Federal Land Agency Managers'

Frequently Asked Questions

About Fish and Wildlife Management on Federal Lands

Disclaimer: The following are some of the more frequently asked questions about fish and wildlife management on federal lands, from the perspective of federal land managers. We are not writing as representatives of the University of Montana or the Montana University System. The answers found below are provided by the authors of the Article ("Fish and Wildlife Management on Federal Lands: Debunking State Supremacy") (PDF) and based on our research. Short answers are provided by the research team, with references to what parts of the Article discuss an issue in more depth.

On General Authority

1. Does the federal government have any authority to manage wildlife on federal lands?

Yes. The U.S. Constitution grants the federal government the authority to manage its own lands and resources, fulfill its treaty obligations, and control interstate commerce, even in the face of objections from the states. Federal land laws also *require* the conservation and management of wildlife by federal land agencies. See Part III.

2. Doesn't the state own wildlife and manage it as a trust resource?

States don't "own" wildlife in the way most commonly understood. When states have argued that their "ownership" of wildlife necessarily trumps that of the federal government, the Supreme Court called state ownership of wildlife a "19th-century legal fiction." Hughes v. Oklahoma, 441 U.S. 322 (1979). (See pp. 907-911).

Most states use trust or trust-like language in proclaiming their "sovereign ownership" of wildlife, meaning that wildlife must be managed in the public interest for state citizens. This trust responsibility is a serious one, but most states have done little to clarify what affirmative conservation duties go along with this trust responsibility. As is the case with the public trust doctrine more broadly, there are many unanswered questions about the exact parameters and possible applications of a "wildlife trust," if the term is to be taken literally. (See pp. 806-808).

Also important to recognize is the trust responsibility of federal land management agencies. Many federal land laws include trust-like language pertaining to the *national* interest in federal lands, non-impairment of their resources, and intergenerational responsibility that further clarifies the federal obligation to conserve wildlife. This trust responsibility is acknowledged in case law and Interior Policy (43 C.F.R. § 24.1(b)). (See pp. 902-906).

3. Legal ownership aside, doesn't a state have total control of wildlife within its borders no matter who owns or manages the land the wildlife inhabits?

No. While states have well-established historical responsibility over the wildlife within their borders, this responsibility is not exclusive or dominant. While states have significant responsibility for wildlife management, that responsibility does nothing to limit the vast constitutional and statutory authorities of the federal government to manage and conserve wildlife. (See Part III)

If there is a conflict between federal and state laws regarding wildlife, the doctrine of federal preemption, derived from the Supremacy Clause of the U.S. Constitution, holds that state law must yield to federal law. Preemption can occur where Congress expressly preempts state law, where Congress occupies a field of law, or where state law interferes with the implementation of federal law. (See pp. 836-838).

4. Doesn't the 10th Amendment to the U.S. Constitution give wildlife management power to the states?

No. States have repeatedly made this argument in court, without success. As far as wildlife is concerned, the 10th Amendment simply prevents the federal government from forcing state governments to carry out federal regulatory schemes, but it cannot prevent the federal government from implementing those schemes itself. (See pp. 829-833).

5. Don't federal public land laws say something about the power of the states to manage wildlife on federal lands?

Yes. Congress did this in what are called "savings clauses," which are found in most federal public land laws (but not in the National Park Service Organic Act). These provisions demonstrate Congress's desire to acknowledge some level of state responsibility over wildlife management. But in no way should these clauses be interpreted to diminish the federal government's vast constitutional and statutory authority to manage its own lands and resources, even when objected to by a state. The savings clauses do nothing to change the fact that state law cannot conflict with or undermine federal prerogatives. (See pp. 836-838).

6. Doesn't the Code of Federal Regulations pertaining to the Department of Interior give the states the "primary" authority for managing wildlife on land managed by Department of Interior agencies?

