

WILDLIFE POLICY—WILD 410

Spring 2022, 9.30—10.50; TR; Room: Social Science #352

Instructor Information

Martin Nie

Professor, Natural Resources Policy; Director, Bolle Center for People & Forests

Clapp Building #402

Telephone: (406) 243-6795

Email: martin.nie@umontana.edu

Office hours: T, Th. 2-4 pm

Course Description

This course examines wildlife law, policy and politics from multiple perspectives. Students are provided an intense introduction to the legal framework of fish and wildlife management in the United States (with coverage of U.S. and state constitutions, key wildlife statutes, administrative regulations, and case law). The political context of wildlife management is provided so that students can better understand the conflicts and tensions in the field. A major part of the class focuses on the Endangered Species Act. This important law is used as a way to investigate a number of broader challenges and opportunities related to the conservation of biological diversity. The class is organized as a discussion-oriented large seminar with roughly 30-40 undergraduate students. Most sessions will include a very short background lecture followed by more in-depth class discussions on assigned readings. This is not a lecture-based course and students should feel comfortable with class discussion of readings, working independently and within groups, and engaging in class discussions and presentations.

WILD 410 or NRSM 422 Natural Resources Policy: There is no prerequisite for WILD 410 but students are strongly encouraged to first take NRSM 422. The latter provides a foundational introduction to the field of natural resources law and policy, with a wider focus on federal land management, water law, and the National Environmental Policy Act (NEPA). There will inevitably be some overlap between the two courses but WILD 410 is designed to provide students a more narrow and specialized introduction to policy and politics, with a focus on wildlife conservation.

Required Reading

Eric T. Freyfogle & Dale D. Goble, *Wildlife Law: A Primer* (Washington, D.C.: Island Press, 2019)

All additional required and recommended reading and my lecture notes are available on the course's [Moodle page](#).

*We will also discuss a number of contemporary issues in wildlife policy. An excellent way to stay up-to-date is to review stories published daily by [EE News and Greenwire](#).

Learning Outcomes

Students successfully completing the course will:

1. Acquire a substantive understanding of U.S. wildlife policy

- Learn how to read and interpret statutes, administrative regulations, and case law and understand the intersections between them and how they impact wildlife management and conservation on the ground.
- Understand the legal and political context of U.S. wildlife policy and management
- Understand the role played by federal, state, and tribal governments in wildlife policymaking and management
- Understand the basis of enduring conflicts and tensions in the field

2. Be able to think critically about a number of wildlife policy problems and solutions.

- Understand the nature of wildlife policy disputes and challenges
- Evaluate the assumptions, strengths, and weaknesses of various reform measures and policy proposals
- Approach problems and issues in an integrated and intellectually rigorous fashion

3. Have the ability to apply acquired knowledge to their field of study or professional/personal interest(s)

Assignments & Assessment

Class Participation:

I reserve the right to consider class participation and attendance when assigning final grades—a sort of tie-breaker. I will do so especially for those students who may be on the cusp of a grade. A student, for example, earning a B+ or 89.4% in final points could possibly be bumped to an A- if he/she was a fully engaged and informed class participant that never missed a class. On the other hand, if a student rarely participated during the semester and has a shoddy attendance record, a C- score would stay a C- score. Please be fully engaged or at least try to pretend and act as though this is the most exciting and enlightening class that you have ever taken and that you never want it to end.

All students must read the reading assignments prior to class and be ready to discuss the readings on a regular basis. I am seeking input from the entire class, not just from a few committed students. If discussion is poor, unannounced pop-quizzes may be given. Therefore, it is in the collective interest of the class to participate. Any student who misses class for any reason will be held responsible for all materials covered and all announcements made during his/her absence. Do not ask me for missed handouts or about material that was covered unless you have a validated excuse. Chronic tardiness is rude and please shut off your cell phones. Given the amount of discussion expected in this course, showing respect for others is paramount and is taken very seriously. We will strive towards an engaging but respectful open forum in which numerous opinions can be discussed and explored. Personal attacks will not be tolerated.

2 Exams (100 pts each, 200 pts total):

There are two written exams consisting of short answer and/or essay questions. I will provide possible exam questions two weeks in advance of each exam. The midterm will be scheduled sometime during

the middle of the semester (between weeks # 7-9). The final exam is scheduled for **Wednesday, May 11, 8-10 am**. I will not arrange other times for the final exam to be taken so please plan your work and travel schedules accordingly.

