

Endangered Species Act

October 20, 2003 11.002/17.30j Public Policy 1

The “Problem”

- Expanding extinction of domestic and foreign plants and animals
 - Human Land Use
 - Agriculture
 - Development & sprawl
 - Resource Consumption
 - Pollution
 - Lack of Concern & Fear

October 20, 2003 11.002/17.30j Public Policy 2

The “Problem”

- Is there an issue?
 - Extinction is natural
 - Adaptation/natural selection → more species that get along with humans
- Is this a problem for you and me?
- If so, how much lifestyle/economic development should we sacrifice for other species?

October 20, 2003 11.002/17.30j Public Policy 3

Policy Background

- Colonial Era
 - Restrictions on deer hunting & tree cutting by mid 1700s
- 1900 Lacy Act
 - To help states protect native game animals
 - Interstate transport of birds or wildlife killed in violation of state law illegal
 - Illegal to introduce wildlife injurious to agriculture or horticulture

October 20, 2003

11.002/17.30J Public Policy

4

Policy Background

- Migratory Bird Act 1918
 - Unlawful to:
 - "...pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention . . . for the protection of migratory birds . . . or any part, nest, or egg of any such bird." (16 U.S.C. 703)
 - To regulate for hunting

October 20, 2003

11.002/17.30J Public Policy

5

Policy Background

- 1920s-1960s
 - Wildlife management controlled by states
 - Conservationists
 - Wildlife as resource
 - Support state management
 - Preservationists
 - Want federal laws protecting wildlife

October 20, 2003

11.002/17.30J Public Policy

6

Committee on Rare & Endangered Wildlife -- 1964

- Professionals from BSF&W
 - Informal working group
- Issue "RedBook"
 - 63 vertebrate species
 - Informal collegial survey

October 20, 2003

11.002/17.30j Public Policy

7

Endangered Species Preservation Act - 1966

- Lobbying by CREW & other BSFW managers
- Sec. Of Interior wants bill for money to buy land
- DOI drafts bill for Congress (1965)
 - Debate on states rights

October 20, 2003

11.002/17.30j Public Policy

8

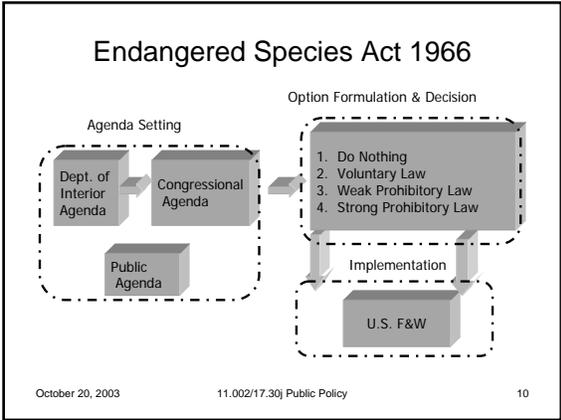
Endangered Species Preservation Act - 1966

- Only animals living in federal wildlife refuges protected
 - Federal government prohibited from regulating hunting/fishing off refuges
 - Listed species not protected if they leave the refuge
- Voluntary protection by other federal agencies
 - All ignore the law
- No public process

October 20, 2003

11.002/17.30j Public Policy

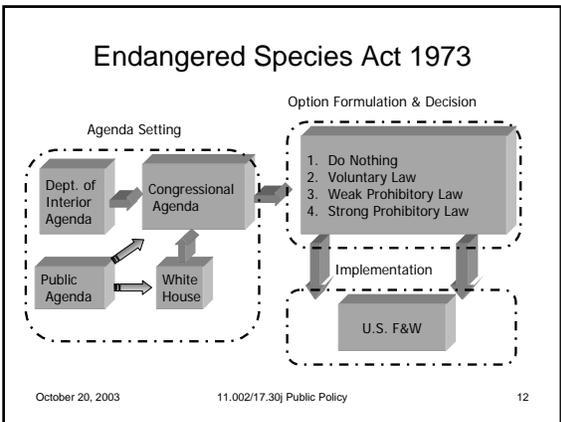
9



Endangered Species Conservation Act -- 1969

- Amends 1966 ESPA
- BSF&W drafts bill for House & Senate
- Provisions
 - Only species threatened with worldwide extinction covered
 - Bans interstate transport of listed species
 - Adds mollusks and crustaceans

