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TEXAS PARKS AND WILDLIFE COMMISSION
REGULATIONS COMMITTEE MEETING
COMMISSION HEARING ROOM
TEXAS PARKS AND WILDLIFE HEADQUARTERS COMPLEX
AUSTIN, TRAVIS COUNTY, TEXAS
JANUARY 16, 2002

BE IT REMEMBERED that heretofore on the 16th day
of January, 2002, there came on to be heard matters
under the regulatory authority of the Parks and
Wildlife Commission of Texas, in the Commission
Hearing Room of the Texas Parks and Wildlife
Headquarters Complex, Austin, Texas, beginning at
9:00 a.m. to wit:

APPEARANCES:

THE PARKS AND WILDLIFE COMMISSION:
REGULATIONS COMMITTEE:

- CHAIR: Katharine Armstrong Idsal, San Antonio, Texas
- C CHAIR: Joseph Fitzsimons, San Antonio, Texas
- Donato D. Ramos, Laredo, Texas
- Philip Montgomery, III, Dallas, Texas
- Ernest Angelo, Jr., Midland, Texas
- John Avila, Jr., Ft. Worth, Texas (Absent)
- Alvin L. Henry, Houston, Texas (Absent)
- Mark E. Watson, San Antonio, Texas (Absent)

THE PARKS AND WILDLIFE DEPARTMENT:
Robert L. Cook, Interim Executive Director, and other
personnel of the Parks and Wildlife Department

COPY

1 statewide oyster fishery proclamation and have
2 proposed amendments that directly affect the
3 administration and management of the oyster lease
4 program, and will provide consistency with the Parks &
5 Wildlife Code Chapter 76 as modified by SB305,
6 including decreasing of the lease fee from \$3 to \$6
7 per acre. And that is the fourth item on your agenda
8 today.

9 Secondly, to continue the rules review
10 process as directed by HB1 of the 75th Legislature:
11 The proposed statewide hunting and fishing
12 proclamation, which we're going to talk about today,
13 is a result of our ongoing rule review process. Staff
14 will request permission to publish rule review and
15 amendments of TAC Chapter 65 to you today.

16 Finally, to develop guidelines for the
17 removal of abandoned crab traps: This action is well
18 under way. Coastal fisheries and law enforcement
19 personnel would, in fact, like to invite the
20 Commission to participate in any number of crab trap
21 clean-up projects that will occur along the Texas
22 coast during the weekend beginning on February 23rd.
23 We'd love to have you there. The list being provided
24 to you, I believe, are some sites of where these
25 activities are going on, some of the focal spots. And

1 this -- this is going to be a big deal for us, it's
2 very important, and we're all kind anxious to see how
3 it goes. So we appreciate your help on that.

4 And that's my report, sir.

5 COMMISSIONER FITZSIMONS: Thank you,
6 Bob. I'm taking my Boy Scout Troop that week, so
7 that'll be fun.

8 The second item on Equine Anemia
9 Regulations, following up on our last Committee
10 meeting. Jerry?

11 MR. COOKE: Mr. Chairman and Members, my
12 name is Jerry Cooke, Game Branch Chief for the
13 Wildlife Division. And I'll be presenting to you the
14 proposed changes to Chapters 59, which are the park
15 rules, and Chapter 65, which address the wildlife
16 management area rules.

17 When we invite the public onto our
18 properties, the public arrives with a reasonable
19 expectation of being protected from other visitors,
20 minimally. One such hazard has been pointed out in
21 the past to us is the -- is the hazard of an infected
22 animal -- an Equine with Infectious Equine Anemia. We
23 proposed at the last Commission meeting that we
24 publish such a rule change. This -- this rule would
25 require that anyone who brings an equine of any kind

1 on to either a wildlife management area or a state
2 park have with them for each equine a VS Form 1011,
3 Texas Animal Health Commission, which shows that the
4 equine has been tested negative to the official -- to
5 an official Equine Infectious Anemia test within the
6 previous 12 months. We had, at last count, twelve
7 comments, all were equestrians, all in favor of these
8 proposed changes. Do you have any questions?

9 COMMISSIONER FITZSIMONS: This would
10 essentially bring our park regulations in compliance
11 with what's now required by the Animal Health
12 Commission for people at rodeos or any other --

13 MR. COOKE: For large gatherings.

14 COMMISSIONER FITZSIMONS: -- groups by
15 the -- right.

16 MR. COOKE: We are defining -- we are
17 defining entry on to our property as -- essentially as
18 a large gathering, a public gathering of -- of
19 equines.

20 COMMISSIONER FITZSIMONS: So they will
21 now be compliant with -- with the rest of the rest of
22 the --

23 MR. COOKE: With the intent, yes.

24 COMMISSIONER FITZSIMONS: Thank you,
25 Jerry. Are there no further questions or discussions

1 or any questions for Jerry on this?

2 Without objection, I'll place this item
3 on the Thursday Commission meeting agenda for public
4 comment and action.

5 And continuing with the animal health
6 theme, Jerry, we're discussing cervid disease issues.
7 As a point of background, the Committee of -- of the
8 whole, the Regulations Committee of the whole, asked
9 the staff at our last meeting to consult with the
10 Texas Animal Health Commission and report back on
11 potential regulatory action at this meeting regarding
12 cervid diseases. Jerry?

13 MR. COOKE: Again, Mr. Chairman and
14 Members, my name is Jerry Cooke, Game Branch Chief of
15 the Wildlife Division presenting this proposal to you
16 related to cervid diseases in Texas.

17 As Chairman Fitzsimons pointed out,
18 we've had ongoing conversations with the Animal Health
19 Commission, including one, you know, full-blown
20 meeting with them on these issues. One of the things
21 that was impressed upon me and I think that they
22 stressed was -- was the ideal situations the disease
23 doesn't show up. I think that's to a certain extent
24 may be wishful thinking. Because it's basically
25 impossible to prevent a foreign animal disease from

1 entering the state; there are too many avenues.

2 That's the basics of it.

3 However, having said that, early
4 detection is our greatest hope of throwing the loop
5 around it and getting it under control as quickly as
6 possible, and early detection really is dependent upon
7 whether or not you're looking for it.

8 Also, it was impressed upon me that if a
9 regulation is presented -- and this really follows the
10 charges that we've had from this Commission all along;
11 a regulation should be reasonable, focused, and aimed
12 with the intent of the issue. Their version of this
13 is, you don't create a regulation that's any broader
14 than is necessary to address the issue, and that it's
15 focused directly on solving the problem. And I
16 believe this -- these proposals are complying.

17 One of the first things, of course,
18 that's discussed is importation, and I wanted to give
19 you a current status of the importation issue of
20 deer. The Texas Animal Health Commission is
21 addressing it in -- in several ways. One certainly
22 related to Chronic Wasting Disease is the State of
23 Colorado is currently embargoed for the transportation
24 of whitetail, mule deer, black tail deer, or elk into
25 the State of Texas. Also, they have current rules

1 that require TB testing for any animal that comes into
2 Texas from any state except for properties that --
3 that have a TB-free status. And specifically, with
4 the State of Michigan because the State of Michigan
5 has free-ranging tuberculosis, only animals coming
6 from a -- a TB-free certified facility can enter
7 Texas. But more importantly, the Texas Animal Health
8 Commission has the qualified staff for assessing risk
9 from the these various states and can expand their
10 embargoes as the risks become apparent.

11 Now, how are we currently dealing with
12 importation? In rules that were adopted several years
13 ago by this Commission, if an animal is brought into
14 the State of Texas, a whitetail deer or a mule deer,
15 for a scientific breeder facility they must be in
16 complete compliance with all Texas Animal Health
17 Commission testing requirements and entry
18 requirements. The reason that this is mirrored in our
19 regulation is it allows our staff to assist the Animal
20 Health Commission in enforcing their rules in this
21 respect. And it also gives the Texas Animal Health
22 Commission complete flexibility without requiring us
23 to change our regulations. We just say do what they
24 say to do and they can -- they can modify their
25 requirements as they see fit.

1 Now, the statutes that relate to the
2 scientific breeder permit state that only whitetail
3 deer and mule deer that are in a healthy condition may
4 be sold, bartered, or exchanged or offered for sale,
5 barter, or exchange by a scientific breeder. And the
6 statutes further clarify that the only purpose of
7 possession under this permit is for propagation or
8 sale. The problem is, is that neither in the statutes
9 nor our rules nor a very clear common agreement is the
10 definition of "healthy condition" made. And we would
11 propose that within our scientific breeder regulations
12 that we do just that: Define healthy condition as
13 being deer coming from a facility that has either a
14 Chronic Wasting Disease monitored herd status no less
15 stringent than Level A, and a tuberculosis herd
16 accreditation status no less stringent than surveyed
17 herd which are current existing animal programs within
18 the Texas Animal Health Commission. And these are
19 entry levels at these -- at these statuses as well.

20 VICE-CHAIRMAN ANGELO: Jerry, what --
21 what does Level A mean?

22 MR. COOKE: Can I -- Can I get that in a
23 slide or two?

24 VICE-CHAIRMAN ANGELO: Sure.

25 MR. COOKE: Because I want to go ahead

1 and complete this thought and then -- then I'll
2 clarify what that -- how that's going to apply.

3 Alternatively, a valid herd health
4 management plan approved by the Texas Animal Health
5 Commission for a facility. This is essentially the
6 Animal Health Commission's version of our wildlife
7 management plans of sitting down with the landowner
8 and -- or the facility operator and assessing the
9 risks and the needs of the -- of the situation and --
10 and designing programs around those needs.

11 Now, what does this entail, Mr. Angelo.
12 For instance, the -- the status for the Chronic
13 Wasting Disease would require this: If you have an
14 animal that clearly is looking suspicious that it --
15 that your veterinarian is concerned about as -- as
16 having all the symptoms and signs by all means test
17 that animal. That mean -- not necessarily means
18 putting the animal down, but it's -- you know, it's
19 for the benefit of the facility. Also, if any animal
20 dies in the facility for whatever reason, hits the
21 fence, gets caught in the gate, you know, gored by
22 another animal, go ahead and test it, test it for
23 Chronic Wasting Disease. This basically means if
24 nothing dies in your facility it costs you nothing
25 except to have a -- a clearer unique identifier for

1 every animal in the property in the facility; which
2 our rules already require anyway, that's no change
3 from our current requirements.

4 For a tuberculosis herd accreditation
5 status as described in the proposal, this would
6 require at least 20 percent of a herd be tested
7 annually sometime during the year for TB. This is --
8 this would involve essentially a vet visit. Any
9 positive tests that show up from a vet visit would be
10 followed up by the Texas Animal Health Commission.

11 Now, how would this apply to our rules?
12 I believe the statute is fairly clear in what that
13 means. But if we clarified it in rules there would be
14 no real question.

15 The proposed change would be no person
16 may sell, offer deer for sale, or transport other than
17 to a veterinarian temporarily relocated deer or
18 release a deer into the wild in this state if the
19 deer -- if the deer are not in a healthy condition as
20 defined it within our definitions. And that completes
21 my presentation. If you have any questions?

22 COMMISSIONER MONTGOMERY: As I
23 understand it, there's no live test for Chronic
24 Wasting Disease.

25 MR. COOKE: There is -- there is --

1 COMMISSIONER MONTGOMERY: How do we
2 define healthy condition with respect to Chronic
3 Wasting Disease?

4 MR. COOKE: There is -- there is
5 currently no credited test; although, there's an
6 experimental test going on in Colorado and Wyoming
7 currently dealing with a -- with a tonsil biopsy which
8 may be infected from mule deer. Now, there is --
9 there is a test that's being used -- I'm sitting here
10 telling you all this. We have some people here from
11 Texas Animal Health Commission to answer detailed
12 questions for you of that nature so I don't mispeak
13 for them. If -- if they would -- if you would care to
14 have them.

