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Modernizing Animal Law: The Case for Wildlife

Walter E. Bickford*

I. Introduction

The law relating to animals is a topic of growing public awareness and interest in this century. Particular interest has developed in the subset of law related to wildlife and related habitat. This has resulted in a dramatic strengthening and updating of laws related to protection of wildlife both on the state and national levels. Much of the legal developments affecting wildlife have arisen from the environmental/conservation movement which has been active throughout this century. Also, throughout this century, primarily during the most recent decade, a second movement, one whose roots stem from a humanitarian concept, has also focused on the issue of wildlife law. The divergent orientations of these two movements, the environmental/conservation movement and the animal liberation movement, needs to be stressed, tested, examined and probed. Modernization of wildlife law is a topic which should and will be discussed often in coming years, and it will be dis-

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As Commissioner, his goal is to broaden the scope of activities of a traditional natural resource management agency, making it an aggressive, environmental advocacy organization. He has supported a new focus on non-game and endangered species work within the department, and sought to include the public broadly in department activities.

cussed within the context of these two divergent and often conflicting movements.

As an environmentalist, a former local official, a former legislator, and now a state administrator, I have learned a great deal about local and state political processes. I am not a lawyer. I am a law maker, familiar with the public, political and legislative processes involved in enacting laws. My interests and efforts have always been in wildlife and environmental protection. In my present capacity as Commissioner of the Massachusetts Department of Fisheries, Wildlife & Environmental Law Enforcement, I am responsible for the well-being of wildlife in the Commonwealth of Massachusetts.

Such experiences have led me to the conclusion that the misinformation, zealotry, emotion and false accusations surrounding other important issues in our society all pale in comparison to the approach taken by the core group of animal welfare advocates with respect to animal protection. The term "core group" is used here because, in my opinion, the vast majority of Animal Liberation Movement (ALM) supporters have good intentions but are misled by the misinformation and direction of their leadership.

In practical terms, wildlife restoration and protection in the Northeast today does not deal with the ravages of market hunting and the blatant wide scale destruction of habitats by lumbering and mining operations, which have been brought largely under control. Today's threats to wildlife are more insidious. It is the less conspicuous, small scale habitat losses brought about by urban sprawl, hazardous waste disposal, acid rain contamination, and overuse of the land which threaten to block needed wildlife habitat and even reverse past successes resulting from wildlife protection legislation. Before these present day threats can be addressed, there is a need for a strong consensus between those constituencies which perceive themselves as supporting wildlife to distinguish the overriding critical issues from the superficial ones. Only then can a strong political counterweight be developed to oppose the political and economic strength of land exploiters.

II. Structure of Discussion

This discussion is presented in four sections. The first section presents a review of various wildlife protection laws and programs with which I have been involved at several levels of government during the past twenty years. My intention is to illustrate some simple, but not commonly appreciated principles of public policy formulation. The second section analyzes a hierarchy of animal issues and briefly discusses several characteristics of each level. In the third section, the goals of modern wildlife management are set forth. The fourth section presents a discussion of the environmental and ALM movement in the context of contemporary problems affecting wildlife.

A. *Twenty Years of Wildlife Policies*

Given the seriousness and prevalence of environmental problems today, one can easily become discouraged and feel totally incapable of influencing change or improvement. But my experience has shown that even the smallest gains toward environmental protection¹ or restoration are essential building blocks for a new environmental ethic and consensus. One can fulfill the cliché: "Think globally and act locally."

1. *Case Study - Local Land Use Policies Resulting In Habitat Protection*

About twenty years ago, the Town of Berlin, Massachusetts was being devastated by developers and earth removal operations. To deal with this problem, a group of local residents urged the town's conservation commission to draft wetlands and flood plain zoning bylaws.² These bylaws were promptly adopted. Earth removal and scenic roads laws soon followed.³ The citizens group also was successful in sponsoring

1. In this discussion, the term "wildlife" and "environment" are used interchangeably. Environmental protection signifies wildlife protection, and wildlife management signifies habitat or environmental management.

2. Berlin, Mass., Zoning Bylaws, § VIII, at 24 (1978).

3. Berlin, Mass., Zoning Bylaws, at 12 (1978).

legislation to deal with the rampant residential development which was taking place on small lots with inadequate sewage disposal systems.

In Massachusetts, it is the task of local boards of health to enforce regulations concerning well location and subsurface sewage disposal systems. Septic tanks and leaching fields must meet minimum standards with respect to distance above groundwater level, distance from wells, streets, property lines, wetlands and streams. But the Berlin Board of Health had become lax and ineffective. Development was virtually uncontrolled, and as a direct result, local wildlife habitats became endangered. Residents of Berlin realized that they had to take action. This action manifested itself by the election of a new Board of Health.

