BACKGROUND PAPER

COLLOQUIUM:
SAVING ALL THE PARTS:
FEDERAL-STATE COOPERATION IN WILDLIFE MANAGEMENT

Date 1996

Jan 1996 - May

March 4, 1996

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Introduction

In theory the power of the American federal government over wildlife is considerable, but in practice the states have been allowed a great deal of latitude in regulating wildlife. This background paper describes the history of federal-state relationships in managing the nation's wildlife. It begins with the erosion of the state ownership doctrine and concludes with the passage of the Federal Aid in Wildlife Restoration (Pittman-Robertson) Act of 1937 and the Federal Aid in Sport Fish Restoration (Dingell-Johnson) Act of 1950. These acts are the primary vehicles for contemporary federal-state cooperation in wildlife management and are the focus of the colloquium presentation.

Basis of State Ownership Doctrine

In the United States, traditional ownership of wildlife was vested in state governments through the transfer of the powers of the English sovereign to the colonies and hence to the states. Simply put, the state ownership doctrine assigns the property rights in wildlife to the state in which the wildlife is found. The state then holds this property in trust for the citizens.

American jurists in the nineteenth century based this doctrine on their understanding of English common law, which Blackstone asserted gave all rights in wildlife to the sovereign. Although the American courts legitimized the state ownership doctrine, the law from which it was drawn was not settled even in England. English game laws had been designed partly to protect class privileges; Blackstone, whose Commentaries (1766) were tremendously influential in the United States, favored leasing restrictions on hunting. Fortunately for America, this view fit frontier conditions and the need to encourage new settlements (Lund 1980, 21; Tober 1981, 146-147):

> The American colonists rejected the class-based English restrictions on arms and hunting, but the states fell heir to the sovereign regulatory power. In 1842 the Supreme Court held that "the powers of sovereignty, [and] the prerogatives and regalities[11] of the English Crown concerning wildlife had become vested in the states, "subject only to the rights since surrendered by the constitution to the general government" (Martin v. Waddell, 41 U.S. (Pet.) 234 [1842] at 267). From that edifice was constructed the state ownership doctrine (Coggins 1980, 305).

The state ownership doctrine evolved as states sought to protect their dwindling game resources. It "enabled state governments to insulate their fish and game somewhat from the commercial demand that was inexorably destroying them.... Making state property out of fish and game, like granting fictive citizenship to corporations, was government's way of collecting a wide range of inter-related problems under a single relatively manipulable [sic] legal abstraction" (McEvoy 1986, 117-118).

The apogee of the state ownership doctrine was reached in Geer v. Connecticut (1896). A Connecticut law prohibited interstate transportation of game which had been lawfully killed in Connecticut; Geer charged that this was an unconstitutional interference with interstate commerce. The state argued that because it owned the game, it could assign a qualified property right to anyone who killed or captured the game, and the property right qualification might include a rule requiring only domestic consumption. The United States Supreme Court found that the state had the power to regulate game for two reasons. First, as trustee for the people, it had ownership of the game, and second, under the police power, the state could protect the state food supply.

Justice White, writing for the Court, affirmed the state's ability to restrict property rights in game whether the game was dead or alive: "the Police power of the state to preserve game birds as a valuable food supply...justifies a statute prohibiting the transport of such birds beyond the state, even if interstate commerce may be remotely and indirectly affected thereby" (at 534-535).

While Geer established the states' rights to control wildlife and to prohibit its export, states still had no mechanisms to prohibit the importation of wildlife. Many states had laws restricting hunting and the sale of illegally harvested game, but they were hampered in the enforcement of their own laws by market hunters bringing in game killed in other states. Dealers charged with violating the state laws could claim their product was taken in another state, and it was virtually impossible to disprove their assertions. Solving such problems was clearly a matter of interstate commerce. In 1900, Representative Lacey of Iowa introduced a bill to remedy this problem.

Erosion of State Ownership Doctrine

The Lacey Act

In 1900, the Lacey Act provided federal sanction to state laws forbidding the importation of certain game by prohibiting interstate transportation of unlawfully killed animals. It also allowed states to assume that any dead wildlife found within the state had been killed in the state and thus was subject to state game laws. The Act provided the necessary federal assent to what was essentially a state restriction on interstate commerce.

When Representative Lacey was asked if his bill produced any state-federal conflict, Lacey replied:

> There is no difficulty whatever. The authority of the National Government begins where the State authority ends. The bill carefully avoids all conflict of this character (U.S. Congress, House 1900, 4873).

