

IN THE SUPERIOR COURT FOR WAKE COUNTY

NO. \_\_\_\_\_

RED WOLF COALITION, )  
DEFENDERS OF WILDLIFE, and )  
ANIMAL WELFARE INSTITUTE, )

Plaintiffs, )

v. )

NORTH CAROLINA WILDLIFE )  
RESOURCES COMMISSION; GORDON S. )  
MYERS, EXECUTIVE DIRECTOR, NORTH )  
CAROLINA WILDLIFE RESOURCES )  
COMMISSION, )

Defendants. )  
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FILED  
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Wake County, NC

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This action challenges violations of the North Carolina Administrative Procedure Act ("APA"), N.C. Gen. Stat. § 150B-1. *et. seq.*, in connection with the Defendants' adoption of a temporary rule to allow coyote hunting at night with artificial lights on public and private lands throughout the state, including in the area designated for the restoration of the endangered red wolf within Dare, Tyrrell, Hyde, Washington, and Beaufort counties ("Red Wolf Recovery Area").

2. Earlier this year, Defendants proposed permanent rule changes that would allow coyote night hunting with artificial lights and published the text of the permanent rule in the North Carolina Register ("Notice of Text"). After receiving public comments on the permanent

rule as published in the Notice of Text, Defendants adopted permanent rule changes (“permanent rule” or “proposed permanent rule”) that were substantially different from those published in the Notice of Text. The North Carolina Rules Review Commission reviewed the permanent rule and approved it. Under the APA, the permanent rule would have become effective on August 1, 2012, but for the fact that the Rules Review Commission received written objections requesting legislative review of the rule. By law, the Rules Review Commission’s receipt of these objection letters delays the implementation of the permanent rule until the General Assembly has the chance to review the rule during North Carolina’s next legislative session, scheduled to convene in January 2013.

3. Rather than allowing the permanent rule to proceed through the prescribed legislative review process, Defendants undermined the rulemaking process by submitting an identical night hunting rule as a temporary rule without the requisite process or basis required for temporary rules under the North Carolina Administrative Procedure Act.

4. Allowing Defendants to adopt a temporary rule without requisite process or sufficient basis, especially when an identical permanent rule is pending review by the General Assembly, subverts the rulemaking process and opens the doors to other temporary rules that could have detrimental environmental impacts.

5. Situations like this—where the rule revisions would imperil an endangered species and undermine a decades-long effort to restore that species—underscore the importance of public participation and close adherence to the protective measures embedded in the rulemaking process.

6. The temporary rule went into effect on August 1, 2012. Through this lawsuit, Plaintiffs seek to have the unlawful temporary rule vacated.

## **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action pursuant to the North Carolina Administrative Procedure Act (“APA”), N.C. Gen. Stat. § 150B-21.1(c) (action for declaratory relief related to an agency’s adoption of a temporary rule), the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. § 1-253, *et seq.*, (declaratory judgments), and N.C. Gen. Stat. § 7A-245 (injunctive and declaratory relief to enforce or invalidate agency rules). Filing a request for declaratory ruling with the agency is not a prerequisite to filing this action here. N.C. Gen. Stat. § 150B-21.1(c1).

8. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 150B-21.1(c) (setting venue for actions for declaratory relief of temporary rules in this court) and pursuant to N.C. Gen. Stat. § 1-77(2) because the claims for relief arose from Defendants’ official acts occurring in Wake County, North Carolina.

## **PARTIES AND STANDING**

### **Plaintiffs**

9. The Red Wolf Coalition (“RWC”) is a non-profit organization located in Tyrrell County, North Carolina. It has approximately 400 members and supporters, including 200 members and supporters in North Carolina.

10. Founded in 1997, RWC advocates for the long-term survival of wild red wolf populations by teaching about the red wolf and by fostering public involvement in red wolf conservation. Through a variety of programs, RWC provides its members, supporters, and the public with science-based information about the biology and ecology of the endangered red wolf and its value to the ecosystem.

11. RWC's education and outreach initiatives include: (1) a quarterly newsletter, *Red Wolf Tracker*, in electronic and print versions; (2) a comprehensive website featuring current news updates and information about red wolves and red wolf recovery; and (3) a red wolf curriculum, co-authored with the U.S. Fish and Wildlife Service ("USFWS") and Defenders of Wildlife, entitled *Far Traveler: A Teacher's Companion to Red Wolf Recovery*, for formal and informal educators.

12. RWC is dedicated to the long-term restoration of the endangered red wolf. It works with the USFWS Red Wolf Recovery Program on red wolf restoration and management issues in an effort to establish and maintain healthy populations of wild red wolves. RWC also works with other organizations to focus world-wide attention on the effort to ensure the long-term survival of wild red wolf populations.

13. Among its other actions taken to protect the red wolf, RWC coordinated with the USFWS to construct an over two acre red wolf enclosure at the USFWS veterinary facility in the Pocosin Lakes National Wildlife Refuge within the Red Wolf Recovery Area. The enclosure will provide the USFWS Red Wolf Recovery Program with another option for housing wild red wolves and sterilized coyotes receiving veterinary care. It will also serve as home to a pair of captive red wolves and allow the public to view the endangered red wolf in its natural habitat. After years of planning and fundraising, RWC funded the project with \$80,000 it raised through grants and other donations, and project construction was completed in June 2012. The enclosure is scheduled to open for public viewing in October 2012.

14. RWC has staff, members, and supporters who live and work in North Carolina, and who visit, recreate, observe wildlife, photograph, and otherwise use and enjoy North Carolina lands, including those within the Red Wolf Recovery Area. RWC, its staff, members,

and supporters derive scientific, aesthetic, educational, professional, and recreational benefits from wildlife, including the endangered red wolf, and their habitats throughout North Carolina. RWC, its staff, members, and supporters also value preservation of opportunities for safe recreation and other uses of North Carolina's lands, including those within the Red Wolf Recovery Area.

15. Defendants' unlawful adoption of the temporary rule allowing nighttime hunting with artificial lights on public and private lands in North Carolina, including within the Red Wolf Recovery Area, will (1) cause risks to public safety and wildlife; (2) lead to the further destruction and disruption of the endangered red wolf population; and (3) will set the stage for similar attempts to subvert the rulemaking process in the future. If allowed to stand, the temporary rule will substantially affect RWC's staff's, members', and supporters' recreational, aesthetic, scientific, professional, and educational rights and interests in North Carolina and its wildlife. These actual and potential injuries have been and continue to be caused by Defendants' adoption of the temporary rule without legal justification or requisite procedural requirements for temporary rulemaking.