3 Short Written Assignments: (20 points each, 60pts total):

Students will be asked to write three 2-3 page (single-spaced) written assignments or policy position papers at different points in the semester. The papers will be graded for substance and style and they will be mostly based on our assigned and recommended readings. Students will be provided an opportunity to re-write one of these papers to receive a possibly higher score.

The papers will test a student’s ability to think and write clearly, efficiently, and critically on contemporary topics in wildlife policy and politics. The papers will include a one paragraph “executive summary” that may be shared verbally with the class and serve as the basis of class discussions. The paper assignments will closely track our class presentations and group discussions.

Papers will be graded on the basis of (1) writing and style (including clarity, level of articulation, and grammar), (2) level of critical analysis, research, specificity and detail, and (3) amount of synthesis and integration of course readings and discussions. I am also looking for formal citation (whatever style you prefer, e.g., parenthetical reference, footnote, endnote, legal, etc., just make sure you are consistent throughout, citing author, title and all publication information).

Class Presentation/Participation/Class Contributions (15 pts. total):

The end-of-semester ESA presentation (mock Senate Hearing on the ESA) is worth 7.5 points. Another 7.5 points will be based on a student’s overall contribution to the class. This can be earned through attendance and well-informed class participation throughout the semester. This should be an easy 15 points for those students who show up, share the workload, make an informed contribution to the class, and play well with others. However, points will be deducted if a student doesn’t prepare sufficiently and adds little contribution to class discussions.

Grading Scale & Points:

The following scale will be used to translate points into grades (rounded up if the next decimal is 5 or above, down if it is four or less).

Grade Range	Description
93-100: A	Points Written exams: 100pts x 2 = 200 pts Written papers: 20pts x 3 = 60 pts Class participation: 15 pts total Total points: 275 pts
90-92: A-	
88-89: B+	
83-87: B	
80-82: B-	
78-79: C+	
73-77: C	
70-72: C-	
68-69: D+	
63-67: D	
60-62: D-	

Grade Range	Description
59- F	

Academic Support:

- [Advising Center](#) and [Tutoring Resources](#): Schedule advising or tutoring appointments, available online or by phone. Tutoring available for math, writing, public speaking, Study Jam groups, and TRiO services.
- [Office for Disability Equity](#): Ensures students receive appropriate accommodations, services, and assistance to fully access the campus programs and facilities.
- [Writing and Public Speaking Center](#): Provides help at any point with writing, presentation, and research projects. Online and in-person appointments available.
- [Office for Student Success \(OSS\)](#): Helps students to meet three goals: transition smoothly to college, remain enrolled and progress in a program of study, and graduate in a timely manner.
 - [OSS COVID-19 Website](#)
 - Download the OSS [Online Student Success Guide](#) or [condensed Student Success Checklist](#)

Academic Honesty

All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the [Student Conduct Code](#).

Plagiarism

The following is taken directly the [UM Catalog \(2015-2016\) Academic Policies and Procedures](#):

“Plagiarism is the representing of another's work as one's own. It is a particularly intolerable offense in the academic community and is strictly forbidden. Students who plagiarize may fail the course and may be remanded to Academic Court for possible suspension or expulsion.

Students must always be very careful to acknowledge any kind of borrowing that is included in their work. This means not only borrowed wording but also ideas. Acknowledgment of whatever is not one's own original work is the proper and honest use of sources. Failure to acknowledge whatever is not one's own original work is plagiarism.”

Course Readings & Class Schedule

This syllabus is very tentative and may regularly change. Bring this schedule to each class session for regular updates and additional or subtracted readings. *All readings are to be done before class.* Given time constraints, some areas may have to be sacrificed, and individual reading will have to take its place. Students must be willing to read and be responsible for material that may not be covered in class. Dates have been left open in order to increase flexibility and allow for maximum class participation and discussion. This type of open schedule, however, requires that students come to class to find out where we are and where we're going. I will inform students before upcoming sections of what readings they should pay particular attention.

About the “Recommended” Reading: Listed below, and found on the course moodle page, are several recommended readings. Everything not listed as recommended or background reading is required reading. The recommended readings provide a different perspective and/or a more in-depth treatment of a topic. They can also be used in preparing for exams, class presentations and written assignments. If you are having trouble with one of the required readings, be sure to try one of the recommended readings for a different way of presenting material.

