ASSOCIATION *of* FISH & WILDLIFE AGENCIES

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WILDLIFE LAW CALL

Summer 2023 | *Wildlife Law*

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THE NORTH AMERICAN MODEL OF WILDLIFE CONSERVATION

ASSOCIATION of FISH & WILDLIFE AGENCIES

The North American Model of Wildlife Conservation is the world's most successful system of policies and laws to restore and safeguard fish, wildlife and their habitats through sound science and active management.

How does the Model work?

In the United States and Canada, the Model operates on seven interdependent principles:

1. Wildlife resources are conserved and held in trust for all citizens.
2. Commerce in dead wildlife is eliminated.
3. Wildlife is allocated according to democratic rule of law.
4. Wildlife may only be killed for a legitimate, non-frivolous purpose.
5. Wildlife is an international resource.
6. Every person has an equal opportunity under the law to participate in hunting and fishing.
7. Scientific management is the proper means for wildlife conservation.

The Association of Fish & Wildlife Agencies formally endorsed the North American Model of Wildlife Conservation at its 100-year anniversary meeting in September 2002 in Big Sky, Montana.[1]

PRINCIPLE 1: WILDLIFE IS A PUBLIC RESOURCE

PUBLIC WATERS & FISHING ACCESS IN THE WEST: *ADOBE WHITEWATER V. NEW MEXICO STATE GAME COMMISSION*

Mike Knoth

In early 2022, the New Mexico Supreme Court clarified and affirmed the public's right to access and fish public waters.

In accordance with the public trust doctrine, the state government manages resources, including wildlife, for the benefit of the people, New Mexico law determines the scope of the right to access and use public waters, and federal law determines riverbed title.[2] New Mexico's Constitution states that "[t]he unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public."[3] The New Mexico Supreme Court has previously held that this clause also conveys the right to recreate and fish in public waters.[4]

In 2015, legislation was passed stating that:

> No person engaged in hunting, fishing, trapping, camping, hiking, sightseeing, the operation of watercraft or any other recreational use shall walk or wade onto private property through non-navigable public water or access public water via private property unless the private property owner or lessee or person in control of private lands has expressly consented in writing.[5]

The legislation seemingly contradicted a nonbinding opinion by the New Mexico Attorney General the previous year, which stated that the New Mexico Constitution allows anglers to fish and wade up to the high water mark.[6] Acting under the statutory language, the New Mexico State Game Commission began a regulatory process to address the navigability of public waters running over private land.[7] Landowners who applied for and received a certificate of non-navigability from the Commission were allowed to exclude the public from non-navigable segments of public water running over their property, enforceable under penalty of criminal trespass.[8] Determination of non-navigability under the regulations was based on whether the watercourse was non-navigable at the time of statehood

[1] This entry comes from the Association of Fish & Wildlife Agencies' webpage on the North American Model of Wildlife Conservation. Found at: www.fishwildlife.org/landing/north-american-model-wildlife-conservation.
[2] *PPL Montana, LLC v. Montana*, 565 U.S. 576, 603-04 (2012).
[3] N.M. Const. art. XVI, § 2.
[4] *State ex rel. State Game Comm'n v. Red River Valley Co.*, 1945-NMSC-034, ¶ 48, 51 N.M. 207, 182 P.2d 421 (N.M. 1945).
[5] NMSA 1978, Section 17-4-6, Subsection C (2015).
[6] *See* N.M. Att'y Gen. Op. 14-04 (April 1, 2014).
[7] *Adobe Whitewater Club of New Mexico v. New Mexico State Game Comm'n*, 2022-NMSC-020, ¶ 2, 519 P.3d 46.
[8] *Id.* at ¶ 5.

on a segment-by-segment basis.[9] Landowners received signage from the Commission to indicate that the waters were closed to the public.[10] On top of the signage, one landowner fenced across the Pecos River with razor-wire.[11]

[12]

The plaintiffs in this case, non-profit groups advocating for public access, sought to enjoin the Commission from enforcing the regulatory process associated with the non-navigability certifications that resulted in the closure of five stretches of river.[13] Landowners who benefitted from the non-navigability certification, including a guided fishing ranch, were granted leave to intervene.[14]

The court considered "whether the right to recreate and fish in water also allows the public to touch privately owned beds underneath the waters."[15] In its decision, the court relied on the case of *Red River*, which held that the New Mexico Constitution and common law gives the public the right to use public waters for fishing and recreational activities, rather than strictly for navigation.[16] *Red River* distinguished the federal navigability test for river ownership from the determination of the scope of public use under state law, reasoning that although the banks and beds of a body of water may be privately owned, the water itself is held in the public trust, for the benefit of the public.[17] "[E]ven if a landowner claims an ownership interest in a stream bed, that ownership is subject to a preexisting servitude (a superior right) held by the public to beneficially use the water flowing in the stream."[18] Beyond *Red River*'s holding that non-navigable water with privately owned beds cannot exclude fisherman, *Adobe* holds that anglers may walk and wade as reasonably necessary to exercise their right to fish—a significant victory for fishing rights in New Mexico.

This author has personal experience with ambiguous public water access in the West, having spent a summer in Buffalo, Wyoming, often fishing for trout in the streams descending from the Bighorn Mountains. I enjoyed fishing streams and mountain lakes, managed to catch Cutthroat Trout in both the Snake and Yellowstone Rivers, as well as the familiar Brook Trout, the state fish of Michigan, which is non-native to Wyoming. Coming from Michigan, I was accustomed to the right to fish and wade below the high-water mark, free from trespass as long as I remained in the stream. However, on one occasion it became clear to me that something was different in Wyoming while I was fishing Clear Creek in the Bighorn National Forest. I encountered a fence across the stream, which surprised me not only because I did not expect to encounter private land in the National Forest, but also because it seemed restrictive to fence across public waters. I wondered how it would be possible to float the stream if there was a fence across the it, not to mention the potential hazard to those floating. Wyoming law dictates that if a stream can be used by a watercraft, it is accessible to be floated by the public, but the public does not have access to private streambeds.[19] Montana is known for its exceptional public access, which took decades to secure.[20]

While public access won the day in New Mexico in *Adobe*, public access to the exceptional fishing in streams across the American West is not secure. The complicated nature of property law and water law, along with the lack of uniformity among different states' laws, sets the stage for future litigation between the interests of landowners and public access advocates. The successful North American Model of Wildlife Conservation includes the principles that fisheries and wildlife are managed in the public trust, and public access guarantees every citizen the opportunity to hunt and fish. Efforts to close public access, as seen in *Adobe*, run counter to these standards. Consequently, if less fishing access is available to the public, it is likely to limit fishing licenses and equipment that could be sold, money from which is dedicated to conservation efforts.

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[9] *Id.* at ¶ 6.
[10] *Id.*
[11] Todd Leahy, *High and Dry: New Mexico anglers lose walk-and-wade access through private lands*, Backcountry Hunters & Anglers Stream Access Report (2017) www.backcountryhunters.org/stream_access_report.
[12] Hattie Johnson, *New Mexico Supreme Court Written Decision Affirms Public's Right to Access River*, American Whitewater (Sept. 2, 2022) www.americanwhitewater.org/content/Article/view/article_id/ryrHztPKtFQ2dakHkzHR8/.
[13] *Adobe, supra* note 7 at ¶ 7; Katherine McKalip, *New Mexico Supreme Court Rules in Favor of Public Access to State Waters*, Backcountry Hunters & Anglers (Mar. 01, 2022) www.backcountryhunters.org/new_mexico_supreme_court_rules_in_favor_of_public_access_to_state_waters.
[14] *Adobe, supra* note 7 at ¶ 8.
[15] *Id.* at ¶ 7.
[16] *Red River, supra* note 4 at ¶ 36.
[17] *Id.* at ¶ 37.
[18] *Adobe, supra* note 7 at ¶ 41.
[19] *See* BHA Stream Access Report, *supra* note 13.
[20] *Id.*

PRINCIPLE 3: ALLOCATION OF WILDLIFE BY LAW

FRAUDULENT HUNTING LEASES: *U.S. v. NATHANIEL L. KNOX*

Griffin Cole

The third principle within the North American Model of Wildlife Conservation (Model), allocation of wildlife by law, extends wildlife as a public trust resource by declaring that property rights in wildlife should be established according to rules passed by state agencies and the legislature.[21] This often means establishing the *what, when*, *where*, and *how* by which hunters and anglers may take fish and wildlife from nature.[22] While public lands are available in certain areas, some hunters and anglers rely on the use of private lands, whether it be their own or that of another, and every state has a law that pertains to rights on private lands.[23] More specifically, every state has a statute that establishes when a private landowner may be successful against a trespassing hunter or angler in pursuing civil remedy.[24]

In April 2022, the U.S. District Court for Southern Ohio sentenced Nathaniel Knox to a one-year prison sentence and over $18,000 in restitution for selling fraudulent hunting leases.[25] Knox used Facebook to solicit hunters from across the country for leases to hunt on properties in Alabama, Florida, Ohio, and Pennsylvania.[26] The solicited hunters received photographs of trophy deer killed on the properties to encourage them to purchase the fraudulent leases.[27] Knox was ultimately caught when defrauded customers attempted to hunt in Florida with a fraudulent hunting lease and the true landowner of the parcel caught and confronted them.[28] The unknowing trespassers cooperated with local law enforcement to catch Knox, allowing the Fayette County Sheriff's Office to initiate contact with Knox through them under the guise of exchanging payment.[29] Once Knox was exposed, he was arrested and taken into custody. In total, Knox defrauded 59 customers in 2019 and took over $34,000 from these customers.[30]

Allocation of wildlife by law seeks to protect wildlife through public laws and rulemaking processes.[31] The principle plays out in real life as state agencies and legislatures pass game laws pertaining to number of tags purchased, possession of a license, season, and beyond.[32] The "where" aspect of game laws requires that sportsmen adhere to private and public property restrictions that limit or grant hunting. In the states affected in the case of Knox, each has a law that prohibits hunting on private lands in some fashion.[33] However, some of the states have "posting" statutes, which means that posting is required for a landowner to be successful in proceeding on a civil remedy claim against a hunter for trespassing on their land, especially if the hunter is undiscovered by the landowner.[34] Both Florida and Pennsylvania are jurisdictions that require the posting of signs prohibiting hunting on unenclosed land to be successful in pursuing a trespass action.[35] This indicates that the potentially defrauded customers in these states could be free from civil liability from the affected landowner if there were no signs posted in the "leased" parcel prohibiting hunting and/or trespassing.[36]

[37]

In this case, Knox disregarded the landowners of the parcels that he purported to hold hunting leases on as he sold to unknowing hunters the "right" to hunt. Not only does this paint a poor portrait for hunters who are caught as unsuspecting trespassers, but these circumstances also cause possible waste from hunters who may travel to these states and obtain a hunting license and tags through legal

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[21] Shane Mahoney, *The North American*, PROP. & ENV. RSCH. CTR. (June 19, 2019), www.perc.org/2019/06/19/the-north-american-model-of-wildlife-conservation/.
[22] *Id.*
[23] Mark R. Sigmon, Note, *Hunting and Posting on Private Land in America*, 54 DUKE L.J. 549, 558-559 (Nov. 1, 2004).
[24] *Id.*
[25] *Ohio Man Sentenced to Prison for Selling Fraudulent Hunting Licenses*, DEPT. OF JUST., www.justice.gov/opa/pr/ohio-man-sentenced-prison-selling-fraudulent-hunting-leases (last updated Sept. 8, 2022).
[26] *Id.*
[27] *Id.*
[28] *Ohio Man Pleads Guilty to Wire Fraud in Exchange for Purported Hunting Leases*, Dept. of Just., www.justice.gov/opa/pr/ohio-man-pleads-guilty-wire-fraud-exchange-purported-hunting-leases (last updated Apr. 13, 2022).
[29] *Id.*
[30] *Id.*
[31] Shane Mahoney, *supra* note 21.
[32] See *Id.*
[33] Mark R. Sigmon, *supra* note 23.
[34] *Id.*
[35] *Id.*
[36] *See Id.*
[37] Photo: Kris Millgate, *Ohio Man Sentenced to Prison for Selling Scam Hunting Leases on Other People's Land*, Field & Stream, www.fieldandstream.com/hunting/fake-hunting-lease-scam-ohio/ (last updated Sept. 13, 2022, 4:14 PM).

means just to be thwarted by a non-consenting landowner.[38] Because the purchase of tags and hunting licenses are some of the prominent ways to fund conservation efforts, the traveling hunter could be forced to forego the cost of these licenses even though their money is being used for the purpose of conservation.[39] Furthermore, the sale of fraudulent hunting leases undermines the right of private property owners to control the use of their land and manage any wildlife that may pass through their land.[40] Not to mention, the risks to an unwitting hunter of any hazards on the land and in addition to possible altercations with the nonconsenting property owner.[41]

PATTERNS OF SIMILAR VIOLATIONS: *U.S. V. STIMAC*

Mariel Dunn

The issue of *U.S. v. Stimac* occurred in Minnesota on the Red Lake Band of the Chippewa Indians Reservation land.[42] Brett Stimac, a non-Indian resident of Minnesota and avid hunter, was convicted of killing a bear on reservation land, gave changing statements of the events, and had a history of repeated fish and wildlife violations.[43]

[44]

Stimac had a bear tag with a season start date of September 2, 2019 and specific regions on which he was allowed to hunt, which did not include the Reservation; however, on September 1, 2019 Stimac drove to the Reservation, shot and killed a black bear, and posted about the confirmed kill on Facebook the next day.[45] The district court found by a preponderance of evidence that Stimac killed the bear, charged him with wildlife trafficking under the Lacey Act and trespass on Indian land, and ultimately administered a repeated violation statute since a pattern of similar violations was present under Section 2Q2.1(b)(1)(B) of the U.S. Sentencing Guidelines.[46] The code "provides that a defendant's base offense level should be increased by two levels where 'the offense . . . involved a pattern of similar violations'."[47] Stimac argued against the pattern of similar violations charge.[48]

§2Q2.1 - OFFENSES INVOLVING FISH, WILDLIFE, AND PLANTS

(a) Base Offense Level: **6**

(b) Specific Offense Characteristics

(1) If the offense (A) was committed for pecuniary gain or otherwise involved a commercial purpose; or (B) involved a pattern of similar violations, increase by **2** levels.