16. As set forth above, RWC, its staff, members, and supporters are aggrieved and irreparably harmed by the Defendants' unlawful adoption of the temporary rule. In addition, RWC's staff, members, and supporters who live and work in North Carolina have sustained procedural injury from the Defendants' unlawful adoption of the temporary rule. These actual and potential injuries will not be redressed except by an order from this Court that declares Defendants enacted the temporary rule illegally in violation of the APA and vacates the temporary rule.

17. Plaintiff Defenders of Wildlife (“Defenders”) is a national non-profit, public interest organization founded in 1947. Defenders has more than 1,120,000 members and supporters nationwide, including more than 9,600 members and supporters in North Carolina. It also has more than 19,100 members in its “Defenders Electronic Network” in North Carolina.

18. Defenders has members who live and work in North Carolina, including in the vicinity of the Red Wolf Recovery Area, as well as members from across the country who visit, recreate, observe wildlife, photograph, and otherwise use and enjoy North Carolina lands, including those within the Red Wolf Recovery Area.

19. Defenders is dedicated to the protection of all endangered or threatened wild animals and plants in their natural communities, and the preservation of the habitat on which they depend. Defenders advocates new approaches to wildlife conservation that will help keep species from becoming endangered, and it employs education, litigation, research, legislation, and advocacy to defend wildlife and their habitats.

20. Defenders has long been active in eastern North Carolina, promoting the initial introduction of the endangered red wolf to the Alligator River National Wildlife Refuge, and then successfully defending that program in court. The red wolves now range beyond the Refuge throughout much of northeastern North Carolina, in and out of the Red Wolf Recovery Area, and will be detrimentally impacted by the application of the temporary coyote night hunting rule.

21. Defenders, its staff, and its members derive scientific, aesthetic, educational, professional, and recreational benefits from wildlife, including the endangered red wolf, and their habitats throughout North Carolina, and they value preservation of opportunities for safe recreation and other uses of North Carolina’s lands, including those within the Red Wolf Recovery Area.

22. Defendants' unlawful adoption of the temporary rule allowing nighttime hunting with artificial lights on public and private lands in North Carolina, including within the Red Wolf Recovery Area, will (1) cause risks to public safety and wildlife; (2) lead to the further destruction and disruption of the endangered red wolf population; and (3) will set the stage for similar attempts to subvert the rulemaking process in the future. If allowed to stand, the temporary rule will substantially affect Defenders' members' and staff's recreational, aesthetic, scientific, professional, and educational rights and interests in North Carolina and its wildlife. These actual and potential injuries have been and continue to be caused by Defendants' adoption of the temporary rule without legal justification or requisite procedural requirements for temporary rulemaking.

23. As set forth above, Defenders, its staff and its members are aggrieved and irreparably harmed by the Defendants' unlawful adoption of the temporary rule. In addition, Defenders' members who live and work in North Carolina have sustained procedural injury from the Defendants' unlawful adoption of the temporary rule. These actual and potential injuries will be not redressed except by an order from this Court that declares Defendants enacted the temporary rule illegally in violation of the APA and vacates the temporary rule.

24. Plaintiff Animal Welfare Institute ("AWI") is a national non-profit, public interest organization founded in 1951. It has approximately 30,000 members and supporters worldwide, including nearly 890 members and supporters in North Carolina.

25. AWI has members and supporters who live and work in North Carolina, including in the vicinity of the Red Wolf Recovery Area, as well as members and supporters from around the world who visit, recreate, observe wildlife, photograph, and otherwise use and enjoy North Carolina lands, including those within the Red Wolf Recovery Area.

26. AWI is dedicated to minimizing the impacts of human actions detrimental to endangered or threatened species, including harassment, habitat degradation, encroachment and destruction, and irresponsible hunting and trapping practices.

27. Through advocacy, litigation, research, and education, AWI works to safeguard endangered or threatened wild animals and their habitats and to implement humane solutions to human-wildlife conflicts. AWI works with national and local governments and other policymakers to avoid actions damaging to species by promoting effective and safe wildlife protection laws and regulations.

28. AWI submitted comments on the permanent rule as proposed in the Notice of Text, testified at the public hearing for the permanent rule as proposed in the Notice of Text, and has worked with Defendants to voice its ongoing concerns about the rule's detrimental impacts on public safety and the endangered red wolf population.

29. AWI coordinates with the USFWS and the Red Wolf Coalition on efforts to recover and restore the red wolf. It has launched a federal legislative and regulatory campaign to further protect the species. It also provides information on the imperiled species in its publication, *The Endangered Species Handbook*, and in articles in its quarterly magazine.

30. AWI, its staff, and its supporters derive scientific, aesthetic, educational, professional, and recreational benefits from wildlife, including the endangered red wolf, and their habitats located throughout North Carolina, and they value preservation of opportunities for safe recreation and other uses of North Carolina's lands, including those within the Red Wolf Recovery Area.

31. Defendants' unlawful adoption of the temporary rule allowing nighttime hunting with artificial lights on public and private lands in North Carolina, including within the Red Wolf



Recovery Area, will (1) cause risks to public safety and wildlife; (2) lead to the further destruction and disruption of the endangered red wolf population; and (3) will set the stage for similar attempts to subvert the rulemaking process in the future. If allowed to stand, the temporary rule will substantially affect AWI's staff's and supporters' recreational, aesthetic, scientific, professional, and educational rights and interests in North Carolina and its wildlife. These actual and potential injuries have been and continue to be caused by Defendants' adoption of the temporary rule without legal justification or requisite procedural requirements for temporary rulemaking.

32. As set forth above, AWI, its staff, and its supporters are aggrieved and irreparably harmed by the Defendants' unlawful adoption of the temporary rule. In addition, AWI supporters who live and work in North Carolina have sustained procedural injury from the Defendants' unlawful adoption of the temporary rule. These actual and potential injuries will not be redressed except by an order from this Court that declares Defendants enacted the temporary rule illegally in violation of the APA and vacates the temporary rule.

### **Defendants**

33. Defendant the North Carolina Wildlife Resources Commission ("Commission") is an agency of the State of North Carolina. The Commission is responsible for the management of North Carolina's wildlife. The Commission adopted a permanent rule that would allow coyote night hunting with artificial lights throughout North Carolina, including within the Red Wolf Recovery Area. While the permanent rule was pending legislative review, the Commission adopted an identical temporary rule without the requisite process or justification required by the APA.