No. This is the language from 43 CFR 24, but the word "primary" is not defined, and is found in what is actually a policy statement rather than a regulation, which was not subject to the rulemaking requirements of the Administrative Procedure Act, and as such does not carry the force of law. Furthermore, the word is used in an inconsistent and unhelpful fashion throughout the policy, such as saying "where States have primary authority," without explaining where states have such authority.

Another part of this policy, claiming that the Federal Land Policy and Management Act (FLPMA), "explicitly recognized and reaffirmed the primary authority and responsibility of the States for management of fish and resident wildlife on such lands," is simply wrong because the statute does not even use the word primary nor is it implied in the law.

Other language in the policy statement also recognizes the significant constitutional authorities provided to the federal government and that state authority over fish and wildlife is subject to overriding federal law. Furthermore, the policy says that fish and wildlife "are held in public trust by the Federal and State governments for the benefit of present and future generations of Americans" and makes clear that "Congress may choose to preempt State management of fish and wildlife on Federal lands…".
(See pp. 875-876 and pp. 913-916).

7. Isn't it true that the federal agencies just manage the wildlife habitat and the state agencies manage the wildlife populations?

No. This is a myth that has no basis in federal law. Federal land management agencies have an obligation, and not just the discretion, to manage and conserve fish and wildlife on federal lands. While they differ in significant ways, the laws governing federal public lands require these lands to be managed for fish and wildlife conservation and not just habitat.

The myth is also illogical from a biological perspective and it creates a reductionist and oversimplified dichotomy between wildlife and habitat. It is also not followed in practice by federal or state agencies, such as when states attempt to exert control over federal habitat by supplying supplemental water or forage.

In sum, the myth is not only wrong from a legal standpoint but it leads to fragmented approaches to wildlife conservation, unproductive battles over agency turf, and an abdication of federal responsibility over wildlife. (See pp. 897-907).

8. Must a federal agency follow a state wildlife management plan?

No. But the key question is whether there is a conflict between the state wildlife management plan and federal law or regulation. If there is a conflict, the doctrine of federal preemption, derived from the Supremacy Clause of the U.S. Constitution, holds that state law must yield to federal law. Preemption can occur where Congress expressly preempts state law, where Congress occupies a field of law, or where state law interferes with the implementation of federal law. However, a federal agency may choose to follow a state plan if there is not a conflict with a federal law or regulation. (See pp. 836-838).

9. Don't federal public land laws require some form of coordination with the states when it comes to wildlife management?

Yes. Most federal public land laws (other than the National Park Service Organic Act), among others such as NEPA, include opportunities for coordinating federal planning processes with state and local governments. These provisions provide a constructive, but often underutilized, opportunity for federal and state governments to plan for the management and conservation of wildlife across political jurisdictions. However, these provisions do not give state and local governments authority to manage federal land nor do they require federal agencies to manage federal land in ways that are consistent with non-federal plans. Though coordination is a worthy endeavor, these laws make clear that it cannot come at the expense of federal agencies meeting their statutory obligations. Federal agencies may exercise their discretion contrary to state interests.

See pp. 854-855 (covering USFWS), pp. 865-867 (covering USFS), pp. 873-876 (covering BLM) and pp. 926-931 (explaining how these provisions could be more effectively used by federal and state governments).

10. Is there a legal basis for the North American Model of wildlife management?

No. Other than its first principle—that "wildlife resources are a public trust"—the Model has no independent legal authority and is not supported by federal jurisprudence. Providing such support would be difficult given the vagueness and ambiguity of most of the Model's broadly-stated principles. The Model is often incoherent as a guide for decision making and so full of exceptions that it leaves most of the central issues of modern wildlife conservation unaddressed. Because the Model does not set out a clear and coherent framework for managing wildlife, states often apply its principles selectively and fail

to abide by key tenets of the Model. Furthermore, The Model's focus on state primacy and hunting (and the license-based revenue it generates for the states) is much narrower than the national conservation mandates provided to federal land agencies. (See pp. 811-814 and pp. 911-913).

11. Does the federal government require state approval to introduce species or individual animals on federal lands or to remove them (including game species)?

