

VI. PROTECTION OF WILDLIFE

Producer Note: Agricultural producers also have responsibilities concerning wildlife and migratory birds which may have habitat on the producer's property. Federal and state laws contain measures designed to protect or enhance wildlife or wildlife habitat.

A. Federal Endangered Species Act

The Endangered Species Act³⁷ (ESA) is designed to protect endangered and threatened species from federally-funded or directed activities, including pesticide use and wetlands manipulation.

The ESA also prohibits private persons from taking any listed endangered or threatened species of animal without a permit or exemption which allows the taking. Taking is defined as harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting the animal. An intent to take the animal is a required element for a violation of the ESA. No reported cases involve the taking of animals by pesticide poisoning, but the U.S. Fish and Wildlife Service has taken administrative action against farmers and ranchers who kill protected animals with meat illegally laced with pesticides. For example, in *Christy v. Hodel*,³⁸ a court upheld the authority of the U.S. Fish and Wildlife Service to assess penalties against livestock owners who deliberately killed grizzly bears, an endangered species, in order to protect their livestock.

Producer Note: An unlawful taking can result in serious criminal and civil penalties. Producers can apply for incidental taking permits if a contemplated activity might result in an inadvertent taking of a protected species. Permits are granted by the U.S. Fish and Wildlife Service.

The ESA makes it unlawful for anyone to import, take, possess, sell, deliver, or transport an endangered species of fish or wildlife or an endangered species of plant. Any person who knowingly violates the ESA is liable for a criminal fine of up to \$50,000 and up to one year of

³⁷ 16 U.S.C. § 1531 *et seq.* (1994).

³⁸ 857 F.2d 1324 (9th Cir. 1988), *cert. denied* 490 U.S. 1114 (1989).

imprisonment. All other ESA violations, such as reporting violations, are subject to a criminal fine of up to \$25,000 and up to six months imprisonment.

Through FIFRA, mandatory limitations on pesticide use are included on pesticide labels and in county specific use bulletins. If producers use pesticides in an area where mandatory limitations exist, they need to follow the directions and limitations contained in the bulletins. Voluntary limitations on pesticide usage may also be employed to protect endangered and threatened species and are contained in interim pamphlets available through EPA.

Producer Note: The Endangered Species Act can be a powerful tool in the protection of wildlife and its habitat through the imposition of serious criminal and civil penalties for the destruction or harming of protected species. Producers must be aware of any endangered or threatened species existing on their property and take steps to ensure that activities do not harm those species.

B. Federal Migratory Bird Treaty Act

Producer Note: Treaty provisions like those which protect migratory birds will be taken into account by regulatory officials when making certain determinations. For example, these provisions will be considered by an agency when determining whether to grant or deny permits for CAFOs.

The Migratory Bird Treaty Act³⁹ implements conventions between the United States and Canada, Japan, Mexico, and the former USSR for the protection of migratory birds. Birds protected under the Act are not necessarily endangered. The Act provides that, except as permitted by regulation, it is unlawful to pursue, hunt, take, capture, or kill any migratory bird. Violation of the Act is a misdemeanor with penalties including fines up to \$500 and imprisonment up to six months. Federal courts have split on the question of whether intent must be present in order to impose liability under the Act in cases where birds have been poisoned by pesticides.⁴⁰

³⁹ 16 U.S.C. § 703 *et seq.* (1994).

⁴⁰ See *United States v. Van Fossan*, 899 F.2d 636 (7th Cir. 1990) and *United States v. Rollins*, 706 F. Supp. 742 (D.C. Idaho 1989).

C. State Wildlife Protection Laws and Regulations

Producer Note: Many states have additional measures which either enhance protections under federal laws or address issues peculiar to wildlife found within the state. These states also may address common problems caused by wildlife. Utah has laws protecting wildlife.

Utah protects wildlife under the Wildlife Resources Code.⁴¹ Endangered wildlife is wildlife designated as endangered under the provisions of the federal Endangered Species Act. Protected wildlife include any wildlife except coyotes, field mice, gophers, ground squirrels, jack rabbits, muskrats, and raccoons. Threatened wildlife is wildlife designated as threatened under the federal Endangered Species Act. All wildlife, except those held in private ownership and legally acquired, are considered property of the state.

The following acts are prohibited under the Wildlife Resources Code and any violation is a misdemeanor:

- Taking or permitting a dog to take protected wildlife or parts of protected wildlife;
- Transporting or shipping protected wildlife;
- Selling or purchasing protected wildlife; and
- Possessing protected wildlife without a valid license, permit, tag, certificate of registration, bill of sale, or invoice.

Taking means hunting, pursuing, harassing, catching, capturing, possessing, trapping, or killing any protected wildlife. A person is guilty of wanton destruction of protected wildlife if he captures, injures, or destroys protected wildlife. Wanton destruction of certain protected wildlife such as bighorn sheep and other birds and animals can be considered a felony depending on the value of the bird or animal which has been assigned to it by the Division of Wildlife Resources within the Department of Natural Resources. Wanton destruction is defined as intentionally, knowingly, or recklessly capturing or injuring protected wildlife.

Producer Note: Taking protected wildlife is either a misdemeanor or felony in Utah depending on the value placed on the wildlife. For example, the Division of Wildlife Resources has assigned a value of \$1,000 to bighorn sheep and moose and that value is a factor in determining whether killing the animals is a felony or misdemeanor. Generally, rare wildlife have a higher dollar value than more common animals such as deer.

⁴¹ UTAH CODE ANN. § 23-1-1 *et seq.* (1995).

⁴² Federal Agriculture Improvement and Reform (FAIR) Act of 1996, P.L. 104-127.

⁴³ Conservation Reserve Program-Long Term Policy, 61 Fed. Reg. 49697-01 (1996) (to be codified at 7 C.F.R. pt. 704 *and* pt. 1410)(proposed Sep. 23, 1996).