

THE RECIPROCITY OF CONSERVATION AND HUNTING: IMPROVING KENTUCKY’S NORTH AMERICAN MODEL OF WILDLIFE CONSERVATION

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INTRODUCTION

Some people consider conservation and wildlife management (hunting, fishing, trapping, etc.) divergent practices.² Yet, the two of them embrace an intricate theme of reciprocity.³ In America, dollars from hunter and angler license sales are a major, if not the most significant, source of conservation funding.⁴ This inextricable link between conservation and management warrants the reasonable preservation of both practices, not one without the other. The Commonwealth of Kentucky is a great place to start.

The Kentucky Department of Fish and Wildlife successfully maintains its conservation and management model, but it does not articulate a need for additional funding.⁵ Further, Kentucky’s existing model emphasizes the preservation of game species but neglects the preservation of non-game species.⁶ Hunters are also arguably declining,⁷ and the Department’s conservation and management funding is volatile as hunter dollars are its cornerstone.⁸ Therefore, Kentucky should adopt a “dual-payer” model of funding that combines its current model with additional funding sources of redistributed agency funds and reallocated taxes.

In 2001, the Association of Fish and Wildlife Agencies (AFWA) formally

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² See Teresa M. Telecky, *Hunting is A Setback to Wildlife Conservation*, 29 *EARTH ISLAND J.* 45, 45–46 (2014).

³ See generally John F. Organ, Valerius Geist, Shane P. Mahoney, et al., *The North American Model of Wildlife Conservation: Technical Review 12-04*, THE WILDLIFE SOC’Y & THE BOONE & CROCKETT CLUB 1–5 (Dec. 2012) (demonstrating the reciprocity of hunting and conservation).

⁴ Bill O’Brian, *Hunters as Conservationists*, U.S. FISH & WILDLIFE SERV. (Feb. 12, 2018), <https://www.fws.gov/story/hunters-conservationists> [<https://perma.cc/G8BB-32LR>]; Mike Harmon, *Examination of Certain Operations and Financial Activity of the Kentucky Department of Fish and Wildlife Resources*, KY. OFF. AUDITOR OF PUB. ACCTS. 6 (Dec. 18, 2018); *Division of Fish & Wildlife Funding*, IND. DEP’T OF NAT. RES. (2021), https://www.in.gov/dnr/fish-and-wildlife/about-us/funding-and-license-sales/#American_System_of_Conservation_Funding_Infographic_text [<https://perma.cc/68MY-C76Z>].

⁵ Jonathan Gassett, *Wildlife Action Plan*, KY. DEP’T OF FISH & WILDLIFE RES. (Feb. 5, 2013), <https://fw.ky.gov/WAP/Pages/Wildlife-Action-Plan-Full.aspx> [<https://perma.cc/ZL87-Y7NY>].

⁶ *Id.*

⁷ David Willms & Anne Alexander, *The North American Model of Wildlife Conservation in Wyoming: Understanding It, Preserving It, and Funding Its Future*, 14 *WYO. L. REV.* 659, 684 (2014).

⁸ Harmon, *supra* note 4, at 7.

adopted the “North American Model of Wildlife Conservation.”⁹ One of the AFWA’s key tenants is, “hunters and anglers pay for wildlife conservation and management.”¹⁰ This is called a “user-pays” model.¹¹ All states employ some form of a user-pays model, including Kentucky.¹² The Commonwealth’s current model includes more than one “user,” a “dual-payer” model, comprised of money from license fees and money from federal and other sources. This model is precarious because it relies heavily on any user-pays model’s largest weakness: that there will always be as many hunters as there are now.

This article proposes several feasible improvements to Kentucky’s model. One improvement calls for the Kentucky Legislature to amend the Department of Parks enabling statute with express authority to redistribute funds toward activities closer linked to conservation and management efforts. Another improvement calls them to reallocate a portion of the sales tax collected on outdoor equipment to the Department of Fish and Wildlife by statutory amendment. A stronger dual-payer model would ensure a healthy future for Kentucky’s ecosystems and pave the way for other states to adhere to a similar plan. Part II provides an overview of America’s history of wildlife impositions, conservation, and management. Part III uncovers the need for a more stable wildlife conservation and management model in Kentucky. Part IV proposes the details of two amendments to create a strengthened dual-payer model.

I. AMERICA’S HISTORY OF WILDLIFE IMPOSITIONS, CONSERVATION, AND MANAGEMENT

A review of America’s history of wildlife impositions, conservation, and management efforts illuminates its current flavor of wildlife conservation and management. One can divide America’s wildlife conservation and management history into three eras.¹³ First, America’s wildlife roamed comparatively undisturbed before America’s birth. Second, human encroachment on wildlife was prevalent at America’s origin. Third, state and federal actors combated exploitation.

A. *Early, Primal Impositions*

Before the colonization of North America, wildlife roamed arguably freer than today.¹⁴ A variety of life inhabited the continent, from wolves, bison, and other fauna to a guild of flora.¹⁵ Scholars often employ one theory, Pleistocene Overkill, to explain the demise of these species.¹⁶ It suggests that native people preyed on

⁹ Willms, *supra* note 7, at 659–60; Organ, *supra* note 3, at 1–2.

¹⁰ Willms, *supra* note 7, at 660.

