



# Protecting Biodiversity

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## The Endangered Species Act

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# The “Problem”

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- ✦ Expanding extinction of domestic and foreign plants and animals
  - Economic Development & Population Growth
  - Lack of Concern
- ✦ Is this a problem?
  - Extinction is natural
  - Adaptation/natural selection → more species that get along with humans
- ✦ How much lifestyle/economic development should we sacrifice for other species?

# Policy Background

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✦ 1900 Lacy Act

✦ Migratory Bird Act 1918

✦ 1920s-1960s

- Wildlife management controlled by states
- Conservationists
  - Wildlife as resource
  - Support state management
- Preservationists
  - Want federal laws protecting wildlife
- Migratory Bird Treaty

# Committee on Rare & Endangered Wildlife -- 1964

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## ✦ Professionals from BSF&W

- ◆ Informal working group

## ✦ Issue “RedBook”

- ◆ 63 vertebrate species
- ◆ Informal collegial survey

# Endangered Species Preservation Act - 1966

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- ✦ 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

# Endangered Species Preservation Act - 1966

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✠ 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

# Endangered Species Conservation Act -- 1969

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- ✦ Amends 1966 ESA
- ✦ 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

# Endangered Species Act -1973

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✠ Nixon prods Congress to revise ESCA 1969 to improve protection

- Pressure from BSF&W

✠ Goal: 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, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

# ESA – Provisions

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✦ Repeals ESCA 1969

✦ Protection for all threatened species, subspecies, & population

- Vertebrates, invertebrates, & plants
  - BSF&W opposes plant listing
- Drops “global” risk requirement
- “Takings” of listed species prohibited
  - “...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”
  - Including intra-state species
  - On *any* property

# ESA 1973 -Provisions

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- ✱ DOI & DOC joint jurisdiction
  - ◆ DOC protects marine species
- ✱ Listing based on best scientific & commercial data available

# ESA 1973 -Provisions

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- ✦ All federal agencies must coordinate actions to protect listed species
- ✦ Public role expanded
  - ◆ public comments
  - ◆ publication in Federal Register prior to listing
  - ◆ public can request a public hearing on a listing
    - BSF&W opposes

# ESA 1973 -Politics

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- ✦ No commercial interests testify against bill
- ✦ Nixon administration submits alternate bill
  - Removing plants & invertebrates
- ✦ Stronger Dingell ESA Bill Passes
  - House 390-12
  - Senate 92-0
- ✦ Conference version changes some provisions
  - House approves 355-4
  - Senate: voice vote

# The Snail Darter & the Dam



# Snail Darter v. Tellico Dam -- I

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✠ 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

# Snail Darter v. Tellico Dam -- I

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✦ 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

# Snail Darter v. Tellico Dam -- I

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## ✠ 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."

✠ "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

# 1978 Amendments

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✦ 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

# 1978 Amendments

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

# Snail Darter v. Tellico Dam -- II

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✦ 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

# Snail Darter v. Tellico Dam -- II

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✠ 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

