



What Exactly is a “Protected Animal?”

Orbis recently defined “protected” plants, but what are “protected” animals? This question comes up frequently on social media. There are comments on animal photograph posts such as, “That species is endangered, call DNR!” Some novice biologists may quickly identify animals as a rare or protected species, without having the proper training to identify those species. The public may learn about endangered species, maybe they saw a documentary or participated in a program which brought awareness to certain species. Unfortunately, this can be confusing for the average person to understand how an animal is protected. We are certainly not trying to discourage citizens who want to learn or have knowledge about protected wildlife! The reality is the public are not explicitly wrong in saying any animal is protected. Even if those animals are not rare or unique, almost all wildlife species are protected or regulated in some way by state or federal law. Below is a discussion of laws and regulations protecting animals, and an example of state-focused protection using Ohio’s wildlife laws and regulations.

There is some difference of opinion regarding the definition of “wildlife” on the internet, and some consider plants, fungi, and even habitat as part of that definition. Wildlife in this paper refers to multicellular animals only in the Kingdom Animalia. Additionally, there is an “alphabet soup” of abbreviations when discussing these laws.

Wildlife Laws and Protected Species

Wildlife and their habitats are protected by local, state, and/or federal laws as well as international laws. Regulation of wildlife ranges from unlimited take (i.e. no protection) to the Federal Endangered Species Act specifying federally threatened and endangered species that require federal permits to take. The term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in these activities. Individuals are responsible for obtaining and complying with any necessary permit requirements to take wildlife species.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

As referenced in Orbis’s “Protected Plant” whitepaper, CITES is an intergovernmental agreement to protect wild animals and plants from extinction through international trade. The United Nations Environment Programme administers CITES internationally, and the U.S. Fish and Wildlife Service (USFWS) administers CITES in the United States.

Federal Regulations

Animals receive protection at the federal level through several laws and regulations. These include:

- ✦ Lacey Act
- ✦ Migratory Bird Treaty Act (MBTA)
- ✦ Bald and Golden Eagle Act (BGEA)
- ✦ Endangered Species Act (ESA)
- ✦ National Environmental Policy Act (NEPA)
- ✦ Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

The USFWS administers the Lacey Act, MBTA, BGEA, and ESA. The U.S. Environmental Protection Agency (EPA) administers NEPA and FIFRA.

Lacey Act

The Lacey Act of 1900 protects wildlife from illegal trafficking and was the first federal law to protect wildlife. Under the Lacey Act, it is illegal to import, export, sell, acquire, or purchase fish, wildlife, or plants that are taken, possessed, transported or sold in violation of foreign, U.S., state, or Indian law. Wildlife must be lawfully acquired with proper permits possessed prior to acquisition.

Migratory Bird Treaty Act (MBTA)

The MBTA of 1918 protects all migratory birds: from rare species to common backyard birds such as the American robin (*Turdus migratorius*). The MBTA was created primarily to protect migratory birds from collection for their feathers, a common activity prior to 1918. The MBTA prohibits trade, transport, capture and sale of migratory birds and their parts, such as feathers, eggs, and nests. Most U.S. bird species are protected by the MBTA except resident/non-migratory game birds such as the wild turkey (*Meleagris gallopavo*), native pheasant, grouse, and quail, and non-native species such as the house sparrow (*Passer domesticus*) and European starling (*Sturnus vulgaris*). The MBTA has many exceptions and limitations; for example, the Migratory Bird Hunting & Conservation Stamp Act allows waterfowl to be hunted (taken) during designated seasons with required permits. Scientific research requiring handling and marking of migratory birds (i.e. banding) is permitted if the researcher acquires a U.S. Federal Bird Banding and Marking Permit.

Bald and Golden Eagle Protection Act (BGEA)

The BGEA of 1940 specifically protects the bald eagle and golden eagle similar to the MBTA, but further adds that they cannot be taken without proper permits. The BGEA was first created to protect the bald eagle because of its status as the national emblem of the United States, but the golden eagle was added in 1962. The bald eagle was

removed from protection from the ESA in 2007 but is still protected by the BGEA. Scientific collection permits, rehabilitation permits, and depredation permits (targeting nuisance eagles that are known to attack livestock) all allow take under the BGEA. Additionally, Native Americans may use feathers of eagles (and other parts) for religious purposes if the parts are received from the National Eagle Repository (NER).

