

FINAL



**RECOMMENDATIONS**

OF THE

**OFFICE OF REGULATORY REINVENTION**

REGARDING

**NATURAL RESOURCES**

FEBRUARY 2013

Office of Regulatory Reinvention  
Natural Resources Advisory Rules Committee

**Steve Arwood**

Director  
Dept. of Licensing and Regulatory Affairs

**Sharon Hanshue**

Chief, Office of Legal Services  
Department of Natural Resources

**Thomas Bailey**

Executive Director  
Little Traverse Conservancy

**Robert Mannes**

President & CEO  
Core Energy, LLC

**Charlie Becker**

Resource Supervisor  
Plum Creek Timber Company

**Bill Manson**

Executive Director  
Michigan Snowmobile Association

**Ann Conklin**

Chief Operating Officer  
Michigan Recreation and Park Association

**David Morris**

Managing Director, Corporate Research  
Michigan Economic Development Corp.

**Mark Coscarelli**

Vice President  
Public Sector Consultants Inc.

**John Walters**

Territory Sales Manager  
Roseburg Forest Products

**Dennis Eade**

Executive Director  
Michigan Steelhead & Salmon Fishermen's  
Association

**Kent Wood**

Legislative Affairs Manager  
Michigan United Conservation Club

**Bill Gilbert**

Director/Instructor  
Michigan ORV Safety Association

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## 1. INTRODUCTION

### a. Background

This report contains the recommendations of the Office of Regulatory Reinvention (ORR) for changes to Michigan's natural resources regulations. These recommendations consist of the final recommendations of the Natural Resources Advisory Rules Committee (ARC), as modified and supplemented by the ORR.

The Natural Resources Advisory Rules Committee (ARC) was created by the Office of Regulatory Reinvention (ORR), in accordance with Executive Order 2011-5. The mission of the ORR is to ensure that Michigan's regulatory environment is simple, fair, efficient and transparent, and supports business growth and job creation. The purpose of the Natural Resources Advisory Rules Committee (ARC) was to produce advisory recommendations to the Office of Regulatory Reinvention (ORR) for changes to Michigan's existing regulatory climate.

NOTE: This document is not part of the rulemaking process. This report is a set of recommendations from the ORR to the Governor. Any proposed changes to administrative rules recommended by this report will be made as part of the rulemaking process, and any proposed changes to Michigan statute will be made through the legislature.

### b. Scope

The Natural Resources ARC was tasked with evaluating and making recommendations for changes to Michigan's natural resources regulations, including existing administrative rules, non-rule regulatory actions, regulatory processes, and as necessary, statutes. Evaluations and recommendations were based on the application of the seven factors described in Executive Order 2011-5 to existing rules. Those seven factors are as follows:

1. Health or safety benefits of the rules;
2. Whether the rules are mandated by any applicable constitutional or statutory provision;
3. The cost of compliance with the rules, taking into account their complexity, reporting requirements and other factors;
4. The extent to which the rules conflict with or duplicate similar rules or regulations adopted by the state or federal government;
5. Extent to which the regulations exceed national or regional compliance requirements or other standards;

6. Date of last evaluation of the rules and the degree, if any, to which technology, economic conditions or other factors have changed regulatory activity covered by the rules since the last evaluation; and
7. Other changes or developments since implementation that demonstrate there is no continued need for the rules.

**c. Process**

The Natural Resources ARC met for the first time on October 10, 2011, and immediately identified the following topic areas to explore: hunting and fishing license point of sale; real estate issues; oil and gas extraction activities; obsolete rules; forestry activities; fish and wildlife; ORV education and safety issues; trails; and parks. Outside DNR staff made presentations on several of these topics at the request of the ARC. The members of the Natural Resources ARC also began soliciting input from colleagues and businesses to identify existing Michigan regulations which were duplicative, obsolete, or unduly burdensome.

Over the course of several months, the committee members explored different major natural resources topic areas and viewed several presentations by DNR staff. Between October 10 and April 30, 2012, the Natural Resources ARC held nine meetings.

At its meeting on April 30, the Natural Resources ARC discussed and approved the recommendations. An interim draft of this report was shared with the ARC members, and the final version reflects their input.

**2. ADDITIONAL OBSERVATIONS**

In general, the Natural Resources ARC found that Michigan's natural resources system is well-managed and provides significant value to Michigan's citizens. The Committee included representatives from the forestry industry, the recreation and park association, the snowmobile association, fishing groups and conservation clubs; and these representatives identified virtually no major issues in their areas. The managing director of corporate research from the MEDC conducted a survey of business groups that engage our natural resources system and that survey also found that the business community had no issues of large concern with the Department. It is obvious that the DNR's long history of outreach to its many constituent groups has created an effective method of building consensus to solve issues.

DNR staff members readily complied with the Natural Resources ARC's request for presentations on major topic areas and were very accommodating in providing information to the committee. This is a strong testament to the collaborative spirit that the DNR already embodies.

### 3. RECOMMENDATIONS

The following pages contain the final recommendations of the Natural Resources ARC, along with a recommendation added on by the ORR, in consultation with the DNR. There are 16 recommendations in total. Of the 15 recommendations originating with the ARC, 13 received unanimous support with 2 drawing a dissenting vote. Copies of the final Issue Papers, providing background and rationale for each recommendation, are included in *Appendix A* to this report.

