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# Hunting: A Necessary Evil To Benefit the Greater Good

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## **Introduction**

Before I begin, I'd like to be very clear. I am not a hunter. I have never hunted, either for sport, for food, or for survival, and I do not plan to do so in the future. I am in no way an animal rights activist either, but I personally struggle with the idea of killing an innocent animal under any circumstances other than what is absolutely necessary for personal survival. Let's face facts, hunting is killing, and there is no greater act that I can think of that deprives an animal of its rights more than killing it. Given these personal views, it may be difficult to understand why I am writing this paper in support of both the policies and implementation of hunting regulations; however, after researching the subject and looking at the statistics, I will show why I have let go of my personal feelings and now enthusiastically support hunting as beneficial. Is the concept of hunting in itself evil? Maybe, but it is a necessary evil to benefit the greater good of animals and society. Good

Given my personal feelings against hunting and having never hunted myself, I am in a unique position to offer a fresh, unbiased outlook into the benefits of hunting, not only for the sake of animals, but also for the environment, and American society. I will begin by giving a brief overview of the current federal and state regulations of hunting. Although I considered discussing the history and evolution of hunting law, I feel that the topic is lengthy and our interests would be better served by discussing the current state of the law and the impacts it has and will have moving forward into the future. I will then discuss the individual policies behind the regulations, and the positive and negative effects the implementation of these policies have. While ultimately I will explain why I feel current regulations and policies in support of hunting are greatly beneficial to managing animal populations, I will also address the potential negative

aspects of hunting. I will conclude by addressing potential changes and offer personal suggestions I feel that would make hunting even more effective at managing animal populations.

### **Federal Hunting Regulation in the United States**

In the United States, hunting laws are divided between the federal government and state governments. The sole agency that regulates federal hunting law is the U.S. Fish and Wildlife Service.<sup>1</sup> The Service is responsible for controlling three primary areas: (1) the regulation of laws relating to migratory birds under the Migratory Bird Treaty Act;<sup>2</sup> (2) the regulation of endangered species under the Endangered Species Act;<sup>3</sup> and (3) the regulation wildlife refuges under the National Wildlife Refuge System.<sup>4</sup> Aside from The Service, there is also an advisory council known as the Wildlife and Hunting Heritage Conservation Council<sup>5</sup> that serves important functions.

The first area The Service is responsible for is the regulation of migratory birds under the Migratory Bird Treaty Act. The reason for federal involvement in this area is that migratory birds in North America are an interstate resource, as well as an international resource, with numerous species breeding throughout the United States and Canada.<sup>6</sup> In the fall of each year, these birds migrate south to winter in the United States, Mexico, and Central and South

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<sup>1</sup> For convenience, I will herein refer to this agency simply as “The Service”.

<sup>2</sup> More specifically, the Migratory Bird Treaty Act of 1918, codified as 16 U.S.C. §§ 703 – 712.

<sup>3</sup> More specifically, the Endangered Species Act of 1973, codified as 16 U.S.C. §1531. As a side note, I should note that endangered species aren’t the full focus of this discussion but I will briefly discuss it.

<sup>4</sup> The National Wildlife Refuge System is a division of the U.S. Fish and Wildlife Service, pursuant to the National Wildlife Refuge System Administration Act of 1966, codified as 16 U.S.C. 668dd – 668ee, as amended by the national Wildlife Refuge System Improvement Act of 1997 and the Refuge Recreation Act of 1962, codified as 16 U.S.C. 460k-460k-4. For convenience, I will herein refer to this simply as “The System”.

<sup>5</sup> For convenience, I will herein refer to this council as “The Council”.

<sup>6</sup> The National Fish & Wildlife Service Website: Migratory Birds.

[http://www.fws.gov/policy/frsystem/title.cfm?title=Migratory%20Bird%20Hunting&doc\\_type=final&date=09](http://www.fws.gov/policy/frsystem/title.cfm?title=Migratory%20Bird%20Hunting&doc_type=final&date=09).

(Last visited on December 1, 2012).

America.<sup>7</sup> Further, the migratory nature of these bird species and their interstate and international movements would make state regulation virtually impossible.<sup>8</sup> As a result, the ultimate management authority lies with the federal governments in their respective countries, with migratory bird treaties between the United States and other countries governing the management of these birds.<sup>9</sup> These treaties distinguish those species of birds that can be hunted from those that can't and establish outside limits on hunting season dates and season lengths

The next area The Service is responsible for is the regulation of endangered species under the Endangered Species Act. The purpose of the Endangered Species Act is to provide a means for conserving the ecosystems upon which endangered and threatened species depend. The Act also establishes a program for the conservation of such species.<sup>11</sup> Congress stressed the importance of protecting these species, stating the endangered and threatened species of wildlife and plants “are an esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.”<sup>12</sup> The Endangered Species Act directs all federal agencies to participate in conserving these species. Specifically, section 7(a)(1) of the Endangered Species Act charges federal agencies to aid in the conservation of listed species, and section 7(a)(2) requires the agencies, through consultation with The Service, to ensure that their activities are not likely to jeopardize the continued existence of listed species or adversely modify designated

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<sup>7</sup> U.S. Fish and Wildlife website. [http://www.fws.gov/policy/frsystem/title.cfm?title=Migratory%20Bird%20Hunting&doc\\_type=final&date=09](http://www.fws.gov/policy/frsystem/title.cfm?title=Migratory%20Bird%20Hunting&doc_type=final&date=09). (Last visited on November 25, 2012.)

<sup>8</sup> Id. If state also governed in this area, imagine the confusion that would arise with conflicting law regarding these migratory birds among the states the federal government, as well as governments of other countries.

<sup>9</sup> Id.

<sup>11</sup> U.S. Fish and Wildlife Service website, Endangered Species Program. <http://www.fws.gov/engangered/>. (Last visited on November 26, 2012.)

<sup>12</sup> Id.

critical habitats.<sup>13</sup> It is also worth noting that in terms of federal regulation, The Service shares exclusive responsibility for the administration of the Endangered Species Act with The National Oceanic and Atmospheric Administration (NOAA).<sup>14</sup> The methods for implementing the protections for endangered species, as well as their beneficial effects will also be discussed later in this paper.

