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SHOULD BIRDS HAVE STANDING?

This question immediately calls to mind Justice Douglas' dissent in *Sierra Club v. Morton*, 405 U.S. 727, 741 (1971). Justice Douglas referred to a law review article that argued for standing for natural objects. Christopher S. Stone, *Should Trees Have Standing?--Toward Legal Rights For Natural Objects*, 45 S. Cal. L. Rev. 450 (1972). Though the Federal Courts still will not entertain a suit with a "natural" plaintiff, it is becoming clear that Federal Courts will allow a state or the federal government to sue for the loss of wildlife. In *In Re Steuart Transportation Co.*, the court held that the state could recover for the loss of 30,000 migratory water fowl resulting from an oil spill in the Chesapeake Bay. The defendant contended that the state and/or federal government could not bring such an action because there was no property damage to something "owned" by the state or federal government. The court agreed that the birds were wild, owned by no one. It found that the right to maintain an action does not depend on ownership, but rather is based on the sovereign right to protect the public interest in preserving wildlife resources. This sovereign right is derived from two sources: 1) the public trust doctrine and/or 2) the doctrine of *parens patriae*. The public trust theory in this case turns on the fact that the state and federal governments have a right and a duty to protect and preserve the public interest in wildlife, i.e., a duty "owing to the people." Likewise, under *parens patriae*, the state acts to protect a quasi-sovereign interest where no private individual cause of action is available. *In Re Steuart Transportation Co.*, 495 F. Supp. 38 (E.D. Va. 1980) (opinion by Judge Calvitt Clarke).

M.J.L.