#### Recommendation #1

**Subject:** Obsolete Rules

**Recommendation:** The DNR should work with the ORR to rescind rules and policies that the DNR identified as obsolete, and update rules which were identified for amendment, as set forth in *Appendix B*. In total, the DNR identified 139 rules for rescission (equal to 10% of the DNR's existing rules). The rules identified for rescission are located in the following rule sets:

- **State Land Office Board Auction Sale of State-Owned Lands (R 211.1 – 211.315)\***
- Commercial Fishing (R 299.721 - 299.846)
- Commercial Fishing (R 299.1071 – 299.1079)
- Deadstream Swamp (R 299.341 – 299.342)\*
- **Slash Disposal (R 299.901 – 299.907)\***
- Forest and Mineral Resource Development Fund Program (R 299.2651 – R 299.2666)\*
- **Hunting Restrictions – Highland and Waterloo Recreation Areas (R 299.291-299.293)\***
- **Local Hunting and Firearms Controls (R 317.150.6 – 317.150.8)**
- Recreation Bond Program (R 318.210 – 318.211)
- **Rules for Put-Take Pheasant Areas (R 299.61 – 299.62)\***
- **Public Access Stamp Program (R 299.981 – 299.989)\***
- **Field Dog Trial Areas (R 299.681 – 299.699)\***

**Key:**        **Bold** = Already rescinded

              \* = Rescission of entire rule set

With respect to policies, the Natural Resources Commission is reviewing their policies and will be considering a resolution to update 10 and rescind 65 of their policies. The DNR is also actively engaged in policy review and has rescinded about 30 policies in the last year.

**Justification:** See issue paper “Obsolete Rules” on pg. 13.

Recommendation #2

**Subject:** Land Appraisal Process

**Recommendation:** The Department’s procedure for real estate appraisal review should be simplified so that the Department’s reviewer is confirming only that the appraiser is approved to work for the state, that Uniform Standards of Professional Appraisal Practice procedures are followed and that the work conforms to those procedures, and that the Department is complying with its fiduciary duties. The Department should adopt procedures that encourage a detailed discussion between the appraiser and the review appraiser involving such issues as:

1. Definition of the appraisal problem
2. Property rights being valued
3. Any hypothetical conditions or extraordinary assumptions being considered
4. Unique physical characteristics associated with the subject property
5. Appraisal methodology being proposed
6. General description of, and rationale for, the comparable sales data being proposed for consideration in the valuation section of the report

This consultation should proceed prior to the document development phase of the final report. In addition, the Department should more diligently maintain the list of approved appraisers, so that the list contains only appraisers in whom the Department has confidence, and should authorize the Real Estate Services section to add and remove names from the list.

**Justification:** See issue paper “Land Appraisal Process” on pg. 14.

Recommendation #3

**Subject:** Oil and Gas – Agreement Approval Process

**Recommendation:** The DNR should create a policy that within ten days of receipt, the DNR will certify whether or not an applicant’s application is complete for all easements, surface use agreements, change of lease classifications and special use agreements. The Department then would have 60 days (unless there is federal involvement) to either issue or deny the application with a specific explanation issued if the application is denied. In the event the applicant wants to change the application, the clock restarts. If

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there is a public comment period, that time period would be in addition of the 60 day window.

**Justification:** See issue paper “Oil and Gas – Agreement Approval Process” on pg. 16.

Recommendation #4

**Subject:** Oil and Gas – Surface Owner Notification

**Recommendation:** Investigate the feasibility of establishing a process whereby a private surface owner over State-owned minerals could ask to have its email address tagged to the tract where they own the surface and every time there is mineral activity by the State, an email alert is automatically generated and sent to the surface owner.

**Justification:** See issue paper “Oil and Gas – Surface Owner Notification” on pg. 17.

Recommendation #5

**Subject:** Land Ownership Strategy

**Recommendation:** The DNR should be more proactive in messaging its core land ownership strategy – there is a need to get better and more info out on what DNR is attempting to achieve with its strategy.

**Status:** The Director of the DNR has recently initiated development of a Public Land Management Strategy to better articulate the purpose and goals of the agency’s land ownership. The report is expected to be completed by mid-2013.

**Justification:** See issue paper “Land Ownership Strategy” on pg. 18.

Recommendation #6

**Subject:** Hunting and Fishing Guides

**Recommendation:** Hunting and Fishing Guides should take advantage of technology, for example by providing functional base maps showing trout streams and real time regulations on legal gear.

**Justification:** See issue paper “Hunting and Fishing Guides” on pg. 19.

Recommendation #7

**Subject:** Hunting and Fishing Promotion

**Recommendation:** The DNR should partner with Travel Michigan/MEDC to develop a marketing strategy for promoting hunting and fishing opportunities in Michigan. This could include using partnership models developed through the Michigan Wine Council

for the promotion of Michigan wines and the Department of Agriculture for the promotion of Michigan food products. Strategies should be built around electronic marketing (including a branded web presence, social media, and applications for hand-held devices), printed publications, and earned media. Integrate those marketing strategies with the “Pure Michigan” branding campaign. Strategies should balance the need for informing the public of regulatory requirements as well as information that helps to promote Michigan as a destination for such activities for both residents and non-residents.

**Status:** DNR is working closely with MEDC/Pure Michigan to integrate programs into the Pure Michigan brand. For example, DNR opportunities for outdoor recreation have been incorporated into the [michigan.org](http://michigan.org) website, the Pure Michigan campaign for 2012 included videos on hunting and fishing in Michigan, and Pure Michigan is hosting a website that promotes discounts for individuals who purchase a Recreation Passport when they renew their license plate ("Passport Perks Providers").

**Justification:** See issue paper “Hunting and Fishing Guides” on pg. 20.

Recommendation #8

**Subject:** Hunting and Fishing Guides

**Recommendation:** The DNR should be allowed to bid out the printing of all digests/guides and the DNR should not be required to use DTMB unless DTMB can have them printed them at a competitive price.

