SENATE FISH AND GAME
Exhibit No. 2
Date 02.10.2015
Bill No. SB 245

Montana Code Annotated 2014

87-1-225. Regulation of wild animals damaging property -- public hunting requirements. (1) Subject to the provisions of subsection (2), a landowner is eligible for game damage assistance under subsection (3) if the landowner:

(a) allows public hunting during established hunting seasons; or

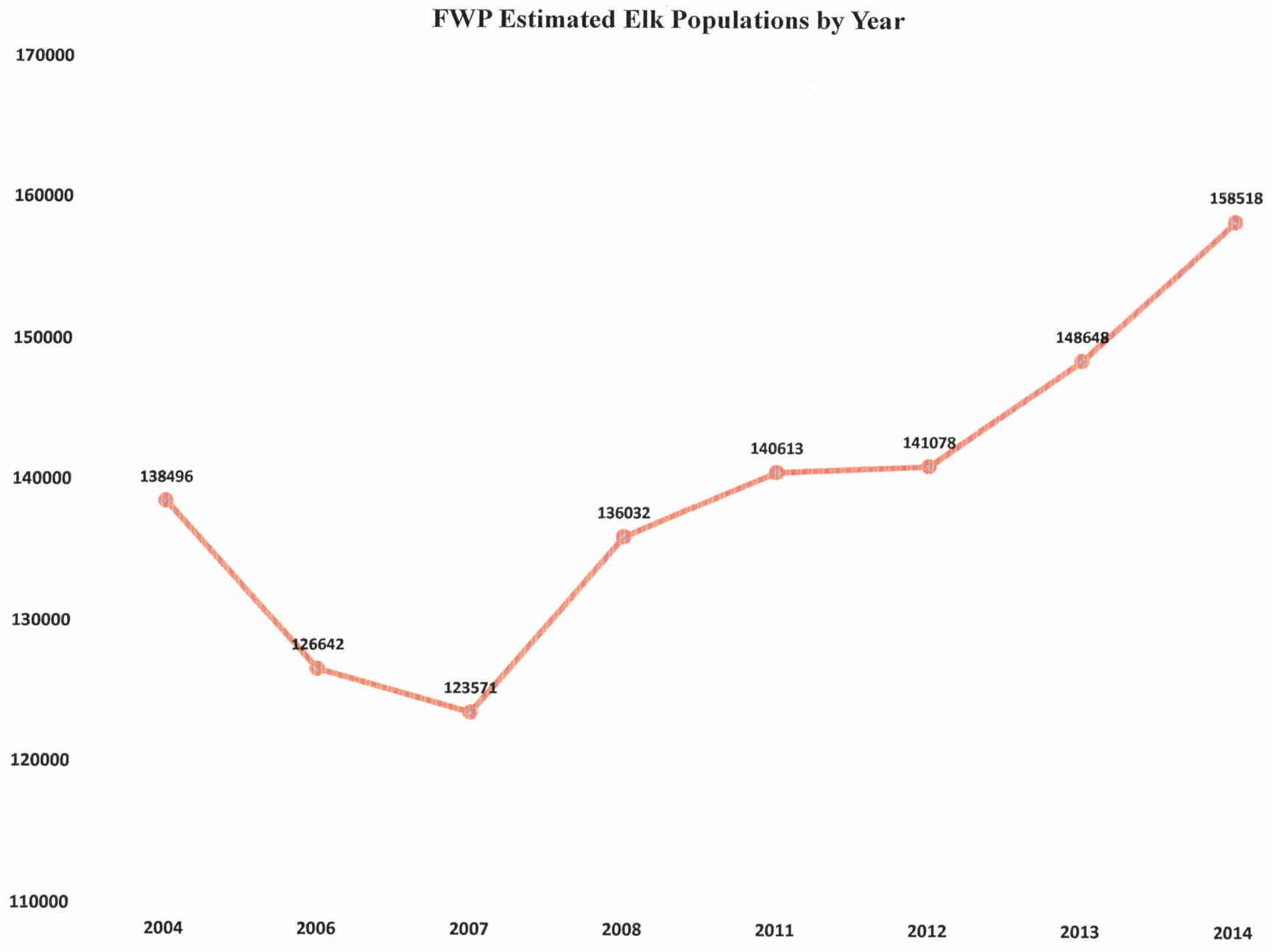
(b) does not significantly reduce public hunting through imposed restrictions.