The court analyzed the code using statutory interpretation starting with the plain language of the statute.[49] If the court finds the language is ambiguous, meaning "it is susceptible to more than one reasonable interpretation," then the court moves to examine the legislative history.[50] The language in question is the term "*offense*" and whether the term includes a Lacey Act violation, under which Stimac was charged for his wildlife trafficking violation.[51] If *offense* does include the Lacey Act violation and a pattern of similar violations under this act can be proven, the offense level will be increased by two levels for sentencing purposes.[52] The Lacey Act makes it "unlawful for any purpose . . . to import, export, transport, sell, receive, acquire, or purchase any . . . wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law."[53]

After analyzing the word *offense*, the court reasoned that the term includes all relevant conduct under an act and thus *offense* "encompasses Stimac's Lacey Act violation and all acts committed" in furtherance of that violation.[54] Furthermore, a pattern of violations has been established since Stimac's actions had characteristics in common with the Lacey Act violation.[55] A violation of the Lacey Act occurred when Stimac took possession of the bear and removed it from the Reservation property in violation of Tribal Code.[56] Stimac also violated Minnesota law when he took a bear without a valid bear license, specifically being that bear were out of season.[57] Moreover, Stimac's record uncovers past fish and wildlife violations such as "convictions for illegal transport of big game and failing to

[38] *Ohio Man Sentenced to Prison*, *supra* note 25.
[39] Shane Mahoney, *supra* note 21.
[40] *Ohio Man Sentenced to Prison*, *supra* note 25.
[41] *See Id.*
[42] *U.S. v. Stimac*, 40 F.4th 876, 878 (8th Cir. 2022).
[43] *Id.*
[44] Photo: Keith Ramos, American black bear at Maine's Moosehorn National Wildlife Refuge, U.S. Fish & Wildlife Service.
[45] *Stimac*, *supra* note 42 at 878.
[46] *Id.* at 879.
[47] *Id.* at 878.
[48] *Id.* at 880.
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.* at 881; 16 U.S.C.A. § 3372 (West).
[54] *Stimac*, *supra* note 42 at 880.
[55] *Id.* at 881.
[56] *Id.* at 881.
[57] *Id.* at 882.

display a fish shelter license."[58] The court concluded that these past violations warranted a pattern of similar violations sufficient to warrant an application of Section 2Q2.1(b)(1)(B) under the United States Code.[59]

Under the North American Model of Wildlife Conservation, wildlife is held in trust by the states to benefit the public. Additionally, under the Model, laws and regulations are developed and enforced by state and federal agencies to guide proper use and management of wildlife, habitat, and resources. Stimac's disregard for such laws and regulations threatens the management of entire species, regions, and beyond.

ILLEGAL TAKING & TRANSPORTING OF WILDLIFE: *U.S. v. BOWMAR*

Griffin Cole

YouTube has become a popular way for people to monetize their hobbies and other activities through filming themselves performing or instructing on these activities. An Iowa couple, the Bowmars, used YouTube to share their passion for hunting and fitness; however, the YouTube couple violated the code of sportsmen as well as state and federal wildlife laws.[60]

The legal controversy concerning the Bowmar duo started in 2015 when Josh and Sarah Bowmar first hunted in a Nebraska county with illegal bait traps.[61] From September of 2015 to November of 2017, Josh and Sarah Bowmar hunted for whitetail deer in two additional Nebraska counties using illegal bait traps, and Sarah Bowmer hunted for deer and turkey in yet another Nebraska county using illegal bait traps in November of 2016.[62] Since the animals were taken in violation of Nebraska state law, the Lacey Act was triggered when the couple transported their ill-gotten gains across state lines back to Iowa.[63] The Lacey Act prohibits the transport, sale, or acquisition of any wildlife that is killed in violation of federal or state law, meaning that the Nebraska violations for the method of killing expanded to federal violations under the Lacey Act.[64] Four counts of the Nebraska baiting law were dropped by the prosecution in a plea deal for the Bowmars.[65]

[66]

Criminal charges were filed against the Bowmars following the apprehension of Jacob Hueftle, the owner of Hidden Hills Outfitters, which was one of the services the Bowmars used when hunting in Nebraska.[67] Hueftle was charged with crimes related to the use of illegal bait traps on the hunts with the Bowmars, but the expedition with the Bowmars was not the only guided hunt that resulted in criminal charges for Hueftle and Hidden Hills Outfitters.[68] Hueftle was also charged with the utilization of illegal bait traps with nearly 118 clients from twenty-one states.[69] Moreover, Hueftle was charged with killing protected migratory birds such as hawks and falcons.[70] The litany of crimes charged to Hueftle resulted in him being sentenced to thirty months in a federal prison.[71]

Given the clear violations of state and federal conservation law, Hueftle and the Bowmars were all at fault for failing to abide by the clearly established laws and regulations that are in place to guide proper use and management of wildlife.

The North American Model of Wildlife Conservation states that wildlife is allocated by rule of law, meaning that property interests and the designation of what constitutes

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[58] *Id.*
[59] *Id.*
[60] Philip Joens, *Ankeny Hunters, Supplement Business Owners Plead Guilty in Federal Poaching Case*, DES MOINES REG., www.desmoinesregister.com/story/news/crime-and-courts/2022/10/29/iowa-youtubers-josh-sarah-bowmar-plead-guilty-poaching-case-nebraska/69577598007/ (last updated Oct. 31, 2022, 11:37 AM).
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Picture From: Nancy Gaarder, *Celebrity Bowhunting Couple Pleads Guilty to Conspiracy in Nebraska Wildlife Case*, OMAHA WORLD-HERALD, https://omaha.com/news/state-and-regional/celebrity-bowhunting-couple-pleads-guilty-to-conspiracy-in-nebraska-wildlife-case/article_8339c0e6-5458-11ed-a4a0-b7eabd3f1f47.html (last updated Oct. 27, 2022).
[67] Joens, *supra* note 60.
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*

a lawful taking of wildlife are managed by state and federal law.[72] This principle is aimed at regulating the take of wildlife in a responsible and sustainable manner according to scientific research and management. Nebraska's law prohibiting the baiting of white-tailed deer is a product of scientific management. Researchers have found that some feed used in baits is condemned grain that cannot be fed to humans or livestock because it contains toxins from mold that can kill turkeys and other wild birds that may consume the bait.[73] Furthermore, there is a concern that bait traps could spread disease between animals because deer saliva is rich in the prions responsible for chronic wasting disease.[74]

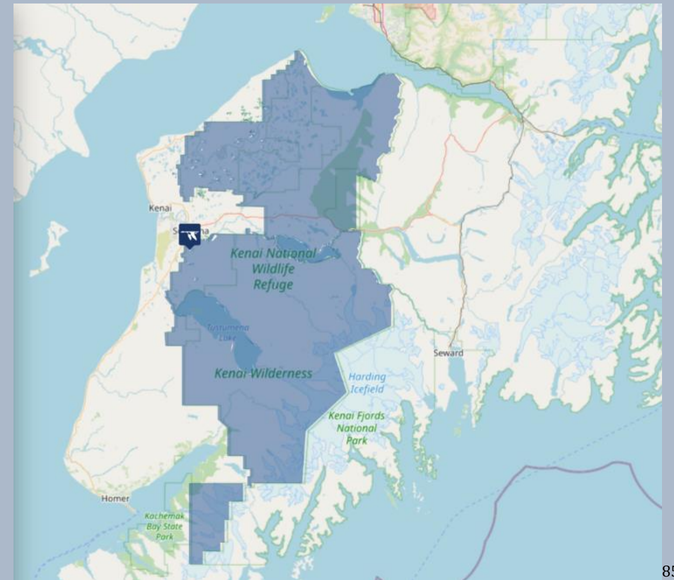
LAND OWNERSHIP & WILDLIFE JURISDICTION: *SAFARI CLUB INTL. V. HAALAND*

Mariel Dunn

Safari Club International v. Haaland emerged from the Kenai Refuge in Alaska.[75] The U.S. Fish & Wildlife Service (FWS) issued the *Kenai Rule* which limited brown bear baiting and closed the Skilak Wildlife Recreation Area (WRA) to hunting coyote, wolf, and lynx.[76] The State of Alaska and Safari Club International sued Secretary of the Interior Deb Haaland[77] claiming that the *Kenai Rule* violated the Alaska National Interest Lands Conservation Act (ANILCA), National Wildlife Refuge System Improvement Act of 1997 (Improvement Act), Administrative Procedure Act (APA), and National Environmental Policy Act (NEPA).[78]

Plaintiffs argued that Alaska has "the ultimate regulatory authority over hunting on federal lands in Alaska."[79] The U.S. Court of Appeals for the Ninth Circuit addressed this argument and rejected the rest of the claims.[80]

In 2013, the Kenai brown bear was no longer considered a special concern species because population numbers had reached safe levels.[81] Thus, the "Alaska Board of Game expanded the availability of brown bear hunting permits, extended the brown bear hunting season, increased relevant harvest limits, and approved the taking of brown bears through baiting at registered black bear stations in the Kenai Refuge."[82] However, the FWS disagreed with the Board's decision based on its determination that brown bear populations would be negatively impacted.[83] Since the Board did not revoke the change, the FWS issued the Kenai Rule, which obstructed the Board's decision to allow bear baiting.[84]



[85]

ANILCA reserves with Alaska the primary responsibility for the administration of its wildlife; thus, the taking of wildlife on federal lands is governed by state law unless the taking is limited by federal law or "incompatible with documented Refuge goals, objectives, or management plans."[86] ANILCA is meant to be cooperative and to reserve with Alaska its traditional authority over hunting methods.[87] The FWS manages and regulates the federal lands in Alaska.[88] Plaintiffs asserted that ANILCA strips the FWS of the "power to restrict the means, methods, or scope of state approved hunting on federal lands in Alaska."[89] However under the Supremacy Clause of the U.S. Constitution, which allows federal legislation to overrule conflicting state laws, the Secretary of the Interior still holds the power to manage and

[72] *See* Shane Mahoney, *The North American*, PROP. & ENV. RSCH. CTR. (June 19, 2019), www.perc.org/2019/06/19/the-north-american-model-of-wildlife-conservation/.
[73] Patrick Durkin, *Baiting: Do the Consequences Outweigh the Benefits?*, MEATEATER (Feb. 5, 2019), www.themeateater.com/conservation/policy-and-legislation/baiting-do-the-consequences-outweigh-the-benefits.
[74] *Id.*
[75] *Safari Club Intl. v. Haaland*, 31 F.4th 1157, 1165 (9th Cir. 2022).
[76] *Id.* at 1166.
[77] Deb Haaland is the Secretary of Department of the Interior who manages the use of public lands and delegates authority to the FWS to create rules and manage the land.
[78] *Haaland* at 1165.
[79] *Id.*
[80] The claims under the APA and NEPA were rejected and are not discussed here. The claim that the FWS violated the APA by acting arbitrarily and capriciously in issuing the Kenai Rule did not justify invalidation, the claims were based on a misunderstanding and inapt. *Haaland* at 1170. Additionally, the record supports the FWS' conclusions under the NEPA claim. *Id.* at 1178.
[81] *Haaland.* at 1166.
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] U.S. Fish and Wildlife Service, *Kenai National Wildlife Refuge*, www.fws.gov/refuge/kenai/map (last visited Nov. 23, 2022).
[86] *Haaland* at 1165.
[87] *Alaska Asks Supreme Court to Review Secretary of the Interior's Authority to Override State Hunting Laws*, Newswires (Oct. 28, 2022), www.einnews.com/pr_news/598225718/alaska-asks-supreme-court-to-review-secretary-of-the-interior-s-authority-to-override-state-hunting-laws.
[88] *Id.*
[89] *Haaland.* at 1167.

protect the value of the public lands, including the Kenai Refuge.[90]

The other ANILCA claim stated that the Kenai Rule violated the 2017 congressional joint resolution[91] revoking the Refuges Rule.[92] The resolution only pertained to the Refuges Rule and did not mention the Kenai Rule.[93] The Ninth Circuit rejected this argument because it found no congressional intent to include the Kenai rule under the resolution.[94]

The Improvement Act focuses on giving priority to wildlife dependent recreational activities when considering management for a refuge.[95] Wildlife dependent recreational activities are listed as "hunting, fishing, wildlife observation and photography, and environmental education and interpretation."[96] However, the management of the wildlife dependent recreational activities must be consistent and compatible with the purpose of a wildlife refuge.[97] Under the Improvement Act, FWS is directed to work with state agencies to adopt regulations consistent with state fish and wildlife laws.[98] The State of Alaska argued the Improvement Act was violated under the Skilak WRA by "disfavoring the compatible priority use of hunting relative to the other compatible priority uses and compatible non-priority uses of the Skilak WRA."[99] The court rejected this claim because the "designation of the Skilak WRA as a special area to be managed for non-consumptive uses is a permissible exercise of this authority."[100] The court further reasoned the "Improvement Act does not require FWS to allow all State-sanctioned hunting throughout the Kenai Refuge."[101]