The newly elected Board of Health convinced the town to appropriate funds for intense soil, surface water and groundwater studies. These studies delineated the natural constraints or limitations of the land to development. Based on the findings of these studies, the town increased minimum lot sizes from thirty thousand to eighty thousand square feet.⁴ The Board of Health greatly upgraded and strictly enforced the minimum state sanitary code relative to on-site sewage disposal systems.⁵ The Berlin studies also resulted in the closing of the town's environmentally unsound landfill,⁶ and the containment of industrial zones to well-defined limits.⁷

Conducting scientific studies on which to base development restrictions is an important step in land-use planning. By incorporating these scientific studies into local bylaw formulation, the management techniques designed to protect the community's natural resources are better able to withstand scientific and judicial review.

4. Berlin Mass., Zoning Bylaws, § VI, at 15 (1978).

5. Berlin, Mass., Board of Health Regulations (1972).

6. Scrutiny of the landfill revealed leachate discharging into a trout stream and a high potential of underground aquifer pollution.

7. Traditionally, industrial zones are placed in close proximity to highway interchanges. This was the case in Berlin. But soil studies revealed that most of the soils within the industrial zones would not support adequate subsurface sewage leach fields. Consequently, such zones were reduced to areas with acceptable soils.

Although none of the resulting bylaws enacted in Berlin had the specific intention of protecting wildlife, wildlife nevertheless has benefited enormously. In addition to the land use regulation approach, the Berlin Conservation Commission purchased several hundred acres of land. The land was purchased for conservation purposes, including habitat protection, thereby effectuating wildlife protection. As a result, Berlin remains largely unscathed by land exploitation and overdevelopment. Berlin's wildlife is diverse and plentiful.

A town meeting is scheduled for May 1987, when residents will consider a land transfer tax of five percent. If the tax is passed, these funds will be used by the local conservation commission to purchase additional wildlife habitat. A Berlin citizens group is trying to persuade landowners to accept conservation restrictions (or easements) on their wetlands and along streams and rivers. Berlin, Massachusetts has become an environmentally sensitive community.

These governmental actions can be viewed as being far more beneficial to wildlife species and to individual animals' protection than a town ordinance against discharging firearms or banning leghold trapping might have been.

2. *State Growth Policies*

If all three hundred and fifty-one Massachusetts cities and towns had managed their growth as Berlin has done, I believe that there would be no serious threat to wildlife in Massachusetts today. It cannot be overemphasized that habitat protection means wildlife protection.

Local government is a microcosm of state government. At both the local and state levels, land use decisions need to be grouped under the broad category of growth policy. In the mid-1970's, Massachusetts pioneered a process of formulating a growth policy for the state which would encourage urban development and discourage sprawl into rural areas. Over three hundred of the three hundred and fifty-one cities and towns throughout the Commonwealth participated in a state growth policy formulation process and set up local growth policy committees to conduct extensive surveys within their respective

towns. The message from the surveys was, and is, loud and clear: rural areas do not want to become suburbs, suburbs do not want to become cities, and cities do not want to become slums.

The final Massachusetts growth policy statement recommended over thirty programs which would promote urban center revitalization and rejuvenation, and discourage sprawl into farms and woodlands.⁸ The transportation policy de-emphasized highway construction away from the urban areas and stressed reliance on mass transit. This policy alone has greatly benefited wildlife.⁹ Subsequent bond issues have provided funds for purchasing development rights on farmlands, wetland areas, greenways along rivers and streams, endangered wildlife species habitat, and other open spaces.

Clearly, a realistic statewide wildlife protection policy is based on a sound habitat protection policy, which in turn depends on a sound overall growth policy. The name of the game is habitat protection, for with habitat protection one has wildlife protection. I believe that even more sound growth policy proposals would have been implemented if the sportsmen's organizations had been more actively involved in lobbying for such proposals. But, at the time, the sporting organizations were so alienated by the ALM that they neither trusted nor

8. 1975 Mass. Acts 807. An Act Providing for the Formulation of a Massachusetts Growth and Development Policy. Also a summary report of 1977 city and town centers, A Program for Growth.

The state office of planning announced in 1975 a program to protect and enhance the quality of life in Massachusetts. The program consisted of proposed changes in environmental regulations and new legislation.

To implement this program, for example, the executive branch used its regulatory authority to prevent "sprawl". In one instance the Executive Office of Transportation refused to grant a "curb cut" (permission to develop an entrance onto a state highway) for a proposed shopping mall. The mall was to be built on high quality agricultural land outside a small town. In addition to destroying the farm land, the mall would have steered business away from an existing commercial area, thus resulting in urban blight.