(2) The department may provide game damage assistance when public hunting on a landowner's property has been denied because of unique or special circumstances that have rendered public hunting inappropriate.

(3) Within 48 hours after receiving a request or complaint from any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops on the property, the department shall investigate and arrange to study the situation with respect to damage and depredation. The department may then decide to open a special season on the game or, if the special season method is not feasible, the department may destroy the animals causing the damage. The department may authorize and grant the holders of the property permission to kill or destroy a specified number of the animals causing the damage. A wild, ferocious animal damaging property or endangering life is not covered by this section.

History: En. Sec. 1, Ch. 60, L. 1957; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-135; amd. Sec. 1, Ch. 569, L. 1987; amd. Sec. 1, Ch. 568, L. 1989; amd. Sec. 2835, Ch. 56, L. 2009.

Provided by Montana Legislative Services


FWP Estimated Elk Populations by Year
170000
160000
150000
140000
130000
120000
110000
138496
126642
123571
136032
140613
141078
148648
158518
2004
2006
2007
2008
2011
2012
2013
2014

FWP COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: ____2/21/06_____

Agenda Item: _Separation of game damage seasons from the general 5-week season-Final_____

Division: _____Wildlife_____

Action Needed:

____ **Approval of Tentative Rule** __X___ **Approval of Final Rule/Action** _____
Endorse Course of Action _____ **None - information only**

Time Needed on Agenda for this Presentation: _____1 hour_____

Background (Brief description of the issue, decision to be made, history, etc.):

This proposed season change will separate general seasons from game damage seasons. Game damage assistance, which may include early or late seasons, will continue to be provided to qualified landowners that meet eligibility criteria as defined by statute, Administrative Rule, and policy. Game damage is to be directed at site-specific landownerships, and are not intended for population control, which is the function of general hunting seasons.

PROPOSAL: ***Separate game damage from general 5-week season regulations. This would result in the elimination of early and late deer and elk seasons that are currently listed in the Regulations (with the following exceptions):***

Exceptions that may provide for early or late hunts include:
Exception 1: Early backcountry hunts associated with wilderness areas (Sept. 15 opener);
Exception 2: HDs with populations that involve jurisdictional issues (National Parks, other states), Tribal lands, or legally established (under state statute) game preserves.
Exception 3: Weapon Restriction Areas

Specifically, deer and elk Hunting Districts that currently (2005) have early and late season opportunities that will be eliminated for the 2006/2007 hunting season are listed below by Region:
(Some LPTs contain date ranges that occur both during the 5-week season and outside the general 5-week season. The changes included herein reflect only those dates that are outside the 5-week general season).
Region 1- Deer: 170-10
Elk: 190-00, 121-01, 170-10,
Region 2- Deer: 260-10 (includes only HD 260), 260-60 (includes only HD 260)
Elk: 202-01, 204-70, 204-71, 210-02, 210-03, 299-70, 212-02, 213-01, 213-02, 213-80, 215-02, 216-02, 240-70, 240-71, 261-70, 261-71, 290, 292-80, 291-01, 293-01.
Region 3- Deer: 320, 322, 331, 333, 339, 340, and 380
Elk: 335-70, 350, 360, 370, 380-70
Region 4- Deer: 404-10
Elk- 411-00, 411-01, 412-00, 417-00, 421-00, 421-01, 422-00, 423-00, 446-01, 450-00.
Region 5-Deer: 597-00, 598-00, 599-00

Elk: 500-00, 502-00, 510-20, 411-00, 411-01, 520-00, 520-20, 560-20, 570-00, 575-00, 580-00, 580- 01, 580-20, 590-00, 590-01, 590-20, 590-21
Region 6- Elk: 621-00 (Oct. 10-21)
Region 7- Elk: 590-00 & 590-20 (includes HD 590 & 701 that occur outside the general 5-wk season)

Public Involvement Process & Results (Brief description of the type of public involvement and summary of what we heard from the public):

There have been mixed comments relative to the 5-week season proposal. There were questions about how our new game damage hunt roster would work, and how it might address damage problems for qualified landowners. Additionally, the liberalization of general seasons in many areas of the state was an important part of the discussion that took place during those public meetings. Presentations were made to Stockgrowers, Montana Outfitter and Guides Association, Private Land/Public Wildlife Council, Montana Wildlife Federation, numerous organized sportsmen organizations, and numerous landowners and other interested public. Support was mixed from some organizations/groups, but generally there was strong support from sportsmen, strong resistance from outfitter interests, and some support and some resistance from landowners. Those landowners that did support the proposal did so with the realization that general season liberalizations and streamlined game damage hunts will provide them the tools they need to address wildlife issues on their properties. Many landowners with outfitting did not favor eliminating customized seasons.

