

REAFFIRM STATE AUTHORITY AND RESPONSIBILITY FOR WILDLIFE MANAGEMENT – LEGAL ISSUES

Efforts by conservationists at the turn of the 19th century paved the way for state laws vesting authority in state agencies to manage fish and resident wildlife on all lands within state boundaries. The authority of states to protect and manage fish and resident wildlife within their respective borders is being eroded, in part due to some federal actions.

Congress has consistently deferred to state regulation of fish and resident wildlife, preempting state law only when necessary to the purpose of federal legislation. Congress has consistently inserted “saving provisions” into direction provided federal agencies that reserve for the states the authority to manage fish and resident wildlife on federal lands.

However, federal agencies have increasingly ignored these saving provisions, often times ostensibly to avoid interference with other congressional directives. Additionally, federal laws are being used to obstruct the states from completing specific management activities. Cases have arisen recently where the federal government has restricted state wildlife management on federal lands in contravention of specific statutory provisions. Other actions are “federalizing” state wildlife agency decision making by imposing new National Environmental Policy Act (NEPA) requirements, changing 30 years of precedent on state actions that use Pittman-Robertson wildlife restoration funds. Extending NEPA to routine habitat management activities (formerly categorically excluded) will confound the timely implementation, or preclude the implementation of long-standing management policies and programs to the detriment of wildlife and outdoor recreation. ■

RECOMMENDATION

The Administration should adopt a policy that requires federal agencies to defer as a general rule, to the authority of the states in fish and resident wildlife matters. The Administration should direct agency heads to review discretionary NEPA processes and eliminate those that unnecessarily limit state wildlife management programs. The Administration should also act with restraint, acknowledging the authority of the states in fish and resident wildlife.