15 Dr. Max Coates is with the Texas Animal
16 Health Commission; he may be able to handle some of
17 these technical questions better than I.

18 DR. COATES: I'm Dr. Max Coates with
19 Texas Animal Health Commission, and in my position
20 there oversee the field operations. I'd be happy to
21 try to address this question or others.

22 As Jerry mentioned, currently there is
23 no live animal tests for Chronic Wasting Disease.
24 There are tests under development but, of course, they
25 are a variable period of time out.

1 The test for Chronic Wasting Disease is
2 a -- is a fatal experience because the brain tissue is
3 required for a definitive diagnosis. Now, this would
4 be the reason why all of the deads would need to be
5 examined; particularly, if they were showing any signs
6 that were compatible with a diagnosis -- possible
7 diagnosis of Chronic Wasting Disease.

8 Your specific question, I'm not sure
9 I've answered that for you. But if -- if I have not
10 please restate and I'll -- I'll take another run at
11 it.

12 COMMISSIONER MONTGOMERY: Trying to
13 understand what we're being asked to pass, and how --
14 if -- how do we define healthy with respect to Chronic
15 Wasting Disease?

16 DR. COATES: Chronic Wasting Disease is
17 basically determine -- the status of a herd is
18 determined by long-term surveillance; it's one of the
19 diseases that has a very long incubation period. Or
20 it may have a very long incubation period, so the only
21 way that you can really tell that it's absent from a
22 set of animals is prolonged surveillance, and to do
23 the laboratory evaluation of any animals that are
24 either symptomatic or died for whatever cause. And
25 once you do this for a period of time -- and that

1 period of time is -- is variable in different
2 jurisdictions, but may be up to five years -- and if
3 you have not had disease occur in a -- in a set of
4 animals that are kept isolated for that period of
5 time, it's -- it's believed that you're very safe at
6 that point in saying that they are truly free of this
7 particular disease.

8 The prion diseases as a rule have very
9 long incubation periods. And Chronic Wasting Disease
10 is one of those; scrapie is another. These are the
11 kinds of things that -- that take several years in
12 order to go from infection to clinical manifestation.

13 COMMISSIONER RAMOS: So really Chronic
14 Wasting Disease is a lot worse than our brucellosis
15 problem. Because with brucellosis you can test for
16 it.

17 DR. COATES: That's correct.
18 Brucellosis does have live animal tests and -- and is
19 much better understood. All of the prion diseases are
20 what might be classified as newly-emerging diseases.
21 And although they're being intensively studied,
22 particularly, as a result of BSE and the United
23 Kingdom, the total natural history of those diseases
24 has not yet been worked out.

25 COMMISSIONER RAMOS: And likewise, you

1 know, you can calfhooD vaccinate for brucellosis.

2 Can -- is there a comparable vaccine?

3 DR. COATES: There are no vaccines that
4 are effective or even in the works at this time for
5 any of these diseases.

6 COMMISSIONER RAMOS: So Chronic Waste
7 Disease is a much worse problem if we get it into
8 Texas than brucellosis?

9 DR. COATES: That's correct. Chronic
10 Wasting Disease would be extraordinarily difficult, if
11 not very nearly impossible, to eradicate with
12 certainty in a wildlife population. And this is the
13 issue that's facing places like Colorado and Wyoming.

14 MR. COOKE: And Nebraska.

15 DR. COATES: And Nebraska now.

16 COMMISSIONER RAMOS: And once we would
17 get it in the state do you -- is the type of disease
18 that would spread fairly fast? I mean if you -- if I
19 had it in my herd, for example, is it very contagious
20 or --

21 DR. COATES: It's a slow incubating
22 disease. Its spread is not clearly understood, but
23 it -- it is believed to be transferred laterally
24 within a herd under specific circumstances and may be
25 vertically transmitted from -- from dam to offspring.

1 And so it's -- and because you have to observe for
2 such a long period to determine that you either did or
3 did not have transmission, it would be a very long
4 period of time before we would know. But I would
5 suggest it's not raging contagious diseases that you
6 would expect for things like, say, anthrax -- not
7 anthrax but brucellosis. It doesn't spread that way
8 and it doesn't incubate out fast enough to -- to be a
9 real acute problem.

10 COMMISSIONER RAMOS: And -- and once an
11 animal develops it, is it reversible or does the
12 animal die?

13 DR. COATES: It -- once an animal
14 becomes infected and clinical, it's invariably fatal.
15 There is no prevention, no treatment, and no cure.

16 COMMISSIONER RAMOS: Thank you.

17 VICE-CHAIRMAN ANGELO: How long from the
18 time the symptoms are visible does -- before the
19 animal dies? Is there a standard for that?

20 DR. COATES: A variable period of time.
21 The -- again, a lot of detailed controlled
22 experimentation has not yet been done with these
23 things, and a lot of it depends on the general
24 husbandry and condition of the animal going in as well
25 as the environmental conditions. You know, a harsh

1 environment will take them down quicker than some mild
2 climate and -- and relatively decent groceries and low
3 parasite loads. But I think as -- from the time they
4 begin to be symptomatic and you notice that they're
5 wasting away, it doesn't take a great long time.

6 COMMISSIONER RAMOS: Would it make sense
7 that if you have them in a confined -- if you have an
8 animal in a confined area of pens that it's more
9 likely to spread but, obviously, throughout in the
10 wild?

11 DR. COATES: I think this is axiomatic
12 with any infectious or contagious disease situation;
13 the more concentrated the population the easier it is
14 for effective transmission to occur. And where we --
15 the -- the current herd, for example, in Nebraska,
16 the -- the whitetails that are infected, have a very
17 high infection rate. This is well beyond what's been
18 observed in free-ranging populations. However, I will
19 say that those are very heavily stocked. They're in a
20 high-fence containment situation. They're -- they
21 couldn't survive on a natural environment at that
22 density; you would starvation, wholesale starvation.
23 But this particular group is fed or they plant plots
24 of feed stuff so that they have plenty of -- of food
25 to match the population. But their rate is

1 extraordinarily high. Natural rate is about 4 percent
2 they believe in the free-ranging situation. These are
3 probably very nearly 40 percent.

4 COMMISSIONER RAMOS: So basically what
5 you're saying is, if -- if in fact we were to have a
6 case of in Texas of Chronic Wasting Disease that would
7 definitely be a threat to our deer herds?

8 DR. COATES: Yes, it would be. And I
9 think that the -- again, particularly where you
10 concentrate them and facilitate the transmission of
11 either TB or any other infectious disease and then
12 turn them loose you -- this is one of the reasons why
13 this particular population is so key to the long-term
14 health of free-ranging deer in my view.

15 COMMISSIONER RAMOS: Thank you.

16 CHAIRMAN IDSAL: Once again, could you
17 tell us the states where Chronic Wasting Disease has
18 been found; and also, what states currently have
19 suspended importation of whitetail deer?

20 DR. COATES: The -- the current
21 locations in free-ranging populations right now is
22 Nebraska, Colorado, and Wyoming. These are where you
23 have infected animals that are free ranging. On the
24 other hand, there has been infection detected in -- in
25 captive herds in a number of other states. Currently,

1 the only states that have quarantined captive herds --
2 Dan, correct me if I mispeak -- are Nebraska and
3 Colorado. But in the past Montana, South Dakota,
4 Oklahoma, Kansas, Nebraska, and Colorado have all had
5 captive herds infected.

6 The response to Chronic Wasting
7 Disease -- and this has been recognized as a very
8 significant disease by U.S. Department of
9 Agriculture. In fact, recently they have created an
10 extraordinary emergency and are providing support for
11 depopulation of -- of infected CWD elk, particularly,
12 and they're -- they're going up to three thousand
13 dollars per head in order to assist in getting this
14 out of the populations, because it is a -- a very
15 significant threat. And it's not just the animal
16 health threat, but it is the public perception of risk
17 associated with the -- with the wildlife population,
18 and certainly there are those who feel that it would
19 have a serious adverse effect on -- on hunters'
20 attitudes if it got into our free-ranging population.

21 MR. COOKE: As it has in other states.

22 DR. COATES: Now, I will say that there
23 are programs for captive deer already in several
24 states; South Dakota has had a program for a number of
25 years; Colorado has programs; we have had a program on

1 the book for captive cervids; and so there are active
2 steps being taken to try and maintain the
3 marketability of these populations.

4 MR. COOKE: If I might, Madam Chairman,
5 to address your question a little more specifically.
6 Doug Humphreys on my staff contacted every wildlife
7 agency in the United States to determine how many of
8 them had specific prohibitions related to cervids or
9 whitetail deer particularly. And of those, he found
10 that of the 50 states 16 of them had fairly rigid or
11 rigorous entry requirements related to whitetail deer,
12 and that there were 7 states who outright prohibited
13 cervids from entering the state, if that was your
14 question.

15 CHAIRMAN IDSAL: That is my question.
16 Thank you.

17 VICE-CHAIRMAN ANGELO: Mr. Chairman,
18 how -- how contagious is the disease from elk and deer
19 and mule deer to cattle, for instance?

20 DR. COATES: Cattle are not known to be
21 affected. The -- the reason that the language to date
22 has been crafted hand-targets only blacktails,
23 whitetails, mule deer, and elk is those are the only
24 species known to be affected by this particular
25 condition. It's not one organism that can affect a

1 very wide range of hosts; these are the only known
2 hosts at this time.

3 COMMISSIONER FITZSIMONS: Dr. Coates, I
4 have just a couple of questions. You pointed out --
5 and I may not have written this down quickly enough.
6 I'm interested in the relationship between captive and
7 free-range infection. Now, you listed free-range
8 infection Nebraska, Colorado, Wyoming?

9 DR. COATES: Colorado, Wyoming, and
10 Nevada. Those are the three states where free-ranging
11 disease is known to exist.

12 MR. COOKE: Chronic Wasting Disease.

13 COMMISSIONER FITZSIMONS: And there's no
14 coincidence that they are -- also have captive
15 infection. And my question is, it goes from captive
16 to free range?

17 DR. COATES: I'm not sure I would draw
18 that conclusion that -- that having both enhances the
19 possibility that disease will exist. Disease was
20 first noted in free-ranging animals -- and this was in
21 the area of north central Colorado up around the area
22 of Fort Collins where it was first disclosed, and
23 since then it's been detected other places.

24 One of the things that one must
25 consider, if you're looking at free-ranging

1 populations and -- and anything that causes them to
2 slow down, lose condition, lose vitality, is that in
3 the presence of reasonable predator populations these
4 disappear from the scene at an abnormally fast rate,
5 and unless you're out there looking it may exist out
6 there at this low level and you won't notice that it's
7 there.

8 COMMISSIONER FITZSIMONS: And it's that
9 4 percent level, but, obviously, when you're captive
10 at 40 percent that you mentioned you're going to see
11 it.

