



The Public Trust Doctrine

Implications for Wildlife Management and
Conservation in the United States and Canada

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SYNOPSIS

The Public Trust Doctrine (PTD), with its origin in Roman civil law, is an essential element of North American wildlife law. The Doctrine establishes a trustee relationship of government to hold and manage wildlife, fish, and waterways for the benefit of the resources and the public. Fundamental to the concept is the notion that natural resources are deemed universally important in the lives of people, and that the public should have an opportunity to access these resources for purposes that traditionally include fishing, hunting, trapping, and travel routes (e.g., the use of rivers for navigation and commerce).

The PTD is also recognized as an essential foundation of what has been termed the “North American Model of Wildlife Conservation” (the Model; Geist 1995). This model is viewed as an important construct of law, policy, program framework, and scientific investigation that has led to the protection, conservation, and restoration of wildlife populations in the U.S. and Canada (Geist *et al.* 2001). The underpinnings of the PTD and the future relevance and successful application of the Model may be at risk due to recent changes in society, government policies, and case law (Organ and Mahoney 2006).

Several significant threats have been identified that directly or indirectly erode or challenge the PTD in North America (e.g., Geist and Organ 2004). These threats undermine existing state, provincial, and federal laws, as well as governmental policies and programs. Moreover, they inhibit sound conservation practices for fish and wildlife resources. Approaches to wildlife conservation that for many decades have afforded protection and ensured the sustainability and conservation of wildlife populations are dependent on the legal underpinnings of the PTD. The degree and magnitude of the threats are not universal, though the following issues have been recognized as significant challenges: inappropriately claiming ownership of wildlife as private property; unregulated commercial sale of live wildlife; prohibitions on access to and use of wildlife; personal liability issues; and a value system oriented toward animal rights (Organ and

THE NORTH AMERICAN MODEL OF WILDLIFE CONSERVATION

The North American Model of Wildlife Conservation has seven distinctive components (Geist *et al.*, 2001):

1. Wildlife as a public trust resource.
2. Elimination of markets for wildlife.
3. Allocation of wildlife by law.
4. Wildlife can only be killed for a legitimate purpose.
5. Wildlife is considered an international resource.
6. Science is the proper tool for discharge of wildlife policy.
7. Democracy of hunting.

Mahoney 2006, Organ and Batcheller 2009). These threats in various ways are potentially harmful to the long-standing tenet that wildlife is a public trust resource.

Concerns regarding these threats and their overall effects led to this technical review, which includes an assessment of the current status of state and provincial statutes and case law related to the PTD. This review examines the benefits of the PTD and also outlines the role of government agencies and their stakeholders in maintaining public trust resources and the rights, privileges, and benefits that the PTD bestows upon the public. Recommendations are set forth with the objective of enhancing the PTD. Securing the PTD is seen as a significant action relevant to the continued protection, conservation, and public use of wildlife resources in North America.

INTRODUCTION

Wildlife professionals have used the Model to describe the system of conservation and natural resource management that has developed over the past two centuries in the U.S. and Canada

(Geist 1995). The PTD—as it relates to water resources, submerged lands, and by extension to fish, wildlife, and other natural resources—provides the cornerstone upon which the highly successful Model was built.

In support of the Model, the North Dakota Chapter of TWS requested that TWS adopt the seven principles of the Model as a basis for guiding and providing input on wildlife management policy, work to enshrine the Model into international treaty law between Canada and the U.S., develop education and information strategies in support of the Model, and seek the support of other conservation organizations to pursue similar actions.

Following the 2006 WAFWA annual conference in North Dakota, a resolution was adopted to encourage the development of a strategic plan to strengthen application of the PTD among member states and provinces and to facilitate a legal analysis, in cooperation with AFWA, WMI, and TWS, of the current status of the Doctrine in member states and provinces.

In March 2007, TWS approved a position statement on the Model, as well as a proposal to prepare a technical review of the PTD in collaboration with WAFWA, AFWA, and WMI. The purpose of this technical review was to: (1) synthesize and interpret existing materials on the PTD as it relates to wildlife management and conservation; (2) review the status and scope of state and provincial legislation as it relates to the PTD; and, (3) identify components that should be included in state or provincial statute, state or provincial wildlife agency charter, or other authorizations and executive proclamations to ensure a legally defensible PTD. Questions that guided the technical review committee focused on legal “ownership” of wildlife, origins of state or provincial laws addressing issues of wildlife management and conservation, clarity of agency authority to manage wildlife, legal tenets that provide evidence the PTD is in place, variability among laws or protection among jurisdictions or among various wildlife species, and competing agency authorities (i.e., among state wildlife and agriculture departments, or between state and federal agencies).

AN OVERVIEW OF THE PUBLIC TRUST DOCTRINE

The Trust Defined and Why it Matters

Simply defined, a trust is a collection of assets committed or entrusted to one to be managed or cared for in the interest of another. The party to whom the trust assets are committed is commonly referred to as the trustee, whereas the party for whom the assets are being managed is referred to as the beneficiary of the trust. Accordingly, the PTD holds that publicly owned wildlife resources are entrusted to the government (as trustee of these resources) to be managed on behalf of the public, the beneficiaries. Consequently, governmental institutions do not own trust resources; rather, they are owned by the public and are entrusted in the care of government to be safeguarded for the public's long-term benefit.

The PTD has been described by some as the cornerstone of the Model (Geist *et al.* 2001, Geist and Organ 2004, and Prukop and Regan 2005). This viewpoint holds that the PTD establishes the core principles central to the Model—the notion that wildlife is a public resource, managed for the common good, and held in custodianship by a cadre of trained professionals who serve as trustees (Brulle 2000) and are held accountable by the beneficiaries, the public.

Alternative models have developed in other countries and are frequently based on privately owned fish, wildlife, and habitat managed for personal or corporate gain. In such cases, the general public may receive little or no apparent benefit from wildlife resources. A number of undesirable outcomes may result from a system of wildlife management not anchored on a PTD foundation including:

- (a) a diminished connection or indifference toward wildlife resources stemming from a disassociation with nature, which means wildlife may become irrelevant to the general public thereby reducing public support for conservation.
- (b) wildlife resources that are viewed as an artifact of the past, separated from modern life, to be seen and appreciated yet