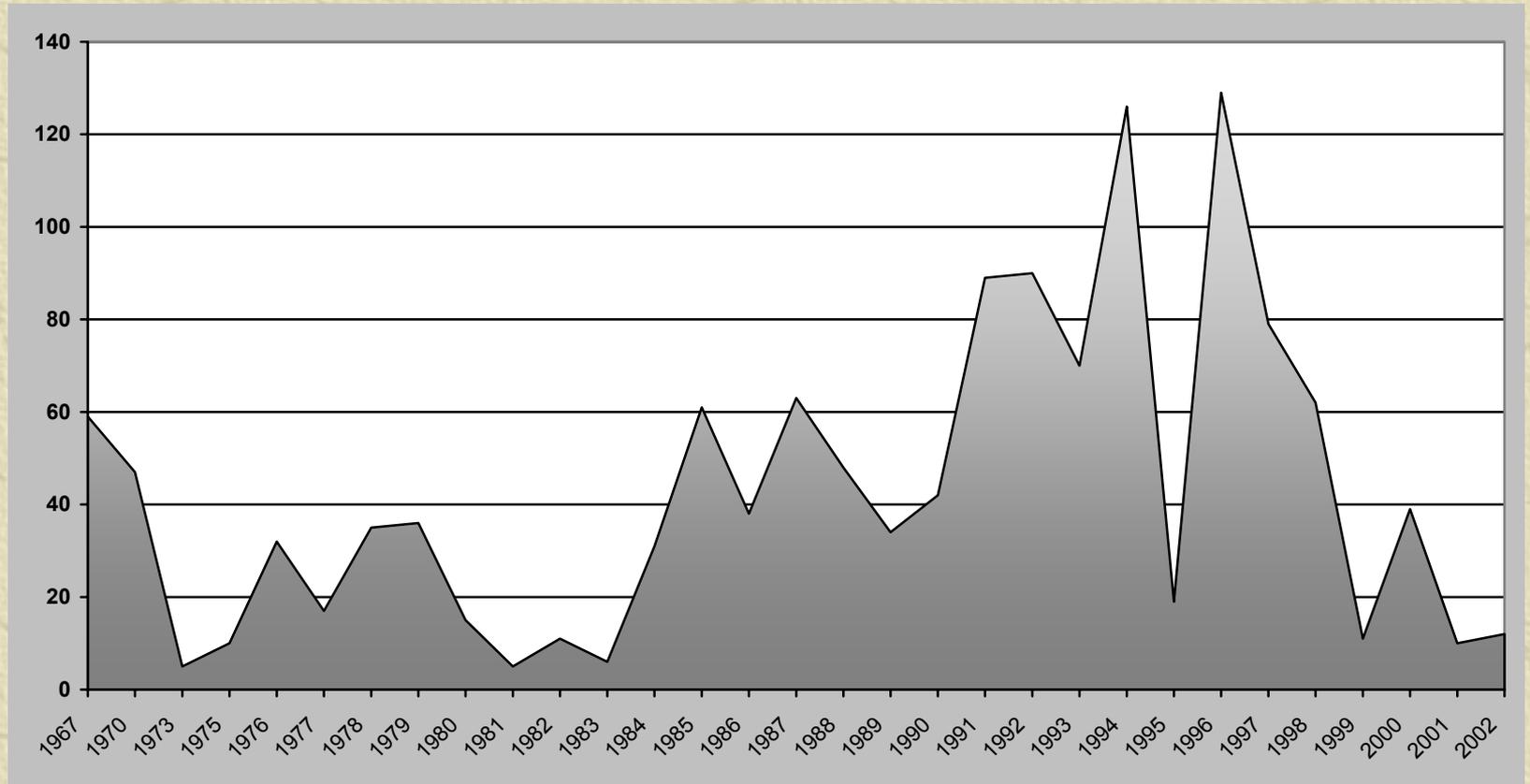
✠ Nov. 1979: Dam Completed

# Endangered Species Act

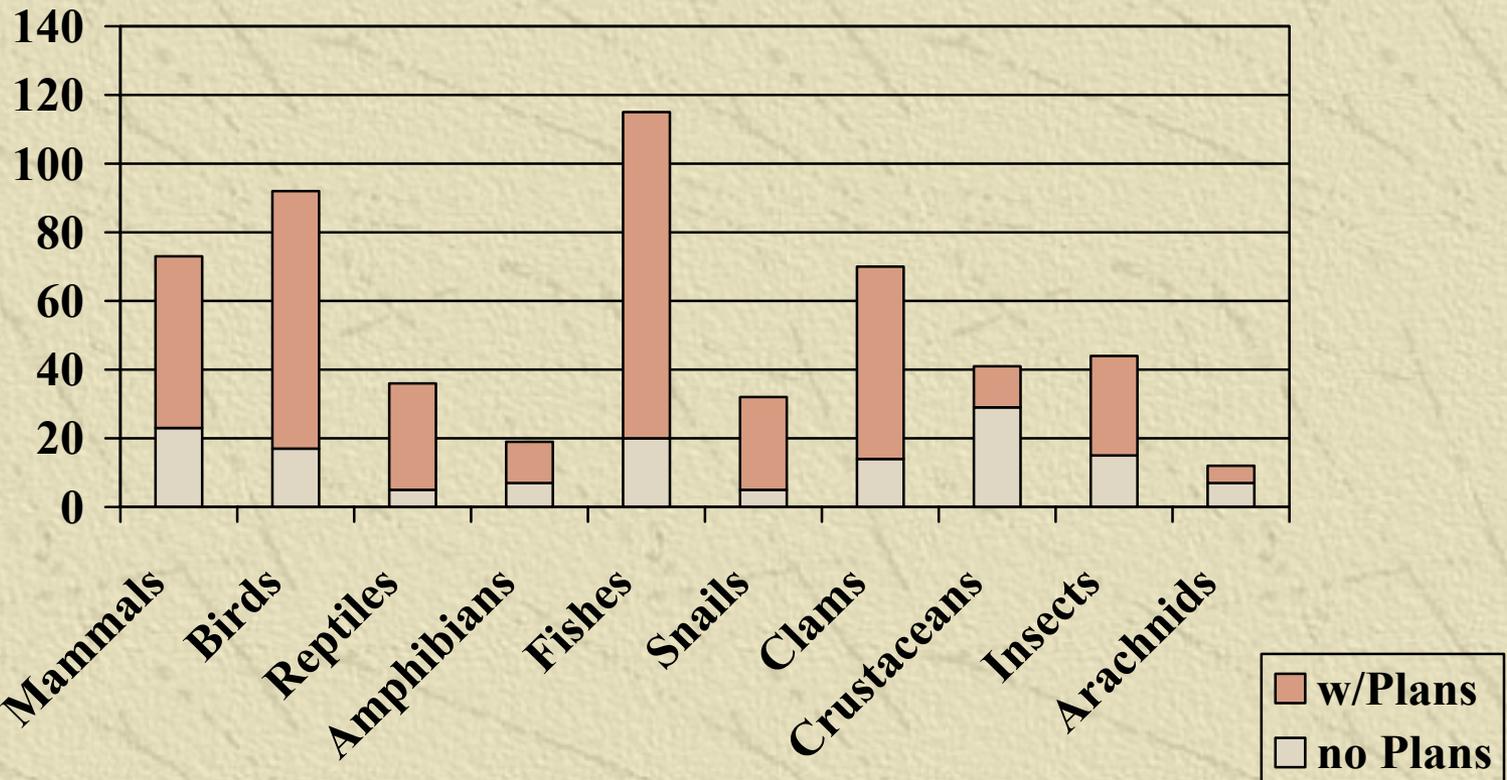
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- ✦ Most restrictive environmental law in the U.S.
- ✦ The “search” for endangered species begins
- ✦ February 2002
  - ◆ 1254 U.S. Species Listed
    - 514 Animals
    - 740 Plants