It is clear that Lacey was concerned to safeguard the state ownership of wildlife, although it is not clear if that was from conviction or because he was relying upon the ruling in Geer. Asked why his act was limited to states with laws forbidding killing of particular species of birds, Lacey replied:

> In order to do that [to pass a more general bill] it would become necessary to enact a national game law, which, I think, would be unconstitutional. By limiting it to the prohibition of interstate commerce in those things which the State prohibits, then we have clear ground and there is no trouble on the subject (U.S. Congress, House 1900, 4873).

The Lacey Act helped the states in their efforts to enforce existing laws, but it did nothing to regularize or to enhance protections for migratory birds. Across the nation a patchwork of hunting regulations and irregular enforcement left many species at the mercy of the casual hunter (Fox 1981; Orr 1992). There was no effort to coordinate the states' legislation (Orr 1992). Lobbyists such as T. Gilbert Pearson, one of the founders of the Audubon Society, began to work toward federal regulation (Orr 1992), and in a political climate that increasingly supported centralization of governmental power (Scheiber 1986), they soon found supporters in the Congress.

The Migratory Bird Act

The first congressional attempts to establish federal control over migratory birds came in 1904 but the bill died in the Agriculture Committee; a second attempt in 1906 failed as well. Two years later, a third bill was introduced but also failed. By 1912, other interest groups had begun to rally around the cause (Belanger 1988; Fox 1981; Orr 1992). The firearms manufacturers and dealers

were interested in protecting their markets. Game associations wished to preserve their sport and successfully educated the public that some action was needed. Some advocates were moved by the plight of the disappearing species and the wanton slaughter of birds, especially for feathers to decorate fashionable women's hats. The reduction in bird populations was obvious, with elimination of the passenger pigeon being perhaps the most dramatic. By expanding the bill to include insectivorous birds, agricultural interests were brought into the fold.

It seems clear from the debates, briefs, court rulings and contemporary commentary that everyone was agreed that game in general, and migratory birds in particular, needed protection. They also agreed that the federal acts would provide protection, yet they argued bitterly over the legislation. For the most part, the arguments were not on scientific or administrative grounds but rather on constitutional grounds.

Speaking against the Migratory Bird Act, Representative Mondell of Wyoming said:

> If this bill should become a law no man who voted for it would ever be justified in raising his voice, against any extension, no matter how extreme, of the police authority and control of the Federal Government....No legislation so profoundly subversive of the fundamental principles of our Government has been suggested since the beginning of my service here, and I doubt if it has been in the history of Congress.... [Pass] this bill.. and we no longer have a Government of self-governing states but are well on the way to an empire governed from this Capital (U.S. Congress, House 1913, 4330).

Mondel then suggested the **lobbying** efforts in support of the bill were orchestrated by the Department of Agriculture, and that many supporters of the bill saw it as opening federal job opportunities through enforcement of the Act. He concluded:

> [if] by some inscrutable dispensation of Divine Providence [this legislation] gets past the Supreme Court, let us nevermore attune our 4th of July orations to the proposition that this is a union of self-governing States..., for we shall not only cease to be a people having control of our local affairs, but we shall have established a bureaucracy outrivalling that of Russia (U.S. Congress, House 1913 [Mondell], 4330).

The Weeks-McLean Migratory Bird Act was hidden as a rider to an agricultural appropriations bill and signed by President Taft on 4 March 1913, as his administration was rushing to a close. Taft later said he thought the migratory bird provisions of the bill were unconstitutional and would have vetoed the bill had he been aware of the contents (Fox 1981, 157).

Several states promptly initiated law suits challenging the constitutionality of the law, and they were successful in the lower federal courts (United States v. Shauver [1914], United States v. McCullagh [1915]).

Legal Challenges to the Migratory Bird Act

United States v. Shauver (1914)

Mr. Shauver had killed three coots in violation of the Migratory Bird Act. Caught and convicted, he brought suit alleging the Act was unconstitutional.

In the brief for the United States, the government claimed that under the commerce clause, the national government owned migratory birds because they move between the states and thus enter

interstate commerce. According to this brief, the United States has power under Articles IV and I of the Constitution[1] to regulate migratory wildlife. While the United States did not contest the common law notion that the sovereign held wildlife in trust for the people, it did question which sovereign in a federal system retained this trust. The United States contended that a government has title to wildlife in order to protect the rights of the community; therefore, the title rests with the government best able to protect those rights. Since only the Federal government can make treaties to protect game while it is outside state jurisdiction, the United States concluded that the Federal government is the level of government best able to protect the community rights.