12 DR. COATES: Right. This -- this set of
13 deer in Nebraska is an interesting one. And this is
14 fairly new and that -- that whole situation has not
15 been extensively studied because it is a newly
16 disclosed herd. But these things were caught in high
17 fence when it was built. There have been no
18 additional animals put in there, I'm told, for ten
19 years. Again, the population has increased steadily
20 over that period of time so that you have kind of a
21 closed-cell increasing concentration. If in fact,
22 those animals that were trapped in there initially had
23 that low level, predators are obviously not a feature
24 in that kind of situation. Then the opportunity
25 enhances for transmission as the density increases, so

1 that it may be an indication of what happens. What
2 really happened was that those animals, when they were
3 trapped, contained the disease but nobody new about
4 it.

5 COMMISSIONER FITZSIMONS: And then it's
6 allowed to spread in that -- in the captive
7 environment.

8 DR. COATES: Well, the -- those ones
9 that are -- were trapped in that high fence continued
10 to just spread it around and -- and was facilitated by
11 the high concentration.

12 MR. COOKE: But that would necessarily
13 suggest it was already free ranging before the fence
14 was closed.

15 DR. COATES: Right. Undetected in the
16 free-ranging population for the -- perhaps, for the
17 reasons that I speculated about.

18 COMMISSIONER FITZSIMONS: Now -- and you
19 pointed out that detection -- the problem with
20 detection, I mean, just you boil it down that -- that
21 it's -- because of the slow incubation you don't know
22 until it's too late that you have it, I mean, five to
23 six years; is that right?

24 DR. COATES: They -- they feel that you
25 are very safe in saying if you carefully observed a

1 herd for five years and there is no indication of
2 disease that there is no disease present.

3 COMMISSIONER FITZSIMONS: But how does
4 it infect -- affect the integrity of a regulation if
5 you're allowing scientific breeders to release deer
6 into the wild in less than five years? That's what I
7 would -- there seems to be a gap.

8 DR. COATES: There is a gap. There is
9 frankly a gap. But in fact, although, we don't think
10 we've imported any at this point in time, we have no
11 reason to believe we have, there's -- there's --
12 there's two things about disease. You can either make
13 a statement that it's not known to exist, which means
14 it hasn't jumped up and bit you yet, or it's known not
15 to exist because you've been out -- been out there
16 actively looking for it.

17 COMMISSIONER FITZSIMONS: So either an
18 informed opinion or an uninformed one.

19 DR. COATES: That's right. You know, no
20 news is not necessarily good news and with -- you've
21 got to start with one of these things somewhere and my
22 judgment would be that the sooner the better. It's a
23 critically important piece of our economy and I think
24 we need to do things pretty vigorously to protect that
25 and make sure that the marketability of those products

1 is maintained.

2 COMMISSIONER FITZSIMONS: What would be
3 the difference in enforcement and administration if
4 instead of doing this you just waited until we got it
5 and then addressed it?

6 DR. COATES: Well --

7 MR. COOKE: Ask Michigan about that
8 issue.

9 DR. COATES: The Michigan whitetail deer
10 is probably a good example of why you don't want to
11 wait until you notice -- until you can't avoid
12 noticing, which is basically what they did with their
13 TB problem. It probably will not be cleared up in my
14 lifetime.

15 COMMISSIONER FITZSIMONS: The TB problem
16 in Michigan.

17 DR. COATES: The TB problem in
18 Michigan. And this disease is probably more insidious
19 and difficult to deal with than TB. We do have some
20 test technologies for live animal testing in TB.
21 Currently, there are no such techniques for -- for the
22 prion diseases. So getting that done --
23 extraordinarily difficult. The fallout from trying to
24 effectively deal with whitetails in this state, as
25 Michigan is struggling to do by wholesale population

1 reduction and -- and so forth would not be -- I would
2 not want to be in your chair with that situation.

3 COMMISSIONER FITZSIMONS: So your --
4 your message is, better early than late.

5 DR. COATES: Absolutely. No question
6 about it prevention is always the best bet.

7 COMMISSIONER FITZSIMONS: I can
8 understand simple language like that.

9 COMMISSIONER MONTGOMERY: Is there
10 anything else that this department should be doing?

11 DR. COATES: I beg your pardon?

12 COMMISSIONER MONTGOMERY: Is there
13 anything else your department recommends that we do
14 other than what we're planning to do with this
15 regulation and the enforcement regs as you all
16 discussed?

17 DR. COATES: I don't have any other
18 recommendations at this time. But certainly we're not
19 bashful about making those, and we do talk with --
20 with Jerry and his staff on a routine basis. And
21 Dr. Baca has worked with y'all in the TB efforts and
22 with monitoring on the wildlife management areas
23 and -- and, you know, I think that we certainly
24 recognize the -- this jurisdictions and the concern
25 y'all have about maintaining a healthy deer

1 population, and we're committed to doing the very best
2 that we can to assure that it stays the way it is.

3 COMMISSIONER RAMOS: But I guess what
4 you're saying is, the best way to not have a problem
5 is to not let it come in, obviously?

6 DR. COATES: The best way to avoid a
7 serious problem it to take preventive steps early.
8 And the best way to assure that you don't have a
9 problem is to monitor for it so that if it occurs you
10 find it early while it still is in its smallest state
11 and affords the highest probability of prompt
12 resolution.

13 COMMISSIONER RAMOS: Okay. And do you
14 know, Doctor, at this point in time there's any type
15 of a vaccine that you say, you know, in a year or two
16 years will be out there to where you might be able to
17 vaccinate against it, or is that just not even on the
18 drawing board?

19 DR. COATES: I would say not. The whole
20 notion of -- of what prions are, how they work is just
21 kind of like bacteriology was, you know, 75 years
22 ago. We really don't know enough about the mechanisms
23 of how they work, but it's -- it's very much below the
24 cellular level.

25 COMMISSIONER RAMOS: And would you say,

1 Doctor, that in the last few years the -- the number
2 has grown in the United States? In other words, if
3 you were to back up and look at what you would see
4 four or five years ago as occurred to -- today are we
5 seeing more cases?

6 DR. COATES: Absolutely.

7 COMMISSIONER RAMOS: So the national
8 trend, as you might say, might be in favor of the
9 spreading of that disease?

10 DR. COATES: Yes, indeed it has been.
11 And I think this -- the reason that USDA made their
12 move is that they clearly recognize that too and feel
13 like it's critically important to -- to address this
14 problem now rather than waiting further.

15 COMMISSIONER FITZSIMONS: Could you
16 specifically tell me what the USDA -- I mean, would
17 that be APHIS?

18 DR. COATES: That's correct. Well, the
19 United States Department of Agriculture. APHIS
20 Veterinary Services is a piece of that complex.

21 COMMISSIONER FITZSIMONS: Right.
22 Exactly what their declaration -- emergency
23 declaration or whatever the term was you used, just so
24 I can get my nomenclatures correct.

25 DR. COATES: I thought it -- I thought

1 it might come up, so, in fact, I brought a copy of
2 their declaration. It's published in the -- published
3 in the -- in the Federal Register and available on the
4 web site, but I did bring a copy of it that we can
5 probably get some --

6 MR. COOKE: Copies made.

7 DR. COATES: -- copies made if -- if
8 y'all would like those.

9 COMMISSIONER FITZSIMONS: One other --
10 Thank you, Doctor. In the prohibition or the embargo,
11 I think, the term you used with Colorado I notice it's
12 not all service, it's those mentioned blacktail, mule
13 deer, whitetail, elk, correct?

14 DR. COATES: That's correct.

15 COMMISSIONER FITZSIMONS: And that is
16 because that's where they -- that Chronic Wasting
17 Disease has occurred positively in those species?

18 DR. COATES: It's also the only species
19 of deer that it's known to occur in. There has never
20 been any indication, reports that it affects things
21 like sikas or fallow deer or any of the other exotic
22 deer species. So what we'd like to do in -- in
23 regulatory action is to do absolutely what's necessary
24 but don't overkill and don't go beyond where you know
25 you need to go. And I think that this is important

1 in -- in having credible regulatory programs is that
2 you do what you need to do and nothing more to
3 minimize the impact and -- and adverse effect.

4 COMMISSIONER FITZSIMONS: So whitetails
5 and -- and blacktail not an issue in Texas -- but
6 whitetail, mule deer, and elk are the --

7 DR. COATES: And blacktail.

8 COMMISSIONER FITZSIMONS: -- and
9 blacktail are the threats known to --

10 DR. COATES: That's correct. That's
11 correct. Those are the only species known to be
12 affected by this particular disease. So regulatory
13 control would only need to be exercised for those
14 particular types.

15 MR. COOKE: For that disease.

16 COMMISSIONER RAMOS: Would you have any
17 idea of what it's costing the other states that have
18 Chronic Wasting Disease in their herds? I mean --

19 MR. COOKE: I can get that for you.

20 COMMISSIONER RAMOS: -- I know the state
21 spends a lot of money fighting brucellosis. It would
22 be very expensive for the state to have to --

23 DR. COATES: I don't know what it costs,
24 but -- but those can probably be generated -- Jerry
25 can probably get those for you. But if you look just

1 at Colorado alone, when their problem erupted recently
2 they imposed a statewide ban on the export of all
3 deer, you know, and -- and they had a pretty sizable
4 industry up there, and that meant it all ground to a
5 halt. So whatever the value of that industry was at
6 the time it went to zero. And because of the disease
7 and the necessary protective responses by other
8 jurisdictions, it's going to be a very long time
9 before their marketability is regained for that
10 particular industry.

11 COMMISSIONER FITZSIMONS: That's
12 analagous to your example of Michigan on TB is, if you
13 till -- if you wait until you have the problem then
14 your industry is completely devastated rather than
15 getting in front of it.

16 DR. COATES: That's right. And it --
17 it -- the longer you wait -- if you wait until it
18 becomes a problem it is not a short-term fix. It is a
19 very, very long-term problem.

20 COMMISSIONER FITZSIMONS: And extremely
21 expensive, I imagine.

22 DR. COATES: Very expensive both in --
23 in dollars and political capital.

24 MR. COOKE: Well, in terms of the
25 Michigan thing, as I pointed out at the last

1 presentation, their surveillance is running tests on
2 37,000 animals per year; that's -- that's the agency
3 costs of -- of the disease independent of the
4 industry's impact.

5 COMMISSIONER FITZSIMONS: Commissioner
6 Montgomery?

7 COMMISSIONER MONTGOMERY: The question
8 is just where you're going, so what is the regulatory
9 plan for these other -- the broader range of service
10 given our limited jurisdiction?

11 COMMISSIONER FITZSIMONS: Well, I
12 believe what Dr. Coates said that the risk that the --
13 that risk is where the disease exists, which is elk,
14 whitetail deer, mule deer, and blacktail.

15 COMMISSIONER MONTGOMERY: Right. But
16 given that we have limited jurisdiction, what is the
17 overall regulatory plan?

18 DR. COATES: I beg your pardon? I
19 didn't --

20 COMMISSIONER FITZSIMONS: Well, elk --
21 elk they've addressed with regard to Colorado.

22 DR. COATES: You know, all of the
23 susceptible species are covered by the prohibition of
24 importation from Colorado. And -- and there -- we are
25 discussing at this point in time whether it is at that

1 point where the same sort of restrictions should be
2 placed against Nebraska.

3 COMMISSIONER FITZSIMONS: You mentioned
4 I -- I thought I saw something on the news the other
5 day that -- that -- in a CWD-positive animal in
6 Oregon?

7 MR. COOKE: Yeah.

8 COMMISSIONER FITZSIMONS: Is that
9 jumping a state?

10 DR. COATES: That's TB. They're looking
11 at TB.

12 COMMISSIONER FITZSIMONS: That's TB,
13 okay.

14 DR. COATES: They all -- they've had
15 some die off out there. And they have had some TB
16 isolated from elk, and that elk herd is located on a
17 ranch that also has cattle, so they're -- they're in
18 kind of a twist out there right now.