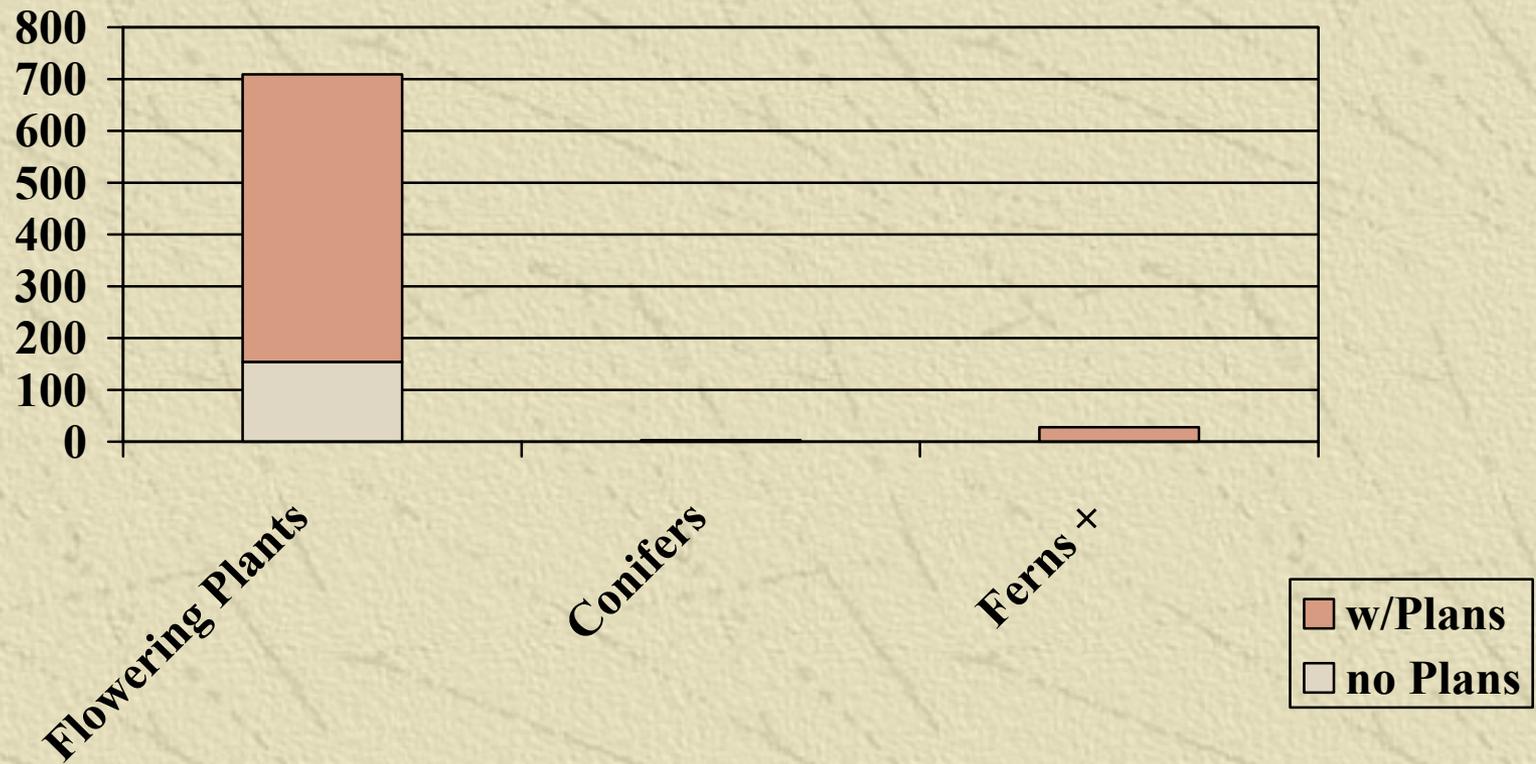
# Species Added to the ESA List



# ESA Recovery Plans



# ESA Recovery Plans -- Plants



# Number of Endangered Species by State 2002