Since the ANILCA authorizes the FWS to enact regulations preempting State regulations, this case is an excellent example of state and federal jurisdiction rights over land and wildlife regarding hunting rights. The related tenet under the North American Model of Wildlife Conservation states that "laws and regulations developed by the people and enforced by state and federal agencies will guide the proper use of wildlife resources."[102]

PRINCIPLE 4: WILDLIFE MAY ONLY BE KILLED FOR A LEGITIMATE PURPOSE

CENTER FOR BIOLOGICAL DIVERSITY V. LITTLE

Andrew Crane

In 1975, the grizzly bear was listed as threatened under the Endangered Species Act (ESA) in response to its shrinking population.[103] As habitat generalists, it is not wholly unusual for a grizzly bear to wander onto private property and subsequently be removed.[104] In *Center for Biological Diversity v. Little*, a diverse group of conservation and animal welfare organizations alleged that the Governor of Idaho, the Director of the Idaho Department of Fish and Game, and the members of the Idaho Fish and Game Commission implemented a regulatory scheme that allows for unlawful "taking"[105] of grizzly bears and Canada lynx in violation of the ESA.[106] The actual law is meant to authorize the trapping and snaring of gray wolves, but the organizations allege that these laws are reasonably certain to cause unlawful taking of grizzly bears as well, hence their

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[90] *Id.* at 1168; U.S. Const. art. VI, cl. 2.
[91] The 2017 congressional joint resolution revoked the Refuges Rule which "excluded the baiting of brown bears and State predator control programs from all national wildlife refuges in Alaska." *Haaland* at 1170.
[92] *Id.* at 1167.
[93] *Id.* at 1169.
[94] *Id.*
[95] *Haaland* at 1165.
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Haaland* at 1170.
[100] *Id.*
[101] *Id.*
[102] Brent Lawrence, *North American Model of Wildlife Conservation: Wildlife for Everyone* U.S. FISH & WILDLIFE SERVICE (April 4, 2022) www.fws.gov/story/2022-04/north-american-model-wildlife-conservation-wildlife-everyone.
[103] *Ctr. for Biological Diversity v. Little*, No. 1:21-cv-00479-CWD, 2022 WL 3585727, 1 (D. Idaho Aug. 22, 2022).
[104] *Id.*
[105] Per 16 U.S.C. § 1532(19), The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.
[106] *See Ctr. for Biological Diversity*, *supra* note 104.

request for an injunction to stop the trapping and snaring allowances altogether.

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On July 1, 2021, Idaho readopted all prior existing rules for wolf trapping and consolidated them into a single charter.[108]

The Idaho Code provisions on wolf trapping laws established a wolf season year-round on all private property so long as individuals are in compliance with permit requirements before entering. Prior to this, snaring and trapping were prohibited between April 1 and September 9 annually.[109] All Idaho wolf tags are valid for hunting/trapping/snaring when seasons are open. In addition, there are no limits on the number of wolf tags an individual can purchase provided that all appropriate fish and game education requirements are met.[110] Any federal agency, state agency, private contractor, political subdivision of the state of Idaho, or agency of another state may be permitted to dispose of wolves for the protection of livestock.[111] In essence, the recently enacted state laws re-adopted previous laws and regulations, but also expanded them to authorize permanent, year-round wolf-trapping on private property, unlimited number of wolf tags per person, and state-sponsored private-contractor wolf removal.[112]

Plaintiffs alleged that these rules would result in unlawful grizzly takings, pointing to multiple examples in Idaho and one report from Montana.[113] In 2020, two bears were killed in incidents directly or indirectly involving wolf snares—both were subadult males, one of which was found with a wolf snare "very tightly around its neck and another wolf snare wrapped around its front left paw" with neither snare having the necessary identification tags.[114] According to the investigating officer, the bear was captured at a time when there were no open wolf seasons and the ground snares were found to be out of compliance.[115] The second grizzly was shot and killed when a hunter, with British Columbia tags, mistook it for a black bear after the bear was caught in the hunter's snare.[116] In 2012, an employee of the Idaho Department of Fish and Game accidentally captured a subadult female grizzly with a wolf snare.[117] The report from Montana shows that between 2010 and 2018, seven grizzlies were caught in traps intended for wolves or coyotes, however, none of the data presented reveals a taking incident under the regulatory scheme that this challenge is being made.[118] Under the legal standard to be followed by the court, the Plaintiffs must prove a "reasonably certain threat of imminent harm to a protected species."[119]

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In order to clear this threshold, Plaintiffs were tasked with showing that future ESA violations were likely under Idaho's existing laws.[121] State defendants pointed out that Plaintiffs had no evidence that either of the bears snared in 2020 were snared by a lawful wolf trap or trap set in compliance with Idaho's regulatory scheme.[122] The Court pointed to the case of *Loggerhead Turtle v. County Council of Volusia County, Florida* as an example of an appropriate causal relationship.[123] In *Loggerhead Turtle*, plaintiffs alleged that the county's permitting of beach driving was

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[107] Photo of Grizzly Bear. Photo from: www.biologicaldiversity.org/species/mammals/grizzly_bear/natural_history.html.
[108] *Ctr. for Biological Diversity*, *supra* note 104 at 3. The wolf trapping laws and regulations in question consisted of Idaho Code § 36-201(3), § 36-408, and § 36-1107(c).
[109] *Id.*
[110] *Id.* Previously there was a limit of 15 wolf tags per season.
[111] *Id.*
[112] *Id.* at 4.
[113] *Id.* at 2.
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.* at 3.
[118] *Id.*
[119] *Marbled Murrelet v. Pac. Lumber Co.,* 83 F.3d 1060, 1066 (9th Cir. 1996).
[120] Photo of Grizzly Bear and Wolf. Photo from: www.brightvibes.com/unique-friendship-between-wolf-and-bear-documented-by-finnish-photographer/.
[121] *Ctr. for Biological Diversity*, *supra* note 104 at 7.
[122] *Id.*
[123] *Id.*

resulting in the death and injury of sea turtles.[124] The evidence showed uncontroversially that driving of vehicles on the beaches where turtles laid their eggs was harmful, and would continue to harm the turtles.[125] In contrast, Plaintiffs in the present case did not meet the burden of showing hunters *in compliance* with Idaho's regulatory scheme were causing harm, going above and beyond a trap's inherent likelihood to capture a passerby animal.[126] Consequently, Plaintiff's motion was denied.[127]

The North American Model of Wildlife Conservation states that wildlife may only be killed for a legitimate, non-frivolous purpose, which includes laws that prohibit the casual killing of wildlife or wanton waste. However, this case illustrates the additional importance of a causal link as it relates to law. It is not enough to identify a harm or a potential harm—a specific link must also be established between that harm and an aggravating party or force. In this case, the connection between the evidence and the specific laws the Plaintiffs brought an action against proved insufficient.

Principle 5: Wildlife is an International Resource

Interstate Wildlife Violations: *Bock v. Washington*

Sara Nederhoed

In October 2014, brothers Chad and Nathan Bock, both U.S. citizens and Washington residents, were stopped by British Columbia (B.C.) Conservation Officer Jesse Jones for a wildlife inspection.[128] Officer Jones stopped the Bocks because he noticed moose antlers in the back of their truck.[129] During the inspection, Nathan provided a B.C. resident hunting license, and Chad provided a B.C. non-resident accompanied hunt permit that was obtained by Nathan.[130] Officer Jones issued warnings to the Bocks for failure to leave evidence of gender attached to the meat of the moose; however, Officer Jones was also suspicious of Nathan's hunter license and he launched an investigation.[131] In the process of the investigation, Officer Jones discovered that to obtain the hunting licenses, permits, number, and tags, Nathan used non-existent or inaccurate residences and addresses, information which he shared with the Washington Department of Fish and Wildlife (WDFW), starting a new investigation into the Bocks by Officer JoLynn Beauchene.[132] She discovered that the Bocks had unlawfully imported several animals into the U.S. by failing to document them properly or by failing to disclose them at the Canadian border, in addition to not having proper hunting permits.[133]

Officer Beauchene then obtained search warrants for the Bocks' residences in Spokane County, WA, and seized numerous items including trophies, meat, and taxidermized animals; Officer Jones, who was present at the seizure, identified the animal parts that had been taken by the Bocks in Canada.[134] With permission from the U.S. Fish and Wildlife Service (FWS) and her superiors at WDFW, Beauchene transferred the wildlife and animal parts, as well as documents and electronic storage devices from the Bocks' residences, to Officer Jones in B.C.[135] The Bocks claimed they did not receive notice of the transfer of their property to Canada from either the Washington or B.C. officers.[136]

[137]

British Columbia failed to file charges against the Bocks before the statute of limitations had run, and, in 2018, the Spokane County prosecutor filed charges against the Bocks for violating a Washington statute, which "forbids the possession of wildlife that the defendant knows was taken in another country in violation of that country's laws or regulations relating to matters such as licenses or tags."[138] The Bocks entered into a Stipulation to Police Reports and Order of Continuance (SOC), which continued their cases in pre-trial status for one year, and if they complied with the terms of the agreements, which included agreeing to commit no other violations, the prosecutor would drop the

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[124] *Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Fla.*, 896 F. Supp. 1170, 1180 (M.D. Fla. 1995).
[125] *Id.* at 1181
[126] *Ctr. for Biological Diversity*, *supra* note 104 at 9-10.
[127] *Id.* at 10
[128] *Bock v. Washington*, 33 F.4th 1139, 1141 (9th Cir. 2022).
[129] *Id.*
[130] *Id.* at 1141-42.
[131] *Id.* at 1142.
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] Kim Chandler, *WDFW Enforcement*, Washington Department of Fish & Wildlife (last viewed Mar 3, 2023) https://wdfw.wa.gov/about/enforcement.
[138] Wash. Rev. Code § 77.15.265

charges against them.[139] Pursuant to the SOCs, the Bocks waived several of their rights, including the right to challenge evidence against them.[140] The Bocks completed the SOCs, and the charges against them were dropped in October 2019.[141] Before the dismissal, however, the Bocks filed suit against WDFW, the State of Washington, Officer Beauchene, two of her superiors, and Officer Jones (the Officials) centering around WDFW's transfer of wildlife and animal parts to the Canadian authorities.[142] The estimated value of the wildlife and animal parts was at least $192,000.[143] The Officials argued that the Bocks waived their right to challenge the forfeiture of the parts, and that the WA statute is constitutional.[144] The Bocks responded, arguing (1) that the WA statute is unconstitutional when it is applied to wildlife taken outside of WA, and (2) that by transferring the wildlife and animal parts to British Columbia., WDFW unconstitutionally deprived them of property without notice or a hearing, and deprived them of a remedy.[145]

The WA district court granted in favor of the Officials, noting that WA law "explicitly makes it a state law crime to take wildlife from another country in violation of that country's laws."[146] The district court also rejected the Bocks' argument that the automatic forfeiture statute unconstitutionally deprived them of property without notice or a hearing, and noted that automatic forfeiture only triggers if the party enters into an SOC, as was done here.[147]

Analysis:
The U.S. Court of Appeals for the Ninth Circuit first analyzed whether the Officials violated the Bocks' due process rights by transferring the wildlife and animal parts, without notice or hearing, to British Columbia.[148] Pursuant to the Fourteenth Amendment of the U.S. Constitution, "a state cannot deprive any person of . . . property without due process of the law."[149] "One of due process's central and undisputed guarantees is that, before the government permanently deprives a person of a property interest, that person will receive – at a minimum – notice."[150] The Bocks argue that because the wildlife and animal parts were transferred beyond the jurisdiction of WA courts, and because WA authorities cannot guarantee the return of such property, their interest in the property was extinguished.[151] The Court found this argument moot because the Bocks signed the SOCs, which triggered the automatic forfeiture of the wildlife and animal parts.[152] The Court concluded that even if the Bocks were protected by the Fourteenth Amendment, they gave up their property interest when they signed the SOCs; therefore, they could not state a concrete injury from the transfer of the wildlife and animal parts to British Columbia.[153]

Next, the Court analyzed the Bocks' argument that the WA wildlife forfeiture statute is unconstitutional.[154] The Court reinforced that, pursuant to their SOCs, the Bocks were charged with unlawful possession of wildlife in violation of another country's laws, and that successful completion of their SOCs resulted in the automatic forfeiture of the relevant wildlife and animal parts in this case.[155] The Bocks argued that they did not knowingly waive their right to challenge the forfeiture when they signed their SOCs, but the Court also rejected this argument.[156] The Court stated that so long as the claimant is given notice of the seizure of property pursuant to a search warrant, the state has fulfilled its due process obligations.[157] Further, the district court repeatedly asked the Bocks to confirm that their consent to the terms of the SOCs was knowing and voluntary, and they did.[158]

Conclusion:
The Court of Appeals held that (1) the Bocks' challenge of due process violations is moot,[159] (2) the Bocks cannot raise the argument that the WA statute is unconstitutional because they signed the SOCs effectively agreeing to the forfeiture of wildlife and animal parts,[160] and (3) the Bocks' argument that the Officials are liable under the Fourteenth Amendment fails.[161]

The facts of this case reinforce the need for the Interstate Wildlife Violator Compact (IWVC). The IWVC was established in order to promote compliance with rules, regulations, ordinances, and laws that are related to managing wildlife resources in the member states.[162] Violators are held responsible for their illegal activities, and may have their hunting and/or fishing licenses suspended in all participating states in addition to the state where a

