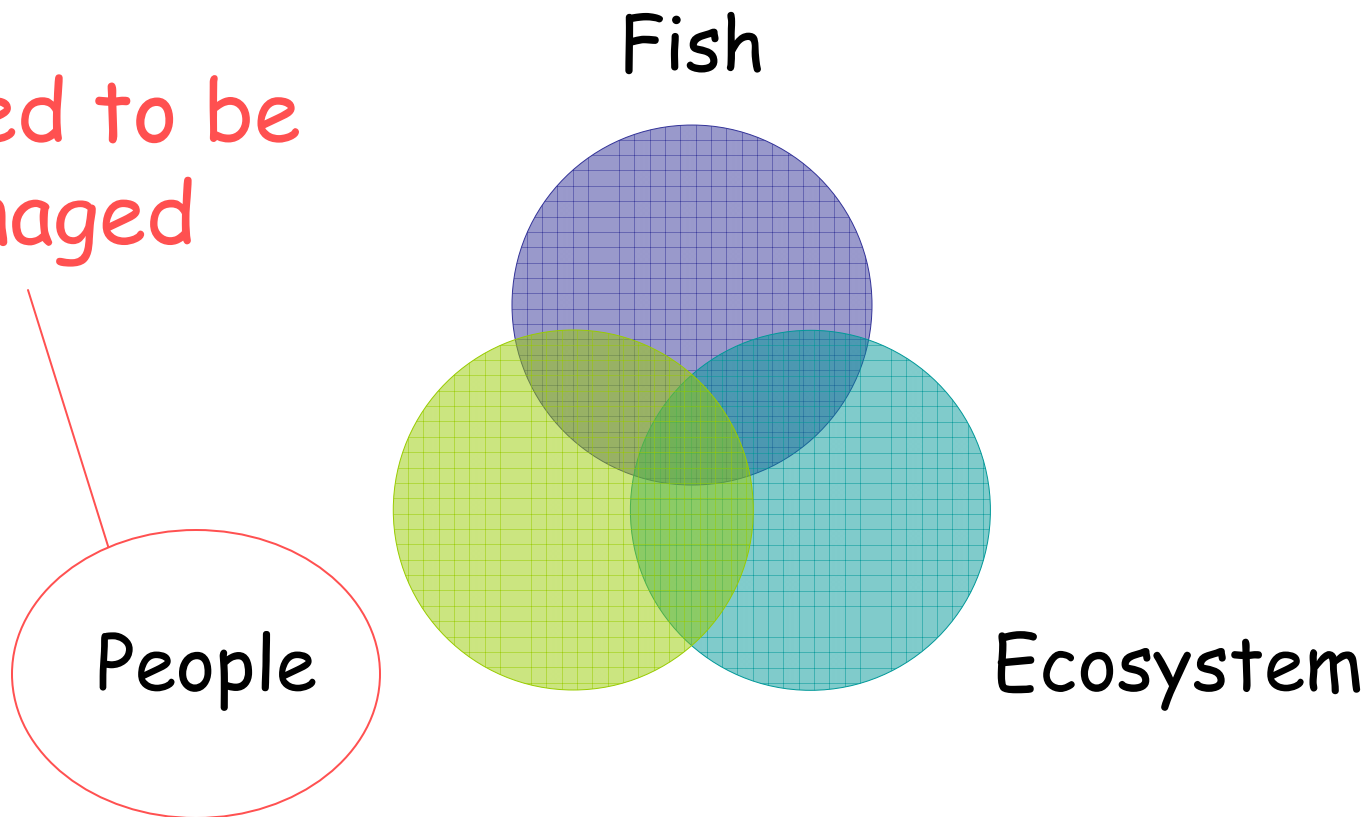


Legal Considerations

- What is law and policy?
- Legal systems in North America
- Legislative history
- Federal laws
- Ecosystem-level laws
- Managers interacting with the law

Legal Considerations

Need to be managed



Law: Legislative

Versus

Policy: Administrative

Legal Considerations

1. Law is open to interpretation
2. Law requires skepticism
3. Protection of fish resources based on the "will of the people"
4. Legal education not required for managers - problematic

From where do fisheries-oriented
laws derive?