34. Defendant Gordon S. Myers is the Executive Director of the North Carolina Wildlife Resource Commission, and is sued in his official capacity as the head of the state agency that unlawfully adopted the temporary rule challenged herein.

### **STATUTORY AND REGULATORY BACKGROUND**

#### **The North Carolina Administrative Procedure Act**

35. The North Carolina Administrative Procedure Act, North Carolina General Statutes, Chapter 150B, defines the process by which an agency is authorized to adopt permanent and temporary rules and provides for review in this Court for persons aggrieved by a temporary rule.

36. “A rule is not valid unless it is adopted in substantial compliance with the [APA’s rulemaking procedures].” N.C. Gen. Stat. § 150B-18. Among other requirements, an agency may not promulgate a permanent rule without publishing a notice of text in the North Carolina Register, prepare or obtain a fiscal note where required, hold at least one public hearing after publication of the rule, and accept oral or written comments on the proposed rule. N.C. Gen. Stat. § 150B-21.2.

37. The notice of text of a permanent rule must include: (1) the text of the proposed rule; (2) a short explanation of the reason for the proposed rule; (3) a citation to the law that gives the agency authority to adopt the rule; (4) the date, time, and place for any public hearing scheduled on the rule; and (5) notification to the public of the period of time during which the agency will accept written comments on the proposed rule and fiscal note, when prepared. N.C. Gen. Stat. § 150B-21.2(c). The agency must accept comments on the text of the proposed rule for at least 60 days after the text is published in the North Carolina Register. Id. (f). The “agency must consider fully all written and oral comments received.” Id.

38. An agency must not adopt a permanent rule until the close of the comment period.

Id. (g). “An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule . . . .” Id.

39. When an agency adopts a permanent rule, it must thereafter submit the adopted rule to the North Carolina Rules Review Commission (“RRC”) for review. Id. The RRC “may request [the] agency to make technical changes to the rule and may condition its approval of the rule on the agency’s making the requested technical changes.” N.C. Gen. Stat. § 150B-21.10. A rule approved by the RRC “becomes effective on the first day of the month following the month the rule is approved” by the RRC, unless the RRC receives written objections to the rule as published in the agency’s notice of text from 10 or more persons. N.C. Gen. Stat. § 150B-21.3(b), (b1), (b2). If the RRC receives “written objections from 10 or more persons . . . requesting review by the legislature,” implementation of the permanent rule is automatically delayed until the General Assembly has the chance to consider the rule during its next legislative session. N.C. Gen. Stat. § 150B-21.3(b1), (b2).

40. When the requirements for notice, comment, and objections to a permanent rule have been met and the permanent rule is subject to legislative disapproval, the agency may adopt the permanent rule as a temporary rule *if* the permanent rule would have met the criteria for adopting a temporary rule, as set forth in N. C. Gen. Stat. § 150B-21.1(a), at the time the notice of text for the permanent rule was published in the North Carolina Register. N.C. Gen. Stat. § 150B-21.3(b2).

41. An agency “may adopt a temporary rule when it finds that adherence to the notice and hearing requirements [for a permanent rule] would be contrary to the public interest and that the immediate adoption of the rule is *required* by one or more” of the reasons enumerated in the APA, including (1) “[t]he effective date of a recent act of the General Assembly,” or (2) the need of the Commission to establish hunting seasons or bag limits. N.C. Gen. Stat. § 150B-21.1(a) (emphasis added).

42. A recent act of the General Assembly that may serve as justification for the adoption of a temporary rule means an act “occurring or made effective no more than 210 days prior to the submission of a temporary rule to the Rules Review Commission.” N.C. Gen. Stat. § 150B-21.1(a2).

43. Unless otherwise provided by law, an agency seeking to adopt a temporary rule must provide the text of the rule and a notice of public hearing at least 30 days prior to adopting the temporary rule; “notify persons on its mailing list maintained pursuant to G.S. § 150B-21.2(d) and any other interested parties of its intent to adopt the temporary rule and of the public hearing”; “[a]ccept written comments on the proposed temporary rule for at least 15 days prior to adoption of the temporary rule”; and “[h]old at least one public hearing on the proposed rule.” N.C. Gen. Stat. § 150B-21.1(a3). The agency must also prepare a written statement of its findings of need for a temporary rule (“Findings of Need”), explaining why adherence to the more stringent notice and hearing requirements for permanent rules “would be contrary to the public interest and why immediate adoption of the rule is required.” N.C. Gen. Stat. § 150B-21.1(a4).

44. When an agency adopts a temporary rule it must submit the rule and the agency’s Findings of Need for the temporary rule to the RRC. If the RRC approves the temporary rule,

the temporary rule will be codified into the North Carolina Administrative Code. N.C. Gen. Stat. § 150B-21.1(b). The temporary rule becomes effective on the date codified in the North Carolina Administrative Code. N.C. Gen. Stat. §§ 150B-21.1(d), 21.3(a).

45. “A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes.” N.C. Gen. Stat. § 150B-21.1(c). “Filing a petition for rule making or a request for a declaratory ruling with the agency is not a prerequisite to filing” such an action for declaratory judgment. N.C. Gen. Stat. § 150B-21.1(c1).

46. A court shall set aside an agency rule if it does not meet the criteria for adopting a temporary rule set forth in North Carolina General Statutes § 150B-21.1(a) or the criteria set forth in North Carolina General Statutes § 150B-21.9. N.C. Gen. Stat. § 150B-21.1(c).

47. The reviewing court must set aside a temporary rule unless the agency adopting the temporary rule established in its Findings of Need that adherence to the permanent rule notice and comment requirements would be contrary to the public interest and that the immediate adoption of the temporary rule was required by, for example, a recent act of the General Assembly. N.C. Gen. Stat. § 150B-21.1(a), (c).

48. North Carolina General Statutes § 150B-21.9 also requires a court to set aside a temporary rule unless it meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly;

(2) It is clear and unambiguous;

(3) It is reasonably necessary to implement or interpret an enactment of the General Assembly . . . ; and

(4) It was adopted in accordance with [the APA's procedure for adopting temporary rules.]