¹¹ *Id.*

¹² Organ, *supra* note 3, at 6–8.

¹³ Willms, *supra* note 7, at 662.

¹⁴ *Id.*

¹⁵ Peter Moyle & Mary A. Orland, *Humans and Wildlife in America*, THE MARINEBIO CONSERVATION SOC’Y, <https://www.marinebio.org/creatures/essays-on-wildlife-conservation/3/> (last visited Jan. 6, 2022) [<https://perma.cc/4RDF-5LF6>].

¹⁶ *Id.*

these animals to a noticeable detriment.¹⁷

From the 1500s to the mid-1600s, North America's wildlife species were much like those present today.¹⁸ On one hand, scholars believe Native Americans embodied a culture that encouraged minimal wildlife impositions. On the other, though, recent scholarship reveals Native Americans impacted wildlife on a larger scale than previously thought. Regardless, their interference was nominal and primal when compared to the effects of today's rural municipalities and cityscapes.

B. Decimation of America's Wildlife

The Colonial Age and Westward Expansion fostered a new age of wildlife impositions. Europeans found America rich in wildlife.¹⁹ Deer, elk, moose, and beavers inhabited eastern forests;²⁰ Bison, antelope, bears, elk, sheep, and moose inhabited the west.²¹ Scholars believe colonialists' arrival to North America initially spiked wildlife populations due to the transmission of diseases to Native Americans, the preeminent cause of wildlife decimation at the time.²²

Colonial settlers exploited America's wildlife by commercializing hunting and fur trapping.²³ As early as 1650, beavers were nearly eliminated from the eastern coast.²⁴ In 1748, South Carolina records account for a shipment of about 160 thousand deer pelts to Great Britain.²⁵ Passenger pigeons initially numbered between three and five billion, but by the 1850s, settlers sometimes killed over fifty thousand birds daily.²⁶

Western Expansion created further opportunities for exploitative professions. Forty to seventy million bison and about ten million pronghorns then roamed the western plains.²⁷ In 1833, the American Fur Company exported over forty thousand bison hides overseas.²⁸ In 1865, commercial hunters killed about one million bison.²⁹ By 1871, the number increased five million per year.³⁰ Around 1900, a census recorded only 540 remaining bison.³¹ The onslaught of passenger pigeons progressed too.³² By then, no pigeons remained in the wild, and passenger pigeons

¹⁷ *Id.*

¹⁸ See Robert Brown, *A Conservation Timeline: Milestones of the Model's Evolution*, THE WILDLIFE SOCIETY 28–29 (2010), <http://wildlifehabitat.tamu.edu/Lessons/Habitat-Concepts-1/Readings/A-Conservation-Timeline.pdf> [https://perma.cc/KM34-RMKK].

¹⁹ *Id.* at 28.

²⁰ *Id.*

²¹ *Id.* at 30.

²² *Id.* at 28.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *The Passenger Pigeon*, SMITHSONIAN INFORMATION, <https://www.si.edu/spotlight/passenger-pigeon> [https://perma.cc/DQ5H-24EM].

²⁷ Brown, *supra* note 18, at 28.

²⁸ *Id.*

²⁹ *Id.* at 29.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

became extinct fourteen years later.³³ The government and public sentiments began recognizing the exploitation of America's wildlife.³⁴ This "laid the foundation for the North American Model of Wildlife Conservation."³⁵

C. Increase in Government Efforts to Conserve and Manage Wildlife

After taking notice of the country's unsustainable practices, the federal government and state governments addressed America's wildlife exploitation.³⁶ First, the states and Supreme Court addressed conservation and management at a large scale.³⁷ Later, Congress acted through several statutes.³⁸

i. Rise of State Conservation and Management Efforts and the Supreme Court

The States and people were the first to address wildlife exploitation. In 1844, the New York Sportsmen's Club was formed.³⁹ New York also drafted some of America's first management laws. Subsequently, state legislatures passed similar laws. Many hunting, conservation, and scientific organizations formed.⁴⁰ Some lobbied for stricter exploitation laws and bans on wasteful hunting.⁴¹ In response, states created wildlife commissions and agencies.⁴² These entities implemented the practice of collecting money for hunting and angler licenses, thereby establishing user-pays models.⁴³

Kentucky was among the first states to recognize the need for proper conservation and management.⁴⁴ As early as 1738, deer-harvest laws applied to the territory that would become the Commonwealth.⁴⁵ From the mid-1700s to around the last half of the century, Kentucky's efforts to conserve wildlife were sporadic.⁴⁶ In 1912, The Kentucky Game and Fish Commission was born, which later became the Kentucky Department of Fish and Wildlife.⁴⁷

The Supreme Court answered challenges regarding wildlife management too.⁴⁸

³³ *The Passenger Pigeon*, *supra* note 26.

³⁴ *Id.*

³⁵ *Organ*, *supra* note 3, at 6–10.

³⁶ *See generally* *Martin v. Lessee of Waddell*, 41 U.S. 367 (1842) (demonstrating an instance of state and federal consideration of wildlife exploitation).

³⁷ *See* *Brown*, *supra* note 18, at 29.

³⁸ 16 U.S.C. §§ 1331–1332 (1971); 16 U.S.C. § 47 (1906) (repealed 1976).