The last area that The Service is responsible for is regulation and preservation of national wildlife refuges through National Wildlife Refuge System. The System regulates and protects national refuges, which are a network of habitats that benefit wildlife, provide unparalleled outdoor experiences for all Americans, and protect a healthy environment.<sup>15</sup> The National Wildlife Refuge System Administration Act of 1966 closes?? Unclear national wildlife refuges in all states except Alaska to all uses until opened.<sup>16</sup> The Secretary of the Interior may open refuge areas for any use, including hunting and/or sport fishing upon a determination that such uses are compatible with the purposes of the National Wildlife Refuge mission. That mission is to ensure and maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.<sup>17</sup>

Along with the three areas in which The Service provides protections, The Council ?? also provides an essential service to the protection of animal rights. The Secretary of the Interior and the Secretary of Agriculture established The Council, and although it does not have any

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<sup>13</sup> Id.

<sup>14</sup> NOAA regulation is outside the scope of this discussion because it deals mainly with weather forecasts, severe storm warnings, and climate changes. The only animals that NOAA deals with on a regular basis are oceanic wildlife, specifically migratory fish.

<sup>15</sup> U.S. Fish and Wildlife Service website: America's National Wildlife Refuge System. <http://www.fws.gov/refuges/pdfs/factsheets/FactSheetAmNationalWild.pdf>. (Last visited on November 26, 2012.)

<sup>16</sup> Federal Register, Volume 77, Number 176, Department of the Interior, Fish and Wildlife Service, Page 1.

<sup>17</sup> Id.

regulatory or enforcement powers of its own, it provides advice on wildlife and habitat conservation endeavors that (1) benefit recreational hunting; (2) benefit wildlife resources; and (3) encourage partnerships among the public, the sporting conservation community, wildlife conservation groups, the States, Native American Tribes, and the federal government.<sup>18</sup> The ultimate goal of The Council is achieve these objectives in order to protect animal rights and preserve America's hunting heritage for future generations.<sup>19</sup> Whose on it? Is it balanced?

### **State Hunting Regulation in the United States**

As outlined above, the federal government has very important responsibilities in protecting animal rights through hunting regulations. However, as large a role as this may seem, the federal government only plays a small part in the overall regulation of hunting in the United States. The states, through individual state wildlife protection agencies and state environmental protection agencies, are responsible for the majority of the hunting regulations.<sup>20</sup> Aside from federal regulation of migratory birds, federal wildlife refuges, and endangered species, the states have the primary responsibility and sole authority over the hunting of all wildlife that resides within their boundaries.<sup>21</sup>

State wildlife agencies are responsible for regulations such as (1) selling hunting licenses, (2) setting hunting seasons as well as duration of hunting seasons, (3) establishing areas open / closed to hunting, (4) animal control and management of non-endangered wildlife, and (5) game

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<sup>18</sup> Federal Register, Volume 75, Number 24, Department of the Interior, Department of Agriculture, Establishment of the Wildlife and Hunting Heritage Conservation Council, page 1.

<sup>19</sup> As of 2012, the Council has a diverse and balanced membership. This includes secretaries from Cabela's, The United States Shooting Foundation, Ducks Unlimited, The Wildlife Management Institute, and the Wildlife Society. Recent advice that the Council has given pertains to America's Great Outdoors Initiative, and a 10 year plan for recreational hunting and wildlife conservation.

<sup>20</sup> Id.

<sup>21</sup> U.S. Fish and Wildlife website: Migratory Bird Program. <http://www.fws.gov/migratorybirds/RegulationsPolicies/fedrole.html>. (Last visited on November 25, 2012.)

warden information.<sup>22</sup> State cooperation with the federal government (a topic I plan to address later) is an essential feature of why this joint hunting regulation is so effective at managing animal populations. But, as a general principle, the states are free to regulate hunting in any way they wish to as long as they operate within the framework established by The Service.

### **Introduction to the Policy and Implementation of Hunting Regulations in the United States**

Now that a basic explanation has been provided about how hunting regulations are structured in the United States, I will explain the policies behind the regulations and how both the federal and state governments implement those policies. I will show why I believe that this successful joint effort makes hunting a necessary evil which ultimately achieves the greater good of effectively managing animal populations.

There are two main policies underlying the hunting regulations in the United States: (1) to protect animals by reacting to problems with animal population management, and (2) to protect animals by preventing problems with population management from ever arising. It is through on-going cooperation between the federal government and the state governments that these policies are effective in protecting animals.<sup>23</sup>

### **Protecting Animals By Reacting To Population Management Problems**

When I first learned of the above-cited policies, I couldn't help but ask myself the same question repeatedly: isn't it counter-intuitive to protect animals by killing them? Before being informed of the current state of the environment and looking at the statistics, my answer was a definitive yes. Now, having learned more about effectively managing animal populations,

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<sup>22</sup> Id.

<sup>23</sup> I want to note that there is some overlap with these policies. I have tried to effectively separate them in a way that will bring the most clarity, and if one issue is not fully addressed in one policy section, it will be further explained in another.

however, I can firmly say that the answer is a resounding no. To better grasp the reasoning behind this complete change of position, it is prudent to have a basic understanding of the current state of the environment and how it came to be this way.

As we are all well aware, human beings have become the dominant predatory species on this planet. This, of course, is subject to change, but as it stands it is a concrete fact.<sup>24</sup> In expanding our species across the globe, humans have continued to shrink the habitable areas where wild animals live. In America, this domination began when Europeans began to colonize this land in the early 17<sup>th</sup> century.<sup>25</sup> In colonizing America and consistently expanding their territory, humans have gradually driven wildlife into smaller and smaller areas.<sup>26</sup> This expansion has caused many problematic effects on both predatory and non-predatory<sup>27</sup> species. By forcing animals into tighter areas and restricting their food supply, humans have caused a significant problem with the stability of animal populations, causing them to become naturally unsustainable.

This effect on animal populations can occur in different forms. Humans may cause one species, for example a predatory species, to become under populated, which in turn causes a game species to become over populated for lack of natural predators. In time however, these large numbers cannot be sustained and will dramatically decrease due to restricted habitable areas to live and a lack of food.<sup>28</sup> For another example, humans may cause a game species to

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<sup>24</sup> “Mass Extinctions in the Marine Fossil Record”. John J. Sepkoski Jr. and David M. Raup. 19 March 1982. According to this scholarly paper, there have been five mass extinctions in Earth’s history, the most recent being the Cretaceous-Paleogene Extinction that occurred 65.5 million years ago and ended the reign of the dinosaurs.