> By ratifying the Constitution, the people expressly delegated to the Federal Government the exclusive right to protect wild life by treaties with foreign nations, and at the same time withdrew from the states the right, without the consent of Congress, to make among themselves agreements for such purposes, thus vesting in Congress the ultimate control and protection of same....thus stripping the States of all power to protect migratory wildlife...(United States v. Shauver, United States Brief, 10).

The legal argument of the United States was rather neat: if the birds belong to the United States, the act is constitutional. If the birds belong to the states, then they change owners when they move between states, thus becoming articles of interstate commerce, and the act is constitutional.

District Judge Trieber was unconvinced by the arguments advanced by the United States. He found that the act was unconstitutional and state ownership of wildlife was absolute. The general police power of the national government was upheld only when needed to sustain some enumerated federal power. If the national government wanted to regulate wildlife, then the judge felt that proper procedure was to amend the Constitution.

United States v. McCullagh (1915)

Another successful challenge to the Migratory Bird Act arose in Kansas. In United States v. McCullagh, District Judge Pollack took issue with arguments that the national law was necessary because state efforts had been ineffective, noting that, for example, Congress has not the competence to pass national laws regulating marriage and divorce, no matter how useful such laws might be. He found that the new federal law and existing state laws could not co-exist; thus the problem could not be resolved by either dividing authority between the levels of government or by cooperative institutions.

Before appeals from these cases could reach the Supreme Court, Congress found an alternative mechanism to achieve its ends.

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[1] *Article I, Section* 8, *Clause 18:* [The Congress shall have Power] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article IV, *Section 3, Clause 2:* The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

The Migratory Bird Treaty Act

President Taft had not been alone in his misgivings over the 1913 Migratory Bird Act. Even before the bill was signed, Senator Elihu Root (New York) had proposed a resolution asking the President to negotiate a North American treaty on migratory birds, partly to provide constitutional legitimacy for the federal assumption of ownership (Belanger 1988, 22). The rapid state response challenging the Weeks-McLean bill led Senator McLean to introduce his own resolution in April 1913, only a month after his Migratory Bird Act became law. The resolution was passed, and treaty negotiations began almost at once. The treaty was signed on 16 August 1916, swiftly ratified by the Senate, and entered into force on 22 August 1916. Enabling legislation was passed in the following year, and on 3 July 1918, the Migratory Bird Treaty Act was signed by President Wilson.

Opposition to the enabling Act for the Migratory Bird Treaty was stiff (Belanger 1988, 24). Representative Huddleston of Alabama was appalled at the process. "I can not believe," he stormed on the floor of the Congress, "that what is otherwise unconstitutional as an unjustifiable invasion of powers reserved to the States may become constitutional merely because a treaty is negotiated" (U.S. Congress, House 1918, 7363).

The House debate touched on delicate matters. Accused of being against states' rights, Representative Focht of Pennsylvania replied:

> Oh, no; I was against secession and treason and not against the right of state sovereignty. I was against your going out of the Union (U.S. Congress, House 1918, 7376).

That sort of language was not calculated to soothe the tempers of the members who saw the constitutional rights of states being eroded by the Congress and the President. Debate continued for several days. Representative Tillman of Arkansas said:

> I think the whole bill is objectionable. It is an unwarranted invasion, or attempted invasion, of State rights.... [We] already have been for some time playing fast and loose with the sacred doctrine of State rights, and yet there are a few people left who have some respect for the rights of the sovereign States (U.S. Congress, House 1918, 7446).

Another member of the Arkansas delegation agreed, noting that since Shauver was still not decided by the Supreme Court, the presumption was that the Migratory Bird Act was unconstitutional, and the treaty power did not give Congress the authority to override the Constitution (U.S. Congress, House 1918 [Caraway], 7449). Representative Mondell, who had eloquently opposed the Migratory Bird Act, opposed the treaty-enabling legislation as well:

> What would the [founding] fathers have thought of such legislation, men recently liberated from the tyranny of a bureaucracy, of officers appointed by a distant power with authority to interfere with their local affairs? They attempted to prevent that for all future time and to leave with the local authorities the management of their local affairs. Whenever we encroach upon those principles thus laid down and established we undermine the very foundations of our Government (U.S. Congress, House 1918, 7450).