**Status:** The DNR and DTMB reached an agreement that allows the department to obtain the best price for printing guides and other materials, whether private vendor or the state print shop. This allows the DNR to utilize the most cost effective solution for print production.

**Justification:** See issue paper “Hunting and Fishing Guides” on pg. 21.

Recommendation #9

**Subject:** Hunting Blinds

**Recommendation:** Review existing rules for placement and construction of ground blinds on state property; consider permission for placement of temporary blinds in zone 3.

**Justification:** See issue paper “Hunting Blinds” on pg. 22.

Recommendation #10

**Subject:** Fish and Wildlife Consumption Advisories

**Recommendations:**

- The State of Michigan should initiate and coordinate an independent scientific peer review of the Michigan Department of Community Health’s (MDCH) process and protocols for establishing fish and wildlife consumption advisories.
- The MDCH should establish a process and allow for public comment on Michigan fish and wildlife consumption advisories issued annually.
- The MDCH should examine and streamline the annual Michigan Fish Consumption Advisory Guide to clarify and simplify risk communication with the public, including harmonizing advisories for sport-caught and commercially caught fish.
- The MDCH should coordinate any public fish and wildlife consumption advisory with the DNR’s Fisheries Division, Wildlife Division, and with the Michigan Department of Agriculture and Rural Development, prior to issuing the advisory for the public.

**Justification:** See issue paper “Fish and Wildlife Consumption Advisories” on pg. 23.

Recommendation #11

**Subject:** Land Consolidation

**Recommendation:** DNR needs to be relieved of the obligation in statute to sell for no less than “appraised” value on “surplus” lands.

**Status:** This recommendation was implemented in 2012, through Public Act 240 of 2012.

**Justification:** See issue paper “Land Consolidation” on pg. 25.

Recommendation #12

**Subject:** Strategic Administrative Management of Minerals

**Recommendation:** The State should review the administration and management objectives of all minerals (both leased and unleased) with the working goal to develop a management plan that will optimize the value to the state of its mineral resources. This plan must consider the current/future resource value, economic value, natural resource value and public interest.

**Justification:** See issue paper “Strategic Administrative Management...” on pg. 26.

Recommendation #13

**Subject:** Bait Fish

**Recommendation:** Amend Fisheries Order 245 to relieve the angler of the obligation to keep a receipt when purchasing certified baitfish and require all baitfish producers selling in Michigan to produce, sell, and distribute only certified baitfish and roe to their customers (retail operators).

**Justification:** See issue paper “Bait Fish” on pg. 28.

Recommendation #14

**Subject:** ORV Policy and Procedures Manual

**Recommendation:** During calendar year 2013, the DNR shall review the ORV Policy & Procedures manual and this review should include two public input forums held at times and places convenient to participation by interested parties.

**Justification:** See issue paper “ORV Policy and Procedures Manual” on pg. 29.

Recommendation #15

**Subject:** Old & Outdated ATV/ORV Legislation (MCL 324.81129)

**Recommendation:** The current statute (enacted in 1991) allows a youth at “any age” to operate an Off-Road Vehicle (defined as dirt bikes, full size pick-ups, dune buggies, & most other side-by-side off road vehicles) on Michigan’s designated trail system, but bans the use of ATVs (4 wheelers) for use under the age of 12 years old, should be amended so that all youth can use 4-wheelers as well as two-wheeled dirt bikes and other ORVs with appropriate supervision.

**Justification:** See issue paper “Old & Outdated ATV/ORV Legislation MCL 324.81129” on pg. 30.

Recommendation #16

**Subject:** Dry Hull Inspections of Charter Boats (MCL 324.44501, et seq.)

**Recommendation:** The current statute and rules require that charter boat owners must register their vessel with the Secretary of State, and then seek a certificate from the DNR through a process that requires a dry hull (out of water) inspection. To simplify the process, boat owners could provide proof of the required inspection (which they would obtain on their own from a recognized inspector) at the time of registration with the Secretary of State.

**Justification:** See issue paper “Dry Hull Inspections of Charter Boats” on pg. 31.

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APPENDIX A

**ISSUE PAPERS FOR FINAL RECOMMENDATIONS**

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**RECOMMENDATION #1**

**SUBJECT:** Obsolete Rules

**BACKGROUND/ISSUE:** DNR identified several rules for rescission due to obsolescence.

**RECOMMENDATION:** The DNR should work with the ORR to rescind rules and policies that the DNR identified as obsolete, and update rules which were identified for amendment, as set forth in *Appendix B*. In total, the DNR identified 139 rules for rescission (equal to 10% of the DNR's existing rules). The rules identified for rescission are located in the following rule sets:

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- **Field Dog Trial Areas (R 299.681 – 299.699)\***

**Key:**        **Bold** = Already rescinded  
              \* = Rescission of entire rule set

With respect to policies, the Natural Resources Commission is reviewing their policies and will be considering a resolution to update 10 and rescind 65 of their policies. The DNR is also actively engaged in policy review and has rescinded about 30 policies in the last year.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** By getting obsolete rules and policies off the books, not only is the size of government decreased, but more clarity is provided to citizens reading and using the rules.

## **RECOMMENDATION #2**

**SUBJECT:** Land Appraisal Process

**BACKGROUND/ISSUE:** The Department of Natural Resources maintains a list of appraisers who are approved to complete appraisals for use in Department land transactions, including Natural Resources Trust Fund projects undertaken by local units of government. The Department also has established standards to which appraisals must conform. Among the requirements is that the appraiser consult with the Department's Review Appraiser prior to completing their appraisal report.

