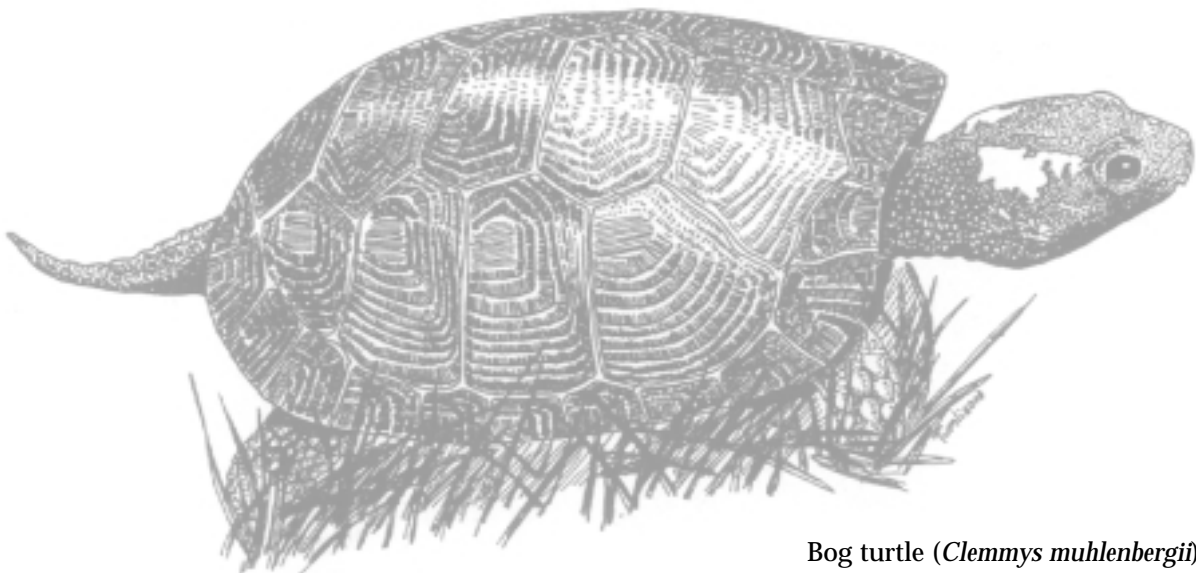


Example Handout on Endangered Species

Kenneth A. Bridle, Ph.D.

This document was prepared at the request of the Piedmont Land Conservancy in North Carolina. The intent was to have a document that summarized the applicable rare species laws for landowners and aid in obtaining permission to conduct biological inventories on private property. An additional document is provided, listing rare species for that region. Together these inform the landowners of their rights and the land trusts' intentions. Organizations considering landscape scale inventory or restoration projects should consider developing a similar document for their jurisdictions.

If the possibility exists that rare species are involved in the project, it is best to have a discussion of all federal, state, and local laws that might affect the management plan and the landowner's willingness to cooperate.



Bog turtle (*Clemmys muhlenbergii*).

Endangered Species and Piedmont North Carolina Landowners

Kenneth A. Bridle, Ph.D.

An understanding of endangered species and the laws designed to protect them are important for the proper functioning of any land conservancy. Rare plant and animal species occur in our region and stewardship of these resources is a part of our mission. We also strive to work with private landowners to achieve this mission. However, a common fear often prevents landowners from working with conservation organizations. The concern of some landowners is that if the existence of an endangered species is discovered on their land, restrictions and land-use limitations will be imposed. This belief is largely based on a lack of knowledge and understanding of the law and misinterpretations of its record. Also, in the current climate of political confrontation, the issue of endangered species protection is a rhetorically charged debate, often with little regard for the truth. The following is derived from the relevant federal and state laws regarding endangered species and is presented as a brief summary of those sections that most directly impact landowners and private land use.

Summary of the Federal Endangered Species Act

The Endangered Species Act of 1973 (ESA or the Act), as amended, serves as the basis for the federal program and the model for most state programs, including North Carolina. In the first paragraph of the Act, Congress recognized the value of endangered species by stating that “endangered species of fish, wildlife and plants are of aesthetic, ecological, recreational, educational, historical, and scientific value to the nation and its people.” These values include commercial commodities, environmental health and quality indicators, educational, and recreational public interests.