Alternatives and Analysis (Brief description of alternative solutions with analysis of the pros and cons of each):

The alternative is to continue with the present format, which has incorporated game damage seasons into the regulations. The present situation that includes customized seasons has had the following effects:

Early /Late Seasons (Customized Seasons):

- **Customized seasons (that is, early or late seasons) have not generally been effective at managing populations. Currently, sixty percent of our Elk Management Units are over population objective, with many of these having existing customized early/late seasons.**

- **A lack of access is typically what keeps us from meeting harvest and population objectives. This may occur on both private lands, and also on public lands that are closed or severely limited by private land restrictions.**

- **Customized seasons have increased commercial leasing of hunting by providing a mechanism for unqualified game damage hunts to occur outside the general season framework.**

- **Complex regulations are the product of customized seasons (currently, we have over 2,100 lines in our deer and elk regulations). This leads to difficulty understanding the regulations, large demands on staff time and budgets associated with annual regulation changes, and produces costly mistakes that reflect badly on the Dept.**

- **Customized seasons may change often, sometimes annually, as changes in landownership, access, special interests, as seasons prove to be less effective that anticipated, or as various opinions of how best to manage deer or elk change.**

- **The hunting public is often left out of discussions where special interests may propose customized seasons. In short, the public may initially be left out of management decisions on public resources that don't just involve private land.**

□ Customized seasons may result in separate management on public and private lands, which can lead toward privatization of wildlife (a public trust resource).

□ Habitat and access are significant priorities for the Wildlife Division. However, at present, a considerable amount of staff time is spent dealing with complex regulations that could be spent on habitat and access.

□ Hunter shift and hunter congestion can occur when one region liberalizes the general season as they eliminate early and/or late seasons, and another region has conservative general seasons and many late and/or early season.

□ If early/late seasons are provided every year on private/restricted public lands, deer and elk learn this is a good place to be during the general season. We have seen elk move to these 'safe havens' earlier and earlier from public hunting areas, making population harvest problematic during the general season, and unnecessarily placing hunters in situations that facilitate poor hunting behavior.

□ If hunting is occurring over the broad landscape during the 5-week general season, elk and deer are more likely to be available to the general public, as hunting pressure results in the redistribution of deer and elk. Historically, the 5-week season was effective at keeping elk within acceptable numbers. To make this situation truly effective today will require cooperation among all parties involved.

□ Many of these customized seasons place hunters in situations where hunting behavior can become problematic by placing hunters and deer and elk in situations where they are faced with picking out one deer or elk to kill from a large group. They often take place in very open terrain which promotes long shots (it is hard to sneak up on large groups of elk located in large open areas), shots into large groups, and other situations that contribute to less than fair chase hunting techniques, and that reflect badly on the sport of hunting. Additionally, this may result in landowners and others questioning hunter behavior and labeling them slob hunters. This is becoming increasingly problematic on lands owned by non-resident owners, many of which are outfitted. Some landowners claim that they have closed their land to public hunting and solicited the services of an outfitter in response to this situation. We have facilitated this behavior by providing the opportunity that set hunters up for that criticism with the use of customized seasons.

□ Sportsmen are becoming increasingly disenfranchised as a result of customized seasons as they view their role to one of being relegated to antlerless harvest only after the general public season is over and paying customers have been accommodated.

□ Customized seasons that occur before the general season often place gun hunters and archers in close proximity in time and space, thereby creating a safety concern.

□ Landowners, outfitters, FWP regulations, and weather have all played a part

in creating and/or exacerbating this problem, and all need to cooperate to fix it. Present models currently being used in other states all lead to the same place - privatization and commercialization of wildlife (a publicly held resource). Unlike landowners, general public hunters and FWP, private land outfitters have typically not been directly accountable for meeting harvest and population objectives, but need to part of the solution.

We recognize that ranching and outfitting are part of the business and cultural landscape of Montana and provide a legitimate service to certain parts of the hunting community. The game

damage statute is clear that seasons outside the 5-week general season framework are specifically directed to those landowners that meet specific qualifications that include allowing public hunting opportunity during established seasons (heretofore the 5-week general season).