19 COMMISSIONER FITZSIMONS: And a lot of
20 your comments, though, about the incredible expense
21 and the destruction of the industry if you wait too
22 long, wait till you have it and then try and fix the
23 problem.

24 Jerry talked earlier about coastal
25 fisheries having their analysis of the fees being tied

1 to recouplement of administrative costs. I imagine
2 right now -- I don't know if that's in line with
3 this -- what that analysis would show with this --
4 with the scientific breeder permittees. But if we had
5 a CWD outbreak waiting for it to happen, and then had
6 to do what Colorado has had to do that ratio, my
7 guess, would be thousands to one.

8 MR. COOKE: Yeah. It would -- it would
9 not be pretty.

10 VICE-CHAIRMAN ANGELO: Chairman, why --
11 what we're doing right now, what you all are doing
12 and, I guess, we're looking at the same thing is,
13 restricting the importation from states where the
14 disease is known to exist. Would it make any sense,
15 in light of your -- your comments on targeting the
16 problem, to expand that, since we don't know that it
17 doesn't exist, in some of -- in other states? I mean,
18 is it -- as a proactive approach, would that be
19 extreme?

20 DR. COATES: I think, again, what we've
21 tried to do is make those suggestions that are based
22 on existing known circumstances rather than going to a
23 blanket let's restrict everybody. Most of the
24 industries and wildlife folks are concerned across the
25 country about these two problems. Because they've

1 gone to school on Michigan and they're going to school
2 on Colorado right now and nobody wants to get in that
3 game, and I think that you will see a lot of
4 regulatory changes in the next year with regard to
5 this particular thing.

6 One of the particular difficulties with
7 anything that affects a population like deer is that
8 you have a variety of statuses in different
9 jurisdictions. Some permit the owning of that
10 particular type of animal; others don't. If they're
11 owned and are captive, then they may fall under
12 Department of Agriculture jurisdiction for their
13 control; while the ones that aren't fall under the
14 Parks and Wildlife or the Fish and wildlife
15 Commissions in those various states, so that you --
16 you have a regulatory coordination challenge to keep
17 everybody doing the same thing and keep those levels
18 of concern matched up.

19 And this is one of the reasons I -- I
20 would really like to commend Jerry and appreciate
21 y'all getting us into this. Because it is key for us
22 to keep a coordinated fence built so that these
23 problems don't come home to roost here.

24 COMMISSIONER FITZSIMONS: Thank you.
25 Madame Chair? In trying to wrestle with this issue,

1 and it's a tough one, and I know there are a lot of
2 people that -- that this will concern and that will be
3 affected by this, but paramount in my thoughts is
4 protecting them as well as others where there's a lot
5 we do not know.

6 In the -- In thinking this through, I
7 thought, well, why can't we just have certificate --
8 you know, health certificate papers or something?
9 Well, it's impossible to do that because you can't --
10 because there is no live test to date that we can rely
11 on. Could -- and then that led me to think, well,
12 how -- if we embargo those states where it has been
13 identified, does that guarantee that the deer from
14 those states are not brought into Texas? And then I
15 made some phone calls and I heard something
16 repeatedly, that it is not uncommon for a whitetail
17 deer to be sold to a second state and -- that is in
18 fact clean, and then that state, then the -- that
19 particular animal could then be imported into Texas
20 circumventing, in effect, the embargo that was set up
21 in the first place. Can you address that?

22 DR. COATES: Yes. One of -- one of the
23 things that I can tell you that's happened in recent
24 years that helps control this circumstance -- and --
25 and I'll open by saying that those people who operate

1 illegally and avoid all rules and regulations, we'll
2 take them off the table right now because those folks
3 are currently -- you can't reach them with logic and
4 reason and rules.

5 If people, in fact, do the rules and --
6 and meet all the interstate movement requirements --
7 deer are required to be either from a certified -- or
8 an accredited TB-free herd or have been tested and
9 identified in order to move interstate. They have to
10 travel; they leave footprints; they -- they have --
11 there is an auditable trail. And if a -- an
12 individual has a disease problem, whether it's TB or
13 Chronic Wasting Disease, in the process of that
14 investigation one of the things that happens is all of
15 the sales from that herd are traced and those animals
16 are located and their status is determined.

17 And -- and I can tell you that we have
18 had animals from Colorado traced through a variety of
19 states that did end up here and -- and those have been
20 dealt with. And again, this indemnification
21 opportunity provided by the federal forces has helped
22 a great deal, because these things are not cheap, as
23 you know, and -- and just going in and saying, "we'd
24 like for you to kill your stock" is not very
25 palatable.

1 We've had some that were from Colorado
2 went to Missouri, went to New York, came back to
3 Texas. And all of those movements were traced, those
4 animals were located, and they have been destroyed and
5 tested and all found negative. So there is a
6 mechanism out there that goes with the epidemiologic
7 tracing of deer, and it has been made possible in
8 large part by the TB rules that are mandatory
9 interstate rules at this point.

10 CHAIRMAN IDSAL: What about Chronic
11 Wasting Disease?

12 DR. COATES: Chronic Wasting Disease --
13 the recordkeeping for TB and the identification of the
14 animals for the TB program gives you a vehicle to ride
15 if you have to -- to chase CWD potentially exposed
16 animals. And that's currently the mechanism that has
17 been used.

18 COMMISSIONER FITZSIMONS: But if you
19 don't have one you don't have anything to ride; I
20 mean, you've got to have both programs --

21 DR. COATES: Right.

22 COMMISSIONER FITZSIMONS: -- in -- in
23 place.

24 DR. COATES: Both conditions are of
25 concern. But because of the federal TB rules and the

1 identification and so on, you have that set of wheels
2 that you can --

3 MR. COOKE: You could trace the
4 animals.

5 DR. COATES: -- trace exposed animals
6 that may have been exposed to CWD.

7 CHAIRMAN IDSAL: So you're using the TB
8 testing requirements as the --

9 COMMISSIONER FITZSIMONS: The vehicle?

10 CHAIRMAN IDSAL: -- the vehicle?

11 DR. COATES: The -- the TB does have a
12 testing requirement; CWD unfortunately we don't have
13 anything. But many states are beginning to put rules
14 and are under consideration of putting rules in place
15 that you can't come here unless you come from a
16 monitored herd situation.

17 COMMISSIONER FITZSIMONS: That's my
18 question, Chairman Idsal, is that I understand the TB
19 via -- I think that's a good analogy, the set of
20 wheels you use to sort of piggyback your tracing. But
21 if every state doesn't have a CWD monitoring program,
22 how do you -- how -- how do you maintain the integrity
23 of -- of that?

24 DR. COATES: What you ultimately end up
25 doing is putting in a state-peculiar requirement that

1 says you have to come from a CWD-monitored herd or you
2 can't come here. And -- and this is done ad hoc until
3 the federal folks decide that they're -- they're ready
4 to put a mandatory interstate movement rule in place,
5 and there is adequate support out there to do that.

6 We had TB rules in this state long
7 before there was interstate movement requirement by
8 the federal folks, because we had a -- a need to
9 protect our industries; both our domestic and our free
10 ranging. And -- and I'm glad in the light of the
11 Michigan determination that we have had that
12 protection up there.

13 COMMISSIONER FITZSIMONS: Back to the
14 point of what's on the agenda before us: The
15 definition of healthy condition.

16 DR. COATES: Right.

17 COMMISSIONER FITZSIMONS: It -- because
18 I think we're getting off into something of -- the
19 bigger questions here. But I think, if I'm clear,
20 your recommendation is that this -- these amendments
21 would allow us to get in front of the problems, as you
22 described, not being late as -- as Michigan was on to
23 it.

24 DR. COATES: I think this is our best
25 hope of getting out there and staying out there, and

1 I -- I will suggest that although its -- there is an
2 either/or. We -- we suggested that and feel that it's
3 an important provision in your proposal, that you --
4 you have these two statuses or an approved herd plan.
5 Because there may be peculiarities in any producer's
6 circumstance or situation that -- that make rigid
7 compliance with those two very-well-defined status
8 programs infeasible, and if we can evaluate those on
9 an individual basis to be sure that we get to the end
10 point, which is early detection of -- of disease
11 should it be introduced, then that gives us some
12 flexibility to adapt to the peculiarities of different
13 breeder's problems and circumstances.

14 COMMISSIONER FITZSIMONS: And right now
15 we don't even have early detection.

16 COMMISSIONER RAMOS: Could I have just
17 one comment?

18 COMMISSIONER FITZSIMONS: Yeah.

19 COMMISSIONER RAMOS: I'm looking at this
20 Department of Agriculture definition of an emergency.
21 And in there in the first paragraph it says that
22 Chronic Wasting Disease is a possible -- could be
23 possibly transmitted to cattle, domestic livestock and
24 humans also. So it seems that it's a threat not only
25 to the deer industry, but also to the cattle

1 industry. And I'm looking -- and I can give you a
2 copy of this.

3 DR. COATES: I -- I would suggest that
4 that caveat is there because so the -- the absolute
5 detail of these prion diseases is unclear at this
6 time.

7 Initially, for example, BSE, commonly
8 bandied about as mad cow disease in the UK, was
9 believed to be a disease of cattle only. And then
10 after that had been going phone for some time this new
11 variant Kreutzfeldt-Jacobs disease issue came up, and
12 there are those that indicate that this is a situation
13 where that prion disease jumped from the cattle into
14 people. And -- and so rather -- early on the British
15 government said, no, it doesn't happen. Well, their
16 Department of Agriculture between BSE and hog cholera
17 and foot and mouth disease, they completely redesigned
18 their system. They don't have the old Ministry of
19 Agriculture and Fisheries anymore; they did away with
20 that whole agency and recrafted it. It was a very
21 serious thing to -- to begin to pound absolutes where
22 public health could ultimately be found to be
23 involved. So I think they're very cautious.

24 COMMISSIONER FITZSIMONS: Jerry.

25 MR. COOKE: I think -- I think the

1 wording of the -- of the statement was describing what
2 he was talking about earlier. What -- what is known
3 about prion diseases is very small, and the Chronic
4 Wasting Disease is clearly part of this spongiform
5 group, which also include diseases of these other
6 animals.

7 COMMISSIONER RAMOS: Well, what they're
8 basically saying, you can't rule out the fact that it
9 could go into cattle and humans.

10 DR. COATES: That's it.

11 MR. COOKE: Correct.

12 DR. COATES: They're not going to get
13 caught short.

14 MR. COOKE: That's right.

15 COMMISSIONER FITZSIMONS: I want to
16 thank you. Any further questions? I know that we'll
17 get a chance to talk about this some more. It's --
18 it's certainly an important issue. I want to thank
19 the Animal Health Commission and you, Dr. Coates, for
20 your help, your staff's help working Jerry to -- to
21 help us address this. And for your help in -- in
22 helping draft these -- these recommendations.

23 DR. COATES: Certainly. We stand ready
24 to assist in trying to respond to questions. Should
25 you have any in the future too, give us a call, and if

1 we don't know we'll go find some more folks that --
2 that can give us more information. Thank you for the
3 opportunity to participate with your process.

