

The Case for a National Environmental Legacy Act

Protecting Public Resources for Present and
Future Generations

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The Case for a Legacy Act

- Broad support for considering interests of future generations
- Our laws already commit to this
- We are failing to protect a natural resource legacy

Proposal: Adopt a statute that defines our legacy and protects it



Two Anchoring Concepts

- Sustainability
- Concern for Future Generations



Sustainable Development

“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Brundtland Commission, OUR COMMON FUTURE (1987)



Sustainability's Goal

Improve the quality of life while living
within the carrying capacity of
ecosystems

IUCN, CARING FOR THE EARTH (1991)

Sustainability

- International Acceptance
 - Stockholm Declaration
 - Brundtland Commission
 - Rio Declaration
 - Agenda 21



Intergenerational Equity

- Present generation must not compromise the ability of future generations to meet their needs
- Meet human needs without compromising the health of ecosystems

U.S. Public Opinion

Reasons for protecting the environment:

(2002) Among six reasons for caring about protecting the environment, those polled selected the following:

- 1) “responsibility to future generations to protect the earth” 39%
- 2) “nature is God’s work” 23%
- 3) “protect the balance of nature for you and your family to enjoy health” 17%
- 4) “respect nature” 10%
- 5) “appreciation for beauty” 6%
- 6) “to protect America’s natural history” 4%
- 7) “don’t know” 1%



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Commitments to Sustainability and Future Generations in Existing Law

- Goals
- Mandates
- Incentives

Statutes with Goals or other Aspirational Language

- Alaska National Interest Lands Conservation Act, 16 U.S.C. §3101(a)
- Clean Air Act, 42 U.S.C. §7651(a)(5)
- Coastal Zone Management Act, 16 U.S.C. §1451(b)
- Energy Reorganization Act 42 U.S.C. §5801(a)
- Estuarine Protection Act, 16 U.S.C. §1221
- National Environmental Policy Act, 42 U.S.C. §4331(a) and (b)(1)
- National Forests Management Act, 16 U.S.C. §1609(a);
- National Historic Preservation Act, 16 U.S.C. §470(b)(4) and (5)
- National Marine Sanctuaries Act, 16 U.S.C. §1431(a)(4)(C)
- National Maritime Heritage Act, 16 U.S.C. §5401(5) and (6)
- National Park Service Concessions Management Act, 16 U.S.C. §5951(a);
- National Park Service Organic Act, 16 U.S.C. §1
- National Recreation Act, 16 U.S.C. §4601
- National Wildlife Refuge System Administration Act, 16 U.S.C. §668dd(a)(2) and (a)(4)(B)
- Nuclear Waste Policy Act, 42 U.S.C. §10131(a)(7)
- Emergency Wetlands Resources Act, 16 U.S.C. §3901
- Wild and Scenic Rivers Act, 16 U.S.C. §1271
- Wilderness Act, 16 U.S.C. §1131(a).

Examples of Aspirational Language

- Coastal Zone Management Act, 16 U.S.C. §1451(b) (2006):
Congressional Findings: (b) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources of immediate and potential value to **the present and future well-being of the nation.**”
- National Forest Management Act, 16 U.S.C. §1609(a):
Congress declares that the National Forest System consists of units of federally owned forest, range, and related lands . . . united into a nationally significant system **dedicated to the long-term benefit for present and future generations.**
- National Environmental Policy Act, 42 U.S.C. §4331
Declaring policy to use all practicable means and measures to promote general welfare to create and maintain conditions under which man and nature can exist in productive harmony, and **fulfill the social, economic, and other requirements of present and future generations.**



Mandates for Sustainable Use of Natural Resources

- Federal Land Policy and Management Act, 43 U.S.C. §1701 *et seq.*
- Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. §1801 *et seq.*
- Multiple-Use Sustained Yield Act, 16 U.S.C. §528 *et seq.*
- National Forest Management Act, 16 U.S.C. §1600(6) and §1601(d)

Incentives to promote sustainability

National Natural Landmarks Program

Conservation Reserve Program, 16 U.S.C. 3831 *et seq.*

Wetlands Reserve Program, 16 U.S.C. §3837

Environmental Easement Program, 16 U.S.C. §3839

Forest Legacy Program, 16 U.S.C. §2103(c)

Forestry Incentives Program, 16 U.S.C. §2101

Agricultural Water Quality Incentives Program, 16 U.S.C. 3838(a)

