



Environmental Institutions Seminar Series

Presents

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Collaborative Natural Resources Management in an Adversarial Landscape: Adaptive Management and the New Federal Data Amendments

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12:30 pm – 2:00 pm

Room 4045 Duke Law, Science & Towerview Drives, Duke University

Abstract

Adaptive management is an approach to natural resource management that is often described as “collaborative.” It rests on the premise that, in managing complex systems like watersheds, forests, and wildlife populations, we often cannot obtain the knowledge we need until we attempt solutions, measure their effectiveness (or, as likely, ineffectiveness), and integrate that knowledge into redesigned approaches. More precisely, its essential features are probably better described as “iterative” than “collaborative.” It is currently featured in Columbia River salmon restoration, the Comprehensive Everglades Restoration Plan (the most ambitious natural resources restoration plan in history), numerous watershed and forest management plans, and in dozens of Habitat Conservation Plans under the Endangered Species Act. Yet, given the contested political visions toward these underlying resources, practical experience reveals that adaptive management does in fact need a fair amount of stakeholder cooperation to have a chance of working.

Within the last decade, a “sound science” political narrative has arisen based on the overarching notion that environmental agencies “ignore ‘sound science’ in their zeal to write stringent regulations to implement ultra-protective regulatory policies.” In the late 1990s, Congress passed two statutes known as the Data Amendments: the Data Quality Act (“DQA”) and the Shelby Amendment. Lately, these statutes have begun to make their mark on the regulatory landscape as various political and economic actors use them to demand “correction” of regulatory science alleged to lack “quality.” Most famously, in 2003 the Competitive Enterprise Institute used the DQA to demand that the federal government retract its reference to the “National Assessment on

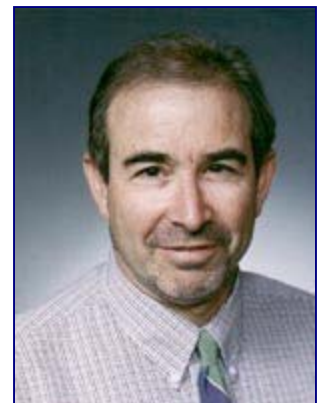
Climate Change” – despite the fact that the report had been peer reviewed by over 300 scientists and assembled under the supervision of the President’s Committee of Advisors on Science and Technology. Lately, challenges have begun to mount under the DQA to science used by the federal government in wildlife and forestry management.

Is there a chance in hell that “sound science” and adaptive management can coexist?

Biography

Donald T. Hornstein is the Aubrey L. Brooks Distinguished Professor of Law at the University of North Carolina Law School. He has won the Law School’s McCall Award for Excellence in Teaching five times (in 1989, 1999, 2000, 2001, 2003) and, in 1999, became the first law professor at UNC to win the University’s overall Distinguished Teaching Award for Post-Baccalaureate Instruction. In 1996-1997, he received a Fulbright Award to work in Eritrea, East Africa on environmental- and natural resources related work. In 1994-1996, Professor Hornstein was Associate Dean for Faculty at Carolina Law.

Professor Hornstein’s work on adaptive management and the new federal Data Amendments (the subject of his seminar) include an article in an upcoming Duke Law Journal (Complexity Theory, Adaptation, and Administrative Law), a book chapter to be published by the Cambridge University Press (The Data Wars, Adaptive Management and the Irony of “Sound Science”) and an article in 2003 published in Law and Contemporary Problems (Accounting for Science: The Independence of Public Research in the New, Subterranean Administrative Law).



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