³⁹ *Brown*, *supra* note 18, at 29.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Brown*, *supra* note 18, at 30; *Willms*, *supra* note 7, at 660.

⁴⁴ *See History of the Kentucky Department of Fish and Wildlife Resources from Settlement Through 1944*, KY. DEP'T OF FISH & WILDLIFE RES., <https://fw.ky.gov/More/Pages/History.aspx> [https://perma.cc/7395-RBNS].

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Martin v. Lessee of Waddell*, 41 U.S. 367 (1842); *Geer v. Connecticut*, 161 U.S. 519 (1896),

In *Martin v. Waddell's Lessee*, a seminal natural resource law authority, the Court recognized the public trust doctrine, where the government holds the land under navigable waterways in trust for the public.⁴⁹ There, the Court denied a property owner's attempt to prevent others from taking oysters he claimed.⁵⁰ The doctrine bolstered the user-pays model by tacitly encouraging use of wildlife and natural resources by the layperson.

The Court next affirmed the States' authority to regulate wildlife. In *Geer v. Connecticut*, it held the citizens' common ownership of wildlife imposes a duty of state legislatures to enact laws that will best preserve nature held in trust.⁵¹ There, the defendant challenged a Connecticut penalty for illegally transporting animals to another state.⁵² The Court upheld the penalty.⁵³ This fortified the state ownership doctrine, which emphasizes the states' sovereignty to conserve and manage wildlife within their borders.⁵⁴

Later, a new line of cases eroded the state ownership doctrine's muscle. In *Missouri v. Holland*, the Court held that States cannot usurp federal statutory authority.⁵⁵ There, Missouri challenged the Migratory Bird Act for infringing on its power over wildlife within its borders.⁵⁶ This permitted the federal government to implement wildlife management laws within the States. In *Kleppe v. New Mexico*, the Court held New Mexico's challenge of the Wild and Free-Roaming Burros Act was invalid because the federal government can govern animals on federal land.⁵⁷ In *Hughes v. Oklahoma*, the Court held an Oklahoma law that prohibited transporting minnows out of state violated the Commerce Clause, extending federal control further.⁵⁸

Each of these cases fashioned a canvas for states to implement functional dual-payer models with a user-pays prong. But these states relied heavily on the user-pays license fees. Thus, many states like Kentucky became more, and still are, dependent on hunter and angler dollars than before to support conservation and management efforts.

overruled by *Hughes v. Oklahoma*, 441 U.S. 322 (1979); *Missouri v. Holland*, 252 U.S. 416 (1920); *Kleppe v. New Mexico*, 426 U.S. 529 (1976).

⁴⁹ *Martin*, 41 U.S. at 411.

⁵⁰ *Id.* at 407–18.

⁵¹ *Geer*, 161 U.S. at 529.

⁵² *Id.* at 519–20.

⁵³ *Id.* at 529.

⁵⁴ The opinion also articulated dicta, which many scholars use to employ an extended public trust doctrine that applies to property other than land under navigable water. *Geer*, 161 U.S. at 529 (“[T]he power or control lodged in the State, resulting from this common ownership, is to be exercised, like all other powers of government, as a trust for the benefit of the people, and not as a prerogative for the advantage of the government, as distinct from the people, or for the benefit of private individuals as distinguished from the public good”).

⁵⁵ *Missouri v. Holland*, 252 U.S. 416, 434 (1920).

⁵⁶ *Id.* at 417–20.

⁵⁷ *Kleppe v. New Mexico*, 426 U.S. 529, 539–41, 546 (1976).

⁵⁸ *Hughes v. Oklahoma*, 441 U.S. 322 (1979).

ii. *Rise of Congress and the President's Conservation and Management Efforts*

Congress and the President became heavily concerned with exploitation at the turn of the twentieth century. This created the bedrock for many federal wildlife impositions today.

Congress first addressed habitat protection. In 1891, Congress passed the Forest Reserve Act to prevent exploitative logging.⁵⁹ The forests reserved by the Act eventually became the national forests Americans recognize today. For example, the Shoshone National Forest was America's first federally managed forest service.⁶⁰ In 1905, the United States Forestry eventually took over managing reserves from the General Land Office.⁶¹

Congress then addressed exploitation of wildlife. In 1900, Congress enacted the Lacey Game and Wild Birds Preservation and Disposition Act.⁶² The Act made it unlawful for one to import, export, sell, acquire, or purchase wildlife, fish, and plants transported or sold in violation of U.S. law, or in interstate commerce in violation of state law.⁶³

Congress also turned its attention to wildlife harvesting regulations. In 1918, it passed the Migratory Bird Treaty Act.⁶⁴ Congress believed the measure would increase the "sustainability of populations of all protected migratory bird species."⁶⁵ This Act eliminated the ability of Americans to hunt "migratory birds," and offered protection to migratory birds' nests and eggs.⁶⁶

Although the Act only pertains to birds, its passage was a first domino to subsequent legislation concerning regulating America's wildlife by federal means.

