



The attached comments are submitted on behalf of the New York State Builders Association and the Long Island Builders Institute with respect to the proposed changes to 6 NYCRR Part 182.

The proposed changes to 182.2 (g) would expand the definition of experimental population by deleting extirpated species and making it applicable to threatened or endangered species. This proposed regulation also significantly broadens the location for reintroduction of an experimental population by deleting historic range and permitting introduction into any area to aid in recovery within New York. This expansion of experimental population represents a significant increase of species that receive DEC protections and of the area available to locate such species. The removal of historic range together with the increased number of listed species places an undue regulatory burden on property owners whose property rights could be adversely impacted by introduction of a species previously foreign to the property owner's location. DEC's statutory authority is directed at the protection of species habitats throughout all or a significant portion of their range..

This regulation effectively expands the species indigenous habitat to the entirety of New York State without regard to its range as currently required. DEC would have authority to introduce species to parts of New York State that were not in the species ranges. Property owners could be limited in their ability to develop or use their property through the introduction of experimental populations pursuant to this proposed regulation. DEC would be able to place experimental populations in areas outside of their range to the detriment of property owners facing land use restrictions based on the artificial introduction of species in a habitat not previously occupied. This proposed regulation does not appropriately balance the burden on the property owner. If a species introduced into its native range naturally moves outside that area, DEC has the ability to obtain statutory protection for such species. The Environmental Conservation Law actively many species through statute.

Part 182.3 (b) (3) is revised by the proposed regulation to expand the criteria for determining a species to be a species of special concern by reducing from 3 to 1 the adjacent states or provinces, which have listed a species as endangered or threatened. The use of a smaller number of provinces or states would potentially result in data which is not representative of the regional status of the species. In Quebec province Peary Caribou are listed as endangered species. Under this proposed regulation the Peary Caribou would be a candidate for special concern status. The proposed regulation would unnecessarily expand to pool of species that would be considered for endangered or threatened status. This status should be carefully ascribed to species to maintain the balance of not overburdening property owners. This change would unnecessarily broaden criteria to list species without

an appropriate relationship to New York state based on geographic, climate, migratory patterns and other differences by narrowing the adoption basis to one state or province.

Part 182.9 (c) limits a DEC determination that a proposed activity is not subject to regulation to one year. The majority of activities subject to review under Part 182 are also subject to local government review. With local review it is almost a certainty that it will not be completed in one year. Based on the practical situation involving approvals one year would require property owners to resubmit for review by DEC. additional time. Three years should be provided for a non-jurisdictional determination to avoid duplication and regulatory burden.

Part 182.13 (a) (6) provides that... “experimental population areas must be geographically distinct from existing habitat occupied by the target species.” It is possible and depending on the experimental species probable that the introduced species might expand its range beyond its designated area. The experimental population in its designated area is exempt from incidental take permitting. It is not clear if the experimental population expands beyond its geographic region does it lose its exemption and become subject to incidental take permitting. The property owner would be subject to unanticipated land use restrictions based on an extension of range by the experimental population.

Part 182.13 (a) (7) provides a homeowner or building owner an exemption of limited application since the exemption does not apply when listed species are present. There are endangered and threatened species which occupy dwellings or other buildings on a year-round basis. As a consequence, owners with a year-round listed species would be restricted in their land uses.

The New York State Builders Association and Long Island. Builders Institute want certainty in species regulation together with a balance between property rights and species protection. Your consideration of these comments is greatly appreciated.

Sincerely,

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