

Endangered!

What Is the Endangered Species Act And How Does It Impact Farming?

EDITOR'S NOTE: This is the first of a two-part series.

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Farmers and ranchers cannot underestimate the power of the Endangered Species Act should an endangered plant or animal species be found on their land.

Depending on the situation, even if protecting the endangered species would cause economic hardship on the agricultural operation, the producer may not have any choice but to follow a law that caters more to environmental conservation even to the financial detriment of the landowner.

How far might a landowner have to go to get around the Endangered Species Act (ESA)?

"It literally takes an act of Congress," said Elizabeth Rumley, senior staff attorney at the National Agricultural Law Center in Fayetteville, Ark., during an August webcast hosted by the Agriculture and Food Law Consortium.

The ESA was created by the U.S. Congress in 1973 and signed into law by President Richard Nixon on Dec. 28, 1973, in order to protect and recover plant and animal species in danger of extinction as well their habitats.

Several months earlier, in August of 1973, as the Tennessee Valley Authority was finishing construction of the Tellico Dam on the Little Tennessee River, biologist David Etnier discovered a local population of snail darter, a tiny fish listed as an endangered species. Already millions of dollars had been invested into the essentially completed dam, though it was not yet officially in operation.

Once the ESA became law, a law student Hank Hill who was approached by Etnier filed a lawsuit against the Tennessee Valley Authority, a federal agency, to cease dam activity on the grounds that the new reservoir that would be created by the dam would destroy the snail darter's critical habitat. The Tennessee Valley Authority claimed that the dam should be an exception to the law as there needed to be a balance between endangered species protection and economic development.

The lawsuit eventually found itself in the U.S. Supreme Court, which ruled in favor of the plaintiff, effectively stating that the ESA trumped economic development in every circumstance.

Six years later, Congress specifically exempted the Tellico Dam from the ESA.

The majority of private landowners will never have the opportunity to be exempted by Congress, which is why Rumley said they need to know the law.

To begin with, the ESA is governed by two agencies: the National Oceanic and Atmospheric Administration oversees marine species; and the U.S. Fish and Wildlife Service (FWS) oversees freshwater and land species. For Yankton-area producers, the FWS is the agency they would be dealing with should an endangered species be found on their land.

The ESA works by first identifying and listing species that are endangered or threatened. Endangered means that the species is in critical danger of extinction, and threatened means the species is being affected by habitat loss but not to the extent of becoming endangered. In order to decide on which



ILLUSTRATION: METRO GRAPHICS

species to possibly list, the FWS creates petitions to list certain species and is also open to receiving petitions to list certain species.

A recent example would be the Monarch Butterfly, petitioned in August of 2014 by The Center for Biological Diversity, the Center for Food Safety, The Xerces Society and monarch biologist Lincoln Brower.

Once the FWS receives a petition, it does a status review. By law, the FWS must publish a proposed rule within one year of the petition if it finds that the status review does show that the petitioned species is eligible for ESA protection. The proposed rule must go through the full rule-making process, including publicizing a public comment period, the FWS reviewing all comments and making any adjustments to the proposed rule. Finally, the FWS must publish the final rule within one year of publication of the proposed rule.

In order to be eligible for ESA protection, a species must be subject to at least one of the following:

- Destruction or threatened destruction of its habitat;
- Overutilization by, for example, hunting or fishing;
- Population decline from disease or predation;
- Lack of protection any other way.

"Economic factors cannot be considered," Rumley said, "so there is no balancing test between the two."

Since the ESA's creation, 2,000 species have been listed as endangered and 28 have been delisted.

Once a species has been listed as endangered and is therefore included under ESA protection, the FWS designates the species' critical habitat.

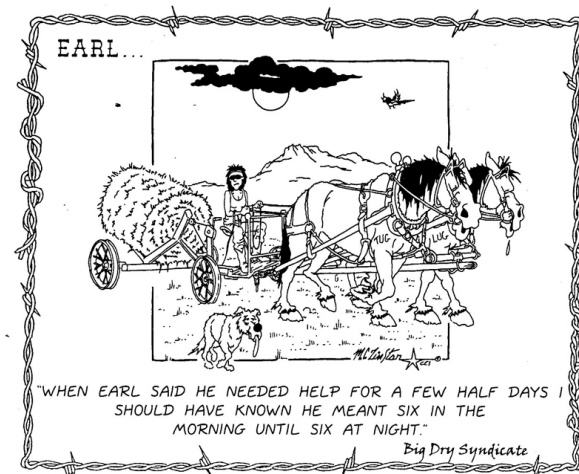
"It's not enough to protect the creature itself," Rumley said. "You have to protect its habitat, because otherwise the creature has nowhere to go."

A species' critical habitat is the area occupied by the species at the time of the ESA listing and that which is essential to the species' conservation. This area may be public or private lands, though the FWS does weigh economic factors in this determination. However, the FWS does not have to prove that the species is present in the critical habitat area.