9. If government extends infrastructure, i.e. roads, sewers, water mains, etc. into undeveloped areas, then development will soon follow. This is a self fulfilling prophecy. It follows that terminating or deemphasizing programs which promote and fund infrastructure into undeveloped areas will protect open spaces and hence, wildlife habitat.

had the time left to cooperate with the legitimate environmental organizations.¹⁰

B. *Animal Rights - Wildlife*

There are additional substantive issues of wildlife protection besides those of habitat loss and destruction. It was during my early legislative career that I encountered what I understand is the major concern and the basis for this symposium: animal rights. Let me expand on my experience to illustrate the politics of wildlife protection.

1. *A Hierarchy of Animal Issues*

A hierarchical diagram can be helpful in understanding the relative importance of the broad range of wildlife issues faced by the body politic.¹¹ At the base of the hierarchy is

10. In this article there is a fundamental distinction made between environmental organizations and animal liberation or animal rights organizations. The distinction between these groups often is blurred in the public mind, but nonetheless is profound. The word "legitimate" as used in this article refers to environmental organizations which stress habitat and ecosystem protection as the most effective approach to wildlife protection. Such organizations include Audubon Societies, Sierra Club, Izaak Walton League, National (and state) Wildlife Federations, and Ducks Unlimited. These groups intentionally try to avoid highly emotional issues which are of questionable value to wildlife species. See Sagoff, *Animal Liberation and Environmental Ethics: Bad Marriage, Quick Divorce*, 22 Osgoode Hall L.Jour. 297, 300-04 (1984).

The issue of whether or not to permit hunting on newly acquired public lands is one such issue. For example, all above mentioned Massachusetts based environmental groups lobbied for the Massachusetts Division of Fisheries and Wildlife proposed nongame income tax check-off fund without regard for the hunting "nonissue". The Massachusetts based ALM attempted to kill the proposal unless it stipulated that no hunting would be permitted on all lands purchased with said funds. If the no hunting stipulation was included, the proposal would not have become law. This is a typical example of the ALM willingness to "throw the baby out without the bathwater" type of counterproductiveness. It arises, of course, from the different priorities of these groups. What is objectionable is not the different priorities, but the confusion created by the willingness of these groups to portray themselves as interested in the welfare of animal species, when that is not their priority.

Note that pro-hunting organizations involved did not press for absolute hunting privileges. They were willing to let the management agency determine compatibility of uses on a parcel by parcel basis. If it was demonstrated that hunting impeded protection of a nongame species then no hunting would be allowed.

