

BEFORE THE
WISCONSIN DEPARTMENT OF NATURAL RESOURCES

In the Matter of Whether Broad)
Authorization may be provided)
Under 29.604 (6r), Stats.,)
to Incidentally Take an Animal Species)
that is Listed as Threatened.)

Authorization to incidentally take the State-threatened Butler's gartersnake (*Thamnophis butleri*) described herein during and as a result of activities that impact Tier 2 Sites (moderate conservation value sites to the overall status and recovery of the snake) is granted as provided herein.

FINDINGS OF FACT

1. The following definitions apply to the authorization described herein:
 - a. "Suitable habitat" and "suitable habitat patch" are defined as undeveloped areas that include both wetland and adjacent upland habitat. The acreage calculation for suitable habitat (defined above) includes the total, contiguous, suitable habitat available for the snake, regardless of project boundaries. In most cases the suitable habitat calculation will include habitat beyond the project boundary. To be considered as potential Butler's gartersnake habitat:
 - The wetland habitat may be any classification except permanent open water. Lakes, streams, and deep ponds are not considered suitable, nor are permanent stormwater management ponds. A 100' edge of forested wetland where it abuts or is adjacent to suitable upland habitat is also considered suitable, as crayfish burrows are likely to be present in this habitat.
 - The upland habitat must be within 300 feet of over-wintering wetlands AND have intact ground vegetation (grasses, forbs) AND have less than 75% canopy closure. The upland habitat must be directly connected to the wetland in at least one location. Closed canopy upland forests where ground vegetation is very sparse are not considered suitable, but old fields with significant invasion of woody shrubs and trees are suitable if grasses and forbs are still largely intact. Manicured lawns and fields in active row crops or in crop rotation are not considered suitable. Fields that remain fallow for more than one year may be considered suitable habitat. Pastures will be included as suitable habitat if more than 50% of the acreage has an eight-inch or greater canopy height.
 - b. "Good quality suitable habitat" means habitat with less than 50 percent of the wetland habitat component dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass, *Phalaris arundinacea*; purple loosestrife, *Lythrum salicaria*; giant reed grass, *Phragmites* sp.); and/or less than 50 percent of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely

to become sparser through ongoing natural succession.

- c. "Moderate quality suitable habitat" means habitat with more than 50 percent and less than 75 percent of the wetland component dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass (*Phalaris arundinacea*); purple loosestrife (*Lythrum salicaria*); giant reed grass (*Phragmites* sp.)) and/or more than 50 percent and less than 75 percent of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.
 - d. "Poor quality suitable habitat" means habitat with more than 75 percent of the wetland component dominated by cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass (*Phalaris arundinacea*); purple loosestrife (*Lythrum salicaria*); giant reed grass (*Phragmites* sp.)); and/or more than 75 percent of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.
 - e. "Isolation" means a site that does not exchange genetic material with other sites because of physical separation from other suitable habitat patches. Barriers include physical structures such as paved roads, parking lots and walls that are impassable to the snakes; or resistant terrain, such as mowed lawns, golf courses, forests or agricultural fields that a snake could physically pass through, but would do so only occasionally with risk of predation, desiccation, and lack of shelter from the elements. Resistant terrain is considered impassable if it extends over 1,000 feet from suitable habitat.
 - f. "Tier 1 Site" means a suitable habitat patch of *minimal conservation value* where the Butler's gartersnake occurs and includes suitable habitat that is less than 10 acres in size, regardless of habitat quality, or less than 20 acres with poor habitat quality.
 - g. "Tier 2 Site" means a suitable habitat patch of *moderate conservation value* where a site where the Butler's gartersnake occurs and includes suitable habitat that is more than 10 acres and less than 20 acres with moderate to good habitat quality, or is greater than 20 acres and less than 30 acres with poor to moderate habitat quality.
 - h. "Tier 3 Site" means a suitable habitat patch of *significant conservation value* where the Butler's gartersnake occurs and includes suitable habitat that is greater than 20 acres and less than 30 acres with good habitat quality or is greater than 30 acres regardless of habitat quality.
2. The Wisconsin Department of Natural Resources (Department) listed the Butler's gartersnake (*Thamnophis butleri*) as a State-threatened species in 1997 due to extensive habitat loss within its very limited range and the integration with a similar species, the plains gartersnake (*Thamnophis radix*). Since that time, the Department has increased its understanding of the habitat requirements of the snake and the continued loss of suitable snake habitat. However, conflicts between land development and snake conservation continue due to the coincidence of the snake's limited range with the rapidly developing metropolitan Milwaukee area.

3. Between 1997 and June 2005, forty-two projects around the state have been authorized for incidental take of a state-listed species. Over 60 percent (26 projects) of the authorizations have been for the Butler's gartersnake. No other species has had more than one authorization within the same period.
4. The rarity of the Butler's gartersnake and the continued development pressure within its range necessitates a streamlined process for reviewing and planning projects that may impact the species. In 2003, the Department organized a Conservation Strategy Team consisting of Department staff and other individuals experienced with the snake specifically and species conservation generally. The purpose of the team was to develop a Conservation Strategy that would secure the long-term protection and recovery of the snake. The latest version of the Butler's Gartersnake Conservation Strategy (Version 2.3) was completed on March 31, 2005.

The strategy classifies suitable habitat areas for the snake based on size, isolation from other suitable sites, and habitat quality and allows for the identification of the sites most likely to contribute to the snake's long-term conservation. The three tiers are Tier 1 (sites of minimal conservation value), Tier 2 (sites of moderate conservation value) and Tier 3 (sites of significant conservation value).

