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Wildlife Management and the Forest Preserve

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WILDLIFE MANAGEMENT AND THE FOREST PRESERVE

An Article Prepared for The Constitutional Protection of Wilderness, Pace Law School 2010

By,

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December 1, 2010

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Introduction

The forever wild language of article XIV of the New York constitution has sparked debate and controversy ever since its enactment. This paper examines how the Forest Preserves affect wildlife contained within the "wild forest lands" protected under article XIV. Through examining the history of the article's adoption it becomes clear that wildlife concerns were a chief motivating factor in preserving these forests. The paper then examines how wildlife is managed in New York, and discusses certain practices which may have implications on the "forever wild" designation. The economic and social benefits of hunting, fishing, and hiking for New York are then examined and it is argued that by increasing their support base the State can further ensure the conservation ideals enacted through the original promulgation of the Forest Preserve will continue to last for another hundred years.

I. History

In the late 1800's a conservation movement began in New York which still influences the way environmental decisions are made in the State. During this time, concern mounted regarding the effects of destructive forestry practices occurring in some of the state's most pristine wildernesses. Writings, paintings, and stories "from the wild" began to appear in the New York Times and in the minds of City elites. This manifested a new desire to recreate in the wilderness, producing a

conservation ethos which promulgated itself to protect these sacred lands.

The beginning of this ideal first sprouted after the Civil War. In 1869 an extremely popular book, *Adventures in the Wilderness,* documented numerous romanticized tales of fishing and hunting in the Adirondacks.[1] These dramatizations led multitudes of middle and upper-class New Yorkers into the Adirondacks to experience their own adventure. Termed "Murrays fools" by the locals, visitors were often unprepared for the realities of harsh conditions in the Adirondacks.[2] While the Adirondacks had always been portrayed in an idealistic natural light, *Adventures in the Wilderness* originated the association of recreation with the Adirondacks and "the wild" in general, producing a desire to recreate in the wilderness through fishing and hunting; "[m]idle class men (and a few women) from Eastern Cities repaired in droves to American seashores, forests and fields to hunt and fish."[3] Being only a day's trip from New York City, the Adirondacks were perfectly situated to suit this ideal. Tourists viewed the forest as a place where "men from the elite and middle classes developed the muscles, self-reliance, and independence needed for success in the competitive world of industry and commerce."[4] To accommodate the throngs of visitors "great hotels" began springing up, with wealthier

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[1] PHILIP G. TERRIE, CONTESTED TERRAIN 61 (2d ed. 2008).
[2] *Id.*
[3] *Id.* at 62.
[4] *Id.* at 63.

tourists even establishing their own "great camps". Such luxurious accommodations often stood in stark contrast to the rough life locals had to endure. As such locals never envisioned "the wild" as a recreational playground, but rather as "a nature not so much of scenery and sport as of a place where people lived and worked among exploitable resources."[5] The dichotomy between locals and tourists over the Adirondacks still exists today; however, the visitors had the political power, and as such their vision was the one promulgated through conservation.

Elite recreational users of the Adirondacks initiated the conservation movement for the area; "[t]he key authors of the Adirondack conservation story were journalists, wealthy businessmen, cut-and-run loggers, government officials, aristocratic hunters and anglers trying to protect their sport."[6] While it is true that most locals also hunted and fished, the participants from New York City spawned the desire to protect the Adirondacks. They initiated the push to protect wilderness areas (primarily from logging interests) in New York and began the process of evaluating the state of New York's wilderness.[7] Benefits arising from field sports and recreational

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[5] *Id.* at 81.
[6] TERRIE, *supra* note 1, at 83.
[7] Commissions, such as the Seymour Commission and Sergeant Committee, were formed to assess the feasibility for the state to acquire timber land. *See* ALFRED S. FORSYTH, THE FOREST AND THE LAW 4-6 (1970).

activities were a chief motivation for protecting forest lands.[8] Under political pressure from City interests, the State government began investigations leading to an 1885 act which defined a "forest preserve" and appointed a forest commission. [9] However, with no clear definition of what it was designed to protect, and with the close ties commission members had with the forest industry, more was needed.[10]

The Constitutional Convention of 1894 led to the designation of "forever wild" in the Constitution, along with creating the Adirondack and Catskill State Parks. Seeing the need for further protection the convention adopted the terminology of the 1885 act:

> The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereone be sold, removed or destroyed. [11]

This represents some of the strongest language ever utilized for environmental conservation. Forest preserve land (state land within

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[8] "Throughout this forest, game is still abundant; the deer, bear, and panther, with smaller animals, find shelter and support and their presence gives to the magnificent scenery a strange, wild and romantic element, which has contributed to make its more accessible portions a choice summer pleasure ground of our people who travel, and who admire the natural splendor of their native land." *First annual report of the Commissioners of State Parks of the State of New York Transmitted to the Legislature May 15,* 1873 (Senate Document 102, 1873; Albany: Weed, Parsons. 1874), *quoted in* TERRIE, *supra* note 1 at 93-94.
[9] Specifically, this act also included for the first time the famous "forever wild language", "The lands now or hereafter constituting the forest preserve shall be forever kept as wild forest lands." 1885 N.Y. Sess. Laws 482 (HeinOnline).
[10] TERRIE, *supra* note 1, at 95.
[11] JOURNAL OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEW YORK 686 (Robert C. Cumming et al. eds., 1894).

the Adirondack and Catskill parks) was now subject to this strict language; by including preserve lands in the Constitution, New York ensures that they may only be altered through popular approval or by re-writing the Constitution during a convention.[12] Article XIV applies to lands in the Adirondacks *and* Catskills.[13] However the main thrust of the support behind the article was due to the popularity and desire to protect the Adirondacks.

A. Involvement of Wildlife Management

As we have seen, wildlife management was a major factor in initiating the desire to protect the Adirondacks. Wildlife conservation is also mentioned in the Constitution of New York: "Forest and wildlife conservation are hereby declared to be policies of the state. For the purposes of carrying out such policies the legislature may appropriate moneys . . . for the practice of forest or wildlife conservation."[14] These responsibilities grew out of the tasks mandated to the Fish and Game Commission[15] and the 1911 Conservation Department.[16] Thus wildlife conservation is provided for through New York's Constitution. The romanticized history of hunting and fishing in the Adirondacks helped

[12] Conventions occur every 20 years or can be promulgated through a call from the State. N.Y. Const. art. 19, §§ 1, 2.
[13] N.Y. Const. art. 14, § 1.
[14] N. Y. Const. art. 14, § 3.
[15] "The forest commission shall have the care, custody, control and superintendence of the forest preserve." 1885 N.Y. Sess. Laws 482 (HeinOnline).
[16] The Conservation Commission "shall have all the powers and be subject to all the duties, in respect to the fish and game of the state, of the forest, fish and game commission or commissioner . . . and it shall administer all laws relating to state jurisdiction over fish and game." 1911 N.Y. Sess. Laws 508 (HeinOnline).

pave the way for an environmentalist movement which created the Forest Preserve, however how these forest lands were supposed to be utilized was still in dispute.