[139] Answering Brief of Defendant-Appellant at 8.
[140] *Bock*, 33 F.4th at 1142.
[141] *Id.*
[142] *Id.* at 1143.
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] *Id.* at 1143-44.
[149] U.S. Const. amend. XIV.
[150] *Bock*, 33 F.4th at 1144 (quoting *Wright v. Beck*, 981 F.3d 719, 727 (9th Cir. 2020)).
[151] *Bock*, 33 F.4th at 1144.
[152] *Id.*
[153] *Id.* at 1145.
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] *Id.* at 1145-46.
[159] *Id.* at 1144.
[160] *Id.* at 1145.
[161] *Id.* at 1146.
[162] *Interstate Wildlife Violator Compact*, NATIONAL ASSOCIATION OF CONSERVATION LAW ENFORCEMENT CHIEFS, www.naclec.org/wvc (last visited Nov. 26, 2022).

violation was committed.[163] There are currently 48 member states of the IWVC, including the state of Washington.[164] In its own Wildlife Violator Compact, the WA law includes a definition of a "State" to mean "any state, territory, . . . District of Columbia, . . . Provinces of Canada, and other countries."[165]

PRINCIPLE 7: SCIENTIFIC MANAGEMENT

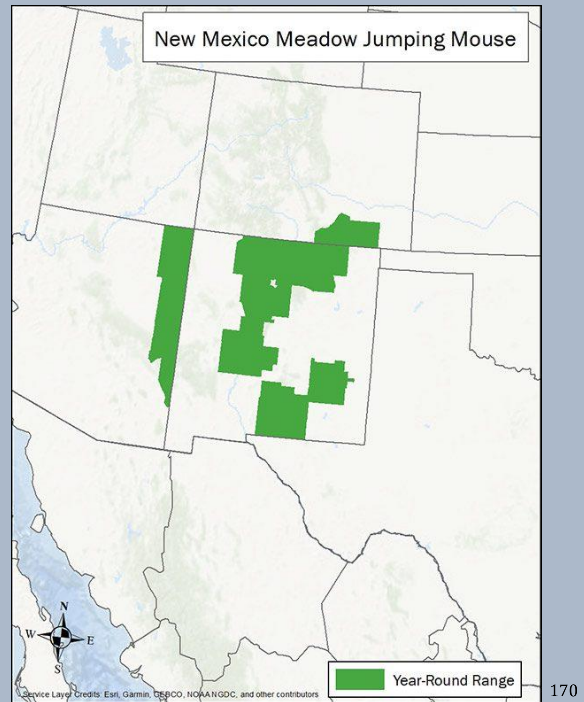
CRITICAL HABITAT & ECONOMIC COSTS: *NORTHERN NEW MEXICO STOCKMAN'S ASSOC. V. FISH & WILDLIFE SERVICE*

Andrew Crane

When extending the protection of the Endangered Species Act (ESA) to a new species, many factors are considered. Among them, the U.S. Fish and Wildlife Service (FWS) must consider the economic cost incurred by new critical habitat designations. Unsurprisingly, the methods by which the FWS calculates and weighs these costs are often scrutinized. In *Northern New Mexico Stockman's Association v. U.S. Fish and Wildlife Service*, two ranching organizations with grazing allotments disputed the inclusion of land that was designated as critical habitat for the New Mexico Meadow Jumping Mouse (Jumping Mouse).[166] This case is important because it illuminates how the FWS weighs factors of all different values and navigates restrictions.

The Jumping Mouse

The Jumping Mouse has a unique hibernation cycle, only being active during the summer months while spending the rest of the year in hibernation.[167] This atypical cycle means the Jumping Mouse's survival "hinges on its ability to quickly gather enough nutrients and nest materials from its surrounding habitat" to survive through the winter months.[168] While other factors, such as drought or flooding, can cause habitat degradation, animals such as cattle have also been found to damage the Jumping Mouse's habitat.[169]



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In 2013, the FWS proposed listing the Jumping Mouse as endangered, citing flooding from wildfires as one of the major reasons for listing, while also proposing a rule designating the Jumping Mouse's critical habitat, complete with a draft economic analysis, and requested additional comments from the public.[171] In 2016, the FWS published a final rule designating 14,000 acres consisting of habitat either currently occupied by the Jumping Mouse or unoccupied but essential to the conservation of the species as critical habitat of the Jumping Mouse.[172] Along with the final rule, the FWS published its final analysis of the economic impacts of the habitat designation.[173] The analysis utilized a methodology known as the *baseline approach* which allows the FWS to only consider costs that are "solely attributable to the designation of critical habitat" and ignores the costs that would exist regardless, meaning any cost that could be attributed to both the listing of a species and the designation of habitat is omitted from the report.[174] While the FWS has discretion under the ESA to exclude areas from critical habitat if it determines necessary, no areas were excluded based on economic impact.[175]

[163] *Id.*
[164] *Interstate Wildlife Violators Compact*, CONGRESSIONAL SPORTSMEN'S FOUNDATION, https://congressionalsportsmen.org/policies/state/wildlife-violators-compact (last visited Mar. 3, 2023).
[165] Wash. Rev. Code § 77.75.070
[166] *N. N.M. Stockman's Ass'n v. United States Fish & Wildlife Serv*., 30 F.4th 1210, 1214 (10th Cir. 2022).
[167] *Id.* at 1215.
[168] *Id.*
[169] *Id.*
[170] Range of the New Mexico Jumping Mouse. Range Map provided by NatureServe. https://landpotential.org/habitat-hub/new-mexico-meadow-jumping-mouse/.
[171] *Id.* at 1215-16.
[172] Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse, 81 Fed. Reg. 14264 (2016).
[173] *N. N.M. Stockman's Ass'n*, *supra* note 167 at 1217.
[174] *Id.*
[175] *Id.*

The Ranchers

The Northern New Mexico Stockman's Association and the Otero County Cattlemen's Association (the Ranchers) had cattle that grazed on federal land in New Mexico pursuant to a renewable federal permit issued by the U.S. Forest Service, several of which overlapped with critical habitat of the Jumping Mouse.[176] Though the Ranchers did not own any land in the critical habitat areas, their federal ranching permits were tied to their private land or livestock, to the extent that selling their land may include the transfer of the grazing permit.[177] The Ranchers' claim was that the designation of critical habitat for the Jumping Mouse would increase their costs, affect the health of their cattle, and lower property values.[178] The Ranchers claimed that:

> (1) the Service's methodology for analyzing economic impacts of critical habitat designation violated the ESA and Tenth Circuit precedent; (2) the Service failed to consider the impact of designation on ranchers' water rights on federal lands; and (3) the Service provided inadequate reasoning for its decision to not exclude certain areas from the habitat designation.[179]

The district court rejected these claims; the Ranchers appealed.[180]

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Economic Analysis

The Ranchers alleged that Section 4(b)(2) of the ESA requires the FWS to analyze all costs associated with designation, even costs that can be attributed to causes other than those exclusively caused by the critical habitat designation.[182] Their argument relied on a 2001 case where the court found that analysis of impacts "caused co-extensively by … other agency action (such as listing)" is required.[183] However, the ESA prohibits the FWS from considering economic factors when deciding to list a species, as the Secretary is limited to using "solely … the best scientific and commercial data available."[184] Additionally, in the 2001 case, the court came to that conclusion based on existing procedures at that time.[185] After the 2001 case, the FWS amended the regulatory definitions that were causing the court's issue with the baseline approach.[186] The remaining overlap, and subsequent omission, of costs "reflects reality" and that some species are more interconnected with their habitat.[187] The baseline approach satisfies Section 4(b)(2) of the ESA's economic impact requirement, which requires consideration of "the economic impact … of specifying any particular area as critical habitat."[188] Under the plain meaning of the provision, only costs related to the designation of critical habitat may be considered.[189]

Impact on Water Rights

The Ranchers contended that the FWS underestimated the economic impact because it did not consider the costs associated with the taking of the Rancher's water rights.[190] The FWS takings assessment did not consider the designation's impact on the taking of the Rancher's water rights on federal land, claiming private water rights were outside of the scope.[191] No information or evidence was provided during the rulemaking process that would alert the FWS to any vested water rights that would require compensation for their infringement.[192]

Exclusion

The final argument of the Rancher's claims was that the FWS abused its discretion when it decided to not exclude federal lands they used from the critical habitat designation.[193] The text of the ESA indicates that:

> [t]he Secretary *may* exclude any area from critical habitat *if* he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he *determines* … that the failure to designate such area as critical habitat will result in the extinction of the species concerned.[194]

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[176] *N. N.M. Stockman's Ass'n*, *supra* note 167 at 1218.
[177] *Id.*
[178] *Id.*
[179] *Id.*
[180] *Id.* at 1218-19.
[181] Photo of a New Mexico Meadow Jumping Mouse. Photo from: www.fws.gov/media/new-mexico-meadow-jumping-mouse.
[182] *N. N.M. Stockman's Ass'n*, *supra* note 167 at 1221.
[183] *N.M. Cattle Growers Ass'n v. U.S. Fish and Wildlife Service*, 248 F.3d 1277, 1283 (10th Cir. 2001).
[184] 16 U.S.C. § 1533(b)(1)(A).
[185] *N. N.M. Stockman's Ass'n*, *supra* note 167 at 1223.
[186] *Id.* at 1224.
[187] *Id.*
[188] *Id.* at 1226.
[189] *Id.*
[190] *Id.* at 1228.
[191] *Id.*
[192] *Id.* at 1229.
[193] *Id.*
[194] 16 U.S.C. § 1533(b)(2) (*emphasis added*).

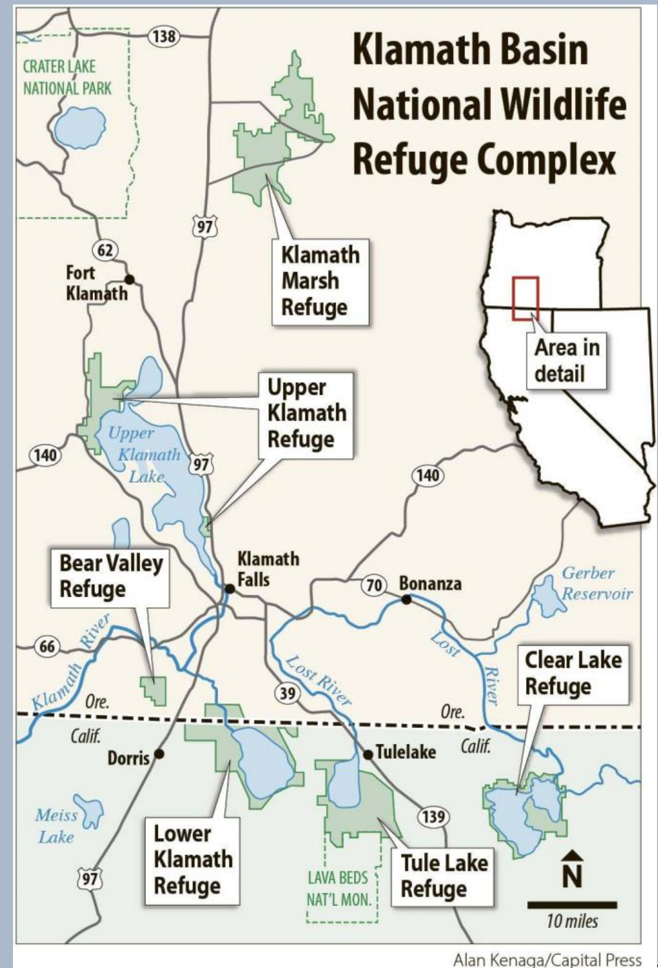
The language denotes that the Secretary of the Interior has discretion in these matters.[195] The FWS anticipated a great many benefits[196] to the area's inclusion, but few benefits to *exclusion* due to no other conservation plan being in place for the Jumping Mouse.[197] The specialized habitat requirements of the Jumping Mouse require prioritized conservation efforts for its environment as it is directly dependent on its habitat for survival.[198]

TULELAKE IRRIGATION DISTRICT V. UNITED STATES FISH AND WILDLIFE SERVICES

Sara Nederhoed

The Klamath Refuge Complex, located in northern California and southern Oregon, comprises 200,000 acres and six national wildlife refuges.[199] National wildlife refuges were created for the conservation and restoration of fish, wildlife, and plant species and habitats.[200] The six refuges located in the Klamath Refuge Complex are the Tule Lake Refuge, the Lower Klamath Refuge, the Upper Klamath Refuge, the Clear Lake Refuge, the Klamath Marsh Refuge, and the Bear Valley Refuge.[201] Enacted in 1964, the Kuchel Act forged a compromise between wildlife conservation groups and agricultural interests, which applied to four refuges in the Klamath Refuge Complex: Tule Lake, Lower Klamath, Upper Klamath, and Clear Lake.[202] The Act provides that the four refuges were to be dedicated to wildlife conservation administered by the Secretary of the Interior, for the purpose of waterfowl management, but with consideration for agricultural use.[203] The Act further provided that the Secretary of the Interior can continue leasing reserved lands within the Lower Klamath and Tule Lake Refuges.[204]

Two years later, Congress enacted the National Wildlife Refuge System Administration Act of 1966 to govern the entire National Wildlife Refuge System, including the Klamath Refuge Complex.[205] Later amended in 1997 as the Refuge Improvement Act, it states that "each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established."[206] Relevant to this case, the Refuge Improvement Act also requires that the Secretary propose a comprehensive conservation plan for each refuge or related complex of refuges; publish a notice of opportunity for public comment in the Federal Register on each proposed conservation plan; issue a final conservation plan for each planning unit consistent with the provisions of the Act; and, not less frequently than 15 years after the date of issuance of a conservation plan and every 15 years thereafter, revise the plan as necessary.[207]



[208]

