

Notice of Public Hearing

LSA Document #20-69

Notice of Public Hearing

Under [IC 4-22-2-24](#), notice is hereby given that on July 29, 2020, at 6:00 p.m., at the Mounds State Park, Pavilion, 4306 Mounds Road, Anderson, Indiana **AND** on July 30, 2020, at 6:00 p.m., at McCormick's Creek State Park, Canyon Inn, 250 McCormick's Creek Park Road, Spencer, Indiana, the Natural Resources Commission will hold a public hearing on proposed amendments to [312 IAC 9](#). The proposal adds [312 IAC 9-1-1.2](#) to define "air gun", adds [312 IAC 9-1-13.2](#) to define "relaxing snare lock", and adds [312 IAC 9-1-13.7](#) to define "snare lock". The proposal amends [312 IAC 9-3-2](#) governing general requirements and licenses for hunting deer. The proposed rulemaking amends [312 IAC 9-3-3](#) governing air guns for deer hunting, and amends [312 IAC 9-4-2](#) governing youth waterfowl hunting. The proposed rule amends [312 IAC 9-4-14](#) governing endangered species of birds, amends [312 IAC 9-5-7](#) governing the sale and transport for sale of native reptiles and amphibians, amends [312 IAC 9-5-9](#) governing the reptile captive breeder's license, and amends [312 IAC 9-5-11](#) governing the turtle possession permit. The proposed rule amends [312 IAC 9-10-9.5](#) governing the special purpose educational permit, amends [312 IAC 9-10-11](#) governing the nuisance wild animal control permit, and amends [312 IAC 9-10-23](#) governing the migratory bird depredation permit. The proposed rule repeals [312 IAC 9-4-10](#).

[IC 4-22-2-24\(d\)\(3\)](#) Justification Statement: [312 IAC 9-1-13.2](#): Adds a definition of "relaxing snare lock" as follows: "A relaxing lock is a snare lock that allows the snare loop to release constriction pressure on the captured animal when the cable is not taut (e.g., when the animal stops pulling)." Basically, it is a lock that backs off slightly when the animal stops pulling. Locks that are designed to maintain location or continue to close (usually due to a mechanical feature) whether or not an animal is pulling are nonrelaxing locks. Some locks are being sold as "relaxing" but don't match the Department of Natural Resources' (DNR) interpretation. Since there isn't a definition in state law or rule, it is difficult to enforce, and this requirement is for the use of snares both during the season and under a nuisance wild animal control permit, as well as by landowners who use them on their own property for nuisance animals throughout the year. The use of a relaxing snare lock is critical since it keeps an animal from being killed in the snare, particularly when the animal captured is not the target species, but someone's pet dog or a protected/regulated species, potentially putting the person in violation of the law by capturing/killing the animal. The requirement of a relaxing snare lock is not new, but this definition is needed to clarify what is meant. This will not increase costs for businesses; the relaxing snare locks sold in Indiana typically meet this definition. Snare locks can still be sold that do not meet this definition because they can still be used on traps set under water.

[312 IAC 9-1-13.7](#): Adds a definition of "snare lock" to provide clarification for trappers and conservation officers since this term is used in [312 IAC 9-3-18](#). Since there isn't a definition in state law or rule, it is difficult to enforce the requirement, and this requirement is needed to clarify this term that is used both during the trapping season and under a nuisance wild animal control permit, as well as by landowners who use them on their own property for nuisance animals throughout the year. This definition will not affect businesses.

[312 IAC 9-3-2](#): This rule change adds hunter orange requirements for deer hunters during the deer reduction zone season when firearms are allowed to be used. This is needed to help ensure the safety of the public and others that may be hiking or participating in other outdoor activities during this time. Hunter orange is already required by deer hunters during the firearm and muzzleloader seasons and is proven to be a highly visible color in the woods, thereby reducing hunting accidents. The addition of the words trapping and fishing for the resident youth consolidated license are needed to comply with the language used for that license in [IC 14-22-12-1\(a\)\(24\)](#) and is not a change in the license required (or cost).

[312 IAC 9-4-2](#): This rule change adds requirements that youth hunters must have a properly licensed adult accompany them while hunting during the youth waterfowl season. This is currently not specified in the rule as it is for the youth deer season ([312 IAC 9-3-4](#)) and youth turkey season ([312 IAC 9-4-11](#)) and is needed to help adults and officers know the requirements.