New York created the most extensive conservation park in the Nation. Questions began to arise as to how this park/preserve functioned. The term "forever wild" is of essential importance in understanding this debate. Could no timber ever be cut down? What about the interactions with private lands? Could the State approve projects which would destroy trees in the park for the popular good? Answers began to trickle down from the courts. New York courts adopted an idea that the Forest Preserve was a place to preserve "wilderness", that the main intent of the convention of 1894 was to prevent the destruction of timber which would ruin the area's natural beauty and enjoyment.[17] Naturally "wilderness" includes the wildlife within the forest. Courts describe the preserve as a "wild resort in which nature is given free rein. Its uses for health and pleasure . . . must always retain the character of a wilderness. Hunting, fishing, trapping . . . find an ideal setting in nature's wilderness."[18] Through their interpretations the courts have always maintained that wildlife is an essential component of the Forest Preserve.[19] The "wild forest

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[17] Ass'n. for Prot. of Adirondacks v. MacDonald, 253 N.Y. 234, 238 (1930).
[18] Ass'n. for Prot. of Adirondacks v. MacDonald, 228 A.D. 73, 81-82 (N.Y. App. Div. 1930) *aff'd,* 253 N.Y. 234 (1930).
[19] "From the beginning the courts have acknowledged that the Forest Preserve was established to

lands" protected through the Constitution provide essential habitat for New York's wildlife to thrive. The Preserve cannot simply be thought of as a timber sanctuary, but rather must be viewed as an area that protects all the components of a forest (including the organisms within them) as forever wild. This idea is further illustrated when examining the modern ways in which the preserves are managed.

i. The Adirondack Park Agency

Specifically in the Adirondacks, concern began growing in the late 60's over increased tourism use and popularity of the Adirondack Park. A major concern stemmed from private land owners developing their property in such a way that undermined the essence of the park.[20] As a result the Adirondack Park Agency (APA) formed in 1971.[21] The APA manages the Adirondack Park by establishing a state land master plan and a private land master plan (dividing the park into specific land designations), both of which limit use on Park lands.[22] The state land master plan breaks down land parcels into nine specific designations: wilderness, primitive, canoe, wild forest, intensive use, historic, state administrative, wild, scenic and recreational rivers, and

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provide outdoor recreation in a wild forest setting. The Framers . . . stated that the purpose of the provision, was to bring a halt to commercial exploitation of the state's forest lands and 'to save the forests for the enjoyment and benefit of the people.'" Neil F. Woodworth, *Recreational use of the Forest Preserve Under the Forever Wild Clause, in* CELEBRATING THE CONSTITUTIONAL PROTECTION OF THE FOREST PRESERVE 27, 27 (1994).

[20] TERRIE, *supra* note 1, at 167.

[21] N.Y. Exec. Law § 801 (McKinney 2010).

[22] TERRIE, *supra* note 1, at 168.

travel corridors.[23] The most restrictive of these classifications is the wilderness designation, or areas where "the earth and its community of life are untrammeled by man—where man himself is a visitor who does not remain."[24] These areas require at least 10,000 acres of uninterrupted land and only allow scattered Adirondack lean-tos and primitive tent sites.[25]

The new regulations were challenged in New York courts under the assumption that any tolerance of cutting trees or building on Preserve land was unconstitutional.[26] Presently the management plan is constitutional since it passes the current legal test, "allowing public facilities and public uses that are compatible with the character and preservation of wild forest lands and which do not involve any material cutting of trees."[27] Fishing and hunting are allowed on all of these designations[28] and the plan calls to protect wildlife in general: "wildlife values and wildlife habitats are relevant to the characteristics of the land and sometimes determine whether a particular kind of human use

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[23] STATE OF NEW YORK, ADIRONDACK PARK STATE LAND MASTER PLAN 15 (2001), *available at* http://www.dec.ny.gov/docs/lands_forests_pdf/adk.pdf.
[24] *Id*. at 20.
[25] *Id.* at 21.
[26] *See* Helms v. Reid, 90 Misc. 2d 583 (N.Y. Sup. Ct. 1977).
[27] Woodworth, *supra* note 19, at 36.
[28] While the APA can designate land uses and enforce matters within the preserve, it is important to remember that the DEC still controls wildlife, and wildlife laws even in the forest preserve. As a result the DEC still regulates hunting and fishing within the forest preserve according to the law. N.Y. Envtl. Conserv. Law § 11-0303 (McKinney 2010), *see also* N.Y. Envtl. Conserv. Law § 11-0101 (McKinnedy 2010).

should be encouraged or prohibited."[29] Protecting wildlife in the state plan complies with the historical reasons for enacting a park and the court interpretations surrounding the purpose of the Preserve. Hunting and fishing are in character with the park since they historically occurred in, and were the impetus behind, the desire to protect the area. By allowing recreational wildlife activities on even the most stringently protected areas in the preserve, the APA acknowledges the importance of these types of activities in the park and recognizes their incorporation in article XIV.[30]

The private land master plan promulgated by the APA is far more controversial, since it controls what citizens construct on their own private land. This plan breaks up private land into seven categories: hamlet, moderate intensity use, low intensity use, rural use, resource management, and industrial use.[31] Particular designations regulate lot sizes, proximity to streams, etc., and may require a homeowner to obtain a permit in order to build.[32] While these areas can interact with Preserve lands (since some surround a State controlled area) the APA

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[29] STATE OF NEW YORK, *supra* note 23, at 14.

[30] It should be noted that these activities include "hiking, mountaineering, tenting, hunting, fishing, trapping, snowshoeing, ski touring, birding, nature study, and other forums of primitive and unconfined recreation." STATE OF NEW YORK, *supra* note 23, at 24. They are only allowed as long as the "use does not endanger the wilderness resource itself". *Id.*

[31] *See A citizens guide to Adirondack Park Agency Land use Regulations*, ADIRONDACK PARK AGENCY, http://www.apa.state.ny.us/Documents/Guidelines/CitizensGuide.pdf (last visited Nov. 22, 2010).

[32] *Id.*

attempts to maintain the characteristics of Preserve land by matching it with appropriate private land regulation (for example, a wilderness zone would probably have the private lands near it highly regulated).

ii. The Catskills

The Catskill Park is a patchwork of state (41%), private (53%), and *New York City* (6%) lands.[33] The city ownership is due to water supply concerns, which will be addressed later. This area has never been united under the governance of one agency, such as the APA. With no governing organization, the park is regulated through two regions of the DEC, private land owners, and City lands. As such, no uniform feeling of "a park" exists: there are no signs describing when visitors enter/leave the Preserve, no color coded guardrails, and no agency to deal with all the specific issues surrounding the park.

The Catskills were included in the Forest Preserve almost as an afterthought, in order for a county to pay off a tax debt.[34] The park continued expanding its state lands through this method (along with private lawyers and politicians who used the lands to establish fishing and hunting preserves).[35] The creation of the Preserve was initially well received by locals, who viewed it as a means to stimulate summer

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[33] STATE OF NEW YORK , CATSKILL PARK STATE LAND MANAGEMENT PLAN (2008), *available at* http://www.dec.ny.gov/docs/lands_forests_pdf/cpslmpwom.pdf.

[34] ALF EVERS, THE CATSKILLS: FROM WILDERNESS TO WOODSTOCK 585 (2d. ed. 1982)

[35] *Id.*

business through hiking and tourism.[36] The main support for the Forest Preserve originated from its efforts to increase the supply of game fish and mammals.[37] Many streams in the Catskills suffered from pollution stemming from tanneries. In response, the State undertook an effort to supply these streams with trout as early as the 1870's.[38] Deer also suffered in the Catskill region; "by the beginning of the 1900s intense hunting and a *growing* human population had made a glimpse of a deer an event to be talked about for months."[39] Consequently, the Legislature established a "deer park" near the foot of Slide Mountain.[40] The herd of deer contained in the park, released in 1895, established the current population located in the Catskills. Wildlife in the Catskills motivated the State to adopt conservation measures and protections to preserve the land.