**North Carolina General Statutes, Chapter 113, Article 22; Session Law 2011-369; and 15A North Carolina Administrative Code Subchapter 10B, Section .0200**

49. North Carolina General Statutes, Chapter 113, Article 22, governs the regulation of wildlife in the state. The Commission has authority, under certain circumstances, to promulgate rules to fix seasons, bag limits, and manner of take for wild animals. N.C. Gen. Stat. §§ 113-291.1, 291.2.

50. The Commission's "authority to fix seasons includes the closing of seasons completely when necessary and fixing the hours of hunting." N.C. Gen. Stat. § 113-291.2.

51. North Carolina General Statutes § 113-291.1 sets forth the manner of taking wild animals. For the most part, game animals may only be taken "between a half hour before sunrise and a half hour after sunset." N.C. Gen. Stat. § 113-291.1(a). The Commission "may adopt rules prescribing the manner of taking . . . wild animals not classified as game." *Id.*

52. Wild animals not classified as game, and for which a season is set, "may be taken during the hours and methods authorized for taking game animals." 15A N.C. Admin. Code 10B .0201(d). Coyotes are not classified as game. N.C. Gen. Stat. § 113-129 (7b), (7c).

53. Session Law 2011-369, effective October 1, 2011, repealed a provision in North Carolina General Statutes § 113-291.1(b)(2), which permitted the use of electronic calls for hunting coyotes. Section 4 of Session Law 2011-369 replaced that provision with a provision that allows the Commission to adopt rules prescribing seasons and the manner of taking wild animals with the use of artificial lights and electronic calling devices.

54. North Carolina Administrative Code Subchapter 10B, Section .0200, contains the regulations promulgated by the Commission setting forth the seasons, bag limits, and manner of

take, including in some cases the use of artificial lights and electronic calls, for wild animals that are not classified as game.

55. The regulation currently applicable to coyotes provides:

- (a) There is no closed season for taking coyotes by hunting.
- (b) There are no bag limit restrictions on coyotes.
- (c) Manner of Take. Hunters may use electronic calls.

15A N.C. Admin. Code 10B .0219 (Jan. 12, 2012).

## FACTS

### The Endangered Red Wolf and Public Safety

56. Once common throughout the eastern and south-central United States, red wolf (*Canis rufus*) populations were destroyed by the early part of the 20th Century as a result of intensive predator control programs and the degradation and alteration of the species' habitat. The red wolf was designated a federal endangered species in 1967. To protect the species from extinction, the U.S. Fish and Wildlife Service initiated efforts to conserve the species, including starting a program to breed the species in captivity. The USFWS declared red wolves extinct in the wild in 1980.

57. In 1987, a handful of red wolves bred in captivity were reintroduced into the Alligator River National Wildlife Refuge in eastern North Carolina as an experimental population under the Endangered Species Act.

58. This effort is regarded as one of the most successful efforts to reintroduce an imperiled species in the wild.

59. Considerable resources have been expended on this project by the USFWS and private cooperators.

60. The effort to reintroduce red wolves in the wild has attracted national attention and support.

61. Since reintroduction in the wild, the red wolf population and Red Wolf Recovery Area has expanded beyond the Alligator River National Wildlife Refuge to include the Pocosin Lakes and Mattamuskeet National Wildlife Refuges; the United States Air Force's Dare County Bombing Range; and private property, spanning Dare, Tyrrell, Hyde, Washington, and Beaufort counties.

62. Approximately 100 wild red wolves now live in their native habitat in northeastern North Carolina with the goal, as outlined in the USFWS' Red Wolf Recovery Plan, to remove threats of extinction by more than doubling the population in the wild.

63. In recent years, however, gunshot mortality has become a serious threat to the wild population of red wolves. Since 2004, up to 7% of the red wolf population is shot each year. These daytime accidental shootings are currently the leading cause of red wolf mortality. Due to the similarity in appearance of coyotes and red wolves, hunters taking part in legal coyote night hunting create risks of increased red wolf shootings.

64. Concerned over the risk of increased red wolf mortality, the USFWS submitted a comment letter on the permanent rule explaining:

The Service is concerned that the proposed night hunting regulations will result in red wolves being mistaken for coyotes and inadvertently shot.

...

In recent years, gunshot mortality has become a serious threat to the wild population of red wolves. From 1987 to 2003, the Red Wolf Recovery Program documented an average of less than two wolves killed per year by gunshots. Since 2004, red wolves taken by gunshot have substantially increased to about seven wolves per year. Last year (2011), at least seven red wolves were investigated as killed by gunshots during the fall hunting



seasons for deer and bear (October 15-December 31). Gunshot mortality of red wolves reduces the number of breeding animals, disrupts population dynamics, reduces recruitment, and increases an opportunity for hybridization between wolves and coyotes.

Letter from Cynthia K. Dohner, Regional Director, USFWS, to Gordon Myers, N.C. Wildlife Resources Commission (April 16, 2012).

65. In an effort to reduce hybridization, the USFWS also implemented a program to sterilize coyotes in the Red Wolf Recovery Area.

66. In its comment letter on the permanent rule, the USFWS further expressed its concern over the night hunting rule's impact on its coyote sterilization program and red wolf hybridization:

[F]our sterilized coyotes were lost to gunshot during [October 15 -December 31, 2011]. Gunshot mortality of sterile coyotes increases the potential for hybridization as intact coyotes fill the empty space, generally disrupts coyote dynamics, and increases compensatory reproduction (i.e. an increase in the number of offspring produced to compensate for the loss of individuals not reaching reproductive age as a result of ecological or social constraints), effectively increasing the coyote population. Moreover, these recent gunshot mortalities have *occurred during daylight hours*. Providing additional hunting opportunities at night will likely exacerbate the problem and increase the number of animals lost.

We are concerned that allowing the hunting of coyotes at night will increase the potential for more red wolves to be killed and more sterilized coyotes to be killed. Killing sterilized coyotes will undermine our management strategy to use coyotes as placeholders in making progress toward red wolf recovery.

Id. (emphasis added).

67. In its comment letter on the permanent rule, the USFWS also raised concerns over the risks to public safety caused by the permanent rule:

We are concerned about the safety of Red Wolf Recovery Program biologists too. While our field activities are typically conducted during the daytime,

occasionally our work, such as trapping, and that of our biologists must be done at night. As you may know, a law enforcement officer was killed in another state that currently allows hunting coyotes at night.

