

# Endangered Species & Wildlife

## Chapter 16

### Endangered Species and Wildlife

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The degradation of Oregon's environment has brought about a host of troubling consequences. As a result of both human and natural disturbances, we have witnessed a grave loss of biodiversity and healthy habitats. Plant and animal species that have evolved and adapted to particular ecosystems over thousands or even millions of years are now threatened with extinction. While extinction happens regularly, scientists estimate that the rate of worldwide extinction has risen to more than 1,000 times what it was before the 1800s.



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As of 2007, there are 37 fish and wildlife species on the Oregon state list of threatened and endangered species, and 134 species on the state sensitive species list. At least 16 species listed under the federal Endangered Species Act are not on the state's list. Species that are officially protected include the Chinook and Coho salmon, Steelhead, Oregon chub, Bull trout, Columbia whitetailed deer, the Steller sea lion, the Northern spotted owl and the Marbled murrelet.

In addition to the incalculable moral and social costs of species extinction, there are vital economic reasons to preserve all plant and animal life. One powerful example of this is the loss of income from the fishing industry due to dwindling salmon populations.

#### The Federal Endangered Species Act

The federal Endangered Species Act (ESA) was enacted in 1973 to preserve species at risk of becoming extinct. The Act is designed to protect species that have been listed as threatened or endangered and can affect activities on federal, state, and private lands. An "endangered" listing is a more serious status than a "threatened" listing and triggers added legal protection.

The ESA has been modified several times since its passage, but efforts to change it significantly over the past decades have failed. Administration of the ESA falls under the authority of both the U.S. Fish & Wildlife Service and the National Marine Fisheries Service. The federal ESA requires agencies to review the status of each listed species every five years.

New information has been gained indicating a need to strengthen protections of two endangered species that have received considerable attention: the Northern spotted owl and the Marbled murrelet. Both birds are older-forest dependent species that inhabit Oregon's federal, state, and private lands. In 2004, independent scientific reviews paid for by USFWS concluded that these two species are declining even faster than previously thought. These rates of decline are faster on state and private lands than on federal lands.

The Oregon Department of Forestry has been in the process of developing a Habitat Conservation Plan to help ensure long-term viability of both species on state and private lands for several years, but has yet to complete one for either and it is now unlikely that they will.

In 2005 and 2006, NMFS reaffirmed the federal listings of most salmon and steelhead in Oregon, but officially removed Oregon Coast coho from the list of threatened species and added Lower Columbia River coho as a threatened species. In addition, all of those listings now include many populations of hatchery fish. Currently, all of the federal salmon and steelhead listings are being challenged in numerous federal courts.

## How the Oregon ESA Works

Oregon passed its own ESA in 1987 and amended it in 1995. The Oregon ESA is far more limited in scope than the federal law. This is because the state Act applies only to actions of state agencies on state-owned or leased lands or lands with state easements, which amounts to about three percent of Oregon's land base (see Chapter 18, State Parks and Other State Lands). Activities on private and federal lands are not directly affected by Oregon's ESA. The state ESA, however, can still play an important role in species protection and recovery.

The Oregon Fish and Wildlife Commission is responsible for reviewing the status of fish and wildlife species, while the Oregon Department of Agriculture is responsible for plants. Eight plant species are listed under the state act. The Oregon ESA does not cover invertebrate species.

Under state law, the Oregon Fish and Wildlife Commission determines if a species is threatened or endangered based on scientific data provided by the ODFW and other parties. Anyone can file a petition to add or remove a species from the state ESA. Once the petition is filed, the decision rests with the Commission. In order to list a species, the Commission must find that the natural reproductive potential of a native species is in danger of failure due to limited population numbers, disease, predation, or other natural or human caused factors. In addition, the Commission must determine that at least one of the following factors exists:

- o Most populations are experiencing imminent or active deterioration of their range or primary habitat.
- o Over-utilization for commercial, recreational, scientific, or educational purposes is occurring, or is likely to occur.
- o Existing state or federal programs or regulations are not adequate to protect the species or its habitat.

Like the Federal ESA, the Oregon ESA requires the Fish and Wildlife Commission to review each listed species at least once every five years to determine if it should be reclassified or removed from the threatened or endangered list. The Commission may remove a species from the list if it determines that the above criteria no longer apply.

## Amendments to the Oregon ESA

The 1995 Oregon Legislature amended the state ESA with the passage of House Bill 2120. The bill weakened the state's ESA in some important ways.

**Listing a Species:** Even if a species meets the state's listing criteria, the Commission can now decide against listing a species based on its federal status or other considerations, such as whether the species is secure outside of Oregon or whether the species lacks cultural, scientific, or commercial significance. These changes mean that the Commission has greater latitude in deciding whether or not to list species. However, the Commission must justify its decision on biological grounds.