The North American Conservation model provides the framework that has invested the hunting public in both the restoration and the management of numerous wildlife species. One of the biggest threats to that model is the commercialization of wildlife. Privatization and commercialization ultimately disenfranchises the general public, and ultimately removes them from restoration/conservation that has been responsible for the recovery of many species. Future management must continue to address the issue of public wildlife on private land in a way that recognizes that private land outfitting will continue, but that does not privatize a public resource nor violates public trust policy.

As stated above, the proposal is to separate game damage seasons from the 5-week general season, and determine eligibility for game damage (which may include early and/or late hunts) as defined in statute, ARM, and policy. The proposal does not eliminate early and/or late seasons, but rather separates the two and determines eligibility for inclusion into a damage hunt. A game damage hunt roster will be developed that will streamline those hunts and provide a more efficient and effective way of implementation.

If the Commission decides not to proceed with the 5-wweek season proposal, elk (and some deer) populations will continue to increase, resulting in more game damage and a failure to meet Elk Plan population objectives.

Agency Recommendation & Rationale (Brief description of our recommendation to the Commission and the reasons for it):

Our recommendation is to separate game damage from general 5-week seasons, which results in the elimination from these early and late hunts (customized seasons) from the regulations. This action will produce the following results:

Summary: ***The return to a 5-week general season that separates game damage (as described and defined in Statute, ARM, and policy) from deer and elk program direction, will have the following positive effect:***

- ☐ ***Highlight the access issue;***
- ☐ ***Move us away from complex regulations and the confusion they produce with the public (and the considerable staff time and money that process consumes);***
- ☐ ***Provide increased staff time to focus on the higher priorities- habitat and access;***
- ☐ ***Supports the principles of the public trust doctrine;***
- ☐ ***Incorporates principles of the North American Model;***
- ☐ ***Move us closer to management objective in part by identifying and highlighting problems that keep us from reaching those objectives;***
- ☐ ***Will hold all interests accountable to solve a common problem, including FWP, landowners, sportsmen, and outfitters;***
- ☐ ***Will rebuild a sense of community in some rural areas that has been increasingly lost as local citizens have become separated from participating in hunting that has been part of the Montana culture for generations.***

Proposed Motion (Draft language the Commission could use to adopt the agency recommendation):

I move that the Commission approve the general 5-week season proposal as presented by the Department.

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Commentary

The Role of State Wildlife Professionals Under the Public Trust Doctrine

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ABSTRACT The Public Trust Doctrine (PTD) is considered the cornerstone of the North American Model of Wildlife Conservation. Effective application of the PTD requires a clear understanding of the doctrine and appropriate behavior by trustees, trust managers, and beneficiaries. Most PTD literature refers generically to the role of the government as the people's trustee, without addressing the differences between the legislative, executive, and judicial branches of government in the United States or recognizing the distinction between elected and appointed officials and career civil servants. Elected and appointed officials, especially in the legislative branch, have policy-level decision-making authority that makes them trustees of the people's wildlife under the PTD. In contrast, career professionals working for state wildlife agencies (SWA's) have ministerial duties as trust managers. The differences between the roles of trustees and trust managers are important. By focusing on their role as trust managers, while supporting and respecting the role of elected and appointed officials as trustees, SWA professionals can more effectively advance application of the PTD.
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KEY WORDS North American model, professional, public trust doctrine, state wildlife agency.

The Public Trust Doctrine (PTD) is considered the cornerstone of the North American Model of Wildlife Conservation (Geist et al. 2001, Batcheller et al. 2010, Organ et al. 2010). In essence, the PTD holds that certain natural resources, such as water, fish, and wildlife, are held in trust by the government for the benefit of the people. The origin of the PTD was traced to the *Institutes of Justinian* (A.D. 529) and the concept of the sovereign as the trustee of the people's interest in wildlife has been well established in English common law since the date of the Magna Carta (Batcheller et al. 2010).

The U.S. Supreme Court ruled in *Martin v. Waddell*, 41 U.S. 367 (1842) that the trust responsibility under the PTD passed from the English crown or parliament to the states upon secession of the colonies in 1776. Although the federal government has subsequently assumed primary trust responsibility for migratory birds, marine mammals, and endangered species (Bean and Rowland 1997), the majority of the PTD responsibility remains with state governments (Batcheller et al. 2010).