11. See Figure 1, at p. 264. This figure was provided by the author.

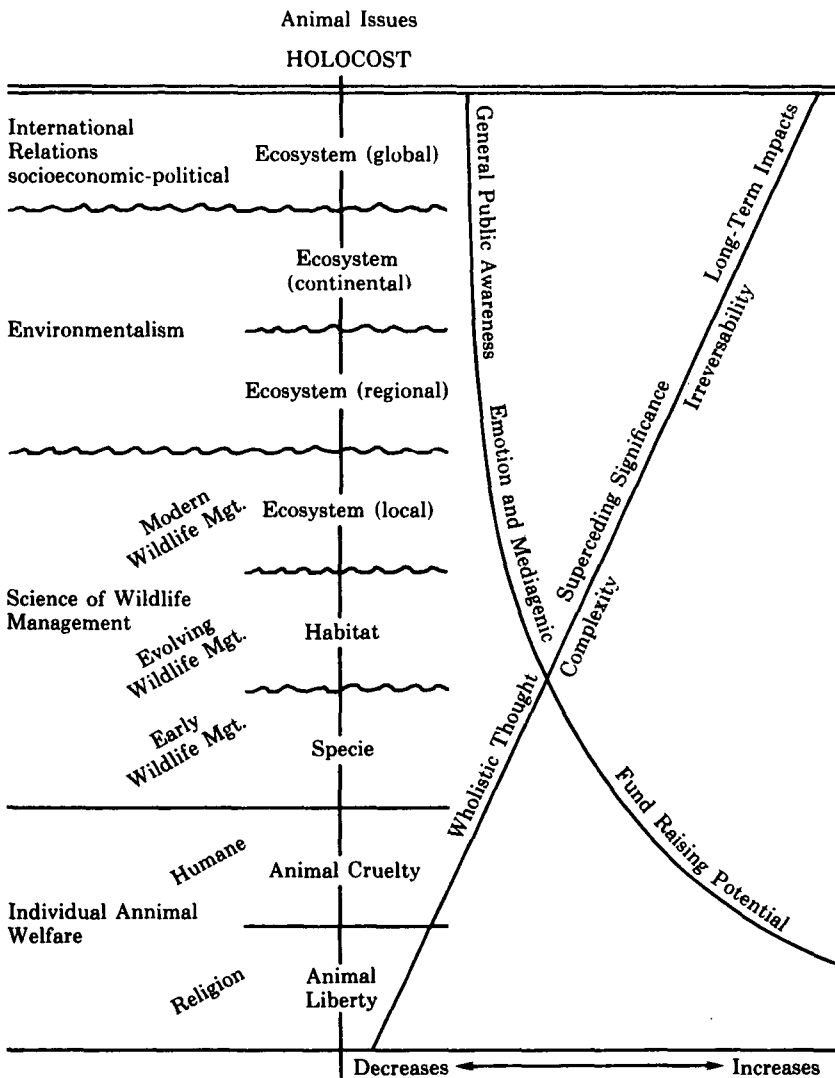


Figure 1: *Nature of Animal Issues*. A hierarchial diagram to convey the relative importance of the broad range of wildlife issues faced by the body politic.

concern about animals as individuals. The question asked here is: Is society concerned with individual animals' "rights" or with assuring their freedom from wanton physiological trauma? Respectively, these concerns are referred to as animal rights and humane issues. Individual animal rights are radically philosophical in nature, while cruelty or maltreatment of animals are traditional humane concerns. The humane concerns have manifested themselves in anti-cruelty statutes. The statutes, for the most part, provide for the humane treatment and protection of domestic animals,¹² but also can deal with wild animals.¹³

Ascending the hierarchy of animal issues, the narrow focus of individual animal welfare broadens and enters the realm of professional wildlife management. In the 1870's, wildlife management was concerned with the protection of marketable species of wildlife from reckless exploitation.¹⁴ Early wildlife management focused on wildlife populations and/or species protection. Individual animals received attention only as members of a population.

One hundred years later, the federal Endangered Species Act¹⁵ was enacted due to the efforts of wildlife managers and environmentalists. The Act recognized that wildlife is of "esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people".¹⁶ For the first time, the political system made a statement reflecting respect for something more than the economic value of wildlife. Endangered species now receive special treatment through such

12. All states have anti-cruelty animal laws, but in various forms. All protect domestic animals to some degree, many making cruelty to animals a criminal offense. Others go further. See Dichter, *Legal Definitions of Cruelty and Animal Rights*, 7 B.C. Env'tl. Aff. L. Rev. 147, 151 (1979).

13. The banning of toothed leghold traps is a conspicuous example of anti-wild animal cruelty law. See e.g., Mass. Gen. L. ch. 131, § 80A (1984).

14. "Particular restrictions expressly directed to market hunting . . . were first initiated by Iowa in 1874 through legislation that established a closed season applicable only to market hunters and by Michigan in 1875 through a prohibition against the sale of certain game birds." Lund, *American Wildlife Law* 64 (1980).

15. Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (1982).

16. *Id.* § 1531(a)(3).

laws as the Bald Eagle Protection Act,¹⁷ and the Crown of Thorn Starfish Act.¹⁸ These laws protect individual animals, in consonance with the notion of the ecological importance of preserving the diversity of species.

This hierarchical level of wildlife management acknowledges that the survival of the entire population or species is necessary for the survival of the individuals of which it is comprised. In nature, the population or species is more important than the individual. Nature, in fact, produces a surplus of animals which suffer attrition through disease, starvation or predation.¹⁹

It is this hierarchical level which is the area of current wildlife management. Current wildlife management takes into consideration several populations or species and their peculiar food, water and cover, i.e., habitat requirements.

This greatest of wildlife management concerns is ecosystem protection, where the issues become more complex. Causal relationships between problems and perpetrators quickly become obscured by the interconnecting and dependent web of the various elements of the ecosystem. Species (floral and faunal) diversification is a major goal of modern wildlife management.²⁰ Diversity provides stability in natural

17. Bald Eagle Protection Act, 16 U.S.C. § 668 (1982).

18. Crown of Thorn Starfish Act, 16 U.S.C. §§ 1211-1213 (1982).

19. See generally Ricklefs, *Ecology* 461-569, 700-75 (1973). Nature has created food webs which drive the population dynamics of all species. Major prey species such as deer exhibit high fecundity rates to compensate for mortality from predators. In the absence of predators deer populations will increase and exceed the carrying capacity of the habitat. Their overbrowsing of the habitat can ultimately result in substantial habitat changes and environmental degradation. For example, an overpopulation of elk in Yellowstone National Park resulted in the virtual disappearance of beaver because the elk consumed all the aspen and willow food base of the beaver.

"Population characteristics are adapted to environmental pressure, the outcome of interactions among populations represents the interaction of evolving systems. . . . The community is made vital by the complex system of interaction, directly or indirectly tying all its members together into a vast web." *Id.* at 586. For a further discussion see generally *id.* at 589-699.