Strategic Reading: I will make clear what readings I want you to read in depth, so that you can come to class ready to discuss the material. Some material, however, can be read more strategically, so that you can put information together as a way to prepare for the exams and the written assignments.

Please note that there are some differences in readings based on whether you have a first or second edition of the text. I’ve indicated required readings for each edition.

Course Moodle Page & Course YouTube Channel: The course has a moodle page that will be used to organize readings and materials, post exam material, and host open forums, among other functions. The course also has a YouTube channel with associated playlists that track the units and topics covered in this class and other law and policy courses taught in the W.A. Franke College of Forestry and Conservation and the Alexander Blewett III School of Law. See moodle page for YouTube link and subscription information.

TOPICS & READINGS

1. Introduction to Wildlife Law, Policy & Politics

A. Background. The Global Biodiversity Challenge & Context

United Nations, Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *Global Assessment Report on Biodiversity and Ecosystem Services* (2019), available at <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/>

Rosenberg, K.V., et al., Decline of the North American Avifauna, *Science* 366 (2019): 120-124. See also <https://www.3billionbirds.org/>

B. Primer on structure and forms of wildlife law and policy (and the relationship between U.S. and state constitutions, statutes, regulations/rules, and case law).

Freyfogle & Goble, *Wildlife Law* 1st ed., Ch. 1; pp. 191-202; pp. 305-308 (2d ed. Ch. 1; pp. 192-202; 287-289)

Case Study: The Migratory Bird Treaty Act

For an overview of the MBTA see *The Migratory Bird Treaty Act (MBTA): Selected Legal Issues* (Washington, D.C.: Congressional Research Service, 2016).

We will work through the following documents as a class:

U.S. Fish and Wildlife Service, Regulations Governing Take of Migratory Birds, Proposed Rule, 85 Federal Register 5915 (Feb. 3, 2020).

U.S. Fish and Wildlife Service, Regulations Governing Take of Migratory Birds: Revocation of Provisions, 86 Federal Register 54 (Oct. 4, 2021)

More documents and resources pertaining to the Trump-Biden MBTA Rulemakings available at <https://www.fws.gov/regulations/mbta/resources>

2. The Public Trust in Wildlife

The public trust doctrine and applications to wildlife management; the complicated nature of state sovereign “ownership” of wildlife.

Freyfogle & Goble, *Wildlife Law* 1st ed. Ch. 2 & pp. 98-99; (2d ed. Ch. 2 & pp. 88-90)

Michael C. Blumm & Aurora Paulsen, “The Public Trust in Wildlife,” *Utah Law Review* 6 (2013): 1437-1504.

Recommended: Douglas Quirke, *The Public Trust Doctrine: A Primer* (A White Paper of the University of Oregon School of Law Environment and Natural Resources Law Center, 2016) (a very good and reader-friendly introduction to the public trust doctrine, though not focused on wildlife).

Recommended: Martin Nie, Nyssa Landres & Michelle Bryan, “The Public Trust in Wildlife: Closing the Implementation Gap in 13 Western States,” *Environmental Law Reporter*, 50, no. 11 (2020): 10909-10919.

Recommended: Jeremy T. Bruskotter, Sherry A. Enzler, and Adrian Treves, “Rescuing Wolves from Politics: Wildlife as a Public Trust Resource,” *Science* 333 (2011): 1828-1829.

Recommended: The Wildlife Society, *The Public Trust Doctrine: Implications for Wildlife Management and Conservation in the United States and Canada* (Bethesda, MD: The Wildlife Society, 2010) (please skim)

Recommended: Center for Biological Diversity, Inc. v. FPL Group, Inc., California Court of Appeal, 83 Cal. Rptr. 3d 588 (2008) (wind turbine operations, raptors, and the public trust doctrine in California)

3. The Constitutional Context of U.S. Wildlife Management

Introduction to the U.S. Constitution’s treaty power, property clause, commerce clause, wildlife federalism, federal preemption, the takings clause, and three foundational Supreme Court decisions focused on wildlife.

Freyfogle & Goble, *Wildlife Law*, Ch. 6.

The Public Trust in Wildlife: Applied to Climate Change

The “*Juliana v. U.S.*” campaign and litigation, available at <https://www.ourchildrenstrust.org/>.

