



Animal Law & Multi-Species Conflict

Sea Lions, Salmon & Humans in the Bonneville Dam Dispute

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Overview

- Environmental Law Perspective
- Animal Law Perspective
- Other legal approaches
- Other philosophical approaches
- Science
- Pragmatic questions and outcomes
- Values and Methods for Resolution

Sea Lions

Predator and Prey



Salmon

Prey



Humans

Enforcing the Law





Humans

Protecting Sea Lions



Humans

Treaty, Economic, Cultural
Rights



Humans

Economic Interests

Environmental

- Conservation
 - Species focus, not individual animal (except to save species)
 - Human centric
 - Balancing adverse impact (human and animal)
 - With conservation of human use (lethal and non-lethal)
 - Regulated protections and use
 - Here – 3 species
 - All have legal protections
 - Sea Lion and Salmon interests - to live, conflicting
 - Human interests – no convergence, conflict with other species

Animal

- Preservation vs. Conservation
- Individual AND Species
- Assumes inherent value in animals
 - De-prioritizes human use
 - Values biodiversity
- Recognizes wider conflict
- Call to change legal approach
- No supporting societal consensus yet
- Species vs. species hardest animal law issues

Other Legal Approaches

International

- Article 13 of EU Treaty of Lisbon (2009)
 - Recognizes animals as sentient beings
 - Requires full regard be given to the welfare requirements of animals while formulating and enforcing some EU policies
 - Balance with religions, customs and legislative provisions
- 1992 first animal welfare inclusion in EU (Treaty of Maastricht)
- 1997 Treaty of Amsterdam first time animals designated as sentient beings
- Constitutional Protections
 - 12 countries? Including:
 - India
 - Germany
 - Switzerland
 - Serbia (species and individuals)
 - Argentina (domestic animals)
 - Romania

Other Legal Approaches

U.S. Criminal Law

- No unnecessary harm or suffering
- General notion about ownership of wildlife – they are not ours – legally
 - Proper ways to reduce animals to our ownership – take
- Add in new scientific understandings – Cambridge Declaration
 - Requires new duties human are bound to recognize
- Different approach to wildlife legal issues

Other Philosophical Approaches

- **Agriculture** – 5 Freedoms (UK Brambell Report 1965)
(Incorporated by the OIE (World Organization for Animal Health))
 - Freedom from hunger or thirst
 - Freedom from discomfort
 - Freedom from pain, injury or disease
 - Freedom to express normal behavior
 - Freedom from fear and distress (be ensuring conditions and treatment which avoid mental suffering)
- **Testing** – 3 Rs (UK Russell and Burch 1959)
 - Replacement – use of non-animal methods
 - Reduction – methods which reduce the number of animals used
 - Refinement – methods which improve animal welfare
- **Other Environmental Theories**
 - Eco-Feminism
 - Deep Ecology
 - BioDynamics

Science

- Fundamental element of ESA analysis
- Science goes both ways in many debates
- New science recognizes physiological, cognitive and even emotional capacities
 - Cambridge Declaration (July 2012)
- Creates new legal questions
 - If we know animals have more capacities, are we compelled to recognize and reconsider our actions in light of new information
 - Does this new information create new duties for humans to refrain from causing harm



Pragmatic Questions and Concerns

“Take” in Question

- Stellar Sea Lions protected by MMPA and ESA
- California Sea Lions protected only by MMPA
- Salmon and steelhead protected under ESA
- Fisheries take up to 17% of dam's protected fish
 - No significant negative impact
- Sea lions take up to 4.2%
 - Significant negative impact
 - No threshold to end take
- Not discussing other risk factors
- **Risk Factors**
 - Dams
 - Fisheries
 - Hatcheries
 - Tribal fishing
 - Sport fishing
 - California Sea Lions
 - Stellar Sea Lions
 - Other fish (native and non native)
 - Birds
 - Pollution
 - Changes in water temperatures affecting spawning
 - Habitat loss

Ironies

- **Record breaking year for Chinook Salmon in the Columbia**
 - Single day records broken
 - 9/9/13 – 63,870
 - compared with 45,884 in 2003
 - Total run records broken
 - 9/24/13 - 818,581 and counting
 - compared with 610,736 in 2003
 - Highest number passing dam since constructed in 1938

Ironies

- Recognition that the sea lions are:
 - Smart enough to know where to fish
 - Smart enough to evade non-lethal hazing methods
 - Unique enough to be identifiable (and responsible for more or less of the predation – eating)
- Not smart enough:
 - To deserve more protection than
 - To recognize their capacities incur duties on us not to interfere
- Treating sea lions differently based on their endangered status and location (Willamette vs. Columbia) not their behavior
- We don't call killing or eating animals predation



Working Toward Resolution

Recognize Values Involved

- We built the dams and created the scarcity and resulting conflict
- We want to allow fishing (some in animal law wouldn't)
 - For food
 - For cultural respect (legal obligations to nations)
 - For entertainment and profit
- Complex problems, caused by humans, need more sophisticated responses
- Look for solutions that work for humans, animals and environment

Methodology to Resolve Conflict - Questions

- What interests are at stake?
 - How fundamental are they to the species (individual survival, species survival, threaten survival, inconvenience)
 - Interests valued equally for each species?
- Are there ways to resolve conflict without impacting fundamental interests?
- What are the causes of the conflict
 - If they are human caused, de-prioritize human interests
 - Human interests never deemed fundamental?
 - Closest would be subsistence hunting/ grazing for tribal peoples
 - Not dispositive because if they need to kill certain animals to survive, they are co-dependent on the species and need to take measures to make sure survival isn't threatened

Methodology to Resolve Conflict

- Economic interests aren't fundamental – not equivalent to survival interests
 - If want to allow economic human use over interests (especially fundamental ones) of animals, need to explicitly be clear about the potential harm and trade-offs and need to state willing to threaten animal's survival in order to get economic benefit
- Distinctions among human uses important to identify
 - Cultural and current legal obligations should trump economic, entertainment and the like
 - Okay to limit one type of human use and not others
- Fewer distinctions between species and add focus on individual animal impact

Points of Agreement

- Significant problem for people, environment and animals
- Prevention is key
- Containment & management critical
- Learn from past
- Focus on future to avoid recurrences
- Science and law work together
- Reduce economic and human centric decision making
- Goal of finding ways to live together or coexist in harmony or some balance
- Consider all relevant factors – including individual animals?

The background features a stylized landscape with green, triangular mountain peaks at the top and bottom. A wide, horizontal band of textured yellow-orange color separates the two mountain ranges. The text "Thank You!" is centered within this band.

Thank You!