None of us wants to create a situation where that tragedy would be repeated. The potential for someone to get shot while legally hunting coyotes at night because of mistaken identity or because they were shooting at a canid being handled by our biologists is real. Night hunting presents a threat to the safety of our biologists, and to the general public, domestic pets and livestock, and non-targeted wildlife we know you will consider.

Id.

68. In its comment letter to the permanent rule, the United States Department of Agriculture (“USDA”) similarly expressed concerns over the risks to public safety caused by the night hunting rule:

As you may be aware, the National Forests in North Carolina are the second most visited National Forest in the country. There is a high demand for a wide variety of recreational uses such as camping, hiking, biking, and equestrian use in addition to hunting and fishing. Some 7.5 million visitors come to the National Forests in North Carolina each year. With this level of use we are concerned that night hunting of coyote . . . would compromise public and employee safety; the benefits would not outweigh the risks.

Letter from Keith Lawrence, Acting Forest Supervisor, USDA, to Gordon Myers, N.C. Wildlife Resources Commission (April 17, 2012).

**Rulemaking**

69. On June 17, 2011, the General Assembly ratified Session Law 2011-369, under which it repealed the provision in North Carolina General Statutes § 113 -291.1 that allowed the take of wild animals (including coyotes) with electronic calling devices. Under the Session Law, however, the General Assembly provided the Commission with authority to adopt rules prescribing the manner of taking wild animals with the use of artificial light and electronic calls.

70. The sections of Session Law 2011-369 related to artificial lights and electronic calls became effective on October 1, 2011.

71. In response to Session Law 2011-369, the Commission proposed in August 2011 to amend 15A N.C. Admin. Code 10B .0219, which governs the take of coyotes, to add the use of electronic calls as a permissible manner of take when hunting coyotes. These permanent rule changes to 15A N.C. Admin. Code 10B .0219 were proposed to take effect on January 1, 2012. 26 N.C. Reg. 94, 95, 106 (Aug. 1, 2011).

72. While the permanent rulemaking process was pending, the Commission proposed the same changes to 15A N.C. Admin. Code 10B .0219 in response to Session Law 2011-369 through a temporary rule permitting the take of coyotes by electronic calls. 26 N.C. Reg. 627, 633 (Oct. 1, 2011); 26 N.C. Reg. 699, 700 (Oct. 17, 2011).

73. The RRC approved the Commission's temporary rule allowing the take of coyotes with the use of electronic calling devices, effective October 1, 2011. 26 N.C. Reg. 699, 700 (Oct. 17, 2011).

74. Following approval of the temporary rule, the RRC also approved the permanent rule changes to 15A N.C. Admin. Code 10B .0219, allowing the use of electronic calls. As of that amendment, 15A N.C. Admin. Code 10B .0219, read as follows:

- (a) There is no closed season for taking coyotes by hunting.
- (b) There are no bag limit restrictions on coyotes.
- (c) Manner of Take. Hunters may use electronic calls.

26 N.C. Reg. 1095, 1104 (Feb. 1, 2012).

75. Again relying on the passage of Session Law 2011-369, the Commission proposed to amend 15A N.C. Admin. Code 10B .0219 a second time to allow for night hunting

of coyotes throughout North Carolina, including within the Red Wolf Recovery Area, with the use of electronic calls and artificial lights.

76. In the Fiscal Note Review for the permanent rule, the Commission concluded: “There will be a non-economic benefit to the regulated community of hunters by providing them with increased hunting opportunities. There *may* also be some benefit to the public by hunter reduction of the non-indigenous coyotes . . . .” (Emphasis added.) The Commission also determined that there will be no substantial economic impact, benefit or otherwise, to the public as a result of the permanent night hunting rule; thus no fiscal note was prepared for the rule.

77. The Commission published its Notice of Text in the North Carolina Register for the permanent rule on February 15, 2012. In its Notice of Text, the Commission published the proposed rule change as follows:

- (a) There is no closed season for taking coyotes by hunting. Coyotes may be taken by hunting anytime during the day or night.
- (b) There are no bag limit restrictions on coyotes.
- (c) Manner of Take. Hunters may use electronic calls calls and artificial lights.<sup>1</sup>

26 N.C. Reg. 1185, 1187 (Feb. 15, 2012).

78. In response to the Commission’s Notice of Text of the permanent rule, it received comment letters from individuals, organizations, and agencies, including the USFWS, the USDA, and AWI expressing concerns over the night hunting rule’s detrimental impacts on the endangered red wolf population and public safety.

79. Despite the concerns communicated in the comment letters, the Commission approved the permanent rule at its May 3, 2012 meeting to allow coyote night hunting with

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<sup>1</sup> Changes proposed in the Notice of Text to 15A N.C. Admin. Code 10B .0219, as currently codified, are indicated by underline; changes proposed during the rulemaking process after the Notice of Text was published for the permanent rule are indicated by underline and *italics*.

artificial lights throughout North Carolina, including within the endangered Red Wolf Recovery Area. As approved by the Commission, the permanent rule differed substantially from the rule published in the notice of text. As approved, the permanent rule read:

- (a) There is no closed season for taking coyotes by hunting. Coyotes may be taken on private lands by hunting anytime during the day or night. Coyotes may be taken on public lands by hunting from the hours of one-half hour before sunrise until one-half hour after sunset, and one-half hour after sunset to one-half hour before sunset by permit only.
- (b) There are no bag limit restrictions on coyotes.
- (c) Manner of Take. Hunters may use electronic ~~ealls~~ calls and artificial lights.

80. At the same time the Commission approved the permanent rule, the Commission also authorized its Director to pursue temporary rulemaking for the night hunting rule in the event it was subsequently delayed until the next legislative session by the RRC's receipt of objection letters.

81. Even though the proposed permanent rule ultimately approved by the Commission differed substantially from the rule published in the Notice of Text, the Commission did not publish the revised text of proposed permanent rule in the North Carolina Register or accept comments on the different rule. Instead, the Commission submitted the revised proposed permanent rule to the RRC.

82. On June 15, 2012, the RRC returned the proposed permanent rule to the Commission with some technical corrections upon which the RRC made its approval contingent. With its corrections the rule would have read:

- (a) There is no closed season for taking coyotes by hunting. Coyotes may be taken on private lands by hunting anytime during the day or night. Coyotes may be taken on public lands by hunting without any permit from the hours of one-half hour before sunrise until one-half hour after sunset, and one-half hour after sunset to one-half hour before sunset by hunting by permit only.
- (b) There are no bag limit restrictions on coyotes.