[312 IAC 9-4-10](#) and [312 IAC 9-4-14](#): Removes the reference to ruffed grouse in [312 IAC 9-4-10](#) and adds the ruffed grouse as an endangered species in [312 IAC 9-4-14](#). The change recognizes the serious population peril and plight of ruffed grouse in Indiana that has seen their populations drop to less than 0.5% of the population levels in 1983, and their distribution across the state drop from 43 counties in 1983 to persisting in only a few counties in 2018, with extirpation occurring in at least 25 counties since 1983. Historically, ruffed grouse likely existed in all 92 counties of Indiana. The hunting season for ruffed grouse was suspended in 2015.

State endangered status will raise the conservation need or sensitivity level of ruffed grouse, requiring consideration in environmental reviews pertaining to vegetative disturbance of forest environments. Since ruffed grouse population levels are positively tied to the amount, intensity, and frequency of vegetative disturbance, their presence will generally be supported by active forest management and their populations negatively impacted by passive forest management. There are no significant or accountable costs seen for the proposal, other than

indirectly as it supports the need for more timber management.

Under current trends in advancing forest succession toward more mature forests, ruffed grouse will likely become essentially extirpated unless there are some major natural disturbance events (e.g., series of tornado outbreaks) across the limited forest landscape where ruffed grouse currently persist in southcentral and southeast Indiana or sufficiently intense forest management (even-age silviculture) is used to create young forest habitats (0-20 years old).

Some might argue that if ruffed grouse become extirpated in Indiana, the population can be reestablished by trap-transfer of ruffed grouse from other states with higher level populations of ruffed grouse. A primary responsibility of the DNR is to take all reasonable and feasible measures to ensure the state's natural resources are protected and that extirpation does not occur in the first place. Waiting until the ruffed grouse is extirpated and then attempting to restore the state's population by "trap-transfer" would be incriminating evidence of neglectful stewardship of Indiana's natural resources. Restoration of extirpated grouse populations in Indiana is ultimately a last option and likely not a feasible option, especially if habitat does not exist in sufficient quantities to ensure the successful survival of displaced grouse from trap and transfer efforts. The costs to pursue such an effort could easily exceed \$500,000, perhaps \$1 million, given the current plight of the appropriate subspecies across their respective distribution in the eastern U.S. Attempts to use subspecies of ruffed grouse outside their historical distribution have failed.

[312 IAC 9-5-7](#): One change in this rule adds the boreal chorus frog to the list of native reptiles and amphibians and removes the southeastern chorus frog from the list. New research has determined that the boreal chorus frog is found in Indiana, and new taxonomic information published by the Society for the Study of Reptiles and Amphibians indicates that the southeastern chorus frog is not found in Indiana. These frogs will still be able to be taken from the wild in accordance with [312 IAC 9-5-6](#), but they will not be able to be sold and there will be a possession limit of four (4) per species pursuant to [312 IAC 9-5-6\(f\)](#). The DNR is not aware of a market for boreal chorus frogs and there are no businesses known to sell them, and other species not listed in this rule can still be possessed and sold.

The changes to a number of species of snakes would allow a select number of native snake species to be described down to the subspecies level so that individuals could possess subspecies not native to Indiana for captive breeding or other purposes, even if the species itself is native to Indiana. These species include:

- Ring-necked snake (*Diadophis punctatus*) is changed to Northern Ring-necked snake (*Diadophis punctatus edwardsii*)
- Common Gartersnake (*Thamnophis sirtalis*) is changed to Eastern Gartersnake (*Thamnophis sirtalis sirtalis*) and Chicago Gartersnake (*Thamnophis sirtalis semifasciatus*)
- Eastern Ribbonsnake (*Thamnophis sauritus*) is changed to Common Ribbonsnake (*Thamnophis saurita saurita*) and Northern Ribbonsnake (*Thamnophis saurita septentrionalis*)
- Northern Watersnake (*Nerodia sipedon*) is changed to Northern Watersnake (*Nerodia sipedon sipedon*) and Midland Watersnake (*Nerodia sipedon pleuralis*)
- Smooth Earthsnake (*Virginia valeriae*) is changed to Western Smooth Earthsnake (*Virginia valeriae elegans*)
- Racer (*Coluber constrictor*) is changed to Blue Racer (*Coluber constrictor foxii*) and Southern Black Racer (*Coluber constrictor priapus*)
- Eastern Wormsnake (*Carphophis amoenus*) is changed to Midwestern Wormsnake (*Carphophis amoenus helenae*)

