

A Thumbnail Sketch of Federal Laws Governing Lead and the Environment

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Introduction

HUMANS HAVE USED A METAL CALLED LEAD FOR MILLENNIA. Ancient lead mines and smelting areas pockmark the Colline Metalliferae, the hills to the north of Rome in southern Tuscany. These mines predate both the Romans and Etruscans. The uses of lead are multiple. Industrialized economies rely on lead for many purposes. The use of lead-based ammunition, for warfare, public security, and recreational hunting, is common throughout the United States and the world.

The ways in which lead affects the environment and human health have become better known only in recent times. To reduce and prevent lead's harm to the environment and human health, Congress enacted several laws that address lead over the last half of the twentieth century.

On March 4, 2009, the acting director of the National Park Service (NPS) signed a memorandum to the highest agency managers (regional directors, associate directors and acting deputy director) announcing two goals. First, the agency is to eliminate lead-based ammunition for NPS-administered wildlife management. Among these actions are “dispatching animals within parks, whether for culling operations or dispatching wounded or sick animals.” Second, NPS is directed to “draft Special Regulation language as necessary, prohibiting the use of lead in hunting and fishing activities for those parks that authorize such activities.”

Congress authorizes recreational sport hunting in approximately 62 areas of the national park system. Congress has also authorized the subsistence take of wildlife in several park areas in Alaska and in Big Cypress National Preserve in Florida. Recreational fishing is widespread in the national park system.

NPS became concerned about the harm that lead causes to park animals during its efforts with the US Fish and Wildlife Service (USFWS) to restore California condors (*Gymnogyps californianus*) to Grand Canyon National Park, Arizona. The wide-ranging carrion eaters, foraging within and outside of park boundaries, would consume carcasses, some of which contained fragments of lead, resulting in mortality to both adult and young.

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Prior to the NPS's introduction to the hazards of lead, USFWS in 1991 issued a regulation that enforced a ban on the use of lead shot in migratory bird hunting throughout the United States (see Title 50 Code of Federal Regulations (CFR) 20.210)). This ban applies across the nation, including within those parks where hunting is authorized and waterfowl hunting occurs. USFWS acted under its authority in the Migratory Bird Treaty Act of 1916 (16 U.S.C. 703–711).

Conclusion

This analysis is not a summary of scientific data about the effects of lead in the environment or on human health and well-being. This analysis does not examine the history, efficacy, or practicality of substituting materials for lead-based ammunition and/or fishing equipment. This review analyzes only whether there are any federal laws, including executive orders, that NPS may apply to implement the prohibition on lead in recreational hunting and fishing in areas of the national park system.

This analysis concludes that of the six major federal environmental laws that address lead, none either mandates or authorizes NPS to prohibit lead in recreational sport hunting or fishing. NPS possesses statutory authority to carry out its announced intent to prohibit lead. That authority is the National Park Service Act of August 25, 1916 (the Organic Act), which requires that the secretary of the interior conserve the wildlife within the parks. In national park system units where Congress authorizes hunting, NPS may decide to manage that activity in such a manner as to ensure that non-target wildlife are protected from the incidental ingestion or other presence of lead. A decision of this nature is both a reasonable interpretation of the Organic Act authority and based upon sufficient scientific data so as not to be groundless or arbitrary. No further legislative authority is needed for NPS to implement such a decision.

NPS could restrict lead by amending general regulations at 36 CFR Part 2 to prohibit the possession and use of lead-based ammunition by persons engaged in recreational sport hunting. An analogous rule-making could be undertaken for fishing tackle. The memorandum of March 4, 2009, refers to a “Special Regulation.” That reference does not mean that the NPS would adopt 62 separate special regulations for parks where hunting is authorized or the hundreds where recreational fishing occur. This would be administratively unworkable and result in a patchwork of individual park discretion, inappropriate for the pre-eminent national system of protected lands in the United States. Rather, the memo of March 2009 should be understood to mean special regulatory language to amend the existing general rules that govern hunting and fishing in the park system. Should the NPS move in this direction, it should be done carefully, with analysis under the National Environmental Policy Act and the Administrative Procedures Act.

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