(c) Manner of Take. Hunters may use electronic ~~ealls~~ calls and artificial lights.

83. Although not all of the RRC's required technical changes were made, the RRC approved the permanent rule on June 20, 2012 as follows:

- (a) *This rule applies to hunting coyotes.* There is no closed season for taking ~~coyotes~~ coyotes by hunting. Coyotes may be taken on private lands ~~by~~ *hunting* anytime during the day or night. Coyotes may be taken on public lands by hunting without ~~any~~ permit from the hours of one-half hour before sunrise until one-half hour after sunset, and one-half hour after sunset to one-half hour before sunset ~~by hunting~~ *by hunting* by permit only.
- (b) There are no bag limit restrictions on coyotes.
- (c) Manner of Take. Hunters may use electronic ~~ealls~~ calls and artificial lights.

27 N.C. Reg. 360, 366 (Aug. 1, 2012).

84. As recognized in the North Carolina Register, the permanent rule as approved by the RRC was "in a form different from that originally noticed in the Register." 27 N.C. Reg. 336 (Aug. 1, 2012).

85. Nonetheless, the proposed permanent rule would have become effective on July 1, 2012, but for the fact that the RRC received written objections to the permanent rule, as published in the February 2012 Notice of Text, requesting legislative review of that rule from over 30 persons.

86. The objection letters objected to the permanent rule text as proposed by the Commission in the Notice of Text, not to the text proposed to and subsequently approved by the RRC and adopted by the Commission.

87. Nonetheless, the RRC's receipt of the objection letters delayed implementation of the permanent rule until the General Assembly has the chance to consider the rule during North Carolina's next legislative session scheduled for January 2013.

88. Rather than allowing the permanent rule to proceed through the prescribed legislative review process, the Commission submitted to the RRC on July 13, 2012 an identical night hunting rule as a temporary rule:

- (a) This rule applies to hunting coyotes. There is no closed season for taking coyotes coyotes by hunting. Coyotes may be taken on private lands anytime during the day or night. Coyotes may be taken on public lands by hunting without a permit from the hours of one-half hour before sunrise until one-half hour after sunset, and one-half hour after sunset to one-half hour before sunset by permit only.
- (b) There are no bag limit restrictions on coyotes.
- (c) Manner of Take. Hunters may use electronic calls calls and artificial lights.

89. In its Findings of Need for the temporary rule submitted to the RRC, the Commission based the need for the temporary rule on the “effective date of a recent act of the General Assembly,” Session Law 2011.369 (effective October 1, 2011), under North Carolina General Statutes § 150B-21.1(a), and the Commission’s need to establish hunting seasons under North Carolina General Statutes § 150B-21.1(7).

90. At its July 13, 2012 meeting, the RRC approved the temporary rule. The temporary rule went into effect on August 1, 2012. The permanent rule is still pending legislative review.

91. Because the unlawfully adopted temporary rule permits night hunting of coyotes with artificial lights throughout North Carolina, including within the Red Wolf Recovery Area, the temporary rule will result in increased red wolf mortality and hybridization and risks to public safety.

**FIRST CLAIM FOR RELIEF**  
**(Violation of APA – No Recent Act of the General Assembly Required the  
Temporary Rule)**

92. The allegations of the preceding paragraphs are incorporated by reference as if repeated and set forth in full herein.

93. Temporary rules are permitted under the APA only in limited and prescribed circumstances.

94. An agency may adopt a temporary rule when it finds that adherence to the notice and comment requirements for a permanent rule would be contrary to the public interest and that the immediate adoption of the rule is *required* by one or more of the reasons enumerated in the APA, including “a recent act of the General Assembly.” N.C. Gen. Stat. § 150B-21.1(a).

95. In its Findings of Need for the temporary rule, the Commission claims that the temporary rule was required by “a recent act of the General Assembly.”

96. The Commission failed to identify a recent act of the General Assembly that required the adoption of the temporary rule.

97. In its Findings of Need for the temporary rule, the Commission claims that Session Law 2011-369 is the recent act of the General Assembly that compelled the need for the temporary rule.

98. Session Law 2011-369’s relevant sections state that the “Commission *may* adopt rules prescribing seasons and the manner of taking of wild animals and wild birds with the use of artificial light and electronic calls.” (emphasis added.)

99. Session Law 2011-369’s relevant language does not *require* the Commission to do anything.



100. Session Law 2011-369's relevant language contains no *requirement* that the Commission adopt a temporary rule to allow coyote night hunting with artificial lights.

101. Session Law 2011-369's relevant language also contains no requirement that made it "reasonably necessary [for the Commission to adopt the temporary rule] to implement or interpret an act of the General Assembly." N.C. Gen. Stat. § 150B-21.9.

102. In fact, in its Fiscal Review of the Permanent Rule, the Commission stated that the primary benefit of the rule was "to the regulated community of hunters by providing them with increased hunting opportunities."

103. Because the temporary rule was not required by a recent act of the General Assembly, it must be vacated.

**SECOND CLAIM FOR RELIEF**  
**(Violation of APA – The Commission's Authority to Set Seasons Does Not Authorize Rulemaking Related to the Manner of Take by Use of Artificial Lights)**

104. The allegations of the preceding paragraphs are incorporated by reference as if repeated and set forth in full herein.

105. Temporary rules are permitted under the APA only in limited and prescribed circumstances.

106. An agency may adopt a temporary rule when it finds that adherence to the notice and comment requirements for a permanent rule would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the reasons enumerated in the APA, including "the need of the Commission to establish hunting seasons or bag limits." N.C. Gen. Stat. § 150B-21.1(a).

107. The Commission's authority to fix seasons includes the closing of seasons completely when necessary and fixing the hours of hunting. N.C. Gen. Stat. § 113-291.2.

108. The Commission's authority to regulate the manner of take is separately derived from North Carolina General Statutes § 113-291.1 (Manner of taking wild animals and wild birds).

109. Examples of manner of take include: a rifle, a bow and arrow, electronic calls, and artificial lights. N.C. Gen. Stat. § 113-291.1.

110. The temporary rule provision allowing the take of coyotes with artificial lights does not establish a hunting season; it simply expands the manner of take.

111. Even if allowing the take of coyotes at night with artificial lights could be considered within the Commission's authority to establish hunting seasons or bag limits, the Commission has failed to demonstrate any "need" to revise the coyote hunting season.

