

WILDLIFE AND THE LAW
University of Colorado School of Law
Fall Semester 2012
Adjunct Prof. Andrew G. Ogden
Tuesdays 2:25-4:05
Room 307

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Hours: By Appointment
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Required Texts: Goble & Freyfogle, Wildlife Law (2nd Ed. 2010)
(on reserve) Goble & Freyfogle, Federal Wildlife Statutes (2002)

Optional Readings: Bean & Rowland, The Evolution of Natural Wildlife Law (3rd
(on reserve) Ed. 1997)
Freyfogel & Goble, Wildlife Law – A Primer (2009)

Recommended Websites: [U.S. Fish & Wildlife Service](#)
[NOAA Fisheries Service](#)

Additional Readings: Matthiessen, Wildlife in America (1959, Revised & Updated
1987)

Additional Websites: Red Lodge Clearinghouse rlch.org
High Country News hcn.org
The Wildlife News thewildlifeneeds.com
Environment360 e360.yale.edu
ScienceDaily sciencedaily.com
Defenders of Wildlife defenders.org
Center for Biological Diversity biologicaldiversity.org
American Bird Conservancy abcbirds.org
Western Resource Advocates westernresourceadvocates.org
Pacific Legal Foundation pacificlegal.org
Mountain States Legal Foundation mountainstateslegal.org
[University of Michigan Law School Animal Legal & Historical
Center](#)

Syllabus

Required Readings: "CB" = Casebook
"SS" = Statutory Supplement (read text, skim statutes)
"Supplemental Reading" on TWEN

Optional Readings: "B&R" = Bean & Rowland The Evolution of National Wildlife Law
"F&G" = Freyfogle & Goble Wildlife Law-A Primer
"Optional Reading" on TWEN

Reading Guidelines: Unless noted otherwise, please read the materials thoroughly. Statutes and other items marked as "skim" may be read in a more cursory manner for general structure and content. Items marked as "review" should be "skimmed" if you are already familiar with the material, or read more fully if for the first time.

Class 1: August 28

- I. Introduction; Roles & Objectives of Wildlife Law: CB 21-31, 40-42, 51-52
- II. Ethics: CB 59-63, 71 nts. 6 & 7, 72-73, 82-101; Supplemental Readings: Excerpts from D. Favre, "Wildlife Rights . . .", 9 *Envtl. L.* 241, 265 (1979) & S. Schectman, "The Bambi Syndrome . . .", 8 *Envtl. L.* 611, 633 (1978) [both available on TWEN]; Case Study: SS 22-24 §1331, 24-28 (skim), "They should shoot horses, shouldn't they?" HCN 12-11-2006 & "We're still throwing horses overboard" HCN 7-1-2010 [both available on TWEN].
- III. Origins of Wildlife Law in U.S: CB 116-128, Optional: F&G 36-41; CB 145-152, Optional F&G 49-61

Class 2: September 4

- III. Origins of Wildlife Law in U.S:
CB 338-345; SS vii-ix, CB 345-354; CB 381-409; Optional: F&G 21-35

Class 3: September 11

- III. Origins of Wildlife Law in U.S.
CB 459-479; Supplemental Reading: NAHB v. Babbitt (D.C. Cir. 1997) [TWEN] (review), Rancho Viejo v. Norton (D.C. Cir. 2003) [TWEN] (review); CB 486-488, CB 479-486; Supplemental Reading: R. Fischman, "Cooperative Federalism and Natural Resources Law" (2005) (Review §II.A pp. 182-188, read §II.B.2 pp. 193-204 [TWEN]; Optional: F&G 109-115, 132-134

Class 4: September 18

- IV. Protection & Conservation: SS 639-642; [FWS Digest of Federal Wildlife Laws](#); [FWS Laws & Regulations](#); SS xiii, 163
- IV. Protection & Conservation (Lacey Act)
SS 3, 4-12; CB 746-768, 920-921; Optional Reading: Robert Anderson, "The Lacey Act: America's Premier Weapon in the Fight Against Unlawful

Wildlife Trafficking", 16 Pub. L. L.R. 27 (1995) [TWEN], F&G 185-191; B&R 39-53

- IV. Protection & Conservation (Migratory Bird Treaty Act)
SS 12-16; CB 768-801; Supplemental Reading: U.S. v. Brigham Oil & Gas (Dist. Ct. N.D. 2012) [TWEN], U.S. v. Moon Lake Electric Association, Inc. (Dist. Ct. Colo. 1999) [TWEN]; Optional Reading: F&G 191-202; B&R 63-87. (Bald & Golden Eagle Protection Act) SS 17-20; CB 810-818; Optional Readings: FWS Migratory Bird Program, F&G 202-205; B&R 93-102

Class 5: September 25

- IV. Protection & Conservation (MBTA/BGEPA Case Study): "FWS Land-Based Wind Energy Guidelines" (April 2012) [also on TWEN] (skim)
- IV. Protection & Conservation (Marine Mammal Protection Act):
SS 28-29, 29-88; CB 832-867; Optional: NOAA Fisheries Office of Protected Resources; B&R 107-147
- IV. Protection & Conservation (Magnuson-Stevens Fisheries Management and Conservation Act) SS 88-90; CB 867-872; Optional: B&R 149-171
- IV. Protection & Conservation (MMPA Case Study): Shell Oil Application for IHA for Chukchi Sea Operations (May 2011) (skim) [TWEN], Incidental Harassment Authorization Under MMPA to Shell Oil (May 2, 2012) (skim) [TWEN], NMFS ESA §7 Consultation Biological Opinion (April 23, 2011) (skim) [TWEN]

Class 6: October 2

- IV. Protection & Conservation (Endangered Species Act Overview & Policy):
CB 1032-1038
SS 341-348; CB 1089-1101; TVA v. Hill, 437 U.S. 153 (1978) (Review) [TWEN]; Optional: F&G 233-238; B&R 193-202
- IV. Protection & Conservation (ESA Section 4 Listing)
SS 348-356; CB 1136-1140 nt. (1)-(4); Optional: F&G 238-254; B&R 203-212; CB 1101-1122.

