

**BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE  
STATE OF INDIANA**

**IN THE MATTER OF:**

|  |   |                               |
|--|---|-------------------------------|
| <b>ADMINISTRATIVE RULE GOVERNING</b>     | ) | <b>Administrative Cause</b>   |
| <b>A STATE-WIDE RIVER OTTER TRAPPING</b> | ) | <b>Number: 23-FW-030</b>      |
| <b>SEASON</b>                            | ) |                               |
|  | ) | <b>LSA Document #24-86(F)</b> |

**REPORT ON RULE PROCESSING, PUBLIC HEARING, AND HEARING  
OFFICER ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ACTION**

**1. RULE PROCESSING**

**A. OMB AND SBA APPROVAL:**

For consideration as to final action is the proposed rule amending 312 IAC 9-3-18.2 to allow an individual to trap a river otter anywhere in the State of Indiana and to establish a statewide quota for the river otter trapping season. The proposed final rule is attached as Exhibit A.

David Bausman, General Counsel for the Department of Natural Resources (Department) submitted the proposed rule language and regulatory analysis to the Indiana Office of Management and Budget (OMB) and Indiana State Budget Agency (SBA) for review and approval. By letter dated December 20, 2023, Cristopher Johnston, OMB Director, and Zachary Q. Jackson, SBA Director, authorized the Department to proceed with the proposed rule as follows:

Pursuant to the provisions of IC 4-22-2-22.8, the Office of Management and Budget and State Budget Agency have reviewed the proposed rule that amends 312 IAC 9-3-18.2 (OMB #2023-26R), which you submitted on October 27, 2023. After reviewing the proposed rule, the recommendation of OMB and SBA is that the rule changes be approved. DNR is authorized to commence the public comment period(s).

Furthermore, if you revise the proposed rule after this approval, you must resubmit the rule and obtain a new approval pursuant to IC 4-22-2-22.8(e).

Indiana Department of Natural Resources may proceed with the rule proposed in its submission.

The Natural Resources Commission granted preliminary adoption of the rule on January 23, 2024.

As explained below, the rule was revised to make technical and conforming changes suggested by the Legislative Services Agency (LSA). David Bausman submitted the revised rule to OMB and SBA for approval on February 5, 2024. By letter dated February 8, 2024, Christopher Johnston, OMB Director, and Zachary Q. Jackson, SBA Director, authorized the Department to proceed with the proposed rule as follows:

Pursuant to the provisions of IC 4-22-2-22.8, the Office of Management and Budget and State Budget Agency have previously reviewed and approved the proposed rule that amends 312 IAC 9-3-18.2 (OMB #2023-26r), which was initially submitted on October 27, 2023. After receiving approval, Indiana Department of Natural Resources made changes to the proposed rule language and resubmitted an updated draft for review on February 5, 2024. It is the recommendation of OMB and SBA that the rule changes be approved.

IDNR may proceed with the updated rule draft proposed in its February 5, 2024, submission.

**B. AUTHORIZATIONS TO PROCEED AND PUBLICATION:**

The Commission received Authorization to Proceed for the first public comment period from the Legislative Services Agency on February 21, 2024. The **Notice of First Comment Period** to adopt a rule was published in the Indiana Register at DIN: 20240306-IR-312240086FNA on March 6, 2024. The **Notice of Public Hearing** was published at DIN: 20240306-IR-312240086PHA on March 6, 2024. Substantive comments were received during the first comment period, requiring a second public comment period be initiated.

The Commission received Authorization to Proceed for the second public comment period from the Legislative Services Agency on May 1, 2024. The **Notice of Second Public Comment Period** was published at DIN: 20240522-IR-312240086SNA on May 22, 2024. The **Notice of Second Public Hearing** was published at DIN: 20240522-IR-312240086PHA on May 22, 2024.

After the second public comment period was opened, the rule was revised by the Department of Natural Resources to incorporate technical and conforming changes suggested by the Legislative Services Agency. The revised rule was submitted to the OMB and SBA for additional approval after the second public comment period closed. An additional public comment period was initiated and the second public hearing was postponed until approval of the revised rule from OMB and SBA was received.

The Commission received Authorization to Proceed on the additional public comment period on July 12, 2024. The **Notice of Additional Public Comment Period** was published at DIN: 20240724-IR-312240086APA on July 24, 2024. The **Notice of Additional Public Hearing** was published at DIN: 20240724-IR-312240086PHA on July 24, 2024.

