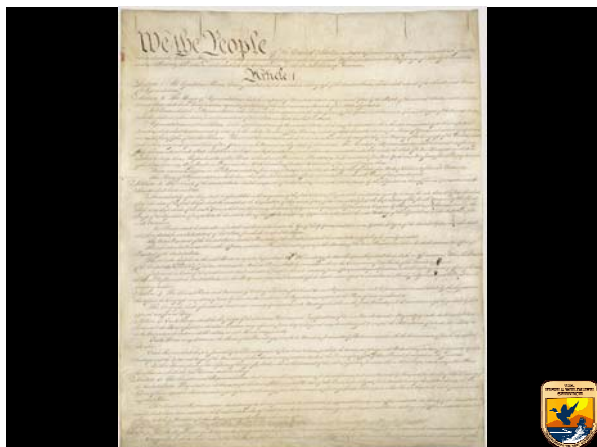


13 Sept 2005, 1430h
Kevin: Thanks, we enjoyed talking to your class today. Paul pointed out an error that I made : The Tohono O'odham Nation is the second largest reservation in the lower 48, behind the Navajo Nation.

Natural Resource Statutes and Policies

Paul Barrett, USFWS
ECOL 406/506, UA
13 Sept 2005



U.S. Constitution

10th Amendment

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."



ARS 17-102. Wildlife as state property; exceptions

“Wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the commission.”



State of Wyoming v. U.S, 99-8089

Tenth Circuit Court of Appeals rejected Wyoming's challenge to FWS control over National Wildlife Refuges

The court dismissed the state's Tenth Amendment claim saying Wyoming does not have a constitutional right “to manage wildlife, or more specifically vaccinate elk” on the National Elk Refuge. “[W]e believe the point painfully apparent that the Tenth Amendment does not reserve” that right to the state, “regardless of the circumstances.”



What If ????

The State wildlife agency and FWS (or NMFS) disagree over implementing actions to recovery listed species?



Who “Owns” the Water ?



State Water Laws



State Water Laws

- Doctrine of Prior Appropriations
- Riparian Rights



State Water Laws

- Doctrine of Prior Appropriations
- Riparian Rights

Federal Water Law

Reserved Water Rights



Rivers and Harbors Act of 1899

Federal Water Pollution Control Act (Clean Water Act)



Rivers and Harbors Act of 1899

*Navigable Waters
Dredging*

Federal Water Pollution Control Act (Clean Water Act)

Discharge



Fish and Wildlife Coordination Act



Fish and Wildlife Coordination Act

*Requires Consultation (Coordination) with the
Fish and Wildlife Service and State Agencies
When Water Projects Require a Federal Permit*



National Environmental Policy Act of 1969 (NEPA)



National Environmental Policy Act of 1969 (NEPA)

Disclosure Law



National Environmental Policy Act of 1969 (NEPA)

Requires that all Federal Agencies prepare detailed environmental impact statements for "every recommendation or report on proposals for legislation and other major Federal actions that significantly affect the quality of the human environment."



National Environmental Policy Act of 1969 (NEPA)

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What is "significant"?



National Environmental Policy Act of 1969 (NEPA)

What is "significant"?

- Environmental Assessment
- FONSI
- Environmental Impact Statement



Organic Acts



Organic Acts

Federal Land Policy and Management Act of 1976



Organic Acts

Federal Land Policy and Management
Act of 1976

Cabeza Prieta National Wildlife
Refuge



Migratory Bird Treaty Act of 1918



Migratory Bird Treaty Act of 1918

Federal prohibition unless permitted by regulation to "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, ... any migratory bird included in the terms of this Convention."



Migratory Bird Treaty Act of 1918

- United States of America
- Great Britain
- Republic of Mexico
- Japan
- Soviet Union



Pre- Endangered Species Act of 1973 Legislation

- *Lacey Act* - 1900. Authorized Federal enforcement of state wildlife laws and based on Federal power to regulate interstate commerce.



Pre- Endangered Species Act of 1973 Legislation

- *Lacey Act* - 1900. Authorized Federal enforcement of state wildlife laws and based on Federal power to regulate interstate commerce.
- *Committee on Rare and Endangered Wildlife Species* 1964 - consists of 9 biologist - published the first "Redbook" - first Federal list of fish and wildlife considered threatened with extinction.



Pre- Endangered Species Act of 1973 Legislation

- Lacey Act - 1900.
- Committee on Rare and Endangered Wildlife Species 1964
- 1966 Endangered Species Preservation Act - Federal agencies must conserve habitats of native vertebrate species found by the Secretary of the Interior to be in danger of Extinction to the extent "Practicable and consistent" with the primary purposes of the Federal agencies.



Pre- Endangered Species Act of 1973 Legislation

- 1969 Endangered Species Conservation Act - extended protection to invertebrates, and extended the Lacey Act's prohibitions to cover interstate commerce in illegally taken reptiles, amphibians, and certain invertebrates. Also took Global View - authorized Secretary to make a list of species threatened with worldwide extinction and with limited exceptions permitted the Secretary to prohibit imports of such species or their products into the U.S.



Endangered Species Act of 1973, as Amended

- Largest controversy involved whether protection should be extended to plants.
- Not seem as a large economic issue. Passed Senate unanimously, passed House overwhelmingly
- Signed into law on December 28, 1973



Endangered Species Act of 1973, as Amended

- Jointly administered by Secretaries of Interior and Commerce (Fish and Wildlife Service and National Marine Fisheries Service)
- Amended many times, presently up for reauthorization but is maintained under a continuing resolution.



Endangered Species Act of 1973, as Amended

- Section 3. Definitions
- Section 4. Determination of endangered species and threatened species (Listing)
- Section 5. Land acquisition
- Section 6. Cooperation with States
- Section 7. Interagency cooperation
- Section 8. International cooperation
- Section 8A. Convention implementation
- Section 9. Prohibited Acts
- Section 10. Exceptions
- Section 11. Penalties and enforcement
- Section 12. Endangered Plants



Endangered Species Act

VS.


Code of Federal Regulations



Endangered Species Act
(Statute)


VS.

Code of Federal Regulations
(Implementing Regulation)



ESA

Statutes are Congressionally enacted and accorded the highest degree of deference by the courts.




CFR

Implementing regulations reflect an expert agency's interpretation of the statute. They are afforded a correspondingly high degree of deference by the courts, as long as the agency interpretation is reasonable.




Administrative Acts




Administrative Acts

- Administrative Procedures Act



Administrative Acts

- Administrative Procedures Act
- Federal Advisory Committee Act



Administrative Acts

- Administrative Procedures Act
- Federal Advisory Committee Act
- Freedom of Information Act

