

CHAPTER 9. PROTECTION OF FISH AND WILDLIFE AND THEIR HABITAT

9-1. General

9-1.1. Means of Protection. Protection, preservation, and conservation of fish and wildlife are afforded by preserving, maintaining, and developing (i.e., managing) habitat and by regulating the take of fish and wildlife and the activities of man which affect them.

9-1.2. Wildlife Ownership. Within the United States, the common law of the land provides that all wildlife is the property of the people, the sovereignty of which is vested with the states. State laws, therefore, are the primary means of protecting fish and wildlife through regulations. The Federal Government also has certain protective responsibilities. The Migratory Bird Treaty Act of 1918 as Amended (3 July 1918, 16 U.S.C. 703-711, 40 Stat. 755) authorizes and directs the Secretary of the Department of the Interior to exercise control over migratory birds. The Federal Government has responsibility for protecting threatened or endangered species of native plants and wildlife under the Endangered Species Act of 1973 (P.L. 93-205 as amended by P.L. 94-235, 94-359 and 95-632). In public lands, when there is conflict between the objectives of a state and the Federal Government, the supremacy clause of the United States Constitution (Article VI, clause 2) precludes state control over authorized Federal activity in furtherance of Federal public land programs. In addition, other Federal laws apply to various marine fish and mammals and their habitat. A military installation may also impose regulations, for safety or other reasons, which are more restrictive than Federal or state regulations. An installation may develop programs to instill strict discipline and responsibility in the hunting and fishing activities of its personnel.

9-2. Habitat Preservation and Management for Threatened and Endangered Species. The habitat of threatened and endangered species may be very restricted in area, or it may contain certain nesting trees, water quality or supplies, specific food items, or other components essential to the continued existence of a species. Special care is needed in managing or protecting such habitat and the threatened or endangered species population occupying the habitat.

9-2.1. Critical Habitat. All Federal land managing agencies have been directed to survey their lands and make critical habitat recommendations to the Secretary of the Interior. The definition of critical habitat was revised by the 10 November 78 amendment to the Endangered Species Act of 1973.

9-2.2. Critical Habitat Management. The existence of threatened or endangered species should be determined from literature and from consultation with biologists or ecologists of the Fish and Wildlife Service (app C, No. 6c) and the National Marine Fisheries Service (app C, No. 5) and state fish and game agencies who have made special studies of such species. Critical habitat has a strong meaning in the Endangered Species Act, and no Federal agency may take any action which will modify this habitat. The probable environmental impact of an action on threatened and endangered species must be assessed. If required, the Federal agency must initiate consultation with the Fish and Wildlife Service in accordance with Section 7 of the Endangered Species Act. Specific management practices may be required to maintain the critical habitat. Nest trees used by such species as red-cockaded woodpeckers, bald eagles, and ospreys should remain, along with replacement trees, in any forest management operation. For threatened and endangered species, the best management may be no management (i.e., no disturbance of the critical habitat). Management for endangered species usually benefits other species as well.

9-3. Regulations.

9-3.1. Hunting, Fishing, and Other Outdoor Recreation Activities. Hunting, fishing, and trapping laws effective on installations are expected to be within the limits established by the respective state fish and wildlife agencies and the Federal Government. Threatened and endangered species should be subject neither to fishing, hunting, and trapping nor to undue disturbance from camping, boating, swimming, and other recreational or military activities.

9-3.1.1. Law Enforcement. Usually, the Provost Marshal/Security Officer is charged with the enforcement of hunting, fishing, and trapping regulations. Enforcement is provided as directed by

DOD instructions and is in compliance with applicable state laws. Officers of the Fish and Wildlife Service are primarily responsible for enforcing laws dealing with waterfowl and other migratory birds and with threatened and endangered species and certain laws dealing with fish. State conservation officers may hold a dual commission to act as Federal agents to enforce wildlife regulations on Federal land normally as specified under a cooperative agreement.

9-3.1.2. Harvest Regulations. Laws or regulations governing the harvest of fish, game animals, and furbearers are based primarily upon trends in wild animal populations in view of previous harvests and upon habitat conditions, current populations, and management objectives of an installation. For migratory game birds, the surveys and inventories by the Fish and Wildlife Service provide the best general and nationwide or regional indications of population trends. State wildlife agencies can provide information on population trends for resident game species and fur animals. The Fish and Wildlife Service can render technical assistance in determining fish populations in streams and the population and balance of fish species in ponds and lakes. State conservation agency personnel can provide similar assistance.