In cases over \$750,000 in value, two appraisals are required. While most appraisals are reviewed in a timely manner, on occasion a Department review of appraisals can be a time consuming process which delays projects, and can result in the Department overturning the approved appraiser's results. This has put local communities into the position of having met all of the DNR requirements for hiring an approved appraiser and preparing the report according to DNR standards, yet having a project put on hold because a reviewer in Lansing disagrees with the conclusions of an approved appraiser in a local community.

**RECOMMENDATION:** The Department's procedure for real estate appraisal review should be simplified so that the Department's reviewer is confirming only that the appraiser is approved to work for the state, that Uniform Standards of Professional Appraisal Practice procedures are followed and that the work conforms to those procedures, and that the Department is complying with its fiduciary duties. The Department should adopt procedures that encourage a detailed discussion between the appraiser and the review appraiser involving such issues as:

1. Definition of the appraisal problem
2. Property rights being valued
3. Any hypothetical conditions or extraordinary assumptions being considered
4. Unique physical characteristics associated with the subject property
5. Appraisal methodology being proposed
6. General description of, and rationale for, the comparable sales data being proposed for consideration in the valuation section of the report

This consultation should proceed prior to the document development phase of the final report.

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In addition, the Department should more diligently maintain the list of approved appraisers, so that the list contains only appraisers in whom the Department has confidence, and should authorize the Real Estate Services section to add and remove names from the list.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** This recommendation should lead to a streamlined process that leads to mutually agreeable outcomes for both parties. This solution seeks to prevent major disagreements between the Department and local communities.

**RECOMMENDATION #3**

**SUBJECT:** Oil and Gas – Agreement Approval Process

**BACKGROUND/ISSUE:** Currently, there is no timeline for issuance or denial of various agreements or permits that lessees of state minerals need from the DNR to conduct operations. Examples of such agreements include – but are not limited to – pipeline easements, surface use agreements, and facility agreements. Frequently, issuance of a necessary permit or agreement has taken 9-12 months, sometimes longer and quite often this delay can be encountered after significant capital has already been expended. Timing associated with obtaining the requisite approvals for operations is a criterion that is evaluated by industry when making investment decisions.

**RECOMMENDATION:** The DNR should create a policy that within ten days of receipt, the DNR will certify whether or not an applicant’s application is complete for all easements, surface use agreements, change of lease classifications and special use agreements. The department then would have 60 days (unless there is federal involvement) to either issue or deny the application with a specific explanation issued if the application is denied. In the event the applicant wants to change the application, the clock restarts. If there is a public comment period, that time period would be in addition of the 60-day window.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** This recommendation creates a predictable window for businesses to plan around and allows for a reasonable time frame for the state to react. Predictability is very important for attracting investment capital and to keep business costs down.

**RECOMMENDATION #4**

**SUBJECT:** Oil and Gas – Surface Owner Notification

**BACKGROUND/ISSUE:** Currently the only notification to surface owners of mineral activity under their property comes from oil and gas companies immediately prior to an auction of mineral rights below their land.

**RECOMMENDATION:** Investigate the feasibility of establishing a process whereby a private surface owner over State owned minerals could ask to have its email address tagged to the tract where they own the surface and every time there is mineral activity by the State, an email alert is automatically generated and sent to the surface owner.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** This system would provide better customer service by enhancing surface owner knowledge and allow for overall cost reductions in the system down the road.

**RECOMMENDATION #5**

**SUBJECT:** Land Ownership Strategy

**BACKGROUND/ISSUE:** DNR has a comprehensive land ownership strategy – including disposal of land and consolidation of current properties. The state devotes many resources to executing this strategy.

**RECOMMENDATION:** The DNR should be more proactive in messaging its core land ownership strategy – there is a need to get better and more info out on what DNR is attempting to achieve with its strategy.

**STATUS:** The Director of the DNR has recently initiated development of a Public Land Management Strategy to better articulate the purpose and goals of the agency’s land ownership. The report is expected to be completed by mid–2013.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** This is a DNR-supported recommendation that will lead to better constituent understanding of what the DNR is trying to accomplish.

Communication is critical for the strategy to be effective and sustained.

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**RECOMMENDATION #6**

**SUBJECT:** Hunting and Fishing Guides

**BACKGROUND/ISSUE:** Currently, hunting and fishing guides are only printed in booklets.

**RECOMMENDATION:** Hunting and fishing guides should take advantage of technology, for example by providing functional base maps showing trout streams and real time regulations on legal gear.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** By taking advantage of technology, hunting and fishing guides can reach a broader audience. They can provide more value through real-time updates and more usable mapping technology.

**RECOMMENDATION #7**

**SUBJECT:** Hunting and Fishing Promotion

**BACKGROUND/ISSUE:** There is ample opportunity to promote hunting and fishing in Michigan as a reason to travel to Michigan.

**RECOMMENDATION:** The DNR should partner with Travel Michigan/MEDC to develop a marketing strategy for promoting hunting and fishing opportunities in Michigan. They should explore the use of partnership models developed through the Michigan Wine Council for the promotion of Michigan wines and the Department of Agriculture for the promotion of Michigan food products. Strategies should be built around electronic marketing (including a branded web presence, social media, and applications for hand-held devices), printed publications, and earned media. Integrate those marketing strategies with the "Pure Michigan" branding campaign. Strategies should balance the need for informing the public of regulatory requirements as well as information that helps to promote Michigan as a destination for such activities for both residents and non-residents.