In the spring of 2010, the U.S. Fish and Wildlife Service (FWS) began the process for the first Comprehensive Conservation Plan (CCP) for the Klamath Refuge Complex.[209] In May of 2016, FWS issued a draft CCP along

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[195] *Babbitt v. Sweet Home Chapter of Communities for a Great Ore*., 151 U.S. 687, 708 (1995).
[196] Including improved conservation for the Jumping Mouse and habitat recovery due to lack of grazing and fencing.
[197] *N. N.M. Stockman's Ass'n*, *supra* note 167 at 1231.
[198] *Id.*
[199] *Tulelake Irrigation Dist. v. United States Fish & Wildlife Serv*., 40 F.4th 930, 933 (9th Cir. 2022).
[200] Tom Koerner, *National Wildlife Refuge System*, THE WILDLIFE SOCIETY, https://wildlife.org/action-center/refuge-system/ (last visited Nov. 11, 2022).
[201] *Tulelake*, 40 F.4th at 933.
[202] 16 U.S.C. § 695k.
[203] *See Id.* § 695l.
[204] *See Id.* § 696n.
[205] *Tulelake*, 40 F.4th at 933.
[206] 16 U.S.C. § 668dd(a)(3)(A).
[207] *See Id.* § 668dd(e)(1)(A).
[208] Alan Kenaga, Illustration of The Klamath Refuge Complex, *in* Mateusz Perkowski, *Klamath refuge management attacked from all sides*, CAPITAL PRESS, www.capitalpress.com/ag_sectors/livestock/klamath-refuge-management-attacked-from-all-sides/article_4970cad8-12e1-11e9-99c0-d74b77f015e1.html (last updated Jan. 8, 2019).
[209] *Tulelake*, 40 F.4th at 934.

with an Environmental Impact Statement (EIS), solicited public comments to it, and then filed a joint EIS/CCP in December 2016.[210] The EIS/CCP in question adopted management strategies that would modify the agricultural uses on leased land in the Tule Lake and Lower Klamath Refuges, which FWS interpreted from the Kuchel and Refuge Acts.[211] First, FWS interpreted the Kuchel Act's main purpose is for proper waterfowl management, so the Secretary must evaluate agricultural uses of leased land that is consistent with that purpose.[212] Second, FWS interpreted the Refuge Act to require the same type of evaluation of agricultural uses as the Kuchel Act.[213]

Regarding the Tule Lake Refuge, three agricultural management alternatives were considered: a no-action alternative, and two regulated agricultural uses on leased land in the refuge, such as requiring a lessee to increase the acreage of unharvested standing grain for duck and geese, and expanding a flooding "walking wetlands" program.[214] FWS chose to expand both the unharvested standing grain acreage requirement and the walking wetlands program.[215] For the Lower Klamath Refuge, FWS considered four alternatives: a no-action alternative, and three others that had provisions similar to the Tule Lake Refuge alternatives.[216] Ultimately, FWS selected an alternative which expanded unharvested grain, a requirement for special use permit applications, and an increase of flood fallow agricultural practice.[217]

Case Facts and Arguments:

Tulelake Irrigation District (TID) and other associated agricultural groups have interests in leased land in the Tule Lake and Lower Klamath Refuges.[218] TID brought suit in federal court claiming that the FWS restrictions for agricultural use on leased lands violated the Kuchel Act, the Refuge Act, the National Environmental Policy Act, and the Clean Water Act, and the district court granted summary judgment to FWS.[219] On appeal, TID only raised the argument that FWS violated the Kuchel and Refuge Acts, first arguing that FWS violated the Kuchel Act by approving the EIS/CCP, which misinterpreted the Kuchel Act to require regulation of leased lands to ensure that the uses are consistent with proper waterfowl management. [220] TID asserted that all leased land farming is consistent with waterfowl management.[221] Second, TID argued that FWS misinterpreted the Refuge Act to require regulated uses of leased land to ensure that the uses were compatible with the major purposes for which the refuges were established.[222] TID asserted that that leased land farming is a "purpose" and not a "use."[223]

Analysis:

The Ninth Circuit Court of Appeals first analyzed TID's claim that the Kuchel Act does not authorize the Service to regulate agricultural uses of leased land to ensure consistency with proper waterfowl management.[224] Specifically, "[t]he Secretary shall, consistent with proper waterfowl management, continue . . . leasing reserved lands . . . within . . . Lower Klamath and Tule Lake National Wildlife Refuges."[225] TID argued that since "consistent with proper waterfowl management" is set off by commas, it is not essential to the meaning of the sentence, rather it clarifies that the leasing *is* consistent with proper waterfowl management.[226] The Court disagreed because reading that provision with the rest of the Kuchel Act, rather than on its own, provides clarity, and, specifically, other parts of the Kuchel Act unambiguously prioritize wildlife management objectives over agricultural uses on leased land.[227] Consequently, the Court rejected TID's interpretation.

Next, the Court analyzed TID's claim that agricultural uses on leased land is a "purpose," not a "use" under the Refuge Act, meaning that agriculture on leased land has the same status as waterfowl management.[228] The Act allows the Secretary to "permit the use of any area . . . whenever [s]he determines that such uses are compatible with the major purposes for which such areas were established."[229] TID claimed that agricultural use of leased land is not subject to a compatibility determination by FWS, but the Court disagreed; reading the Refuge Act in conjunction with the Kuchel Act, it concluded that it is apparent that agriculture is not a "purpose" holding the same status as waterfowl management, which does not insulate it from the compatibility determination.[230] The Court used the language from the Kuchel Act to determine the distinction between "purpose" and "use" in the Refuge Act: "such lands shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full

[210] *Id.*
[211] *Id.*
[212] *Id.*
[213] *Id.*
[214] *Tulelake*, 40 F.4th at 935.
[215] *Id.*
[216] *Id.*
[217] *Id.*
[218] *Id.* at 932.
[219] *Id.*
[220] *Id.* at 933.
[221] *Id.* at 935.
[222] *Id.*
[223] *Id.*
[224] *Id.*
[225] 16 U.S.C. § 695n.
[226] *Tulelake*, 40 F.4th at 936.
[227] *Id.*
[228] *Id.* at 937.
[229] *Id.*
[230] *Id.*

consideration to optimum agricultural use that is consistent therewith."[231] The Court rejected TID's analysis.[232]

Conclusion:

The Court held that under the Kuchel and Refuge Act, FWS is required to ensure that agricultural uses of leased land in the Lower Klamath and Tule Lake Refuges are "consistent" and "compatible" with proper wildlife management.[233] It further held that the EIS/CCP regulations of agricultural uses on leased land is a proper exercise of FWS's authority under the Acts.[234] This holding established that agricultural lessees must comply with FWS to ensure wildlife species, specifically waterfowl, have an expanded habitat in the Klamath Refuge Complex.[235] Habitat expansion for waterfowl in the Refuges will allow for more research, observation, conservation, and restoration of the local and migratory species.[236] This holding also reinforces the purpose of national refuges: conservation and restoration of fish, wildlife, and plant species and habitats.

ISLE ROYALE WOLVES AND THE SUCCESS OF THE SCIENTIFIC MANAGEMENT PRINCIPLE

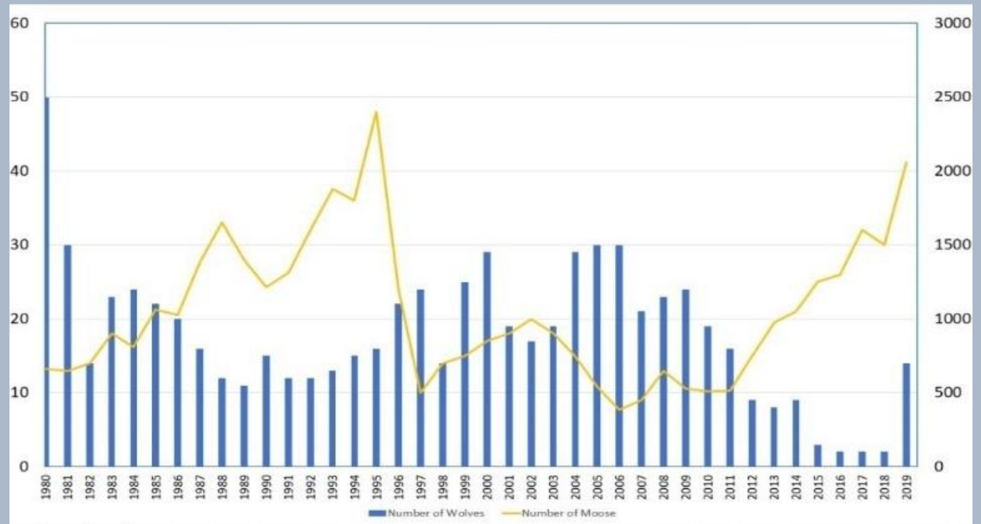
Charlie Sarchet

Critical to the success of wildlife law in the United States are the characteristics identified in the North American Model of Wildlife Conservation (Model), which promote proper protection, management, and restoration of fish and wildlife.[237] A key principle in the Model is that management of fish and wildlife is based on science.[238] This principle relies on relevant fact-finding through extensive research by professionals in specific fields, which incorporate statistics, habitat studies, population surveys, and many more tools.[239] These scientific tools have been used to establish grounds for protecting and maintaining wildlife populations.[240]

The scientific management principle of the North American Model has been used to address the wolf population in the largest wilderness area in Michigan: an island in Lake Superior called Isle Royale National Park.[241] In 2018, the island's wolf population hit a low of just two wolves.[242] That same year, the island's moose population soared to over 2,000 individuals.[243] In other years, the moose population has fallen while the wolf population has grown, but the two populations have not been able to remain steady.[244] This constant back-and-forth between wolves and moose on the island resulted in the longest predator-prey study in the world as researchers began to track the relationship between the two species in 1958, as seen in the graph below.[245] The main consequence for the island's ecosystem is that when the moose population surges, native vegetation becomes dangerously scarce, resulting in devastating effects to the moose population, the island's ability to fight erosion, and the overall health of the ecosystem.[246] The National Park Service's (NPS) responded in 2018 by re-introducing 20-30 wolves over a three-to-five year period in an attempt to balance the population levels.[247]

Background

In *Wyoming v. United States*, a case from the U.S. Court of Appeals for the Tenth Circuit in 2002, the Court was reviewing a standoff between federal and state authorities over the management of an elk refuge in Jackson Hole, Wyoming.[248] At issue was a bacterial pathogen called



[231] 16 U.S.C. § 696l.
[232] *Tulelake*, 40 F.4th at 937.
[233] *Id.* at 937-38.
[234] *Id.* at 938.
[235] *See* Jes Burns, *How Farming Inside Wildlife Refuges Is Transforming Klamath Basin Agriculture*, OPB (July 26, 2017, 10:00 PM), www.opb.org/news/article/farming-inside-wildlife-refuge-klamath-basin-california/.
[236] *See* Barbara Grzincic, *Water battle in drought-plagued wildlife refuges ends in draw*, REUTERS, (July 19, 2022, 10:12 AM), www.reuters.com/legal/litigation/water-battle-drought-plagued-wildlife-refuges-ends-draw-2022-07-19/.
[237] North American Model of Wildlife Conservation, ASSOCIATION OF FISH & WILDLIFE AGENCIES, www.fishwildlife.org/landing/north-american-model-wildlife-conservation.
[238] *See Id.*
[239] Organ et al., The North American Model of Wildlife Conservation, THE WILDLIFE SOCIETY AND THE BOONE AND CROCKETT CLUB TECHNICAL REVIEW (Dec. 2012).
[240] *See Wyoming v. United States*, 279 F.3d 1214, 1219 (2002).
[241] Isle Royale, National Parks Conservation Association, www.npca.org/parks/isle-royale-national-park.
[242] *See id.*
[243] *See id.*
[244] *See id.*
[245] *id.*; *see also* National Park Service, www.nps.gov/isro/learn/nature/wolves.htm.
[246] *See id.*
[247] *See id.*
[248] *Wyoming v. United States*, 279 F.3d 1214, 1218 (10th Cir. 2002).

Brucellosis that was endemic to the elk population in the Yellowstone area, affecting elks' reproductive organs.[249] The U.S. Fish and Wildlife Service (FWS) argued that their power through the National Wildlife Refuge System Improvement Act and the fact that the refuge is on federal land allowed them to override Wyoming's requirement to administer a vaccine.[250] Wyoming argued that the FWS was interfering with its sovereign power to manage wildlife within its borders as reserved in the Tenth Amendment.[251] The Court concluded that because the Property Clause gives Congress the power to use and dispose of federal property as it sees fit, Wyoming's wildlife management authority yielded in this instance.[252] The Court also noted that the FWS refusal was not an action outside its power as the Act gave the FWS authority to administer and manage National Wildlife Refuges.[253]

Wyoming v. United States provides a useful comparison to the regulation of Isle Royale National Park. The Court in *Wyoming* made it clear that Congress has very broad powers under the Property Clause to "use and dispose of federal property as Congress sees fit."[254] Isle Royale is made up almost entirely of federal land in which the wolf population resides.[255] As a result, the NPS is charged with managing Isle Royale's wolves and determining the best route to recovery for the population. Like the Brucellosis pathogen in *Wyoming*, the wolf population on Isle Royale began its decline due to a virus called Parvovirus that was inadvertently introduced from a hiker's dog in 1980, which decreased the wolves' population numbers from 50 to 14 before the virus disappeared a few years later.[256] The virus only got worse as an ice bridge, which frequently connected Isle Royale to Ontario in the winter and allowed wolves to naturally migrate to the island, became less common, cutting off this migration and impeding the wolves from maintaining their population without human intervention.[257]

[258]

Although there was no vaccine introduced for Parvovirus, the state in *Wyoming* went through several years of research and study to test the biosafety and efficacy of a Brucellosis vaccine for the elk called "Strain 19" in its mission to best manage the virus.[259] This research for the elk refuge, along with the research done to find a sustainable solution for the Isle Royale wolves as discussed below, further emphasizes the importance and reliance on science as a foundation in the North American Model and legal regulation in wildlife law.