Representative Huddleston of Alabama went even further; he thought the Act was not only unconstitutional but also bad policy. If the Federal Government can interfere with state

prerogatives to manage birds, he asked, what is to prevent the Federal Government from forcing states to accept aliens or to integrate their schools? (U.S. Congress, House 1918, 7452).

Senator King of Utah was also concerned:

> ...[The] Federal Government is making insidious attacks upon the sovereignty of the States, and the local self-government of the people within the States....
> ...[Any] effort of mine to stem this tide of federalism will perhaps be without avail. The people are saturated with the thought that all power is with the National Government.... (U.S. Congress, Senate 1918, 7473).

Senator Poindexter of Washington disagreed: "There ought to be, in my judgment, the utmost freedom on the part of the Federal Government in exercising those powers which are conferred upon it by the Constitution of the United States" (U.S. Congress, Senate 1918, 7474). Senator King responded:

> We frequently find in the legislation of Congress encroachments upon the reserved powers of the States. We are gradually undermining that love of local self-government, that devotion to the State which alone will preserve this dual form of government and preserve our domestic institutions as well as our National Government.
> [I rose] to protest against the strong and increasing tendencies to crowd out and overwhelm the sovereign States and reduce them to mere dependencies, or lifeless, formless, and needless attachments to or appendage of an all-powerful and omnipotent Federal Government (U.S. Congress, Senate 1918, 7474).

His colleague from Illinois joined him. Senator Sherman was not a passionate opponent of federal regulation of migratory birds, but he was concerned for the precedent—the camel's nose under the tent:

> [The original migratory bird bill] is like everything else however, just as soon as the end of the wedge is placed in position there is always an abundance of authority to hit the head of the wedge and drive it further....
> [7475] [The game laws are] not ordinarily of great significance...but because of the insidious character of a number of those amendments, all of whose purposes are to invade these provinces of the States that have been from the beginning reserved exclusively for the action of the States, I felt disposed to voice my protest more at length (U.S. Congress, Senate 1918, 7475-7476).

The states moved promptly to challenge the enabling legislation in court, but the use of the treaty power to make policy complicated their arguments considerably. The controversy was finally resolved in Missouri v. Holland (1920).

Missouri v. Holland (1920)

Missouri v. Holland arose against federal game warden Holland whose enforcement of the Migratory Bird Treaty Act in Missouri was interfering with the state revenues from hunting. District Judge Van Valkenburg wrote that if there were no treaty, the Act would be unconstitutional, relying on United States v. Shauver and United States v. McCullagh. However, there was a treaty, and the

treaty-making power of the United States is supreme over state authority. Therefore, the Migratory Bird Treaty Act was constitutional. Missouri appealed to the Supreme Court.

At the outset of his brief for the State of Missouri, Attorney General McAllister stated his position unequivocally:

> This suit involves the constitutionality of the "Migratory Bird Treaty Act" and is an endeavor upon the part of the State of Missouri, appellant, to preserve intact its sovereignty and to retain unimpaired the powers reserved to it by the tenth amendment to the Federal Constitution (Missouri v. Holland, Missouri Brief, 1).

The brief is a passionate appeal for states rights:

> Our government had no prototype in history. The Federal Government and the States are separate and distinct sovereignties. The one, within the sphere of its delegated powers, is supreme; the other, within the sphere of its undelegated and reserved powers, is no less supreme. It was never intended that the States should be shorn of the sovereignty in internal affairs (Missouri v. Holland, Missouri Brief, 22).

> If Congress by means of a treaty can tell the people of a state when and under what conditions they may eat wild game which they own in their collective sovereign capacity, and in and over which, while within the borders of the state, neither Congress nor any foreign nation can have, either under national or international law, any property rights nor any power of control, then the [10th] Amendment with its powers "reserved" to the states respectively or to the people, is a delusion, and they are states in name only, and our government a very different government from that presupposed and intended by the people who ratified the Constitution (Missouri v. Holland, Missouri Brief, 41 [emphasis in original]).

McAllister warned of the dangers of the federal position:

> In its ultimate analysis the adoption of the Treaty-Supremacy theory means that the Federal Government, through the treaty-making department of the government, has a general negative upon all state laws passed the States in the exercise of their reserved powers (Missouri v. Holland, Missouri Brief, 92 [fiche]).