The Commission posted all notices of the comment periods and notices of public hearings, with the Regulatory Analysis and other information required under IC 4-22-2-22.5, on the Commission's rulemaking docket maintained on its website at <https://www.in.gov/nrc/rules/rulemaking-docket/>. The rulemaking docket was updated periodically as the rule adoption process progressed. Each Notice of Public Comment identified Linnea Petercheff as the "small business regulatory coordinator" for purposes of IC 4-22-2-28.1.

## **2. PUBLIC HEARING AND COMMENT**

Public hearings were held on April 11, 2024 at the Fort Harrison State Park Inn, Roosevelt Ballroom, 5830 North Post Road, Indianapolis, Indiana, and August 26, 2024 at the Atterbury Fish and Wildlife Area, 7970 Rowe Street, Edinburgh, Indiana. Each meeting was live streamed via Teams, providing members of the public the opportunity to appear in person or through the Teams application and provide comments. The public was able to make comments through the Commission's Rulemaking Docket, by email, and by United States mail during the public comment periods of March 6, 2024 through April 11, 2024 and July 24, 2024 through August 26, 2024. Most of the comments were sent through the Commission's rulemaking docket while only a few were received at the public hearings and by email. No United States mail comments were received.

Several comments were received in support of the rule and in opposition to the rule. Other comments were not applicable to the proposed changes. A summary of the comments and the Department's responses to the comments was prepared by Linnea Petercheff and is attached to this report as Exhibit B.

### **3. HEARING OFFICER ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION**

Indiana Code 4-22-2-19.5 provides the following standards for rules:

- (a) To the extent possible, a rule adopted under this article or [IC 13-14-9](#) shall comply with the following:
  - (1) Minimize the expenses to:
    - (A) regulated entities that are required to comply with the rule;
    - (B) persons who pay taxes or pay fees for government services affected by the rule; and
    - (C) consumers of products and services of regulated entities affected by the rule.
  - (2) Achieve the regulatory goal in the least restrictive manner.
  - (3) Avoid duplicating standards found in state or federal laws.
  - (4) Be written for ease of comprehension.
  - (5) Have practicable enforcement.
- (b) Subsection (a) does not apply to a rule that must be adopted in a certain form to comply with federal law.

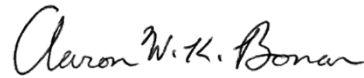
The proposed final rule amendments meet these standards. The proposed amendments impose no additional costs on the Department or regulated entities. The amendments achieve the regulatory goal of instituting a state-wide river otter trapping season while managing natural resources in the least restrictive manner. The proposed amendments impose a state-wide quota of 750 river otters per season and maintain a two (2) river otter individual bag limit. Bag limits were previously set by temporary rule, which is no longer possible under HEA 1623-2023.

Opening the river otter trapping season statewide will allow opportunities for licensed trappers in new areas of the State and will allow some emerging river otter damage issues to be addressed during the season without a permit from the Department. By establishing a statewide quota, closing the season when the quota is met, and maintaining a two (2) river otter season individual bag limit, the Department does not anticipate any negative impacts on the river otter population.

Additionally, other limitations are in place to ensure that the river otter population continues to thrive and expand. Allowing river otters to be trapped statewide will also simplify the rule by making it easier for trappers to know where they can legally trap river otters during the river otter trapping season.

Upon consideration of the rule, the public comments related to the rule, and the Department's responses to those comments, the Hearing Officer recommends final adoption of the proposed final rule.

DATED: September 6, 2024



Aaron W. K. Bonar, Deputy Director  
Natural Resources Commission Division of  
Hearings, Hearing Officer

## TITLE 312 NATURAL RESOURCES COMMISSION

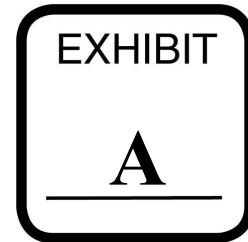
**Proposed Rule – River Otter Trapping Amendments**  
LSA Document #24-86

CITATIONS AFFECTED: 312 IAC 9-3-18.2

AUTHORITY: IC 14-10-2-4; IC 14-22-2-6

**PROPOSED RULE**

SECTION 1. 312 IAC 9-3-18.2 IS AMENDED TO READ AS FOLLOWS:

**312 IAC 9-3-18.2 River otters****Authority: IC 14-10-2-4; IC 14-22-2-6****Affected: IC 14-22-11-1; IC 14-22-11-10; IC 14-22-12-1**

Sec. 18.2. (a) An individual may trap a river otter (~~Lutra~~ (**Lontra canadensis**) ~~from beginning~~ November 15 ~~through and ending either:~~

- (1) March 15 of the following **calendar** year; **or**
- (2) **the date on which the statewide quota set forth in subsection (f) is reached;**

**whichever is earlier.** An individual who sets a trap for a river otter must be at least ten (10) years ~~old,~~ **of age,** unless the individual ~~has~~ passed a state certified trapper education course.