President Theodore Roosevelt's administration pressed a robust wildlife conservation agenda.⁶⁷ Roosevelt's early involvement with the Boone and Crockett Club translated into his presidency years later.⁶⁸ By the end of Roosevelt's presidency, his administration set aside over 230 million acres of American soil as federally protected land, established fifty-five wildlife refuges, and five national parks.⁶⁹ Some scholars criticize Roosevelt for usurping power not delegated to the president,⁷⁰ but others praise his efforts for reversing America's wildlife exploitation. Nevertheless, Roosevelt shaped American conservation and management

⁵⁹ 16 U.S.C. § 471 (1891) (repealed 1976); *How the United States Started Saving its National Forests*, THE WILDERNESS SOCIETY, <https://www.wilderness.org/articles/article/how-united-states-started-saving-national-forests> (last visited Mar. 24, 2022) [<https://perma.cc/N663-YA8M>].

⁶⁰ Brown, *supra* note 18, at 29.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712 (1918).

⁶⁵ *Migratory Bird Treaty Act of 1918*, U.S. FISH & WILDLIFE SERVS., <https://www.fws.gov/law/migratory-bird-treaty-act-1918> (last visited Mar. 24, 2020) [<https://perma.cc/6GER-2LNB>].

⁶⁶ Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712 (1918).

⁶⁷ Brown, *supra* note 18, at 29–30.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Henry P. Monaghan, *The Protective Power of the Presidency*, 93 COLUM. L. REV. 1, 35 (1993).

efforts for the long haul.

Other presidents left their mark on American wildlife. In 1872, President Ulysses S. Grant established the three thousand square mile Yellow Stone National Park.⁷¹ In 1964, President Lyndon Johnson backed the Wilderness Act and Wild and Scenic Rivers Act.⁷²

Entering the twentieth century, the States, Congress, Supreme Court, and President had created the framework for the world's leading wildlife conservation and management model, the North American Model. Kentucky still lies at Model's core. How to retain adequate funding in specific states became a different question.⁷³

II. CURRENT FUNDING FOR KENTUCKY WILDLIFE CONSERVATION AND MANAGEMENT

Unpredictable revenue streams currently fuel the Kentucky Department of Fish and Wildlife.⁷⁴ If reasonable conservation and management is the desired end, then it only helps if funding derives from principles of stability and predictability. Understanding the intricacies of the Department's funds unveils that it lacks, to a noticeable extent, stability and predictability.

As stated before, Kentucky's Department of Fish and Wildlife is formally financed through a dual-payer model. Yet, its user-pays component is a dominant source of funding upon which Kentucky relies. In 2005, over 50% of the Department's budget, excluding federal funding, came from hunting and angler licenses.⁷⁵

The Department of Fish and Wildlife has expressed their need for more funding to achieve their goals of conserving and managing all of Kentucky's wildlife, as opposed to species just desirable to take.⁷⁶ If funding of the department most closely associated with Kentucky's wildlife is inadequate, then one cannot expect a status quo of nourished ecosystems. This, combined with the number of arguably declining hunters, is enough to provoke concern. While scholars debate the accuracy of hunter-decline statistics, evidence supports that outdoorsmen and outdoorswomen are becoming older, and a younger generation is not taking their place.⁷⁷ Therefore, Kentucky's wildlife conservation and management efforts are subject to volatility, because such relies too much on hunter and angler dollars. The chance is not worth taking.

States like Wyoming are prime examples of a working dual-payer model that Kentucky can look to. Wyoming is known for its natural sites, healthy wildlife

⁷¹ Brown, *supra* note 18, at 29.

⁷² *Id.* at 30.

⁷³ Willms, *supra* note 7, at 660.

⁷⁴ Gassett, *supra* note 5.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

populations, and prominent state and federal parks.⁷⁸ Wyoming's dual-payer model funds its renowned system of wildlife conservation and management. One prong of its model is a user-pays prong.⁷⁹ Like Kentucky, this prong has proved a viable method for funding wildlife conservation and management.⁸⁰ Wyoming employs a second prong of robust, diverse funding measures.⁸¹ It includes hefty federal funding, grants, donations, and revenue from state-owned property.⁸² It is important to note that Kentucky and Wyoming are distinct states with distinct natural landscapes, politics, and needs. But the states are not so different as to render any ideas Kentucky draws from Wyoming valueless. The proposed Kentucky dual-payer model is less about the specific categories of additional funds and more about establishing several robust sources that fund wildlife conservation and management.

III. THE PROPOSED KENTUCKY DUAL-PAYER MODEL

For any agency to raise additional funds is difficult alone, and pushback from legislators and voters add to that difficulty. For these reasons, the dual-payer model should derive its funding not from new money but through reallocated and redistributed money. These transfers of money will serve as one "payer" of the dual-payer model, and the money from outdoorsmen licenses, fees, and other contributions will serve as the other "payer." There are two feasible ways to improve Kentucky's conservation and management model: (A.) redistributing how portion of the Department of Parks budget is spent; (B.) redirecting tax money already collected from outdoor equipment sales.

A. Redistributing Money from the Department of Parks to the Department of Fish and Wildlife

The Department of Fish and Wildlife assumes hands-on conservation and management of Kentucky wildlife, while the Department of Parks is involved more in the administrative side of state parks.⁸³ The Department of Parks devotes significantly less money each year directly attributable to conserving and managing wildlife than the Department of Fish and Wildlife.⁸⁴ Rather, most of the Department of Parks expenditures are allocated toward tourism and outdoor recreation.⁸⁵ The

⁷⁸ Cynthia Levy, *10 Best National Parks to Visit in the USA*, THE TRAVEL (Mar. 23, 2022), <https://www.thetravel.com/10-best-national-parks-in-usa/> [https://perma.cc/5TSM-N3H4].