Class 7: October 9

- IV. Protection & Conservation (ESA Section 4 Listing, Cont)
CB 1122-1133; CB 1139 nt. (4) – 1148 nt. (1), CB 1152 - 1155 (all of nt. (6)), FWS Fact Sheet "Candidate Conservation Agreements" [also on TWEN], NCRS "Working Lands for Wildlife" (read Executive Summary & sections on Species Selection Criteria & Greater Sage-grouse) [also on TWEN]; CB 1156-1172 nt. (4); CB 1267-1280; Optional: F&G 273-275; B&R 210-212

Class 8: October 16

- IV. Protection & Conservation (ESA Section 4 Listing, Cont)
CB 1307-1324; Greater Yellowstone Coalition v. Servheen, 665 F.3d 1015 (9th Cir. 2011); Optional reading: Alliance for the Wild Rockies v. Salazar, 800 F.Supp.2d 1170 (D.Mont. 2011)

- IV. Protection & Conservation D.5 (ESA Section 7 Consultation)
SS 361-363 §1536(a)-(d), 50 C.F.R. Part 402 (skim §402.10 "Consultation Procedures") (TWEN), CB 1177-1191 (skip CB 1186 nt. (3)); CB 1191-1212, Karuk Tribe of California v. USFS, 681 F.3d 1006 (9th Cir. 2012) [TWEN]; CB 1212-1215 nt. (1)–(4); SS 363-369 §1536(e)-(o), CB 1263-1267; CB 1283-1296; Optional readings: FWS Section 7 Consultation Handbook http://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf, F&G 255-264, 271-273; B&R 236-265

Class 9: October 23

- IV. Protection & Conservation D.6 (Section 9)
§1538(a) SS 370-371; CB 1215-1219; CB 1219-1231;
Optional Readings: F&G 264-267; B&R 212-227

- IV. Protection & Conservation D.7 (Section 10)
SS 374 §1539(a), CB 1238-1254 nt. (4); HCP & ITP Handbook (Nov. 4, 1996) available at [http://www.fws.gov/endangered/esa-library/index.html - esa](http://www.fws.gov/endangered/esa-library/index.html-esa); Optional readings: F&G 268-271;
USFWS overview of permits & application process
<http://www.fws.gov/endangered/esa-library/pdf/HCPBK1.PDF>; HCP Implementation Agreement <http://www.fws.gov/endangered/esa-library/pdf/HCPAPP4.PDF>
Animal Welfare Institute v. Beech Ridge Energy, 675 F.Supp.2d 540 (D. Md. 2009);
CB 1262-1263 nts. (1)-(3), Litigation Summary: In re Polar Bear Endangered Species Act Listing and §4(d) Rule Litigation, 794 F.Supp.2d 65 (D.D.C. June 30, 2011);
USFWS "Safe Harbor Policy" <http://www.fws.gov/endangered/esa-library/pdf/hcpapp7.pdf>; Optional reading: F&G 269-270;
USFWS "Safe Harbor Agreements for Private Landowners"
<http://www.fws.gov/endangered/esa-library/pdf/harborqa.pdf>;
SS 380-381 §1539(j), CB 1296-1307; Optional Readings: F&G 276

- IV. Protection & Conservation D.8 (Section 11)
SS 381-386 §1540, CB 1231-1238; Optional Readings: B&R 227-229, 265-267

Class 10: October 30

- IV. Protection & Conservation D.9 (ESA Case Study/Problem) [to be posted]
- IV. Protection & Conservation E (MBTA, MMPA & ESA Comparisons/Review)

Class 11: November 6

- V. Environmental Review of Federal Actions (NEPA)
CB 1173-1177, CB 1185 nt. (2) & (3), SS 363 §1536(c)(1), Reg. 50 C.F.R. §402.06, CB 1155 nt. (9), CB 1172 nt. (5); Supplemental Readings: [to be posted]

Class 12: November 13

- VI. National Wildlife Refuge System
SS 226-237, CB 932-946, Optional readings: F&G 209-218; B&R 283-289; CB 946-978; Optional readings: B&R 289-305;
Refuge Management Plan Case Study: Arctic National Wildlife Refuge
(supplemental readings on TWEN)

November 20—Fall Break

Class 13: November 27

- VII. Landscape Conservation
CB1325-1349, CB 1350-1377; C. Fraser, "'Rewilding' the World: A Bright Spot for Biodiversity", *Yale Environment* 360 (April 13, 2012) [TWEN];
Optional reading: F&G 278-302
- VIII. Climate Change CB 1066-1069;
National Fish, Wildlife, and Plants Climate Adaptation Strategy (Draft January, 2012) (skim):
<http://www.wildlifeadaptationstrategy.gov/public-review-draft.php>
DOI Plan for Response to Climate Change Impacts (skim):
<http://www.doi.gov/whatwedo/climate/strategy/index.cfm>
FWS Strategic Plan for Responding to Accelerating Climate Change
(skim): <http://www.fws.gov/home/climatechange/pdf/CCStrategicPlan.pdf>

Class 14: December 4

- VII. Climate Change
"Beyond Reserves and Corridors", *BioScience* Vol. 61, No. 9, pp. 713-719
(September 9, 2011)
Review Question & Answer Session

Final Exam: December 20 1:15pm