Recommended: Michael C. Blumm and Mary Christina Wood, “‘No Ordinary Lawsuit’: Climate Change, Due Process, and the Public Trust Doctrine,” *American University Law Review* 67 (2017): 1-87.

Recommended: *Kleppe v. New Mexico*, 426 U.S. 529 (1976) (case focused on the Property Clause as it relates to wild horses and burros on federal land)

Recommended: Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§1131-1340.

Recommended: *Hughes v. Oklahoma*, 441 U.S. 322 (1979) (case focused on state ownership of wildlife and commerce clause)

Recommended: *Missouri v. Holland*, 252 U.S. 416 (1920) (case focused on the U.S. Constitution and the Migratory Bird Treaty Act).

Recommended: A. Trouwborst, et al., "International Wildlife Law: Understanding and Enhancing Its Role in Conservation," *Bioscience* 67, no. 9 (2017) 784-790.

Recommended: *Andrus v. Allard*, 444 U.S. 51 (1979) (case focused on takings as it applies to the Eagle Protection and Migratory Bird Treaty Acts)

Recommended: *Kafka v. Montana Department of Fish, Wildlife, and Parks*, 201 P. 3d 8 (Mont. Supreme Court, 2008) (case focused on takings as it applies to operation of game farms)

4. Wildlife on Federal Public Lands

Cases and conflicts between federal and state governments; the National Parks and National Wildlife Refuge Systems; Wildlife on multiple use lands managed by the USFS and BLM; wildlife management in federal wilderness; savings and cooperation clauses in federal statutes.

Freyfogle & Goble, *Wildlife Law* 1st ed., Ch. 10. (2d. ed. Ch. 11)

Martin Nie, Christopher Barns, Jonathan Haber, Julie Joly, Kenneth Pitt and Sandra Zellmer, "Fish and Wildlife Management on Federal Lands: Debunking State Supremacy," *Environmental Law* 47 (2017): 797-932. (please see for agency specific statutes and regulations pertaining to wildlife)

Recommended: Adam Federman, "The Hidden Battle Threatening the Future of America's Wild Places," *The Pacific Standard* (May 26, 2019), available at <https://psmag.com/environment/the-hidden-battle-threatening-the-future-of-americas-wild-places>

Recommended: students may find it useful to skim the following two powerpoint presentations and focus on how they so differently view federal and state powers: Kenneth P. Pitt, USDA, Office of the General Counsel, *Wildlife Management Jurisdiction on National Forest System Lands* (PDF powerpoint presentation, Mar. 23, 2011) and Association of Fish & Wildlife Agencies, *The States: Trustees of America's Wildlife* (PDF powerpoint presentation).

30 x 30 Case Study

Related documents and materials available in Moodle

Section 216 of President Biden's Executive Order on Tackling the Climate Crisis at Home and Abroad (Jan. 27, 2021) calls for "conserving" at least 30 percent of our nation's lands and waters by 2030. The Order is one response to declines in biodiversity and the loss of fish and wildlife habitat. Part of this unit will be focused on the 30 x 30 initiative (now referred to as "America the Beautiful") and the role played by federal public lands, including what lands and waters should qualify for "conservation" and for measuring progress toward the 30% goal.

A. The Special Case of Alaska

With a focus on Alaska Native Tribes and Title VIII of ANILCA (subsistence use)

Martin Nie, Christopher Barns, Jonathan Haber, Julie Joly, Kenneth Pitt and Sandra Zellmer, "Fish and Wildlife Management on Federal Lands: Debunking State Supremacy," *Environmental Law* 47 (2017), pp. 876-880.

B. The National Wildlife Refuge System

Robert L. Fischman, "The Significance of National Wildlife Refuges in the Development of U.S. Conservation Policy," *Journal of Land Use & Environmental Law*, 21 (2005): 1-22.

Recommended: Laura B. Comay, *Arctic National Wildlife Refuge: An Overview* (Washington, D.C.: Congressional Research Service, 2018).

The National Wildlife Refuge System Improvement Act of 1997, Public Law No. 105-57 (1997) (the full statute is provided and to be used as a reference as needed).

C. Federal Preemption Case Study

Wyoming v. United States, 279 F. 3d 1214 (10th Cir. 2002) (case focused on the National Wildlife Refuge System and elk management in Jackson Hole, WY) (we will use this case to return to federalism issues and discuss the role of savings clauses in federal land laws).