No. As a landowner, the United States has proprietary interests over its lands and resources; as a government, it also has sovereign powers over its lands and resources. The Property Clause gives Congress "the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

The Property Clause power to protect the public lands may also be used to protect natural resources that are intimately associated with the public lands, such as wildlife, water, and air. In *Hunt v. United States* (1928), the Supreme Court held that the Property Clause included the power to thin overpopulated herds of deer on federal lands in order to protect forest resources, even if the federal action was contrary to state law.

The Court subsequently construed *Hunt* quite broadly in *Kleppe v. New Mexico*, stating that, while *Hunt* found that "damage to federal land is a sufficient basis for regulation. . . , it contains no suggestion that it is a necessary one." The Supreme Court stated that the Property Clause power "necessarily" includes protection of wildlife "integral" to the public lands. The court explained that while "the States have broad trustee and police powers over wild animals within their jurisdictions . . . , those powers exist only 'in so far as (their) exercise may be not incompatible with, or restrained by, the rights conveyed to the federal government by the constitution.'"

Consequently federal agencies have regulated some aspects of hunting, fish and trapping. They have also reintroduced species over the objections of states.

(See pp. 819-825.)

12. Must state governments obtain permission from federal agencies for state actions on federal land to manage wildlife (including introductions and removals)?

It depends on whether the federal agency has a legal duty to act. Such duties may be found in statutory authorities or in regulations furthering the purposes of those authorities. It is important to distinguish those circumstances where the agency has a duty to act from those where the agency has the authority to act but action is discretionary. A failure to engage in a discretionary act is characterized by law as mere "inaction" while a failure to execute a mandatory duty is characterized as a judicially reviewable "failure to act."

The federal agencies have, where necessary, determined through regulations the circumstances where permits or other approvals are required prior to the use and occupancy of federal lands. In general, failure by a federal agency to require the necessary approval represents a "failure to act" and may result in the non-permitted activity being enjoined.

Typically, recreational public uses of federal lands by individuals do not require a permit, but permit requirements are likely to apply to most other circumstances. This would generally include state actions, and relevant federal agency permit requirements would apply. (See pp. 916-920).

13. Is NEPA required for state wildlife actions on federal land?

Yes, if there is a duty to act on the part of the federal agency (See Question 12). The authorization of state action by the federal agency is a federal action and subject to NEPA if the effects of the action could affect the quality of the human environment within the meaning of NEPA. (See pp. 916-920).

14. Can federal agencies authorize state actions on federal lands using MOUs or other documents with states that discuss state authority to manage wildlife?

Yes. It is the purpose of these MOUs to clearly delineate the authorities of the parties and assign responsibilities among them. It is critical that the assignment of authorities reflects federal legal obligations, and this should include identification of actions that would require a permit. Moreover, the MOU process should not be used to relinquish federal authorities without recognizing that such decisions may constitute actions subject to federal procedures required by NEPA or ESA. An important take-away point is that MOUs cannot be used to evade legal obligations. Neither can they change a regulatory requirement, as that can only be done through APA rulemaking, nor can MOUs be used to alter statutory provisions, as that power is reserved to Congress. (See pp. 916-920).

15. Are there any situations where a federal agency must tell a state "no?"

Yes. There are many federal laws that limit the discretion of federal agencies and require them to act. The Endangered Species Act is an obvious example. If a state were to propose an action on federal land that would violate ESA, the responding federal agency must say "no." There are other federal statutes that require protection of wildlife, such as the diversity provision of the National Forest Management Act which places substantive limits on Forest Service land management planning. The Wilderness Act is a federal statute that limits actions of federal lands to protect wilderness character, and is discussed in more detail below.

See pp. 838-897 (reviewing the most relevant federal land laws, regulations and policies)

Wildlife Management and the National Wilderness Preservation System

16. Does a state have to preserve wilderness character in a designated wilderness (or protect the Monument Objects listed in a National Monument Proclamation)?