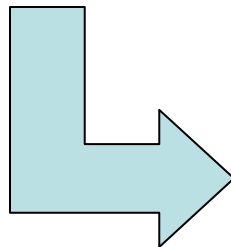
- *British common law*

flexible interpretation

Canada and USA

- legislative, judicial, executive branches
- Canada – legislative enforces the law
- USA – separate executive and legislative

Checks and Balances



Bargaining

Process of Law in USA

1. Legislative statutes are developed
2. As law is “tested out”, gains court opinions
3. Becomes practiced based on common view of the courts

10th Amendment

- Recall, natural resources are mostly in the states' care ... why?
- Any law not explicitly stated in the U.S. Constitution becomes responsibility of the states
- Federal government can create laws when necessary

Resources & the Law

- Greek and Roman basis
- Living resources can not be owned by individual (akin to the air and oceans)

Early U.S.

- Sorting out ownership and regulation of wildlife
 - Who owns?
 - Who manages and regulates?
 - state versus federal rights

Major State Rulings

- *Martin versus Waddell (1842)*



- *state
ownership of
resources*

Major State Rulings

- *Geer versus Connecticut (1896)*
 - state governments
can regulate
resources



Major Federal Rulings

- *Lacey Act (1900)*
 - *Precursor to Black Bass Act (1926)*
 - *Prohibited interstate commerce of wildlife captured in violation of state law*
 - *Can be guilty at both the state and federal level*

Major Federal Rulings

- *Migratory Bird Treaty Act (1918)*
 - Ensure that overharvest does not occur across national boundaries
 - Not a law but a treaty
 - Ensured federal control over states

Major Federal Rulings

- *Missouri versus Holland*
 - MO Attorney General defied federal migratory bird act
 - Established that federal government has jurisdiction in the states

States versus Feds

Treaties w/ Native Americans

- Very loose – open access
- 1.4 Million people
- Federal issue primarily
- States often deal with the resource

Federal Species Protection

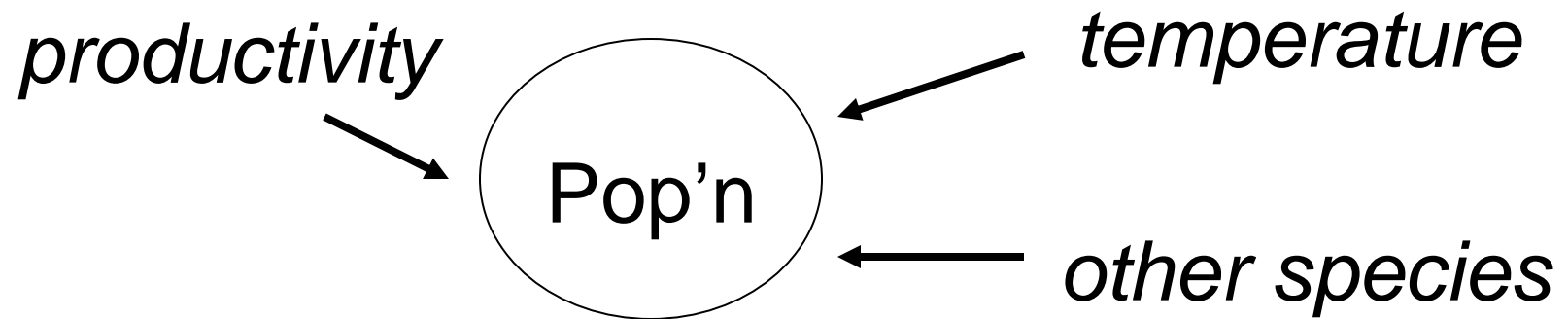
- Black Bass Act 1926
- Marine Mammal Protection Act 1972
- Endangered Species Act 1973
 - FWS - uphold law regardless of socio-economic problems
 - States - uphold protection of sportfish (lots of money generated by this)...conflict w/ mandate of ESA
 - Still, 66% of states have similar laws



Water Rights



Beyond Species and Populations



Beyond Species Protection

- *National Environmental Policy Act (1969)-*
 - *Mandates impact statements for planned actions of government agencies*
- *Fish and Wildlife Coordination Act (1946, 1958)-*
 - *Coordination among agencies mandated*
- *Clean Water Act 1972 (from Water Quality Act 1965)*
 - *Gives the federal government lots of control*

Beyond Species Protection

- *Superfund (1980)*
 - *Industries must pay to clean up pollution*

Legal Challenges of Fisheries Management

1. Expert Witness
2. Interact with lawyers - legal actions
3. Develop policy in synch with law

Courts versus Bargaining