**Weakening Species Recovery:** The 1995 amendments focus more on protecting individual members of a species within a specific habitat site rather than on the recovery of the species as a whole throughout its natural habitat range. The Commission is required to establish "quantifiable and measurable guidelines," otherwise known as survival guidelines, which it considers "necessary to ensure the survival of individual members of the species." Survival guidelines apply to species listed as either threatened or endangered.

Survival guidelines provide minimal protection to imperiled species and by definition may not set a high enough standard to allow recovery of a given species to a healthy status. Survival guidelines, depending on how they are implemented, may also allow a species to decline until it is too late for effective remedial action. The responsibility for following the survival guidelines rests with the affected land management agency. The law affords the land management agency the option of not following the survival guidelines if it justifies its actions and provides reasonable mitigation and enhancement measures.

The 1995 amendments require land management agencies such as the Department of Forestry to follow the survival guidelines until they develop an endangered species management plan. Non-land owning agencies, such as the Department of Agriculture or Department of Environmental Quality, must consider the survival guidelines in their decisions affecting listed species.

A land management agency's endangered species management plan must consider the primary purpose of the land covered by the plan. If logging or other extractive uses are one of the primary purposes of the land, the agency may give that activity more weight than species recovery in developing its plan. The state act allows the agency to "define its role" in species protection. The minimum level of protection is that the land management agency cannot kill or otherwise "take" endangered species, but their actions can fall far short of what is needed to contribute to species survival.

As a result of the 1995 amendments, the protection the state ESA provides depends heavily on the attitude and judgment of those who manage state lands. The revised law leaves much discretion to state agencies. Commitment, cooperation, and coordination among agencies are essential if species are to be protected.

**"Recovery" and The Oregon ESA:** Frustrated by the lack of federal recovery plans for salmon, the Legislature convened the Salmon Recovery Task Force to define "recovery" for the purposes of the Oregon Plan and the Oregon ESA. The 2003 legislative session amended ORS 541.405 to define "recovery" and "self-sustaining" for the first time. These definitions now guide both the state and federal governments in drafting recovery plans for all state and federal ESA listed species in Oregon. Notably, no federal recovery plans exist for any anadromous fish in Oregon, although Oregon issued a draft conservation plan for Oregon coast coho in 2006 and is in the process of developing recovery teams for all other listed salmon species. The Oregon coast coho conservation plan does not meet the requirements for a federal recovery plan.

## **The Oregon ESA and the Oregon Forest Practices Act**

The Oregon Forest Practices Act (OFPA) also plays an important role in species protection. There is a section in the Oregon ESA that prohibits "take" (e.g., killing or capturing) which applies to both state and federal lands, but not private forest lands. Instead, on private land, the Board of Forestry must adopt rules protecting resource "sites" for listed species that may be adverse-

ly impacted by forest practices. Rules have been adopted for bald eagles and spotted owls, but no other species. A rule making process was started for the marbled murrelet in the early 1990s, but was dropped.

Under HB 3396, passed in 1987, and the resulting Oregon Administrative Rule 629-665-000, the Department of Forestry must protect specified resource sites, including sensitive bird nesting sites and threatened species that use resource sites on all forestlands in Oregon. In July, 2006, however, the Department began a process, since put on hold but likely to be reinitiated in 2007, attempting to relieve itself of this legislated duty.

## The Oregon ESA and Wolves

There are no confirmed wolves in Oregon presently, though a few have strayed in from Idaho in recent years and more than 200 unconfirmed sightings have been reported since 1998. In the fall and early winter of 2006, biologists with the state wildlife agency received nearly 40 reports of unconfirmed sightings of wolves or wolf tracks in northeastern Oregon (Russ Morgan, Oregon Department of Fish and Wildlife, December 2006).

Wolves were once an important ecological, cultural, and historical component of Oregon's heritage. Conservation groups have pushed for a restoration and recovery program for wolves in Oregon and in 2003 the Oregon Fish and Wildlife Commission agreed it was legally mandated under the Oregon state endangered species act to develop a conservation and management plan for wolves migrating back into the state. The gray wolf is currently listed federally as an endangered species in most of the US, including Oregon, and the Oregon ESA also lists the gray wolf as endangered. In 2003, the federal government attempted to reduce protections for wolves, but a lawsuit by 18 conservation organizations resulted in a 2005 federal court ruling restoring full protection for the species. Currently, the United States Fish and Wildlife Service is making a new push for entirely removing federal protections in the near future not only for wolf populations in Idaho, Montana and Wyoming, but also for any wolves found in the eastern one-third of Oregon, the eastern one-third of Washington, and a portion of north-central Utah. Removing federal protections for wolves in these additional areas is being proposed despite the fact none of these three states yet have a documented wolf population and federal protections are critical to ensure wolves can safely recolonize their former habitat.