4 COMMISSIONER FITZSIMONS: Thank you,
5 Doctor.

6 MR. COOKE: Should we publish this?
7 Should we publish this?

8 COMMISSIONER FITZSIMONS: Did we get all
9 the way through your --

10 MR. COOKE: We're through mine.

11 COMMISSIONER FITZSIMONS: -- your slide
12 show?

13 MR. COOKE: Right.

14 COMMISSIONER FITZSIMONS: Well, if
15 there's no further questions or discussion, without
16 objection, I authorize the staff to publish this item
17 in the Texas Register for the required public comment
18 period. Mindful of the fact that there are other
19 issues on our agenda for the Regulations Committee.

20 Next is the statewide oyster fishery
21 proclamation amendments. Robin? Thank you.

22 MR. RIECHERS: For the record, Chairman
23 and Commissioners, my name is Robin Riechers and I'm
24 the management director of coastal fisheries. As
25 indicated in the Chairman's charges this item proposes

1 final adoption of amendments to Chapter 58
2 Subchapter A, the oyster fishery proclamation. And
3 these changes are in accordance with Senate Bill 305,
4 which was passed during the last legislative session.

5 Senate Bill 305 in particular had
6 provisions that affected the oyster fish -- oyster
7 fishery lease program. The oyster lease program
8 currently operates only within the Galveston Bay
9 complex and is comprised of 43 separate leases.

10 The lease program has been ongoing since
11 1891, and currently under lease there are 200 -- 2,327
12 acres. These leases account for about 1.5 million
13 pounds of oysters landed each year, which equates to
14 about \$3 million dockside value each year, and on a
15 whole this is about one-third of the total oyster
16 industry dockside value in Texas.

17 Throughout the legislative session we --
18 we continued to brief the Oyster Leaseholder
19 Association and the Oyster Advisory Committee to
20 advise them on these pending legislation changes.
21 More recently we have, again, met with the Oyster
22 Leaseholder Association, the Oyster Advisory
23 Committee, and we held a public hearing in the
24 Galveston County area concerning the proposed rules.

25 There were 11 individuals at the public

1 hearing and six we received comments from. The only
2 comments directed towards the proposals concerned the
3 implementation date of the \$200 renewal fee. Persons
4 commented that they were under the impression that the
5 renewal fee would occur at the end of the fifteenth
6 year -- or the first time it would occur would be at
7 the end of the fifteen-year term which will begin on
8 March 1, 2002, and I'll address that comment in a
9 little bit.

10 In accordance with Senate Bill 305, the
11 proposed amendment set the term of the lease for
12 fifteen years. The per-acre lease fee will be raised
13 from \$3 to \$6 per acre with a 10 percent penalty if
14 the payment is not received within the first 90 days
15 of the due date. After that 90 days from March 1, if
16 the -- the payment is not received the lease will be
17 terminated.

18 Further provisions of Senate Bill 305
19 provided specific guidance for the transfer and
20 renewal of leases. And basically this sets up upon
21 renewal or transfer of a lease the Department will
22 receive \$200 and can set procedures to accomodate
23 these transactions. In the past these leases could be
24 transferred and we wouldn't necessarily have record of
25 that.

1 In regards to the earlier public
2 comment, the legislation took effect September 1,
3 2001. And so since that legislation took effect on
4 that date, any subsequent renewal of the lease, which
5 is March 1, 2002, would be subject to the \$200 fee.

6 The rule also would require upon renewal
7 of the lease in 2002 that an updated lease survey is
8 provided to the Department within one year. A lot of
9 the technology used for these lease surveys is old
10 technology now, and we're asking each leaseholder
11 to -- to basically provide us with a new survey.

12 In addition, after the leaseholder is
13 offered a first right of refusal at the end of each
14 lease, the proposals include provisions to allow an
15 auction of the lease. The Department at that time, of
16 course, can establish a minimal acceptable price and
17 we would base that on previous auctions, open-market
18 prices, and any other factors that we would have that
19 would allow us to make that price determination.

20 Staff recommends only one change from
21 the published proposed rules for the purpose of
22 consistency and clarification, and that is in
23 Section 5830 Release Renewals, we actually propose a
24 minor wording change. We currently have in there "the
25 need for depuration of polluted oysters" as the

1 phrase, and we would like to change that to "the need
2 for depuration of oysters taken from non-approved
3 areas." It's just to conform with language throughout
4 the proclamation.

5 That completes my presentation, and I'd
6 be happy to answer any questions.

7 COMMISSIONER MONTGOMERY: A fifteen-year
8 lease term is a legislative requirement; it's required
9 to be that long?

10 MR. RIECHERS: Yes, sir. Yes, it is.

11 VICE-CHAIRMAN ANGELO: These -- these
12 leases are actually farmed; is that not correct? I
13 mean, they're not totally natural, they're farmed?

14 MR. ROBERSON: Yes, sir. Basically,
15 oysters are -- are removed from a polluted area or a
16 non-approved area and put on those leases with a
17 transplant situation, and then allowed to depurate and
18 then harvested at a later time.

19 COMMISSIONER FITZSIMONS: Any other
20 questions or comments? Thank you, Robin. No further
21 questions or discussion, without objection, I'll place
22 this item on the Thursday Commission meeting agenda
23 for public comment and action.

24 Next, Statewide Hunting and Fishing
25 Proclamation -- Durocher, Osburn, and Graham.

1 Durocher first.

2 MR. DUROCHER: Madam Chairman and
3 Commissioners: My name is Phil Durocher, I'm the
4 Director of the Inland Fisheries Division. What I'll
5 be presenting today is the inland fisheries proposed
6 regulation changes for 2002-2003. Now, basically
7 these proposals I'm going to go over today are the
8 same ones that we presented in a briefing in
9 November. I mentioned at the end of the briefing the
10 probability -- or the possibility because of the staff
11 was analyzing some data that we'd have several changes
12 when we came to you in January, and we'll speak about
13 those in -- in a minute.

14 Summarizing what we're recommending is,
15 we're recommending one change for bluegill or sunfish
16 and we're asking to remove the limits on one
17 reservoir.

18 Red drum in freshwater: We want to
19 modify the limits on one reservoir to be in -- in
20 compliance with the -- with the standard regulation in
21 freshwater reservoirs.

22 For largemouth bass, we're asking to
23 change the length and bag limits on five reservoirs.
24 Three of these were added since the November
25 briefing.

1 And finally, for striped bass, we're
2 asking to change the bag limit on one reservoir.

3 The changes that we propose: The Purdis
4 Creek State Park Lake in Henderson County we're asking
5 to change the regulation for sunfish from 7-inch
6 minimum, 25-fish daily bag to no minimum and no daily
7 bag. And our goal here is to simplify the
8 regulations. This is the only reservoir where we had
9 this regulation in place, and it was experimental we
10 were not achieving the goals that we had hoped to
11 achieve so we're asking that this be changed back to
12 the statewide regulation.

13 On Coletto Creek Reservoir in Goliad and
14 Victoria County we're asking to change the regulation
15 for red drum from the current regulation, which is
16 in -- the same as the one on the coast, the 20- to
17 28-inch reverse slot to the 20-inch minimum which is
18 what we have on -- on regular freshwater lakes. Red
19 drum do not spawn in freshwater, so we need to protect
20 these fish a little more and -- and not allow harvest
21 of the younger fish. And our goal here again is to
22 maximize the angler potential for the recently stocked
23 red drum in this reservoir.

24 We're also asking on Gibbons Creek
25 Reservoir to change the limit for largemouth bass from

1 catch and release only to a 14- to 24-inch slot
2 limit. Or goal here is to allow some harvest of the
3 smaller fish. Hopefully -- hopefully, we'll be
4 boosting angler interest. This recommendation was
5 brought to us by the Texas Municipal Power Agency who
6 owns the reservoir. They're updating the facilities,
7 creating more camping areas and they'd like to -- to
8 allow some people to eat some -- eat some fish, keep
9 some smaller fish and eat them and -- and maybe
10 increase the camping and visitation to that lake. And
11 we don't have a problem with any of that, so we'll
12 recommend that this be changed.

13 The Brushy Creek Lake in Williamson
14 County it's -- it's a new reservoir that's going to be
15 open soon and we're asking to place an 18-inch minimum
16 length limit for largemouth bass here. This is the
17 same limit that we -- we generally recommend on any
18 new reservoirs to -- to prevent an initial over
19 harvest and to maintain the population through that --
20 through that opening.

21 The following reservoirs are ones that
22 were added since our briefing in November. On Lake
23 Alan Henry in Garza County up near Lubbock, we're
24 asking to change the limit for largemouth bass from
25 the current 18-inch minimum to no minimum and a 5-fish

1 bag where only two can be less than 18 inches. This
2 is the same regulation that we proposed and had
3 approved last year for O.H. Ivy. It -- it's a new
4 concept and it sort of replaces -- it does the same
5 things that we do with slot limits, but it's easier
6 for people to understand. And we're asking that this
7 be also put in place at Alan Henry.

8 Just say that the bag limit and length
9 limits smallmouth and spotted bass in this reservoir
10 will remain the same; we're only talking about
11 largemouth bass. And our goals here are to maintain
12 quality bass angling. Lake Alan Henry is one of the
13 most popular reservoirs in that part of the country;
14 it has a fairly constant water level, so the
15 populations do well and it's heavily, heavily fished,
16 a lot of pressure. We need to -- they have a really
17 good fish population there. In fact, it's almost too
18 good. The bass population has grown to the point
19 where they're eating all the foliage and we hope that
20 let -- allowing the anglers to remove some of the
21 small fish will improve the growth on all the fish
22 there and reduce some of that pressure on our prey
23 base.

24 At Lake Proctor and Lake Possum
25 Kindgom -- and these are also two that were added

1 since the November briefing -- we're asking to change
2 the limit for largemouth bass from 14 inch, which is
3 the statewide standard, increase it two inches to a
4 16-inch minimum.

5 At Lake Proctor we're asking to do this
6 because the -- the reservoir -- during the drought here
7 in the last several years that reservoir had -- had
8 fallen down to probably near 50 percent of capacity.
9 And last year had a -- a good rise in the reservoir
10 and it's now full again, and when that happens we have
11 a tremendous year-class of fish that's produced. And
12 we're ask -- we want to protect that -- that group of
13 young fish coming on and prolong the angling quality
14 on Lake Possum Kingdom Reservoir. Fall of last year
15 we had a golden algae outbreak there and lost a
16 significant number of fish, and the reason we're
17 recommending this on Possum Kingdom is to help us
18 assist in the recovery of this bass population after
19 that golden algae outbreak. We want to reduce the
20 harvest of the remaining fish, of course, and protect
21 the fish that we stocked.

22 And the last recommendation that we're
23 making -- again this is one that -- that came to us
24 just recently -- again on Possum Kingdom Reservoir,
25 and it's related to the golden algae kill, we want to

1 change the daily bag limit on striped bass from five
2 fish to two fish. We're going to maintain the 18-inch
3 minimum length limit.

4 And again, our goal here is to assist
5 with the recovery of this population after the golden
6 algae outbreak. Striped bass are not like the
7 largemouth bass or any of the others in these
8 reservoirs; these fish do not reproduce in here. All
9 the fish that are in here are fish that we stock, so
10 it's going to take a little while for us to -- to get
11 that population back to where it was. We're going
12 to -- we're asking that this regulation be put in
13 place to reduce the bag limit until we get the
14 population back up to where it was, and then we'll
15 probably come back and ask that it be changed again
16 back to the statewide standard of five fish.