112. Therefore, the Commission's reliance on "the need of the Commission to establish hunting seasons or bag limits," N.C. Gen. Stat. § 150B-21.1(a), to adopt the temporary rule's provision allowing the take of coyotes with artificial lights is unauthorized and improper.

113. Because the temporary rule to allow night hunting with artificial lights is not within the Commission's power to set seasons, the portion of the rule permitting the use of artificial lights must be vacated.

**THIRD CLAIM FOR RELIEF**  
**(Violation of APA – The Commission Failed to Follow the Required Procedures for Adopting a Temporary Rule)**

114. The allegations of the preceding paragraphs are incorporated by reference as if repeated and set forth in full herein.

115. The APA sets forth a series of mandatory rulemaking procedures for adopting a temporary rule. See N. C. Gen. Stat. § 150B-21.1. A "rule is not valid unless it is adopted in

substantial compliance with the [APA's rulemaking procedures]." N.C. Gen. Stat.

§ 150B-18.

116. An agency "may adopt a temporary rule when it finds that adherence to the notice and hearing requirements [for a permanent rule] would be contrary to the public interest and that the immediate adoption of the rule is *required* by one or more" of the reasons enumerated in the APA, including (1) "[t]he effective date of a recent act of the General Assembly," or (2) the need of the Commission to establish hunting seasons or bag limits. N.C. Gen. Stat. § 150B-21.1(a) (emphasis added).

117. Unless otherwise provided by law, an agency seeking to adopt a temporary rule must also provide the text of the rule and a notice of public hearing at least 30 days prior to adopting the temporary rule; notify interested persons on its mailing list maintained pursuant to North Carolina General Statutes § 150B-21.2(d) and any other interested parties of its intent to adopt the temporary rule and of the public hearing; accept written comments on the proposed temporary rule for at least 15 days prior to adopting the temporary rule; and hold at least one public hearing on the proposed rule. N.C. Gen. Stat. § 150B-21.1(a3). The agency must also prepare a written statement of its Findings of Need, explaining why adherence to the more stringent notice and hearing requirements for permanent rules would be contrary to the public interest and why immediate adoption of the rule is required. N.C. Gen. Stat. § 150B-21.1(a4).

118. The Commission adopted the temporary rule without following the required procedures.

119. The Commission failed to identify "a recent act of the General Assembly" that "required" the adoption of the temporary rule. N.C. Gen. Stat. § 150B-21.1(a), (a2).

120. The Commission's "need . . . to establish hunting seasons or bag limits," N.C. Gen. Stat. § 150B-21.1(a), did not authorize the Commission to adopt the temporary rule's provision allowing the manner of take of coyotes with artificial lights.

121. The Commission failed to submit the temporary rule and a notice of public hearing to the Codifier of Rules at least 30 business days prior to adopting the temporary rule. N.C. Gen. Stat. § 150B-21.1(a3).

122. The Codifier of Rules was therefore unable to fulfill its duty to publish the proposed temporary rule and the notice of public hearing on the Internet. N.C. Gen. Stat. § 150B-21.1(a3).

123. The Commission failed to notify persons on its mailing list, required to be maintained under North Carolina General Statute § 150B-21.2(d), and any other interested parties of its intent to adopt the temporary rule. N. C. Gen. Stat. § 150B-21.1(a3)(2).

124. The Commission failed to accept comments on the proposed temporary rule prior to adopting the rule. N.C. Gen. Stat. § 150B-21.1(a3).

125. The Commission failed to hold any public hearings on the proposed temporary rule. N.C. Gen. Stat. § 150B-21.1(a3).

126. The Commission failed to establish in its Findings of Need for the temporary rule why adherence to the notice and hearing requirements for a permanent rule would be contrary to the public interest. N.C. Gen. Stat. § 150B-21.1(a4).

127. The Commission failed to establish in its Findings of Need for the temporary rule why immediate adoption of the temporary rule was required. N.C. Gen. Stat. § 150B-21.1(a4).

128. In its Fiscal Review of the Permanent Rule, the Commission stated that the primary benefit of the rule was “to the regulated community of hunters by providing them with increased hunting opportunities.”

129. The agency adopted the temporary rule on July 12, 2012 without notifying the public or accepting written comments and without sufficient legal justification.

130. Because the Commission failed to follow the required procedures for temporary rulemaking, the Commission did not have authority to adopt the temporary rule.

131. Because the temporary rule was not adopted in accordance with the APA’s procedures for adopting temporary rules, it must be vacated.

#### **FOURTH CLAIM FOR RELIEF**

#### **(Violation of APA – The Commission’s Adoption of the Permanent Rule As a Temporary Rule Violates the APA Because the Permanent Rule Did Not Meet the Necessary Criteria for Temporary Rule Adoption)**

132. The allegations of the preceding paragraphs are incorporated by reference as if repeated and set forth in full herein.

133. When the requirements set forth in North Carolina General Statutes § 150B-21.2(c)(9) and 150B-21.3(b2) for receiving comments and objections on the permanent rule as published in the Notice of Text are met and where a permanent rule is subject to legislative disapproval, an agency may adopt “the rule as a temporary rule if the [permanent] rule would have met the criteria in G.S. 150B-21(a) [for adopting a temporary rule] at the time the notice of text for the permanent rule was published in the North Carolina Register.” N.C. Gen. Stat. § 150B-21.3(b2).

134. The temporary rule and the permanent rule adopted by the Commission differ substantially from the text of the proposed permanent rule published in the North Carolina

Register, and the Commission failed to publish the revised text of the different rule in the North Carolina Register or accept comments on the different rule.

135. The Commission did not meet the requirements for permanent rulemaking as set forth in North Carolina General Statutes §§ 150B-21.2(c) and 150B-21.3(b2), including the requirements for public notice, comment, and hearing, because the text of the temporary rule and the adopted permanent rule differ substantially from the permanent rule language published in the Notice of Text.

136. The objection letters received by the Commission were in response to the text of the permanent rule published in the Notice of Text in the North Carolina Register and not to the substantially different text of the adopted permanent rule.

137. Similarly, the objection letters received by the Commission sought legislative review of the text of the permanent rule published in the Notice of Text in the North Carolina Register and not of the substantially different text of the adopted permanent rule.

138. The Commission's adoption of the permanent rule as a temporary rule was therefore improper, despite the fact that the permanent rule was subject to legislative approval, because the pending permanent rule did not meet the criteria for adopting a temporary rule at the time the Notice of Text for the permanent rule was published in the North Carolina Register.