Mahoney (2006) questioned the degree to which state wildlife agencies (SWA's) are fulfilling the role of trustee under the PTD and emphasized the need for more effective application of the PTD. Batcheller et al. (2010) and Jacobson et al. (2010) also stressed the need for a more effective model of trustee-based governance. Jacobson and Decker (2008) argued that effective trust-based governance depends on the trustees recognizing and fulfilling their role under the PTD. Because state governments retain the majority of responsibility under the PTD, it is critical that wildlife professionals working for SWA's fully understand both the PTD and their role and responsibilities under this fundamental doctrine.

Most PTD literature refers to government generically as the public's trustee, without differentiating between the legislative, executive, and judicial branches established by the United States' and individual states' constitutions (Horner 2000, Mahoney 2006, Batcheller et al. 2010, Jacobson et al. 2010). This broad reference to government overlooks the important distinctions between the roles and responsibilities of the three branches of government. It also ignores the difference between elected and appointed officials within the executive branch and career civil servants, including most SWA professionals.

I argue that legislators and the commissioners to whom legislators have delegated specific authorities are the primary trustees of the public's wildlife. Governors and appointed agency directors in the executive branch also serve to some degree as trustees. In contrast, SWA professionals are trust managers. I describe the non-trivial differences between trustees and trust managers and explain why the PTD would be more consistently followed if SWA professionals focus on their role as trust managers while supporting and respecting the role of elected and appointed officials as trustees.

The judicial branch also plays a critical role with respect to the PTD. Not only was the court the origin of the PTD in American law (Bean and Rowland 1997), the judiciary is the people's source of redress if the legislative or executive branches of government fail to perform their duties under the PTD (Sax 1970, Horner 2000). However, a thorough treatment of the complex legal issues and role of the courts

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regarding the PTD is beyond the scope of this paper. Readers interested in more detail on these topics should refer to Sax (1970), Bean and Rowland (1997), Horner (2000), Wood (2009), and Batcheller et al. (2010) as well as the references and case law cited by those authors.

WHO ARE THE TRUSTEES OF THE PUBLIC'S WILDLIFE?

Analysis of the structure of governance in the United States supports the proposition that state legislators, and the citizen commissioners to whom the legislatures have delegated limited rule-making authority, are the primary trustees under the PTD. The U.S. Supreme Court, ruling in the seminal case, *Illinois Central R.R. v Illinois*, 146 U.S. 387 (1892), clearly viewed the legislature as the public's trustee under the PTD. Justice Field wrote in the case that, "Every legislature must, at the time of its existence, exercise the power of the State in the execution of the trust devolved upon it" (146 U.S. at 460).

The role of the legislature as the people's trustee is further reinforced by consideration of one of the basic tenets of trust law. A trustee must either possess or have effective ownership control of the corpus of the trust to make decisions regarding management of the trust and distribution of proceeds from the trust in the interest of the beneficiaries.

Under the PTD, ownership of wildlife is generally construed as being collectively vested in the public at large, until an animal is reduced to the possession of an individual through taking by means authorized by law (Bean and Rowland 1997). Through adoption of state constitutions, the citizens of each state have granted the power to enact the laws that govern the taking of wildlife to the legislature. Thus to the extent the people have empowered any branch of government to exercise control over their collective ownership of wildlife, they have done so to their elected representatives in the legislature, not to the executive branch or judiciary.

In most states, the legislature has created a citizen commission charged with oversight of the SWA and has delegated to the commission limited authorities such as regulating methods of take and allocation of wildlife harvest. The primary purpose of establishing commissions during the first half of the last century was to insulate decisions affecting the public's wildlife from the vagaries of partisan politics in the legislative arena or Governor's office (Management Assistance Team 2007). Horner (2000) argued this insulation from political influence is essential to effective application of the PTD. Nevertheless, commissions derive their existence and power from statutes adopted by the legislature. Individuals nominated to serve on the commission are generally subject to confirmation by the senate and commission decisions can be overturned by a simple majority of the legislature. Thus, while commissions serve as trustees, they do so subject to the oversight and will of the legislature.

Governors and their appointed agency directors within the executive branch also serve to some degree as trustees through participation in the legislative process, nomination of commissioners, and setting policy for wildlife use and conservation. However, most of the policy-level decisions made by these officials fall within constraints set by the legislature.