17 So that's our proposals for 2002-2003
18 and I'll be glad to answer any questions.

19 COMMISSIONER FITZSIMONS: Thank you,
20 Phil. And for the coastal fisheries portion now.

21 MR. OSBURN: Thank you, Mr. Chairman and
22 Members: I'm Hal Osburn, coastal fisheries division
23 director. I'd like to brief you on proposed changes
24 to the statewide hunting and fishing proclamation,
25 coastal fisheries. I also want to bring you up to

1 date on our scoping efforts with the spotted seatrout;
2 possible changes to those management strategies that
3 we have in place.

4 We've had two decades of conservation
5 efforts and -- and stocking from our marine hatcheries
6 and has allowed us to reach our current peaks in
7 our -- our trout population abundance. It's also
8 intriguing for us as biologists to note that we may
9 not still have reached our highest potential in the
10 population as we see the stocks continue to climb
11 and -- and have not leveled off.

12 We also see no evidence that our bays
13 have reached carrying capacity for this top predator,
14 and therefore, we believe it's feasible that we can
15 fine tune our regulations and continue our stocking
16 efforts and perhaps make a great fishery even better.

17 We also want to be proactive in
18 addressing changes that we see happening in the trout
19 fishery. Fishing pressure and -- and efficiency from
20 both private anglers and fish guides have been
21 increasing. In addition, the proportion of large
22 trout is declining in our -- in our samples, which
23 means that basically trout are not living as long as
24 they did in the past. Now, the vast majority of our
25 trout are harvested by the time they are 20 inches

1 long; that's about four years old or less than half of
2 their life span. Staff believes that there is
3 definitely a potential for improving the number and
4 size of trout caught by Texas anglers and that there
5 are a variety of moderate rule changes available that
6 could accomplish that.

7 Very much related to properly managing
8 the trout fishery is the issue of fishing guides.
9 They have tripled on the coast in the last 20 years.
10 But I -- I'm very happy to say that we have already
11 been approached by a number of guide groups suggesting
12 actually stricter guide requirements. In fact, in the
13 audience today, they came up to -- to see the
14 Commission in action, is Mr. Mark Lyons, Mr. Barry
15 Badders who are president and vice president of the
16 coastal -- Coastal Bend Guides Association, and they
17 are in the procession of attempting to organize a
18 coast wide guides association, and -- and I think that
19 that would really behoove us in our communication
20 efforts with that group and -- and I really appreciate
21 their attention to that and -- and appreciate them
22 being up here. I'm sure they'd be happy to answer any
23 questions if it was relevant.

24 We did since this summer do a fairly
25 extensive outreach effort on these issues. We've --

1 we met with numerous stakeholder groups. We've
2 received a lot of written correspondence and -- and
3 telephone calls on this issue. The -- the outdoor
4 writers have been very helpful in -- in bringing this
5 issue to the attention of the -- to the angling
6 public. I need to tell you that there is still a wide
7 diversity of opinions on what the optimum regulatory
8 approach would be, and therefore, for that reason
9 staff recommends that we continue to actively scope
10 this issue.

11 We would like to begin with the creation
12 of a task force that represents all the interests, all
13 the different stakeholders up and down the coast. We
14 believe that we can do an -- a education process and a
15 discussion forum with that group and can come back to
16 you next year, hopefully, with a package that a
17 majority of the folks could support.

18 I want to move on to an Sabine Lake
19 issue that was the subject of a petition for rule
20 making last year. The Commission did deny the
21 petition, but asked staff to investigate the benefits
22 requiring that all fish landed in Texas conform to
23 Texas size and bag limits.

24 Texas and Louisiana do have a reciprocal
25 licensing agreement that essentially allows a person

1 to legally take both a Texas and a Louisiana limit in
2 a single day. Now, that means that an angler could
3 harvest 35 trout per day from Sabine Lake, or in
4 the -- in the case of Toledo Bend that we share those
5 waters with Louisiana, they could land 50 crappie less
6 than 10 inches in that -- in that day.

7 There is not the best as we can tell a
8 high level of abuse of this, but staff does believe
9 that there would be an overall benefit to requiring
10 that fish landed in Texas or possessed on Texas waters
11 conform to the Texas size and bag limits.

12 We did quite a bit of scoping this last
13 year, since the Commission charged us with that, and
14 we -- we found that while there is definitely some
15 opposition to this change there is also strong support
16 for the rule. And most of the people said they would
17 not travel to Louisiana or take their business to --
18 to Louisiana marinas just to avoid such a rule, and we
19 think that's an important consideration in evaluating
20 the effectiveness of this rule change. So at this
21 time staff does offer this proposal be included in the
22 statewide hunting and fishing proclamation.

23 And finally, as a clean-up item, there
24 has been a nationwide movement to change the name of
25 the Jewish to the Goliath Rouper, and staff wants to

1 suggest that we do the same. And pardon me, but I --

2 I guess Jewish is just not Kosher anymore. So --

3 MR. COOK: He's out of order.

4 MR. OSBURN: That concludes my
5 presentation.

6 UNIDENTIFIED SPEAKER: I was waiting for
7 that.

8 (Laughter.)

9 MR. OSBURN: Before somebody else stole
10 it. That -- That concludes my presentation.

11 COMMISSIONER MONTGOMERY: A comment on
12 the fishing guide planning effort. I would like to
13 see us make sure that whatever mechanism we have in
14 there to restrict -- to accomplish our conservation
15 goal of restrict and take does not end up resulting in
16 barriers to entry for the constituency that won't be
17 represented as me, such are future people that want to
18 become fishing guides. And what happens so often when
19 professional or industry groups get involved in
20 education is the regulation ends up restricting entry
21 for new entrants and protecting people already in the
22 business and I think our -- our job is to keep
23 conservation goals in mind but not to create a
24 franchise and not to restrict competition.

25 So to me that ought to be a clear

1 principle that's laid out early in the process, that
2 we're not going to restrict future young people from
3 getting into the business just because we have a
4 regulatory goal to limit -- limit harvesting of a
5 resource. Does that make sense?

6 MR. OSBURN: Oh absolutely. And -- and
7 we will do that and staff concurs. There have been
8 actually some proposals to do a limited entry on
9 fishing guides; I will tell you that the Legislature
10 would have to -- to do that. But our response has
11 been that the -- that the fishing guide represents
12 just an opportunity to take people fishing that don't
13 have a boat or the same expertise, and could be
14 equated like fishing piers or jetties and we don't
15 have a -- we don't need to limit those opportunities.
16 We may need to limit how many fish that party retains,
17 but we see no need at this point to -- to emphasize
18 any sort of limited entry in that -- in that regime.

19 COMMISSIONER MONTGOMERY: Another way to
20 do it is auctioning off the permits where people have
21 to bid for them so you -- it's a matter of cross --

22 MR. OSBURN: Correct. We --

23 COMMISSIONER MONTGOMERY: It's probably
24 not very popular, but it's one way to do it.

25 MR. OSBURN: Fishing guides have been a

1 very volatile profession in terms of business change;
2 you know, every five years you'll see a 25 percent
3 turnover. That -- that's another reason not to sort
4 of mess with the business by that limited entry
5 approach. I -- I don't think we have a biological
6 concern as we did with the commercial limited entry
7 programs which were more a -- a different kind of
8 problem.

9 COMMISSIONER FITZSIMONS: The market
10 does a perfectly adequate job of regulating the number
11 of guides, I would guess, and who the good ones are
12 and -- let me ask you a question on the -- on the
13 reduced bag limits, spotted seatrout. Why would you
14 reduce the bag limit if you -- you showed a pretty
15 good curve there, trend line of -- of increase in
16 numbers? And I would guess that an increased bag
17 limit is a reward for good management.

18 MR. OSBURN: It would be that your
19 strategy would be to emphasize more bigger ones. Most
20 of the increase that you see there is the result of
21 more smaller ones in the population. And if those
22 smaller ones are allowed to live for a longer period
23 of time you will gain two things: You gain the
24 potential of actually increasing the overall
25 population from increased spawning; and the -- the

1 fact that there's a larger quality fish now available
2 for the harvest.

3 But the only way to do that is, since
4 most of the harvest is dominated -- those bag limits
5 dominated by small fish -- to ask folks to sacrifice
6 keeping all -- a bunch of small ones for the
7 opportunity to catch fewer bigger ones.

8 COMMISSIONER FITZSIMONS: I can see that
9 for the -- for the person that -- that does a lot of
10 fishing. But the average fisherman I would -- my
11 guess is, you might be reducing some recruitment
12 and -- and losing some casual fisherman because of the
13 bag limit. I just --

14 MR. OSBURN: We would not want to do
15 that. And I will tell you there is a -- a
16 psychological factor to a bag limit. 92 percent of
17 our private boat anglers catch six or less trout right
18 now on -- on a trip. So theoretically, you could say,
19 "well, I'll drop it to six and I've only affected
20 eight out of a hundred people," but there is a
21 psychological thought that, "well, I might" -- today
22 might be my day to get ten. I want that task force to
23 give us their -- their best opinion on that mix and
24 match of size limits, bag limits, guides versus
25 privates, avid fisherman versus weekend warriors. And

1 that's -- that's why it's -- it really is going to be
2 a fine-tuning job rather than any sort of wholesale
3 change.

4 COMMISSIONER FITZSIMONS: My instinct is
5 if there's a -- if the resource can handle the present
6 bag limit reducing it isn't good for recruitment or
7 opportunity. That's just -- anybody else got an
8 opinion on sea trout -- spotted seatrout?

9 Hal, thanks for -- I know you've worked
10 awful hard. If I understand on the spotted seatrout
11 we're going to a task force one year to flush out lots
12 of public comments?

13 MR. OSBURN: You bet.

14 COMMISSIONER FITZSIMONS: I'm sure
15 there'll be no shortage of that. Thanks for your
16 work.

17 MR. OSBURN: Yes.

18 CHAIRMAN IDSAL: I have one question.

19 COMMISSIONER FITZSIMONS: Oh, Chairman.

20 CHAIRMAN IDSAL: I'm sorry. Hal, I
21 would like to see some figures on the economics of the
22 guides -- guide industry. What they make. What their
23 annual income is. Some of the ranges daily, you know,
24 what they charge typically. That sort of thing.

25 MR. OSBURN: There's some -- there's

1 some very good information out there from our
2 relationship with Dr. Bob Ditton at A&M, and -- and
3 we'll be able to provide that to you and some trends
4 as well. And we may solicit some more of that
5 information during this task force year.

6 CHAIRMAN IDSAL: Okay. Thank you.

7 COMMISSIONER FITZSIMONS: I appreciate
8 that. Thanks -- Thanks for your work. Gary.

9 MR. GRAHAM: Chairman Fitzsimons,
10 Members of the Committee, I'm Gary Graham, director of
11 the wildlife division. And we want to continue the
12 statewide with a presentation of ten proposals
13 developed by the staff and coordinated and reviewed
14 between wildlife and law enforcement. We started this
15 process in August. We gave you an idea of what we're
16 going to talk about in November.

17 And the first proposal I'm going to
18 spend a little extra time on because it's -- it is
19 fairly complex and it's a little bit of a departure
20 from what we've done in the past.

21 And this proposal is to redefine what a
22 legal buck is in -- in the six counties indicated in
23 yellow there in order to address the high hunter
24 pressure and -- and undesirable age structure that
25 exists for the herd in these six counties. Hunter

1 pressure has been high here for at least 30 years, and
2 especially relative to the size of the deer herd.

