WILDLIFE POLICY
WILD 595, 2.00—3.30; TR. Spring 2016, Clapp #452

Prof. Martin Nie
Clapp Building #402
Telephone: (406) 243-6795
Email: martin.nie@umontana.edu

Office hours: TR 3.30—5.00pm. If this is not convenient, please set up an appointment.

Course Description: This course examines wildlife law, policy and politics from multiple perspectives. Students are provided an intense introduction to the legal framework of fish and wildlife management in the United States (with coverage of U.S. and state constitutions, Indian treaties, key wildlife statutes, administrative regulations, and case law). The political context of wildlife management is provided so that students can better understand the conflicts and tensions in the field. A major part of the class focuses on the Endangered Species Act. This important law is used as a way to investigate a number of broader challenges and opportunities related to the conservation of biological diversity. While the focus of the seminar is wildlife policy, many of the issues addressed are pervasive in the field of natural resources policy, such as the significance of federalism, private property, scientific uncertainty, and various policy options in conservation. The class is organized as a discussion-oriented graduate seminar and students (individually or in teams) will lead most session reviews and discussions.


All additional required and recommended reading is on the course’s moodle page: http://umonline.umt.edu

*We will also discuss a number of contemporary issues in wildlife policy. An excellent way to stay up-to-date is to review stories published daily by EE News and Greenwire, online at http://www.eenews.net/gw.

*A number of species will be discussed in the context of the Endangered Species Act. Species Profiles—with regulatory and planning backgrounds and documents—are available at the Environmental Conservation Online System, at http://ecos.fws.gov/ecos/home.action.

Learning Outcomes: Students successfully completing the course will:

1. Acquire a substantive understanding of U.S. wildlife policy
   - Understand the legal and political context of U.S. wildlife policy and management
   - Understand the role played by federal, state, and tribal governments in wildlife policymaking and management
   - Understand the basis of enduring conflicts and tensions in the field

2. Be able to think critically about a number of wildlife policy problems and solutions.
   - Understand the nature of wildlife policy disputes and challenges
   - Evaluate the assumptions, strengths, and weaknesses of various reform measures and policy proposals
• Approach problems and issues in an integrated and intellectually rigorous fashion

3. Have the ability to apply acquired knowledge to their field of study or professional/personal interest(s)

Student Responsibilities & Assignments

**Seminar Participation (50 pts):** Informed participation is worth 50 pts when determining final grades. Although subjective, students can earn these points by never missing class and becoming an informed class participant on a regular basis. In short, be fully engaged or at least try to pretend and act as though this is the most exciting and enlightening class that you have ever taken and that you never want it to end.

When assigning these points, I will consider **attendance** obviously, but also whether a student has participated in quality fashion and on a consistent basis throughout the semester. Students will be evaluated based on their informed and consistent contributions to class discussions. This requires students to read and think about course readings before the class session. I am expecting intelligent, lively, and fully engaged classes every week.

**Respect:** Given the amount of discussion expected in this course, showing respect for others is paramount and is taken very seriously. We will strive towards an engaging but respectful open forum in which numerous opinions can be discussed and explored.

**Reading Review, Analysis & Student-led Seminar(s) (100pts):** Students (individually or in groups) will be assigned a particular week’s readings and asked to lead the discussion over two or more full seminar sessions. A quick oral summary (roughly 10-15 minutes) of the readings will first be provided. Although there are a number of ways that the review and discussion can proceed, make sure to cover the following points in your review:

1. What are the major questions addressed in the reading?
2. What argument (if any), theoretical or applied, is being presented and how is it being defended by the author?
3. What concepts are introduced?
4. How is the reading related to others done this semester?
5. Who cares? So what? What insights and contributions does the reading make?

Students will then lead a formal class discussion by posing 5-6 analytical questions to the class based on that day’s reading assignment. Students will also be graded on how well constructed and facilitated this student-led discussion proceeds; thus, students must be well prepared for the quiet and not-so-quiet seminar session. There are no make-ups.

