

Legal Considerations in Fish Management

- I. Management is not simply applied ecology or biology; need to operate within the boundaries of the law and administrative policy. Law is influenced by historical and contemporary social system...managers and conservationists can influence the law and policy.
 - A. Law is legislative; policy is administrative (usually interpretation of law).
 - B. Law is open to interpretation
 - C. Law requires skeptical, thoughtful approach
 - D. Law allows for protection of fish at some level that is acceptable to the government; in democracy, this is supposedly amenable to the majority of the people. Creation, interpretation, and enforcement of the law can be swayed by political action groups.
 - E. Most managers receive little formal training in policy and law. Learn by doing. Probably not the best approach.
- II. Legal systems in North America
 - A. Based on colonial evolution of European law
 - B. British Law - common law; tradition of interpretation of the law in the courts; the law evolves as it works its way through the courts.
 1. Canadian system - the legislative branch is also responsible for the execution of the law
 2. U.S. system - the legislative and executive branches are separate; legislation is achieved through process of bargaining.
 - C. Current U.S. system
 1. Federal government has some jurisdiction over fisheries issues.
 2. States own the fish within their boundaries.
 3. 10th Amendment to the U.S. Constitution
 - a. Any law not explicitly stated in the U.S. Constitution becomes jurisdiction of the states
 - b. Many natural resource laws vary among states, unless the federal government passes legislation stating otherwise.
- III. Legislation in the early U.S.
 - A. Underlying Philosophy - Greek and Roman law - living natural resources like air and water cannot be owned by any individual
 - B. Typical issues
 1. Who owns the resource?
 2. Who manages and regulates the resource?
 3. State vs. federal rights?
 - C. State Rulings
 1. Martin vs. Wadell (1842) - established state ownership of the fish resource
 2. Geer vs. Connecticut (1896) - established state regulatory power over resource (wildlife)
 - D. Federal Rulings
 1. Lacey Act (1900)
 - a. Prohibited interstate commerce of illegally procured wildlife

