AFWA Commission Guidebook Presentation Narrative

Slide 1 – Cover Slide

Hello. I am Chris Smith with the Wildlife Management Institute. This presentation on Understanding the Role and Responsibilities of a State Fish and Wildlife Commission and Commission Members was produced as a supplement to the 2022 edition of the Association of Fish and Wildlife Agencies' Commission Guidebook. The updated guidebook and additional materials discussed in this video are designed to provide background on why citizen commissions were established, what role they play in governing fish and wildlife in the United States, and how they can be most effective working with their state agency and the public to assure continued conservation of our treasured resources. This project was funded by a Multistate Conservation Grant, with funds from the Wildlife and Sport Fish Restoration Program jointly managed by the Association of Fish and Wildlife Agencies and the U.S. Fish and Wildlife Service

The Wildlife Management Institute staff that worked on this project has a combined total of more than 150 years of experience working for state fish and wildlife agencies and their commissions or boards across the county, literally from Alaska to Florida. We appreciate the support of the Association of Fish and Wildlife Agencies for this project and are honored to be able to serve state agencies and their commissions through this work. We also want to acknowledge and thank all the members of all the state fish and wildlife commissions or boards for the service you provide. We know how demanding your job is and we hope this information is helpful to you.

Slide 2 – Some Key Terms

I want to start by clarifying what is meant by a number of terms used throughout this presentation. First, state fish and wildlife agencies may be called as a department, division, bureau, or some other name. For simplicity, throughout this presentation, the term "Agency" is used to refer to the governmental entity responsible for managing a state's fish and wildlife resources. Second, the terms "Stakeholder" and "Beneficiary" are used somewhat interchangeably. "Stakeholders" are people who are most directly influenced by, or influence, commission decisions. "Beneficiaries" is used in the context of public trust management and refers to anyone who benefits from the management and use of fish and wildlife. Third, while the governing bodies of some state agencies are called a board or council, in this presentation, the term "commission" is used as a reference to all these governing bodies. Fourth, when the title "Director" is used, it refers to the chief executive of the state agency, whether their official title is Director, Secretary, Commissioner, or something else. And finally, to save a bit of time, from here on, the term "wildlife" is use to refer to all the fish, birds, mammals, reptiles, or any other non-domesticated animals for which an agency is responsible.

Slide 3 - Overview

This presentation begins with a brief description of wildlife use and conservation in North America and the origins of the commission system of wildlife governance. Next it discusses some of the variation in commission sizes and authorities and highlights the two key roles commissions have working with their agency and public. With that background, we move on to discuss a commission's responsibilities within the public trust management framework and conclude with information on ways a commission, and commission members, can be most effective.

Slide 4 – Brief History

Prior to European discovery of North America, the indigenous human population had relatively limited impact on wildlife populations and habitat. As Europeans colonized the continent and expanded settlement from both coasts, the prevailing view was that wildlife was endlessly abundant and few restrictions were placed on killing wildlife. Markets for meat, fur, and feathers promoted unsustainable exploitation and government programs to remove predators to protect livestock and eliminate bison to subjugate Plains Indian Tribes resulted in the decimation of numerous species. At the same time, agriculture, timber harvest, and industry had major impacts on habitat.

In the late 1800s and early 1900s, influential individuals including Theodore Roosevelt, Gifford Pinchot, and Harriet Hemenway, raised the public's awareness of the need to conserve the nation's dwindling wildlife and habitat. Both federal and state governments began to enact laws to protect wildlife and hire officers to enforce those laws. Those officers represent the origin of many state wildlife agencies today.

By the 1930s, these protective laws and the increasing body of science applied to wildlife conservation began paying significant benefits and led to improved habitat and recovery of many of the species we think of as common today. With the restoration of wildlife, and increasing opportunities for public uses, competing interests turned to politicians to influence how wildlife was managed. Special interests with the right connections to powerful governors or legislators were often favored to the disadvantage of others.

In response, the International Association of Game and Fish Commissioners (the precursor to the Association of Fish and Wildlife Agencies), proposed a new way of governing the management and use of wildlife. The foundation of the new system was a citizen commission, composed of volunteer members appointed to provide oversight of the state wildlife agency and make the rules governing uses of wildlife in the broad public interest.

Slide 5 – Why Were Commissions Established

There were several reasons for establishing commissions. The first was to limit the effect of partisan politics in decision-making. All public policy making, including wildlife management, is inherently a political process. However, to assure equitable distribution of the benefits of our wildlife resources, wildlife management decisions should be made in the interests of all citizens, not narrow interests or political parties.