⁷⁹ *Wyoming Game and Fish Commission FY 2022 Budget*, JOINT APPROPRIATION COMM. 4–6, <https://www.wyoleg.gov/InterimCommittee/2021/02-20211213040-102-GandF-WGFCFY22Budget.pdf> (last visited Mar. 25, 2022) [https://perma.cc/T7TJ-LDWR].

⁸⁰ *See generally id.* (demonstrating how Wyoming's funding is dispersed throughout its programs).

⁸¹ *Id.* at 4–6.

⁸² *Id.* at 1–15.

⁸³ KY. REV. STAT. ANN. § 150.015 (West 2006); KY. REV. STAT. ANN. § 148.021 (West 2006).

⁸⁴ *Kentucky Spending Search: Search of Current Fiscal Year Spending*, KY. TRANSPARENCY (2022), <https://transparency.ky.gov/search/Pages/spendingsearch.aspx#/spending> [https://perma.cc/6GAJ-V7Q5].

⁸⁵ *Kentucky State Park's Improvements: Park Projects*, KY. STATE PARKS, https://parks.ky.gov/park_improvements (last visited Mar. 24, 2021) [https://perma.cc/5KMZ-2NTA].

Department of Parks has the authority and ability to make more financial contributions in closer relation to Kentucky's wildlife, but a noticeable portion of its expenditures goes towards projects in closer relation to tourists' pastimes.⁸⁶

Tourism is predicated on tourists having something to see. In Kentucky, this means seeing its natural landscapes, fauna, and flora.⁸⁷ If the General Assembly passed a law that funneled more of the Department of Parks' activity into endeavors closer related to conservation and management, it could ensure a more stable future for both nature and tourism.

The Department of Fish and Wildlife comprises a little under half of Kentucky's expenditures in the Tourism, Arts, and Heritage Cabinet.⁸⁸ The Department currently runs on around 250 million dollars a year.⁸⁹ This budget is comprised of state, federal, and other funding sources.⁹⁰ The Department spends over 57 million dollars a year.⁹¹ Of that 57 million dollars in expenditures, it spends over half on wildlife management and fisheries management.⁹² The Department focuses its other half of expenditures on administration and support, information and education, law enforcement, marketing, engineering, infrastructure, and technology resources.⁹³ A significant portion fosters a close relationship with Kentucky's wildlife.⁹⁴

The Department of Parks comprises a little under half of Kentucky's expenditures on Tourism, Arts, and Heritage.⁹⁵ Currently, the Department of Parks runs on around 100 million dollars a year.⁹⁶ This budget is comprised of state, federal, and other funding sources.⁹⁷ The Department spends almost its entire budget.⁹⁸ Of that 100 million dollars in expenditures, it spends about 64 million on Resort Parks with the vast amount of the money used for the resorts inside the parks.⁹⁹ This spending includes golf carts, upgrading fitness equipment, painting buildings, upgrading electric services, and pool repairs.¹⁰⁰ The other portion of the Department's expenditures supports state cafeterias, administration and staff, recreation parks, and historic sites.¹⁰¹ Although these improvements are not inherently valueless, the

⁸⁶ *Id.*

⁸⁷ *Kentucky – Nature and Scientific Wonders*, SMITHSONIAN MAG. (Nov. 6, 2007), <https://www.smithsonianmag.com/travel/kentucky-nature-and-scientific-wonders-177754574/> [<https://perma.cc/2KBF-MDZ6>].

⁸⁸ *Kentucky Spending Search: Search of Current Fiscal Year Spending*, *supra* note 84.

⁸⁹ Andy Beshear & John Hicks, *2022-2024 Executive Budget*, 1 TEAM KENTUCKY 1, 335, [https://osbd.ky.gov/Publications/Documents/Budget%20Documents/2022-2024%20Executive%20Budget%20Recommendation/2022-2024%20Executive%20Budget%20Volume%20I%20\(Full%20Version\).pdf](https://osbd.ky.gov/Publications/Documents/Budget%20Documents/2022-2024%20Executive%20Budget%20Recommendation/2022-2024%20Executive%20Budget%20Volume%20I%20(Full%20Version).pdf) [<https://perma.cc/8452-TTUJ>].

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *See generally id.* at 335–36 (explaining the roles of each unit and how it relates to Kentucky's wildlife).

⁹⁵ *Kentucky Spending Search: Search of Current Fiscal Year Spending*, *supra* note 84.

⁹⁶ *Id.*

⁹⁷ Beshear, *supra* note 89, at 328.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Kentucky State Park's Improvements: Park Projects*, *supra* note 85.

¹⁰¹ Beshear, *supra* note 89, at 328.

susceptibility of Kentucky’s wildlife conservation and management model outweighs the negatives of this exact allocation. More efficient use of the Department’s funds would not only benefit Kentucky’s wildlife, but sow benefits that the Kentucky natural tourism industry could reap from in the near future.

