S.357: Wildlife Disease Emergency Act of 2011

**A Legislative History of Wildlife Protection Laws:**

Until the early 1900s wildlife protection in the US was relatively nonexistent. The longstanding attitude brought over by early English settlers still prevailed. “Profit a pendre,” captured the essence of the American belief: in capturing wildlife one possessed it. With abundant resources and seemingly limitless land, the only consideration with regards to land and wildlife was how to maximize the ultimate exploitable yield. However, even early Americans noted that without regulation their hunting stocks were depleted as hunting practices went unchecked. As a result, the earliest wildlife legislation came in the form of state regulation of hunting practices. However, these laws were largely ignored and often challenged. Despite marked decreases in many American wildlife populations by the end of the 1800s (notably the American Bison was nearly forced to extermination) it was not until the 1842 Supreme Court Case Martin v Waddell, that the right of states to regulate wildlife was firmly established.

However, the first federal action aimed to protect wildlife resources (at least in part) did not come until the 1864 Congressional Act transferring the Yosemite Valley from public domain to the State of California. Following this, the federal government began to set aside several areas of federally owned land specifically for wildlife, in 1869 enacting legislation to protect the Pribilof Islands in Alaska as a reserve for the northern fur seal. With increasing awareness being given to protection of fish and wildlife resources the Federal Office of Commissioner of Fisheries and the Division of Economic Ornithology and Mammalogy were respectively established in 1871 and 1886 to gain information on the nation’s fish and wildlife resources (these agencies would eventually become the modern day US Fish and Wildlife Services). The surveys undertaken by these agencies began to reveal that the nation’s resources were in jeopardy and prompted the emergence of the conservation lobby. During this period, Yellowstone National Park was created (in 1872), setting the seeds for the creation of the modern US National Park system. Subsequently the Forest Reservation Creation Act of 1881 allowed the US President to set aside forest reserves from the public domain. Under this act over 45 million acres of public land were eventually converted into National Forest territory. However, the passage of the Organic Administration Act of 1897 proved that these reserves were intended not simply for conservation purposes, as the Act outlined that any National Forests created were meant to “furnish a continuous supply of timber for the use and necessities of the citizens of the US,” as well as, “improving and protecting the forest.”

Perhaps the most lasting legislation to come out of this period however, was the Lacey Act of 1900 (amended several times since, it is still in effect today.) Designed to curb the illegal commercial hunting that threatened many game species, the act marked the beginning of a new era of conservation, by creating civil and criminal penalties for the trade of wildlife, fish, and plants that had been illegally taken, transported, or sold.

When Theodore Roosevelt, an avid hunter and member of the growing conservation movement, was elected to the presidency in 1901 a new era of environmental legislation began. In 1901 the Florida State Legislature passed a model non-game bird protection law that served to establish colonial bird sanctuaries. This law helped encourage President Roosevelt’s decision to create the first genuine wildlife refuge when he declared Pelican Island to be a Federal Bird Protection in 1903. In the decade that followed, over 50 similar reserves were throughout the country. The passage of the Migratory Bird Act in 1913 was enacted to similarly protect migratory bird species by providing for strict civil and criminal penalties for the taking of migratory birds. This was later expanded internationally through the Migratory Bird Treaty in 1916 (between the US and Canada). In the same year an important piece of legislation was enacted that served to revolutionize the American Park System. The National Park Service Organic Act of 1916 allowed for the creation of the US National Park Service, and provided for the Service’s promotion and regulation of national parks, reservations, and monuments so as to facilitate the conservation of the natural and historical objects within. This act gave the new National Park Service a great amount of leeway to monitor, regulate, and protect the various wildlife that the Parks were designed to conserve.

Following the ratification of this major piece of legislation, it was not until 1929 that the Migratory Bird Conservation Act was passed, establishing the federal authority under which the National Wildlife Refuge System would grow, to the ends of acquiring migratory bird habitat for preservation. The passage of the Duck Stamp Act of 1934 provided much needed funds for these land acquisitions through the sale of federal licenses necessary for the legal hunting of migratory waterfowl. In the same year, the passage of the Fish and Wildlife Coordination Act allowed most federal water resource agencies to acquire lands associated with water use projects for wildlife conservation purposes. It also provided for these lands to be within the regulatory jurisdiction of the US Fish and Wildlife Services or State wildlife agencies. This act notably compelled the consideration of ecological effects of all damming or water diversion projects. This was quickly followed by the formation of the US Fish and Wildlife Service in 1940, under which many of the existing wildlife agencies were joined.

Another act of Congress in the same year marked a major milestone in ecological preservation. With bald eagle populations within the US declining to the point that the species was dangerously close to extinction, the eagle could have easily gone the way of the dodo. However, because of the bald eagle’s unique position as the longstanding symbol of American freedom, its plight was given special consideration. In response, Congress passed the Bald Eagle Protection Act of 1940. This brought unprecedented attention to the plight of less familiar species in danger of extinction and ultimately helped spur a wave of legislation designed to specifically protect these “threatened” species.

As the environmental activist movement grew in the early 1960s, the trend of protecting species deemed to be in danger of extinction took form in the first Endangered Species Preservation Act of 1966. The act authorized the Secretary of Interior to create a list of “endangered” species and appropriated $15 million to buy habitat area for these species. In 1967 the first list was compiled with 78 individual species appearing on it. Following the publication of this list greater steps were made to protect these listed species, and in 1969 the Endangered Species Conservation Act was drafted to expand on the Act’s original protections.