(b) ~~In order to trap a river otter,~~ **Except as provided under IC 14-22-11-1,** an individual ~~must possess~~ **may not trap a river otter unless the individual possesses at least** one (1) of the following ~~valid~~ Indiana trapping licenses: ~~or be exempt from needing a license as authorized in IC 14-22-11-1:~~

- (1) **A** resident yearly trapping license under IC 14-22-12-1(a)(4).
- (2) **A** nonresident yearly trapping license under IC 14-22-12-1(a)(7).
- (3) **A** resident youth consolidated hunting, trapping, and fishing license under IC 14-22-12-1(a)(24) or IC 14-22-11-10(b).
- (4) **A** nonresident youth yearly trapping license under IC 14-22-12-1(a)(26).
- (5) **A** lifetime basic trapping license under IC 14-22-12-7(a)(6) before its repeal.

(c) An individual ~~must~~ **may** not take more than two (2) river otters ~~per~~ **in a river otter trapping** season. An individual ~~that who~~ sets ~~the a~~ trap that ~~caught the~~ **captures** a river otter ~~must~~ **shall** count the river otter toward ~~his or her~~ **the bag limit for the river otter trapping** season. ~~limit.~~

~~(d) An individual that kills a river otter:~~

- ~~(1) during the season after the individual's bag limit has been reached;~~
- ~~(2) after the statewide quota has been reached;~~
- ~~(3) in a county where the season is not open; or~~
- ~~(4) outside the season;~~

~~must notify the department within forty eight (48) hours of killing the otter and make arrangements to give that river otter to the department.~~

**(d)** An individual who traps a river otter alive and does not include it in ~~that the~~ individual's bag limit ~~must~~ **shall** release the river otter into the wild in the location ~~in which it was~~ **where the river otter is** captured immediately ~~upon discovery or notification~~ **after discovering** that a river otter ~~has been~~ **is** caught in the trap.

(e) An individual ~~must not~~ **may** trap a river ~~otters~~ **otter** ~~except in a county the director designates on an annual basis by temporary rule~~ **in any county in the state.**

(f) ~~Annually, the director shall establish by temporary rule~~ The statewide quota for **trapping a river otters** ~~otter that may be taken during a river otter trapping~~ season ~~The director may close the season established under subsection (a) by temporary rule upon a determination that the allowable harvest of river otters for the year has been~~

~~reached~~ is seven hundred fifty (750). The department shall track the statewide quota for river otters on the department's website.

**(g) An individual shall not trap a river otter after the:**

- (1) individual's bag limit is reached; or**
- (2) river otter trapping season ends.**

~~(g) (h)~~ An individual who takes a river otter ~~must shall~~ report the take or ~~cause the reporting of~~ **ensure** the take **is reported** by providing the information required ~~on by~~ the department's electronic harvest reporting system ~~within not later than~~ twenty-four (24) hours ~~of the after~~ taking of the river otter. ~~The An individual who reports the reporting a take on the department's electronic harvest reporting system must under this subsection shall~~ provide true and accurate information **to the department. An individual shall keep** the confirmation number provided by the ~~department's~~ electronic harvest reporting system ~~must be maintained~~ with the river otter until the river otter is checked in with a designated department employee or at an official river otter checking station.

~~(h) (i)~~ An individual who takes a river otter during the **river otter** trapping season ~~must shall~~ retain possession of the river otter and ~~cause ensure~~ delivery of the skinned hide and carcass, including the head, of the river otter to a designated department employee or official river otter checking station ~~within not later than~~ fifteen (15) days after the month ~~of harvest. the river otter is harvested.~~ The department employee ~~must shall~~:

- (1) issue a tag and attach it to each hide ~~in accordance with under~~ 50 CFR 23.69; and
- (2) ~~maintain~~ **retain** possession of the skinned river otter carcass. ~~(not the hide).~~

~~(i) (j)~~ A river otter, including the hide and any other part ~~or portion~~ **of the river otter**, taken during the **river otter** trapping season ~~must may~~ not be:

- (1) sold;
- (2) traded;
- (3) bartered;
- (4) gifted;
- (5) transferred to a taxidermist or any other person; or
- (6) shipped;

until **the river otter is** registered through the department's electronic registration system and issued a tag by a department employee ~~in accordance with under~~ subsection ~~(h) (i)~~.