<sup>25</sup> “Hunting Controls Deer Overpopulation”, by Jeff Lane. Chatham Journal. December 28, 2006.

<sup>26</sup> Id.

<sup>27</sup> For consistency, I will herein refer to these animals simply as game.

<sup>28</sup> Id.

become under-populated, causing a predatory species to also become under-populated for lack of food. There are numerous scenarios, but one thing remains constant: in shaping the world as it exists today, we, as humans, are the main reason why the problem with animal populations exist. If we don't act to correct the animal population problem, nature will correct it in very unpleasant ways.<sup>29</sup>

Before speaking about the details of why hunting is the best option to correct the animal population problem, I'd like to give several more concrete examples of why the problem with population management is such a serious issue. Let's first consider the over population of game animals, specifically, white tailed deer.<sup>30</sup> The over population of deer has become a major problem in many areas of the United States. Deer are almost entirely herbivorous<sup>31</sup> and a good example of a typical game species.<sup>32</sup> Being a game species, deer have numerous natural predators that vary by region of the country where they are located.<sup>33</sup> The most common predators of deer are cougars, wolves, American alligators, and jaguars.<sup>34</sup> Other predators include bobcats, lynxes, bears, wolverines, and coyotes.<sup>35</sup>

There are numerous factors that have led to the over population of deer across the United States; and, as stated earlier, it primarily results from humans expanding their territory and forcing deer to compete for limited resources in a confined habitat. This scenario is made worse

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<sup>29</sup> I will address how this will happen, and also give examples.

<sup>30</sup> For convenience, I will simply refer to these animals as deer.

<sup>31</sup> They only scavenge on vegetation; they do not eat other animals.

<sup>32</sup> "Peak Season for Deer Collisions Begins in New Jersey", by Brian, T. Murray. The Star Ledger. November 9, 2010.

<sup>33</sup> Id.

<sup>34</sup> Id. Although Jaguars do not exist in the United States, they do prey on deer in countries with a more tropical climate.

<sup>35</sup> Id.

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in that humans have severely decimated the deer's natural predators through hunting, farming, and urbanization.<sup>36</sup> The result is an enormous number of these deer in many regions, with no natural predators, living in a habitat that is too small and fighting over food sources that are not nearly enough to sustain their entire population.<sup>37</sup> This creates a dangerous problem for not only the deer, but humans as well.<sup>38</sup>

Once the deer's limited food supplies are exhausted, they begin to starve. In some cases, they begin dying of in large groups – often weak, diseased, gasping for breath, unable to even stand for the last several days of their lives.<sup>39</sup> In other cases, the deer are forced to go further outside their natural habitat to find food.<sup>40</sup> This may lead to t deer standing in the middle of busy highways,thereby causing a serious safety risk.

To illustrate, the National Highway Safety Traffic Administration conservatively estimates that there are \$1.5 million car accidents nationwide involving deer every year, resulting in \$1 billion in damage.<sup>41</sup> More tragically, about 150 people are killed each year from these accidents and another 10,000 are injured. The deer not only find their way onto highways but also into towns, parks, and backyards, where they proceed to eat any and all vegetation they can

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<sup>36</sup> Yes, hunting was in fact one of the causes of the over population problem of game animals. Predators that are dangerous to deer are also often dangerous to humans. As humans expanded their territory, many predators were hunted to remove the threat to human safety. However, just because hunting was a factor in creating the problem does not mean that controlled, regulated hunting isn't the best solution to the problem either. GOOD

<sup>37</sup> Id.

<sup>38</sup> "Hunting Controls Deer Overpopulation". by Jeff Lane. Chatham Journal. December 28, 2006.

<sup>39</sup> "Peak Season for Deer Collisions Begins in New Jersey", by Brian, T. Murray. The Star Ledger. November 9, 2010.

<sup>40</sup> Id.

<sup>41</sup> National Highway Safety Traffic Administration website: Data Collection. <http://www.nhtsa.gov/NASS>. (Last visited on November 24, 2012.)

find, causing substantial property damage.<sup>42</sup> There is an enormous cost in repairing landscaped areas, and there are even some cases of forest destruction due to foraging deer destroying native plants that restricts trees' ability to replenish from new growth.<sup>43</sup>

Let's also look at an example resulting from the over population of certain predatory animals. An example I can personally relate to is the problem with black bears in northern New Jersey. In the past several decades, there has been increased human encroachment into, and destruction of bear habitat.<sup>44</sup> This, combined with increasingly mild winters that no longer check population growth, has led to a dramatic increase in both the population of black bears in New Jersey, as well as the frequency of contact between humans and bears.<sup>45</sup> In the absence of immediate bear population reduction measures, fatal or near-fatal bear attacks appear inevitable.<sup>46</sup> There is also a state liability concern in addition to the public safety aspect, representing a potential new area of litigation that could subject New Jersey to significant liability if the state fails to effectively or timely address the problem.<sup>47</sup>

This over-population problem with black bears has caused a substantial safety issue for humans in the past several years.<sup>48</sup> In 2002, a black bear snatched an infant from its carriage in New York's Catskill's region, and the infant was horribly mauled and died.<sup>49</sup> On July 2, 2000, a

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<sup>42</sup> Id. Although the black bear population declined dramatically at one point, they were reintroduced into New Jersey in the late 1980s and 1990s. "Bear Reintroductions: Lessons and Challenges," by Joseph D. Clark. 2002.

<sup>43</sup> "Bow Hunt Back in Randolph as Deer Population Continues to Grow," by Clare Knapp. Randolph Reporter. August 7, 2012.

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<sup>45</sup> "New Jersey's Bear Management Problem: Public Safety Hazard and State Liability Risk," by Scott L. Bach. Member, NRA Board of Directors. President, Association of NJ Rifle & Pistol Clubs.

<sup>46</sup> Id.

<sup>47</sup> 27 Pac. L.J. 1235, at 1250.

<sup>48</sup> Id. at 1251.