Thus, strong state-level protections for wolves are all the more crucial. Numerous attempts have been made in recent legislative sessions to weaken wolf protections in Oregon. The 2003 legislative session included at least nine bills that directly or indirectly sought to remove protections for wolves under state law.

During 2003-2004, a 14-member citizen advisory committee of diverse stakeholders, appointed by the Oregon Fish and Wildlife Commission, assisted ODFW in developing a Wolf Conservation and Management Plan for Oregon. The draft Plan was adopted by the Commission in early February 2004. As adopted, most of the Plan could immediately be implemented, but three concepts of the Plan required legislation during the 2005 session.

First, the Plan asked the Legislature to establish a joint wolf compensation/proactive trust fund. This fund was to be seeded with General Fund dollars, with the remainder coming from private donations. The fund would have provided compensation for wolf-caused livestock losses and assisted livestock producers in using proactive, nonlethal methods to prevent or reduce wolf-livestock conflict.

Second, the Plan asked the Legislature to amend ORS 498.012, the wildlife damage statute, to allow livestock producers to kill wolves caught in the act of attacking livestock.



Third, the Plan asked the Legislature to amend the game mammal statute, ORS 496.004(9) to create a new subcategory of classification, entitled "Special Status Mammal," and to list the wolf under this subcategory with special management restrictions different from other game mammals.

Unfortunately, the language of the omnibus bill intended to accomplish these three legislative pieces looked very different than the actions recommended by the ODFW Wolf Plan. As a result, six diverse stakeholders including Defenders of Wildlife, Hells Canyon Preservation Council, Oregon Farm Bureau, Oregon Sheep Growers Association, Oregon Hunters Association and ODFW reached compromise amendments to which they all agreed. And the two conservation groups introduced an additional amendment needed to secure necessary protections for wolves, without which the bill would be insufficient.

Unfortunately, this consensus effort was trumped by opposition of the Oregon Cattlemen's Association, whose "zero tolerance" position on wolves in Oregon caused them to fight this legislation. Because this bill died, the Oregon Fish and Wildlife Commission revisited the Wolf Plan and excised from it any language referencing the three recommended legislative actions. These three excised portions were then inserted into a new appendix at the back of the Plan, so no one reading it would be confused regarding what is the current state of Oregon law. The Commission adopted the Plan in this new form, on Dec 1, 2005 and indicated they would make a strong push in the 2007 legislative session to achieve the legislation they had hoped for in 2005.

In the spring of 2006, efforts by stakeholders to negotiate a mutually-agreeable bill for the 2007 legislative session failed. Thus, during the summer and fall of 2006, ODFW worked with legislative counsel to draft a wolf bill for 2007 to mirror the bill that was unsuccessfully introduced in 2005. Unfortunately, some of the language in the newly-prepared bill, assigned as HB 2295, further departs from the intent and agreements reached in the ODFW Wolf Plan in ways that will endanger wolf recovery. Based on resolutions passed by the Oregon Cattlemen's Association at their annual November meeting, it is anticipated that the Cattlemen and other wolf-opponents will oppose legislative amendments that will be needed to remedy this new, unfortunate language contained in HB 2295, and that it may be difficult for diverse stakeholders to reach agreement on the bill. (For more details tracking progress of this bill during the 2007 session, contact Amaroq Weiss of Defenders of Wildlife with the contact information at the end of this Chapter).

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## Legislative Priorities

- ◆ The Legislature should reject further efforts to weaken the state Endangered Species Act (ESA).
- ◆ The Legislature should follow the recommendations of the Oregon Fish and Wildlife Commission to enact the recommended legislation for the wolf Plan, so long as the language of the bill accurately reflects the intent of the Plan.
- ◆ The momentum initiated in defining "recovery" needs to continue through the next legislative session.

## Key Messages

- ◆ Human activity is the primary reason for the decline of threatened and endangered plant and animal species.
- ◆ Wetlands and forests, the ecosystems that purify our drinking water and air, are protected when we safeguard the habitat of threatened and endangered species.
- ◆ Preserving habitat is the best tool for insuring the long term recovery and survival of a species.
- ◆ Many ESA listing decisions are made after a species is already at high risk of extinction, thus greatly complicating recovery efforts. We should not wait until a species actually reaches an endangered status before taking action.
- ◆ In many cases, an ESA listing will bring economic benefits. Thousands of jobs in the fishing industry, for example, depend on strong protection for endangered species.

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