9-3.1.3. Permits and Licenses. Reference AR 420-74/DA PAM 420-7/AFR 126-1/NAVFAC INST. 11015.4/MCO P11000.8 (app A) for guidelines relating to permits, fees and licenses.

9-3.1.4. Special or Extended Seasons. When regulations more restrictive than those of a state or the Fish and Wildlife Service are needed to protect certain species, harvests can be regulated by reducing the daily or annual limit of fish or game or by reducing the number of days or restricting the way in which fish or wildlife may be harvested. To ensure that deer do not degrade their habitat through excessive population, it may be desirable to extend the hunting season beyond that authorized statewide. Due to the military mission or security, hunting cannot be permitted on some installations during much of the season (e.g., daily hunting). If, for example, hunting can occur on an installation only on Saturdays, and the state deer season is two weeks, it may be possible to obtain approval from the state wildlife agency to extend the season or to obtain permission for a special any-sex-or-doe season to keep the deer herd under control. Deviations from the seasonal regulations of state or Federal agencies must be made with the consent and advice of the agencies. The need for special or extended seasons should be addressed in the

Cooperative Plan Agreement: a commitment from the state to recognize and consider such a need upon request should be incorporated in the agreement.

9-3.1.5. Record-keeping. As a means of determining trends in the annual fish catch or game harvest, it is recommended that fishermen and hunters be required to complete forms recording the animals taken. In the cases of deer and wild turkey, hunters should bring the killed animals to a checking station for examination by qualified biologists so that they can obtain information on sex and age ratios, condition of the animals, etc., for use in wildlife management plans.

9-3.1.6. Safety Practices. Installations should adhere to the safety devices and practices required by respective states. Establishment of safety zones and danger areas for hunting is the responsibility of the installation Safety Officer, or equivalent, in cooperation with personnel from the fish and wildlife section. Each hunter and fisherman should be requested to report accidents and the location of unsafe conditions, such as unexploded munitions, to the appropriate office. Many states require attendance at a hunter safety lecture prior to issuance of an installation hunting permit.

9-3.2. Environmental Protection. Congress has enacted several laws oriented toward environmental protection and requiring an appraisal of the effect of proposed military construction activities on wildlife habitat in general and on protected plant and animal species and their habitats specifically.

9-3.2.1. Fish and Wildlife Coordination Act of 1934 as Amended (10 March 1934, 16 U.S.C. 661-666c, 48 Stat. 401). The Act is intended to provide for more effective integration of fish and wildlife conservation with Federal water-resource developments, such as stream channelization, impoundment, water diversion, and other control facilities, in order to prevent loss of and damage to fish and wildlife resources and to provide for the development and improvement thereof.

9-3.2.2. Sikes Act of 1960 (15 September 1960, Pub.L. 86-797, 74 Stat. 1052). Section 1 of the Act states that: "... the Secretary of Defense is hereby authorized to carry out a program of planning, development, maintenance, and coordination of wildlife and fish and game conservation, and rehabilitation in military reservations in accordance with a cooperative plan mutually agreed upon by the Secretary of Defense, the Secretary of the Interior, and the appropriate state agency designated by the state in which the reservation is located. Such cooperative plan may stipulate the issuance of special state hunting and fishing permits to in-

dividuals and require the payment of a nominal fee therefore, which fees shall be utilized for the protection, conservation, and management of fish and wildlife, including habitat improvement and related activities in accordance with the cooperative plan."

9-3.2.3. National Wildlife Refuge System Administration Act of 1966 as Amended (15 October 1966, 16 U.S.C. 668dd-668ee, 80 Stat. 927). The purpose of the Act is to provide for the conservation, protection, restoration, and propagation of selected native fish and wildlife species, including migratory birds threatened with extinction, and to consolidate the present authorities (i.e., the legal framework) relating to the administration of the National Wildlife Refuge System by the Secretary of the Interior.