The Department of Fish and Wildlife and the Department of Parks are inextricably linked. Although they are their own entities with separate funding and purposes, each department shares many similarities in their day-to-day operations. Each department finds intrinsic value in Kentucky’s nature. The Department of Fish and Wildlife largely manage the fauna and flora within their habitats.¹⁰² The Department of Parks largely maintains the parks where many of Kentucky’s fauna and flora claim habitat.¹⁰³ Although their statutory purposes are different, their broader goal of protecting Kentucky’s wildlife renders each department a companion agency to the other.

In all fairness, there are key distinctions within each Department’s enabling acts. The Department of Fish and Wildlife’s enabling act, KRS § 150.015, emphasizes principles of management and conservation.¹⁰⁴ Section 150.015 lists several of its purposes.¹⁰⁵ First, its purpose is to “protect and conserve” state wildlife.¹⁰⁶ Second, its purpose is to ensure a “permanent and continued supply of the wildlife resources” to “furnish[] sport and recreation.”¹⁰⁷ Third, its purpose is to “provide for the prudent taking and disposition of wildlife within reasonable limits.”¹⁰⁸

The Department of Parks’ enabling act, KRS § 148.021, hinges on principles of conservation and improving Kentucky state parks.¹⁰⁹ Section 148.021 lists several of its functions and powers.¹¹⁰ First, the Department “may improve [state] parks by constructing and equipping improvements of facilities in said parks.”¹¹¹ Second, the Department “shall exercise all administrative functions of the state relating to the operation of state parks.”¹¹² Third, the Department has the power to collect fees and acquire more land for state parks.¹¹³

Innate in § 148.021’s nature is the legislature’s concern for improving many of the habitats in which wildlife lives.¹¹⁴ That wildlife is protected by the Department of Fish and Wildlife.¹¹⁵ Because § 148.021 authorizes the Department of Parks to “improve” state parks,¹¹⁶ this language could yield the creation of more wildlife research centers than resorts. For example, because the Department must exercise

¹⁰² KY. REV. STAT. ANN. § 150.015 (West 2006).

¹⁰³ KY. REV. STAT. ANN. § 148.021 (West 2006).

¹⁰⁴ KY. REV. STAT. ANN. § 150.015 (West 2006).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ KY. REV. STAT. ANN. § 148.021 (West 2006).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ KY. REV. STAT. ANN. § 150.015 (West 2006).

¹¹⁶ KY. REV. STAT. ANN. § 148.021 (West 2006).

“all administrative functions” relating to the operation of state parks,¹¹⁷ those efforts could aim towards operation of endangered species advancement projects. Section 148.021 permits the Department to collect land and acquire land for state parks.¹¹⁸ It should use that authority to acquire such resources for projects like habitat expansion endeavors. The broad language of § 148.021 leaves room for the Department’s funding to be directed toward more meaningful undertakings than its current expenditures reflect. The statute’s vagueness arguably is one of the reasons why the Department of Parks and Department of Fish and Wildlife already have numerous, functional similarities.

The language of § 148.021 appears broad enough for the Department to funnel expenditures toward more of the activities listed in the previous paragraph. Still, funneling expenditures in this way faces several obstacles. First, the Department of Parks might be hesitant to redistribute money towards tasks that do not fit their traditional responsibilities. Second, the Department might misunderstand a redistribution of expenditures as a “pay cut.” The Department might also face pushback from its constituents. Such obstacles prompt the Department’s need for an explicit statutory trigger to make redistributions more feasible.

So, tying the Department of Parks’ expenditures closer to wildlife conservation and management efforts first requires the state legislature to amend § 148.021. The amendment will provide a standard to guide the Department. While the legislature might balk at including the standard in a new statute, amending § 148.021, rather than begetting a new creature of authority, might suffice.

There are many ways to amend § 148.021. First, the legislature could add the phrase “improvement, and perpetuation” to section (1) of the statute: “the Department of Parks shall exercise all administrative functions of the state relating to the operation, improvement, and perpetuation of state parks.” Second, the legislature could add the phrase “and related auxiliaries” to section (3) of the statute: “[t]he [D]epartment may improve [state] parks by constructing and equipping improvements of facilities and related auxiliaries in said parks.” Finally, the legislature could add a third subsection in section (4) that permits the Department to use collected money from fees and charges for use of the parks toward endeavors “directly attributable to the improvement and perpetuation of such state parks.”

Each amendment would bridge the hurdles legislators might face in promoting wildlife management and conservation with the current act. This is not an exhaustive list of amendments but just a few illustrative references. Moreover, these examples do not cross into the authority of the Department of Fish and Wildlife, as they still cater to the administration of state parks. Yet, the amendments would give the Department of Parks authority that is not so attenuated to render its fiscal resources hopeless, in terms of conservation and management. This explicit authority would be akin to that of the Department of Fish and Wildlife, nonetheless distinct.

If a statutory standard is not feasible, there are other avenues to provide a more stable future for Kentucky’s wildlife. The governor could issue an executive order to

¹¹⁷ *Id.*

¹¹⁸ *Id.*

allocate or distribute funds to the Department of Fish and Wildlife to remedy the most direct ecological issues in Kentucky. It might, however, face pushback from legislators, voters, scholars, and/or lawyers. These potential problems might politically force the governor to leave the state budget and expenditures as is.

