

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 Act³⁹ (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*,⁴⁰ 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 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.

³⁹ 16 U.S.C. § 1531 *et seq.* (1994).

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

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 Act⁴¹ 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.⁴²

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. Idaho has laws protecting wildlife.

1. Wildlife in Idaho

Generally, all wildlife, including wild animals, birds, and fish, within the state of Idaho are considered property of the state and may only be captured or taken under conditions and

⁴¹ 16 U.S.C. § 703 *et seq.* (1994).

⁴² *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).

circumstances prescribed by the state.⁴³ The Idaho Fish and Game Commission (Commission) also regulates the sale, purchase, possession, transportation, and storage of wildlife and wildlife parts.⁴⁴

In addition, Idaho regulates the waste of wildlife⁴⁵ by making it illegal to allow or cause the waste of any game bird, game animal, or game fish, or the portions thereof that are usually eaten by humans. It is also illegal to capture or kill any game animal other than carnivores, except black bear, and detach or remove from the carcass only the head, hide, antlers, horns, or tusks and leave the carcass to waste. However, livestock owners or their employees are exempt when protecting livestock.

2. *Protection of Animals and Birds*

Taking of wildlife⁴⁶ is regulated by the Commission as to types of animals which may be taken, and the methods used. In addition, game, song, insectivorous, rodent killing, and innocent birds, other than English sparrows and starlings, are protected at all times of the year, including their eggs or nests.

However, any person may control, trap, and remove any wild animals or birds or may destroy the houses, dams, or other structures of fur-bearing animals for the purpose of protecting property. For example, a process exists for a landowner to complain to the Commission when wildlife other than antelope, elk, deer or moose are destroying or damaging property. If, after investigation, the complaint is deemed accurate, the Commission can send a representative to control the wildlife, grant permission to the complainant to remove the wildlife, authorize the removal or destruction of wildlife houses, dams or other structures, or issue a permit to any bona fide owner or lessee of property to trap or kill the wildlife.

A permit is not necessary to dispose of black bear, mountain lion, and other predators by livestock owners or their employees when the wildlife are molesting livestock. Mountain lion takings must be reported to the director, but livestock owners may take steps necessary to protect their livestock. In addition, muskrats may be taken at any time in or along the banks of irrigation ditches, canals, reservoirs or dams, by the owners, their employees, or those in charge of said irrigation ditches or canals.

⁴³ IDAHO CODE § 36-103 (1994).

⁴⁴ IDAHO CODE § 36-501 *et seq.* (1994).

⁴⁵ IDAHO CODE § 36-1202 (Supp. 1996).

⁴⁶ IDAHO CODE § 36-1101 *et seq.* (1994 & Supp. 1996).

Special rules exist for damage caused by antelope, elk, deer, or moose. The act also allows for some compensation to landowners for damages caused by animals. Violations of the act may result in both fines and jail time.⁴⁷

All individuals should be aware of the provisions of the Endangered Species Act before attempting to take any animals to ensure compliance with the ESA.

⁴⁷ IDAHO CODE § 36-1401 *et seq.* (1994 and Supp. 1996).

⁴⁸ Federal Agriculture Improvement and Reform (FAIR) Act of 1996, P.L. 104-127.