Endangered Species Act (ESA)

The ESA of 1973 designates and protects native threatened and endangered species from extinction. Species are designated threatened or endangered based on scientific research and evaluation of population trends, habitat trends, and other more specific considerations like disease. The ESA also extends to species habitats and can include designating and protecting critical habitat. Species protected by the ESA cannot be taken by anyone without a permit. Some of the permits allowing take include federal collector permits that allow handling of protected species for research purposes and Habitat Conservation Plans that allow a predetermined amount of incidental take (non-purposeful take) for clearly identified activities.

National Environmental Policy Act (NEPA) and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

The NEPA of 1970 and FIFRA of 1910 protect the environment and regulate pesticide use. NEPA requires federal agencies to assess environmental impacts to proposed actions and may include all the above laws plus additional impacts human activities may have on wildlife and their habitats. The FIFRA regulates pesticide distribution, sale, and use. NEPA and FIFRA are indirectly related to wildlife but provide important protection beyond direct impacts to wildlife and their habitats.

State and Local Regulations

Each state has similar laws or regulations complimenting the above federal acts. State laws regulate the harassment or take of migratory birds, game wildlife, and nongame wildlife, and are administered by one or more agencies. These laws typically target both federally listed species that may become extinct within the country and species that may only become extirpated within the state. State agencies may also indirectly protect wildlife similar to NEPA and FIFRA by using laws to regulate pollution, pesticides, and other potentially harmful activities. In Table 1, the State of Ohio is used as an example of how states protect wildlife. The Ohio Department of Natural Resources (ODNR) Division of Wildlife is responsible for issuing permits and enforcing laws for harassment or take of all wildlife in Ohio. These laws are very similar for most midwestern states, including Indiana, Illinois, and Michigan.

The next time someone posts a photograph of an animal that might be rare or cryptic, do a little research to determine if and how that species is protected, if there are similar species that are not protected, and help your fellow social media users understand more about protected animals. Odds are, if someone says an animal is protected, they may be right, but for the wrong reasons.

Table 1. Example of Ohio laws and regulations specifying whether permits are necessary to “take” the species at the federal and state level.

| Wildlife Category | Species Examples | State Permit | Federal Permit |
|--|---|---------------------|-----------------------|
| Resident game bird | wild turkey, bobwhite quail, pheasants, and ruffed grouse | yes | no |
| Resident nongame ¹ bird | European starlings, house sparrows, and pigeons | no | no |
| Migratory game bird | geese, ducks, doves, snipe, woodcocks, rails, and gallinules | yes | yes |
| Migratory nongame bird | raptors, wading birds, shorebirds, jays, songbirds, swifts, woodpeckers, nighthawks, hummingbirds, and swallows | yes | yes |
| Depredation order ² birds | crows, red-winged blackbirds, brown-headed cowbirds, and grackles | no | no |
| Depredation order ³ mammals | coyotes, woodchuck, skunk, and raccoon | no | no |
| Game mammals | white-tailed deer, fox, rabbits, squirrels, bobcats, opossum, muskrat, beaver, and weasels | yes | no |
| Nongame mammals | bats | yes | no |
| “Pest” mammals ¹ | voles, mice, rat, shrews, groundhogs, chipmunks, and wild boar | no | no |
| Threatened and Endangered Species ⁴ | See listed species on USFWS website | yes | yes |
| Feral domestic species | cats, dogs, and livestock | no | no |
| Amphibians and Reptiles | frogs, salamanders, snakes, lizards, and turtles | yes | no |

¹Unprotected species can be taken anytime and without limit.

²A federal or state permit is not required if they occur in such numbers or manner to compose a significant health hazard or nuisance.

³May be taken “when causing or about to cause damage”.

⁴Note that nongame wildlife can be considered threatened or endangered by USFWS.

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