The Act sets up a mechanism for placing species on the List of Endangered and Threatened Wildlife and Plants. It also defines most of the appropriate terms in non-ambiguous ways (for example—endangered species is a group “which is in danger of extinction throughout all or a significant portion of its natural range”). Listing species provides a method of tracking and planning for each species' recovery. Each listing involves many levels of review by the public, government agencies, and the scientific community. The Act empowers the US Fish and Wildlife Service and National Marine Fisheries Service to manage permits and enforcement, implement recovery plans, recommend research, monitor endangered species populations, and cooperate with other public and private entities to conserve listed species. The goal is to ensure recovery to a point where the species no longer needs protection under the Act. An important and often overlooked provision of the Act requires the Secretary of Interior to consider economic and other costs in the protection plans for each species when designating critical habitat (areas essential to the survival and recovery of a species). This provision promotes a balance between costs and benefits of this regulatory action. In the mid-1990s this judgment was used to exclude from protection 3 million of 9 million acres of spotted owl critical habitat in an effort to lessen the impact on the logging industry.

With regard to listed animals, the Act states it is illegal to

- Engage in interstate or foreign trade without a permit.
- “Take” any listed species (Take = harass, harm, pursue, hunt, kill, trap, etc.).
- Possess illegally taken endangered or threatened species.
- The maximum penalty: \$50,000 and/or 1 year in prison.

With regard to listed plants, the law says that it is illegal to

- Engage in interstate or foreign trade without a permit.
- Remove and reduce to possession such plants from federal lands.
- Maliciously damage or destroy any such species on federal lands.
- Remove, cut, dig up, damage or destroy an endangered plant on land other than your own in knowing violation of the law, including trespassing.
- The maximum penalty: \$50,000 and/or 1 year in prison.

In addition, the Act requires federal agencies to develop programs to conserve listed species and prohibits them from carrying out any action that would jeopardize the continued existence of listed species or adversely modify critical habitat. The Act also protects species from the potentially harmful actions of private landowners. However, the Act offers several flexible tools for resolving conflicts between private landowners and endangered species. For example, private landowners can lawfully “take” listed species if it’s “incidental to and not the purpose of carrying out otherwise lawful activities” and the landowner implements a conservation plan for those species. Implementation of the Act is designed to “foster creative partnerships between the private sector and government agencies in the interest of endangered species conservation.”

From 1979-1999 there were over 120,000 federal projects reviewed for impact on endangered species. Of these, less than 1% were found to significantly impact an endangered species overall, even though a particular project may have caused local destruction of a population, and only 34 (<0.03%) of those development projects were stopped as a result of the ESA. Far from being the uncompromising straitjacket that its opponents portray, the ESA is replete with requirements to balance the needs of endangered species conservation with private property owners and developers. Private developers can obtain federal permits to legally harm or even kill endangered species on their property, provided they show that they tried to minimize their impact on the species in other ways. Other tools to avoid conflict between rare species and landowners include Section 10 permits, such as habitat conservation plans, safe harbor agreements, and candidate conservation plans. As an ultimate balancing of endangered species and economics, there exists the Endangered Species Committee which is authorized to exempt activities from the ESA when the benefits of the project clearly outweigh the conservation of a species, even though this may result in the complete extinction of a species. Due to other flexibilities in the ESA only three cases have ever come before this committee.

The underlying reality is that rare species, like other rare objects, are valued because of their rarity. Most of the people prosecuted under the Endangered Species Act are wildlife traffickers who illegally and knowingly collect rare wildlife and plants to sell for personal profit. The existence of an endangered species on private property legally has no effect unless the landowner (or someone else) is planning a project that requires a federal permit, uses federal funds, or will clearly result in the illegal taking of a listed species. Even where a private landowner’s property is designated as critical habitat for an endangered species, private landowners are not regulated by the ESA; only federal actions that would adversely alter critical habitat are regulated. Critical habitat is an official designation of areas essential to the survival and recovery of a species, made by the Interior Secretary after review of all available scientific and economic data. At the present time only three fishes and one plant have designations of critical habitat in North Carolina.