Further, Kentucky agencies and executive offices could promulgate their own regulations and govern their expenditure habits to promote wildlife conservation and management. In terms of their authority, some agencies might be better for the job, but any efforts at the agency level could be beneficial. Agencies like the Department of Kentucky Fish and Wildlife and Kentucky Parks could promulgate regulations that create expenditure targets. Relevant government offices, such as the Department for Environmental Protection, Division of Conservation, Office of Consumer and Environmental Protection, and Office of Civil and Environmental Law can also affect Kentucky's wildlife.¹¹⁹ However, incentivizing agencies and executive offices would require internal consensus or some other impetus to overcome any hint of agency capture.

Another way to impact Kentucky's wildlife is to advocate for the Department of Fish and Wildlife to distribute more funding towards efforts like endangered species rehabilitation programs, population studies, and habitat restoration. The Department currently has a budget of about 250 million but spends only around 57 million a year.¹²⁰ Kentuckians and government officials could petition for a change in this spending pattern. Still, changing a department's spending habits may be easier said than done.

Even though many avenues for promoting conservation and management of Kentucky's wildlife exist, it appears an amendment to § 148.021 would face the least, or close to the least, scrutiny. The easier a positive change can be implemented, the faster Kentucky's wildlife encounters a brighter future. Changing the law is a first step.

Grassroots movements within Kentucky already espouse initiatives with similar goals to the proposed amendments. Groups like the Audubon Society, Kentuckians for the Commonwealth, Iroquois Hunt Club, Kentucky Waterways Alliance, and several others would likely support efforts to better conserve Kentucky wildlife.¹²¹

¹¹⁹ See generally *Executive Branch*, TRANSPARENCY, <https://transparency.ky.gov/accountability/Pages/executive.aspx> (last visited Mar. 24, 2022) (listing other cabinets that contain agencies supporting Kentucky's wildlife) [<https://perma.cc/2GVL-ESQN>].

¹²⁰ Beshear, *supra* note 89.

¹²¹ See generally *Bird-Friendly Communities*, AUDUBON SOC'Y, <https://www.audubon.org/bird-friendly-communities#:~:text=Audubon%27s%20Bird%2Dfriendly%20Communities%20strives,and%20Bird%2Dfriendly%20Buildings%20programs> (last visited March 24, 2022) (showing efforts to conserve habitats and bird populations) [<https://perma.cc/YLQ7-8KES>]; *History*, KENTUCKIANS FOR THE COMMONWEALTH, <https://kftc.org/#history> (last visited March 24, 2022) (showing work throughout Kentucky communities) [<https://perma.cc/9MKM-XMUW>]; *A Kentucky Tradition in Animal Welfare, Community and Conservation*, IROQUOIS HUNT CLUB, iroquoishunt.com (last visited March 24, 2022) (demonstrating a Kentucky organization devoted to conservation of historic fox hunting) [<https://perma.cc/5T6P-CLXJ>]; *Who We Are*, KY. WATERWAYS ALL., <https://www.kwalliance.org/who-we-are.html> (demonstrating an organization concerned with preserving Kentucky waterways) (last visited March 24, 2022) [<https://perma.cc/3JPM-3R8J>].

The groups might differ in their opinions on whether to promote the taking of wildlife, but the amendments this article proposes would prioritize conservation efforts, something they all agree on. At the end of the day, it is prudent to recognize that this amendment only vests authority to the Department of Parks to redistribute funds; that does not mean they will do it. Pressure from constituents, grassroots movements, and government agents will serve as the impetus to implement the reallocation of funds. This is not a foolproof plan, but among the most feasible of plans for the bluegrass state.

Thus, a stronger dual-payer model would brighten the future of Kentucky's wildlife. By expanding the scope of § 148.021, the legislature can ensure the Department of Parks works even closer with the Department of Fish and Wildlife. Harmonizing the efforts of both departments would benefit Kentucky's wildlife, tourism, and the state as a whole.

B. Diversion from Sales Tax Collected on Outdoor Equipment

Another way to generate revenue for Kentucky's wildlife is to divert a portion of taxes the state already collects from outdoor equipment. By diverting outdoor equipment sales tax, the state can circumvent the issues accompanying raising taxes or other revenue collection methods. This money would also mitigate the volatility of Kentucky's current model.

Several states have employed different methods to raise additional revenue to fund wildlife conservation and management.¹²² Arizona, Colorado, and Maine required their state lotteries to allocate a portion of their revenue to wildlife conservation and management.¹²³ This model is not viable for Kentucky, as the majority of its lottery funds go towards aiding students pursuing education.¹²⁴ Georgia and Pennsylvania allocate a portion of the proceeds from specialty license plate sales toward wildlife conservation and management, a model Kentucky already replicates.¹²⁵ Arkansas and Missouri created an additional sales tax which allocates money toward their fish and wildlife agencies.¹²⁶ Kentucky's traditional resistance towards additional taxes, however, makes this particular model unrealistic.¹²⁷

A diversion of tax money from outdoor equipment sales is more likely to survive political muster than other revenue collection methods employed by other states. Those who use outdoor equipment are arguably more likely than others to be

¹²² Willms, *supra* note 7, at 695.

¹²³ *Id.*

¹²⁴ *Where's the Money Go?*, KY. LOTTERY, https://www.kylottery.com/apps/about_us/where_the_money_goes.html (last visited Mar. 24, 2022) [<https://perma.cc/6WR4-FRKR>].