Jacobson et al. (2010) suggested that "...trustees should be qualified, competent, impartial, and assiduous to the interests of all trust beneficiaries. There should be a mechanism for their replacement if they prove deficient in any of these requirements, and the Trust beneficiaries should have the capacity to initiate the removal of a trustee following due process, along with a voice in the selection of new trustees." While legislators and governors demonstrate varying degrees of qualification, competence, impartiality, and assiduousness with respect to their duty under the PTD, the people of the state (the beneficiaries of the trust) select and remove legislators and governors (trustees) through the elective process on a regular basis. These officials, in turn, regularly replace commissioners and directors. The same cannot be said of SWA professionals.

SWA professionals are civil servants whose jobs are typically protected by employment law, subject to removal only for cause. SWA professionals operate within statutory limits set by the legislature, budget constraints set by the legislature or in a few states the commission, and policy direction from the governor, commission, and director. SWA professionals are trust managers, not trustees.

THE DIFFERENCE BETWEEN A TRUSTEE AND A TRUST MANAGER

The differences between trustees and trust managers are neither trivial, nor merely semantic. Under trust law, a trustee is charged with a fiduciary duty to preserve the assets of the trust in the long-term best interest of the beneficiaries. To fulfill that duty, the trustee must be aware of the current value of the trust as well as the potential to increase the value of the trust through prudent management. The trustee must weigh the risks associated with alternative management strategies against the potential for returns that would increase the corpus or dividends of the trust. The trustee must weigh the immediate needs and desires of the beneficiaries against the duty to sustain the trust and resolve any competing demands among the beneficiaries. In consideration of all the foregoing, the trustee must determine the amount of the corpus or earnings of the trust that should be distributed to the beneficiaries, as well as the allocation of benefits among beneficiaries. Fulfilling this fiduciary responsibility requires consideration of complex trade-offs and making policy-level decisions. Beneficiaries can initiate legal action to hold a trustee directly accountable if the trustee fails to fulfill these fiduciary responsibilities.

In contrast, the role of a trust manager is to monitor and manage the corpus of the trust to attain the goals set by the trustees, report on the status of the trust to the trustees and the beneficiaries, and distribute the proceeds consistent with the direction of the trustees. These responsibilities require knowledge and expertise in management of the trust assets, but are predominantly executive or ministerial functions.

Trust managers are accountable directly to the trustee, but not the beneficiaries.

In the context of wildlife conservation, policy-level decisions regarding the state's wildlife are predominantly made by elected and appointed officials. Decisions regarding what species can be taken by anglers or hunters; what programs SWAs are authorized to implement to create, increase, or sustain harvestable surpluses (e.g., setting aside habitat preserves; predator control); and the allocation of harvest among beneficiaries are decisions typically made in statute or rule by the legislature or commission. Governors and agency directors also make policy-level decisions related to programs, budgets, and management goals, though most of these officials' decisions fall within limits set by the legislature or commission. All elected and appointed officials are directly accountable to the public through both the ballot box and courts where citizen suits typically name elected or appointed officials as the plaintiff.

The day-to-day management of the public's wildlife, including such activities as survey and inventory of populations, habitat management, law enforcement, harvest monitoring, etc. is conducted by SWA professionals. Although SWA professionals are, rightly, charged with developing management options, defining trade-offs, and making recommendations with respect to higher-level policy decisions, the authority for those decisions remains with elected and appointed officials in almost every case. Citizens who are not satisfied with the performance of SWA professionals typically seek redress through their elected and appointed officials rather than filing suit against the professionals. Indeed, in most states, SWA professionals are protected from civil liability in the performance of their duties.

THE IMPORTANCE OF PARADIGM

Recognizing the distinction between the roles and responsibilities of elected and appointed officials versus SWA professionals is essential to advancing application of the PTD. The authors of the United States' constitution thoughtfully crafted a system of governance that separated and balanced the power and authority for policy-making, executive functions, and judicial oversight of government. That constitution, upon which state constitutions are modeled, vests the majority of policy-making authority in the legislative branch, where all members are elected by the citizens. In the executive branch, the power to veto a legislative decision is restricted to the President or Governor, who are also elected, and any veto is subject to potential override by the legislature. This is a deliberate construct to ensure that all the individuals setting major policy are directly accountable to those affected by those policies.