For an update on this issue see Kylie Mohr, "Fatal Disease Looms Large Over Elk Feeding Grounds," *Greenwire* (Jan. 27, 2021).

5. Tribal Rights to Fish and Wildlife

Freyfogle & Goble, *Wildlife Law* 1st ed. Ch. 8. (2nd ed. Ch. 9)

Washington v. Washington State Commercial Passenger Fishing Vessel Association, 443 U.S. 658 (1979) (focus on pp. 1-15) (U.S. Supreme Court decision focused on tribal reserved fishing rights in the Northwest)

U.S. v. Washington, 827 F. 3d 836 (9th Cir. 2016) (the latest decision on Tribal fishing rights in the Northwest, the so-called "culverts" decision focused on habitat). *See also* "13-35474 USA v. State of Washington," on [YouTube](#) (to view state and federal arguments in the culverts case)

Recommended: Michael C. Blumm, "Indian Treaty Fishing Rights and the Environment: Affirming the Right to Habitat Protection and Restoration," *Washington Law Review* 92 (2017): 1-38 (an excellent overview of the litigation leading up to the 9th Circuit's culvert decision)

Recommended: O. Yale Lewis III, "Treaty Fishing Rights: A Habitat Right as Part of the Trinity of Rights Implied by the Fishing Clause of the Stevens Treaties," *American Indian Law Review* 27, no. 1 (2002/03): 281-311 (this is old but a very reader-friendly introduction that students have really liked in the past)

Recommended/discussion: *Clayvin Herrera v. State of Wyoming* (tribal reserved hunting rights case before the U.S. Supreme Court).

A. Tribal Reserved Rights & Tribal “Co-Management”

Optional discussion of co-management of fish and wildlife; and the return of the National Bison Range to Confederated Salish and Kootenai Tribes.

National Bison Range Restoration excerpt from Public Law 116-260. For more background and resources on the Restoration Act see <https://bisonrange.org/>

Monte Mills & Martin Nie, "Bridges to a New Era: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Lands," *Public Land & Resources Law Review* 44 (2021): 49-184.

Recommended: Brian Upton, “Returning to a Tribal Self-Governance Partnership at the National Bison Range Complex: Historical, Legal, and Global Perspectives,” *Public Land & Resources Law Review* 35 (2014): 51-145 (we will discuss the National Bison Range and co-management options in federal lands management, as they pertain to Interior Dept. agencies).

Recommended: Ed Goodman, “Protecting Habitat for Off-Reservation Tribal Hunting and Fishing Rights: Tribal Co-management as a Reserved Right,” *Environmental Law* 30, no. 2 (2000): 279-362.

6. State Wildlife Governance

State game laws, wildlife funding and budgets, Pittman-Robertson & Dingell-Johnson Acts, state wildlife commissions, ballot initiatives, the North American Model of Wildlife Conservation (and critique)

Freyfogle & Goble, *Wildlife Law*, Ch. 7.

A Critique: Kevin Bixby, “An Overview of State Wildlife Governance Today,” a talk delivered at the Wildlife for All Summit, Albuquerque, NM, 2018.

The “Wildlife for All” campaign available at <https://wildlifeforall.us/>

Recommended: Paige Blankenbuehler, “Agricultural interests steer Colorado’s Wildlife Management,” *High Country News* (Aug. 31, 2018).

A. State Laws & Resources for Endangered Species Protection

Alejandro E. Camacho et al., “Assessing State Laws and Resources for Endangered Species Protection,” *Environmental Law Reporter* 47, no. 10 (2017)

Wolf Introduction in Colorado

One interesting development that we will discuss in this context is a 2020 ballot initiative focused on the reintroduction of gray wolves in Colorado. Background and text on Proposition 114 available @ [Colorado Proposition 114, Gray Wolf Reintroduction Initiative \(2020\) - Ballotpedia](#). Link also available in moodle.

Wolf Management in Montana and Idaho

Included in this unit will be an overview of recent legislation pertaining to wolf management in Idaho and Montana. An overview of these bills is available in moodle and we’ll discuss the legislation and the relationship between the state legislatures, fish and wildlife commissions, and the Departments of fish and game. We will then return to the issue in the context of the ESA and a recent petition to relist wolves in the Northern Rockies.