3 Such pressure typically leads to an over
4 harvest of younger age classes. For instance, during
5 the 1999/2000 season 43 percent of the deer that were
6 harvested in these -- in the -- in the district here
7 in the -- the entire district were one-and-a-half
8 years old compared with only 19 percent of the deer
9 that were harvested in the south Texas plains being
10 that age at one-and-a-half years old. So there is
11 a -- in fact, a large amount of data that shows the
12 harvest of deer is -- is disproportionately favoring
13 the younger individuals of the herd.

14 The specific proposal will define a
15 legal buck as having at least one unbranched antler or
16 at least six points on one antler or at -- at least
17 13-inch inside spread.

18 The one unbranched antler will allow
19 harvest of -- at the sort of lower end of the antler
20 quality continuum and provide continued hunter
21 opportunity for new and young hunters and those
22 hunters principally interested in the consumption of
23 meat.

24 The six point condition would allow
25 harvest of deer that are unusual or non-typical and

1 are between the ages -- or at least three-and-a-half
2 years old or older.

3 The 13-inch spread for deer will also
4 allow the harvest or -- or -- or protect the harvest
5 of deer that are three-and-a-half years old or older,
6 and also that 13-inch spread is the distance between
7 the tips of the ears and -- and a three-and-a-half
8 year old deer. And so that's going to help a hunter
9 identify the proper antler spread.

10 The proposal will protect 65 percent of
11 the bucks and -- and consequently will also reduce the
12 harvest in the area by two-thirds. We propose to
13 maintain this definition for at least three years
14 during which we will measure the results. And since
15 I've been in this position, this is the most
16 thoroughly researched proposal that I've received.
17 And Bob Carroll, who's here today, deserves extra
18 credit for the effort he has put into developing
19 this. He's worked a large amount with the people in
20 the area. It is supported by the Texas Sportsman's
21 Association and -- and they are -- you may recall
22 submitted a petition last year that was very similar
23 to this, and they support this proposal as indicated
24 by a newsletter they -- they published in December
25 ment and it's also supported by all of the wildlife

1 management associations in these six counties ment.

2 What we don't know is how well the --
3 the rest of the landowners and hunters in the area
4 support it. And if this is accepted I -- I will
5 propose that we have public hearings in each of those
6 six counties to measure all of the input from those
7 particular constituents.

8 Currently up to two dogs can be used to
9 trail wounded deer in all of Texas, except for the far
10 east where any use of dogs to hunt deer is
11 prohibited. Our staff are confident that the
12 prohibition is no longer needed in the 11 counties up
13 in the northeast corner there, and we will -- we
14 propose that we allow the use of no more than two dogs
15 to trail wounded deer in northeast Texas.

16 When we revised the managed leer --
17 Managed Land Deer permits last year we created two
18 unintended and undesirable conditions on Level 2
19 properties ment.

20 First, we made it illegal to harvest
21 spikes with guns in the early season, and we made it
22 illegal for archers to harvest any buck during the
23 early season, which is the archery only season in
24 this -- in the surrounding properties. Not being able
25 to harvest spikes is a -- is an issue because some

1 spikes are always mistakenly taken when your -- when
2 your intent is to harvest does, and this proposal
3 would allow spikes to be legally harvested.

4 Allowing bucks to be harvested on
5 properties during -- allowing archers to harvest bucks
6 on these properties would make those properties
7 consistent with the surrounding properties.

8 Current regs for those 17 highlighted
9 counties here allow the harvest of does for 16 days
10 starting with the beginning of the general season.
11 Doe harvest, however, in this area remains fairly
12 conservative and our staff think that the population
13 there could sustain more harvest. Consequently, we
14 propose to extend the number of doe days by
15 establishing the season to -- to begin from the
16 opening day through the Sunday following Thanksgiving,
17 and this could create up to, I think, about 25 days
18 on -- during some years.

19 When we created the Youth-Only Season
20 last year we incorrectly allowed unrestricted
21 antlerless harvest during the late Youth-Only Season
22 in some counties where the antlerless harvest had been
23 and should continue to be restricted by the issuance
24 of deer permits. By deleting the phrase "and no
25 TPWD-issued permit is required" from the proper

1 section of the code we can correct that oversight.

2 We would like to remove the requirement
3 that an unskinned head be retained for white-tailed
4 deer. This regulation was created to be consistent
5 with antelope regulations where it is required in
6 order to distinguish the -- the sex of an antelope.
7 Males in antelope have a black cheek patch that's --
8 it makes it easy to determine the sex of the harvested
9 animal. We want to remove the requirement because no
10 such peltage difference exists for whitetail deer.
11 Some of the hunters are concerned about contamination
12 of meat from peltage, and some hunters want to be able
13 to tape their deer in camp and avoid the possibility
14 of hair slippage, and -- and therefore, preserve the
15 cape for taxidermy. I want to note that a skinned
16 head would continue to be required for whitetail deer
17 ment.

18 I have two turkey proposals: The first
19 one is to provide a fall season in -- in Hill County
20 where a spring season is currently open.

21 And the second is to provide a spring
22 season for eastern wild turkey in these four
23 highlighted coastal counties where the populations are
24 strong and probably as healthy as they're going to
25 be.

1 The last proposal is from law
2 enforcement. And this would require hunters to fill
3 out a tag log on the back of the -- of the new license
4 that's going to be coming up. And this requirement is
5 to help law enforcement enforce deer bag limits and to
6 simplify the language on the deer tags that are going
7 to be on this new and improved and hopefully
8 simplified license.

9 These com -- This completes wildlife
10 proposals, and I'd be happy to try and answer any of
11 your questions.

12 COMMISSIONER FITZSIMONS: Gary, on the
13 definition of buck deer for the six counties, would
14 you name those six counties for the --

15 MR. GRAHAM: Let's see if I can --
16 there. Austin, Colorado, Fayette, Lavaca, Lee, and
17 Washington.

18 COMMISSIONER FITZSIMONS: There's a high
19 number of wildlife management areas in that area, as I
20 remember. I remember going down there and -- and I've
21 been very impressed with the work that the wildlife
22 management areas -- or wildlife management co-ops -- I
23 misspoke -- have done there.

24 These proposed regulations are not
25 unlike the -- the -- the private regulations or the --

1 or the co-op regulations that are in effect; is that
2 right?

3 MR. GRAHAM: Many of the co-ops do, in
4 fact, try to manage their herd using similar types of
5 regulations, and -- and consequently that's why
6 they're supportive of this particular proposal.

7 COMMISSIONER FITZSIMONS: Yeah. Well
8 then, it would seem to me that they can do this now
9 without the Department mandating it.

10 MR. GRAHAM: Those -- those -- those
11 individuals. While any landowner could should they
12 choose to. Part of the problem is, this part of the
13 country is -- is very fragmented as well as heavily
14 hunted, so you have a lot of landowners. Many -- many
15 of them have small parcel sizes, and although, the
16 wildlife co-ops are very strong in those counties
17 and -- and growing there's still a lot of landowners
18 out there who aren't participating in wildlife co-ops.

19 COMMISSIONER FITZSIMONS: Well, I'm not
20 sure that -- that this regulation wouldn't deter them
21 from joining the co-op if you -- if the only way to
22 get the management you want is to join the co-op or to
23 have the state do it for you.

24 MR. GRAHAM: Well, perhaps. But what --
25 what our biologists and -- and what I'm thinking is

1 that if we -- if we want to affect the herd at that
2 scale, this large six-county scales, we can't -- we
3 haven't been able to do it effectively with the
4 wildlife co-ops and -- and they're regulations for
5 their properties. It's going to -- it's going to take
6 something stronger or at least a more expansive and
7 include more of the landowners in order for it to
8 really affect the herd at that -- at that larger
9 scale.

10 VICE-CHAIRMAN ANGELO: What
11 percentage -- what percentage of the counties are in
12 the co-ops? I mean, it can't be that big; I wouldn't
13 think.

14 MR. GRAHAM: I don't know. Bob, do you
15 know?

16 MR. CARROLL: Each of the counties in
17 that six area.

18 COMMISSIONER FITZSIMONS: Bob, come on
19 up. You -- you know more about this than anybody.

20 MR. CARROLL: Each of the six counties
21 in the -- that area is broken into five to seven
22 co-ops per county. And it covers all of the area. Of
23 course, all landowners within that co-op don't belong,
24 but it is -- they have the opportunity to belong.
25 They can't say, well, there's not a co-op in my area.

1 COMMISSIONER FITZSIMONS: Any indication
2 of --

3 VICE-CHAIRMAN ANGELO: The whole -- the
4 whole counties could be covered, but they're not
5 because all the people don't belong.

6 MR. CARROLL: Yes, sir. Yes, sir. It's
7 just --

8 VICE-CHAIRMAN ANGELO: What percentage
9 do belong?

10 MR. CARROLL: That's hard to say.

11 VICE-CHAIRMAN ANGELO: And these are not
12 high fenced, obviously, either.

13 MR. CARROLL: No, sir.

14 VICE-CHAIRMAN ANGELO: You know, we
15 may -- when we had -- when they -- when we had this
16 discussion a year or so Ag their concern then was that
17 while they could control it on their property the
18 migration of the deer back and forth was such that
19 they weren't actually being able to effect --
20 effectively manage it, and that -- that's why we
21 needed to do something more. And I think that it
22 makes sense that if you're looking at it from an
23 overall biological standpoint if you're going to
24 improve the herd they can't do it the way it's -- the
25 way it now exists, is that -- is that what --

1 COMMISSIONER FITZSIMONS: Unless they
2 get more members.

3 MR. GRAHAM: Right. With the public
4 hearing process we propose, we'll find out, you know,
5 how many of those people really and -- would like to
6 participate and like to see this type of regulation.

7 COMMISSIONER FITZSIMONS: I'm -- I'm
8 just -- for policy reasons concerned by
9 micromanagement of every --

10 VICE-CHAIRMAN ANGELO: I have the same
11 thing you do, I mean --

12 COMMISSIONER FITZSIMONS: -- every
13 corner of the state. First of all, I'm not sure I
14 could follow the regs if I went to -- to kill a buck
15 in those six counties.

16 VICE-CHAIRMAN ANGELO: I like the one
17 where you have to have six points on the side now;
18 that's pretty tough.

19 MR. GRAHAM: Well, no question about it,
20 it's going to force the hunter to be more observant
21 and -- and.

22 VICE-CHAIRMAN ANGELO: Very -- very
23 selective.

24 MR. GRAHAM: -- in the animals they
25 harvest.

1 COMMISSIONER RAMOS: In line with that,
2 Gary, are you satisfied that the 13-inch spread is
3 going to convert to a three-and-a-half-year-old buck
4 or older?

5 MR. GRAHAM: Very satisfied. Bob has --
6 has huge amounts of data that show the age of the deer
7 and antlers that are -- that are measured and it's --
8 it's -- you know, I can't remember -- 86 percent of
9 the three-and-a-half-year-old deer have an antler
10 spread that's 13 inches or greater.

11 COMMISSIONER RAMOS: Because I was
12 thinking if you were mentioning that, I said, what if
13 we would go from tip to tip of the ears? It would be
14 easier for the hunter to satisfy that requirement, but
15 you could end up with a two-and-a-half year old. In
16 other words, you would end up shooting some younger
17 deer under that -- if you go tip to tip.

18 MR. CARROLL: We -- we sat down with law
19 enforcement when we first came up with this regulation
20 and talked to the staff in that six-county area, and
21 we -- that same subject came up. And law enforcement
22 felt that it would be better if rather than just using
23 outside the tip of the ears that an inch -- it would
24 be easier for them to enforce if we put an inch limit
25 on it.