Currently the Catskill Park is managed under its own state management plan (administered by DEC). Similar to the Adirondack Management plan, the Catskill plan divides State land into distinguishable categories: wilderness, wild forest, intensive use, and administrative.[41] While hunting and fishing are generally permitted throughout the preserves, designations can prohibit hunting and

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[36] *Id.*
[37] *Id.*at 588.
[38] *Id.*
[39] EVERS, *supra* note 34, at 588.
[40] *Id.*, "An act to establish parks for the propagation of deer and other game upon lands belonging to the State situated in the Catskill regions" "now constituting a part of the Forest Preserve, for the purposes of breeding of deer and wild game." 1887 N.Y. Sess. Laws 735 (HeinOnline).
[41] *See* STATE OF NEW YORK, *supra* note 33 at 11.

trapping.[42] However the DEC explicitly states "[h]unting is a tradition and appropriate activity on DEC state lands, including the Forest Preserve."[43] Like the Adirondacks, the Catskill Park utilizes a land management program to regulate state lands which recognizes the importance of preserving wildlife in the area.

The natural wildlife of the Adirondacks and Catskills operated as one of the primary motivators for the conservation movement to create a forest preserve. The vivid descriptions of adventurous hunting trips led to an influx of recreational travelers to these areas, fermenting the desire to maintain a great park. Through every interpretation of the Preserve and what it is meant to be, whether it's the courts, the State Legislature, or the Constitution, the importance of recreation, and specifically recreation involving wildlife (hunting, fishing, birding, or hiking) has always been protected. When one thinks of the Forest Preserve the importance of the wildlife contained within its borders is a central thought. Wildlife are included in article XIV's "wild forest land" and cannot be excluded from its protection. How wildlife is managed will continue to frame and alter the characteristics of the Preserve for years to come.

II. Wildlife Management in New York

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[42] Under some Administrative Areas hunting is prohibited, "The Vinegar Hill Wildlife Management Area . . . is managed for wildlife and limited recreational use, including hiking and cross-country skiing. Hunting and trapping are prohibited." *Id.* at 75.
[43] *Id.* at 104.

The main regulatory agency in charge of wildlife management in New York is the Department of Environmental Conservation (DEC). As such the DEC conserves habitat and sets regulations to help protect plants and animals.[44] The DEC is the main enforcer of hunting regulations which are set by state laws.[45] New York wildlife management law is based on the idea that the "state owns all the fish, game, and wildlife in the state."[46] Under the law, New York is divided into "regions" which each have a management board responsible for "preserv[ing] and develop[ing] the fish and wildlife resources of the state and improve[ing] access to them for recreational purposes."[47] Regional boards are responsible for the wildlife in the Adirondack and Catskill Preserve (the Catskills incorporates two DEC regions). As a result several DEC programs or actions involving wildlife management affect the Forest Preserve and are explicitly provided for in the State's environmental laws.

A. Endangered Species

Under the Federal Endangered Species Act (ESA) states are required to protect any species that is endangered or threatened.[48] For every listed species "critical habitat" must be identified from which recovery plans are promulgated in an attempt to delist the particular

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[44] *See* DEPARTMENT OF ENVIRONMENTAL CONSERVATION, http://www.dec.ny.gov/23.html (last visited Nov. 22, 2010), *see also* McKinney's ECL § 11-0907, which sets the bag limits for bear and deer harvest.
[45] N.Y. Envtl. Conserv. Law § 11-0303 (McKinney 2010).
[46] N.Y. Envtl. Conserv. Law § 11-0105 (McKinney 2010).
[47] N. Y. Envtl. Conserv. Law § 11-0501 (1) (McKinney 2010).
[48] Endangered Species Act, 16 U.S.C.A. §§ 1531-1543 (2006).

species.[49] New York implements the ESA through the Harris and Mason laws. The Harris law allows the State to enforce and even add to the federal list of endangered species.[50] The Mason law incorporates more species under the protection of the act and was enacted due to the limited scope of the federal act.[51] Therefore, lands within the parks can fall under even greater restrictions if they are deemed necessary habitat for a listed species.

B. Fish Hatcheries/Stocked Lakes and Rivers

The DEC undertakes a fish hatchery/stocking program which operates to generate sufficient biomass in New York. The State runs 12 fish hatcheries and stocks over 1,200 public waters with these fish.[52] There are also over 19 certified private fish hatcheries that operate within the state.[53] A major concern associated with fish hatcheries is the spread of disease and contaminants (such as PCB) into the waterway.[54] To alleviate these fears the DEC requires that any private fish hatchery obtain a permit before it introduces fish into a waterway,

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[49] Endangered Species Act, 16 U.S.C.A. § 1533(f)(1)(A) (2006).
[50] N.Y. Envtl. Conserv. Law § 11-0535 (McKinney 2010).
[51] N.Y. Envtl. Conserv. Law § 11-05356 (McKinney 2010).
[52] Fish Hatcheries, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, http://www.dec.ny.gov/outdoor/7742.html (last visited Nov. 22, 2010).
[53] Private and Commercial Hatcheries, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, http://www.dec.ny.gov/outdoor/52348.html (last visited Nov. 22, 2010).
[54] DEC FAQ on Hatcheries, http://www.dec.ny.gov/outdoor/21667.html (last visited Nov. 22, 2010) .

and that the purchaser obtains a fish health certificate, indicating that the fish purchased are from inspected and certified facilities.[55]

Stocking occurs within the Forest Preserve. Numerous streams and ponds are filled with farmed fish from both state and private hatcheries. While no lawsuit challenges the constitutionality of introducing farmed fish into a "wilderness" state, one would envision an extremely difficult case for the plaintiff. Hatcheries are utilized in an attempt to restore natural populations and increase recreational use of rivers and streams. The DEC is charged by law to promote New York's recreational fishing industry.[56] Fish hatcheries accomplish both of these mandates by restoring native populations to a level that encourages recreational use. The importance placed on sustaining fishing in the preserve lands also demonstrates the implicit presumption that this recreational use is protected as part of "wild forest lands" in article XIV. It would be highly unlikely they could be found inconsistent with the ideals of the preserve.

C. Acid Rain and Treated Lakes

A major environmental concern for New York's forests is acid rain. A by-product of fossil fuels, acid rain can lead to increased mortality of

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[55] N.Y. COMP. CODES R. & REGS. tit. 6, §§ 188.1, 188.2 (2010).

[56] "The commissioner shall, in conjunction with the commissioner of economic development and the commissioner of parks, recreation and historic preservation, develop and implement a program which will encourage residents and out-of-state fishermen to utilize New York state's fishing opportunities. N.Y. Envtl. Conserv. Law § 11-1307 (McKinney 2010).

animal life in lakes, inhibit tree growth, and lead to increased tree mortality through the winter.[57] Specifically, the Adirondacks suffer the worst acid rain damage in the nation.[58] In response the State commenced a massive campaign cutting emissions to combat acid rain damage.

New York became the first state in the Nation to adopt legislation aimed at curbing acid rain.[59] This initial act proved highly successful and even included a provision which labeled the areas of the Forest Preserve as "sensitive receptor areas".[60] Acid rain concerns were further displayed when Congress amended the Clean Air Act (1990) to propose emission trading, and added provisions to account for acid rain and ozone depletion.[61] The Legislature recognized the importance of protecting the Preserves; by mandating emission requirements they (and the federal government) helped ensure that a new threat to the Preserve, destruction from acid rain, wouldn't alter the character and nature of the Preserve (which they are obligated to protect).