**STATUS:** DNR is working closely with MEDC/Pure Michigan to integrate programs into the Pure Michigan brand. For example, DNR opportunities for outdoor recreation have been incorporated into the [michigan.org](http://michigan.org) website, the Pure Michigan campaign for 2012 included videos on hunting and fishing in Michigan, and Pure Michigan is hosting a website that promotes discounts for individuals who purchase a Recreation Passport when they renew their license plate ("Passport Perks Providers").

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** This partnership is a natural fit and should make Michigan more attractive as a destination for travelers.

**RECOMMENDATION #8**

**SUBJECT:** Hunting and Fishing Guides

**BACKGROUND/ISSUE:** Currently the DNR can only use DTMB to print all digests/guides.

**Recommendation:** The DNR should be allowed to bid out the printing of all digests/guides and the DNR should not be required to use DTMB unless DTMB can have them printed them at a competitive price.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** DNR should be able to bid out printing – this will save taxpayer money by going with the cheapest available option. Departments should not be forced to subsidize programs by paying in excess for printing over market prices.

**STATUS:** The DNR and DTMB reached an agreement that allows the department to obtain the best price for printing guides and other materials, whether private vendor or the state print shop. This allows the DNR to utilize the most cost effective solution for print production.

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**RECOMMENDATION #9**

**SUBJECT:** Hunting Blinds

**BACKGROUND/ISSUE:** Many hunters desire to use brush and fallen timber to construct rudimentary blinds when hunting deer, turkey, or other various game species, or position small, removable blinds and tree stands on public land. This is a standard tactic used for hunting and adds to the sport's enjoyment.

**RECOMMENDATION:** Review existing rules for placement and construction of ground blinds on state property; consider permission for placement of temporary blinds in zone 3.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** The review will assure that proper rules are in place to maximize hunter enjoyment while ensuring public safety concerns are being met.

## **RECOMMENDATION #10**

**SUBJECT:** Fish and Wildlife Consumption Advisories

**BACKGROUND/ISSUE:** While protecting public health is of paramount concern, in order for fish and wildlife consumption advisories to be credible with the public they must be timely and based upon current data. Moreover, the process used to arrive at the advisories must be transparent and they should be issued only when necessary to minimize potential negative economic and social impacts.

There is growing interest in Michigan among a diverse set of stakeholders about how consumption advisories are developed and communicated.<sup>1</sup> The concern about how these consumption advisories are developed is well documented and can be traced back to the 1990s when the Michigan Environmental Science Board (MESB) examined, on two occasions, specific components (e.g., PCB risk exposure for sensitive populations) of Michigan's fish consumption advisories. Furthermore, there is a perceived lack of transparency in the process used by government agencies to issue these advisories. The lack of transparency, coupled with the paucity and age of data utilized to establish advisories, and lack of opportunity for public input into the current process, creates uncertainties that concern those directly affected by the regulations and undermines the acceptance of the advice by many anglers and hunters.

### **RECOMMENDATION:**

- The State of Michigan should initiate and coordinate an independent scientific peer review of the Michigan Department of Community Health's (MDCH) process and protocols for establishing fish and wildlife consumption advisories.
- The MDCH should establish a process and allow for public comment on Michigan fish and wildlife consumption advisories issued annually.
- The MDCH should examine and streamline the annual Michigan Fish Consumption Advisory Guide to clarify and simplify risk communication with the public, including harmonizing advisories for sport-caught and commercially caught fish.
- The MDCH should coordinate any public fish and wildlife consumption advisory with the DNR's Fisheries Division, Wildlife Division, and with the Michigan Department of Agriculture and Rural Development, prior to issuing the advisory for the public.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** Over the years, criticism of the process utilized by the MDCH has grown among anglers and others tied to the fishing

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<sup>1</sup> December 4, 2009, letter from Ms. Erin McDonough, Executive Director, Michigan United Conservation Clubs, to Ms. Janet Olszewski, Director, Michigan Department of Community Health.

industry and is focused primarily on an apparent lack of transparency for establishing risk assessments and Health Protection Values (HPVs). For example, the current trigger values were established in the 1980s and 90s and documentation is limited for many of those values. While the MDCH may be in the process of documenting and updating the current screening values, the overall advisory-setting process would benefit from scientific peer review.

Fish and wildlife consumption advisories are issued as “advice” rather than regulations, so the Michigan Department of Community health (MDCH) is not required to seek public comment before issuing annual consumption advisories. (This would be required by law if the advisories were issued as regulations.) While the MDCH has begun to update the fish advisory process with the goal of incorporating the best available science, the department also acknowledges that progress is slow due to the limitations on staff and resources.

The method of presentation of the advisory, the degree of detail in the explanation for the advisory and other aspects of the risk communication process are key to public understanding.

The overall goal of these recommendations is to work with state government to assess the current process for establishing fish and wild game consumption advisories with a view toward enhancing transparency; to ensure that the best available science and protocols are being utilized, and to increase public confidence and appropriate response to the advisories.

**RECOMMENDATION #11**

**SUBJECT:** Land Consolidation

**BACKGROUND/ISSUE:** DNR currently can only sell land at the appraised value – this has caused unnecessary inventory to be kept on the books because the appraised value does not meet the market value.

**RECOMMENDATION:** DNR needs to be relieved of the obligation in statute to sell for no less than “appraised” value on “surplus” lands.

**STATUS:** The Natural Resources and Environmental Protection Act was amended through Public Act 240 of 2012 to effect this recommendation. The change allows the Department to sell surplus land “at a price established using the method that the Department determines to be most appropriate.” (MCL 324.2132)

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** This will allow the DNR to sell surplus land – saving taxpayer money.