The **review & discussion** will be graded using the following criteria: (1) Does the student seem knowledgeable and comfortable with the readings being discussed and reviewed—grasp of issues and important related points? (2) Did the student prepare well? Did the student recognize the primary issues addressed in the readings? Was the requisite work put into the assignment? (3) Was the presentation effective and organized? Was the summary of the readings clear and well-stated? (4) Did the student tie-in and integrate class materials and discussions (especially important as the semester progresses), e.g., course readings, discussions, etc.? (5) Did the student do a good job facilitating the class discussion? Did they help us work through difficult questions? Were they able to respond to other student’s questions and concerns? (6) How well organized, constructed and analytical were the student’s questions for class discussion?
*This component of the seminar will be determined by how many students enroll in the class. If the seminar is small (8-10 students), most of the review and discussion can be done individually. If the class is larger, however, we will move to groups of students (2-3) doing the review and leading the discussion.

**Three Final Exam Questions (50pts each, 150 pts. total):** The final exam is a take-home, comprehensive written assignment based on course readings and discussions. Three questions will be asked and are worth 50pts each. Each question will be answered in 5-7 double-spaced pages. Questions will be provided at intervals throughout the semester and students have the option of turning in answers one at a time or all at once on April 28th.

Papers will be graded on the basis of (1) writing and style (including clarity, level of articulation, and grammar), (2) level of critical analysis, research, specificity and detail, and (3) amount of synthesis and integration of course readings and discussions. I am also looking for formal citation (whatever style you prefer, e.g., parenthetical reference, footnote, endnote, legal, etc., just make sure you are consistent throughout, citing author, title and all publication information).

**Academic Honesty:** All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University. All students need to be familiar with the Student Conduct Code. The Code is available for review online at www.umt.edu/SA/VPSA/index.cfm?page=1321.

**Grading Scale:** The following scale will be used to translate points into grades.

<table>
<thead>
<tr>
<th>Points</th>
<th>Seminar participation: 50pts</th>
</tr>
</thead>
<tbody>
<tr>
<td>93-100: A</td>
<td>Student-led discussion: 100pts</td>
</tr>
<tr>
<td>90-92: A-</td>
<td>Final exam: 150pts</td>
</tr>
<tr>
<td>88-89: B+</td>
<td>Total points: 300pts</td>
</tr>
<tr>
<td>83-87: B</td>
<td></td>
</tr>
<tr>
<td>80-82: B-</td>
<td></td>
</tr>
<tr>
<td>78-79: C+</td>
<td></td>
</tr>
<tr>
<td>73-77: C</td>
<td></td>
</tr>
<tr>
<td>70-72: C-</td>
<td></td>
</tr>
<tr>
<td>68-69: D+</td>
<td></td>
</tr>
<tr>
<td>63-67: D</td>
<td></td>
</tr>
<tr>
<td>60-62: D-</td>
<td></td>
</tr>
<tr>
<td>59- F</td>
<td></td>
</tr>
</tbody>
</table>

---

**COURSE READINGS & CLASS SCHEDULE**

Bring this schedule to each class session for regular updates and additional or subtracted readings. *All readings are to be done before class.* Given time constraints, some areas may have to be sacrificed, and individual reading will have to take its place. Students must be willing to read and be responsible for material that may not be covered in class. Dates have been left open in order to increase flexibility and allow for maximum class participation and discussion. This type of open schedule, however, requires that students come to class to find out where we are and where we’re going. I will inform students before upcoming sections of what readings they should pay particular attention.

**About the “Recommended” Reading:** Listed below, and found on the course moodle page, are several recommended readings. Everything not listed as recommended or background reading is required reading. The recommended readings provide a different perspective and/or a more in-depth treatment of a topic.
Students may wish to read or skim these pieces if they are leading a seminar on that topic or use them in answering exam questions.

1. **Introduction to Wildlife Law, Policy & Politics**
   Primer on structure and forms of wildlife law (and the relationship between U.S. and state constitutions, statutes, regulations/rules, and case law); primer on basic approaches to law & policy; introduction to common drivers of natural resource-based conflict.

   Seminar by: Nie


2. **Constitutional & Legal Framework of U.S. Wildlife Management**
   The Property Clause, federal preemption, wildlife on federal lands; federal-state tensions in wildlife management, cases focused on intensive wildlife management in Alaska, wolf control in Idaho, and elk management in Jackson Hole, Wyoming.