After the species has been listed under the ESA, and its critical habitat has been designated, the species is given a wide net of protection, including making it illegal to possess, sell, transport or take the species. Protection is expanded to the species' critical habitat.

"Take" is a broad term that includes harassing, pursuing, hunting, shooting, wounding, killing, trapping, capturing, harming, collecting or attempting to do any of these activities. It is in "taking" where the line between within and outside the law gets blurred.

Part 2 of this two-part series will look at how the Endangered Species Act is applied in various situations and how this affects private landowners, including farmers and ranchers.



Fire Planning Workshops Set For Sept.

BROOKINGS – Landowners wishing to utilize prescribed fire as a management action in their Conservation Reserve Program (CRP) contracts are required to utilize an USDA approved burn plan.

SDSU Extension, USDA, Pheasants Forever, and The Nature Conservancy will host four CRP and Grassland Fire Planning workshops beginning Sept. 2.

The course offers guidance on the most current version of the USDA plan. Registration is not required and the class is free.

"The training focuses on instructing landowners and NRCS support staff on the methods of planning for and conducting prescribed fires," said Pete Bauman, SDSU Extension Range Field Specialist.

Workshop topics include USDA rules, firebreak development, grassland ecology, fire planning, resources and tools, weather, safety, communications, and filling out a fire plan. Participants may bring maps of their areas to receive input on their individual fire projects.

Courses are slated to be held in the following locations:

- Aberdeen — Sept 2: SDSU Regional Extension Center. 13 2nd Ave. SE
- Platte — Sept 9: 1st Fidelity Bank (basement). 501 Main St.
- Kennebec — Sept. 18: Kennebec Fire Hall. 219 S. Main
- Selby — Sept. 21: Selby Golf Course. 201 S. Railway St.

Classes at all locations will run from 8:30 a.m. to 4 p.m. with registration beginning at 8:30 a.m. Participants are on their own for lunch.

"The dry spring of 2015 left many producers unable to complete their planned CRP and pasture burns. With the addition of new spring 2016 units, NRCS staff will very busy and those waiting until spring might find themselves without planning assistance. Producers should not wait until spring to begin planning for and preparing their burn units," Bauman said. "By offering the classes in the fall, we are allowing plenty of time for producers to take the appropriate planning steps."

Producers are also encouraged to begin discussions with their local fire departments during the fall months so all are well aware of the intention to burn in the spring.

"Many volunteer fire departments have begun to offer limited prescribed fire services, but you cannot wait until April to ask them for help, that's their busiest time of year," explained Bauman.

For more information, contact Bauman at the SDSU Regional Extension Center in Watertown at 605-882-5140, or peter.bauman@sdsstate.edu.

SDSU Extension Field Tours Coming Up

BROOKINGS — SDSU Extension will be hosting several soil health and cover crop field tours this fall.

"These tours provide growers with firsthand information on management practices to enhance soil health as well as an opportunity to have their questions answered," explained Anthony Bly, SDSU Extension Soils Field Specialist.

During the tours, SDSU Extension staff and other industry experts will evaluate cover crops for beneficial soil health properties and forage/feed value for grazing livestock.

2015 TOUR SCHEDULE

- Sept. 8 — Minnehaha County: Al Miron Farm, tour begins at 11:45 a.m. (25935 469th Ave, Sioux Falls, SD 57107) lunch is provided;
- Sept. 10 — Clay/Turner Counties: Southeast Research Farm Fall Tour begins at 8:30 a.m. (29974 University Rd, Beresford, SD 57004) rolls and coffee, and noon lunch provided;
- Sept. 14 — Lake County: Mustang Seeds, tour begins at 1 p.m. (1001 10th St SW, Madison, SD 57042);
- Sept. 15 — Brookings/Hamlin Counties: East Dakota Soil and Water Research Farm tour begins at 1 p.m. (20940 470th Ave, Brookings, SD) supper provided;
- Sept. 17 — Clark/Codington Counties: Kopriva Angus tour begins at 1 p.m. (41577 169th St. Raymond, SD).

More details will be released during Dakotafest. Cosponsors and cooperators include: S.D. No-till Association, S.D. Soybean Research and Promotion Council, Millborn Seeds, Mustang/Coyote Seeds, USDA-NRCS, USDA-ARS, Southeast Research Farm, Northeast Research Farm, and S.D. Soil Health Coalition.

To learn more, visit www.iGrow.org/events and search by event date or contact Bly at anthony.bly@sdsstate.edu or (605) 782-3290.

SE Research Farm Field Day Sept. 10

BROOKINGS — South Dakota State University's Southeast Farm Annual Fall Field Day will be held Sept. 10 near Beresford. The morning program will be a tour of area farms where producers' utilize no-till, cover crops and graze cover crops in their operations. Lunch will be served at Southeast Farm.

Livestock research and production topics will be the focus of the afternoon program.