20. The Endangered Species Act, 16 U.S.C. §§ 1531-1543 (1982) and the Marine Mammals Protection Act of 1972, 16 U.S.C. §§ 1361-1407 (1982 & Supp. III 1985), resolve the inadequacies of an ad hoc species orientation by two techniques. First, in their terms they consider not simply named wildlife species, but also the ecosystems that support them. The marine mammals act establishes as

ecosystems.

Based on the foregoing, the logic of listing animal issues in a hierarchical order can be made clear. Ascending the hierarchy we note that each level is ultimately dependent on the success of all higher levels. However, the reverse is not true. Not only is the survival of a population or species not dependent on the welfare of each individual animal (in a non-endangered species), but an obsession with the welfare of each individual could adversely effect the species and the ecosystem.²¹

For example, a tremendous disagreement developed between animal liberationists and the Massachusetts Division of Fisheries and Wildlife (DFW) over an exploding deer population on Crane's Reservation in Ipswich, Massachusetts. A study concluded that existing vegetation provided sufficient food to maintain approximately forty-five healthy deer. There were over two hundred unhealthy deer living on the site. The DFW recommended opening the area to a controlled hunt and sharpshooter program. Opponents conceded that the deer had to be killed and by gun, but nevertheless attempted to obstruct the program for over a year. Their opposition centered on who pulled the trigger of the gun: a hunter or a sharpshooter. Although the program was successfully implemented, the issue diverted scarce resources of the DFW away from other wildlife management issues. These other issues were far more important to wildlife than whether a hunter or a sharpshooter inflicted deer mortality by means of a gun.

2. *Sportsmen v. Animal Activists*

Due to my work with environmental issues, I was recognized in 1982 by the Massachusetts League of Conservation

its primary objective the preservation of the health and stability of the marine ecosystem, while the endangered species act refers to the goal of conservation of the ecosystems critical for the health of endangered species.

Lund, *supra* note 14, at 96. See also Mass. Gen. L. ch. 131, § 40 as amended by Chapter 262 of the Acts of 1986.

21. Endangered Species Act of 1973, 16 U.S.C. §§ 1531-1543 (1982). See also *infra* note 39.

Voters (Massachusetts Audubon Society, Environmental Lobby of Massachusetts, the Sierra Club, Defenders of Wildlife, etc.) as the only legislator in Massachusetts with a cumulative, one hundred percent pro-environment voting record. Simultaneously, the organized sportsmen of Massachusetts (i.e., Massachusetts Sportsmens' Council, Inc.) considered me the leading advocate of their interests in the legislature. Although this may seem ironic to some, it is not. The leadership role that sportsmen have played over the past century in environmental protection and policy-making is fascinating. This key role is documented and undeniable.²² But this role today, has come into conflict with another faction whose proclaimed goal is wildlife protection, the animal rights organizations. This conflict has reached such a level that a political antagonism now exists between the sportsmen/environmentalists and the self-styled animal rights advocates.²³

22. Reiger, *American Sportsmen and the Origins of Conservation* (1986). "[T]oward the end of the nineteenth century, sport policy dealt with each of the causes for wildlife decimation. Sport's first radical solution, the prohibition of commercial exploitation of wildlife. . . ." Lund, *supra* note 14, at 61.

[S]portsmen organizations based their lobbying effort against market hunting upon the contention that game was no longer necessary for food production within the country, arguing rather that domestic agriculture could supply meat more cheaply. . .

[S]portsmen emphasized that all the causes of the decimation of wild game, market hunting was the principle force. . . . [I]n 1884 the sportsman publication, *Forest and Stream*, proposed a political plank: "the sale of game should be forbidden at all seasons. . . ."

Within two decades of the *Forest and Stream* plank . . . sport interests achieved an important general victory in New York. By the Bayne Law of 1911 a general prohibition was addressed to the sale of game mammals and birds. Other states soon emulated this precedent. . . .

From the early twentieth century, market hunters have been completely excluded from competition for sport wildlife. . . .

Lund, *supra* note 14, at 63-64. "Sport assumed the principal role in formulating the means by which wildlife agencies would be funded. . . ." *Id.* at 61. "The initial funds to support wildlife were generated by the sale of hunting and fishing licenses." *Id.* at 62.

23. Sportsmen/environmentalists and like-minded legislators have formed an alliance with the environmental community. In Massachusetts, this effort became a target for vilification by the animal rights advocates who at one point joined with other pro-development groups in an attempt to block re-election campaigns of environmentalist legislators who were not anti-hunting.

