

Environmental Law

“I fought the law and the law won.”

Why study environmental law?

The development of conservation ecology and environmental law are closely linked

All good conservation folks must be aware of the relevant laws

Environmental laws are one of the most effective ways to conserve biodiversity

Jobs

Why do many ecologists avoid the law?

It's messy

It's complicated

It's time-consuming

It's not our job

There may be an appearance of bias

Advocacy = bias???

Some major US environmental laws

Wilderness Act (1964)

National Environmental Policy Act (NEPA; 1969)

Clean Air Act (1970)

Clean Water Act (1972)

Marine Protection, Research, and Sanctuaries Act (1972)

Endangered Species Act (ESA; 1973)

National Forest Management Act (1974)

Comprehensive Environmental Response, Conservation, and Liability Act (CERCLA;
Superfund; 1980)

Some thoughts...

Notice the dates

Who were some of the presidents?

What do you think about the chances of passing such legislation today?

A focus on NEPA

Purpose of NEPA

“The purposes of this Act are:

- To declare a national policy which will encourage productive and enjoyable harmony between man and his environment;
- to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
- to enrich the understanding of the ecological systems and natural resources important to the Nation;
- and to establish a Council on Environmental Quality.”

NEPA

Central goal:

Ensure that federal actions did not significantly affect the environment

Primary mechanism:

Construct an **Environmental Impact Statement** (EIS) before the proposed action, which evaluates the impact and allows for public input

Established environmental quality as a national priority

What's in an EIS?

The environmental impact of the proposed action

Any adverse environmental effects that cannot be avoided

Alternatives to the proposed action

Relationship between local, short-term uses of the environment and maintenance and enhancement of long-term productivity

Irreversible or irretrievable commitments of resources that would be involved

However, an EIS is complicated

Problems with NEPA

A single federal agency prepares an EIS despite the need for collaboration and communication with all stakeholders

Although the public makes comments, the agencies don't always change their planned actions, which results in lawsuits

Does this sound like a policy that 'will encourage productive and enjoyable harmony between man and his environment'?

Still, what's special about NEPA?

It's proactive

Non-economic resources (i.e., most of nature) are considered

Environmental assessment is brought to the fore-front

Public involvement in the process is expected

A focus on ESA

Purposes of ESA

"...to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved."

"...to provide a program for the conservation of such endangered species and threatened species."

ESA

Central goal:

Prevent extinction of species

Primary mechanism:

Once a species is 'listed', it and its 'critical habitat' are protected

Established preservation of biodiversity as a national priority

Non-humans have intrinsic value

Who's in charge?

Terrestrial and freshwater: US Fish and Wildlife Service

Marine: National Marine Fisheries Service of the Department of Commerce

However, there is also much inter-agency and federal-state collaboration

The public can also participate in the process

Who's protected?

Almost all species can be listed

Species listed: 1,318 spp. (1,351 in 2008):

Plants: 746 spp. (744 in 2008, 712 in 2005)

Vertebrates: 374 spp. (369 in 2008, 336 in 2005)

What's missing?

The "boxscore"

What's a species?

Includes subspecies and any distinct population segment which interbreeds when mature

Who's protected in SC?

Species listed: 42 spp.:

Plants: 19 spp.

Animals: 23 spp.

How do we compare?

How does a species get listed? (1)
US Fish and Wildlife Service ranking system (1983)

How does a species get listed? (2)
The real world

Does priority rank matter?
Expenditures vs. Priority rank

Some key components
Species focus
Action needs to occur
A **recovery plan** is to be developed for each species
1,129 of 1,318 spp. (= 86%; 83% in 2008)
Critical habitat is to be designated for each species
534 of 1,318 spp. (= 40.5%; 38% in 2008)

A key assumption
HABITAT protection is enough
What do you think?

Some changes over the years
Initially, effects on economics were not to be considered at all
This changed later to allow economics to play a role in designating critical habitat
Also a 'God Squad' was created to revoke species protection if economics were severely compromised (result of snail darter vs. Tellico Dam)

A major change (1)
Habitat Conservation Plan (HCP; 1982)
An attempt to smooth the waters with private land owners
'shoot, shovel, and shut up'
Private land owners reach an agreement with the government to conserve and manage the listed species on their land
Safe Harbor Agreements
"No Surprises" policy

A major change (2)

“Incidental take” permits are given if a HCP is prepared and approved
Contentious issue but probably a good thing because private landowners must be included across a landscape if species are to be protected
Half of listed species have 80% of their habitat on private land

Some problems of ESA

Species vs. ecosystem protection
Listing of declining vs. almost extinct species
Private property owners and ‘taking’
Expensive
Also see Rohlf (1991)

ESA discussion

Questions/comments on Rohlf (1991)

Does international conservation exist?

Of course...

A focus on CITES

Convention on International Trade in Endangered Species (1973)
169 member countries

CITES overview

Regulates commercial trading of globally endangered species or their *products*
Three appendices/levels of protection

I: Endangered species that are vulnerable to trade (trade prohibited)

II: Species that could be threatened or species that cannot be distinguished from threatened ones (trade requires a permit from exporting country)

III: Species not endangered but home country is concerned (countries are asked to get a permit from exporting country)

CITES oddities

Instead of complete protection and prohibition from trading, sometimes it's in the species best interest to allow a little approved trading

Why?

Removes black market

Price drops

Profit goes to species conservation

Become an environmental lawyer