Article - Natural Resources
17 Section 10-2A-05.1
18 Annotated Code of Maryland
19 (2000 Replacement Volume and 2004 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Natural Resources**

23 10-2A-01.

24 (a) In this subtitle the following words have the meanings indicated.

25 (b) (1) "Conserve" means to use all methods and procedures for the purpose
26 of increasing the number of individuals within species or populations up to the
27 optimum carrying capacity of their habitat and maintaining these levels.

1 (2) "Conserve" includes all activities associated with scientific resources
2 management such as research, census, law enforcement, habitat acquisition and
3 maintenance, propagation, live trapping, and transplantation, including the periodic
4 or total protection of species or populations as well as regulated taking.

5 (3) With respect to endangered and threatened species, "conserve"
6 means to use all methods and procedures including those described in this subsection
7 which are necessary to bring any endangered or threatened species to the point at
8 which the measures provided for these species pursuant to this subtitle are no longer
9 necessary, except that regulated taking as a method and procedure shall be limited to
10 the extraordinary case where population pressures within a given ecosystem cannot
11 be otherwise relieved.

12 (c) "Ecosystem" means a system of living organisms and their environment,
13 each influencing the existence of the other and both necessary for the maintenance of
14 life.

15 (d) (1) "Endangered species" means any species whose continued existence
16 as a viable component of the State's wildlife or plants is determined to be in jeopardy.

17 (2) "Endangered species" includes any species of wildlife or plant
18 determined to be an "endangered species" pursuant to the Endangered Species Act.

19 (e) "Endangered Species Act" means the Endangered Species Act of 1973, 87
20 Stat. 884.

21 (f) "INCIDENTAL TAKING" MEANS THE TAKING OF LISTED SPECIES THAT IS
22 INCIDENTAL TO, AND NOT THE PURPOSE OF, THE CARRYING OUT OF AN OTHERWISE
23 LAWFUL ACTIVITY.

24 (G) "Nongame species" means any wildlife species not legally classified as
25 game birds or mammals, threatened species, or an endangered species by statute or
26 regulation of the State.

27 [(g)] (H) "Optimum carrying capacity" means that point at which a given
28 habitat can support healthy populations of wildlife species, having regard to the total
29 ecosystem, without diminishing the ability of the habitat to continue that function.

30 [(h)] (I) (1) "Plant" means any member of the plant kingdom.

31 (2) "Plant" includes seeds, roots, and other parts of the plant.

32 [(i)] (J) "Species" includes any subspecies of wildlife or plant and any other
33 group of wildlife of the same species or smaller taxa in common spatial arrangement
34 that interbreed when mature.

35 [(j)] (K) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap,
36 capture, or collect, or to attempt to engage in any such conduct.

1 [(k)] (L) "Threatened species" means any species of wildlife or plants which
2 appears likely, within the foreseeable future, to become endangered including any
3 species of wildlife or plant determined to be a "threatened species" pursuant to the
4 Endangered Species Act.

5 10-2A-05.

6 (a) Except with respect to species of wildlife or plants determined to be
7 endangered or threatened pursuant to the Endangered Species Act, the Secretary,
8 upon the petition of an interested person, shall conduct a review of any listed or
9 unlisted species proposed to be removed from or added to the lists published pursuant
10 to § 10-2A-04(f) of this subtitle, if the Secretary publishes public notice that the
11 person has presented substantial evidence which warrants a review.

12 (b) When any species of wildlife or plant is listed as a threatened species
13 pursuant to § 10-2A-04(f) of this subtitle, the Secretary shall adopt regulations
14 necessary and advisable to provide for the conservation of the species. The Secretary,
15 by regulations, may prohibit with respect to any threatened species of wildlife or
16 plant any act prohibited under subsection (c) of this section.

17 (c) Except as provided in subsection (f) of this section AND § 10-2A-05.1 OF
18 THIS SUBTITLE, with respect to any endangered species of wildlife, a person may not:

19 (1) Export the species from the State;

20 (2) Take the species within the State;

21 (3) Possess, process, sell or offer for sale, deliver, carry, transport, or ship
22 the species by any means; or

23 (4) Violate any regulation pertaining to the conservation of the species or
24 to any threatened species of wildlife listed pursuant to this subsection and adopted by
25 the Secretary pursuant to authority provided by this section.

26 (d) Except as provided in subsection (f) of this section, with respect to any
27 endangered species of plant, a person may not:

28 (1) Export the species from the State;

29 (2) Possess, process, sell, offer for sale, deliver, carry, transport, or ship
30 the species by any means; or

31 (3) Violate any regulation pertaining to the species or to any threatened
32 species of plant listed pursuant to § 10-2A-04(f) of this subtitle and adopted by the
33 Secretary.

34 (e) Any endangered species of wildlife or plant which enters the State from
35 another state or from a point outside the territorial limits of the United States and
36 which is transported to a point within or beyond the State may enter and be

1 transported without restriction in accordance with the terms of any federal permit or
2 permit issued under the laws or regulations of another state.

3 (f) The Secretary may permit, under the terms and conditions he prescribes,
4 any act otherwise prohibited by subsections (c) and (d) of this section for scientific
5 purposes or to enhance the propagation or survival of the affected species.

6 10-2A-05.1.

7 (A) THE SECRETARY MAY ISSUE A PERMIT TO AN APPLICANT THAT
8 AUTHORIZES AN INCIDENTAL TAKING OF THE ENDANGERED PURITAN TIGER
9 BEETLE IF:

10 (1) THE APPLICANT SUBMITS A CONSERVATION PLAN TO THE
11 DEPARTMENT THAT SPECIFIES:

12 (I) THE IMPACT THAT WILL LIKELY RESULT FROM THE
13 INCIDENTAL TAKING;

14 (II) THE STEPS THAT THE APPLICANT WILL TAKE TO MINIMIZE AND
15 MITIGATE THE IMPACT, AND THE FUNDING THAT WILL BE AVAILABLE TO
16 IMPLEMENT THE STEPS;

17 (III) THE ALTERNATIVE ACTIONS TO THE INCIDENTAL TAKING THAT
18 THE APPLICANT CONSIDERED AND THE REASONS THAT THE ALTERNATIVES WERE
19 NOT USED; AND

20 (IV) ANY OTHER MEASURES THAT THE SECRETARY REQUIRES AS
21 BEING NECESSARY OR APPROPRIATE FOR THE PURPOSES OF THE PLAN; AND

22 (2) THE SECRETARY FINDS THAT:

23 (I) THE INCIDENTAL TAKING WILL NOT APPRECIABLY REDUCE
24 THE LIKELIHOOD OF THE SURVIVAL OR RECOVERY OF THE PURITAN TIGER BEETLE
25 IN THE WILD;

26 (II) THE APPLICANT WILL, TO THE EXTENT PRACTICABLE,
27 MINIMIZE AND MITIGATE THE IMPACTS OF THE INCIDENTAL TAKING;

28 (III) ADEQUATE FUNDING FOR THE CONSERVATION PLAN IS
29 AVAILABLE AND THE PLAN WILL BE IMPLEMENTED; AND

30 (IV) THE APPLICANT HAS OBTAINED THE REQUIRED FEDERAL
31 AUTHORIZATION FOR THE INCIDENTAL TAKING OF THE PURITAN TIGER BEETLE.

32 (B) THE SECRETARY MAY ADOPT REGULATIONS TO IMPLEMENT AND
33 ENFORCE THIS SECTION.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2005.