Second, by delegating the authority for wildlife management to a commission, state legislatures created a better forum for public engagement in decision-making. With a narrower scope of responsibility than the legislature, the commission can spend more time evaluating the complex biological and social factors associated with wildlife management and provide more opportunities for the public to provide input and shape outcomes. Combined, these things provide a means for citizens to become stewards of the wildlife resource and provide for sustainable uses.

Finally, commissions provide a way to the citizens of a state to oversee the operation of their state wildlife agency. In effect, many commissions serve as a "Board of Directors" ensuring the agency is responsive to the public they serve.

Today, all but a few states have adopted the commission system for wildlife management.

Slide 6 – Commission Composition

Most state wildlife commissions are established in statute by the legislature, although a few are established by the state's constitution. The size of commissions ranges from as few as 5 to as many as 19. In most states, commission members are appointed by the governor, subject to confirmation by the legislative branch.

Some states appoint commission members based on geographic districts and some require a balance of political party representation. Some states require that a number of commission members have a certain background, such as being a farmer or rancher, having knowledge of wildlife biology, are active hunters or anglers, or are non-consumptive users. These requirements are generally intended to ensure that these interests are "at the table" during commission deliberations. However, it's important for each commission member to understand that – regardless of their individual background – the commission serves in the interest of all the public.

Slide 7 - Commission Authorities/Constraints

Most commissions are granted some level of delegated decision-making authority by their state legislature. Commission's authorities and constraints vary among the states, but most commissions have the power to set seasons, bag limits and other rules for hunting, fishing, and trapping. Many commissions also have formal authority for setting wildlife management policies to be implemented by the agency and some commissions have authority to set the agency budget and provide fiscal oversight. In some states, the commission is also responsible for selecting and supervising the agency Director.

State legislatures also pass laws that impose constraints on Commissions. For example, a commission may be precluded from allowing or prohibiting certain practices that are regulated in statute. A commission must also comply with any open meeting, public records, or "sunshine" laws that apply across all state agencies. Newly appointed commission member should consult with their agency Director or legal counsel to learn the details of their authorities and constraints.

Slide 8 - The Commission's Essential Roles

Regardless of the size, composition, authorities, or constraints of a commission, it has two essential roles related to public trust management. The first role is managing the public trust resources embodied in the state's wildlife. Managing the wildlife resource as a "public trust" is rooted in either the public trust doctrine or broader public trust philosophy.

In addition to managing the public trust resources, the commission also has an essential role in managing the trust the public has in the commission and agency. As discussed later in the presentation, maintaining the public's trust in the commission and agency is essential for successful wildlife conservation.

Slide 9 – The Public Trust Doctrine & Public Trust Philosophy

In some states, the Public Trust Doctrine applies to wildlife. The Public Trust Doctrine is most often found in common law or case law, although in some states, like Alaska, it is enshrined in the state constitution. The doctrine is derived from Roman and English legal principles that were brought to North America by the European colonists. The doctrine establishes a fiduciary responsibility for the state to manage wildlife for the benefit of all current and future citizens. In doing so, it must conserve the resource to prevent depletion and treat all citizens equitably in distributing benefits. Importantly, in states where the doctrine applies to wildlife, a government's failure to fulfill its responsibilities can be challenged in court.

In states where the legally binding Public Trust Doctrine does not clearly apply to wildlife, the broader Public Trust Philosophy may still provide guidance for commission decisions. Research has shown that the elements of public trust philosophy, including the idea that human well-being depends on nature, that some resources such as air and water are not suitable for private ownership, that all citizens have equal rights to the benefits of natural resources, that the needs of future generations must be considered, and that the government is accountable to the people, are common across many cultures and through time. While public trust philosophy does not give citizens the ability to take the government to court, citizens can nevertheless enforce these principles through the ballot box by electing new representatives or through ballot initiatives in states that provide that option.

Slide 10 – Elements of the Public Trust System

Whether wildlife conservation in your state is guided by the Public Trust Doctrine or Public Trust Philosophy, there are four basic elements to the system. The first element is the assets of the "public trust," that is, all the species of wildlife under the commission and agency's jurisdiction. The current populations and the habitats they occupy represent the "corpus" of the trust that must be maintained or enhanced to provide benefits to the citizens.

The second element is the stakeholders or beneficiaries of the trust. This includes all citizens in both current and future generations. It is easy to identify some of these beneficiaries, like hunters and anglers, who derive benefits from their use of the resource. Other beneficiaries might not come to mind as quickly, but are no less important. Examples include farmers or ranchers who benefit from management of wildlife at levels that reduce the economic impacts on their crops or livestock. Drivers whose chances of colliding with a deer are reduced through management to control the size of a deer herd are also potential beneficiaries of public trust management. Even people who simply want to know that wildlife is being protected from harm are beneficiaries of public trust management.