Swampbuster Program, 16 U.S.C. §3811 *et seq.*

Coastal Barrier Resources Act, 16 U.S.C. §3501 *et seq.*

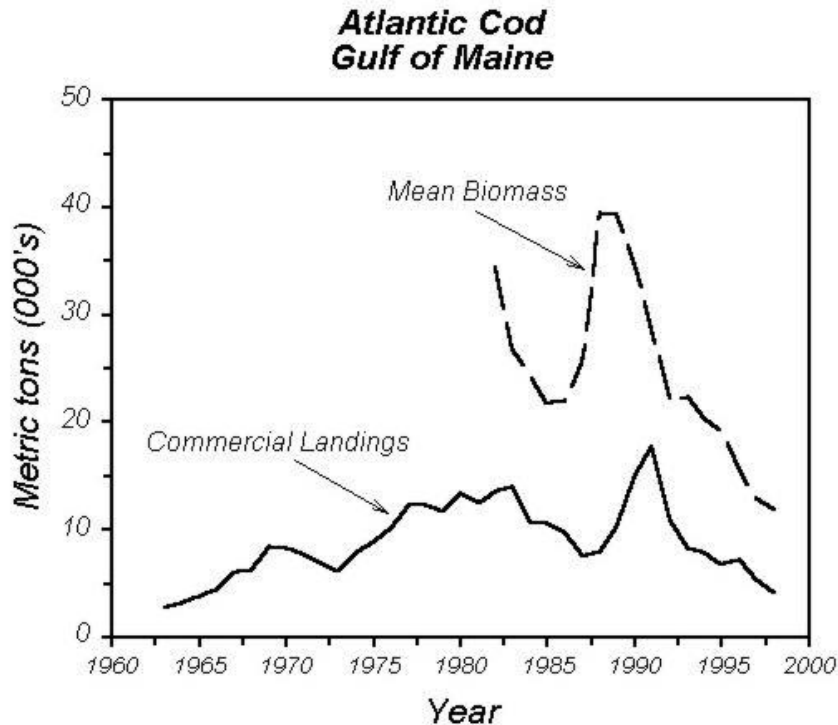


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Fisheries



- If current fishing patterns continue, all major commercial fish species will collapse by 2048
- UN State of the World Fisheries & Aquaculture: 7 of top 10 marine fish species are fully exploited or over exploited
- Almost 90% of all large predatory fish in the ocean are now gone
 - Forces fishing down the food web
- U.S. Fishprint:
 - Biocapacity: 1,153.2 global hectares
 - Fishprint: 3,058.8
 - Ecological balance: -1,905.6
 - 8th worst fishprint in the world

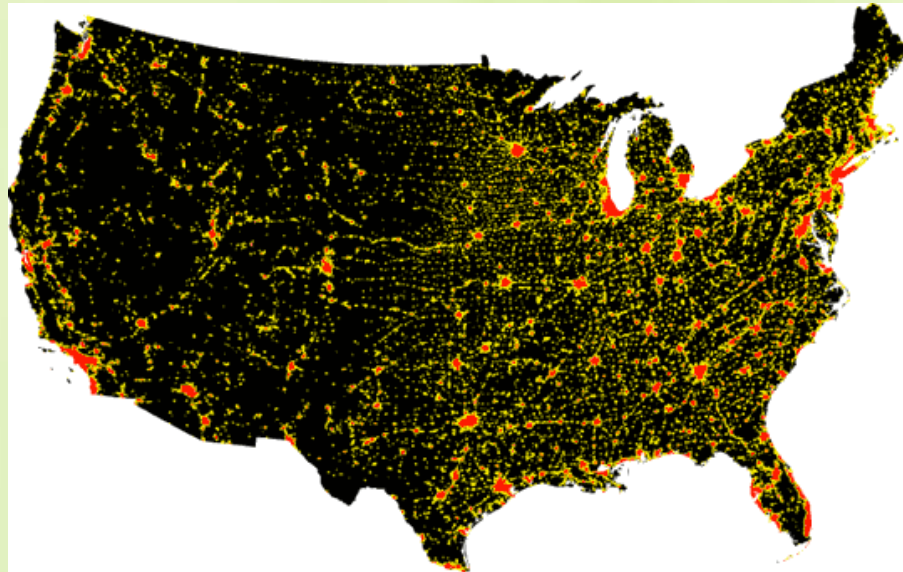
www.nefsc.noaa.gov/sos/spsyn/pg/cod/

Energy Use

- US fossil fuel consumption
 - 84.34 quadrillion Btu in 2003
 - 101.60 quadrillion Btu in 2007
 - Increase to 127 quadrillion Btu projected by 2020
- US Dept. of Energy predicts increased consumption over next 20 years:
 - 45% for coal
 - 58% for oil
 - 93% for natural gas

Trends in Land Use/Ecosystem Extent

- Before European settlement:
 - 920 million acres of forests
 - 900 million- 1 billion acres of grasslands and shrublands
- Rate of urbanization: about 1 million acres/year
 - ~56 million acres classified as urban in 1990