5. In the Fall of 2004, members of the Butler's Conservation Strategy Team and others with expertise in population dynamics held a workshop to determine, given what was known at the time about the snake, how many populations were necessary to ensure the long-term protection of the snake. The following findings were identified based on the current knowledge of the snake and its habitat:
 - a. 65 viable populations must be protected to insure the long-term protection and recovery of the Butler's gartersnake.
 - b. Tier 3 sites are the only category believed to support viable populations over the long term. In addition, current analysis indicates that there are a sufficient number of sites to reach the target of 65 Tier 3 sites.
 - c. Tier 1 and 2 sites are important for individual snake populations but do not contribute to the overall conservation or recovery of the species.
6. Because the Conservation Strategy is focused on securing a sufficient number of Tier 3 sites for protection, the Department determined that Tier 1 sites do not contribute to the overall conservation of the species and thus do not warrant the same protection as sites with moderate or significant long-term conservation value. The Department entered into formal State Agency Consultation under s. 29.604, Stats., in 2004 and authorized broad incidental take for the Butler's gartersnake for projects that impact Tier 1 sites on October 6, 2004.
7. The Department, with advice from the Butler's Conservation Team, determined that Tier 2 sites, as defined, do not warrant the same protection as sites with significant long-term conservation value. Sites classified as Tier 2 are regarded as not contributing to the overall conservation of the species because the habitat they contain is either isolated from other patches, too small to support a population long-term, or of poor quality.

8. The Department issued a public notice dated July 12th, 2005 and closing on August 12th, 2005 that described the proposed incidental take. DNR provided the public notice to the news media throughout the state, to the parties listed in NR 27, and to other parties who have requested in writing to receive incidental taking notices. In addition, the Department held a public informational hearing on the proposed authorization on August 9th, 2005 in Waukesha.

A total of 9 written and 3 verbal public comments were submitted to the Department. Eleven comments were against the proposed IT authorization and one in support. The primary reasons against included:

- a. Protection of all 65 Tier 3 sites has not yet been accomplished,
- b. Authorization of Tier 2 sites would eliminate flexibility to protect any Tier 2 sites,
- c. New data (specifically the results of the genetics study) may be available in the near future that would increase our knowledge of the snake and its range and alter the Conservation Strategy.

The Department determined that no new data was provided that warranted the delay or cancellation of the Tier 2 authorization.

9. All projects that propose activities that will impact the Butler's gartersnake within Tier 2 sites and meet the criteria herein are covered under this broad Authorization for Incidental Take.
10. Any applicant requesting incidental take authorization as described herein is required to provide the necessary information to demonstrate they meet the conditions. The Department will issue a letter as appropriate providing coverage under the authorization. The letter is required to provide coverage under this authorization.
11. Incidental take that occurs under this authorization is not expected to have a negative effect on the overall status and recovery of the species. As such, no conservation measures are required for projects covered under this authorization. Voluntary actions that would protect and/or enhance the snake and its habitat are available and should be used at the discretion of the project applicant.
12. The taking authorization shall apply only to activities that do not inhibit or compromise the long-term conservation and recovery of the species. The Department will apply the principles of adaptive management to this Consultation project. As the collective knowledge base of the Butler's gartersnake evolves, the conditions of this authorization will be reviewed and modified accordingly. In particular, the Department will continue to evaluate the likelihood of conserving a sufficient number of Tier 3 sites to protect the Butler's gartersnake in the long-term. If it appears that there are not sufficient Tier 3 sites, then the Department will reconsider this authorization and its effect on the status and recovery of the snake. The Department reserves the right to deny any authorization or require individual incidental take authorization as warranted.
13. Incidental take of the Butler's gartersnake as a result of activities within Tier 2 sites as described herein is not likely to jeopardize the snake's continued existence and recovery, or the whole plant-animal community of which it is a part within the state; and the activity is not likely to result in the destruction or adverse modification of habitat that is critical to the continued existence of the species within the state.

14. The Department has complied with s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code.
15. The Department has concluded that:
 - a. the proposed activities covered under this broad incidental taking authorization will provide benefits to the public health, safety and welfare.
 - b. the taking will not be the purpose of, but will be only incidental to, the carrying out of a lawful activity,
 - c. the taking will not appreciably reduce the likelihood of the survival or recovery of the endangered species or threatened species within the state, the whole plant-animal community of which it is a part or the habitat that is critical to its existence.
16. The Department has also concluded that the Butler's Gartersnake Conservation Strategy minimizes take to the maximum extent practicable by restricting take to the lower quality Tier 1 and Tier 2 sites.

CONCLUSIONS OF LAW

1. The Department has the authority pursuant to s. 29.604 (6m) and (6r), Stats., to authorize the incidental take of state Endangered or Threatened species.
2. The Department has complied with appropriate statutes and administrative rules in making this decision.

ORDER

Persons and their employees, agents and contractors, are authorized to incidentally take the Butler's gartersnake (*Thamnophis butleri*) as a result of activities that would impact Tier 2 Sites (sites of moderate conservation value) provided that the conditions identified above are met.

APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes, administrative rules and case law establish time periods within which requests to review Department decisions must be filed.

For judicial review of a decision pursuant to sections 227.52 and 227.53, Stats., you must file a petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

This 4 day of October, 2005

State of Wisconsin
Department of Natural Resources
For the Secretary

By: 

Administrator
Division of Land
Wisconsin Department of Natural Resources

ltdecisn_Butlers_100405.doc