<sup>49</sup> "New Jersey's Bear Management Problem: Public Safety Hazard and State Liability Risk.," by Scott L. Bach. Member, NRA Board of Directors. President, Association of NJ Rifle & Pistol Clubs.

24-year old female biathlete was attacked and killed by a black bear while training on a course near Quebec City, Canada.<sup>50</sup> On May 22, 2000, an experienced hiker was mauled and killed by a black bear in Tennessee while waiting for her husband to return from a fishing trip.<sup>51</sup> On June 4, 2001, a black bear chased down, killed, and ate an 18-year old high school student in Canada.<sup>52</sup> The incidents go on, demonstrating that the over population of black bears is a serious problem in throughout the United States and Canada?<sup>53</sup>

Having discribed the animal population control problem, I will now discuss why hunting is the most effective solution to this problem and why the alternatives are not feasible. As previously mentioned, humans are the major reason why the animal population control problem exists, and regardless of how we respond, nature will eventually?? correct the problem.?? I briefly spoke about the over population of game animals. Science demonstrates that without controls, game populations will become too large for the habitat to maintain, resulting in habitat destruction, widespread starvation, disease, and suffering.<sup>54</sup> As the cause of this problem, it is man's responsibility as the dominant species to keep the populations of other animals under control.<sup>55</sup> Like it or not, we humans are at the top of the food chain; we are the dominant predator; it is up to us to resolve this issue.<sup>56</sup> Hunting is the best option, and I will explain why.

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<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Although these bear attacks have not occurred in suburban areas, they illustrate the dangers of human and bear interaction in rural hiking and fishing areas.

<sup>54</sup> 27 Pac. L.J. 1235, at 1260

<sup>55</sup> "Hunting Controls Deer Overpopulation," by Jeff Lane. Chatham Journal. December 28, 2006.

<sup>56</sup> There is no doubt that if there was less human expansion, there would be less problems with animal populations. However, with human population numbers increasing every year, it does not seem realistic to believe that that this problem will correct itself.

Hunting provides for managing wild? animal populations in a controlled, structured, and organized manner. Moreover, the federal government and state government regulate it heavily to ensure that hunters do not abuse their privileges and kill too many animals. For example, The Service rigorously regulates the hunting of migratory birds. A major way it does this is through the Migratory Bird Harvest Information Program (“HIP”).<sup>57</sup> The HIP is a method by which state wildlife agencies and The Service are developing more reliable estimates of the number of all migratory birds harvested throughout the country.<sup>58</sup> The estimates give biologists the information they need to make sound decisions concerning hunting seasons, bag limits, and population management.<sup>59</sup>

In implementing this, all hunters wishing to hunt migratory birds must sign up for the HIP at their state wildlife agency and list their name, address, and date of birth.<sup>60</sup> Whenever they hunt migratory birds, they must have proof of participation in the HIP provided by the state wildlife agency.<sup>61</sup> The state wildlife agency sends this information to The Service, and every year The Service randomly selects a sample of those hunters and asks them to provide detailed information on the kind and number of migratory birds they harvest during the hunting season.<sup>62</sup> Those hunters’ reports are then compared and crossed, and the information is? used to develop

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<sup>57</sup> For convenience, I will refer to this as HIP.

<sup>58</sup> U.S. Fish and Wildlife Service website: Harvest Information Program. <http://www.fws.gov/hip/>. Last visited November 24, 2012.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> Id.

<sup>62</sup> Id.

reliable estimates of the total harvest of all migratory birds throughout the country, and allow the government to issue more effective regulations.<sup>63</sup>

Working jointly with the federal government, states also heavily participate to make the regulations as effective as possible in managing animal populations and preventing problems from arising with over/under population. State wildlife agencies are primarily responsible for: (1) selling hunting licenses, (2) setting hunting seasons as well as duration of hunting seasons, (3) establishing areas open/closed to hunting, (4) animal control and management of non-endangered wildlife, and (5) game warden information.<sup>64</sup> Combined with the federal regulations already in place, these additional state regulations make hunting more efficient and organized and put even more protections in place to ensure that it does not go too far and hurt the animal populations.

There are specific examples of where hunting has helped manage the animal population problem and also other examples where bans on hunting have made the problem worse. In regards to game animals, the problem I mentioned earlier with deer over population is slowly being remedied in New Jersey. In Randolph, New Jersey, a special deer committee formed by the Parks and Recreation Department has made recommendations and worked to expand the areas in which hunters would be welcome during the hunting season.<sup>65</sup> Additionally, the committee has convinced the state to lower the distance bow hunters can place their stands from dwellings from 400 feet to only 150 feet.<sup>66</sup> A state report shows that 299 tagged deer were removed from Randolph last year, and added to that were 172 deer carcasses removed from

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<sup>63</sup> Id.

<sup>64</sup> U.S. Fish And Wildlife website: State Wildlife Protection Agencies. <http://www.fws.gov/offices/statelinks.html>. (Last visited November 23, 2012).

<sup>65</sup> "Deer Overpopulation Raises Concerns in Randolph Township," by Claire Knapp. New Jersey Hills Newspaper. May 3, 2012.

<sup>66</sup> Id.

Randolph roads.<sup>67</sup> These expansions to the hunting regulations have slowly begun to correct the deer overpopulation problem in this area.<sup>68</sup>

Another example shows that when there are no hunting laws in place, such as due to a ban on deerhunting, over population can reach extraordinarily high levels and result in the starvation and suffering of tens of thousands of animals. In 1906, Arizona banned the hunting of mule deer on the Kaibab Plateau in an effort to protect the declining population of that species.<sup>69</sup> The result was a population explosion, by which the Kaibab deer population grew from 3000 to 100,000 animals.<sup>70</sup> By 1924, the deer had overpopulated in their habitat, causing two-thirds (approximately 66,000 deer) to die of starvation.<sup>71</sup>

A similar example of this occurred with a predatory species of mountain lions. In 1990, Proposition 117, referred to as the California Wildlife Protection Act, banned mountain lion hunting within the state, after passing by a voting margin of fifty-two percent to forty-eight percent.<sup>72</sup> Put details of vote in fn. According to biologists, the state has since experienced an over population of mountain lions as a result of this hunting ban.<sup>73</sup> This over population has resulted in two persons being killed by mountain lions, as well as a dramatic increase in attacks on humans, pets, and livestock.<sup>74</sup> This is because the available mountain lion habitat in the state was insufficient for the animals' growing population, thereby forcing mountain lions to go into

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<sup>67</sup> Id.

