

A SCENT OF ABDICATION By Howard N. Ellman

Are our federal and state wildlife agencies properly performing the functions for which they were established? More specifically, do the U.S. Fish & Wildlife Service and state wildlife commissions give due respect to the various multiple functions assigned to them?

A case in point: At a certain level of “take,” regardless of cause, the duty to preserve and enhance a particular wildlife population conflicts with the obligation to accommodate and preserve recreational hunting of that particular wildlife species.

An agency charged with both responsibilities – such as the service and many state commissions -- must provide a *political* solution to a *biological* problem. It must manage the tension between these two goals, strike the appropriate balance between them, carefully assigning priorities while giving due respect to both.

Granted, the task is not a simple one. But today, many wildlife agencies appear to “resolve” issues by ignoring them, all the while remaining blind to their political mandate as well as the accompanying legal authority they possess to address and resolve the issues. They do so when they disclaim any responsibility for regulating the “method or means” of take. (The spinner controversy brought this issue to the fore, but spinners are only a manifestation of the problem, not the problem itself.)

Congress created the service’s predecessor agency in 1871 for the express purpose of imposing limitations on hunting at a time when excessive “harvest” threatened many of our wildlife species with extinction. In 1903, the Theodore Roosevelt administration assigned to the Service responsibility for managing the first national wildlife refuge, a small sanctuary for protection of endangered pelicans. That system has now grown to the point where it includes tens of thousands of acres in more than one hundred refuges and other properties managed by the service under its refuge mandate.

Legislation passed in 1996, building on earlier enactments, requires the service to adopt a plan for public use and enjoyment of properties managed by the agency to the extent that such use can be made compatible with its primary purpose. National wildlife refuge and wildlife production reserves now encompass hundreds of separate properties comprising millions of acres. The system expands by the year to include properties owned outright by the federal government and land administered under various easement programs.

Starting from a protectionist and policing position, such as imposing restrictions on hunting and establishing sanctuaries, the service’s responsibilities have expanded to require accommodation of “compatible” uses. Preservation and enhancement of the

resource remains its primary goal – but the Service is also charged with the responsibility to expand the quantity and quality of recreational hunting to the extent that such activities can be made compatible with its primary function.

In the past, the service managed the tension between these two objectives by adopting restrictions on the methods and means of take that it deemed incompatible with resource preservation. In waterfowl management, these included bans on the use of live decoys, baiting, use of shotguns larger than 10 bore, use of shotguns with magazines that accommodate more than three shells, night shooting and the use of electronic calling devices.

None of these restrictions were held in abeyance pending completion of “scientific” studies to demonstrate a higher harvest rate and an adverse effect on waterfowl populations. The service adopted the restrictions using a process of deductive reasoning - - any method or means of take, so obviously lethal, could only harm populations under certain conditions likely to occur with more or less regularity in the normal ebb and flow of the population cycle. And because a numerous, healthy and relatively stable population creates the essential predicate for enhanced hunting opportunity, the service could achieve its secondary goal by acting affirmatively to aid the paramount one. Or, to paraphrase our motto here at Madduck, “if we take care of the ducks, there will be ducks to take care of us.”

Well and good. Except that the service now rejects this approach, even suggesting that it may have been mistaken when adopted. Specifically, the service now disclaims any interest in or responsibility for regulating “methods and means” of take in the absence of scientific evidence that the particular method or mean in question adversely affects populations. It chooses to ignore the failure of its main strategy for producing a consistently bountiful fall flight -- the purchase of vast tracts of breeding habitat at great cost. Worse, the service and certain state commissions declare that if science demonstrates that a particular method or mean adversely affects populations, they will shorten seasons and cut bag limits rather than outlaw the offending practice. (Consistency would suggest that the bans on baiting, live decoys, electronic calling, etc. should therefore be lifted -- and let the devil take the hindmost.)

To get a true perspective on the service’s current position, assume the following case: Some genius of modern technology invents an attracting device that devastates the birds in the hands of each and every hunter who uses it, regardless of skill. Maybe it’s an array of strobe lights, or an ultra-high frequency sound-maker, or an odor-emitting machine, or whatever. Assume that the device is freely available through the usual sporting goods and catalog outlets at a reasonable price. Let’s further assume that the device increases the killing efficiency of hunters, otherwise equipped in conventional fashion, by a factor of five, or even ten.

Are we prepared to accept the notion that shortened seasons and lowered bag limits are the only proper regulatory response to such an invention? How does that response serve the goal of preserving and enhancing hunting opportunity and recreational enjoyment of

the resource? Do you define “hunter opportunity” as a few days afield equipped with a gizmo that allows you to collect a bag limit in 28 minutes, without fail? Or does your expectation tend toward a different scenario – a chance to experience the full range of the fall and winter migration season over the course of several outings, with a legitimate challenge each time – including the possibility that you might come in some days with a light strap, or no birds at all?

That, my friends, is a rhetorical question. The notion that “methods and means” are not the subject of proper regulation is the type of specious claptrap that gives hypocrisy a bad name. Indeed, “methods and means” provide an inescapable connection between the dual goals of preserving and enhancing waterfowl populations and providing hunter opportunity in a manner consistent with that objective. In the climate of accelerated technological innovation that prevails today, regulation of methods and means is perhaps more imperative than it has ever been in the past. For the service, or any state commission, to take the opposite approach represents a flagrant abdication of responsibility.

Unfortunately, we speak here of positions currently espoused. Those of us who care both about the well-being of the birds and preservation of recreational hunting opportunity must demand that the agencies in question step up to their responsibilities in both pans of the balance.

We have the right to insist upon policies crafted to create and nurture high, relatively stable populations with the maximum recreational opportunity that can be provided in a manner consistent with that goal. You simply can’t get there by washing your hands of responsibility for the methods and means of take. It is well past time for the service, in particular, to recognize and act on that fact.

And the same goes for each and every state commission of like mind.

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