The document published by the Society for the Study of Amphibians and Reptiles (SSAR) titled "Scientific and Standard English Names of Amphibians and Reptiles of North America North of Mexico, with Comments Regarding Confidence in our Understanding" is used to define species and subspecies names in these changes. This document serves as the official names list for the major herpetological societies based in the United States and has been the major point of reference for the names DNR ascribes to our native amphibians and reptiles.

[312 IAC 9-5-9](#): The changes to [312 IAC 9-5-7](#) require the taxonomic nomenclature of snakes currently allowed to be kept under a Reptile Captive Breeding License to be changed as well and include the following:

- Western Foxsnake (*Pantherophis vulpinus*) is changed to Eastern Foxsnake (*Pantherophis vulpinus*)
- Eastern Black Kingsnake (*Lampropeltis getula nigra*) is changed to Eastern Black Kingsnake (*Lampropeltis nigra*)
- Eastern Milksnake (*Lampropeltis triangulum triangulum*) and Red Milksnake (*Lampropeltis triangulum sypila*) is changed to Eastern Milksnake (*Lampropeltis triangulum*)
- Prairie Kingsnake (*Lampropeltis calligaster calligaster*) is changed to Prairie Kingsnake (*Lampropeltis calligaster*)

An additional change to this rule allows individuals keeping snakes under a Reptile Captive Breeding License to mark individual snakes using a scale-clipping system as an alternative to using a passive integrated transponder tag (pit tag), which is currently the required marking technique. The scale-clipping technique provides a method for marking smaller species/subspecies of snake that cannot be safely marked using the pit tag method.

Individuals who keep and breed captive reptiles may benefit from these changes, as it would open up the

opportunity for them to keep and breed more types of snakes, specifically subspecies not native to Indiana. Using a scale-clipping system for marking small snakes will likely be more cost effective than using pit tags.

The changes to [312 IAC 9-1-1.2](#), [312 IAC 9-3-3](#), [312 IAC 9-5-11](#), [312 IAC 9-10-9.5](#), [312 IAC 9-10-11](#), and [312 IAC 9-10-23](#) do not impose a requirement or cost under [IC 4-22-2-24\(d\)\(3\)](#).

The DNR has the statutory authority to establish the methods for taking a wild animal in [IC 14-22-2-6](#). The DNR is also required to develop rules that are based upon "(A) The welfare of the wild animal, (B) The relationship of the wild animal to other animals, and (C) The welfare of the people in [IC 14-22-2-6](#)." Additionally, the DNR is required to review the state's list of endangered species at least every two (2) years under [IC 14-22-34-10](#) and [IC 14-22-34-11](#) and make the changes that are necessary in order to ensure the survival of these species in the wild in Indiana. "Wild animal" is defined in [IC 14-8-2-318](#) and includes mammals, birds, reptiles, and amphibians. The Natural Resources Commission has the statutory authority to adopt rules pursuant to [IC 14-10-2-4](#).

Sources of information for determining costs and benefits were obtained from staff of the DNR Division of Fish and Wildlife and Law Enforcement. Sources of information were obtained from biologists and other staff within the Division of Fish and Wildlife.

Individuals requiring reasonable accommodations for participation in this event should contact the Natural Resources Commission at:

Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204-2273
Attn: ADA Compliance

or call (317) 232-4699. Speech and hearing impaired callers may contact the Commission via the Indiana Relay Service (711) or (800) 743-3333. Please provide a minimum of 72 hours notification.

The proposed rule amendments together with any data, studies, or analyses relied upon under [IC 4-22-2-24\(d\)](#) may be inspected and copied at the Natural Resources Commission, Division of Hearings, Indiana Government Center North, 100 North Senate Avenue, Room N103, Indianapolis, Indiana. Submit written comments to the same mailing address or electronically through:

<http://www.in.gov/nrc/2377.htm>

Bryan W. Poynter
Chairman
Natural Resources Commission

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