No. Preservation of wilderness character is not a state responsibility. It is a federal responsibility. As such, the federal managing agency has the legal duty—clearly stated in the Wilderness Act—to preserve the area's wilderness character and assure that state actions are in conformance with this directive. This action on the federal agency's part is not discretionary, regardless of the federal agency involved. Similar federal duties are required to protect National Monument listed Objects. See pp. 881-883

17. Could a federal agency allow predator control in a designated wilderness or other federally-protected area?

It depends on the purpose for which the federal land is protected. In wilderness, the area is to be managed in such a way, as the Wilderness Act puts it, that "the earth and its community of life is untrammeled"—that is, uncontrolled—and in such a way as to "preserve its natural conditions." Predator control violates these requirements of the Act, and could be permitted only if required by some other federal law. (For instance, implementing the Endangered Species Act might require short-term control of predators of an endangered species.) (see pp. 880-886).

18. Is there a difference in a federal land managing agency's discretion if control efforts are initiated by USDA Wildlife Services as opposed to a state or county agency?

No. The federal agency still must—by law—preserve the area's wilderness character or Monument Objects. (See pp. 880-886).

19. If a state agency wants to do something in a Wilderness that does not protect wilderness character, do they have to get permission from the federal agency?

Yes. And if it does not protect wilderness character, the federal agency must deny the state action. In addition, the state needs to get permission from the federal agency if it wants to do something that might not protect wilderness character. It is the federal agency's responsibility to determine what actions those might be, and to determine if they might be allowed without degrading wilderness character. (See pp. 880-886).

20. Doesn't the so-called Savings Clause in the Wilderness Act give wildlife management responsibilities to the states?

No. Many federal land laws, including the Wilderness Act, include "savings clauses." These provisions demonstrate Congress's desire to acknowledge some level of state responsibility over wildlife management. But in no way should these clauses be interpreted to diminish the federal government's vast constitutional and statutory authority to manage its own lands and resources, even when objected to by a state. The savings clauses do nothing to change the fact that state law cannot conflict with or undermine federal prerogatives. Furthermore, the Wilderness Act unequivocally expresses the federal obligation to assert authority over fish and wildlife to assure the interests of all Americans in the preservation of Wilderness character. (See pp. 836-838).

21. Many wilderness areas have been designated with laws containing extra direction on wildlife management; don't these give authority for state actions?

Short answer:

No. In almost every instance, the law says that the states may do a variety of actions. Legally, this implies that there is discretion, and the discretion whether to allow it belongs to the federal managing agency, just as in any other wilderness. For a detailed analysis of this language, see long answer below. The outstanding exception is the law designating the Wovoka Wilderness containing language that creates an area called a wilderness but which does not conform to the Wilderness Act. (See pp. 887-893).

Long answer:

See also pp. 888-893 for additional context and full footnoted references.

An extensive series of additions that first appeared in the Clark County Conservation of Public Land and Natural Resources Act of 2002[1] deserves detailed attention, in part because they have been duplicated (with minor revisions) in subsequent bills in Nevada[2] and also in one bill in Idaho,[3] and in part because of

[1] Clark County Conservation of Public Land and Natural Resources Act of 2002, Pub. L. No. 107-282, § 208(a)-(f) (2002).
[2] Lincoln County Conservation, Recreation, and Development Act of 2004, Pub. L. No. 108-424, § 209(a)-(f); Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432, Div. C, Title III, Subtitle B, § 329(a)-(f); Carl Levin and Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, Div. A, Title XXX, Subtitle E, § 3064(e)(1)-(5) and § 3066(d)(1)-(5) and (e).
[3] Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, Title I, Subtitle F, 1503(b)(8)(A)-(C).

the confusion wrought by the Clark County additions. While this analysis is specific to the sections found in the Clark County law, it is easily applied to similar language in the other laws.