**RECOMMENDATION #12**

**SUBJECT:** Strategic Administrative Management of Minerals under Current Leases

**BACKGROUND/ISSUE:** The oil and gas industry has a rich heritage in the State of Michigan. Oil and gas were first commercially produced in Michigan in 1925, with the discovery of the Saginaw Field.

To date, more than 50,000 wells have been drilled in Michigan in the pursuit of oil and gas. This drilling has resulted in nearly 15,000 oil wells, more than 13,000 natural gas wells, roughly 3,000 facility wells, and over 20,000 dry holes. Remarkably, less than 2% of Michigan’s land area has produced over 1.3 billion barrels of crude oil and 7.4 trillion cubic feet of natural gas.

The Michigan Natural Resources Trust Fund (MNRTF) and now the Parks division are supported by royalties from Michigan oil and gas exploration and production activities on state-owned minerals. These royalties are the primary source of revenue for the MNRTF. Through 2010, the MNRTF has financed the purchase and development of over 1,600 public recreation projects in Michigan valued at more than \$800 million.

The Department of Natural Resources functions in multiple capacities relative to managing the state’s natural resources for oil and gas development. First, in its capacity as a surface owner, the DNR is responsible for facilitating the orderly development on state land that is balanced with other uses. Secondly, the Minerals Management Section functions as the steward of the state’s mineral resources (over 5 million acres), and subject to compliance with rigorous guidelines, is responsible for issuing oil and gas leases for development.

Michigan's statutory policy regarding development of oil and gas is expressed as follows:

- a. MCL 324.61502. Sec. 61502 states, in part,  
“It is accordingly the declared policy of the state to protect the interests of its citizens and landowners from unwarranted waste of gas and oil and to foster the development of the industry along the most favorable conditions and with a view to the ultimate recovery of the maximum production of these natural products. To that end, this part is to be construed liberally to give effect to sound policies of conservation and the prevention of waste and exploitation.” (emphasis added)
- b. MCL 324.61901. Sec. 61901(2) states, in part,  
“[t]hat the development of new industry and the expansion of existing industry to obtain the

optimum safe production of the state's energy resources is an important concern to the economic stability of this state.”

The Committee is not aware of any policy or management plan that is specifically intended to optimize the development and maximize production of state owned mineral resources as called for in the statute.

Oil and gas development of DNR-managed minerals in Michigan has not been guided by a strategic plan designed to fulfill the statutory mandate of achieving the “...ultimate recovery of the maximum production of these natural products.”

A review of the oil production over the last 5 years from DNR-managed minerals when compared to the overall production from the state would show that production from DNR-managed minerals has not kept pace with production from privately managed minerals. This production decline from DNR managed minerals can be leveled or reversed if the resources were managed in a different manner.

**RECOMMENDATION:** The State should review the administration and management objectives of all minerals (both leased and unleased) with the working goal to develop a management plan that will optimize the value to the state of its mineral resources. This plan must consider the current/future resource value, economic value, natural resource value and public interest.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** The development of a comprehensive mineral management plan should be conducted and revised as needed as it is a public trust issue.

This recommendation supports soundly developing an economic asset with consideration of all the interests at play.

**RECOMMENDATION #13**

**SUBJECT:** Bait Fish

**BACKGROUND/ISSUE:** 2011 Michigan Fishing Guide – Viral Hemorrhagic Septicemia (VHS), General Statewide Provisions, provides that:

“#3 - A retail customer shall retain and show upon request the receipt for purchases of baitfish or roe from a state-licensed baitfish retail operation. A receipt shall be valid for 14 days for all certified baitfish (except frozen certified baitfish which will be good for six months). The receipt for all uncertified baitfish will be good for three days. Required only when Susceptible Fish Species are involved.”

**RECOMMENDATION:** Amend Fisheries Order 245 to relieve the angler of the obligation to keep a receipt when purchasing certified baitfish and require all baitfish producers selling in Michigan to produce, sell, and distribute only certified baitfish and roe to their customers (retail operators).

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** This change takes the burden of proving that baitfish are certified off the angler who currently must retain the retail sales receipt for up to 14 days. This change would also put the responsibility on the baitfish producer to sell certified baitfish.

FINAL

**RECOMMENDATION #14**

**SUBJECT:** ORV Policy and Procedures Manual

**BACKGROUND/ISSUE:** There is concern in the ORV community that the ORV policy and procedures education manual is excessively burdensome.

**RECOMMENDATION:** During calendar year 2013, the DNR shall review the ORV Policy & Procedures manual and this review should include two public input forums held at times and places convenient to participation by interested parties.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** A formal review with ample public comment should sufficiently address concerns and remove any unnecessary or onerous provisions.

FINAL

**RECOMMENDATION #15**

**SUBJECT:** Old & Outdated ATV/ORV Legislation (MCL 324.81129)

**BACKGROUND/ISSUE:** ATV and ORV age limits are inconsistent.

**RECOMMENDATION:** The current statute (enacted in 1991) allows a youth at “any age” to operate an Off Road Vehicle (defined as dirt bikes, full size pick-ups, dune buggies, & most other side-by-side off road vehicles) on Michigan’s designated trail system, but bans the use of ATVs (4 wheelers) for use under the age of 12 years old, should be amended so that all youth can use 4-wheelers as well as two-wheeled dirt bikes and other ORVs with appropriate supervision.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** This change will create more consistency in the law.