None occur in the northwest Piedmont. Currently there are five federally listed plants and seven listed animals in this area.

Federally Endangered or Threatened Plants in Piedmont North Carolina

- **Small-anthered Bittercress** . . . *Cardamine micranthera*
- **Smooth Coneflower** *Echinacea laevigata*
- **Schweinitz’s Sunflower** *Helianthus schweinitzii*
- **Small Whorled Pogonia** *Isotria medeoloides*
- **White Irisette** *Sisyrinchium dichotomum*

Federally Endangered or Threatened Animals in Piedmont North Carolina

- **Eastern Cougar** *Felis concolor cougar* (no longer in this region)
- **Kirtland’s Warbler** *Dendroica kirtlandii* (occasional migrant through this area)
- **Bald Eagle** *Haliaeetus leucocephalus* (proposed for delisting due to recovery)
- **Red-cockaded Woodpecker** . . *Picoides borealis* (Sandhills region)
- **Bachman’s warbler** *Vermivora bachmanii* (last seen in the early 1960s, possibly extinct)
- **Cape Fear Shiner** *Notropis mekistocholas*
- **Peregrine Falcon** *Falco peregrinus* (migrant, now nesting in this area, delisted Aug. 1999)
- **Bog Turtle** *Clemmys muhlenbergii* (Threatened by similarity of appearance to northern population)

Summary of North Carolina Endangered Species Laws

After the establishment of the ESA, many states developed their own endangered species laws to deal with cases of local or regional decline that are not regulated by national law. North Carolina has rich biological diversity in habitats ranging from the mountains to the sea. This state is home to some organisms that occur nowhere else and are declining in numbers. For other species, our state is only part of a larger range, but their populations here may be threatened. It is these species that are covered by the North Carolina endangered species laws.

Animals:

Using the federal Endangered Species Act as a model, North Carolina enacted General Statutes 113-331 to 113-337, effective 1987, which authorizes the Wildlife Resources Commission to develop a system to monitor and protect rare animal species in the state. The Commission was mandated to undertake rare animal species listing and designation of critical habitats upon recommendation of the Nongame Wildlife Advisory Committee. The Commission then coordinates the development and implementation of management plans for listed species. Chapter 392 (H832), 1995 of North Carolina Legislation amended the Commission’s mandate to take into consideration a wider range of conservation, protection, and management measures that may be applied to species and habitats. Costs of protection, economic impact, and reasonably available options for minimizing costs and adverse impacts must be considered in each plan. Most importantly to landowners, “no rule may be adopted that restricts use or development of private property.”

The protection of endangered animals in this state is essentially similar to the federal ESA in that it is targeted at illegal trafficking of rare animals and products, and protection of native

populations from poaching. Landowners can do almost anything they want with state listed rare species on their property except possess, sell, or kill them without a permit.

Plants:

The Plant Protection and Conservation Act (Chapter 106, Article 19B; 202.12-202.22 of the General Statutes of North Carolina) authorizes the North Carolina Department of Agriculture to monitor and protect rare plant species in the state. The Commissioner of Agriculture does the listing of plants at the recommendation of the North Carolina Plant Conservation Board. The Agriculture Department is required to work with other state agencies to monitor and develop management plans for each listed species. Currently the Natural Heritage Program (Division of Environment and Natural Resources) maintains the database which tracks rare plant populations and the Agriculture Department maintains a Plant Protection Office for the purpose of management and legal protection of native plant species in peril. The Plant Protection Office also issues permits regarding collection, propagation, and trade of rare plants for sale—most notably ginseng.

Like the federal ESA, this law is primarily aimed at protecting rare plants from the actions of illegal traffickers who collect the plants for profit and to minimize the impact of state development projects on rare plant populations. In the section outlining the “unlawful acts,” a specific line was included to protect private property owners. It states that “the incidental disturbance of protected plants during agricultural, forestry, or development operations is not illegal so long as the plants are not collected for sale or commercial use.” Here again the bottom line is that a private property owner can do whatever they want with the native rare plants on their land except sell them without a permit.

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