October 20, 2003 11.002/17.30J Public Policy 11



TVA v. Hill

October 20, 2003

11.002/17.30j Public Policy

13

Snail Darter v. Tellico Dam -- I

- TVA begins Tellico dam in 1967
 - \$50 million spent & 70% completed by 1975
- 1975 USF&W receives emergency listing petition
 - University of Tennessee professor
 - Long-time opponent of Tellico Dam project
 - Discovers **snail darter** in search for a listable species 1973
 - TVA dam at Tellico will inundate entire habitat of species
- USF&W responds quickly to list species
 - First such action; wants to set precedent
 - Asks TVA to reassess project

October 20, 2003

11.002/17.30j Public Policy

14

Snail Darter v. Tellico Dam -- I

- 1976 Federal Court suit to stop construction
 - a citizens group: farmers, sportsmen, archaeologists, and representatives of the Cherokee Nation
 - District Court rules for TVA
 - US Court of Appeals reverses lower court
 - Orders project halted

October 20, 2003

11.002/17.30j Public Policy

15

Snail Darter v. Tellico Dam -- I

- 1978 TVA v. Hill (Supreme Court)

– "One would be hard pressed to find a statutory provision whose terms were any plainer than those in Section 7 of the Endangered Species Act. Its very words affirmatively command all federal agencies 'to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence' of an endangered species or 'result in the destruction or modification of habitat of such species'. This language admits of no exceptions."

October 20, 2003

11.002/17.30J Public Policy

16

Snail Darter v. Tellico Dam -- I

- "It may seem curious to some that the survival of a relatively small number of three-inch fish among all the countless millions of species [that exist] would require the permanent halting of a virtually completed dam for which Congress has expended more than \$100 million. The paradox is not minimized by the fact that Congress continued to appropriate large sums of public money for the project, even after ... [it knew about the dam's] ... impact upon the survival of the snail darter

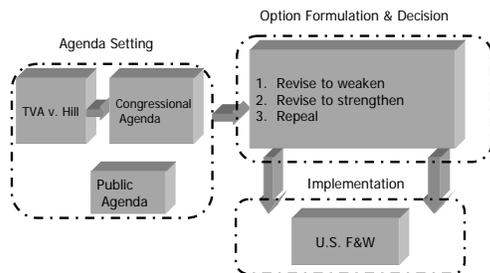
– Chief Justice Warren Burger

October 20, 2003

11.002/17.30J Public Policy

17

Endangered Species Act 1978



October 20, 2003

11.002/17.30J Public Policy

18

1978 Amendments

- Sets up “appeal” process – God Squad

- Secretaries of
 - Interior
 - Commerce
 - Army
 - Agriculture
- Chiefs of
 - Council of Economic Advisor
 - EPA
 - NOAA
- Representatives of agencies from affected states

October 20, 2003

11.002/17.30j Public Policy

19

1978 Amendments

- Requires Critical Habitat designation at time of listing
 - Cost-benefit analysis allowed for habitat designation
- More public access for listing decisions
 - Notice
 - comments

October 20, 2003

11.002/17.30j Public Policy

20

Snail Darter v. Tellico Dam -- II

- God Squad rules Tellico Dam does not warrant a waiver on *economic grounds*
- 1979: Energy and Water Development Appropriation Bill
 - Rider exempting Tellico Dam from any other laws that might prohibit it
 - Sponsored by Sen. Howard Baker (R-Tenn.)
 - Signed by President Carter

October 20, 2003

11.002/17.30j Public Policy

21

Snail Darter v. Tellico Dam -- II

- **Sequoyah v. Tennessee Valley Authority**, 620 F.2d 1159 (6th Cir.), cert. denied, 449 U.S. 953 (1980).
 - Cherokee Nation files suit to stop project
 - Tellico Dam will flood sacred lands
 - Violates Nat'l Historic Preservation Act
 - Court dismisses case based on *blanket* exemption of NWDA 1979
- Nov. 1979: Dam Completed

October 20, 2003

11.002/17.30j Public Policy

22

Supreme Court Expands the ESA's Reach

- **Palila v. Hawaii Department of Land & Natural Resources**
 - Introducing species that threaten ESA-listed species is a violation of the ESA
 - Pigs & sheep for hunting
- **Babbitt v. Sweet Home**
 - Does "harm" imply more than "take?"
 - Harm *defined* in F&W regulations, not law
 - "Incidental take" implies prohibition on indirect harm
- **Impact**
 - Further expands the power of the USF&WS
 - Over state land management
 - Over private property

October 20, 2003

11.002/17.30j Public Policy

23

Problems of Implementation

- **Congressional Displeasure**
 - Limit funds for listing
 - (failed) attempts to weaken the law
- **Presidential Displeasure**
 - Reagan
 - Reduce office staff
 - Bush II
 - Encourage law suits blocking implementation & then Settle out of court

October 20, 2003

11.002/17.30j Public Policy

24