Another way New York combats the Acid Rain problem is illustrated through the DEC's liming program. This program involves the dumping of lime into lakes and estuaries in an attempt to lower the PH and allow native species to survive. The DEC has authority to do

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[57] Bernard C. Melewski, *Acid Rain and the Adirondacks: A Legislative History*, 66 Alb. L. Rev. 171, 172 (2002).
[58] *Id* at 173.
[59] *Id. at 176.*
[60] *Id.* at 177, N.Y. Envtl. Conserv. Law § 19-0915 (McKinney 2010).
[61] Overview of the 1990 Clean Air Act Amendments, ENVIRONMENTAL PROTECTION AGENCY, http://www.epa.gov/air/caa/overview.txt (last visited Nov. 22, 2010), *see generally* Clean Air Act, Amendments, 1990, Pub. L. No. 101-549.

this under § 11-0303 of the Environmental Conservation Law.[62] The DEC views liming as "one of a group of techniques that are broadly characterized as habitat management".[63] Liming has been allowed in the Preserves and the DEC recognizes no conflict with its use in the Adirondack State Park,

> "The Adirondack State Park Land Master Plan does not disallow the use of certain fishery management techniques . . . Unit Management Plans (UMPs) developed by the DEC and approved by the APA for specific areas within the Adirondack park include provisions for liming ponds. Liming is discussed as a management tool . . . [t]hus it is clear that liming is accepted as a legitimate and useful fisheries management activity when applied to carefully selected waters."[64]

Liming displays the extent to which the State is willing to alter natural water bodies in an attempt to restore them back to their pristine wilderness condition. Proactive management, needed to sustain wildlife and the wilderness, is required to protect the "wild forest lands" of article XIV.

D. Road Salting Within the Preserve

While Preserve lands are generally safe from new forms of construction, there are roads and highways intersecting these areas

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[62] "[S]uch management shall be deemed to include as natural resources and the development and administration of resources for making them accessible to the people of the state." N.Y. Envtl. Conserv. Law § 19-0915 (McKinney 2010).
[63] *See* DEC Report on Liming, DEPARTMENT OF ENVIRONMENTAL CONSERVATION, http://www.dec.ny.gov/docs/wildlife_pdf/limingeis3.pdf (last visited Nov. 22, 2010).
[64] *Id.* at 17.

which bring negative effects from salting in the winter. Extensive salting on roads leads to lower biodiversity in adjacent waterbodies, increased salinity in groundwater, increased soil runoff, decreased plant health, increased collisions with wildlife, and a increased corrosion rate for vehicles.[65] Amphibians are especially susceptible to high salinity areas since they have a highly permeable skin which is critical for their respiratory functions.[66] Mammals (moose, deer) and birds are also prone to negative effects due to their physiological need for salt (they often are attracted to the salty edges of roads, increasing accident rates).[67] Salting displays a very real concern, favoring safety for residents over the need to maintain the principles of the Park (by protecting its wildlife). A scientific group, working in conjuncture with Paul Smith's College, proposes to utilize less environmentally stressful techniques in the Adirondack Park. Their study examines the effects of salting on roads in the park and suggests modern techniques to combat negative effects. Unfortunately the initial costs of these techniques are higher than the practices currently implemented and therefore are unlikely to be adopted.[68] As a result a practice which probably conflicts with article XIV continues within the Preserve.

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[65] DANIEL KELTING & COREY LAXSON, REVIEW OF EFFECTS AND COSTS OF ROAD DE-ICING WITH RECOMMENDATIONS FOR WINTER ROAD MANAGEMENT IN THE ADIRONDACK PARK 1 (2010).
[66] *Id* at 41.
[67] *Id* at 42.
[68] The report argues that environmentally conscious practices end up being cheaper *long term*, stating that ecosystem services of the park would be hindered and that new technology can save the state money. *Id* at 20, 59.

E. Poaching

It is illegal for any person to take or kill any protected wildlife, fish, or game, unless provided by the Fish and Wildlife Law.[69] These laws are enforced through Environmental Conservation Officers who frequently arrest violators.[70] Poaching has often been an issue between local communities and the state regulatory body governing them in the Preserves. When the parks first formed people were reluctant to recant their normal hunting activities and conform to the policies mandated by the governing agency. As exemplified by the recent arrests in the northern Hudson valley of over 100 poachers, this divide still exists today.[71] Tensions between local communities and State agencies exist in the Preserves; while they might appear to have subsided it is important to remember these issues still take place.

F. Specific Permitting Programs

A new management program currently undertaken by the DEC is the Deer Management Permit program.[72] This program allows for a hunter to take an additional animal if the Department determines the population is harming the ecosystem of a given area.[73] Currently this

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[69] N.Y. Envtl. Conserv. Law 11-0107 (McKinney 2010).
[70] *See Major Crackdown on Deer Poaching nets more than 100 Individuals*, DEPARTMENT OF ENVIRONMENTAL CONSERVATION (2009), http://www.dec.ny.gov/press/60615.html.
[71] *Id.*
[72] N.Y. Envtl. Conserv. Law § 11-0913 (McKinney 2010).
[73] *Id.*

is a contentious issue in the Catskills, with locals feeling a need for more doe permits to curb the overabundant deer population.[74] The program demonstrates concerns the State has with overabundant deer populations (due to car accidents, crop damage) and how it attempts to mitigate these effects in the Preserve.

G. Reintroduction of Wildlife to the Preserve

During the early years of the Adirondack Park many mammals were nearly extirpated, with others in serious decline. Animals such as the black bear, white-tailed deer, bobcat, otter, marten and fisher all weathered a period of low populations (1800-1900) only to recover fully in modern times.[75] Animals not quite so lucky include the cougar, lynx, wolf and golden eagle.[76] Attempts to reintroduce extirpated species have mixed success. By examining the success and failures of a few, the complexities of the Park begin to come into focus.

i. The Beaver

As a result of extensive trapping, the beaver population in New York at the turn of the century consisted only of one or two families north of Saranac Lake.[77] Thirty five beaver were introduced into the

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[74] Interview with Aaron Bennett, on file with author. Whitetail deer have numerous negative effects when their populations become too high, such as car accidents and overbrowsing. These topics will be discussed later.
[75] JERRY JENKINS & ANDY KEAL, THE ADIRONDACK ATLAS 34 (2004).
[76] *Id.*
[77] *Id.* at 44.

central Adirondacks between 1902 and 1909.[78] Due to the lack of large predators (wolves had been extirpated and coyotes were not in the area yet) the beaver population thrived and the state was forced to re-open the trapping season for them in 1924.[79] A "beaver boom" progressed throughought the state; harvests in 1970 doubled those of the 1950's and the 2000 harvest was double the 1950 yield.[80] Currently the beaver population in the Adirondack Park remains at a constant level (due to it reaching its carrying capacity).[81] The success story of the beaver is an ideal example of how the park reverted to its original character. While bringing back a small mammal with no real predators proved to be easy, a much harder task faces some of the large predators in the Preserve.

ii. Large Predators

Reintroduction of large predators into the Adirondack Park postulates an ideal goal of reverting the wilderness to a state it once exhibited. The sheer size of the park (over a million acres of wilderness protection) seems to offer an ideal habitat to support large animals. However, this ignores the fact that park land is essentially a patchwork of segmented protected areas sprinkled with private lands. Parcels contain different regulations based on their classification. By

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[78] *Id.*
[79] *Id.*
[80] JERRY JENKINS & ANDY KEAL, THE ADIRONDACK ATLAS 44 (2004).
[81] *Id.*

examining the introduction of the lynx into the area, some of the Park's conservation shortcomings are illustrated.