Legislators and governors are keenly aware of the fact that they serve at the pleasure of the electorate. These elected officials and the individuals they appoint must take into consideration a broad range of factors during their deliberations. They must weigh all the biological, social, economic, and political implications of their decisions. These officials also face the direct consequences of making a policy level decision, for better or worse.

In my experience, elected and appointed officials take offense when SWA professionals expect rubber stamp approval of their recommendations. This is particularly true when professionals' recommendations are influenced by the wildlife-related values of SWA professionals which have been shown to differ significantly from the general public to whom elected and appointed officials are directly accountable (Gill 1996, Giglliotti and Harmoning 2003, Teel and Manfredo 2009). The resulting tension between these officials and SWA professionals undermines the working relationship that SWA professionals must maintain if they expect to influence higher-level decision makers.

Finally, if SWA professionals view themselves as trustees of the public's wildlife, given the basic tenet of trust law cited above, SWA professionals must also perceive they have ownership control over wildlife. That perception can lead to resistance to public participation and a broader range of stakeholder involvement in decision-making which runs counter to the reforms promoted by Jacobson et al. (2010).

HOW CAN SWA PROFESSIONALS ENHANCE TRUST-BASED GOVERNANCE?

Jacobson and Decker (2008), Batcheller et al. (2010), and Decker et al. (2010) argued that wildlife conservation would be more effective if the PTD were more widely understood by the public and explicitly articulated in constitutional or statutory law, rather than existing largely as common or judge-made law. These authors suggested that SWA professionals inform elected officials and the public about the PTD and participate in the process of embedding the PTD in the body of their state's legal foundation. I agree, and would argue that no group is better suited to this task than SWA professionals. Surveys demonstrate that the public places a high degree of trust in SWA professionals (Duda et al. 2010). SWA professionals should study the PTD and leverage their credibility with the public to communicate the importance of the PTD to conservation at every opportunity.

SWA professionals should work with both elected and appointed officials and the general public to draft statues or constitutional language and participate both as professionals and citizens, themselves, in efforts to codify the PTD. SWA professionals can minimize the perception that they are attempting to enhance their own power at the expense of elected and appointed officials or the public in this process by emphasizing and respecting the difference between the roles of trustees, beneficiaries, and trust managers.

Jacobson and Decker (2008) argued that in some states, elected and appointed officials fail to fulfill their responsibility as trustees for all of the public. These authors and others have suggested that changes to the wildlife governance structure, such as how commissioners are selected, may be necessary to improve application of the PTD. Restructuring of governance may be beneficial or even necessary, but in the interim, SWA professionals can increase the extent to which elected and appointed officials perform as trustees by redoubling efforts to inform the public about the PTD. A well-informed public will hold elected and appointed

officials accountable as their trustees much more effectively than SWA professionals can. A well-informed public would also be essential to drive the larger political processes required to restructure governance.

SWA professionals may be tempted to assume the role of trustees in states where elected and appointed officials are derelict in their duties. However, doing so is counterproductive for at least two reasons. First, by attempting to perform as trustees, rather than taking steps to assure elected and appointed officials are doing so, SWA professionals will enable continued failure of the trustees to fulfill their duty under the PTD. Second, if SWA professionals assert themselves as the people's trustees, they will very likely alienate elected and appointed officials.

If elected and appointed officials are not fulfilling their role as trustees of the people's wildlife, SWA professionals should inform these officials, respectfully, of their duties and the consequences of violating their fiduciary responsibility. This can be a challenging task, given the degree of control elected and appointed officials have over resources available to SWA professionals and the underlying responsibilities of SWA professionals to execute policies set by elected and appointed officials. In addition, the deliberate tension created by the separation of powers between the legislative branch and the elected and appointed officials in the executive branch has the potential to place SWA professionals in the middle of political contests, with conflicting direction coming from the legislature, commission, governor, and director.

SWA professionals will be most effective operating in this complex political environment if they have earned and retain the respect of elected and appointed officials. Essential individual and organizational behavior to gain and keep the respect of elected and appointed officials includes being open and honest in all interactions, respecting the roles and authorities of these officials, and communicating directly with them first about disagreements or areas of potential violation of the PTD. Nothing will undermine an SWA professional's effectiveness with elected and appointed officials more than surreptitiously communicating with special interest groups or the public to incite opposition. Avoiding passive or insubordinate behavior such as resisting implementation of decisions by elected and appointed officials with which SWA professionals may personally disagree, but that do not violate the PTD, is also an essential element of a respectful working relationship. In my experience, by focusing on providing thorough, objective decision support (i.e., information, analysis, and advice), while recognizing and respecting the role of elected and appointed officials to establish policy, SWA professionals can have greater influence on decisions over the long term.