Recommended: Robert Fischman et al., “State Imperiled Species Legislation,” *Environmental Law* 48 (2018)

B. Debating the North American Model of Wildlife Conservation

J.F. Organ et al., *The North American Model of Wildlife Conservation, The Wildlife Society Technical Review 12-04* (Bethesda, MD: The Wildlife Society, 2012)

Michael P. Nelson, et al., “An Inadequate Construct? North American Model: What’s Flawed, What’s Missing, What’s Needed,” *The Wildlife Professional* (Summer 2011): 57-60.

Recommended: Shane P. Mahoney and Valerius Geist, eds., *The North American Model of Wildlife Conservation* (Baltimore, MD: Johns Hopkins University Press, 2019)

Recommended: Kyle A. Artelle, et al., “Hallmarks of Science Missing from North American Wildlife Management,” *Science Advances*, 4 (Mar. 2018), pp. 1-6.

Recommended: The following two documents illustrate how the North American Model is used in a case involving the introduction of non-native mountain goats by the State of Utah that are now on federal property: (1) Proposed Brief of the Association of Fish and Wildlife Agencies as Amicus Curiae in Support of Defendants Appelles and Affirmation (2017); and (2) Declaration of Martin A. Nie, in *Utah Native Plant Society and Grand Canyon Trust v. U.S. Forest Service* (2017).

Recommended: Susan G. Clark and Christina Milloy, “The North American Model of Wildlife Conservation: An Analysis of Challenges and Adaptive Options,” in Susan G. Clark and Murray B. Rutherford, eds., *Large Carnivore Conservation: Integrating Science and Policy in the North American West* (Chicago: The University of Chicago Press, 2014), Ch. 9.

C. Discussion of Proposed Legislation: Recovering America’s Wildlife Act

Recommended: Recovering America’s Wildlife Act, Senate Bill 3223 (2020) (proposed federal legislation focused on nongame funding).

Recommended: The Blue Ribbon Panel on Sustaining America’s Diverse Fish & Wildlife Resources (2016), available at <https://www.fishwildlife.org/afwa-informs/resources/blue-ribbon-panel>

Part II. The Past, Present and Future of the Endangered Species Act

6. ESA: Background & Overview

Including background and contrast to other key federal wildlife laws (Lacey Act, Migratory Bird Treaty Act, and Bald and Gold Eagle Protection Act)

Freyfogle & Goble, *Wildlife Law* 1st ed., Ch. 9, 11 & 12. (2nd ed. Ch. 10, 12 & 13).

The Endangered Species Act (1973), 16 U.S.C. §1531 (the full statute is provided and to be used as a reference as needed).

Brett Hartl & Jessica Owley, “Rebuilding the Endangered Species Act: An Environmental Perspective,” in Don Baur & Ya-Wei Li, eds., *Endangered Species Act: Law, Policy, and Perspectives* (American Bar Association, 2021).

Recommended: Center for Conservation Innovation @ <https://home.cci-dev.org/directory/> the CCI Directory includes a rich and accessible database on most things ESA, with great tables, graphs, maps and explanatory materials—highly recommended).

Recommended: Noah Greenwald, et al., “Extinction and the U.S. Endangered Species Act,” *PeerJ* 7:e6803 (2019).

Recommended: M. Lynn Corn & Andrea M. Wyatt, *The Endangered Species Act: A Primer* (Congressional Research Service, 2016).

A. Case Study: TVA v. Hill (1978)

Tennessee Valley Authority v. Hill, 437 U.S. 153 (1978)

Zygmunt J.B. Plater, “Classic Lessons from a Little Fish in a Pork Barrel—Featuring the Notorious Story of the Endangered Snail Darter and the TVA’s Last Dam,” *Utah Environmental Law Review* 32, no. 2 (2012): 211-244.

Recommended: Jacob M. Malcom and Ya-Wei Li, “Data Contradict Common Perceptions About a Controversial Provision of the U.S. Endangered Species Act,” *Proceedings of the National Academy of Sciences*, 112, no. 52 (Dec. 2015): 15844-15849. (see for empirical review of section 7 consultation process).

7. Recovery & Delisting Under the Endangered Species Act

Justin R. Pidot, “Contingent Delisting,” *University of Colorado Law Review* 91 (2020): 649-676.

Recommended: Dale D. Goble, “The Endangered Species Act: What We Talk About When We Talk About Recovery,” *Natural Resources Journal* 49 (2009): 1-44.