In 1989 an attempt to re-introduce the lynx into the Adirondack Park began with introducing five cats to Lake Colden for a scheduled release.[82] The releases continued for the next few years, totaling 83 animals.[83] However the program was not a success. Most animals moved to lower elevations and became vulnerable to human induced mortality (cars, hunting, etc). [84] The Park lacked a sufficient "safe space" for the animals to settle.[85] Due to the interconnectivity of the park, lynx were susceptible to human induced mortality when they migrated large distances; "[l]arge as it was by eastern standards (670 square miles), it was apparently inadequate to contain the extensive exploitations of freshly released lynxes."[86] Lynx also faced strong competition from bobcats, which feed on the same prey and generally outcompete lynx.[87] As a result the study recommended that future funds be used to conserve existing wildlife populations, rather than wasting money on programs that have little prospect for success.[88]

Large carnivores require large areas of undeveloped habitat. "A key concern for carnivore survival is roads. Simply put, roads of any

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[82] Rainer H. Brocke, *Wildlife for a Wilderness, Foundations of the Ecosystem and Economy, in* 175 THE GREAT EXPERIMENT IN CONSERVATION, VOICES FROM THE ADIRONDACK PARK (Porter et al, ed., 2009).
[83] *Id.*
[84] *Id.* at. 176.
[85] *Id* at 177.
[86] *Id.* at 177.
[87] Brocke, *supra* note 82, at 171.
[88] *Id.* at 177.

type intersecting the landscape enhance human access, thereby increasing the risk of human-caused deaths, intentional or not."[89] Predators that once thrived in the forest (wolves or cougars) are unlikely to survive the modern park due to its patchwork design. When attempting to restore wildlife in the Forest Preserve back to its natural state, it is essential to examine the compatibility of the animal with the current structure of the park. Due to its patchwork nature and lack of significant (in terms of predator habitat) undeveloped area, the Adirondack Park does not seem suitable to support large carnivores.

iii. Moose walk right back in

Moose had been extirpated from the Adirondack Park for over one hundred and twenty years.[90] While there were abundant populations north and east of the park (Vermont), the scientific community contended that moose and deer were unable to cohabitate since deer carry a parasite lethal to moose.[91] However, due in part to the new wetlands created by a vibrant beaver population, moose began returning to the park in the 1970's.[92] Moose continue to meander into the state and it appears that the park sustains breeding populations.[93] A major concern associated with moose populations involves automobile

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[89] *Id.* at 179.
[90] JERRY JENKINS, *supra* note 75, at 49.
[91] *Id.*
[92] Rainer H. Brocke, *Wildlife for a Wilderness, Foundations of the Ecosystem and Economy, in* 49 THE GREAT EXPERIMENT IN CONSERVATION, VOICES FROM THE ADIRONDACK PARK (Porter et al, ed., 2009)..
[93] *Id.*

accidents. Moose feed on salt lick on the sides of roads and as a result are fairly susceptible to serious auto collisions (moose collisions have a higher mortality rate than deer accidents). A vibrant moose population could generate a moose hunt (Vermont has such a program) which would bring the benefits of publicity and money to the park. However if this were to happen, it would be vital to protect a breeding population, ensuring the park doesn't lose one of its great treasures.[94].

iv. Invasive species

A final concern associated with the parks is the introduction of invasive species and the damage they cause. If re-introducing animals into the park seems in line with the Constitution's intent, the question must be asked whether the extermination of some is permitted. Invasive species are a central concern for both forests and waterbodies. Boat travel can lead to a significant dispersal of invasive aquatic organisms.[95] These organisms (such as the zebra mussel or Eurasian watermilfoil) threaten to significantly alter the ecology of water bodies located within the Preserves. Furthermore significant threats to the forest exist through the introduction of specific species such as the

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[94] Moose have similar concerns involving auto accidents as whitetail deer, which will be discussed later.

[95] In an attempt to mediate this problem the Watershed Stewardship Program was formed to inform boaters of the negative impacts a "dirty boat" can cause. However there is no State law or regulation in place enforcing these concerns. Lake Placid has just approved a *local* law allowing enforcement (fines) for boats which will not clean off before entering waterways. Eric Voorhis, *Law Lets Police Ticket Boat-Launch Violators,* ADIRONDACK DAILY ENTERPRISE (Jul. 16, 2010), http://www.adirondackdailyenterprise.com/page/content.detail/id/514374/Law-lets-police-ticket-boat-launch-violators.html.

emerald ash borer. Should timber cutting on the preserve occur to help curb these species? New York law established an invasive species council which the legislature felt necessary due to the "detrimental effect upon the state's fresh and tidal wetlands, water bodies and waterways, [and] forests."[96] Clearly the State views these threats as a significant risk to the Preserve; however, it appears a constitutional amendment would be required to protect any of the forest from the ash-borer since it requires cutting a significant amount of timber.

New York explicitly protects its wildlife through laws enacted by the Legislature. Wildlife management is a central issue in New York's conservation movement; from game management to controlling the negative effects of acid rain, there is a clear mandate to protect and preserve the wildlife of New York. Similarly the Forest Preserve has always been associated with a teeming wildlife population. Attempts to restore the former glory of the Park by re-introducing animals, and eliminating invasive species, are attempts at restoring the very character of the Park. Rather than conflict with the language of Article XIV, these programs attempt to restore the "wild forest land" with the wildlife that brought them public recognition. By instilling a strong wildlife management program New York ensures it will reap the benefits of having productive woods filled with a diverse group of animals.

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[96] N.Y. Envtl. Conserv. Law § 9-1701 (McKinney 2010).

III. Wildlife Benefits

A. Hunting

Initially in the 1800s hunting and fishing had a devastating effect on the Preserves. Without regulations or limits, game populations hit an all time low at the turn of the last century.[97] However, through the programs previously discussed, many game species in peril (whitetail deer, black bear) rebounded. In fact some populations are so numerous that new management techniques attempt to lower their numbers. By examining the benefits of a healthy game-species population, a potential source of revenue is introduced for the parks.

Whitetail deer have a tumultuous history in the state and parks. Overhunting nearly devastated this species at the turn of the century. However, they have made a remarkable comeback and in some areas (suburbs) are viewed as a nuisance due to them eating gardens and causing accidents. Deer regulations are defined under the laws of New York and enforced/implemented through the DEC. The fees hunters are obligated to pay create a direct resource for the State to tap. Hunters also contribute to local economies through the hotels they stay in, food they buy, and materials they purchase. These are not minute considerations: in New York alone it is estimated that in a given year

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[97] The New York population was estimated at 20,000 and since has recovered to over a million animals, Paul Curtis & Kristi Sullivan, *Wildlife Damage Management Fact Sheet Series, White-Tailed Deer*, CORNELL COOPERATIVE EXTENSION 1 (2001), http://wildlifecontrol.info/pubs/Documents/Deer/Deer_factsheet.pdf.

hunters contribute over $800 million in retail sales, with a total multiplier effect surpassing $1.5 *billion*.[98]

While deer populations continue to rise in New York[99] the number of hunters is declining.[100] Overabundant deer can have a devastating effect on the natural environment; they impair shrub growth, affect other species, reduce plant cover, and alter nutrient and carbon cycling.[101] These extensive populations can also adversely affect humans through traffic collisions, and crop destruction.[102] To address these problems the State is undertaking a new "deer management program" designed to "manage deer populations at a level appropriate for human and ecological concerns."[103] Specifically this program hopes to "[p]romote and enhance deer hunting as an important tradition and management tool in NYS."[104] While the deer management program applies to the whole state, the populations in the two Forest Preserve lands are quite dissimilar.