~~(j) (k)~~ After registering the river otter and obtaining the tag from the department ~~in accordance with under~~ this section, an individual who takes a river otter may:

- (1) sell;
- (2) trade;
- (3) barter;
- (4) ship; or
- (5) otherwise transfer;

the hide of ~~a the~~ river otter ~~in accordance with under~~ this section and 50 CFR 23.69.

~~(k) (l)~~ An individual may possess the untanned hide of a river otter ~~that was~~ lawfully obtained at any time of ~~the~~ year.

~~(l) (m)~~ An individual ~~must may~~ not possess a live river otter except as follows:

- (1) With a wild animal rehabilitation permit under 312 IAC 9-10-9.
- (2) With a scientific purposes license under 312 IAC 9-10-6.
- (3) With a nuisance wild animal control permit under 312 IAC 9-10-11.
- (4) ~~By~~ **With** a registered or licensed educational or scientific institution with the United States Department of Agriculture ~~in accordance with under~~ 9 CFR, Chapter 1, Subchapter A, Parts I through IV.
- (5) ~~By~~ **With** a breeder, dealer, or exhibitor license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter A, Parts I through IV.

~~(m) (n)~~ An individual ~~must may~~ not sell a live river otter unless ~~that person~~ **the individual** has a breeder, dealer, or exhibitor license issued by the United States Department of Agriculture under 9 CFR, Chapter 1, Subchapter

A, Parts I through IV.

**(o) An individual who takes a river otter with a trap that captures and immediately kills the river otter:**

**(1) during the river otter trapping season after the individual's bag limit is met; or**

**(2) outside the river otter trapping season;**

**shall notify the department not later than forty-eight (48) hours after taking the river otter. The individual shall make arrangements to turn the river otter over to the department.** *(Natural Resources Commission; 312 IAC 9-3-18.2; filed Jun 23, 2006, 2:24 p.m.: 20060719-IR-312050214FRA; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA; filed Mar 12, 2010, 1:28 p.m.: 20100407-IR-312090479FRA; readopted filed May 20, 2014, 9:43 a.m.: 20140618-IR-312140017RFA; filed Feb 26, 2015, 2:01 p.m.: 20150325-IR-312140341FRA; filed Jun 21, 2018, 1:45 p.m.: 20180718-IR-312170436FRA; readopted filed Sep 18, 2019, 1:16 p.m.: 20191016-IR-312190325RFA)*



The Division of Fish and Wildlife (DFW) is requesting final adoption of the rule changes that were proposed at preliminary adoption. The DFW is proposing to allow river otter trapping statewide as well as set forth a statewide quota in permanent rule. Opening the river otter trapping season statewide will allow opportunities for licensed trappers in new areas and allow some emerging river otter damage issues to be addressed during the season without a permit from the department. Establishing a statewide quota, closing the season when the quota is met, and maintaining a two (2) river otter season individual bag limit, the DFW does not anticipate any negative impacts on the river otter population. Additionally, other limitations are in place to ensure that the river otter population continues to thrive and expand.

The most recent river otter population estimate was eight thousand five hundred fourteen (8,514). River otter populations have grown since the first river otter trapping season in 2015. A statewide quota of seven hundred fifty (750) river otters was selected to keep the quota under ten percent (10%) harvest mortality of the population size to continue to allow river otters to expand and thrive in Indiana. River otters had a low reproduction year in 2021, so it is in the best interest of river otter management to maintain the seven hundred fifty (750) river otters as the statewide quota to allow the DFW to gather more years of data and continue to monitor the river otter population by adding more data to the population model that was developed in 2022. The river otter population is estimated based on teeth collected from trapped river otters, which is why maintaining carcass collections is critical as the DFW closely monitors the river otter population that the citizens of Indiana and DFW historically worked so hard to restore. Division staff regularly monitor the population model and other data to assess whether a change to the bag limit or statewide quota would be needed in the future.

***Comments opposed to expanding the season statewide.***

**Response:** The DFW values river otters and recognizes the public values them as well; therefore, only incremental changes have been made to the river otter trapping season over the years. The DFW has been slowly adding counties to the open list for limited trapping since the season began in 2015. The proposed permanent change to statewide, rather than county, trapping represents a small proportion of counties in Indiana. Opening these remaining counties will allow opportunities for licensed trappers in new areas and will allow some emerging river otter damage issues to be addressed during the season without a permit from the DFW. This will allow river otters to be used by trappers instead of requiring disposal of the river otter after the river otter is removed under a permit due to a conflict. By establishing a statewide quota, closing the season when the quota is met, and maintaining a two (2) river otter season individual bag limit, the DFW does not anticipate any negative impacts on the river otter population. Additionally, other limitations are in place to ensure that the river otter population continues to thrive and expand. Allowing river otters to be trapped statewide will also simplify the rule.