Recommended: J.M. Scott et al., “Recovery of Imperiled Species Under the Endangered Species Act: The Need for a New Approach,” *Frontiers in Ecology and the Environment* 3, no. 7 (2005): 383-389.

Recommended: Daniel J. Rohlf, Carlos Carroll, and Brett Hartl, “Reply to Goble and Colleagues,” *BioScience* 64, no. 10 (2014): 859-860.

ESA Resources & Examples

Found in moodle are several ESA-related resources and documents that are referenced in lectures and discussions, including: listing petitions and determinations, biological opinions, critical habitat designations, habitat conservation plans, candidate conservation agreements and more.

The ESA and State Wolf Management in Montana and Idaho

See in moodle the “Emergency Petition to Relist Gray Wolves in the Northern Rocky Mountains as an Endangered or Threatened Distinct Population Segment Under the ESA (May 26, 2021)

A. Case Studies: Delisting Grizzly Bears and Gray Wolves

A Petition to Identify and Delist the Northern Continental Divide Distinct Population Segment of the Grizzly Bear Under the ESA,” (Submitted to USFWS by Governor Greg Gianforte and the Montana Department of Fish, Wildlife and Parks on Behalf of the State of Montana, Dec. 17, 2021).

Removing the Greater Yellowstone Ecosystem Population of Grizzly Bears from the Federal List of Endangered and Threatened Wildlife, 82 Federal Register, 30502 (June 30, 2017) (final rule to delist Yellowstone Grizzly Bears).

Crow Indian Tribe et al., v. U.S. (U.S. District Court of Montana, 2018). I’ve also placed in the moodle folder the associated briefs and petitions for the case, including the Tribal petition (and other related documents).

Removing the Gray Wolf (*Canis Lupus*) From the List of Endangered and Threatened Wildlife, 85 Fed. Reg. 69,778 (Nov. 3, 2020) (final rule to delist Gray Wolves). I will place updates and associated lawsuit materials in the Moodle folder).

Recommended: Robert B. Keiter, “The Greater Yellowstone Ecosystem Revisited: Law, Science, and the Pursuit of Ecosystem Management in an Iconic Landscape,” *University of Colorado Law Review*, 91, no. 1 (2020) (providing an overview of grizzly bear and wolf listing decisions and related litigation)

8. The Future of the Endangered Species Act: Debating ESA (and Wildlife Law & Policy) Reform (Including class group work and presentations in the form of mock congressional hearings)

Freyfogle & Goble, *Wildlife Law*, Ch. 13.

I’ll assign additional and most up-to-date readings and legislation from 117th Congress.

Jonathan Wood, Pacific Legal Foundation, Testimony on H.R. 6355 and H.R. 6356, U.S. House of Representatives, (2018).

Damien M. Schiff, “The Endangered Species Act at 40: A Tale of Radicalization, Politicization, Bureaucratization, and Senescence,” *Environs: Environmental Law and Policy Journal* 37 (2013-14): 105-132.

John Buse, “A Different Perspective on the Endangered Species Act at 40: Responding to Damien M. Schiff,” *Environs: Environmental Law and Policy Journal* 38 (2014-2015): 145-166.

The National Endangered Species Act Reform Coalition @ <http://nesarc.org/>

Endangered Species Act Congressional Working Group, *Report, Findings and Recommendations* (Feb. 4, 2014)

The [Center for Biological Diversity’s](#) take on the ESA and ESA Reform.

Additional ESA Resources:

The U.S. Fish & Wildlife Service's Environmental Conservation Online System at <https://ecos.fws.gov/ecp/> (use for all T&E species and their administrative documents).

Center for Conservation Innovation @ <https://home.cci-dev.org/directory/> the CCI Directory includes a rich and accessible database on most things ESA, with great tables, graphs, maps and explanatory materials—highly recommended).

Greenwire (news service) @ <https://www.eenews.net/gw> (be sure to access via Mansfield, the best and most detailed environmental news service, with great coverage of ESA cases).

The Fish & Wildlife Service and NOAA Fisheries have jointly proposed revisions to regulations that implement portions of the ESA. Background on these rulemakings (including powerpoints and videos) and the proposed rules are available @ https://www.fws.gov/endangered/improving_ESA/regulation-revisions.html.

Final Exam: Wednesday, May 11, 8-10 am