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[98] *Economic Importance of Hunting in America*, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES, 4 (2002), http://www.fishwildlife.org/pdfs/Hunting_Economic_Impact.pdf.
[99] JENKINS, *supra* note 75, at 53.
[100] The number of hunters (and even fishermen) in New York has declined since 1996, U.S. Fish & Wildlife Service, 2006 National Survey of Fishing , Hunting, And Wildlife-Associated Recreation—New York 15 (2006), http://www.census.gov/prod/2008pubs/fhw06-ny.pdf
[101] *See* Steeve Cote et al, *Ecological Impacts of Deer Overabundance*, 35 ANN. REV. ECOLOGY, EVOLUTION AND SYSTEMATICS, 113 (2004) (discussing adverse impacts of deer overabundance).
[102] *Id.*
[103] Powerpoint: DEC, *Developing a Deer Management Plan for NYS*, 2010, http://www.dec.ny.gov/docs/wildlife_pdf/deerplanppt2010.pdf
[104] *Id.*

Catskill Park deer populations are illustrative of the state's population, in that they have continually expanded. High numbers of deer have not necessarily translated to an increase in hunters.[105] For an area that is struggling economically, the loss of this revenue is sorely missed.

The Adirondacks enjoyed a robust and healthy deer population up until the 70's.[106] Since winters are much harsher in the Adirondacks they affect wildlife populations more severely than the surrounding areas. Deer are no exception: coupled with an aging forest that decreased their food supply, deer in the Adirondacks "became increasingly vulnerable to hard winters. Deep snow in 1969 and 1970 reduced deer populations all over northern New York."[107] Unlike populations surrounding the park, deer populations inside the blue line haven't recovered.[108] This has led to a drop in hunting club attendance and a tendency for some of the most famous Adirondack hunting clubs to hunt outside of the Preserve.[109]

Hunters represent a potential revenue source for rural areas that often struggle economically. The benefits mentioned from hunting apply to fishermen and even wildlife watchers. Generating a group of individuals who care about preserving wildlife (whether it's used to fish, hunt or watch) automatically fosters a support group for these

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[105] *See* interview with Aaron Bennett (describing hunting lodge reduction in contrast to his perceived increase in abundance of deer populations).
[106] JENKINS, *supra* note 75, at 49.
[107] *Id.*
[108] *Id.*
[109] *Id.*

forests. Much in the way the park was started by individuals concerned with recreational activities in the preserve, a modern concerned citizen group can generate support for these parks as well. Recreation provides revenue, support, and protection for the Preserve lands.

B. Fishing

Freshwater fishing also plays an enormous role in both parks. As with hunting, fishermen generate revenue for local towns and villages in and around the park. Freshwater fishing in New York generates over 900 million dollars annually,[110] with just over 1 million participants every year.[111] The Catskills in particular enjoy a deep heritage of fly fishing. Fishing regulations are also enforced through state law.[112] Additionally, fishermen illustrate a great example of how concerned citizens can organize to enforce environmental regulations they feel are necessary.

The immense and offensive pollution undergone on the Hudson River during the 60's lead to the formation of the Hudson River Fishermen's Association (HRFA).[113] The group organized, mobilized, and increased support to protect the Hudson River from polluters who

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[110] U.S. Fish & Wildlife Service, 2006 National Survey of Fishing , Hunting, And Wildlife-Associated Recreation—New York 34 (2006), http://www.census.gov/prod/2008pubs/fhw06-ny.pdf pg.
[111] *Id.* at 19.
[112] N.Y. Envtl. Conserv. Law §11-1301 (McKinney 2010).
[113] *A Brief History*, RIVERKEEPER, http://www.riverkeeper.org/about-us/our-story/a-brief-history/(last visited Nov. 22, 2010).

were destroying its integrity. Eventually forming into the watchdog group Riverkeeper, HRFA initiated the movement which led to cleaning the Hudson. Riverkeeper is an excellent example of how fishermen or hunters share the same concerns as environmentalists. The Riverkeeper model must be kept in mind when attempting to find support for the Forest Preserve.

C. The Catskill Park, A Model of Ecosystem Services

All natural biota provide a service to the human race. Trees generate oxygen, streams give us water, and marshes provide flood control. The term "ecosystem services" describes a relatively modern notion that these services should be accounted for when determining the value of land. The term is loosely defined as "the benefits human populations derive, directly or indirectly, from ecosystem functions."[114] Hopefully by finding a value for such services a governing body can "capture a portion of the benefits received by environmental service users and channel it to land users to provide an incentive to protect ecosystems, not to provide compensation for the actual value of the service provided by the ecosystems."[115] Ecosystem service management attempts to encourage conservation through the incentive of monetary gain. By imposing these practices a government is simply trying to let

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[114] Ezequiel Lugo, *Ecosystem Services, the Millennium Ecosystem assessment, and the Conceptual Difference Between Benefits provided by Ecosystems and Benefits Provided by People*, 23 J. LAND USE& ENVTL. L. 243, 243-244. (2008).
[115] *Id.* at 256.

the natural systems pay their way into significance.[116] One of best examples of ecosystem services is displayed in the Catskill Park and surrounding areas.

Water purification is an intensely complex issue that often requires large sums of money. However, it may provide an optimal example to foster the notion of ecosystem services. New York City demonstrated how ecosystem services provide a cheaper alternative to industrial mechanisms. Faced with an ultimatum to filter the water entering into the city (with a cost of $6-8 billion in investment, and $300 million a year to operate) the City began to investigate other mechanisms to provide clean water. Discovering a provision in the Safe Drinking Water Act, the City learned it wouldn't be required to filter water if it demonstrated it took other sufficient steps to protect its water from contamination.[117] As a result the city embarked on a $250 million program to acquire and protect 350,000 acres of land in the Catskills as watershed. These estuaries are protected from boating and other contaminative activities (reducing runoff, septic seepage, etc.) through the City's police powers. Utilizing the ecosystem service of water filtration helped save the City significant money (since the watershed program is only projected to cost $1.5 billion).[118] The City watershed extends outside of the Preserve, but it does include Forest Preserve

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[116] Gretchen C. Daily, *Protecting Ecosystem Services: Science, Economics, and Law*, 20 STAN. ENVTL. L. J. 309, 310 (2001).
[117] *Id.* at 315, Safe Drinking Water Act 42 U.S.C. § 300g-4 (2006).
[118] Daily, *supra* note 116 at 316.

lands. By protecting the environment with the intent of using its service to purify water, New York City displays a highly successful ecosystem services example.