Subsection (a) of the Clark County additions is the reiterated wildlife boilerplate, but instead of saying nothing in this law "affects" the jurisdiction of the state, it says nothing "affects or diminishes" state jurisdiction. The change is redundant: if nothing "affects" then nothing "diminishes." This subsection changes nothing of substance from the reiterated wildlife boilerplate, which in turn changes nothing of substance from the language in the Wilderness Act itself.

Subsection (b) gives the Secretary authority to authorize otherwise prohibited uses if the Secretary determines their use is *necessary*[4] to "promote healthy, viable, and more naturally distributed wildlife populations that would enhance wilderness values and accomplish those purposes with the minimum impact necessary to reasonably accomplish the task."[5] Since this is the same authority that the Secretary has in every wilderness, this subsection changes nothing of substance from the authority found in the Wilderness Act itself.

Subsection (c), which refers to "existing activities," provides that: "Consistent with section 4(d)(1) of the Wilderness Act . . . the State may continue to use aircraft, including helicopters, to survey, capture, transplant, monitor, and provide water for wildlife populations in the Wilderness."[6] This language has caused confusion for land managers, state agencies, and non-governmental organizations alike. In part, this is because Section 4(d)(1) of the Wilderness Act has always been interpreted to mean the landing of aircraft by the public at established sites, rather than at any location for administrative use (which would be the case for the activities described in this subsection). Regardless, subsection (c), like section 4(d)(1) of the Wilderness Act, specifies that the state "may be permitted" to continue this use; in other words, the Secretary has discretion to allow it or not.[7]

Agency regulations and policy place parameters on the use of such discretion. BLM regulations state: "As necessary to meet minimum requirements for the administration of the wilderness area, BLM may… [p]rescribe conditions under which . . . State agencies or their agents may [land aircraft] to meet the minimum requirements for protection and administration of the wilderness area."[8] The wildlife section of BLM wilderness policy emphasizes that any prohibited uses "must be determined by the BLM to be the

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[4] Emphasis added. *See* 16 U.S.C. § 1133(c) (prohibiting motor vehicles and equipment, aircraft landing, and structures or installations unless "necessary to meet minimum requirements for the administration of the area for the purpose of this chapter").

[5] Pub. L. No. 107-282 § 208(b) (citing H. Rep. 101-405, App. B). Notably, this provision does not authorize activities to promote agricultural-style population increases in certain "desirable" species.

[6] *Id.* § 208(c) (citing 16 U.S.C. 1133(d)(1)). Subsection (c) also cross-references House Report 101–405 Appendix B, which provides at section B(1) that "The emphasis is on the management of the area as wilderness as opposed to the management of a particular resource. This language is viewed as direction that all management activities within wilderness be done without motor vehicles, motorized equipment, or mechanical transport, unless truly necessary to administer the area or are specifically permitted by other provisions in the Act. It means that any such use should be rare and temporary." In addition, see section B(3): "In rare instances, facility development and habitat alteration may be necessary to alleviate adverse impacts caused by human activities on fish and wildlife.... [F]ish and wildlife habitat developments necessary for fish and wildlife management (which were in existence before wilderness designation) *may* be permitted to remain in operation" (emphasis added).

[7] 16 U.S.C. 1133(d)(1) ("the use of aircraft . . . *may* be *permitted* to continue subject to such restrictions as the Secretary . . . deems desirable) (emphasis added).

[8] 43 C.F.R. 6303.1(b).

minimum necessary to preserve wilderness character."[9] USFS wilderness regulations reiterate the blanket prohibition of the Wilderness Act,[10] while the wildlife section of the USFS wilderness policy is silent on this, other than to direct managers to follow a policy developed with the International Association of Fish and Wildlife Agencies (IAFWA).[11] That document contains language identical with H. Rept. 101-405, which is also listed as a guiding reference in subsection (c), as noted above. The result of this subsection, then, is that the Secretary *may* approve the state's use of aircraft for a number of wildlife-related purposes, but only if it is the minimum necessary for managing the area as wilderness -- exactly the same authority granted under the Wilderness Act.