<sup>68</sup> It is unknown exactly how many deer must be removed to effectively alleviate the problem. However, the problem is slowly improving with the effectiveness of these new policies. How do you know that?

<sup>69</sup> 27 Pac. L.J. 1235, at 1274.

<sup>70</sup> Id.

<sup>71</sup> Id. at 1275.

<sup>72</sup> Id. at 1276

<sup>73</sup> Id.

<sup>74</sup> Id. at 1277

cities and suburbs in search of food.<sup>75</sup> In response to this growing problem resulting from Proposition 117, the California Legislature enacted legislation that repealed that law, allowing the state Fish and Game Commission and the Department of Fish and Game to establish a management plan which could include the hunting of mountain lions.<sup>76</sup> In time, the mountain lion population has decreased to numbers that allow the species to become naturally sustained in their environment without contact with humans.<sup>77</sup>

Another example of managing a predatory species through hunting involves the black bears in New Jersey. In response to the New Jersey black bear problem,, the state issued 6,400 permits, allowing hunters to patrol 1,000 square miles of northern New Jersey, which,has one of the densest black bear populations in the nation.<sup>78</sup> The bear hunt was strictly regulated, and in order for hunters to participate, permits had to be applied for in advance, along with tags that had to be purchased and applied to any animal that was killed.<sup>79</sup> There were rules about weapons, ammunition, and the transportation of the bears, which had be brought to one of four check-in stations the day they were killed.<sup>80</sup> The animals were weighed by state agents, who also took skin and blood samples, and a tooth before releasing the carcass to the hunters.<sup>81</sup> These strict regulations made this bear hunt organized and effective, and it successfully lowered the black bear numbers in northern New Jersey back to levels that could be sustained naturally with decreased human interaction. Who says it was that successful???

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<sup>75</sup> Id.

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> “No Stopping New Jersey’s Black Bear Hunt,” by Michael K. Global Animal Magazine. December 7, 2011.

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Id.

An alternative approach to the bear hunt in New Jersey was attempted to correct the bear over population in 2000. That year a limited bear hunt scheduled by the New Jersey Division of Fish and Wildlife was cancelled by then Governor Whitman.<sup>82</sup> Instead of hunting, the state decided to experiment with tagging and relocation, but it failed to solve the bear problem.<sup>83</sup>

As witnessed in New Jersey, tagging and relocation is an ineffective alternative to hunting with both predatory animals and game animals. Regarding predatory animals, for example, in 1996, a 16-year old girl was mauled by a black bear while on a 4H outing near Tucson, Arizona.<sup>84</sup> The bear had previously been tagged and relocated by the state fish and game division.<sup>85</sup> The relocated bear returned to its place of origin many miles away, mauling and disfiguring the teenage girl.<sup>86</sup> Similarly, the bear that killed the Tennessee woman in 2000, had also been previously tagged by the state fish and wildlife agency.<sup>87</sup>

Tagging does not reduce the bear population, and relocation just moves the problem.<sup>88</sup> In many instances, as above, the bears return to their origin, even if over great distances.<sup>89</sup> Hunting, unlike tagging and relocation, has an immediate and lasting impact on the population management problem.<sup>90</sup> Also, not only does it not tap a state's limited financial resources, but it also generates revenue for the state wildlife agencies due to increased hunting license fees.<sup>91</sup> .

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<sup>82</sup> "New Jersey's Bear Management Problem: Public Safety Hazard and State Liability Risk," by Scott L. Bach. Member, NRA Board of Directors. President, Association of NJ Rifle and Pistol Clubs.

<sup>83</sup> Id.

<sup>84</sup> Id. at page 2

<sup>85</sup> Id.

<sup>86</sup> Id. The State of Arizona settled a \$15 million dollar lawsuit by the girl for \$2.5 million.

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id. at page 3.

<sup>90</sup> Id.

<sup>91</sup> Id. at page 4.

There are also problems with tagging and relocation when it comes to game animals. As mentioned previously, the main problem with the deer over population is starvation and disease from competing over a limited food supply in a relatively small habitat. Tagging and relocating these animals from one area with limited resources to another does not solve the problem of over population; it merely allows for people to move the problem somewhere else.<sup>92</sup> There will still be the same over population problem at the new location, along with starvation, disease, and mass deaths.<sup>93</sup> Merely relocating the problem to a different community accomplishes little, if anything.

Other than tagging and relocation, several other alternatives to hunting have been suggested, both for predatory and game species. One of these is sterilization.<sup>94</sup> Although this has been discussed but not implemented, research has shown it to be extraordinarily expensive, and extremely slow in correcting the problem, taking many years.<sup>95</sup> Another suggested alternative is contraceptives. However, this is very complicated because of the difficulty in devising contraceptives that will affect multiple animals and animal species, as well as devising an effective method to deliver the contraceptives.<sup>96</sup> Another suggestion has been to re-introduce meat eating predators into areas that are over populated with game animals to essentially do the same job that hunters are doing.<sup>97</sup> While this option would probably be effective in reducing the

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<sup>92</sup> "Hunting Controls Deer Overpopulation," by Jeff Lane. Chatham Journal. December 28, 2006.

<sup>93</sup> However, this method could be more effective if the deer were moved to protected animal preserves.

<sup>94</sup> This is essentially spaying and neutering the animals, preventing them from being able to reproduce.

<sup>95</sup> There are very high costs associated with this. Capturing the deer with tranquilizers is very costly, along with feeding the deer in captivity during the time it takes to sterilize them.

<sup>96</sup> Id. Imagine attempting to deliver a contraceptive to thousands of wild animals on a regular basis. Also, these shots have been shown to be extremely expensive, costing about \$230 each.