Endangered Species

It is helpful when studying Michigan wolves and the scientific management principle to understand Michigan wolves' relationship with the Endangered Species Act. In the 2016 Michigan Court of Appeals decision *Keep Michigan Wolves Protected v. State Department of Natural Resources*,[260] the Court addressed wolves as a piece of Michigan's ecosystem.[261] Plaintiff challenged the state law that took advantage of wolves being removed from the federal endangered list by adding "wolf" to the definition of "game," thus authorizing a wolf hunting season.[262] Notably, the Court observed that the state's Natural Resources Commission was to establish the wolf hunting season by "follow[ing] principles of sound scientific management" rooted in various Michigan statutes.[263] The situation became moot, for the time being, in February of 2022 when a district court ruling placed gray wolves back on the federal endangered species list.[264] Wolves serve as a key

[249] *See id.* at 1219.
[250] *See id.* at 1218.
[251] *See id.*
[252] *See id.* at 1227.
[253] *See id.* 1229-30.
[254] *See id.* at 1227 (citing *Branson Sch. Dist. Re 82 v. Romer,* 161 F.3d 619, 636 (10th Cir.1998)) (noting that the "Supreme Court ... has recognized the very broad powers of Congress under the Property Clause to use and dispose of federal property as Congress sees fit").
[255] *See Wolves at Isle Royale*, NATIONAL PARKS CONSERVATION ASSOCIATION, www.npca.org/advocacy/37-wolves-at-isle-royale.
[256] *See id.*; *see also* Science News Staff, *Hard Times for Island Wolves*, SCIENCE, www.science.org/content/article/hard-times-island-wolves.
[257] *See id.*; *see also* Google Maps, *Isle Royale* (showing where the ice bridge would connect between Canada and the island).

[258] Andrew Rossi, *Wyoming Game and Fish Confirms Brucellosis in Elk from Bighorn Mountains*, BIG HORN BASIN MEDIA (Nov. 8, 2022) https://mybighornbasin.com/wyoming-game-and-fish-confirms-brucellosis-in-elk-from-bighorn-mountains/.
[259] *See Wyoming*, *supra* note 251.
[260] *Keep Michigan Wolves Protected v. State Department of Natural Resources*, 2016 WL 6905923 (Mich. Ct. App. 2016) (not reported).
[261] *See id.*
[262] *See id.* at 1.
[263] *See id.* at 2.
[264] Michigan.gov, *Federal Court Rules Protections for Michigan Wolves to Remain in Place*, MICHIGAN DEPARTMENT OF ATTORNEY GENERAL, www.michigan.gov/ag/news/press-releases/2022/02/11/federal-court-rules-protections-for-michigan-wolves-to-remain-in-place.

piece of nature's ecosystems in such a way that deserve "nationwide wolf recovery," both on a national scale and for the Great Lakes region,[265] and both federal and state courts have relied on precedent, state law, and federal law, which often call for scientific insight, when determining actions regarding wolves and other wildlife.

The National Park Service's Record of Decision

The decision to re-introduce 20-30 wolves over a three-to-five-year period culminated in a statement addressing the Isle Royale wolves by the NPS and the Department of the Interior (DOI) in 2018.[266] The NPS highlighted that scientific studies lasting around 60 years now have shown that the relationship between wolves, moose, and vegetation in Isle Royale illustrates a bottom-up ecosystem where vegetation has been the driving factor around the moose population, rather than a top-down driven ecosystem where wolves have more influence.[267] Without action, the Isle Royale ecosystem would continue to face intense instability.

The NPS cited the National Park Service Organic Act of 1916, which directs the U.S. DOI through the NPS to conserve wildlife in park system "by such means as will leave them unimpaired for the enjoyment of future generations."[268] Further, the NPS noted that under the NPS Management Policies of 2006, the Park Service has broad management discretion, but must "leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise." In addition, the NPS decided that the Park Service may address impairment when such impairment impacts "the integrity of park resources or values, including the opportunities that otherwise will be present for the enjoyment of those resources or values."[269] Using these grounds, the NPS determined that it had the power to implement its decision to avoid further impairment of the Isle Royale ecosystem, mainly to the island's vegetation, soil erosion, water quality, moose population, and wolf population.[270]

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In reaching its decision to re-introduce wolves to Isle Royale, the NPS conducted research that suggested gathering wolves from the Great Lakes region that previously lived in areas with similar vegetation to the island and wolves that preyed on moose would be best suited for the endeavor.[272] Further input from certified wildlife veterinarians included collecting samples for health and genetic testing to bring the healthiest wolves possible to the area.[273] Future monitoring will be done using GPS collar tracking, scat sample collection, and other visual observations.[274] The professional judgement of the NPS utilized all of these relevant scientific studies as a foundation for its wildlife management on Isle Royale, stating that "[t]he selected action is grounded in best available science and represents a balanced approach to natural resource management and policy while providing for the preservation of wilderness character and continued visitor enjoyment."[275]

Conclusion

The NPS and DOI have made it clear that maintaining a healthy ecosystem in Isle Royale is of the utmost importance.[276] After extensive planning, research, and studies, the NPS was able to determine that a re-introduction of 20-30 wolves over a three-to-five year period is the best course of action to maintain Isle Royale's ecosystem.[277] By 2020, fourteen wolves were estimated to inhabit the island, and by June of 2023, that number is estimated to have increased to 31.[278] The recent success of the wolf population on Isle Royale further demonstrates the ongoing potential the scientific management principle has of allowing lawmakers to lean on scientific findings when deciding the best action to take in wildlife management.

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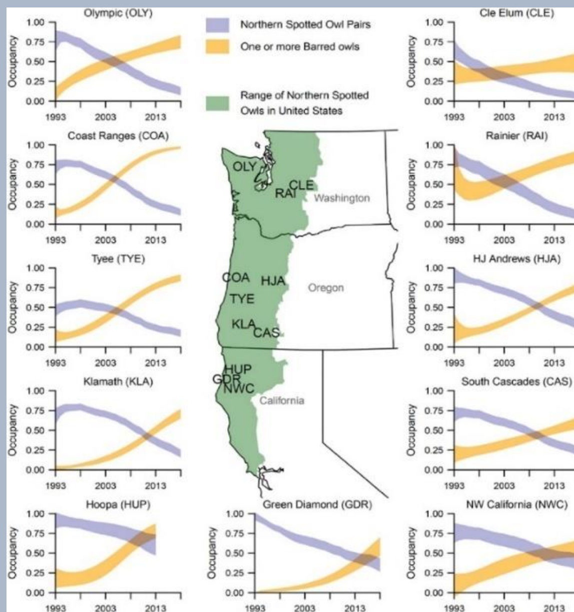
[265] *See Id.*
[266] *See* National Park Service and U.S. Department of the Interior, *Final Environmental Impact Statement to Address the Presence of Wolves at Isle Royale National Park*, NATIONAL PARK SERVICE (2018), https://parkplanning.nps.gov/document.cfm?parkID=140&projectID=59316&documentID=88676.
[267] *See Id.*
[268] *See Id.*
[269] *See Id.*
[270] *See Id.*
[271] https://d2j02ha532z66v.cloudfront.net/wp-content/uploads/2022/02/AP22041736115963-scaled.jpg.
[272] *See* National Parks Conservation Association, *supra* note 270.
[273] *See Id.*
[274] *See Id.*
[275] *See Id.*
[276] *See* National Parks Conservation Association, *supra* note 270.
[277] *See Id.*
[278] *See Id.*; *see also* Cyndi Perkins, *Isle Royale Winter Study: Wolf Count Rises Slightly, Moose Population Drops*, MICHIGAN TECH, www.mtu.edu/news/2023/06/isle-royale-winter-study-wolf-count-rises-slightly-moose-population-drops.html (June14, 2023).

FRIENDS OF ANIMALS V. U.S. FISH AND WILDLIFE SERVICE

Tony Attard

"This case is a tale of two owls."[279] On one side, the continually threatened northern spotted owl, whose population continues to dwindle.[280] On the other, the abundantly populous barred owl, who have recently encroached on, and even attacked, spotted owls.[281]

In its 2011 Recovery Plan, the U.S. Fish and Wildlife Service (FWS) detailed strong evidence that barred owls negatively affect spotted owl populations.[282] To support the declining spotted owl population and fill in "substantial information gaps," the FWS introduced an experiment to lethally remove barred owls from certain areas to gauge their effect on spotted owls.[283] This was accomplished partially by the FWS entering into Enhancement of Survival Permits (permits) and Safe Harbor Agreements (agreements) with four nonfederal landowners, allowing the FWS access to the landowner's property to experiment[284] in exchange for which the landowners could incidentally take spotted owls where none resided when they entered the agreements (non-baseline sites).[285]



Northern Spotted Owl Populations vs. Barred Owl Populations Over Time [286]

Though it is ordinarily prohibited to take members of a species listed under the Endangered Species Act (ESA), these permits and agreements are exceptions.[287] However, they are only available if the terms of the agreements are reasonably expected to provide a "net conservation benefit" to the listed species included in the permits and otherwise comply with the Safe Harbor Policy (policy).[288] In determining the net effect of the experiment, the FWS consulted an expert wildlife agency (itself) and issued a Biological Opinion to ensure the experiment would not likely "jeopardize the continued existence of . . . [spotted owls] or result in the destruction or adverse modification" of its critical habitat.[289] Ultimately, the FWS determined that the value of the information gained from the experiment would outweigh the potential incidental take of spotted owls on temporarily occupied non-baseline sites.[290]

However, the FWS must also comply with the National Environmental Policy Act (NEPA), an act which "ensure[s] Federal agencies consider the environmental impacts of their actions."[291] Therefore, as required, the FWS issued an Environmental Impact Statement (EIS), which concluded that the experiment would negligibly damage the massive barred owl population, alongside minorly deteriorating the spotted owl population due to habitat intrusion.[292] As also required, the FWS prepared an Environmental Assessment (EA) for each permit, which found that the permits were unlikely to significantly impact the spotted owl because they only authorized incidental taking on non-baseline sites, which were unlikely to be repopulated. [293]

In response to the FWS's experiment, Friends of Animals (Friends), an environmental group, sued the FWS, alleging the experiment violated the ESA and NEPA.[294] When the trial court ruled in favor of FWS on all issues, Friends appealed to the U.S. Court of Appeals for the Ninth Circuit.[295]

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[279] *Friends of Animals v. U.S. Fish & Wildlife Serv.*, 28 F.4th 19, 23 (9th Cir. 2022).
[280] *Id.* at 23-24.
[281] *Id.*
[282] *Id.* at 24, *see* U.S. Fish &Wildlife Serv., Revised Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*) I-8, I-9 (U.S. Fish & Wildlife Serv. Et al. eds., 2011).
[283] *Id.* (quoting U.S. Fish &Wildlife Serv., Revised Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*) III-62 (U.S. Fish & Wildlife Serv. Et al. eds., 2011)).
[284] *Id.* at 26.
[285] *Id. See generally* 16 U.S.C. § 1532(19), 50 C.F.R. §17.3(c)(3).
[286] Alan B. Franklin, Range-wide declines of northern spotted owl populations in the Pacific Northwest: A meta-analysis, 259 Biological Conservation (2021).
[287] *Friends*, 28 F.4th at 25-26, *see also* 16 U.S.C. §1538, 16 U.S.C § 1539(a)(1)(A), 50 C.F.R. § 17.32(c)(1).
[288] *Id.* at 26 (quoting 50 C.F.R. 17.32(c)(2)).
[289] *Id.* at 25 (quoting 16 U.S.C. § 1536(a)(2)).
[290] *Id.* at 27, *see also* 50 C.F.R. §17.32(c)(2).
[291] *Id.* at 24 (quoting 40 C.F.R. § 1500.1).
[292] *Id.* at 24-25.
[293] *Id.* at 27, see generally *Cal. ex rel. Imperial Cty. Air Pollution Control Dist. v. U.S. Dep't of the Interior*, 767 F.3d 781, 792 (9th Cir. 2014).
[294] *Id.*
[295] *Id.* at 27-28.

