

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 431 (Senator Brooks)
Education, Energy, and the Environment

**Fish and Wildlife - Endangered and Threatened Species and Migratory Birds -
Regulations, Lists, Petitions, Essential Habitats, and Takings**

This bill makes changes to the State’s endangered and threatened species laws and provisions governing the Irreplaceable Natural Areas Program by (1) defining “foreseeable future” and “harm” under the endangered and threatened species laws, and modifying provisions governing listing or delisting species as endangered or threatened species; (2) authorizing designation of essential habitats for endangered and threatened species; (3) prohibiting a person from taking (*e.g.*, harming) a migratory bird listed as a protected migratory bird under federal regulations as of January 1, 2025, except as provided in regulations adopted by the Secretary of Natural Resources; and (4) requiring that the Department of Natural Resources (DNR) review and, if warranted, update regulations carrying out the Irreplaceable Natural Areas Program by July 1, 2033, and at least every 10 years thereafter.

Fiscal Summary

State Effect: State expenditures may increase, beginning as early as FY 2027, as discussed below. Revenues are not directly affected.

Local Effect: Local government expenditures may increase, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

State Endangered and Threatened Species Laws

Current Law

In General

The State's Endangered Species of Fish Conservation Act (ESFCA) and Nongame and Endangered Species Conservation Act (NESCA), and DNR regulations implementing the acts, generally prohibit taking, possession, transportation, or trade of threatened and endangered species of fish, wildlife, or plants, subject to specified exceptions.

Under both acts, "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

Under DNR regulations, "harm" is defined as an act which kills or injures wildlife and includes an act that significantly modified or degrades a habitat thereby killing or injuring wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Under both acts, "endangered species" is defined as any species whose continued existence as a viable component of the State's fish, wildlife, or plant resources is determined to be in jeopardy, including any species of fish, wildlife, or plant determined to be an endangered species pursuant to the federal Endangered Species Act (ESA). "Threatened species" is any species of fish, wildlife, or plant which appears likely, within the foreseeable future, to become endangered, including any species of fish, wildlife, or plant determined to be a threatened species pursuant to ESA.

Listing and Delisting of Species

Under ESFCA and NESCA, in addition to the species determined to be endangered or threatened pursuant to ESA, the Secretary of Natural Resources must determine, by regulation, whether any species of fish, wildlife, or plant normally occurring within the State is an endangered or threatened species due to any of several factors:

- the present or threatened destruction, modification, or curtailment of its habitat or range;
- overutilization for commercial, sporting, scientific, educational, or other purposes;

- disease or predation;
- the inadequacy of existing regulatory mechanisms; or
- other natural or manmade factors affecting its continued existence within the State.

The Secretary must make determinations:

- on the basis of the best scientific, commercial, and other data available and after consultation, as appropriate, with federal agencies, other interested State agencies, other states having a common interest in the species, and interested persons and organizations; and
- taking into consideration any actions being carried out or about to be carried out by the federal government, other states, other State agencies, or political subdivisions, or by any other person, which may affect the species.

The Secretary must adopt regulations containing the lists of endangered species and threatened species. By July 1, 2026, and at least every five years thereafter, the Secretary must review and, if warranted, update the regulations.

Except with respect to species of fish, wildlife, or plants determined to be endangered or threatened under ESA, if an interested person submits a petition including specified information, the Secretary must conduct a review of the listed or unlisted species proposed by the petition to be removed from or added to the endangered and threatened species lists. Among the information that must be provided on the petition is evidence (1) of the species' decline, if the species is an unlisted species or (2) that the species is more common than previously believed and documented, if the species is a listed species.

Programs Necessary for Conservation

The Secretary must establish programs, including acquisition of land or aquatic habitat or interests in land or aquatic habitat, necessary for the conservation of threatened or endangered species of fish, wildlife, or plants.

The Bill

Definitions

The bill establishes a definition of "foreseeable future" (used in the definition of "threatened species") under both acts, defining the term to mean as far into the future as DNR can make reasonably reliable predictions, on a case-by-case basis, about the threats to a species of fish, wildlife, or plant and the species' response to those threats (1) using the best available data and (2) taking into account considerations including the species'

life-history characteristics, the projected time frame of the threat, and environmental variability.