Obviously, if the legislature proceeds with a decision or action that appears to violate the PTD, SWA professionals have an obligation, as part of the executive branch, to support intervention by the judiciary, consistent with the constitutional role of the courts in resolving disputes between the legislative and executive branches. SWA professionals can minimize the impact of involving the court on their future relationship with legislators by being up front about the dispute and ensuring that the case is tried in the court, not the media, and that arguments are based on facts and the law, not personal or political opinions or motivations.

SWA professionals can also enhance application of the PTD by helping trustees understand the needs and desires of the beneficiaries. People often express their needs or desires to elected and appointed officials in the form of public comments on proposed legislation or rules. While certainly valuable to the political process, and highly valued by the public, this type of information can easily be influenced by activist campaigns or lobbyists and may only reflect the views of those interests that strongly favor or oppose a given proposal (Peterson and Messmer 2010).

SWA professionals can ensure that elected and appointed officials have more complete and balanced information regarding the public's values, needs, or desires. The increasing number and role of human dimension specialists within SWA's speaks to the recognition that wildlife conservation and management is about much more than biology. Fully understanding the social, economic, and political aspects of management decisions is equally important to informed decision-making under the PTD. SWA's should apply as much, and as rigorous, science to these areas as they do the biological aspects of wildlife conservation. As recommended by Decker et al. (1991) in the process of generating options, defining trade-offs, or facilitating consensus building, SWA professionals must also be vigilant to avoid either filtering information or attempting to influence the outcome with their own values.

In addition to assessing the public's needs and desires, SWA professionals are ideally positioned to identify and resolve competing or conflicting demands among the beneficiaries. Most wildlife management decisions involve trade-offs, with different parties bearing costs or reaping benefits. If the competing or conflicting interests are not provided a way to seek constructive resolution of their differences prior to the time when a legislative body or commission is faced with making a decision, these trustees will be forced to make a decision with a higher probability of creating winners and losers. Interests that lose in one round of decision-making may attempt to obstruct implementation of the decision through whatever means are available (e.g., legal challenges) or seek to reverse the decision at the next opportunity (e.g., election cycle, commission meeting, ballot initiatives, etc.). This results in wasted time and resources and potentially flip–flop management approaches. It is often more productive to invest the time in seeking broad-based, collaborative recommendations that lead to politically stable policy decisions through consensus building ahead of decision-making (Jacobson and Decker 2008). Many SWA's have recognized the value of this approach and are hiring or training professionals within their ranks with the necessary skills to facilitate conflict resolution and participatory democracy.

CONCLUSION

More effective application of trust-based governance is critical to the future of wildlife conservation and management. The PTD will be more consistently applied when the parties

involved in trust-based governance understand their roles and fulfill their respective responsibilities. At the state level, legislators and commissioners are the primary trustees, responsible for most policy-level decisions regarding the corpus of the trust and allocation of benefits. Governors and their appointed agency directors also have responsibilities as trustees. SWA professionals are trust managers, responsible for executive functions, consistent with the direction set by the trustees.

SWA professionals can best advance application of the PTD by informing elected and appointed officials about their roles and responsibilities as trustees, informing the public about their rights and responsibilities as beneficiaries under the PTD, and working to embed the PTD in codified law. If the public fully understands the PTD, the citizens of a state will be more effective in holding elected and appointed officials accountable than SWA professionals can be. SWA professionals must not attempt to fill the role of trustees to avoid enabling dereliction of duty by elected and appointed officials and to maintain effective working relationships with these officials. SWA professionals will be more effective and have greater influence on decisions of the trustees if they respect the respective roles of all parties under the PTD.

Fulfilling their role under the PTD requires SWA professionals to continue to excel at traditional activities, such as population and harvest monitoring, biological and human dimensions research, and law enforcement, as well as expanding and enhancing efforts related to communication, education, and public engagement in decision making. It also requires SWA professionals to inform and support the decisions of policy makers and the general public while holding their own values in check. This is a high standard to achieve, but no one ever said being a professional was easy.

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