

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 Act³⁴ (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*,³⁵ a

³⁴ 16 U.S.C. § 1531 *et seq.* (1994).

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

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. 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 Act³⁶ 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

³⁶ 16 U.S.C. § 703 *et seq.* (1994).

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.³⁷

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. Nebraska has laws protecting wildlife.

The Nebraska Nongame and Endangered Species Conservation Act³⁸ provides state protection to species listed as endangered or threatened under the federal Endangered Species Act. The Nebraska Game and Parks Commission is authorized to extend the protection of the Act to other wildlife and wild plants normally occurring within the state and not listed under the federal statute, but still endangered or threatened due to habitat destruction, overutilization, disease, predation, inadequate regulatory mechanisms, or other factors.

The Act prohibits the export of any endangered species from the state or the taking of the species within the state. It is also a violation to possess, process, sell, offer for sale, deliver, carry, transport, or ship any endangered species. The Act further prohibits the violation of any regulation pertaining to the conservation of endangered or threatened species.

The Act directs all state agencies to take steps to ensure that programs and projects do not jeopardize the continued existence of endangered or threatened species. The Game and Parks Commission is authorized to establish programs for the conservation of endangered, threatened, and nongame species.

Producer Note: Another Nebraska statute³⁹ permits a farmer or rancher to destroy predators of livestock or poultry. However, this statute specifically states that the provision does not apply to any species protected by the Nongame and Endangered Species Conservation Act, the Endangered Species Act, and other federal wildlife statutes.

³⁷ 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).

³⁸ NEB. REV. STAT. § 37-430 *et seq.* (1993 and Supp. 1996).

³⁹ NEB. REV. STAT. § 37-201 (Supp. 1996).