<sup>97</sup> "New Jersey's Bear Management Problem: Public Safety Hazard and State Liability Risk." by Scott L. Bach. Member, NRA Board of Directors. President, Association of NJ Rifle and Pistol Clubs.

game population to sustainable numbers, the other effects would be unacceptable. The reasoning is that the game population is originally too high because humans have eliminated the predatory species from the area for safety concerns – that of children, livestock, and domestic animals. Re-introducing the predators into this area would also re-introduce the same safety risks that were present previously. Each of these methods are not as effective or consistent at managing animal populations as hunting.

Hopefully, it has now been made clear how the problem with animal population management arose and how serious the problem is and the danger it poses both to animals and to humans. I have also tried to demonstrate the ineffectiveness of the proposed alternatives to hunting. It is therefore submitted that hunting is by far the best solution to managing animal populations in the United States and there has yet to be a more efficient alternative.<sup>98</sup> Through federal and state regulation, hunting is structured, organized, and efficient. The effects of hunting on population control are also immediate and lasting. The next aspect I will address is how hunting serves as a preventative measure to ensure that animal over population problems don't continue to arise.

### **Protecting Animals By Preventing Population Management Problems**

As noted earlier, the main causes of animal population problems are a habitat that is too small and an insufficient food supply. I have just demonstrated how hunting helps remedy this by directly reducing the number of animals in the wild and bringing populations to sustainable

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<sup>98</sup> I'm aware that if I was one of the unlucky animals killed by a hunter, I would disagree with this statement, but this is a perfect example of a necessary evil to protect the animal species and also ensure the safety of humans. The reality is that humans have greater rights and protections than animals, and can not be held to the same standard.

numbers.<sup>99</sup> This is a purely reactionary policy. However, in addition to this, hunting has a proactive policy with the goal of preventing animal population problems from arising all together. This method of doing this is to raise revenue, through hunting, to expand, preserve, and conserve wildlife habitats for the future. I will explain how the federal government, state governments, and private citizens work together to contribute large amounts of funding to support this goal every year – through hunting.

The most successful way the federal government implements this policy is through Federal Migratory Bird Hunting and Conservation Stamps.<sup>100</sup> These are actual pictorial stamps produced by The Service, and they are not valid for postage.<sup>101</sup> Every hunter that wishes to hunt migratory birds is required to purchase a Federal Duck Stamp. Federal Duck Stamps are a vital tool for wetland conservation, and ninety-eight cents out of every dollar generated by the sale of Federal Duck Stamps goes directly to the purchase or lease of wetland habitat for protection in the National Wildlife Refuge System<sup>102</sup>. Aside from the revenue generated by the actual purchase of Federal Duck Stamps, if a hunter wishes to hunt in a national wildlife refuge requiring a Federal Duck Stamp, an additional fee is charged and donated to this fund.<sup>103</sup>

The Federal Duck Stamp has been called one of the most successful conservation programs ever initiated and is a highly effective way to conserve America's natural resources.<sup>104</sup> Since 1934, sales of Federal Duck Stamps have generated more than \$750 million, which has

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<sup>99</sup> 27 Pac. L.J. 1235, at 1277

<sup>100</sup> These are commonly called “duck stamps”, and that is how I will refer to them.

<sup>101</sup> US Fish Wildlife Service Website: Federal Duck Stamps. <http://www.fws.gov/duckstamps/Info/Stamps/stampinfo.html>. (Last visited November 25, 2012.)

<sup>102</sup> Id.

<sup>103</sup> Id.

<sup>104</sup> Id.

been used to purchase or lease over 6 million acres of wetlands habitat in the United States, all protected by the National Wildlife Refuge System.<sup>105</sup> Migratory birds and waterfowl are not the only species that have benefitted from the Federal Duck Stamp: numerous other bird, mammal, fish, reptile, and amphibian species that rely on wetlands have prospered.<sup>106</sup> Further, an estimated one-third of the nation's endangered and threatened species find food or shelter in refuges established using the Federal Duck Stamp funds.<sup>107</sup>

Some states also contribute to expanding and preserving animal habitats to prevent population management from never becoming an issue. Like the Federal Duck Stamp, every state [all 50?] has its own unique version of the duck stamp.<sup>fn</sup> Even though state duck stamps are purchased for a substantially lower value, they are required, along with Federal Duck Stamps, to hunt migratory birds and waterfowl within that particular State.<sup>108</sup> As the Federal Duck Stamps generate revenue to expand federal wildlife refuges, all the funds generated by state duck stamps are distributed to support wildlife management programs and conservation efforts in each state. For example, Louisiana has a 13,000-acre state wildlife refuge housing a multitude of waterfowl, mammals, and reptiles.<sup>109</sup> Another example is Washington, which has nearly a million acres divided into 33 wildlife preserves across the state.<sup>110</sup>

States also generate funds for tconservation through the sale of hunting licenses and tags. The federal government does not sell hunting licenses. Hunting licenses are sold exclusively by

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<sup>105</sup> Id.

<sup>106</sup> Id.

<sup>107</sup> Id.

<sup>108</sup> Id.

<sup>109</sup> State of Louisiana Department of Wildlife and Fisheries. <http://www.wlf.louisiana.gov/refuge/state-wildlife-refuge>. (Last visited December 2, 2012.)

<sup>110</sup> State of Washington Department of Fish and Wildlife. [http://wdfw.wa.gov/lands/wildlife\\_areas/intro.html](http://wdfw.wa.gov/lands/wildlife_areas/intro.html). (Last visited December 1, 2012.)

the states and each state has different requirements for obtaining a license.<sup>111</sup> Different states have their own requirements for types and amount of paperwork, hunting and safety courses, informational courses that inform hunters of areas of hunting, time periods of hunting, harvesting techniques, and distinctions between the species.<sup>112</sup> Hunting tags are required for hunters to hunt bigger game, which vary from state to state.<sup>113</sup> Tags must be purchased in addition to the hunting license, and the number of tags issued to an individual is typically limited.<sup>114</sup> In cases where they are more prospective hunters than the quota for that species, tags are usually assigned by lottery.<sup>115</sup> As with the hunting licenses, proceeds from tags also get distributed to state wildlife protection management programs and conservation efforts.<sup>116</sup>

Aside from duck stamps, licenses, and tags, there is an additional way states fund wildlife conservation efforts, and that is through the payment by hunters of federal excise taxes on hunting equipment and ammunition.<sup>117</sup> By paying the federal excise tax, hunters are contributing hundreds of millions of additional dollars for conservation programs that benefit many wildlife species, both hunted and non-hunted.<sup>118</sup> Each year, nearly \$200 million in hunters' taxes are then distributed to state agencies to support their wildlife management programs, the purchase of lands open to hunters, and hunter education and safety classes.<sup>119</sup>

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<sup>111</sup> US Fish Wildlife Service Website: Federal Duck Stamps. <http://www.fws.gov/duckstamps/Info/Stamps/stampinfo.html>. (Last visited November 25, 2012.)