C. *Goals of Wildlife Management: Protection and Enhancement*

"American wildlife policy from the colonial period through the late nineteenth century established free taking as its principle goal."²⁴ Though several states, early in their history enacted wildlife laws, such as limited closed seasons,²⁵ it was apparent that this body of wildlife law was not effective in halting the trend of the free taking of animals, particularly market hunting, and ultimately species extinction.²⁶ With the passage of time, the trend toward conservation grew nationally. By the late nineteenth century, additional methods were established to restore and stabilize the declining wildlife population. Programs were designed to intentionally eliminate predators²⁷ and to establish protected areas generally known as wildlife sanctuaries.²⁸ Furthering the effort to formulate an effective wildlife policy, the technique of replenishment or

24. Lund, *supra* note 14, at 57.

25. Bean, *The Evolution of Wildlife Law*, 12-15 (1983).

26.

Midway through the nineteenth century it was observed, "[T]he game-laws of most of our States are a mere bagatelle that no one regards: in other words, they are dead letter, and there are few if any persons willing to take upon themselves the trouble and responsibility of enforcing them, or calling willful offenders to account for their many misdeeds."

Lund, *supra* note 14, at 59-60 (citations omitted). See also, Lund, *supra* note 14, at 57-58.

27. See Cain, *Predator and Pest Control*, in *Wildlife and America*, 379-395 (1978). This method has been the subject of dispute. "From the ecological perspective, the broadside carnage inflicted upon predators during the high period of state predator control through bounties, open seasons, and technical aid was partially ill conceived. Many of the objects of these campaigns now enhance the ranks of endangered species." Lund, *supra* note 14, at 74. In fact, in today's wildlife management scheme there is a "[g]rowing respect" for predators so much so that "[m]any states have abrogated the exceptions that excluded predatory birds from the protection accorded to nongame birds." *Id.* at 75. See e.g., Mass. Gen. L. ch. 131, § 75A.

28. Greenwalt, *The National Wildlife Refuge System*, in *Wildlife and America* 399-412 (1978). note 25, at 11. The first of these wildlife sanctuaries was Yellowstone National Park established in 1872 pursuant to the Act of March 1, 1872 ch. 24, § 12, 17 Stat. 32. The Act prohibited "hunting." However, the hunting ban during the nineteenth century only applied to "market hunting." In 1916 under the National Park Service Act, 16 U.S.C. §§ 1-3 (1983), a ban on sport hunting was imposed. Lund, *supra* note 14, at 94. Mass. Gen.L. ch. 131 § 7.

restocking has been utilized.²⁹ Cumulatively, the above-mentioned methods have succeeded only in part.³⁰

Today, it is recognized that the major overriding threat to wildlife loss is the destruction of habitat,³¹ and until this component has become incorporated into a wildlife management program, any program will remain ineffective. Habitat loss or destruction can and must be countered at all levels of government — local, county, state, and federal. A united, well organized, strong environmental coalition which includes the sporting community will be required to counter the forces which drive habitat destruction.

Environmentalists must eschew pessimism about the health and survival of the planet's environmental tolerances, and combine efforts to reverse global ecosystem failure. Given the fact that international agreements are difficult to establish and enforce,³² and that the current national administration is indifferent toward the environment, efforts are, for all practical purposes, confined to holding local ecosystems together in the anticipation of a better day for environmental concerns, at both the national and international levels.

Putting aside the overriding global issues and focusing on wildlife management within any given state, the narrowest

29.

Stocking a region artificially with game animals is effective only if they are being introduced into a new region or into an area from which they have been killed off. . . . The principles of population growth make it clear that if game animals of a certain species are already present, artificially stocking that region with additional members of the species will be futile. Stocking a region with a completely new species must be done cautiously, or the species may succeed so well as to become a pest and upset the biotic community. . . .

Villee, *Biology* 861-62 (7th ed. 1977). See also, Lund, *supra* note 14, at 67-70.

30. Stearns & Ross, *The Pressures of Urbanization and Technology*, in *Wildlife and America*, 199-217 (1978).

31. *Id.* "[W]ildlife populations fell in response to the transformation of habitat concomitant to the spread of ranching, farming, industrialization, and urbanization across the continent." Lund, *supra* note 14, at 60. "That land management policies often were the principal limit on animal numbers became widely recognized in the 1930's as a consequence of the work of an American conservationist, Aldo Leopold. He identified the key to wildlife well-being as the condition of its habitat." *Id.* at 70 (citations omitted). Thus, "states have increasingly either purchased outright or acquired easements in land in order to foster wildlife numbers." *Id.* at 71.

