§ 11-0539. New York natural heritage program.

1. There is hereby established within the department the New York natural heritage program. The program is charged with:

a. analyzing existing sources of information, monitoring and taking censuses of plant and animal populations, and cooperating with other public agencies and scientific and educational institutions, including the New York state museum and the office of parks, recreation and historic preservation, to identify the location and status of plant and animal species and ecological communities, with an emphasis on rare species and rare ecological communities;

b. developing systems for ranking the state and global rarity of plant and animal species and ecological communities and producing lists of such rankings in consultation with the state biological survey and other appropriate entities and individuals; and

c. maintaining comprehensive data management systems integrating information on the location and status of rare plants, animals, and ecological communities, and analyzing and interpreting such information for the purpose of conserving and managing the state's biological diversity.

2. Upon request, and subject to the provisions of subdivision four of this section, the department shall provide information from the New York natural heritage program to other state agencies, public authorities, counties, towns, villages, cities and landowners or their authorized representatives.

3. The department may contract with a private entity to administer the New York natural heritage program.

4. Notwithstanding the provisions of article six of the public officers law or any other provision of law, the department may deny access to inspection of records, data or information collected or maintained by the New York natural heritage program that identify

locations or habitats of rare, threatened or endangered species or ecological communities where the destruction of such habitat or the removal of such species therefrom would impair their ability to survive, provided, however, that the commissioner may permit access to such records, data or information to persons, educators, schools or universities engaged in legitimate scientific and academic research.

5. No provision contained in this section shall in any way be construed to diminish or extend the department's authority to protect threatened or endangered species of wildlife or rare, threatened or endangered species of plants pursuant to sections 9-1503, 11-0535 and 11-0536 of this chapter or any other provision of law.

6. Nothing in this section shall authorize any person to enter private land without the permission of the private landowner.

7. State-owned waters, lands or portions thereof may be designated as natural heritage areas in order to conserve and manage plants, wildlife or ecological communities, with an emphasis on rare plants, wildlife, and ecological communities which support such plants or wildlife.

a. For purposes of this title, a site shall be eligible for designation as a "natural heritage area" if it matches one or more of the following criteria:

(i) provides habitat for "endangered species" or "threatened species" as defined in section 11-0535 of this title for animals and 9-1503 of this chapter for plants;

(ii) provides habitat for rare species where rare means species ranked as S1, S2 or S3 under criteria developed pursuant to paragraph b of subdivision one of this section; or

(iii) contains "significant ecological communities" where such term means all rare ecological communities as well as the best examples of common communities.

b. Any property designated as a natural heritage area shall be described and depicted upon a map. The description shall include a narrative setting forth the plants, animals or ecological communities

present on the property. The department shall make maps depicting natural heritage areas available for public inspection except as provided in subdivision four of this section.

c. Designation may be accomplished by the head of any state agency or entity having jurisdiction over state lands or waters for such appropriate properties as may exist within their respective jurisdictions and consistent with their respective missions, provided the commissioner is consulted, and approves, prior to such designation.

d. A designating state agency or entity shall publish notice concerning the designation of a natural heritage area in the environmental notice bulletin prior to such designation. Such notice shall provide for a thirty day public comment period following publication of the notice.

e. The head of any state agency or entity having jurisdiction over state lands or waters previously designated as natural heritage areas may seek to remove all or a portion of such lands or waters from such designation provided, however, that prior to such removal the commissioner publishes a finding that the designated area or portion of such area no longer meets the criteria in paragraph a of this subdivision. Such finding shall be published in the environmental notice bulletin and shall provide for a thirty day public comment period following publication of the notice.