



1.0 Authority

[Endangered Species Act of 1973](#) provided for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend by encouraging establishment of state programs. The Act outlines the following:

- Authorizes the determination and listing of species as endangered or threatened
- Prohibits unauthorized taking, possession, sale, or transport of endangered species
- Provides authority to acquire land for the conservation of listed species, using federal Land And Water Conservation funds
- Authorizes establishment of cooperative agreements and grants-in-aid to states that establish and maintain active and adequate programs for endangered and threatened wildlife and plants
- Authorizes the assessment of civil and criminal penalties for violating the Act or regulations
- Authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the Act or any regulation issued there under

[s. 29.604 Wis. Stats.](#), Endangered and threatened species protected was signed

[NR 27](#), Endangered and Threatened Species, is the Department of Natural Resources administrative rule put into place in 1971, contains the rules necessary to implement the statute and, in conjunction with that statute, governs the taking, transportation, possession, processing or sale of any wild animal or wild plant specified on the [Wisconsin Endangered and Threatened Species List](#). Listed species are protected by law.

[FDM 24-20](#), Endangered Species, contains department policies and procedures.

2.0 Background

Rare plants found on Wisconsin's highway rights of way are subject to state and federal law. Because of their relatively undisturbed condition, highway rights of way in Wisconsin can be an important repository for these rare and native plants declared endangered, threatened, or of special concern by the Wisconsin Department of Natural Resources (DNR).

In situations where a highway construction or maintenance project threatens the survival of these species, the possibility of salvaging them should be explored as one method of saving them. It is often preferable to salvage plants a year or more prior to the scheduled beginning of highway construction, especially when members of the public will be engaged in the work.

Listed threatened, endangered, and special concern species require state or federal agency coordination, permits or agreements prior to their relocation or "take". Permits and agreements are often made between the department and other state and federal agencies during development of department planning, design or maintenance. Coordination between federal agencies, the DNR and the department is required prior to salvaging or removal of state or federally listed plants. Plants not listed may be moved without permit.

Regional environmental coordinators, the designated DNR liaison and Bureau of Highway Maintenance landscape architects can provide coordination and technical assistance for identification and transplant procedures.

3.0 Salvage Applicant Priorities

Plants may be salvaged and relocated to other places on the right of way, preferably nearby as permitted by the agencies. Small numbers of plants may be relocated by experienced Wisconsin Department of Transportation (WisDOT) personnel, if available. A private contractor may be required to move larger quantities or larger plant sizes.

If relocation to other WisDOT properties is not feasible, permits may be issued to interested not-for-profit private parties to “rescue” the plants. Preference should be given to individuals or organizations that intend to relocate the plants to publicly owned properties such as school grounds or parks. Second priority for privately salvaged plants should be given to placement on private property. Plant species listed in the current edition of the DNR Bureau of Endangered Resources “Endangered and Threatened Species List” and/or the US Department of the Interior, US Fish and Wildlife Service “Endangered and Threatened Species List” publication should be relocated only to publicly owned land.

Rescue for commercial purposes, e.g. selling at garden centers or flea markets, should not be allowed unless the above-referenced individuals or organizations do not have an interest. In the event that it is allowed, those intending to harvest plants for sale must agree to provide some reasonable and equitable form of remuneration to the department, e.g. replanting a percentage of plants harvested at a different location on highway right of way, returning a percentage of native seed collected to the department, etc. See HMM 07-25-10, Harvesting Products of Nature.

4.0 Permit Application

Permit applicants should submit [Application/Permit to Work on Highway Right of way](#). The following information should be submitted in addition to the application form:

- A letter of introduction from the applicant detailing the methods to be used for plant removal and site restoration, if required.
- A description of the intended use(s) for the salvaged plants.
- A map and/or description of the location of the proposed plant rescue site.
- A list of the names and approximate numbers of the plants to be rescued.
- Documentation the applicant has received approval from the DNR and the US Fish and Wildlife Service to relocate any plants listed as endangered or threatened. The document should identify the name and number of each endangered or threatened species to be rescued by the applicant. If necessary, verify approvals with the respective agencies.
- Documentation from the governing authority that the applicant has obtained permission to relocate plants to publicly owned land or from the landowner, if different from the applicant, to relocate plants to privately owned land.

5.0 Application Review and Issuance

Regional maintenance personnel should verify the area of the proposed rescue is within the grading limits of a project on the current letting schedule for the appropriate year.

The regional environmental coordinator and Project Development Section and a Bureau of Highway Maintenance landscape architect should be consulted. If special requirements are identified by these individuals, add them to the special provisions.

If there are known populations of invasive plant species growing at the proposed rescue site, the permit should be denied unless the applicant can furnish adequate evidence (s)he can prevent the invasive species from being relocated along with the permitted plants.

The original approved Application/Permit should be sent to the applicant. One copy should be retained by the WisDOT regional office. A courtesy copy should be sent to the governing authority if the relocation site is publicly owned or to the private landowner if different from the applicant.

6.0 Additional Permit Provisions

The following provisions should be added to the permit if appropriate:

- The vegetation to be rescued shall be reviewed in the field jointly by the applicant and the designated WisDOT representative prior to any work commencing on the highway right of way.
- Copies of all state and federal permits and agreements shall be on-site prior to and during the performance of the work.
- Non-target vegetation shall not be damaged or destroyed.
- All participants must be at least 11 years of age. If the rescue or replanting location is on a controlled-access highway, the minimum age is 16. The applicant must furnish one adult supervisor for every 6 workers.

WisDOT property limits for the salvage operation will be clearly delineated prior to the salvage operation. Only vegetation within the designated department property boundaries is to be salvaged. Trespass onto adjacent lands for the purpose of salvaging vegetation is prohibited without the express written consent of the owner(s). Vegetation on adjacent lands may be salvaged or rescued only after receipt of the owner's written consent.

7.0 Timing

Applicants are encouraged to apply well before the growing season for the target plant species so the plants may be located, identified and marked. Marking of the plants to be moved should take place when they are actively growing.

To assure transplanting success and plant establishment, it is critical the transplanting operation be scheduled to take place during the optimal season for the particular species being rescued.