<sup>112</sup> Id.

<sup>113</sup> Id.

<sup>114</sup> Id.

<sup>115</sup> Id.

<sup>116</sup> Id.

<sup>117</sup> U.S. Fish and Wildlife website: Hunters and Conservation. <http://www.fws.gov/hunting/whatdo.html>. Last visited November 24, 2012.

<sup>118</sup> Id.

<sup>119</sup> Id.

Aside from the federal government and state governments contributing to expand and preserve wildlife habitats, each year hundreds of thousands of acres of prime wildlife habitat is maintained and conserved by private landowners. This occurs by virtue of hunting clubs and wildlife preserves.<sup>120</sup> This land provides vital habitat in areas where the federal and state government have few or no land holdings or do not have the funds to acquire such holdings.<sup>121</sup> Thus, private land holdings sustain much of each state's wildlife for the specific benefit of the landowner and for the general benefit of all.<sup>122</sup>

Therefore, it is clear how much hunting contributes every year to preventing animal population problems. It does so by generating millions of dollars to expand, preserve, and conserve millions of acres of wildlife habitat. If not for hunting, it would be extremely difficult to generate funds to protect these millions of acres of wildlife habitat. Should hunting be substantially restricted or prohibited, there would be no funds for the federal government and state governments to keep these lands protected and preserved for the animals. Furthermore, the holdings of private landowners would be put to more profitable uses that would in all likelihood be less conducive for wildlife.<sup>123</sup> For these reasons, the animal populations—without hunting—would become completely unsustainable, causing drastic uncontrollable changes; hence there would be no effective means to either prevent or react to the problem.

### **Negative Impacts of Hunting**

As I mentioned earlier, as much as I now support the practice of hunting, I must acknowledge that it has some negative aspects to it. It should be kept in mind, however, that any

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<sup>120</sup> 27 Pac. L.J. 1235, at 1278.

<sup>121</sup> Id.

<sup>122</sup> Id.

<sup>123</sup> Id.

realistic advocate of hunting will never proclaim that it is the perfect, flawless option to deal with the animal population problem. Rather, it is merely the best option, considering the alternatives.

The main argument against hunting is that it is morally objectionable and unethical on a number of grounds. One argument is that from an animal rights standpoint, killing any animal for food is wrong, whether that animal is a deer, a cow, a chicken, or a bear.<sup>124</sup> Many also find hunting to be unethical because there is a recreational aspect to it. The idea of “killing for fun” can appear morally twisted, even if the end goal is to effectively manage animal populations.<sup>125</sup> Further, even if the recreational aspect is accepted, a number of people still feel that technological advancements and modern weaponry have erased the traditional spirit that so many hunters claim they wish to preserve.<sup>126</sup> There is also an issue regarding the pain and suffering inflicted on the animals. According to statistics, many animals suffer prolonged and painful deaths at the hands of hunters.<sup>127</sup> Other statistics show that hunting disrupts the hibernation and migration patterns and separates animal families.<sup>128</sup>

Another argument against hunting is that the whole purpose is to correct a problem that human beings are responsible for creating in the first place. It is argued that it is our own fault that, for example, deer cause so many accidents and property damage every year, and that humans have fatal interactions with black bears and cougars. As explained earlier, this argument is based in fact. Human expansion is the main reason for the animal over population problem we

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<sup>124</sup> Id. at page 3.

<sup>125</sup> Id.

<sup>126</sup> Traditionally, hunting was done with a bow and arrow. As technology and weaponry evolved, there was still an aspect to it that required an amount of skill. Hunters had to work for their kill. Today, however, people find that with all the technological advancements and modern weaponry, the balance is tipped so far in favor of the hunter that the animal doesn't stand much of a chance. They argue that the tradition that hunters wish to preserve no longer exists.

<sup>127</sup> Id.

<sup>128</sup> All these statistics can be found on any of the animal rights groups' websites. PETA is probably the biggest.

have today. We have forced them into smaller habitats and decreased their food supply through urbanization and expansion. The proponents of this argument advise that we should now remove ourselves from the equation and let nature take its toll and naturally correct it.

Another criticism of hunting is that it could potentially lead to the extinction of some animal species. There is no doubt that hunting has led to the extinction of animal species in the past, for example the carrier pigeon in the early 20<sup>th</sup> century. The carrier pigeon was wiped out due to unregulated hunting and habitat destruction. However, this is not an issue in present day. As demonstrated, hunting is now very strictly regulated, and what happened to the carrier pigeon is extremely unlikely to happen again today with another species, given the stringent safeguards in place by the both state governments and the federal governments.

As explained earlier, humans are now the dominant species on this planet. It is up to us to be the top predator and manage the animal population problem, regardless of the fact that we created it. There is no reason why we should sit back and let nature correct the problem through slow, torturous starvation, disease, and suffering. As shown above, humans have the ability not only to provide organized and efficient solutions to react to the animal population problem, but also provide solutions to prevent it from happening in the future.

Another criticism of hunting of some individuals is that hunting doesn't effectively resolve or prevent the animal population problem at all. Studies have been conducted on deer, and show that removing some deer from their population results in more food for the remainder, which in turn leads to the births of more twins and triplets.<sup>129</sup> These same individuals argue that hunting is unnecessary because the deer will self-regulate and give birth to fewer fawns when

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<sup>129</sup> "Hunting Controls Deer Overpopulation," by Jeff Lane. Chatham Journal. December 28, 2006.

food is scarce.<sup>130</sup> However, these same individuals also argue for alternatives to hunting such as tagging and relocation, sterilization, contraceptives, or simply leaving nature to handle the problem. Unfortunately, all of these have been shown as not viable alternatives at this point in time.<sup>131</sup>

### **Suggestions For Better Managing the Animal Population Problem**

When I first considered what changes should be suggested to make hunting regulation more effective at managing and preventing the animal population problem, I didn't have any answers. What could I, as a third year law student, possibly think of or do differently than the entire U.S. Fish and Wildlife Service and all the state wildlife protection agencies? After doing research and gaining knowledge, however, I am now able to suggest some viable options that could make the hunting regulations even more efficient.