Biodiversity



- EPA states that more than 500 species have become extinct in the US since 1620

<http://www.fws.gov/northeast/nyfo/es/images/eaglemnwr2000.jpg>

Soil Erosion



- By 1980s, US was losing over 3 billion tons of topsoil per year
- Congress started the Conservation Reserve Program (CRP) in 1985- removed ~1/10 of cropland from production
- Water erosion more common in East
- Wind erosion more common in West

<http://www.biologydaily.com/biology/upload/thumb/8/86/225px-Erosion.jpg>

Wetlands

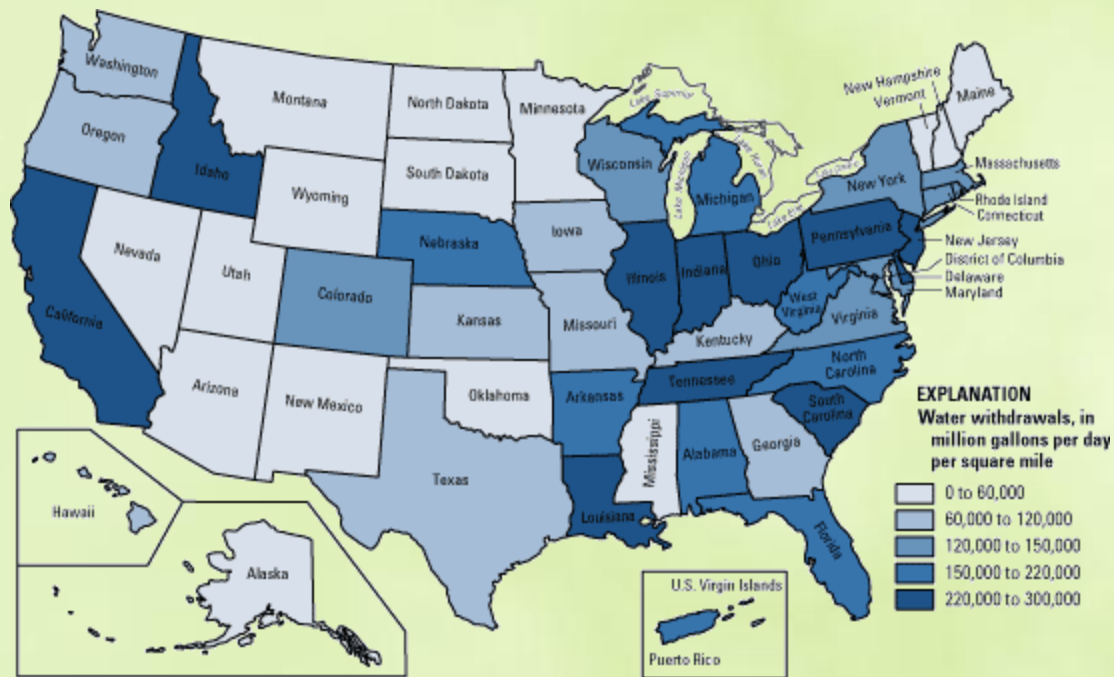
- Freshwater wetland area has declined by 50% since European settlement
- Current acreage in US estimated at 80 million



View of Everglades Nat'l Park from helicopter

U.S. Freshwater Withdrawals

- In 2000 totaled 408 billion gallons per day (85% from freshwater)
- Current rate of increase will lead to a doubling of consumption in 20 years
- 3rd highest annual freshwater withdrawals in the world
- 8th highest per capita use of water in the world



<http://pubs.usgs.gov/circ/2004/circ1268/images/fig04-intensity.gif>

Climate Change Impacts?

- Decline in surface water availability
- Groundwater demand increase and salination
- Impacts on wetlands
- Changes in forests
- Stress on fisheries



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Shortcomings of Current Law

- Goals are not enough
- Agency discretion undermines mandates
- Burden of proof works against sustainable use
- Lack of data and inadequate monitoring
- Failure to consider cumulative impacts

Core Idea of a Legacy Act

- Define in concrete terms the environmental legacy we want to leave next generations
- Mandate protection of that defined legacy

The Contours of a Legacy Act

- Covers public natural resources under federal ownership or control
- Defines the legacy we wish to protect
- Mandates protection of the legacy
 - Prohibition of impermissible degradation
 - Requires legacy planning by agencies
- “Legacy period” extends time horizon

The Contours of a Legacy Act

- Shifts burden of proof
- Requires development of metrics for values and services
- Data collection and monitoring



Center for Progressive Reform

www.progressivereform.org

<http://www.progressivereform.org/beyondenvirolaw.cfm>