**RECOMMENDATION #16**

**SUBJECT:** Dry Hull Inspections of Charter Boats (MCL 324.44501, et seq.)

**BACKGROUND/ISSUE:** Currently, charter boat owners must register their vessel with the Secretary of State, and then seek a certificate from the Department through a process that requires a dry hull (out of water) inspection. Officers from the Department used to perform the dry hull inspections. In 2008, for a variety of reasons, the Department contracted the inspection process out to independent marine surveyors.

**RECOMMENDATION:** The current statute and rules require that charter boat owners must register their vessel with the Secretary of State, and then seek a certificate from the DNR through a process that requires a dry hull inspection. To simplify the process, boat owners could provide proof of the required inspection (which they would obtain on their own from a recognized inspector) at the time of registration with the Secretary of State.

**RATIONALE FOR CHANGE/ADDITIONAL COMMENTS:** By eliminating the DNR's role in the inspection process, boat owners would only have to provide documentation to one state agency, thereby cutting expense of duplicated documentation, creating uniformity of fees and saving time for the owners.

FINAL

APPENDIX B  
DNR RULE REVIEW  
SUMMARY

Department	1st Level Bur/Div/Agency	Total # of Rule Sets	Total # of Rules	Rules/Subsections Identified for Rescission/Repeal	Rules/Subsections Rescinded/Repealed
Natural Resources	Administrative Division	1	7	76	76
Natural Resources	Executive Division	2	66		
Natural Resources	Fisheries Division	6	222	10	
Natural Resources	Forest Management Division	10	97	25	7
Natural Resources	Law Enforcement Division	15	882	3	3
Natural Resources	Michigan Historical Center	1	2		
Natural Resources	Parks and Recreation Division	3	22	12	2
Natural Resources	Wildlife Division	2	32	13	13
<b>Total</b>	<b>8</b>	<b>40</b>	<b>1330</b>	<b>139</b>	<b>101</b>

Natural Resources Recommendations

**ADMINISTRATIVE DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
State Land Office Board Auction Sale of State-Owned Lands	R 211.1 - 211.315	X			Department Review, Annual Regulatory Plan 2011-2012, ORR Recommendations	Statute Repealed; rules no longer needed

**EXECUTIVE DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
Departmental Organization and General Functions			R 299.3001 - 299.3099		Annual Regulatory Plan 2011-2012	Should be amended as the DNR has undergone organizational changes due to Executive Orders. Some rules refer to committees and advisory boards now abolished, and some general functions have been transferred by Title II transfer to other agencies

**FISHERIES DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
Commercial Fishing	R 299.731; 299.751; 299.822; 299.827; a portion of 299.761				Department Review	10% of the rules listed or language contained is obsolete or not applicable to the present conditions of the fishery; these rules will be rendered unnecessary by an upcoming rewrite of the Commercial Fishing statute.
Commercial Fishing	299.1072(a)&(e); 299.1073; 299.1074(b),(c), & (e); 299.1078; a portion of 299.1075;				Department Review	25% of the rules listed or language contained is obsolete or not applicable to the present conditions of the fishery; these rules will be rendered unnecessary by an upcoming rewrite of the Commercial Fishing statute.

FISHERIES DIVISION RULES

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
Natural River Zoning (13 Rivers)			R 281.51 - 231.395	X; 2010-026 NR	Annual Regulatory Plan 2011-2012	Request For Rulemaking approved and draft language has been submitted. The proposed rule amendments will revise and consolidate these 13 existing Natural River administrative rules into one rule. The consolidated rule will retain the individual and unique development standards for each river, while creating an updated, uniform administrative framework for all Natural Rivers. Three designated rivers without existing administrative rules (Fox, Two Hearted, Lower Kalamazoo) will be included within the consolidated rule set for a total of 16 rivers.

**FOREST MANAGEMENT DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
State Aid for Snowmobile Safety Programs			Rules generally need to be updated to conform to statute.		Department Rule Review	The administrative rules were promulgated in 1979 and do not reflect changes to the statute, which was codified into Act 451 of 1994 as Part 821, Snowmobiles, Section 82107. Later amendments to the section allowed local law enforcement agencies to be eligible for grant funds, and increased the grant portion of the cost share from 75% to 85%.
Deadstream Swamp	R 299.341 - 299.342				ORR Recommendations/Department Review	No longer useful; Rules can be rescinded following revision to the relevant Land Use Order.
Slash Disposal	R 299.901 - 299.907	X			ORR Recommendations/Department Review	Rules are obsolete.
Commercial Forests			R 299.2601 - 299.2612	X; 2010-039 NR	Annual Regulatory Plan 2011-2012	Request For Rulemaking approved and have begun to draft the amended rules. Amendments needed due to the 2006 amendments to the Commercial Forest Act, which cause some rules to contradict the statute. Also, recent Commercial Forest program issues may need to be addressed in rules.

**FOREST MANAGEMENT DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
Metallic Mineral Leases on State Lands			R 299.4001 - R 299.4007		Annual Regulatory Plan 2011-2012	The rules have not been revised since 1992 and so are out of date with more recent changes to mining laws for non-ferrous metallic minerals. Amendments will better accommodate uses of state-owned land for metallic mineral leasing, and to clarify the existing rules.
Nonmetallic Mineral Leases on State Lands			R 299.4021 - 299.4027 (Specifically R 299.4025 lists two reasons to allow direct leasing of nonmetallic minerals. Additional reasons are now permitted)		Annual Regulatory Plan 2011-2012	The rules have not been amended since 1989 and are out of date with more recent changes in laws and court rulings. Amendments will better accommodate uses of state-owned land for nonmetallic mineral leasing, and to clarify the existing rules.