Other services exist in the Forest Preserve that have yet to be tapped in a way similar to the Catskills. While the Catskills exemplify clean water, the Adirondacks can be thought of as providing a carbon sink. A carbon sink is "a process, activity, or mechanism that removes G[reen] H[ouse] G[ases] or GHG precursors from the atmosphere and then stores them."[119] Major carbon sinks are oceans and forests, since they are highly influential in the global carbon cycle (describing how carbon shifts among great storage facilities: the geological, oceanic, terrestrial, and atmospheric reservoirs).[120] Forests act as a great remover of carbon from the atmosphere. Through their utilization of photosynthesis they exchange (along with the oceans) twenty-five times more carbon with the atmosphere than humans' release.[121] Two thirds of the total carbon on earth is sequestered in biomass from vegetation or soils by trees and plants in forests. [122] As a result of their significant effect on carbon, tearing down forests can increase the level of carbon in the atmosphere.[123] The Adirondack Forest Preserve has an explicit ban on cutting timber, promulgated through the APA private and state land

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[119] *See* Dennis Hirsch, *Trading in Ecosystem Services: Carbon Sinks and the Clean Development Mechanism*, 22 J. LAND & USE & ENVTL. L. 623(2007).
[120] *Id.* at 628.
[121] *Id.* at 629.
[122] *Id.* at 629.
[123] *Id* at. 629.

master plans. Perhaps illustrating their carbon value can keep the Adirondack forest from being cut or sold, much in the same way the Catskills are viewed for their water.[124]

Wildlife in the park also generates revenue. Maintaining a complex and diverse wildlife population ensures that hunters, fishermen, and wildlife watchers will continue to utilize the parks. As previously discussed, hunting and fishing activities generate significant revenue for local communities. Wildlife watchers have the same effect. In New York "watchers" include 3.9 million people and generate over 1.5 billion dollars. [125] Combined with the revenue generated from fishing and hunting activities, wildlife in New York contributes a significant amount of money to the State's economy. Similar to water protection in the Catskills, the wildlife within the Forest Preserves is a vital ecosystem service worth protecting.

D. Biodiversity, a new reason for large wild areas

While wildlife management has typically focused on game species it is important to note that wilderness protection does not simply encompass animals we hunt. During the end of the twentieth century scientists began to appreciate the importance of the interconnected

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[124] For a general illustration of the potential values associated with water in the Adirondack Park *See* KELTING & LAXSON, *supra* note 65, at 20.
[125] U.S. Fish & Wildlife Service, *supra* note 110, at 14.

ecological systems that manifest in nature.[126] This notion began to foster itself in a sense of "ecological conservationism" which, "was based on the notion that nature, unspoiled by humans, is the central organizing principle of ecosystem health, and therefore more emphasis should be placed on protecting the integrity of native ecosystems."[127] Ecosystem land management has four premises that follow from this line of thinking: 1) commodity production can be tolerated only if it doesn't interfere with preserving natural systems, 2) original conditions are to be protected since they are most consistent with a healthy ecosystem, 3) all species, not just those on brink of doom, need to be safeguarded, and 4)natural processes and linkages should also be protected.[128]

This idea has led to a notion that biodiversity (the diversity of life in all its forms, and all its levels of organization, encompassing ecosystem, regional, species, and genetic diversity) should be the driving force in wilderness protection. [129] Biodiversity protects areas not just for threatened species but for their physical environment as well. It requires management to be done "on a large enough scale, both geographically and temporally, to guard against species loss, to reflect the interconnectedness among living things, and to ensure sustainable

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[126] Jan Laitos, *The Transformation on Public Lands*, 26 ECOLOGY L.Q. 140, 195 (1999).
[127] *Id.* at 195.
[128] *Id.* at 196.
[129] *Id.*

resource systems."[130] As such large areas of conserved land are required to accommodate all of the ecological processes needed; "[a]n array of large, intact ecosystems is necessary to support healthy and diverse living organisms."[131]

The Forest Preserves provide a perfect template to enact these types of management policies. While the patchwork of public and private lands makes it challenging to conserve vast open areas, all efforts should be made to consolidate conservation blocks into bigger areas to further protect their biodiversity. As previously discussed, this is essential if any large predators (requiring a large habitat) are going to successfully be reintroduced into the parks. While it generally is difficult to establish these areas (due to the fact that many ecosystems don't confine themselves to human induced lines on a map) the Forest Preserves may be flexible enough to begin this process.

IV. The Future of the Forest Preserve

With mounting dissatisfaction growing in New York's populace over state government, a new constitutional convention looms on the horizon. This paper has examined the current state of wildlife

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[130] *Id.*
[131] Laitos, *supra* note 126, at 197.

management under Article XIV and will now focus on three potential scenarios which could occur under a new convention.

A. The Constitutional Convention, leave things the same?

New York law incorporates one of the strictest conservation mandates in the Nation. The "forever wild" language represents a strong regulation designed to protect wilderness areas forever. This language protects hunting and fishing rights by including them within the preserve. Though many benefits have been demonstrated from article XIV, there are problems associated with the current system.

The current doctrine allows for uses of the park so long as they are in "character of the wilderness."[132] While this designation allows the promulgation of state land master plans that legalize some inappropriate uses (timber cutting, mechanized travel, large highways) it is important to remember the plans also champion the re-introduction of species and promote recreation in the park. The allowance of certain programs on Preserve land permits the Preserve to adapt to modern conditions and effectively meet concerns that arise. How would a strict interpretation deal with damage to the Preserve from global warming? Or invasive species? By allowing certain activities to occur on the Preserve, in line with the character of wilderness, the park has adapted the archaic "forever wild" clause to regulate modern concerns.

[132] N.Y. Const. art. 14, § 1.

Current construction of Article XIV also allows for the recreational use of the park (a main reason for its promulgation) to be promoted. By allowing certain recreational activities in designated areas, the Forest Preserve ensures that people in the State will continue to have an interest in maintaining the area. Wildlife activities (hunting, fishing, hiking) add an incentive since they are a low-impact use, not having the adverse effects associated with other recreational activities. Specifically, hunting in the Adirondacks personifies this type of an experience. Hiking through the woods without an ATV, in difficult weather conditions, with the knowledge that any animal has to be hand-dragged out of the woods leads to a unique experience sought after by numerous hunters.[133] By allowing these activities to occur, the Preserve ensures a concerned populace will continue to utilize the park in a low-impact fashion.

While there are many benefits to the current structure, opportunities for improvement exist. Though parks protect open spaces of land, the fragmented nature of some areas significantly hinders biodiversity conservation. Large predators are absent from the park, compromising the true "character of wilderness". Often ecosystems do not conform to the lines drawn by humans. As such only part of a vital ecosystem may be protected, while the remainder retains some lesser

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[133] The hunting experience is described as one of the most unique and fulfilling experiences a hunter can have. Dan Ladd stated how hunters often get hooked and return every year for the experience. Interview with Dan Ladd, president of Adirondack Hunting, on file with author.

designation. Fragmented areas also lead to conflicts between uses. Allowing a use on one parcel, while prohibiting it on an adjacent one, creates confusion and hostility. The fragmented nature of the Park restricts it from obtaining its true biodiversity potential and leads to confusion on land classifications and uses. Solutions to these problems such as park expansion, or new land classifications could alleviate some of the tensions in the Preserves. However it is important to remember that while there are problems associated with the forest Preserves, they have existed in relative harmony over the past 100 years through the system currently in place.

B. The Constitutional Convention, Impacts of Degradation?

New York cannot afford to allow any degradation of its conservation policies under a new constitutional convention. The measures undertaken in the late 1880's represent a pioneering effort championing conservation and preserving natural wilderness. To retreat from these practices would have a devastating effect on the commonwealth and the image of New York as an environmental leader.