First, I think hunting should be regulated even more. The right to hunt is considered a privilege, not a Constitutional right under the Second Amendment, and a hunting license is required in order to hunt in the United States.<sup>132</sup> Hunters have unsuccessfully challenged the legality of hunting licenses based on the ruling of *District of Columbia v. Heller*.<sup>133</sup> In that case, the US Supreme Court ruled that the Second Amendment guarantees an individual's right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally

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<sup>130</sup> Id.

<sup>131</sup> There are also additional practices of hunting that are considered extremely objectionable, such as canned hunting, trophy hunting, baiting, and hunting of stocked animals, but this is not the hunting I am speaking about and addressing it would merely cause confusion.

<sup>132</sup> Id.

<sup>133</sup> Here, the US Supreme Court ruled that the Second Amendment guarantees an individual's right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes. However, the Court has yet to directly address hunting licenses, and more specifically, what standard of review would apply, leaving state hunting licenses valid and in force.

lawful purposes. However, the Court has yet to directly address hunting licenses, and more specifically, what standard of review would apply, leaving state hunting licenses valid and in force. [should be in fn] From this case and facts I have already spoken of, it is clear that hunting is an area capable of regulation, and will likely continue to be heavily regulated going into the future. Regulation is why hunting is so effective. Nevertheless, I believe greater regulation would add to the effectiveness of managing the animal problem.

With respect to the animal population problem, I believe that the only reason hunting is a viable method is because of effective regulation. The whole purpose of this policy is to react to certain species of animals that are either under or over populated and bring their numbers towards a balancing point that can be sustained naturally. Without strict coordinated? federal and state regulation, there would be no guidelines or effective procedure about how to do this. Hunters would not know what animals should be hunted in certain seasons, how many animals can be hunted, size limits, etc. Further, without effective procedures, there would be no way to police and monitor hunter's activities to make sure they are complying with the guidelines. Not having accurate guidelines and not having a method to enforce those guidelines would likely cause more problems than they would solve.

I believe programs like the HIP and institutions like The Council are critical in obtaining valuable information regarding the population numbers of different species. This information gives the regulatory bodies more guidance to regulate more efficiently. Looking at this issue made me wonder why there aren't more programs like this. I admit that I am no policy-maker and can't begin to fathom the practical or financial difficulties that would arise from these suggestions, but I believe that programs identical to the HIP could be created for all different

animal species other than just migratory birds. Maybe there could be a program created for the specific management and data collection of certain predatory animals. Perhaps the same could be done for certain game animals. I realize the cost for this would be great, but with all this additional information we can ensure that the regulations being made each year are as accurate as possible. Since it has proven effective for migratory birds, why not for other species.

There are also additional ways to ensure compliance with the regulations. One way may be to hire additional park rangers and state wildlife personnel to patrol the woods during hunting season, making sure the regulations are being complied with fully. Another way may be to establish more of the same checkpoints referred to earlier with respect to the bear hunt. State wildlife agencies could create random checkpoints at different locations for all different types of animals during hunting seasons to ensure that the proper species and number of animals are hunted.<sup>134</sup> They could also take samples from the animals for study and help gather information about the animal populations. Continuing on this track, state legislatures could adopt stricter penalties for hunting regulation violations, deterring people from committing violations.<sup>135</sup>

There are also ways to strengthen the policy of preventing animal population management problems. I spoke earlier about how successful Federal Duck Stamps are at raising revenue for the expansion and preservation of wildlife habitats. One way to create even more revenue would be to slightly increase the price of Federal Duck Stamps. Currently, the price of a federal duck stamp is \$15, and it still generates millions of dollars a year in support of habitat preservation. Imagine if that price was raised only slightly, to say \$25, or perhaps raised in

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<sup>134</sup> While there is no concrete evidence that the amount of regulation is not currently effective, an increased amount of regulation may serve to alleviate the concerns of anti-hunting advocates.

<sup>135</sup> While most states have severe penalties for violation of hunting laws, such as large fines and up to 180 days in jail, states could create additional protections or increase the penalties to provide more effective deterrence.

increments every year. This would produce a substantial amount more towards preventing expanding and preserving natural wildlife habitats.

It is further suggested that the same could be done with state duck stamps. State duck stamps are even cheaper than Federal Duck Stamps, costing about an average of \$5 each. If hunters are able to spend hundreds and thousands of dollars on hunting equipment, weapons, and ammunition, it would seem that an additional few dollars a year would not impose a heavy burden on them. When all the funds are added up, there would be a substantial amount more for state wildlife protection efforts. And, aside from raising the price of both federal and state duck stamps, why not add additional stamps for different animals species both at the federal and state levels? Why isn't there a bear stamp, or a deer stamp, or a mountain lion stamp, or an elk stamp? Looking at the incredible success that the duck stamps have had in raising revenue in support of wild habitat, additional millions of dollars could be raised every year by doing this.

### **Conclusion**

In this paper I have attempted to articulate and explain what has led me to change my personal feelings towards hunting. I have outlined the sources of hunting laws in the United States. I have explained the cause of problems regarding animal population management and why they are a serious issue. I have explained the policies supporting the regulation of hunting and how implementing these policies have been successful in both preventing and reacting to animal population problems. I have also explained the criticisms of hunting and possible alternatives to hunting, as well as my own suggestions on how to make hunting regulations even more efficient. I hope that I was able to illustrate the great benefits of hunting for both the prevention of problems with animal population management and for the correction of problems

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already in existence. Regardless of whether we have caused the problem, we as humans must address the problem going forward into the future. We have a responsibility as the dominant species on the planet to correct what we have done; and for the above reasons, hunting is the best available method to do this. Is hunting inherently evil? Maybe, but it is the best option we have to benefit the greater good.

Better than first draft. A little too introspective. Should be more on the moral issues, other than just citing them.

Final Grade: A-