

CHAPTER 5C**ENDANGERED PLANT SPECIES PROGRAM****Authority**

N.J.S.A. 13:1B-1 et seq., 13:1B-15.151 et seq., and 13:1D-9.

Source and Effective Date

R.2005 d.181, effective May 12, 2005.
See: 36 N.J.R. 5289(a), 37 N.J.R. 2013(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 5C, Endangered Plant Species Program, expires on May 12, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 5C, Endangered Plant Species Program, was adopted as R.1990 d.22, effective January 16, 1990. See: 21 N.J.R. 2847(a), 22 N.J.R. 179(a).

Pursuant to Executive Order No. 66(1978), Chapter 5C, Endangered Plant Species Program, was readopted as R.1995 d.45, effective December 22, 1994. See: 26 N.J.R. 3790(a), 27 N.J.R. 322(a).

Pursuant to Executive Order No. 66(1978), Chapter 5C, Endangered Plant Species Program, was readopted as R.2000 d.42, effective December 22, 1999. See: 31 N.J.R. 3005(a), 32 N.J.R. 274(a).

Chapter 5C, Endangered Plant Species Program, was readopted as R.2005 d.181, effective May 12, 2005. See: Source and Effective Date.

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 5C, Endangered Plant Species Program, was extended by gubernatorial directive from May 12, 2010 to May 12, 2011. See: 42 N.J.R. 468(a).

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SUBCHAPTER 1. GENERAL INFORMATION**7:5C-1.1 Purpose and scope**

This chapter constitutes the rules of the Department of Environmental Protection concerning the development and adoption of a State endangered plant species list, as authorized by P.L. 1989, c.56 (N.J.S.A. 13:1B-15.151 through 13:1B-15.158), and contains the official Endangered Plant Species List. The purpose of this chapter is to provide detailed procedures, standards, and criteria for developing and adopting a list of endangered plant species native to the State, in order to eliminate the confusion resulting from various existing inconsistent unofficial lists and to efficiently incorporate the preservation of the State's natural diversity into government planning operations.

7:5C-1.2 Construction

This chapter shall be liberally construed to permit the Department to effectuate the purposes of P.L. 1989, c.56 (N.J.S.A. 13:1B-15.151 through 13:1B-15.158).

7:5C-1.3 Severability

If any subchapter, section, subsection, provision, clause or portion of the chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

7:5C-1.4 Definitions

The following words and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“APA” means the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

“Commissioner” means the Commissioner of the Department of Environmental Protection, or his or her designee.

“Department” means the Department of Environmental Protection.

“Division” means the Division of Parks and Forestry in the Department of Environmental Protection.

“Endangered Plant Species List” means the official State list of native endangered plant species promulgated by the Department pursuant to P.L. 1989, c.56 (N.J.S.A. 13:1B-15.151 through 13:1B-15.158) and the rules in this chapter.

“Endangered species” means any native plant species whose survival in the State or the nation is in jeopardy, including, but not limited to: plant species designated as listed, proposed, or under review by the Federal government as endangered or threatened throughout its range in the United States pursuant to the “Endangered Species Act of 1973,” P.L. 93-205 (16 U.S.C. section 1533 et seq.), as amended; any additional species known or believed to be rare throughout its worldwide range; and any species having five or fewer extant populations within the State.

“Extant populations” means those populations documented in the Natural Heritage Database to exist at a particular location.

“Native” means growing or living naturally in New Jersey without having been brought to or planted in New Jersey by any person.

“Natural Heritage Database” means the manual and computerized file maintained within the Division of Parks and Forestry which includes continually updated information on the location and status of native plant species of the State, as authorized by N.J.S.A. 13:1B-15.146 through 13:1B-15.150.

“Plant” means any member of the Plant Kingdom, including all roots, stems, leaves, flowers, fruits, seeds, spores, gametophytes, and other parts thereof.

“Plant Kingdom” means those organisms contained in the phylum Bryophyta and phylum Tracheophyta.

“Population” means a group of individuals of the same species which occupy a specific geographic location.

“Rare” means extremely uncommon making it vulnerable to extinction throughout its range.

“Species” means any species, subspecies, or variety of plant.

“Under review by the Federal government as endangered or threatened” means plant species listed as candidate species in the most recent Notice of Review published in the Federal Register by the United States Fish and Wildlife Service.

Amended by R.1991 d.446, effective August 19, 1991.

See: 23 N.J.R. 812(a), 23 N.J.R. 2507(b).

Added “Extant population” and “Plant Kingdom”. Amended “Under review by the Federal government as endangered or threatened”.

Amended by R.2000 d.42, effective January 18, 2000.

See: 31 N.J.R. 3005(a), 32 N.J.R. 274(a).

In “Under review by the Federal government as endangered or threatened”, substituted “as candidate species” for “within status categories 1 and 2” following “listed”.

SUBCHAPTER 2. DEVELOPMENT AND ADOPTION OF ENDANGERED PLANT SPECIES LIST

7:5C-2.1 Development and adoption of Endangered Plant Species List

(a) The Commissioner will direct research and investigations related to historical records, populations, distributions, critical habitat needs, limiting factors, and other biological and ecological data that will aid in determining the eligibility of native plant species for inclusion on the Endangered Plant Species List. The Department will incorporate the results of research and investigations conducted under this section into the Division’s Natural Heritage Database.

(b) On the basis of research and investigations described at (a) above and information contained in the Natural Heritage Database, the Department will propose and adopt, pursuant to the APA, designation to the Endangered Plant Species List of those native plant species meeting the criteria at N.J.A.C. 7:5C-2.2, giving the common and scientific name for each listed species.

(c) The Department will, on the basis of new or updated information in the Natural Heritage Database, review the Endangered Plant Species List at least annually to determine if additions or deletions to the list are needed based on the criteria at N.J.A.C. 7:5C-2.2. If the Department determines on the basis of its review that a listed plant species is no longer endangered, or that a plant species qualifies for listing as endangered, the Department may propose and adopt, pursuant to the APA, revision of the Endangered Plant Species List. The Department will not propose the removal from the Endangered Plant Species List of any native plant species designated as listed, proposed, or under review by the Federal government as endangered or threatened.

7:5C-2.2 Criteria for designating plant species as endangered

(a) The Department will designate a plant species as endangered if it is a native plant species and it satisfies one or more of the following criteria:

1. The Department makes a determination that its survival in the State or nation is in jeopardy based on the best available scientific information, including, but not limited to:

i. The number of apparently secure populations in the State as compared to the number of populations vulnerable to decimation by natural or man-made factors;