In its argument before the Court, Missouri tried to find a compromise position acceptable to both the states and the national government. Article VIII of the Migratory Bird Treaty states that "[the] High Contracting Powers agree themselves to take, or propose to their respective appropriate law-making bodies, the necessary measures for insuring the executive of the present convention" (Missouri v. Holland, Missouri Brief, 97 [fiche]). McAllister suggested this could mean asking the state legislatures to implement the treaty. This would save the Treaty and get rid of the Migratory Bird Treaty Act.

The amicus curiae brief filed by Kansas in support of Missouri agreed that the treaty power does not allow the Federal Government "to regulate and control the property and property rights of an individual state held by it in its quasi-sovereign capacity" (Missouri v. Holland, Kansas Brief, 23 [fiche]). Kansas also pointed out that it was not clear that all migratory birds go to or from Canada, so the treaty might not be sufficient or necessary. The validity of the Act was also questioned

because the regulations imposed by the Act were stricter than required by the Treaty. Finally, Kansas risked some fortunetelling, suggesting that if the national government were allowed to regulate birds through a treaty, they might also try to regulate corporations, child labor laws, general labor contracts, and environmental planning (Missouri v. Holland, Kansas Brief, 28-29 [fiche]).

The Supreme Court upheld the district court decision. Writing for the Court, Justice Holmes said:

> Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject-matter is only transitorily within the state, and has no permanent habitat therein. But for the treaty and the statute, there soon might be no birds for any powers to deal with....It is not sufficient to rely upon the states. The reliance is vain, and were it otherwise, the question is whether the United States is forbidden to act. We are of the opinion that the treaty and statute must be upheld (252 U.S. 416 at 435).

Conclusion

Going into the Progressive Era, the issue of regulating wild game seemed settled. No matter how unsatisfactory the state efforts might be, the state power to regulate was practically absolute. Yet within twenty years, the federal presence in wildlife regulation was permanently established. Why did this happen? The explanations usually offered are a mix of Progressive Era reforms, a national drive for efficient use of resources, growing awareness of the loss of wilderness, and public concerns for diminishing wildlife. One explanation which has received little attention is the steady centralization of federal powers within the American federal system.

Many explanations for the rise of the American conservation movement at the turn of the century are offered in the popular and academic literature. Three major variants are identified by Roderick Nash: conservation as democracy; conservation as efficiency; and conservation as anxiety (Nash 1990, 98-101).

Conservation as democracy suggests that the conservation movement was part of the larger Progressive movement of the turn of the century (Bates 1990, 98-101). Disgusted with the excesses of big business, monopolistic control of industry, and machine politics, reformers struggled to protect the rights of the people to the natural resources of the land, not in a spirit of preservation but rather to ensure that the opportunities and benefits held in reserve in these resources were accessible to the general public. Gifford Pinchot, first head of the United States Forest Service, wrote that conservation was the "use of natural resources for the greatest good of the greatest number for the longest time" (Pinchot 1947, 326).

Conservation as efficiency is the second explanation. It emphasizes the centralizing force that the drive for rational and efficient organization of time and resources imposed on many facets of American life during this era (Hays 1959). The precepts of Scientific Management in business overflowed into the public sector; government regulation of businesses such as the railroads and the passage of pure food and drug laws was motivated as much by goals of efficiency as by the public interest. Hays contests the notion that anti-monopolists encouraged conservation; he believes that forces as varied as wilderness groups, Eastern botanists, and Western water users all strove to achieve conservation goals. Conservation in his view is part of a larger social movement which helped to transfer American society "into a highly organized, technical, and centrally planned and directed social organization which could meet a complex world with efficiency and purpose" (Hays, 265).

The third view, conservation as anxiety, is convincingly argued by Roderick Nash, He views the conservation movement as a reaction to the announcement in the 1890 Census that the American frontier was officially closed (Nash 1982). With the disappearance of the frontier, Americans could no longer accept wasteful exploitation of resources, and the drive to preserve some of the natural world which had partially defined the American experience gained wider acceptance. Environmental historians agree in most part with Nash's thesis, analyzing the roles of sportsmen eager to preserve their prey (Mighetto 1991; Reiger 1986) and of the professional hunters concerned about their livelihoods (Mighetto 1991; Dunlap 1988), the impact of writers such as Thoreau and Muir (Harrington 1991), and the professionalization of the biological sciences (Dunlap 1988; Chandler 1985).