The third element in the public trust system is the trust managers – the professionals who work for your agency in many different capacities. These individuals are charged with the day-to-day management of the assets of the trust, consistent with the direction provided by the final element of the public trust system – the Trustees.

The Trustees include all the elected and appointed officials, including commission members, who are accountable to the citizens. While commission members may be responsible for most decisions related to conservation of the public trust in wildlife, it is important to recognize that other officials, including the agency director, governor, and state legislators share responsibility as Trustees.

Slide 11 – Responsibilities of Trust Managers

It's worth diving a bit deeper into the differences between the responsibilities of the trust managers and the trustees.

The professional trust managers in your agency are responsible for:

- Monitoring the status of the trust assets through surveys and other ways of assessing the number, health, and interactions of wildlife species;
- Identifying potential benefits of the trust, such as the number of animals from a population that can be taken by hunters, anglers, or commercial fishers; or the change in economic impacts that would result from increasing or decreasing the number of animals in a given area.

- Informing both the trustees and beneficiaries of the options and limitations for management. This is often done through development of species' management plans that lay out various approaches with differing outcomes for consideration by the public, the commission or other trustees.
- Informing trustees of beneficiaries' interests. While commission members can expect to hear directly from citizens through both formal and informal input mechanisms, public meetings or online comments don't necessarily provide a complete picture of public interests. Most states now either hire or contract with social scientists to gather objective data on people's interests, values, and opinions on management. Incorporating these "human dimensions" of wildlife is increasingly important as wildlife commissions face more complex and controversial decisions.
- Facilitating dialog among beneficiaries is another important service your agency professionals can provide. There will always be competing interests that want different things from wildlife in your state. By bringing competing interests together to learn about others' views and desires and to seek outcomes that provide a broader range of benefits, or represent win-win rather than win-lose outcomes, the trust managers can make your job as trustees much more rewarding.
- Your trust managers are also responsible for making science-informed recommendations. Using good science, they can tell you what outcomes of management are possible. However, science alone cannot tell you which outcome is the right one for a given decision. As a commission member, you will need to apply your values and the input you receive from the public to choose the appropriate course of action.
- Finally, the trust managers are responsible for managing the trust as directed by the trustees. This means agency professionals should not substitute their values or judgement for yours, unless the commission specifically delegates decision-making authority to them on a case-by-case basis.

Slide 12 – Responsibilities of Trustees

As trustees, commission members' responsibilities include:

- Maintaining the corpus of the trust, meaning ensuring the conservation of the species under your jurisdiction. This does not mean you have to protect every individual animal or cannot decide to reduce the size of a given population. It simply means you must ensure that populations remain abundant and healthy enough to provide ongoing benefits for today's citizens without foreclosing options for future generations.
- Considering the needs of all beneficiaries, both current and future. It is almost unavoidable that some of your decisions will benefit some interests more than others. What you need to guard against is systematically advantaging one interest over others. By showing respect for all interests and listening to every opinion, you can demonstrate your commitment to fair treatment. Remember that "empathy does not imply endorsement." You can seek to understand people whose values and desires differ from yours, and consider their input without having to adopt those values as your own. In our experience, the more respect you grant to those who disagree with you as a commission member, the more those individuals will respect you and the decisions you make.
- You are also responsible for allocating the benefits of the trust, with two important caveats:
    - First, the allocation must be consistent with the capacity of the trust to sustain itself.
    - Second, the allocation must be in consideration of competing interests. As mentioned a minute ago, this often requires balancing of interests.

- Finally, your responsibility is to focus on the policy and regulatory matters that come before you. It's the agency director's job to manage the personnel and programs and deal with the day-to-day business of the agency. A solid partnership built on mutual respect for the different roles is the key to successful wildlife conservation.

Slide 13 – What Must Trustees Consider?

The decisions you make as a commission member should be based on information from five sources:

- Obviously biological and ecological information is critical as it tells you what options are consistent with maintaining healthy wildlife populations. This type of information is often the core of what agency professionals provide.
- Other important considerations your agency's professionals can provide are technical and economic feasibility. For example, it may not be physically possible, or cost-effective to gather some types of information or implement a proposed action. If either of those is the case, other approaches will need to be developed.
- As mentioned before, most state legislatures set legal mandates and constraints that affect commission decisions. Making decisions that are not consistent with those parameters will invite challenges from citizen interests or legislative action to further direct or confine commission decisions.
- Finally, social values and interests have an increasingly important and influential role in commission decisions. As mentioned before, science can tell you what's possible, but your stakeholders and beneficiaries will tell you what's "right." There are many ways to gather information on social values and interests and your agency professionals can, and should, help with gathering and analyzing this data for you.

Slide 14 – Why is your job so hard?