Northern Spotted Owl [296]

Endangered Species Act

On appeal, the court first looked at the definition of "net conservation benefit" under the ESA.[297] Friends argued that because the ESA does not define such a benefit, and the definition of a net benefit under the policy required actual species recovery, an informational benefit was insufficient.[298] The court disagreed, citing the ESA's definition of conservation as "all methods and procedures," including "research" necessary to recover a species.[299] Further, the policy itself, which governs the agreements, defined a net benefit as anything that directly or indirectly contributes to the recovery of the species, and according to the court, "[t]he experiment here 'indirectly' aids the recovery of . . . spotted owl[s]."[300] Moreover, when asked about the meaning of net conservation benefit within the policy, the FWS stated three times that a "net conservation benefits may result from . . . creating areas for *testing* and implementing new conservation strategies," the exact purpose of the experiment.[301] Accordingly, the court ruled that the FWS's sought informational benefit was valid under the ESA.[302]

Next, the court looked at the FWS's baseline conditions.[303] Under the agreements, a baseline site was anywhere where a spotted owl resided when entering the agreement, but Friends claimed this definition was flawed due to the FWS's inability to establish abandonment and their disregard for displaced spotted owls in non-baseline sites.[304] The court threw out Friends' abandonment claim as a red herring, inapplicable here because none of the relevant documents require abandonment.[305] Also, the court dispensed with Friends' second argument by citing the FWS's analysis that no evidence exists that displaced spotted owls successfully breed and are therefore unlikely to contribute to the species' recovery.[306] Thus, the court found that the FWS reasonably described baseline conditions using the relevant owl survey data.[307]

The last challenge to the FWS's ESA compliance was its lack of analysis concerning one permit's effect on critical habitat.[308] Since one of the permits overlapped with such habitat, Friends argued that the Biological Opinion's failure to consider this constituted a violation.[309] However, the court looked at the FWS's analysis and found it considered that 3,345 aces of critical habitat would be removed but decided that it would not impair the overall recovery of the spotted owl.[310] Hence, the court deemed the effect adequately considered.[311]

National Environmental Policy Act

The court began its NEPA analysis with Friends' claim that the FWS needed to issue a Supplemental Environmental Impact Statement when it issued the four permits.[312] Generally, NEPA does not require agencies to file Supplemental EIS when "(1) the new alternative is a '*minor variation* [rather than a substantial change] of one of the alternatives discussed in the [original] EIS,' and (2) the new alternative is '*qualitatively within the spectrum of alternatives* [rather than significant new information] that were discussed in the [original EIS].'"[313] Here, Friends' challenge was twofold: (1) allowing the incidental taking of spotted owls via permit is a substantial change from the original EIS, and (2) that the four agreements entered into

[296] The National Wildlife Federation, *Northern Spotted Owl*, www.nwf.org/Educational-Resources/Wildlife-Guide/Birds/Northern-Spotted-Owl (last visited Nov. 28, 2022).
[297] *Friends*, 28 F.4th at 29 (quoting 16 U.S.C. § 1536(a)(2)).
[298] *Id.*
[299] *Id.* (quoting 16 U.S.C. § 1532(3)).
[300] *Id.* at 30 (quoting Announcement of Final Safe Harbor Policy, 64 Fed. Reg. 32717-01, 32,722 (June 17, 1999).
[301] *Id.* (quoting 64 Fed. Reg. at 32,719 (Response 5), 32,720 (Response 11), 32,722 (Purpose of the Policy) (emphasis added)).
[302] *Id.*
[303] *Id.* at 31.
[304] *Id.*
[305] *Id.*
[306] *Id. See also* U.S. Fish &Wildlife Serv., Revised Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*) C-58 (U.S. Fish & Wildlife Serv. Et al. eds., 2011).
[307] *Id.*
[308] *Id.* at 32.
[309] *Id.*
[310] *Id. See also* U.S. Fish &Wildlife Serv., Revised Recovery Plan for the Northern Spotted Owl (*Strix occidentalis caurina*) III-51 (U.S. Fish & Wildlife Serv. Et al. eds., 2011).
[311] *Id.*
[312] *Id.* at 32-33.
[313] *Id.* at 33 (quoting *Russell County Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1045 (9th Cir. 2011) (citing Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,035 (Mar. 23, 1981)).

constituted significant new information that the initial EIS did not consider.[314] The court sided with the FWS on both claims. First, the court found that the allowed incidental taking was only a minor experiment variation because the permits ultimately promoted spotted owls by allowing the FWS into nonfederal lands to remove barred owls.[315] Second, the court found the permits and agreements were contemplated in the original EIS when the FWS stated where possible, it would seek cooperation from nonfederal landowners.[316] Thus, the FWS did not need to issue a Supplemental EIS.[317]

Friends' last challenge under NEPA was that the permits and experiment were "connected actions;" therefore, the FWS must analyze them under one EIS.[318] "Connected actions" are defined as actions that can only proceed with simultaneous or previous actions or depend on a larger action for justification.[319] However, where one action might be reasonably completed without the existence of the other, the actions are not connected.[320] The court concluded that the FWS could experiment, albeit less efficiently, without the permits and that each permit was individually independent.[321] Thus, because they were unrelated, the permits and experiment were not "connected actions" and need not be discussed in the same EIS.[322]

Ultimately, in finding that the FWS both complied with the ESA and the NEPA, the Court of Appeals affirmed the trial court's ruling in favor of the FWS, supporting the North American Model of Wildlife Conservation's principle of science being the proper tool for wildlife management.[323]

RELATED WILDLIFE LAW CASES & ISSUES

ALMOND ALLIANCE OF CALIFORNIA V. FISH AND GAME COMMISSION

Tony Attard

In 1969 the California legislature changed the definition of "fish" under Section 45 of the California Endangered Species Act to include invertebrates and amphibians under the existing definition of wild fish, mollusks, or crustaceans.[324] The first terrestrial, or living-on-land, invertebrate to be included under the Act was the Trinity Bristle Snail, included as a mollusk in 1980.[325] Notably, multiple butterfly species were rejected from the Act's list by the Office of Administrative Law, stating that the Act could not be construed to include insects within the categories of birds, mammals, fish, amphibia or reptiles.[326] Subsequently, in 1984, a new California Endangered Species Act (Act) replaced the 1969 legislation.[327] In creating this Act, the legislature added the term "invertebrate" to the general species list alongside fish, birds, and plants, but quickly removed it to avoid confusion.[328] The Department of Fish and Wildlife (Department) and the Natural Resources Agency stated that it was already well understood that the definition of "fish" included invertebrates, supported by the Department's long history of regulating and managing numerous classes of them.[329]

[330]

In this case, *Almond Alliance v. Fish and Game Commission*, a public interest group petitioned the Commission to include four bumblebee species as endangered under the Act.[331] The Act defines a species as endangered if it "is in serious danger of becoming extinct throughout all or a significant portion of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease."[332] The petition made it through the first two of four procedural requirements for an endangered or threatened species, and thus the bumblebees were categorized by the Commission as candidate species.[333] A candidate species is a native species of bird, fish, amphibian, reptile, or plant that the Commission has formally noticed as being under review by the Department for addition to the endangered or

[314] *Id.* at 33.
[315] *Id.*
[316] *Id.* at 34.
[317] *Id.*
[318] *Id.* (quoting 40 C.F.R. § 1501.9(e)(1)).
[319] *Id.* (quoting 40 C.F.R. § 1501.9(e)(1)).
[320] *Id. See Great Basin Mine Watch v. Hankins*, 456 F.3d 955. 969 (9th Cir. 2006).
[321] *Id.* at 34-35.
[322] *Id.* at 35 (quoting 40 C.F.R. § 1501.9(e)(1)).
[323] *Id.*
[324] *Almond All. of California v. Fish & Game Comm'n*, 79 Cal.App.5th 337, 342 (3rd Dist. 2022) (quoting (Cal. Fish & G. Code, §§ 2062, 2067 & 2068 (West 2022)).
[325] *Id.* at 345.
[326] *Id.* at 344, *see also* Cal. Gov't Code, §11349.1(a).
[327] *Almond*, *supra* note 328 at 345, *see generally* Cal. Fish & Game Code § 2050 (West 2022).
[328] *Id.* at 345-46, 348, *see also* Dept. Fish & Game and Natural Resources Agency, Enrolled B. Rep. on Assemb. B. 3309 (Cal. 1984).
[329] *Id.* at 348 (quoting (Cal. Fish & G. Code, §§ 2062, 2067 & 2068 (West 2022)), *see generally* Dept. Fish & Game and Nat. Res. Agency, Enrolled B. Rep. on Assemb. B. 3309 (Cal. 1984).
[330] Photo from: Maya Earls, 'Bees are Fish' Criticism Mostly Misguided, Law Scholars Say, Bloomberg Law (June 6, 2022).
[331] *Almond*, *supra* note 328 at 351.
[332] *Id.* at 349 (quoting Cal. Fish & Game Code § 2062 (West 2022), *Central Coast Forest Assn. v. Fish & Game Com.*, 2 Cal.5th 594, 598 (2017)).
[333] *Id.* at 351.

threatened species lists.[334] In response, the Almond Alliance (Alliance), an almond farming organization, challenged the Commission's categorization of the bumblebees as an abuse of their discretion.[335] The trial court ruled for the Alliance, concluding that "invertebrates" within the definition of "fish" indicates invertebrates necessarily connected to marine habitats rather than insects.[336]

On appeal, the Court of Appeals performed a statutory interpretation analysis on the Act's definition of "fish" to conclude whether it included bumblebees.[337] Such an analysis seeks to ascertain the true meaning of the law as the legislature intended.[338] First, the court must look to the ordinary meaning of the language in the statute, or where technical terms exist, the court construes the term under its technical meaning.[339] The analysis stops there if there is no ambiguity within the language.[340] However, if ambiguity exists, the court may resort to extrinsic evidence, such as the Act's purpose or history in becoming law.[341]

Concerning the application of Section 45's "fish" definition to the Commission's listing power, the Alliance argued that this definition could not be used because it would create surplusage or make already-existing words in the statute, such as amphibian, effectively meaningless.[342] This argument is persuasive because courts should "avoid…interpretations that render a part of a statute surplusage."[343] The Commission and Department argued in response that they had used Section 45 to denote species in previously upheld rulings by this court.[344] The court, agreeing with the Commission and Department, stated that while surplusage is a helpful guide for legislative interpretation, "it is not a command" and must yield to the legislature's intent.[345] Specifically, the court looked to the 1984 bill analysis, as to the Commission's ability to categorize invertebrates and their history of doing so.[346] The court reasoned that the legislature adopted this interpretation when it expressly stated that any former listings would meet the definitions of endangered and threatened species in the Act.[347] Therefore, because the only way the previously-listed Trinity Bristle Snail could be threatened or endangered is by applying Section 45 to these categories, and since it was threatened based on the legislature's adoption of formerly listed species, the legislature intended the section to govern.[348] Thus, based on the legislature's intent when it created the Act, the Commission may list invertebrates as endangered or threatened species under the definition of "fish."[349]

The Court of Appeals' next issue was whether invertebrate means any invertebrate or merely aquatic invertebrates.[350] The court reasoned that Section 45's definition of "fish" was ambiguous enough to be either based on its plain language.[351] Ultimately, the court agreed with the Commission and Department, pointing to the technical definition of "fish" also including mollusks, amphibians, and crustaceans- all of which contain aquatic and terrestrial species.[352] Moreover, the Trinity Bristle Snail, a terrestrial mollusk, invertebrate, and a threatened species under the Act's plain language, supports an interpretation including any invertebrate.[353] In turn, the term "fish" under Section 45 must be a technical term encompassing terrestrial and aquatic species rather than a term of plain meaning.[354] The Court of Appeals held that the Commission had the authority to list all four bumblebee species as endangered or threatened terrestrial invertebrates under the Act, reversing the trial court.[355]

Wildlife Conservation's Most Reliable Source Of Funding: The Pittman-Robertson Act

Nolan De Jong

History and Purpose of the Pittman-Robertson Act

The Pittman-Robertson Act (Act) was enacted on September 2, 1937, by President Franklin Roosevelt.[356] The Act was sponsored by Senator Key Pittman of Nevada and Congressman Absalom Willis Robertson of Virginia.[357] It imposes an 11% excise tax at the point of sale on long guns and ammunition and a 10% tax on handguns and archery

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[334] *Id. See generally* Cal. Fish & Game Code § 2068 (West 2022). In California, "the Department of Fish and Wildlife is charged with implementing and enforcing the regulations set by the Fish and Game Commission, as well as providing biological data and expertise to inform the Commission's decision-making process." *About the California Fish and Game Commission*, https://fgc.ca.gov/About.
[335] *Id.*
[336] *Id.* at 352 (quoting (Cal. Fish & G. Code, §§ 2062, 2067 & 2068 (West 2022)).
[337] *Id.* at 353 (quoting (Cal. Fish & G. Code, §§ 2062, 2067 & 2068 (West 2022)).
[338] *Id. See also California Forestry Assn.,* 156 Cal.App.4th 1191, 1544-45 (3rd Dist. 2022)
[339] *Id. See also California Forestry*, *supra* note 342; *Sacramento County Alliance of Law Enforcement v. County of Sacramento*, 151 Cal.App.4th 1012, 1017 (3rd Dist. 2007).
[340] *Id.*
[341] *Id. See also California Forestry*, *supra* note 342.
[342] *Id.* at 354 (quoting (Cal. Fish & G. Code, §§ 2062, 2067 & 2068 (West 2022)).
[343] *People v. Cole*, 38 Cal.4th 964, 980-981 (2006).
[344] *Almond*, *supra* note 328 at 354.
[345] *Id.* (quoting *Roberts v. United Healthcare Services, Inc.*, 2 Cal.App.5th 132, 146 (2nd Dist. 2016)).
[346] *Id.* at 354-55.
[347] *Id.* at 355.
[348] *Id.* at 355-56.
[349] *Id.* at 358 (quoting (Cal. Fish & G. Code, §§ 2062, 2067 & 2068 (West 2022)).
[350] *Id.* at 359.
[351] *Id.* (quoting (Cal. Fish & G. Code, §§ 2062, 2067 & 2068 (West 2022)).
[352] *Id.* (quoting (Cal. Fish & G. Code, §§ 2062, 2067 & 2068 (West 2022)).
[353] *Id.* at 359-60, 362.
[354] *Id.* at 360 (quoting (Cal. Fish & G. Code, §§ 2062, 2067 & 2068 (West 2022)).
[355] *Id.* at 360, 365.
[356] Boone and Crockett Club, North American Wildlife Policy and Law, 166 (Bruce D. Leopold et al. eds., 2018).
[357] *Id.* at 165.

equipment.[358] The excise tax is then collected by the U.S. Department of the Treasury and distributed as federal grants to state wildlife agencies by the U.S. Fish and Wildlife Service (FWS) through the Wildlife and Sport Fish Restoration (WSFR) Program.[359] Funds are apportioned to each state using a formula that considers the land area of the state and the number of paid hunting licenses in that state.[360] This funding may be used towards various efforts depending on state needs, but typically is aimed towards operations of facilities and land, research, higher education, coordination and administration, capital developments and stocking programs, technical assistance in wildlife management and acquisition, and outreach efforts.[361] While the states retain reasonable discretion as to the use of funding received through the Act, each state must report to the FWS the purposes to which the funding is ultimately applied.[362]

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The Act has been amended several times, notably in 1955 and in 1970.[364] The 1955 amendment ensured funding was allocated directly from the Department of the Treasury to the FWS, who then apportions the funds to the states through the WSFR.[365] This measure ensures stability in conservation funding for future generations by eliminating the risk of congressional conditions placed on the funds before they are allocated to the states. Moreover, the 1970 amendment added handguns and archery equipment to the Act, imposing an excise tax of 10%.[366] Currently, one-half of the excise tax collected on handguns is set aside for Basic Hunter Education programs.[367] Each state is responsible for facilitating hunter education programs as they see fit for their individual states.[368] The programs provide instruction in firearm and archery safety, wildlife management, conservation, ethics, game laws, outdoor survival, and wilderness first aid.[369] The goal of this program is to teach individuals to be safe, responsible, conservation-minded hunters.[370] Most states require completion of a hunter education course prior to purchasing a hunting license.[371]

The Act was enacted in response to massive decline in wildlife populations in the early 20th century.[372] In large part, this decline was due to both habitat destruction from increased agriculture and unregulated overhunting.[373] Since 1937, the Act has generated over $14.1 billion in revenue, with no state receiving more than 5% of the total revenue generated per year and no state receiving less than 0.5% per year.[374] Additionally, each state must match $1 of state funds directed towards wildlife conservation efforts for every $3 of federal funding received through the Act.[375] This incentivizes individual states to allocate funding to conservation-related activities that may have been applied to other purposes if not for the enticement of additional federal funds.