32. M. Bean, *supra* note 24, at 252-255.

and strictest goals of wildlife management agencies are:

1. maintaining species diversification (including all flora and fauna);
2. achieving the maximum number of healthy individuals in each species;
3. buffering drastic fluctuations in a species population;³³ and
4. assuring equitable access to wildlife resources for all segments of society.³⁴

Achieving the maximum number of individuals in various species is tempered by the ideal of replicating what might have been a balanced ratio of species in a natural ecosystem minus the adverse impacts of an industrialized society. Such manipulation affronts some wilderness purists. However, it should be noted, as an example, that if the Massachusetts Division of Fisheries and Wildlife did not mitigate acid rain impacts by liming acid sensitive ponds, many unique smaller ecosystems would be lost.³⁵ The point is that virtually all of the continental U.S., and without a doubt all of the eastern half of the continental U.S., has been severely altered by society's exploitation of the natural resources. Therefore, additional manipulation by society to restore the country to a semblance of an historically natural state is justified and necessary.

The most effective tools for buffering drastic wildlife population fluctuations are habitat management and heavy regulation of hunting. The length of hunting seasons, bag limits, area closures, and other regulatory techniques are based on

33. Poole & Trefethen, *The Maintenance of Wildlife Populations* in Wildlife and America, (1978).

34. Greenwalt, *supra* note 28, at 403-404. A Policy for the Protection, Enhancement, and Management of Fish and Wildlife, Mass. Division of Fisheries and Wildlife (rev. 1984).

35. New England is heavily impacted by acid rain. The Division of Fisheries and Wildlife funded the University of Massachusetts to conduct an extensive sampling and analysis program of Massachusetts waters. Highly acid sensitive water bodies, i.e. those with limited alkalinity for buffering acid rain, were identified. The Division then initiated a mitigation program of adding lime to said water bodies. Prior to this program, over twenty lakes in Massachusetts lost their native biological communities.

biological considerations and public input.³⁶ Habitat management techniques include regulations for forest harvesting practices, which protect nest cavity trees, evergreen cover for wintering deer, and enhance food and shelter for all wildlife. In urban states with high development pressures, there is a need to purchase land for protection purposes. An additional implicit objective of wildlife agencies is to assure that ethical and humane techniques are used in the taking of wildlife.

D. *Putting It All Together: The Elements of Wildlife Protection - Socioeconomics, Politics, Environment and Humane Treatment*

The record is clear. The environmental approach of wildlife and ecosystem management, which focuses on protection of habitat from physical and chemical degradation, has worked. Restoration of species diversity, increasing numbers of individual animals, and the resulting stability of wildlife populations are indisputable proof that ecosystem management is the approach which can best assure the health and abundance of wildlife resources.³⁷

On the other hand, I believe that the ALM approach is emotional and subjective, and that its claims are speculative and conjectural. The ALM approach defies a basic tenet of nature. That is, whereas in western human society individual interests are emphasized over societal interests, nature

36. Mass. Gen. L. ch. 131 § 5 (1986). As put forth by Lund:

Taker impact upon wildlife populations can be regulated by licensing techniques. Wildlife population sizes are widely controlled by restrictions within the licenses addressed to the sex of the target animal for polygamous species of game animals. In order to increase the game stock, that state restricts hunting to males, while population reduction can be achieved by special incentives to kill females. . . .

Licensing has also been used to direct hunter pressure on a geographic basis. . . .

Lund, *supra* note 14, at 65-66.

37. If measured by the diversity of species and the number of individual animals, wildlife has made a tremendous comeback in the northeastern United States. This is due to a combination of professional wildlife management by state and federal agencies and substantial reversion of open farm land to wooded habitat. *See supra* note 30. This wildlife resurgence occurred without influence by the recent animal liberation movement.

stresses the species or population over, and often at the expense of, the individual. Thus, biologically, the ALM approach will ultimately fail, since it tends to focus on the alleged rights of the individual animal at the expense of the biological health of the species.³⁸ Resorting to strident self-righteousness and broad-stroke criticism of legitimate environmental ecosystem protection efforts by professional wildlife management agencies which use controlled hunting as a tool of wildlife management, the ALM has been responsible for significant splintering and polarization of the environmental coalition. Hence, their efforts have not helped the cause of wildlife preservation. Rather, it can be argued, that the ALM approach has actually hindered wildlife protection by causing a division in the political lobby necessary to protect the environment.

Stressing individual animal liberation is biologically, ecologically, and politically unsound. Furthermore, and ironically, it is humanely unsound.³⁹ The focus on the individual animal rather than the animal population indicates an ignorance of natural population principles and moreover bespeaks of a distance from nature. In fact, such an approach implies the imposition on wildlife of the value of western democratic society

38. Sagoff, *supra* note 10, at 304. In human society the fundamental basis of law (at least in the United States of America) is the protection of the health, safety, welfare and liberty of the individual (so-called natural rights). In nature, the individual is routinely sacrificed to benefit the population. Most animal populations produce far in excess the number of young which the habitat can support. Most of these excess young are eliminated by disease, starvation, and predation. This is "nature's way". See *supra* note 19. It is not a painless, clean method. From the perspective of humanness, nature's way of culling inflicts far more prolonged suffering than do humanity's methods of maintaining ecological balance. Such methods include hunting.