9-3.2.4. National Environmental Policy Act of 1969 (1 January 1970, Pub. L. 91-190, 83 Stat. 852). The purposes of the Act, as stated in Section 2, are to:

9-3.2.4.1. Declare a national policy that will encourage productive and enjoyable harmony between man and his environment.

9-3.2.4.2. Promote efforts that will prevent or eliminate damage to the environment and biosphere and will stimulate the health and welfare of man.

9-3.2.4.3. Enrich the understanding of the ecological systems and natural resources important to the Nation.

9-3.2.4.4. Establish a Council on Environmental Quality and provide guidelines for preparation of Environmental Assessments (EA) and Environmental Impact Statements (EIS).

9-3.2.5. Marine Mammal Protection Act of 1972 as Amended (21 October 1972, Pub. L. 92-522, 86 Stat. 1027). The purposes of the Act are to protect marine mammals and establish a Marine Mammal Commission. Section 2(2) states: ". . . in particular, efforts should be made to protect the rookeries, mating grounds, and areas of similar significance for each species of marine mammals from the adverse effect of man's actions." The Act gives the Secretaries of Commerce and the Interior authority to protect specific marine mammals.

9-3.2.6. Marine Protection, Research, and Sanctuaries Act of 1972 as Amended (23 October 1972, Pub. L. 92-532, 86 Stat. 1052). The purpose of the Act is to regulate the transportation of material from the United States intended for dumping in ocean waters. The Act also regulates, under accepted principles in international law, dumping in ocean waters over which the United States has jurisdiction or may exercise control in order to protect its territory or territorial waters. The Act specifically prohibits any person from transporting

and dumping into ocean waters any radiological, chemical, or biological warfare agent or any high-level radioactive waste or any other material except by permit; either an Environmental Protection Agency Permit or a U.S. Corps of Engineers Permit (possibly both) must be obtained before either transportation or dumping can take place and then, only when certain criteria are considered.

9-3.2.7. Endangered Species Act of 1973 (28 December 1973, Pub. L. 93-205, 87 Stat. 884). Section 2(b) states that: ". . . the purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section." Section 7 of the Act provides that all Federal Departments and agencies: ". . . shall, in consultation with and with the assistance of the Secretary of the Interior, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical." The Act also gives the Secretary of the Interior authority to protect specific animals. The Department of the Interior's Federal list of threatened and endangered species is published annually in the Federal Register and is updated as required.

9-3.3. *Executive Orders and DOD Documents.* Various Executive Orders and DOD documents relate to environmental quality and, at least indirectly, to protection of fish and wildlife. The Council on Environmental Quality published in 1978 the final regulation for the implementation of National Environmental Policy Act of 1969. In "Protection and Enhancement of Environmental Quality" (E.O. 11514, 5 March 1970) and "Provisions, Control, Abatement of Environmental Pollution at Federal Facilities" (E.O. 11752, 17 December 1973), the President directed that all Federal agencies set the example for the rest of the Nation by demonstrating initiative and leadership in the formulation and execution of an imaginative environmental program. In a memorandum from the Deputy

Assistant Secretary of Defense (Installations and Housing) to the Assistant Secretary of the Army (Installations and Logistics) and to all Military Departments, reference is made to Section 7 of the Endangered Species Act of 1973 (28 December 1973, Pub. L. 93-205, 87 Stat. 884). The memorandum states, in part, that the Department of Defense, because of the protective or security nature of many of its installations, has provided vital sanctuaries for threatened species of fauna in the past and can make further unique contributions to the protection of such species. The memorandum further states that an Endangered Species Protection Program will be initiated and carried out at all military installations and activities. Steps for carrying out this program are included in the directive. Two related Executive Orders "Floodplain management" (E.O. 11988) and "Wetlands Protection" (E.O. 11990) were issued 24 May 1977. The Orders tie together the need to protect lives and

property with the need to restore and preserve natural and beneficial floodplain and wetland values. To implement these policies E.O. 11988 requires that each agency provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains. E.O. 11990 requires each agency to provide leadership and take action to minimize the destruction of wetlands, and to preserve and enhance the natural and beneficial values of wetland. This involves maintenance of natural systems including: conservation and long-term productivity of existing flora and fauna: species and habitat diversity and stability; hydrologic utility; fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest including scientific, recreational, and cultural uses.