Demands for energy, food, water, and space are steadily increasing, putting mounting pressure on wildlife and habitats. At the same time, society's wildlife-oriented values are changing. Research conducted by Colorado State University has documented that the number of people who believe wildlife should be used and managed for human benefit, referred to as having "traditionalist" wildlife values, is declining. In contrast, the number of people who believe wildlife are part of our social network and that people should live in harmony with wildlife, termed "mutualists," is increasing. These trends contribute to controversy over some of the ways wildlife has been used or managed in the past.

In addition to these trends in wildlife-oriented values, the operating environment for agencies and commissions is changing. There is greater emphasis on conservation of endangered species or wildlife that is not pursued by hunters or anglers. Emerging threats like Chronic Wasting Disease, white-nose syndrome or harmful algal blooms in fresh and marine systems add complexity to management. Budget constraints or caps on personnel levels can mean agencies must try to do more with less, all the while adapting to a rapidly changing climate. Finally, low trust in government combined with polarization and declining civility in public policy-making add to the challenges commissions face.

So, how can you be most effective given all these factors?

Slide 15 – Effective Commissions and Commission Members

In our experience, the following actions and traits will help commissions and commission members succeed in today's environment.

First, invite all perspectives to the table. Excluding certain interests from your deliberations or refusing to listen to opinions that differ from yours is not only improper from the standpoint of your public trust responsibilities; it will drive those interests to seek other ways to be heard, like going to court. Even for the most controversial issues, giving all sides the chance to express their views is important.

Second, treat all perspectives equitably. Strive for independence and objectivity when considering input and don't just respond to the loudest voices in the room. You can't expect everyone to be happy with the decisions you make, but if the same interests are consistently dissatisfied with the outcomes, that could be a sign of systematic bias. This principle also applies to how you interact with your fellow commission members.

Third, seek to fully understand the issues before you. You can expect to receive a great deal of information from you staff and will likely hear volumes from your public. Take advantage of the expertise in your staff and ask probing questions. Do your homework, and be open to changing your mind based on new information or analysis and, if necessary, consider postponing any non-urgent decision if more information is needed to make a sound and durable decision. Respect the agency director's role and staff's expertise in making temporary emergency decisions on closures based on local conditions.

Fourth, consider the short- and long-term impacts of decisions. It can be tempting to make a decision quickly and dispose of an issue that comes before you, but remember that wildlife conservation is a "long game." In addition, your obligation to consider the interests and needs of future generations requires you to think beyond the immediate benefits of a decision. It may be necessary for people to accept some restraint or sacrifices now to keep options open in the years ahead.

Fifth, act and speak as one body. While vigorous, civil debate is an important part of a commission's decision-making process, once a decision is reached, commission members should be consistent in explaining the rationale for the decision. In some circumstances, it may be appropriate to express or explain remaining disagreement among commission members, but this should be done without personal attacks or criticism of any commission member based on their individual view on an issue.

Finally, effective commissions are accountable for their decisions. They do not place blame on others if the outcome of a decision is not what was expected or desired and accept responsibility for the outcomes – both positive and negative. If a commission makes a well-informed decision, there is no reason why members should be reluctant to explain to the public why or how they reached that decision or be defensive about it. If a member of the public objects to a decision, the best course of action is to let them know how they can participate in any future decision-making process that relates to the issue.

Slide 16 – Managing the Public's Trust in You

At the beginning of this presentation, I said that in addition to managing the public trust resources one of your essential roles is managing the public's trust in the commission and agency. In many ways, public trust is your most valuable asset. With it much is possible; without it conservation is much more difficult.

Trust in government in general has declined markedly over the past 50 years. While surveys show that wildlife agencies are among the most trusted sources in the government, trust is easy to lose and very hard to regain.

The keys to maintaining the public's trust in the commission and agency include being open, honest, and fair with all interests; treating everyone with respect whether you agree with them or not; and reliably setting and meeting expectations. Being as transparent and inclusive as possible is essential.

Serving as a wildlife commission member can be a demanding task. You can expect to hear a wide range of opinions, some of which will be expressed with strong emotion. Rather than dismissing that sentiment, remember that if people were not passionate about wildlife, there would be less public support for conservation.

Slide 17 – For More on This Topic

I hope you found this brief presentation helpful in understanding the role of a state wildlife commission and commission members. It has been an honor for the staff of the Wildlife Management Institute to compile this information in support of the Association of Fish and Wildlife Agencies.

You can find more information about the concepts discussed in this presentation as well as other helpful resources in the Association of Fish and Wildlife Agencies' Commission Guidebook. The guidebook is available online on the Association's website at the address here.

Slide 18 – Thank You

And, finally, thank you to all the commission members who volunteer their valuable time to serve their state and conserve our precious wildlife resources. You truly make a difference for the well-being and benefit of your state's wildlife as well as citizens today and for generations to come.