39. Mass. Gen. L. ch. 130, § 5 (1986). See also Game and Freshwater Fish Commission, Florida, Everglades Emergency Deer Hunt Controversy: Everglades Update (Mar. 1983). Abnormally high rainfall in the spring of 1982 raised water levels of the Florida Everglades and concentrated deer on elevated sites. There was insufficient forage for the deer and Florida proposed to conduct an emergency hunt to minimize deer mortality from starvation and habitat degradation. Animal rights groups attempted to stop the herd reduction through litigation. Because of the delay induced by the litigation, only two-thirds of the area was ultimately opened to hunting. Subsequent field surveys showed that two hundred and fifty-two deer had died apparently from starvation and related causes of mortality in the area not hunted compared to only forty-eight in the hunted area.

places on the individual. It reflects the ultimate form of cultural imperialism.⁴⁰

The animal liberationist focuses on the "rights" of individual animals, arguing that individual animals, like humans, have rights in society. Other extremist advocates for animals attempt to focus public attention on individual animal welfare with the long range objective of awakening the public to the consequences of its environmentally catastrophic lifestyle. This is a worthy, but misguided objective. The approach of building public appreciation, first for animal suffering and eventually for global ecosystem concerns is a chimera at best, and most certainly is divisive.

Animal rights advocates characteristically allow their zealotry for individual animal liberty to obscure any meaningful view of the "big picture." The warm but valueless feeling of fulfilling ones' perceived obligation to nature by opposing any consumptive use of wildlife appears to be enough to assuage sensitive environmental consciences. Moreover, animal rights literature self-righteously denigrates widely recognized founders of environmentalism and wildlife management principles, such as Aldo Leopold.⁴¹ The resulting splintering and polarization of the environmental community weakens the political force needed to elect environmentally attuned legislators and confuses those already in office. In effect, the almost demagogic message of many animal rights advocates becomes injurious to the environmental protection movement.

40. Singer, *Animal Liberation* 238-39 (1975). Singer refuses to reject the notion that humanity should police the natural world to reduce cruelty. In his book, Singer discusses and cannot conceptually reject a hypothetical example of humanity eliminating predatory animals to eliminate the perceived evil of carnivores, namely, the suffering of prey species. Rather, Singer calls the example unworkable but, even then, is compelled to qualify. "For that reason, if for no other, it is true to say that, except in a few very limited cases, we cannot and should not try to police all of nature". *Id.* The notion that humanity should "police" the natural world to protect it from itself under any circumstances reveals that Singer's philosophy is the ultimate attempt to extend human dominion over animals; in other words, it is the ultimate form of cultural imperialism. Singer's philosophy and the animal liberation movement as a whole is culturally imperialistic in its focus on individual animals when the processes of the natural world, as presently understood, focus on the population or species.

41. Sagoff, *supra* note 10, at 300.

The pressure on natural ecosystems, such as suburban and commercial development and encroachment, pollution of the air and the natural water systems, are far more of a threat to wildlife than the trapping of a beaver for a coat. The issue involves linkage and relativity: the linkage of interdependent elements of the ecosystem, and the causal relationship between these elements, both biotic and abiotic. It also involves the political linkage to achieve or obstruct environmental protection goals. In light of the global losses of habitat over the course of the years, the relative significance of banning trapping altogether makes little sense. It is the larger scheme with which those concerned for wildlife must be concerned. In order to achieve the end result of wildlife protection, animal rights advocates, wildlife managers, and environmentalists must work in unison.

III. Conclusion

Contemporary lifestyles, values, and consumption patterns will end up impoverishing posterity. Contemporary uneasy environmental consciences are appeased by opposing hunting and trapping. The ALM camp has finely tuned the instrument of emotionalism to create superficial and indeed false issues, and in the process makes it difficult to mobilize political action on the real issues, such as wildlife management through habitat or ecosystem protection.

The rampant deforestation of large areas of the planet, topsoil erosion, energy waste, commercial and residential development, and road building into undeveloped areas are only a few of the more salient environmental problems. These problems will not only adversely affect wildlife populations, but surely will compromise the hard earned gains of the past several decades upon which a shimmering, but all too tenuous, quality of life is based.

The immodesty of our demands on an increasingly fragile environment, the political obfuscation of the real environmental issues that need to be addressed, and the crying need to educate legislative bodies and public opinion are all symptoms of prevailing attitudes about the environment. Policymakers

and responsible public officials can no longer afford to be blase or naive about the environment. Environmentalists have their agenda, and everyone shares responsibility for the final outcome.

If modernizing animal law means ending all direct human consumptive uses, then the resulting polarization can only cause wildlife to lose in the long run.