Most current explanations for the development of conservation at the turn of the century encompass some variation of the above theses; little attention is paid to the changing relationship between state governments and the federal government. Those writers who recognize the expansion *of* federal involvement as an aspect of conservation see the increased federal role as an inevitable and value-neutral result of conservation policy. Chandler writes:

> The development of effective institutions for the management of wildlife was another chapter in the expansion of the role of the federal government in American life, but this expansion did not come at the expense of the states.... Indeed, one of the main purposes and outcomes of federal intervention was to make state regulation of wildlife work better (Chandler 1985, 216).

Samuel Hays, whose focus on efficiency explicitly raises the necessity of centralized decision-making, does not address federalism issues, and Chandler, in his history of the Fish and Wildlife Service written for the Audubon Society, makes no mention of conscious expansion of federal powers.

Neither does the political science literature on federalism attribute any deliberate centralization focus to the conservation movement (Anton 1989; Elazar 1964; Henig 1985; Nice 1987; Tober 1989; Peterson, Rabe, and Wong 1986; Walker 1981). Because most wildlife regulation was left for state implementation, federal interest in wildlife via the commerce clause was only a footnote to the larger concerns of the transportation, banking, labor, and securities regulations.

The evidence that federal assumption of control over wildlife was part of a larger effort to centralize national power is strong, although it is not conclusive. First, virtually all Congressional debates focuses on the constitutional issues of the proper relationship between the state and federal governments. Second, there was no attempt to find a compromise position to save state sovereignty over wildlife. One conclusion which might be drawn is that the legislation was designed in part to enhance the powers of the federal government and that the policy vehicle—wildlife conservation—was to some extent irrelevant. Were it not so, we might expect some attempt to find policy alternatives that avoided awkward constitutional questions. Instead, there were no efforts to coordinate the policies even of contiguous states. The suggestion made by the states during arguments in Missouri v. Holland to allow the states to implement the Migratory Bird Treaty and thereby avoid the constitutional confrontation was not even recognized by a federal rebuttal.

Using a popular policy agenda to achieve a hidden agenda is an ancient political ploy. Certainly environmental policy is often used to camouflage less respectable goals, partly because environmental issues have such high social appeal. In California, regulation of the state shrimp fishery was as much an attempt to force the Chinese out of business as it was scientific regulation of a natural resource (McEvoy 1986, 117-118). Similarly, early English game laws were instituted in part to restrict the

use of weapons by potential dissidents or criminals (Lund 1980, 6). These early laws also protected the class distinctions, using qualification statutes which "allowed only prominent citizens to take game, to possess certain weapons and, ultimately, to eat certain animals" (Lund, 8).

Having flexed its muscles over migratory birds, the federal government allowed the states to retain some control over wildlife. Some later protective legislation such as the Marine Mammal Protection Act (1972), the Endangered Species Act (1973, and implementation legislation for the Convention for the International Trade in Endangered Species (CITES 1973) place responsibility for compliance with the national government, but the states have been allowed much autonomy throughout the twentieth century, subject of course to the silken chains of federal money through such programs as the Pittman-Robertson Act (1937) and the Dingell-Johnson Act (1950), which redistribute funds from federal taxes on hunting and fishing equipment to the states for wildlife and sportfish recreation programs.

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Transcripts and Briefs

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United States v. Shauver, Transcripts of Records and File Copies of Briefs 4, Docket 4 (1914).

note: The remainder of the material contained in the briefs is found on microfiche and is marked accordingly in the text.

Federal Statutes

Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq. (1988).

Federal Aid in Wildlife Restoration (Pittman-Robertson) Act of 1937, 16 U.S.C §669 et seq.

Federal Aid in Sport Fish Restoration (Dingell-Johnson) Act of 1950, 16 U.S.C. §777 et seq.

Lacey Act [1900], 31 Stat. 187, 16 U.S.C. §§ 667e, 701, 3371-3378, and 18 U.S.C. §42-44 (1988).

Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361 et seq. (1982).

Migratory Bird Act of 1913, ch. 145, 37 Stat. 847 (repealed 1918 [40 Stat. 757]).

Migratory Bird Treaty Act, 40 Stat. 755 (1918), 16 U.S.C.§§703 et seq. (1988).

Treaties and International Agreements

Convention for the Protection of Migratory Birds, 16 August 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628.

Convention on the International Trade in Endangered Species of Wild Fauna and Flora [CITES], 3 March 1973, 27 US.T. 1087, 993 U.N.T.S. 243. In force 1 July 1975.