¹²⁵ Willms, *supra* note 7, at 695.; *E.g.*, *Kentucky DU License Plate*, DUCKS UNLIMITED, <https://www.ducks.org/kentucky/kentucky-license-plate-program> (last visited Mar. 24, 2022) [<https://perma.cc/N882-CU4Y>].

¹²⁶ Willms, *supra* note 7, at 695.

¹²⁷ *See Teacher Victory: Kentucky House Overrides Tax Increase Veto*, CBS NEWS (Apr. 13, 2018), <https://www.cbsnews.com/news/kentucky-house-overrides-tax-increase-veto/> [<https://perma.cc/N3FW-VKQJ>].

proponents of wildlife conservation and management, as their livelihoods and hobbies rely on healthy Kentucky ecosystems.¹²⁸ This suggests they might be more likely to support a redistribution of the taxes they already pay.¹²⁹

Texas and Virginia have employed models that impose a sales tax on outdoor equipment that returns to specified wildlife conservation and management programs.¹³⁰ Those programs embrace the essence of the North American Model, “since [those who purchase outdoor equipment] are likely wildlife users in either the traditional hunting or fishing sense, or as part of an indirect use such as camping, hiking, [and] photographing.”¹³¹ The General Assembly should adopt a model like Texas and Virginia’s. Kentuckians spend millions each year on outdoor activities, many of which likely include the purchase of outdoor equipment.¹³² The state imposes a six percent sales tax on such sales.¹³³ Although the necessary statistics and information are not available to produce an estimated revenue figure, it is feasible that outdoor equipment sales tax would help protect Kentucky’s wildlife.

The proposed tax distribution would best be imposed through an amendment to KRS § 139.200, Kentucky’s sales tax statute.¹³⁴ For many of the reasons listed in part IV section A, an amendment through the legislature would fare better than any alternative. Yet, several challenges follow. The biggest challenge is the Kentucky legislature seems to frown upon earmarking general fund dollars, as compared to other states.¹³⁵ In 1954, Kentucky earmarked 46% of its general funds.¹³⁶ That percentage dwindled to 16% in 1984 and 12% in 2005.¹³⁷ The General Assembly’s engrained hesitancy to earmark general funds¹³⁸ might threaten earmarking a portion of the tax collected on outdoor equipment sales. Also, agency directors and voters could raise concerns “that diverting these general fund dollars . . . will negatively impact their ability to function as mandated.”¹³⁹

Thus, redistributing outdoor equipment tax money yields a benefit to the Commonwealth.

Any benefit is better than none. America’s historic toil in exploiting its wildlife and natural resources is a reminder of the progress it has made. Kentucky, however, must not forget that America’s complacency with society and technological development has put its nature at risk several times before. Therefore, a redistribution of tax dollars from outdoor equipment sales would give Kentucky’s wildlife another

¹²⁸ Willms, *supra* note 7, at 695.

¹²⁹ *Id.* at 695–96.

¹³⁰ *Id.* at 695.

¹³¹ *Id.*

¹³² DAVID KNOPF, SCOTT LEMMONS & BARRY ADAMS, U.S. DEP’T OF AGRIC., KENTUCKY AGRICULTURAL STATISTICS 2020 ANNUAL BULLETIN 5–6 (Dec. 2020).

¹³³ KY. REV. STAT. ANN. § 139.200 (West 2023).

¹³⁴ *Id.*

¹³⁵ *See* ARTURO PÉREZ, NAT’L CONF. OF STATE LEGISLATURES, EARMARKING STATE TAXES 5 (Sep. 2008).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *See id.*

¹³⁹ Willms, *supra* note 7, at 696.

leg up.

IV. CONCLUSION

Most people do not realize the reciprocal, intimate nature of wildlife conservation and management. This misconception especially pertains to how states fund their conservation and management efforts. America has a long history of imposing on its wildlife, which caused many federal and state actors to remedy exploitation. Now, every state employs some version of the North American Model, but funding issues arise in certain states, like Kentucky.¹⁴⁰

The Kentucky Department of Fish and Wildlife has indicated a need for more funding to conserve, protect, and manage all wildlife.¹⁴¹ Although most agencies “need more funds,” the magnitude of importance in conserving and managing Kentucky’s wildlife overrides any hesitancy. Kentucky can employ a similar model to Wyoming’s in creating multiple reliable sources of funding for conservation efforts.¹⁴² Legislative amendments to § 148.021¹⁴³ and § 139.200¹⁴⁴ would direct more of Kentucky’s efforts toward conserving and managing its wildlife.

The goal of this article is to solve foreseeable issues before they gain traction; it is a prophylactic measure. Like with every proposal, there are positives and negatives to Kentucky’s proposed dual-payer model. Not only would a stronger dual-payer model suit Kentucky well, but it would ensure an efficient, stable, predictable, and feasible system of conservation and management for all species, not just game species. After all, an improved model for wildlife conservation and management is better than just an existing good one.

¹⁴⁰ Organ, *supra* note 3, at 24–25.

¹⁴¹ Gassett, *supra* note 5.

¹⁴² Willms, *supra* note 7, at 694.

¹⁴³ KY. REV. STAT. ANN. § 148.021 (West 2006).

¹⁴⁴ KY. REV. STAT. ANN. § 139.200 (West 2023).