These acts were determined to be inadequate to fulfill their intended goals of preservation, and so, in 1973, Congress passed an entirely new bill. The Endangered Species Act of 1973 was designed to protect both the endangered species and their habitats, providing for stringent regulations for developing in these protected habitats as well as harsh penalties for the “taking” of any protected species. Along with this sweeping legislation the Marine Mammal Protection Act of 1972 offered similar protections for all marine mammals, banning their “taking,” as well as placing a moratorium on the import, export, or sale of these animals. During this same period, Congress passed the National Environmental Policy Act of 1969, which was designed to minimize the environmental impact of all development projects by requiring environmental impact statements from all federally funded projects.

While the progress of American species and habitat protection in the 20th century has been impressive, it is striking that very little significant legislation providing for ecological preservation has been passed since the mid 1970s. It is for this reason that a current bill before the senate is of particular significance to the environmental movement.

**S.357: Wildlife Disease Emergency Act of 2011**

**112th US Congress**

US Senator Frank Lautenberg has introduced legislation that would better address problems of widespread wildlife diseases that threaten both local and national ecosystems as well as economic, social, and human health interests. Lautenberg’s proposed legislation would create a federal plan for responding to wildlife disease emergencies. It would also help to better understand and address wildlife diseases such as the deadly white-nose syndrome that is causing the unprecedented decimation of bat populations in the Northeast Region. Senator Lautenberg points to the ecological importance of bats and their relative susceptibility to rapid extermination as major reasons for legislative action, “Bats play a vital role in our ecosystem by preying on insects that destroy crops and carry disease. Without a quick response, white-nose syndrome could have a ripple effect that hurts the economy, environment, and public health.” (Lautenberg Press Office)

Senator Lautenberg’s proposal would:

- Authorize the Secretary of Interior to identify and declare wildlife emergencies; - Establish a fund through which the Secretary may coordinate rapid response to those emergencies;

- Prepare for, identify, and address diseases adversely affecting wildlife populations and biodiversity through strategic and coordinated actions among Federal, State, and local agencies, Indian tribes, and nongovernmental organizations.

**Major Legislative Timeline:**

**Lacey Act of 1900 (16 USC 3371-3378)**

This act protected plants and wildlife by creating civil and criminal penalties for a wide variety of violations. It provided an important strengthening of existing wildlife protection laws throughout the country by making it a separate offense to engage in the taking, possessing, transport, or sale of wildlife that have been obtained in violation of any local, federal, or international wildlife laws.

**Migratory Bird Treaty Act of 1918 (16 USC 703-712)**

This act implemented various treaties between the US, Canada, Japan, Mexico, and the USSR for the protection of migratory birds. Under the act, taking killing or possessing migratory birds is unlawful except where permitted by specific regulations. This act was in large part designed to protect against the illegal poaching of migratory birds for the purposes of obtaining their feathers for use in women’s’ hats popular during the period.

**Migratory Bird Conservation Act of 1929 (16 USC 715-715r)**

This act established a Migratory Bird Conservation Commission authorized to act on the recommendations of the Secretary of the Interior for the purchase or rental of land and/or water for the conservation of migratory birds’ habitats.

**Bald Eagle Protection Act of 1940 (16 USC 668-668d)**

This act prohibited the taking or possession of, and commerce in, bald and golden eagles. This law was one of the first to protect a specific species because of a threat of extinction.

**The Endangered Species Conservation Act of 1966 (PL 89-669)**

This act designated that the Secretary of the Interior was to produce a list of vertebrates that were in danger of extinction and was to institute protections for these species whenever possible.

While a tremendous step towards the protection and preservation of endangered species the act did not provide for the mechanisms to actually provide adequate protections for listed species. However, it did begin the process of taking an account of species deemed to be under threat of extinction.

**The Endangered Species Conservation Act of 1969 (PL 91-135)**

This act was an expansion of the earlier Endangered Species Conservation Act of 1966. It extended protection to some invertebrates, increased prohibitions on illegal trade. This act was also deemed insufficient in the protections it afforded endangered species and was replaced by the 1973 Endangered Species Act.

**The Endangered Species Act of 1973 (16 USC 1531-1544)**

This act provided the first sweeping legislation protecting and enforcing the conservation of species in danger of extinction. It provided broad protections for species of fish, wildlife, and plants that were listed as threatened or endangered in the US or abroad. It provided for the listing of species as threatened or endangered and the designation of critical habitats for listed species. It provided particularly stringent protections on these designated habitats and imposed stiff civil and criminal penalties for any violation. The act also outlined recovery plans for listed species as well as procedures for federal agencies to follow when taking actions that may jeopardize listed species.

Many sectors of industry have lobbied heavily against this act, as they deem it to limiting and severe in nature. As a result, over time several of the protections afforded listed species have been eroded over time. However, the act remains an exemplary piece of legislative protection on the environment.

**Conclusion**:

Although it has been a long road to legislating wildlife protections within the US, we should be proud of our unparalled tradition of preservation. Although commercial interests often sought to block the legislation that served to protect America’s resources and natural beauty, American conservationism is still alive and well. While many in industry opposed setting aside land for National Parks and Reserves with the primary purpose of conservation, it is difficult to detach the image of the pristine Yellowstone or awe-inspiring Grand Canyon from the American ideals they have come to embody. Just as these landmarks have become the very symbols and treasures of our country, the plants and animals that make up our national wildlife are equally fundamental to the American way of life. Senator Lautenberg’s proposed legislation would be a grand step towards ensuring the continuation and health of our wildlife, and in so doing, the American way of life.

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