Prior to these laws *no* protection encompassed the Adirondacks and Catskills, resulting in rampant extraction of its many resources, chiefly timber and wildlife. While the timber industry has subsided to a fraction of what it once was, threats of resource extraction still face the Forest Preserve. Practices such as hydrofracking, mining, timber harvesting, and tourism can lead to devastating consequences in some

of New York's most pristine areas. Currently Preserve lands enjoy strict protection; however, removing this could lead to rampant habitat loss, negatively affecting wildlife.

Eliminating Article XIV would negatively affect the wildlife in the area. While it might be tempting for local towns to look to the forest for economic gains,[134] threats of vast ski parks, casinos, and increased human development can destroy habitat and alter the nature of the park (destroying its "wild forest lands"). One envisions a scenario where hunting and fishing would be reduced and as such towns struggling to survive economically could lose even more resources.

The significant services furnished to the State from the parks would also be in danger. The precious water supply in the Catskills would be put at further risk, possibly necessitating a hefty price tag to purify New York City's water supply. Also, the carbon reducing impacts of the Adirondacks could be reduced due to logging or development practices. After fighting so hard to maintain a pristine wilderness that benefits the entire state, it is sacrilegious to abandon Article XIV for a lesser mandate.

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[134] One Adirondack hunter expressed the frustration of dealing with a economically struggling town when there appears to be vast amounts of money in the woods. Locals often cite new technologies in low impact logging and the fact that the State is allowed to remove timber as support for forest destruction. However these arguments need to be rebuffed by stating that increased logging practices will actually saturate the timber industry, making logging less effective and re-iterating the importance of the preserve as a tourist magnet.

C. The Constitutional Convention, Increase the power of Article XIV?

Preserving, and even increasing, the power of article XIV should be a top priority for the next constitutional convention. The Preserve lands are an essential element to the State of New York and should be protected for future generations to enjoy. Faced with looming threats to the integrity of the wilderness in these areas, New Yorkers crafted a monumental environmental movement to protect the Adirondack and Catskill forests. Modern threats of acid rain, global warming, mineral extraction, and habitat destruction threaten New York's forests in the same manner as logging did in the early 1900's. Now is the time to incorporate some modern environmental approaches into Article XIV, ensuring that it has a meaningful effect for another hundred years.

By conserving wildlife in the park, New York ensures that the essential character of the Forest Preserve will remain. Efforts to increase wildlife in the park, specifically the recreation associated with them, will result in numerous benefits.[135] Ensuring vibrant game populations generates a group of citizens (hunters/fishermen) who directly contribute funds in rural areas and are concerned with maintaining the integrity of the Preserve. Incorporating language into article XIV which mandates useful game populations guarantees a steady revenue stream and concerned group of citizens emerging from

[135] "Hunters will go where the wildlife is" Dan Ladd, in the Adirondacks efforts to increase deer populations could create more incentive for hunters to travel to the area.

the Preserve lands. Specifically, efforts need to be made in an attempt to rebuild the depleted Adirondack deer population, while encouraging more hunting in the Catskill area. Programs should also attempt to increase the amount of hunters in New York, especially from New York City. The Preserve accomplished its most sweeping measures (article XIV and the Catskill watershed) only with the support of the City. Programs encouraging city residents (especially children) to once again flock to the Preserve create a new base of support from the state's most influential region. Out-of-state hunters and fishermen also must be encouraged to vacation in the parks. A concerned group of outdoorsmen fosters strong support for the Forest Preserves.

The Forest Preserve needs to be viewed in terms of its benefits, rather than from all of its perceived failings. Local towns have to realize that without the money they receive from the State paying taxes on Preserve land, most of their municipalities would be bankrupt. The Preserve acts as a tourism anchor, drawing in birders, hikers, hunters, fishermen, and general vacationers. Deteriorating the Preserve deteriorates its appeal for these uses and will lead to a decrease in their economic benefit on the area. The Preserve is the economic catalyst for areas surrounding it, and efforts need to encourage its further use. A major problem facing Preserve lands is the lack of regional planning for these areas. Each county represents itself, often in isolation and hostility towards other counties. Having numerous areas oppose each other cannot promote tourism and recreational activities. Counties

must work together to develop tourism proposals, promoting the entire Adirondack or Catskill park, as opposed to their specific area. If this proves to be problematic perhaps an area-wide tourism board should be created to promote these unique areas for use. To ensure the continued survival of the parks, efforts need to be made promoting their virtues.

While game management is an important aspect, one cannot focus solely on game species when discussing wildlife management. Currently through the adoption of state land master plans parcels of Forest Preserve land are segmented into different land use categories intermixed with private lands. The patchwork formulation hinders broad wildlife goals such as maintaining true biodiversity. While large protected areas are extremely useful now, a convention should examine whether it is possible to expand some of the state land to integrate ecological boundaries as opposed to human ones. A mandate incorporated into Article XIV stating that ecological boundaries have to at least be a concern when forming state park boundaries could ensure greater protection through preserving biodiversity.

The thought of protecting vast open spaces for conservation was perceived as a radical thought in the late 1800's. However, New York adopted this ideal in full force when it implemented the Forest Preserve. Perhaps now is the time to yet again incorporate an ideal that can have positive environmental impacts for years to come. The concept of ecosystem services is often viewed as a radical new environmental approach, yet it has a similar potential for conservation

as the state parks did at the turn of the last century. Evolving a way in which the forests are compensated for the carbon they reduce, the water they conserve, or the wildlife they protect can lead to an economic incentive to further protect these lands. For example, we have heard in numerous classes of the high taxes private land owners face in these parks. Perhaps a tax incentive for owners who vow to preserve their woods (in payment for the carbon they reduce, water they preserve, or wildlife they protect) could be an effective management technique. A new convention should take a hard look at the potential benefits a constitution that includes ecosystem services provides.

Finally, the last major area a convention should focus on is the Catskill Park. Undefined by official signs and regulated by different interests, most travelers are unaware when or if they are even in the "park" area. A main challenge in the area is unifying ideas, purposes, and desires to accomplish *any* goals in the region. While watershed protection provides some level of authority, its concerns deal primarily with protecting water basins by restricting their use.[136] Without a specific direction the region has stalled into an economic downturn it is unlikely to escape. By creating some unifying body (agency or other smaller governmental organization) concerned with the Catskills,

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[136] For example, reservoirs are closed to motorized fishing, resulting in less fishermen to the area. A pilot program recently enacted is exploring the use of motorized boats on one reservoir. Interview with Aaron Bennett, on file with author.

programs can begin to develop encouraging travel and use in the area. Wildlife can provide a major cog in these efforts through programs designed to educate the public, allow them to recreate, and foster an image (similar to that of the 1880s) of a truly wild land where majestic creatures thrive. Hopefully through these programs interest in the area will increase, allowing for the benefits of tourism to outweigh some of the destructive forces facing the area, such as mineral extraction.

V. Conclusion

The lands of the Forest Preserve represent some of the most pristine wilderness in the world. Recognizing their beauty and looming threats, New York preserved them as "forever wild" in its Constitution under Article XIV. Benefits from this designation are still being realized by the State. From these actions New York City now has a safe and effective water supply, the State enjoys a carbon sink in the Adirondack forest, and wildlife in the parks has made a significant comeback. The Article protects "wild forest lands", including wildlife and recreational uses associated with them. The wildlife teeming in these lands has the untapped potential to re-invigorate the state's populace with a desire to protect forest lands. A new constitutional convention cannot ignore these benefits; it must take steps to support and strengthen Article XIV so that the State of New York will continue to discover new positive aspects emerging from the Forest Preserves.