***Comments on the statewide quota being too low.***

**Response:** The most recent river otter population estimate from 2022 was eight thousand five hundred fourteen (8,514). A statewide quota of seven hundred fifty (750) river otters for the trapping season was implemented during the 2021-2022 river otter trapping season. A statewide quota of seven hundred fifty (750) river otters was selected to keep the quota under ten percent (10%) harvest mortality of the population size to continue to allow river otters to expand and thrive in Indiana. River otters had a low reproduction year in 2021, so it is in the best interest of river otter management to maintain the statewide quota of seven hundred fifty (750) river otters. This will allow the DFW to gather more years of data and continue to monitor the river otter population using the population model that was developed in 2022. When 2022 data was added to the population analysis for river otters, populations were stable. Therefore, there is no data to support an increase to the statewide quota. DFW staff will continue to regularly review the population model and other data to assess whether a change to the bag limit or statewide quota would be needed in the future.

***Comments opposed to allowing the trapping of river otters in Indiana.***

**Response:** The DFW has the responsibility to manage and protect Indiana's wildlife resources. The focus of our wildlife management efforts is to maintain healthy and viable wildlife populations using the best science available. White-tailed deer, beaver, and wild turkey are other examples of wildlife species in which populations were once extremely low but are now sustainably harvested using established seasons and regulations that are enforced by Indiana Conservation Officers. The most recent river otter population estimate was eight thousand five hundred fourteen (8,514). River otter populations have grown since the first river otter trapping season in 2015. The statewide quota was selected to keep the quota under ten percent (10%) harvest mortality of the population size to continue to allow river otters to expand and thrive in Indiana. The rule requires strict limits on the number of otters that can be taken and mandatory registration of harvested otter.

The DFW does not believe that the trapping season will adversely affect the river otter population. Many of the traps used have been tested and approved for use to trap river otters are listed in the Best Management Practices for river otter trapping by the Association of Fish and Wildlife Agencies, which is available at:

[https://www.fishwildlife.org/application/files/5116/9265/2621/Otter\\_BMP\\_final\\_2023.pdf](https://www.fishwildlife.org/application/files/5116/9265/2621/Otter_BMP_final_2023.pdf)

Additionally, research in 2016 by Responsive Management showed approval of regulated trapping in Indiana was seventy-five percent (75%), an increase from a 2001 survey where approval was sixty-eight percent (68%). Survey results also indicated that larger majorities agree that people should have the freedom to choose to participate in regulated trapping if they want to with eighty-two percent (82%) of Indiana residents agreeing, showing that there is support for regulated trapping in Indiana.

All of our neighboring states also have established otter populations, as well as regulated otter trapping seasons. Currently, regulated trapping is used to manage river otter in at least thirty-three (33) states, many of which reintroduced river otter.

River otters are elusive animals, have large home ranges, and spend time in wetland habitats that aren't easily accessible, and managing them without regulated trapping is difficult. Trapping is managed through scientifically based rules, and the division continually reviews capture methods and develops rules that consider the animal's welfare. Educational programs are conducted throughout the state each year by department staff and other certified trapper education instructors.

***Comments to change the trapping methods to only allowing water traps to minimize incidental captures of non-target species.***

**Response:** The DFW did not propose changes to the trapping methods and is unable to do so in this rule since those methods are set forth in 312 IAC 9-3-18. Additionally, many of the traps used have been tested and approved for use to trap river otters are listed in the Best Management Practices for river otter trapping by the Association of Fish and Wildlife Agencies, which is available at:

[https://www.fishwildlife.org/application/files/5116/9265/2621/Otter\\_BMP\\_final\\_2023.pdf](https://www.fishwildlife.org/application/files/5116/9265/2621/Otter_BMP_final_2023.pdf)

***Comment on the requirement of the CITES tag.***

**Response:** Because river otters are listed in the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), a CITES tag is required for otter pelts that are sold outside the country under federal law pursuant to 50 CFR 23.69. Most pelts used in the fur market are sent outside the country. Therefore, this tag ensures that the pelt can be sold, and the carcass collection provides the DFW with age data to help monitor the population. The DFW also uses the tag at the state level for law enforcement purposes. Tags are only supplied by DFW employees and show the river otter has been registered as required by rule when law enforcement is checking river otters at a fur sale, a taxidermist, or a fur buyer.