**FOREST MANAGEMENT DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
Forest and Mineral Resource Development Fund Program	R 299.2651 - 299.2666				Annual Regulatory Plan 2011-2012	These are mandated by statute; could be rescinded if the NREPA requirement were eliminated. These rules were promulgated in 1991 and to our knowledge have never been utilized to fund a forest or mineral related project. The rules require an appropriation from the legislature from the General Fund to fund a project, which is highly unlikely due to diminishing General Fund availability.
Oil and Gas Leases on State Lands			R 299.8101 - 299.8107		Annual Regulatory Plan 2012-2013	Amendment is needed to update definition of "Lessor," various procedural changes and the authority paragraph. Also, these are among the most problematic rules for the oil and gas industry, and could be reviewed to identify processes that may be changed and/or shortened.

**LAW ENFORCEMENT DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
General Rules - Part 1. Regattas and Marine Parades			R 281.1001-1051		Department Review	Should be updated to reflect changes in statute.
Numbering of Vessels and Motorboats			R 281.1201 - 281.1209		Annual Regulatory Plan 2012-2013	Technical amendment will be requested to make corrections to the rule set's authority paragraph (the public act as stated has been repealed). No additional changes are needed to the rules.
Vessels Carrying Passengers for Hire			R 281.3101 - 281.3506		Department Review, Annual Regulatory Plan 2011-2012	Formulas currently used in determining vessel capacity utilize 150 lbs. as the average weight per person. Formulas in federal laws have changed, due to the apparent increase in average weight of people generally, from 150 to 185 lbs. State rules should be changed to reflect this increase.  In addition, the process for charter boat dry hull inspection can be streamlined by eliminating the DNR's role in the process (see recommendation #17)
Wholesale Fish Dealers Report Forms			R 308.1		Department Review, Annual Regulatory Plan 2011-2012	Amendments to the rule set are needed to provide clear and concise reporting instructions for fish dealers.

**LAW ENFORCEMENT DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
Local Snowmobile Control			R 257.1601 - 257.1602		Annual Regulatory Plan 2011-2012	A technical amendment will be requested under MCL 24.244 (1) to combine these three like rule sets into one. Consolidating all rules for local ORV and snowmobile controls will improve comprehension of the requirements.
Local Snowmobile and Off Road Vehicle Control-Kawkawlin River			R 257.1603			
Special Local Snowmobile Controls			R 281.663.1			
Placement of ORV Decal			R 257.1691		Annual Regulatory Plan 2011-2012	A technical amendment will be requested under MCL 24.244 (1) to use language consistent with Part 811 of 1994 PA 451 by changing “decal” to “license” only.
Watercraft Rented to Public			R 281.511 - 218.529		Annual Regulatory Plan 2011-2012	Formulas currently used in determining vessel capacity utilize 150 lbs. as the average weight per person. Formulas in federal laws have changed, due to the apparent increase in average weight of people generally, from 150 to 185 lbs. State rules should be changed to reflect this increase.

**LAW ENFORCEMENT DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
Regulations of Lands Administered by the Department of Natural Resources			R 299.921 - 299.933	X; 2010-014 NR	Annual Regulatory Plan 2011-2012	The rules are being amended to bring the rules current with the times, better accommodate increasingly varied trends and uses of state-owned land for outdoor recreation activities, provide better clarification of the rules to reduce conflict, to provide for more effective enforceability, and ensure the rules are in harmony with public health laws
Local Hunting and Firearms Controls	R 317.150.6 - 317.150.8	X			Annual Regulatory Plan 2011-2012	

**PARKS AND RECREATION DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
Hunting Restrictions - Highland and Waterloo Recreation Areas	R 299.291 - 299.293	X			Department Review, Annual Regulatory Plan 2011-2012, ORR Recommendations	This rule set was specifically promulgated to address stewardship issues of the natural resources in Waterloo Recreation Area. In 1994 the land was gifted to the National Audubon Society. There is no need to continue with this rule set.
Underground Gas Storage Leases on State Lands			R 299.4051 - 299.4055		Annual Regulatory Plan 2011-2012	The rules have not been amended since 1990 and are out of date with current practices for operation of storage wells on state owned lands. Amendments will better accommodate uses of state-owned land for underground natural gas storage leasing, and to clarify the existing rules.
Recreation Bond Program	R 318.201 - 318.208; R 318.211				Annual Regulatory Plan 2012-2013	R 318.209 and 318.210 are the only rules that remain relevant due to discontinuation of grants being issued in approximately 1998.

**WILDLIFE DIVISION RULES**

Rule Set	Rules/Subsections Identified for Rescission/Repeal	Rule Rescinded/Repealed	Rules Identified for Amendment	Amendment in Process	Source	Explanation
Threatened & Endangered Species			R 299.1021 - 299.1028		Annual Regulatory Plan 2012-2013	The rules are out of date with recent biological data regarding the health, habitat, and presence of threatened and endangered species in Michigan. Amendments will update the lists to better reflect the status of impacted species.
Rules for Put-Take Pheasant Areas	R 299.61 - 299.62	X			Department review, Annual Regulatory Plan 2011-2012, ORR Recommendations	Enabling legislation for these rules has been repealed and the put-take pheasant program has been discontinued by the Department. These rules may be rescinded.
Field Dog Trial Areas	R 299.681 - 299.699	X			Department review, Annual Regulatory Plan 2011-2012, ORR Recommendations	Enabling legislation for this rule has been repealed. Rule may be rescinded.
Public Access Stamp Program	R 299.981 - 299.989	X			Department review, Annual Regulatory Plan 2011-2012, ORR Recommendations	Enabling legislation for this rule has been repealed. Rule may be rescinded.