   Seminar by: Nie

   Freyfogle & Goble, *Wildlife Law*, Ch. 6. & Ch. 10.


   Letter to USFS Regional Forester, from Earthjustice, RE: Idaho Dept. of Fish and Game Wolf Killing Program in the Frank Church-River of No Return Wilderness (Oct. 14, 2014)


   Wyoming v. United States, 279 F. 3d 1214 (10th Cir. 2002) (case focused on the National Wildlife Refuge System and elk management in Jackson Hole, WY)


   Recommended: *Kleppe v. New Mexico* (1976) (foundational case focused on the Property Clause as it relates to wild horses and burros on federal land)
3. The Public Trust in Wildlife
The state ownership doctrine and public trust responsibilities; the public trust doctrine and applications to wildlife management, inland fisheries and stream access


Seminar by:______________________________________

4. Wildlife & Private Property
Dimensions of property and ownership; the U.S. Constitution’s Takings Clause and its significance to wildlife management and conflict; policy options to biodiversity protection on private lands.

Freyfogle & Goble, *Wildlife Law*, Ch. 4 (and review pp. 117-121)


Andrus v. Allard, 444 U.S. 51 (1979) (case focused on takings as it applies to the Eagle Protection and Migratory Bird Treaty Acts)

Kafka v. Montana Department of Fish, Wildlife, and Parks, 201 P. 3d 8 (Mont. Supreme Court, 2008) (case focused on takings as it applies to operation of game farms)


Seminar by:______________________________________
5. Indian Tribal Rights
Tribal reserved rights, treaty fishing rights in Pacific Northwest and beyond, tribal co-management of fish and wildlife


Seminar by:______________________________________

6. State Wildlife Governance
State game laws, wildlife funding and budgets, state wildlife commissions, ballot initiatives, the North American Model of Wildlife Conservation (and critiques)


Case Study: The Proposed Montana Wolf Conservation Stamp (proposed rule by Montana Fish, Wildlife and Parks, 2014).

7. The Endangered Species Act: Background & Overview
Including background and contrast to other key federal wildlife laws (Lacey Act, Migratory Bird Treaty Act, and Bald and Gold Eagle Protection Act), significance and analysis of TVA v. Hill (1978), review core provisions of law (with focus on §§4, 6, 7, 9, & 10); habitat conservation planning, candidate conservation agreements, incidental take permits.

Seminar by: Nie


The Endangered Species Act (1973), 16 U.S.C. §1531


Example of Citizen Petition: Center for Biological Diversity et al., Petition to Protect the Monarch Butterfly Under the Endangered Species Act (August, 2014)

Optional Background documents on HCPs and CCAAs (for students wishing to see plans and associated case law)

Background on habitat conservation planning: http://www.fws.gov/endangered/what-we-do/hcp-overview.html


Friends of the Wild Swan et al., v Jewell, CV 13-61-M-DWM (D. Mont. 2014) (decision focused on Montana DNRC’s HCP)


Background on candidate conservation agreements: http://www.fws.gov/endangered/what-we-do/cca.html


Range-Wide Oil and Gas Candidate Conservation Agreement with Assurances for the Lesser Prairie-Chicken in Colorado, Kansas, New Mexico, Oklahoma and Texas, Between the USFWS and Western Association of Fish and Wildlife Agencies/Foundation for Western Fish and Wildlife (Feb. 28, 2014).

8. Science, Uncertainty & Political Decision Making (in the Context of the ESA)

Approaches to scientific uncertainty in environmental decision making, the ESA’s best available science mandate, scientific uncertainty and political judgment in ESA decision making, adaptive management as approach to scientific uncertainty, cases focused on delisting of grizzly bears and wolves.


Greater Yellowstone Coalition v. Servheen, 665 F. 3d 1015 (9th Cir. 2011) (Ninth Circuit decision on proposed delisting of Grizzly Bear)

Open letter from scientists and scholars on wolf recovery in the Great Lakes region and beyond (2015)


Seminar by: _______________________________________

**9. Recovery Under the Endangered Species Act**


10. The Future of the Endangered Species Act: Debating ESA Reform—Class Exercise


[Additional readings and proposed legislation to be determined—and taken from the 114th Congress]