Subsection (d) authorizes "wildlife water development projects," more commonly known as "guzzlers," if they will "as determined by the Secretary, enhance wilderness values by promoting healthy, viable and more naturally distributed wildlife population."[12] Again, note that guzzlers are not authorized for any other reason, such as to increase hunting opportunities for certain species. However, an additional restriction is placed on these installations: they may only be authorized if "the visual impacts of the structures and facilities on the wilderness areas can reasonably be minimized."[13] As minimizing visual impact is now standard management practice, this subsection changes nothing of substance from the authority found in the Wilderness Act itself.[14] (For additional discussion of guzzlers in wilderness, see pp. 921-926.)

Subsection (e) reiterates the Secretarial authority to prohibit, "in consultation with the appropriate State agency (except in emergencies)," hunting, fishing, or trapping "for reasons of public safety, administration, or compliance with applicable laws."[15] Since the Secretary has this authority on all public lands, this subsection changes nothing of substance from existing federal authority.

Subsection (f) directs the Secretary of the Interior to "enter into a cooperative agreement with the State of Nevada . . . [to] specify the terms and conditions under which the State (including a designee of the State) may use wildlife management activities."[16] A Memorandum of Understanding (MOU) between the BLM and the Nevada Department of Wildlife (NDOW) was reached in 2003 and was last amended in 2012.[17]

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[9] U.S. Dep't of the Interior, Bureau of Land Mgmt., Management of Designated Wilderness Areas, Manual 6340 (2012), § 1.6.C.21.c.1.
[10] 36 C.F.R. 261.16(c).
[11] U.S. Dep't of Agric., U.S. Forest Serv., Wilderness Management, FSM Chapter 2320, § 2323.32(5).
[12] Pub. L. No. 107-282, § 208(d)(1).
[13] *Id.* § 208(d)(2).
[14] *Id.* Subsection (d) adds little if anything to subsection (b), which as noted above, provides authority to allow otherwise prohibited uses such as installations, under similar circumstances. Congress may have been motivated to include a provision specific to the visual impacts of guzzler installations due to the infamous Faydee guzzler in the Orocopia Mountains Wilderness of the California Desert, installed prior to wilderness designation, which is so obtrusive as to be visible in aerial photographs taken by earth-orbiting satellites.
[15] Pub. L. No. 107-282, § 208(e). This tracks the language of the Sawtooth extra special provision, Pub. L. No. 92-400, § 8.
[16] Pub. L. No. 107-282, § 208(f).
[17] Transmittal of an amendment (Supplement 9) to the Memorandum of Understanding between the Bureau of Land Management and the Nevada Department of Wildlife, BLM Nev. Information Bulletin, No. NV-2013-006 (Dec. 19, 2012). Appendix 1 is the amended MOU.

The MOU largely reiterates H. Rep. 101-405, with added sections on scheduling coordination meetings between the two agencies and on the maintenance, repair, and replacement of guzzlers.[18]

Since the 107th Congress passed the Clark County bill in 2002, thirty additional wilderness laws have been signed into law. Such extensive extra special provisions for wildlife management were replicated in only the four laws cited above.[19] While these have been confusing to federal managers, state employees, and non-governmental organizations by appearing to devolve greater deference to the states, the fundamental federal authority—and responsibility—for managing fish and wildlife in wilderness areas remains virtually unchanged. In fact, the same general statement can be made concerning all of the extra special provisions for managing wildlife throughout all the wilderness legislation, even prior to 2002. With the exception of a few unique provisions,[20] all the language added over time actually has had little material effect on the federal government's authority and responsibility to manage wildlife in wilderness.

22. If the federal agency considers a state action in wilderness, is the state responsible for the Minimum Requirements Analysis?

No. Again, management of a wilderness is a federal responsibility, and this includes the determination of whether a state plan that proposes a use prohibited by Section 4(c) of the Wilderness Act meets the so-called "minimum necessary" test. Of course, state involvement in clarifying the proposal is preferred, but the decision is a federal duty. (See pp. 884-886).