139. The Commission failed to identify "a recent act of the General Assembly" that "required" the adoption of the temporary rule. N.C. Gen. Stat. § 150B-21.1(a), (a2). Session Law 2011-369 did not *require* the Commission to adopt rules allowing coyote night hunting with artificial light.

140. Even assuming Session Law 2011-369 did require the Commission to adopt the night coyote hunting rules, the relevant sections of Session Law 2011-369 became effective on

October 1, 2011, more than 210 days prior to the Commission's submission of the temporary rule to the RRC on July 13, 2012.

141. The date on which the permanent rule's Notice of Text was published cannot be used in determining whether Session Law 2011-369 is a "recent act" of the General Assembly because the Commission did not meet the requirements as set forth in North Carolina General Statutes § 150B-21.3(b2) for adopting a permanent rule as a temporary rule: the text of the temporary rule and the adopted permanent rule differed substantially from the permanent rule language in the Notice of Text published in the North Carolina Register depriving the public of the opportunity to comment on or submit objections to the permanent rule as adopted.

142. The Commission's "need . . . to establish hunting seasons or bag limits," N.C. Gen. Stat. § 150B-21.1(a), also did not authorize the Commission to adopt the temporary rule's provision allowing the manner of take of coyotes with artificial lights.

143. Because the permanent rule did not meet the necessary criteria for temporary rule adoption at the time the Notice of Text for the permanent rule was published in the North Carolina Register, the temporary rule was adopted without the process required under the APA and must be vacated.

#### **FIFTH CLAIM FOR RELIEF**

#### **(Violation of APA – Session Law 2011-369 Is Not a "Recent Act" of the General Assembly and Cannot Serve as Justification for the Temporary Rule)**

144. The allegations of the preceding paragraphs are incorporated by reference as if repeated and set forth in full herein.

145. Temporary rules are permitted under the APA only in limited and prescribed circumstances.

146. An agency may adopt a temporary rule when it finds that adherence to the notice and comment for a permanent rule requirements would be contrary to the public interest and that the immediate adoption of the rule is *required* by one or more of the reasons enumerated in the APA, including “a recent act of the General Assembly.” N.C. Gen. Stat. § 150B-21.1(a).

147. A “recent act of the General Assembly” is one “occurring or made effective no more than 210 days prior to the submission of a temporary rule to the [RRC].” N.C. Gen. Stat. § 150B-21.1(a2).

148. In its Findings of Need for the temporary rule, the Commission claims that the temporary rule was required by “a recent act of the General Assembly.”

149. The Commission failed to identify a recent act of the General Assembly that required the adoption of the temporary rule.

150. In its Findings of Need for the temporary rule, the Commission claims that Session Law 2011-369 is the recent act of the General Assembly that compelled the need for the temporary rule.

151. The Commission submitted the temporary rule to the RRC on July 13, 2012.

152. The relevant sections of Session Law 2011-369 became effective on October 1, 2011, more than 210 days prior to the Commission’s submission of the temporary rule to the RRC on July 13, 2012.

153. Session Law 2011-369 is not a “recent act” of the General Assembly because it was made effective more than 210 days prior to the Commission’s submission of the temporary rule to the RRC.



154. Even if Session Law 2011-369 could be considered a “recent act of the General Assembly,” its relevant sections do not “*require*” the Commission to adopt rules night coyote hunting rules.

155. Because Session Law 2011-369 is not a recent act of the General Assembly that *required* the Commission to adopt night coyote hunting rules, it cannot form the basis for the temporary rule, and the temporary rule must be vacated.

**SIXTH CLAIM FOR RELIEF**  
**(Violation of APA – The Commission’s Temporary Rule Is Unclear and Ambiguous.)**

156. The allegations of the preceding paragraphs are incorporated by reference as if repeated and set forth in full herein.

157. A temporary rule must be “clear and unambiguous.” N.C. Gen. Stat. § 150B-21.9.

158. As adopted, the temporary rule is unclear and ambiguous:

- (a) This rule applies to hunting coyotes. There is no closed season for taking coyotes. Coyotes may be taken on private lands anytime during the day or night. Coyotes may be taken on public lands by hunting without a permit from the hours of one-half hour before sunrise until one-half hour after sunset, and one-half hour after sunset to one-half hour before sunset by permit only.
- (b) There are no bag limit restrictions on coyotes.
- (c) Manner of Take. Hunters may use electronic calls and artificial lights.

159. The Commission’s authorizing statute, permanent rules, and temporary rule do not define the terms “private lands” or “public lands.”

160. Without definitions of “private lands” and “public lands,” it is impossible to determine the scope, application, or requirements of the temporary rule.

161. Moreover, the rule does not define the type of permit that is needed for night hunting of coyotes on public lands or identify the person or agency responsible for issuing the permit.

162. The rule also does not prescribe any procedures for obtaining a permit for night hunting of coyotes on public lands.

163. The temporary rule does not clarify whether and to what extent the public land managers have the authority to preclude or set limitations on night coyote hunting on the public lands within their jurisdiction.

164. The temporary rule leaves those individuals who desire to hunt coyotes at night on public lands without any guidance on when a permit is required because the term "public lands" is undefined.

165. The temporary rule leaves those individuals who desire to hunt coyotes at night on public lands without any guidance on what kind of permit is required.

166. The temporary rule leaves those individuals who desire to hunt coyotes at night on public lands without any guidance on where to apply for a permit or what procedures must be followed to obtain a permit.

167. The temporary rule leaves those individuals who desire to hunt coyotes at night on public lands without any guidance on what additional limitations on night coyote hunting may be set by public land managers on the lands within their jurisdiction.

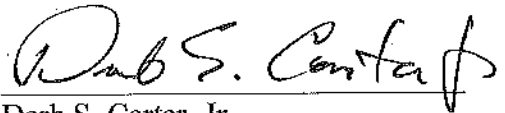
168. Because the temporary rule is unclear and ambiguous, it must be vacated.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Issue a declaratory judgment stating that the Defendants have violated the APA, and its implementing regulations in the respects set forth above;
- B. Order that the temporary rule be vacated, set aside, and/or rescinded;
- C. Issue an injunction preventing the illegal temporary rule from taking further effect;
- D. Award Plaintiffs the costs of this action, including their reasonable attorneys' fees; and
- E. Grant Plaintiffs such further and additional relief as the Court deems just and proper.

This the 7<sup>th</sup> day of September, 2012.



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