The program agenda includes:

• 8:15 a.m. — Coffee and Rolls at Southeast Farm (29974 University Road, Beresford, SD 57004)

• 8:30 a.m. to Noon — Tours of area farms including: Gary Andersen, Tim and Scott Wellenstein and Dick Nissen who utilize no-till, cover crops and cover crop grazing in their operations. These tours will be led by Anthony Bly, SDSU Extension, Soils Field Specialist.

• Noon to 1 p.m. — Lunch served at Southeast Farm; during lunch a discussion on Avian Flu will be led by Russ Daly, Avian Flu; Russ Daly, Professor, SDSU Extension Veterinarian, State Public Health Veterinarian.

• 1-3:30 p.m. — Attendees have several, livestock-related topic areas to choose:

— Soybean Council Swine Trial: Led by Bob Thaler, Professor & SDSU Extension Swine Specialist;

— Protein Quality and Feedlot Rations: Preliminary results — led by Derek Brake, SDSU Assistant Professor of Ruminant Nutrition;

— Grazing Management: Led by Warren Rusche, SDSU Extension Cow/Calves Field Specialist;

— Grazing Grass: Led by Pete Bauman, SDSU Extension Range Field Specialist; and

— Cover Crops: Led by Elaine Grings, Assistant Professor & SDSU Extension Cow/Calves Management & Production Specialist and Peter Sexton, Southeast Farm Supervisor, Associate Professor & SDSU Extension Sustainable Cropping Systems Specialist.

To learn more, visit www.iGrow.org/events.

Farm Bill MPP-Dairy Sign-Up Under Way

BROOKINGS — The sign-up period for the 2016 Milk Margin Protection Program for Dairy producers (MPP-Dairy) is under way and runs through September 30 at your local Farm Service Agency (FSA) office.

"The MPP-Dairy program is a voluntary safety net program established by the 2014 Farm Bill that continues through Dec. 31, 2018," said Tracey Erickson, SDSU Extension Dairy Field Specialist.

Erickson explained that the program provides eligible producers with indemnity payments when the difference between an all milk price and average feed cost (the margin), falls below coverage levels producers select on an annual basis.

To be eligible for MPP-Dairy, operations must produce and commercially market milk in the U.S., provide proof of milk production when registering, and not be enrolled in the Livestock Gross Margin for Dairy program (LGM-Dairy).

"Eligible dairy operations must register for MPP-Dairy coverage at the FSA office where their records are stored," Erickson said.

When signing up for the program, producers will need to supply the following information.

- A production history establishment, which is completed on form CCC-781;
- Election of the annual coverage level and completion of the contract

on form CCC-782;

- Payment of the \$100 administrative fee, annually; and
- Payment of the premium, if there is a premium owed.

This will be dependent upon the premium level selected. An operation must pay:

- 1) the premium in full at the time of annual coverage election;
- 2) a minimum of 25 percent of the premium by Feb. 1 of the applicable calendar year of coverage with the remaining balance to be paid by June 1 of the applicable calendar year of coverage.

In mid-August, a collaborative group will host a meeting to explain the parameters of the program, along with showcasing the recently updated MPP-Dairy Risk Management calculator. For dates, times and locations, visit www.igrow.org.

The collaborative group includes; SDSU Extension, Southwest Minnesota Dairy Profit Group, Midwest Dairy Association, NDSU Extension Service, Iowa State University Extension and Outreach, University of Minnesota Extension, South Dakota Dairy Producers, Minnesota Milk Producers Association, Iowa State Dairy Association, North Central Risk Management Education Center and United States Department of Agriculture.

To learn more, contact Erickson at tracey.erickson@sdsstate.edu.

South Dakota Sheep Growers Convention Set

BROOKINGS — The South Dakota Sheep Growers Association 78th annual Convention will be held in Rapid City at the Best Western Ramkota Sept. 25-26.

The convention begins Friday, Sept. 25 with tours to Center of the Nation Wool, New Generation Supplements, the Newell Sheep Yards, as well as the historic, Orwick Family Sheep Ranch.

The Orwick family will be hosting a lamb supper after a pasture tour of the prairie. Sept. 26 will include seminars and activities at the Best Western Ramkota, featuring speakers from the sheep industry, academia and sheep organizations; including: Lucas Lentsch, S.D. Secretary of Agriculture; Kelly Hepler, Secretary of S.D. Game, Fish & Parks; and USDA Under Secretary of Agriculture, Edward Avalos.

Topics include; new Veterinary Feed Directive (VFD), managing internal parasites, H2A workers, and research updates. The Master Lamb Producer awards and highlights will be presented during the Saturday luncheon. Trapper of the Year and Shepherd's Award will also be announced during the evening banquet as well as the Make It With Wool finals.

To register for the event visit the South Dakota Sheep Growers Association website (sdsheepgrowers.org) or Facebook page, or email sdsheepgrowers@yahoo.com. Completed forms can be mailed to Tammy Basel, 16079 Minnehaha Place, Union Center, SD 57787, or emailed to tbasel@gwtc.net. Pre-registration is encouraged by Sept. 7, 2015.