The bill also defines “harm” under both acts – in a similar manner as it is defined in DNR regulations – to mean an act that kills or injures any species of fish or wildlife and includes an act that significantly modifies or degrades a habitat, thereby killing or injuring any species of fish or wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering.

Listing and Delisting of Species

The bill requires that a determination made by the Secretary whether a species of fish, wildlife, or plant normally occurring within the State is an endangered or threatened species must be made without reference to possible economic or other impacts of the determination.

The bill also establishes that the Secretary must delist a species if the Secretary determines, based on consideration of factors and standards in existing statute, that the best scientific and commercial data available substantiate that:

- the species is extinct;
- the species has recovered to the point that it no longer meets the definition of endangered species or threatened species;
- information has become available since the original listing decision that shows that the listed entity does not meet the definition of an endangered species or threatened species; or
- information has become available since the original listing decision that shows that the listed entity does not meet the definition of a species.

A petition submitted to delist a species must include evidence of one of the above.

Essential Habitat Designations

The bill authorizes the Secretary to designate areas as essential habitats for endangered and threatened species.

Taking of Migratory Birds

The bill establishes, under NESCA, that, except as provided in regulations adopted by the Secretary, a person may not take any migratory bird listed under specified federal

regulations (that list birds protected by the federal Migratory Bird Treaty Act) as of January 1, 2025.

Irreplaceable Natural Areas Program

Current Law

Chapter 420 of 2022 established the Irreplaceable Natural Areas Program, within DNR, to preserve Maryland's native biodiversity on State-owned land managed by the department for current and future residents of the State. Chapter 420 required that DNR adopt regulations by July 1, 2023, to carry out the program, including regulations (1) designating irreplaceable natural areas on State-owned land managed by the department, and (2) establishing management objectives for irreplaceable natural areas, including a map depicting boundaries for each area, a description of the unique features and threats for each area, and compatible and incompatible activities for each area.

The Bill

The bill requires DNR to review and, if warranted, update the regulations carrying out the program, by July 1, 2033, and at least every 10 years after.

State and Local Expenditures:

Department of Natural Resources

DNR expenditures may increase, beginning in fiscal 2027, to the extent the department begins regulating the taking of migratory birds when the bill takes effect, in accordance with the State law definitions of "take" (which includes harm) and "harm" (established in statute by the bill as including "an act that significantly modifies or degrades a habitat, thereby killing or injuring [a fish or wildlife species] by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering"). DNR has indicated that regulating the taking of migratory birds, in addition to its existing regulation of the taking of endangered and threatened species, likely involves (1) drafting and implementation of regulations, including establishing best practices and mitigation requirements; (2) permit review for the incidental taking of migratory birds; and (3) enforcement efforts. DNR indicates, however, that the extent of any additional resources needed cannot be reliably estimated at this time.

Other State Agencies, and Local Governments

The extent to which the bill may affect capital programs (construction of buildings or other infrastructure) of State agencies or local governments – to the extent the bill strengthens

fish, wildlife, and plant protections in comparison to federal and State protections in the absence of the bill (and results in costs for capital programs to comply with the strengthened protections) – cannot be reliably determined. For example, any impact of the bill’s prohibition on the taking of any migratory bird listed under federal regulations as of January 1, 2025, is unclear, largely due to uncertainty of how restrictive DNR’s implementation of the prohibition is under the bill (the bill makes the prohibition subject to any exceptions provided in regulations adopted by the Secretary of Natural Resources) in comparison to current or future federal regulation of the taking of migratory birds.

Small Business Effect: Small businesses may be meaningfully affected if they (1) are engaged in activity that is limited, made more costly, or otherwise affected by strengthened fish, wildlife, and plant protections under the bill or (2) may generate business from assisting others in complying with the strengthened protections.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 578 (Delegate Palakovich Carr, *et al.*) - Environment and Transportation.

Information Source(s): Department of Natural Resources; Department of General Services; Maryland Department of Transportation; University System of Maryland; City of Frederick; Anne Arundel, Baltimore, Cecil, Frederick, Montgomery, and Somerset counties; Maryland Association of Counties; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2026
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