The Pittman-Robertson Act's Uncertain Future

A vulnerability of the Act is that Congress may repeal an excise tax.[376] This presents a threat to the Act, a critical source of reliable funding for wildlife conservation efforts throughout the United States.

The "RETURN (Repealing Excise Tax on Unalienable Rights Now) our Constitutional Rights Act of 2022" was introduced by Rep. Andrew Clyde of Georgia on June 22, 2022.[377] Rep. Clyde's Bill sought to repeal the federal excise tax on firearms, ammunition, and archery equipment and reduce the tax on fishing equipment.[378] Although RETURN would

[358] Matthew Every, *Spike in U.S. Gun Sales Brings $1.1 Billion in Taxes for Conservation*, FIELD & STREAM (Feb. 14, 2022, 6:00 PM), www.fieldandstream.com/conservation/increased-gun-sales-bring-record-tax-revenue/.
[359] Boone and Crocket Club, *supra* note 360, at 166.
[360] *Id.* at 167.
[361] *Id.* at 173.
[362] *See Id.* at 168.
[363] Originally posted on Safari Club International's First for Wildlife Blog on 10/30/2017. www.sandiegosci.org/2017/10/reality-check-conservation-cant-afford-to-keep-hunting-season-closed/.
[364] Boone and Crocket Club, *supra* note 360, at 166.
[365] *Id.*
[366] *Id.*
[367] *Wildlife Restoration (Pittman-Robertson)*, MISS. WILDLIFE, FISHERIES, & PARKS (2022), www.mdwfp.com/conservation/who-pays-for-it/pittman-robertson-act [hereinafter *Miss. Wildlife, Fisheries, & Parks Article*].
[368] *Hunter Education*, U.S. Fish & Wildlife Service (2022), www.fws.gov/program/hunter-education.
[369] *Id.*
[370] *Id.*
[371] *Id.*
[372] Boone and Crocket Club, *supra* note 360, at 163.
[373] *Id.*
[374] *Id.* at 167.
[375] *Id.* at 168.
[376] *See Id.* at 164.
[377] H.R. 8167, 117th Cong. (2022).
[378] *Id.*

not eliminate the Pittman-Robertson Act altogether, it would significantly weaken the Act.[379] Rep. Clyde agreed that the Act should still be funded, but argued that the funding should be disconnected from firearms so that the issues of firearms and wildlife conservation can be managed individually.[380] Rep. Clyde proposed shifting the funding source from the current excise tax framework to funds raised from offshore oil and gas development.[381] Rep. Clyde reasoned that the Second Amendment, as a constitutional right, may not be taxed.[382] Rep. Clyde further feared that the ability to purchase firearms and ammunition could be taxed out of existence due to the connection.[383] In fact, the RETURN Bill was proposed following a separate bill proposed by Rep. Don Beyer of Virginia on June 14, 2022, that sought to impose a 1,000% tax on certain types of firearms.[384] Rep. Beyer's 1,000% tax was largely unsupported, but the timing of the two starkly contrasted proposals suggested ideological retaliation on the part of Rep. Clyde with RETURN.[385]

Rep. Clyde's Bill was at one time supported by fifty-one Republican cosponsors.[386] However, the RETURN Bill faced much opposition from wildlife, conservation, and hunting organizations.[387] Specifically, on July 12, 2022, the Association of Fish & Wildlife Agencies (AFWA) sent an open letter strongly opposing the repeal of the P-R Act's excise tax scheme that was cosigned by the National Wild Turkey Federation (NWTF), the National Shooting Sports Foundation (NSSF), and the Rocky Mountain Elk Foundation (RMEF), among others.[388] In their letter, these organizations recognized the "user pays-public benefits" as "a primary funding source for state fish and wildlife agencies who utilize the funds to undertake wildlife conservation."[389] Moreover, the letter stated that "the purchase of hunting licenses and stamps, clearly demonstrates the long- standing commitment of members of the sporting-conservation community to personally invest in science-based conservation and wildlife management."[390] The United States is also "widely recognized as the most successful wildlife conservation framework in the world."[391]

Wildlife Conservation Efforts Require a Reliable Source of Funding

The Pittman-Robertson Act is too fundamental to United States wildlife conservation efforts to be dramatically reduced or eliminated. First, the current method of allocating funds is critical for the function of the Act. Funds raised through the Act are transferred directly from the Department of the Treasury to the USFWS, bypassing congressional appropriation measures.[392] This is an invaluable component of the current funding structure because it eliminates risk of congressional interference.[393] Modifications to the Act may put this structure at risk.

Second, funds from the Act are used to support the building and maintenance of public shooting ranges.[394] This allows Americans to exercise their Second Amendment rights, rather than hindering those rights.[395] This further supports the application of an excise tax on firearms and ammunition, even for those with no intent to participate in hunting. Moreover, according to a 1999 study, 90% of sportsmen were unaware that the tax was being applied to their purchases.[396]

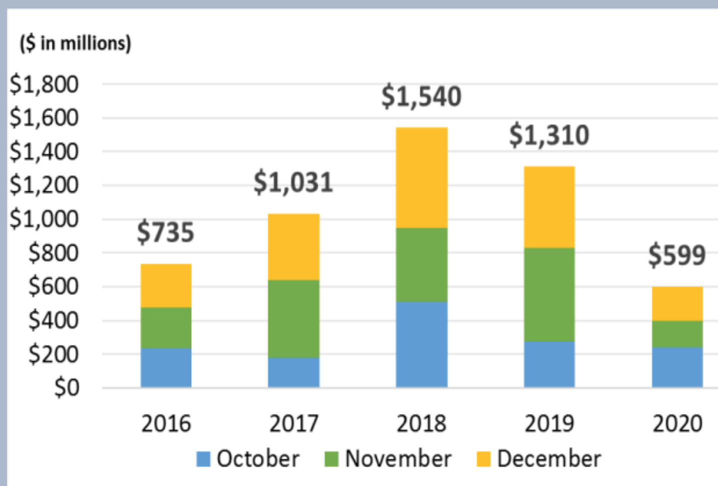
Third, the current amount of funding already appears to be inadequate for future conservation needs.[397] Therefore, in the future, wildlife conservation efforts will likely require a supplementary funding program as opposed to a replacement as proposed by Rep. Clyde's RETURN bill.[398]

Fourth, there has been little to no litigation associated with the Act.[399] This is a result of the unambiguous scope and strict enforcement of the Act that has required very little judicial interpretation.[400] Therefore, opening the Act to amendment will likely result in additional costs related to litigation, legislative debate, and implementation. Altering the nearly century-old Act would likely result in both uncertainty in funding for the states and an increased financial burden on the USFWS and the judicial system as disputes arise.

Finally, and perhaps most consequential, the RETURN bill proposed that offshore oil and gas development replace the funding currently sourced from the excise tax on firearms, ammunition, and archery equipment.[401] This placed the

[379] David Maccar, *This New Bill Could Gut Conservation Funding, Kill Pittman-Robertson Act*, FREE RANGE AMERICAN (Aug. 7, 2022), https://freerangeamerican.us/bill-kill-pittman-robertson-act/ [hereinafter *Free Range American Article*].
[380] *Id.*
[381] *House Bill Would Repeal Pittman-Robertson Act*, WILDLIFE MGMT. INST., (2022), https://wildlifemanagement.institute/brief/july-2022/house-bill-would-repeal-pittman-robertson-act [hereinafter *Wildlife Mgmt. Inst. Article*].
[382] Free Range American Article
[383] *Id.*
[384] Assault Weapons Excise Act, H.R. 8051, 117th Cong. (2022).
[385] Free Range American Article.
[386] H.R. 8167, 117th Cong. (2022).
[387] See Free Range American Article.
[388] *Id.*
[389] Wildlife Mgmt. Inst. Article.
[390] *Id.*
[391] *Id.*
[392] Boone and Crocket Club, *supra* note 360, at 166.
[393] See *Id.*
[394] Miss. Wildlife, Fisheries, & Parks Article.
[395] See *Id.*
[396] Boone and Crocket Club, *supra* note 360, at 173.
[397] *Id.* at 174.
[398] See *Id.*
[399] *Id.*
[400] See *Id.*
[401] H.R. 8167, 117th Cong. (2022).

reliability of the Act funding in jeopardy as other interests compete for the taxes raised through offshore oil and gas. In fact, offshore oil and gas revenues already provide most or all funding for several federal land conservation and restoration programs, including the Land and Water Conservation Fund (LWCF), the Historic Preservation Fund (HPF), and the National Parks and Public Land Legacy Restoration Fund (LRF).[402] Moreover, there are concerns about whether future revenues will be sufficient to fully fund these programs, due to effects of COVID-19 and federal policy, among other factors.[403] Considering the uncertainty of even the existing funding commitments of offshore oil and gas revenue, adequately replacing Pittman-Robertson Act funding with these revenues seems increasingly unlikely.[404] The exclusive allocation of the current excise tax to the Act purposes is one reason why funding through the Act has been exceedingly successful since 1937, generating more than $14 billion during that time.[405]



Federal Offshore Oil and Gas Revenues for October Through December, 2016-2020 [406]

Additionally, the RETURN bill's failure to guarantee exclusive access to funding from offshore oil and gas was not the only challenge associated with shifting funding. The recent shift by the U.S. political system and broader economy away from fossil fuels puts the future reliability of funding through oil and gas development at risk.[407] This has resulted in fluctuating revenues of offshore oil and gas, compromising its reliability as a source of funding.[408] Firearms and ammunition, on the other hand, remain a steadily growing market with 11.8% growth from 2017-2022, including 5.3% growth in 2022 alone.[409] Conservation efforts will certainly require continued funding to maintain the hard-earned progress achieved during its nearly century-long history. To alter conservation's most reliable source of funding without a viable alternative is a reckless idea.

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[402] *Offshore Oil and Gas Revenues During the COVID-19 Pandemic*, CONGRESSIONAL RESEARCH SERVICE, FEDERAL (2021), https://crsreports.congress.gov/product/pdf/IF/IF11649 [hereinafter *Congressional Research Service Article*].

[403] *Id.*

[404] *Id.*

[405] Wildlife Mgmt. Inst. Article.

[406] Photo from https://crsreports.congress.gov/product/pdf/IF/IF11649

[407] Steven Mufson & Dino Grandoni, *Biden wants to make the climate fight central to his presidency. What do big oil and gas firms think about that?*, WASHINGTON POST (Dec. 22, 2020, 8:00 AM), www.washingtonpost.com/politics/2020/12/22/biden-fossil-energy-oil-gas-companies/.

[408] Congressional Research Service Article.

[409] *Online Gun & Ammunition Sales in US – Market Size 2005-2027*, IBISWORLD (Sept. 14, 2021), www.ibisworld.com/industry-statistics/market-size/online-gun-ammunition-sales-united-states/.

About the Wildlife Law Call

These case and current event briefs were composed by the students in the Fall 2022 semester of *Wildlife Law* at Michigan State University College of Law. The course is taught by Carol Frampton, Chief of Legal Services for the National Wild Turkey Federation (NWTF), assisted by Shelby LaButte, Assistant Director of the Center for Conservation Excellence (CCE), housed at the NWTF. The *Wildlife Law* students from the Fall 2022 semester took a class trip to The Demmer Center: Shooting Sports, Education, and Training Center in Lansing, Michigan. The students were instructed on archery safety, fundamentals, and shooting.

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NWTF is a nonprofit organization dedicated to the enhancement of wild turkey populations and habitat, and recruitment, retention, and reactivation of hunters. AFWA is a professional organization whose members are the fish and wildlife agencies of the 50 U.S. states as well as territories, several Canadian provinces and Mexican states, as well as some U.S. federal agencies.

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