23. If the federal agency denies a state action in wilderness, is that decision binding?

Yes.

24. Is the federal government bound by what is commonly called the AFWA Agreement or any MOU developed with an individual state?

Not necessarily. Neither the so-called "AFWA Agreement" nor MOUs have the force of law. All these documents delineate general terms of moving forward on topics of mutual interest. But the federal agency may not follow any of these if doing so would violate federal law. (See pp. 919-920).

25. Do the states have <u>any</u> wildlife management responsibility in designated wilderness?

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[18] *Id*. The MOA contains some minor discrepancies with the Executive Order on invasive species -- Executive Order No. 13112 (1999) -- in the definitions concerning native and non-native species.

[19] It is unclear why this developed in Nevada legislation, though the state's primary wilderness "friends" group has historically been more supportive of the Nevada Division of Wildlife than of preserving the wilderness character of the designated areas. (See Article pp. 924-925) This organization's influence may also explain the extraordinary language undermining the Wilderness Act in the Wovoka Wilderness.

[20] Pub. L. No. 95-237 § 4(c) (1978) (directing the Forest Service to conduct wildlife research in cooperation with the state of Idaho in the Gospel-Hump Wilderness); Pub. L. No. 96-487 § 1315(b) (1980) (allowing aquaculture in certain Alaska wilderness areas); Pub. L. No. 98-140 § 2(c) (1983) (limiting the use of motor vehicles for wildlife management in the Lee Metcalf Wilderness); Pub. L. No. 103-433 § 103(f) (1994) (permitting greater leeway in approving the use of motor vehicles for management) and § 506(b) (directing the Secretary to allow hunting in the Mojave National Preserve Wilderness (created largely out of BLM lands where hunting was permitted)); Pub. L. No. 113-137 § 3 (2014) (mandating fish stocking in the Stephen Mather Wilderness). The provisions in Pub. L. No. 96-487 (Alaska National Interest Lands Conservation Act) and Pub. L. No. 103-433 (California Desert Protection Act).

Yes. States may have the responsibility for actions which are known to have no negative effect on an area's wilderness character, including actions such as setting hunting and fishing license requirements.

26. If federal legal requirements take priority over state wildlife management, can states permit hunting outfitters in wilderness when the Wilderness Act prohibits commercial activities?

Yes, if the federal agency has determined that outfitters in a particular wilderness are necessary. The Wilderness Act contains an exception to the general prohibition on commercial enterprises for "commercial services...to the extent necessary...for realizing recreational or other wilderness purposes of the area." If the federal agency determines outfitter services are necessary, the state may manage the permitting of those outfitters. (See pp. 884-886).

27. Can states permit commercial trapping in wilderness when the Wilderness Act prohibits commercial activities?

No. The states could permit trapping for personal use only. In this, trapping is not different from other commercial use of wildlife. So although fish and wildlife may be allowed to be collected for personal private use, federal agencies must, either alone or with cooperation of state agencies, develop constraints on wilderness visitors to prohibit collection of commercial quantities. This is usually done through a combination of possession limits and requiring alteration of the resource in such a way as to make it commercially valueless. In the case of trapping, this may also include federal oversight of the number and location of traps in wilderness. Absent state cooperation, the federal agency may ban all trapping in wilderness. (See pp. 884-886)

28. Can wilderness areas be used for raffled hunts generating income for an NGO?

No. These are money-generating (therefore commercial) activities prohibited by the Wilderness Act, regardless of the beneficence or non-profit status of the intended recipient. (See pp. 884-886)

29. Can wilderness areas be used for hunting competitions?

In general, no. Competitions of any kind are prohibited if there is prize money or other award of monetary value. Hunting competitions, as with other competitions, might be permitted if the winner receives nothing of monetary value (such as only "bragging rights") and the federal agency determines in advance that the competition will not degrade the area's wilderness character (that is, it does not affect the natural species composition and distribution). (See pp. 884-886).