1 COMMISSIONER RAMOS: It's going to be
2 easier to enforce, but it's going to be harder I think
3 for a hunter perhaps.

4 MR. CARROLL: Well, the -- the average
5 tips of the ears in that country on those deer is
6 approximately 13 inches. And the average age of
7 that -- on a three-and-a-half-year-old deer the
8 average spread is 13.2 inches. So by using that as a
9 guideline, the tips of the ears as 13 inches and that
10 inside spread as 13.2 inches, that gives that hunter
11 something to go by. You're not shooting in the dark.

12 COMMISSIONER FITZSIMONS: You'd better
13 not be shooting in the dark.

14 MR. CARROLL: Yeah. Literally.

15 MR. GRAHAM: I forgot to also mention
16 that Bob has surveyed eight different regions in the
17 southeast law enforcement agencies there and -- and
18 have found where they have similar types of
19 specialized antler regulations and asked the same set
20 of nine questions and got uniformed support for how
21 it's working in those regions from Florida to
22 Mississippi.

23 COMMISSIONER FITZSIMONS: I -- I don't
24 doubt that at all. And I commend -- Bob, I commend
25 you for your work. Mine is a threshold question

1 here. Not whether or not the criteria is correct, but
2 whether or not every time a region in the state is not
3 getting exactly the deer they want they come to us to
4 do it for them, rather than -- I mean, you didn't get
5 to those age structures south Texas by having these
6 sort of regulations for south Texas; you did it by
7 landowners -- granted much larger tracts -- saying
8 we're going to kill -- you know, you have control on
9 your property of what's killed. And I'm --

10 MR. GRAHAM: Well, it's a --

11 COMMISSIONER FITZSIMONS: I understand
12 the fragmentation issue, but join the co-op.

13 MR. GRAHAM: It's -- Bob and -- and
14 staff have been struggling with this issue, I think,
15 before TSA came to us with -- with the petition to do
16 it. And in fact, there are at least three other areas
17 of the state that -- that staff have those same kind
18 of concerns; that the age structure and the harvest
19 pressure are problems. And if this is accepted and --
20 and we can monitor it and see what happens, it may be
21 that we would proactively go and -- and try to do this
22 in -- in at least two of the other areas of the state
23 for the same reasons.

24 MR. COOK: I think that's a real
25 important point, Commissioner, is that, you know,

1 the -- in general, the does are getting bred. There's
2 no question about that; we never argue that. But we
3 see such intense hunting pressure in some of these
4 areas of the state that the age structure of buck herd
5 is so young that over the long term we have some
6 concerns about deer behavior and -- and how those
7 deer -- the timing of the breeding season -- instead
8 of having a good sharp peak in the breeding season
9 like we would normally see in a deer herd that
10 contains adult deer, adult bucks, therefore real
11 compact fawning season early in the year, it -- this
12 doesn't solve all problems. No question. And in
13 fact, it may create some. But it's -- it's a proposal
14 that I -- I don't know, Bob. You -- I know that since
15 I've been in Austin in the '90s, these folks have come
16 to us every year requesting some way help us, you
17 know. Can you work with us? And -- and we have
18 not -- we have not gone that route and --

19 COMMISSIONER FITZSIMONS: Well, I'm just
20 concerned about the precedent. I want to learn more
21 and, maybe, now I've opened my big mouth I need to go
22 to some of these scoping meetings and learn a little
23 bit about them -- about it. Any other -- and Bob's
24 worked hard on this. Any other questions with regard
25 to that one?

1 MR. GRAHAM: Thank you.

2 COMMISSIONER FITZSIMONS: Thank you,
3 Gary, Bob. Any other questions on the proclamation?

4 If there are no further questions to
5 discuss, without objection, I authorize staff to
6 publish this item in the Texas Register for the
7 required public comment period.

8 Madame Chair, with your direction we'll
9 either go ahead and take up public liens with -- with
10 Herb or -- and then adjourn for lunch or do them both.

11 CHAIRMAN IDSAL: Well, I think we have
12 Item 7 for after lunch.

13 COMMISSIONER FITZSIMONS: Yes, ma'am.

14 CHAIRMAN IDSAL: I think we should do --
15 go ahead and do Item 6 and then we will go into
16 executive session.

17 COMMISSIONER FITZSIMONS: As you wish.
18 Herb?

19 MR. KOTHMANN: Mr. Chairman and Members
20 of the Regulations Committee: My name is Herb
21 Kothmann, I'm the director of public hunts. This is a
22 briefing and I'll try to emphasize the brief part of
23 that.

24 The two items will concern proposed
25 amendments to the public lands proclamation, and our

1 candidate state parks for next years 2002-2003 public
2 hunts.

3 The first proposed proclamation change
4 would be to eliminate duplication of regulations.
5 Currently, our public hunt fees appear in two separate
6 proclamations of the Texas Administrative Code. We're
7 proposing to remove them from the Public Lands
8 Proclamation, Chapter 65, and keep them in Chapter 53,
9 the fee schedules where all of our departmental fees
10 appear.

11 Second proposed proclamation change
12 would be to standardize our permit requirements for
13 hunting by annual permit. Currently we have a
14 provision that allows hunting of small game under a
15 \$10 lended public use permit on our five National
16 Forest Wildlife Management areas. This provision was
17 put in when those forest service areas joined our
18 public hunting program because, at that time, it was
19 thought there was a large number of people who only
20 hunted small game and we didn't want them to have to
21 purchase the more expensive \$40 permit.

22 However, the sale of annual permits, the
23 \$10 permit, have remained stable at about 2000 per
24 year since before those forest lands came into the
25 program; therefore, it appears that very few people

1 are using that \$10 permit to hunt on the forest
2 service lands. And a survey of our permittees
3 indicates that about 40 percent of the hunting
4 activity reported by those \$10 permittees is actually
5 done on areas where it's not authorized on some of the
6 other 252 areas that allow access under that permit.

7 This change would standardize the permit
8 requirements for hunting by annual permit on all of
9 our public hunting lands by requiring a \$40 permit and
10 this proposed change is supported by U.S. Forest
11 Service.

12 The Candidate State Parks for the
13 2002-2003 public hunts we are considering basically a
14 re-run of this past season's hunt. The Commission
15 this last year recommended hunting on 45 units of the
16 state park. We are again recommending hunting on
17 those 45 tracts of land; however, this year one of
18 those tracts will be within our wildlife management
19 area program. The Arroyo Colorado Unit has since been
20 transferred to the wildlife division and will be
21 hunted as a state park this coming year.

22 I have a three quick slides showing the
23 names of those 44 units of the state park that we --
24 system that we're considering as candidates for the
25 2002-2003 public hunts. And again, this is -- these

1 are all parks that were hunted under our system this
2 past year.

3 Mr. Chairman, that concludes my
4 presentation. Do you have any questions?

5 COMMISSIONER FITZSIMONS: How many
6 hunters participate in public lands hunts last --

7 MR. KOTHMANN: Well, the drawn hunts
8 where we have computer drawings though application on
9 state parks and wildlife areas -- we have a little
10 over six thousand hunters that hunt through our drawn
11 hunts, and about one-third of those positions are on
12 our state park hunts, about two-thirds are our
13 wildlife management area hunts. In addition to that,
14 under the annual permit we have about 43,000 people
15 that purchase the \$40 annual public hunting permit to
16 hunt on lands that are open. And that includes some
17 of our wildlife management areas, a few of the state
18 parks for limited periods of times, primarily small
19 game, and some of our leased lands such as the
20 cooperative agreements with U.S. Forest Service, the
21 timber companies, our 137 dove leases that we had this
22 past year. So it's a -- say 43,000 of the annual
23 permit holders. Some of those, I'm sure, also were
24 drawn among those six thousand permittees. In
25 addition to that, we have some daily permittees,

1 regular permit hunts, available by \$10 that we may
2 pick up an additional 10,000 maximum folks on those.
3 There's a lot of duplication. The same people hunting
4 under different permit formats because we have such a
5 wide variety of offerings.

6 COMMISSIONER FITZSIMONS: The six
7 thousand included in the 43,000 as they're going to
8 have a --

9 MR. KOTHMANN: Many of those people who
10 are drawn, for example, on a Kerr Wildlife Area deer
11 hunt may also purchase the annual permit to hunt dove
12 around, or go to some of these East Texas areas to
13 hunt deer under that annual permit.

14 COMMISSIONER FITZSIMONS: The 137 dove
15 leases, I --

16 MR. KOTHMANN: This past season.

17 COMMISSIONER FITZSIMONS: -- I had no --
18 I didn't realize that since that program had started
19 it had gotten that big. That's -- that is great. Any
20 idea how many hunters on those 137 that's --

21 MR. KOTHMANN: You caught me a little
22 flat footed. I believe that about 22 to 23 percent of
23 all activity done by those 43,000 permittees is done
24 on those public dove leases.

25 COMMISSIONER MONTGOMERY: I went out and

1 checked a couple of them out this year; they were full
2 of people.

3 COMMISSIONER FITZSIMONS: They were full
4 of people.

5 COMMISSION MONTGOMERY: It's a very
6 popular program obviously.

7 COMMISSIONER FITZSIMONS: That is
8 great. And things are going well with the landowners,
9 good relations there, that program is --

10 MR. KOTHMANN: By and large it's going
11 very good. We -- we -- we do have some
12 misunderstandings that occur. One --

13 COMMISSIONER FITZSIMONS: I'm shocked.

14 MR. KOTHMANN: We -- we -- we are
15 wanting land -- people from whom we lease land to be
16 sure that they have the right to lease us that land.

17 COMMISSIONER FITZSIMONS: I'm shocked
18 again. I thought that was only in oil the patch days.

19 MR. KOTHMANN: When -- we require that
20 individual to sign a lease agreement underneath a
21 statement whereby he -- he makes a -- he testifies
22 that he auth -- he is authorized to issue us that
23 hunting rights. That has not totally insulated us
24 from a few misunderstandings out there. But it -- it
25 is going quite well.

1 MR. COOK: It's going very good.

2 COMMISSIONER MONTGOMERY: It's a good
3 program.

4 COMMISSIONER FITZSIMONS: Great. It's a
5 good program. When that started that was something
6 that -- that I thought a lot of and I'm glad that
7 that's doing well. That's a pet project.

8 CHAIRMAN IDSAL: It's an important thing
9 for us, that we view dove hunting as an -- sort of an
10 entry level for our youth and -- and that's
11 gratifying.

12 MR. KOTHMANN: Thank you.

13 COMMISSIONER MONTGOMERY: Herb, thank
14 you.

15 COMMISSIONER MONTGOMERY: I have a
16 question. I want to be sure our policy is that --
17 that the peak use periods that the state parks that
18 receive a lot of use are not closed just for hunting
19 for a few people. In other words, it seems to me I --
20 I noticed over the holidays that one particular one
21 that it was not open on New Year's Day because of the
22 hunting. And I -- to me that's going too far to pull
23 them out of the park system at peak times. So I -- I
24 don't know how we balance that. I know it's going to
25 be different in a lot of places, but --

1 MR. KOTHMANN: Our guidance in the past
2 from the Commission on park hunts on developed parks
3 that have a format of public visitation is to, number
4 one, not hunt them on weekends is -- if that requires
5 excluding general visitation. Sometimes you can
6 geographically separate hunting activity from the
7 general visitation and -- and do both. But guidance
8 is one not to pre-empt general visitation by hunting
9 on weekends, to hunt on major holiday periods. Now, I
10 should say major holidays. In order to hunt -- have
11 had some youth hunts -- we have to hold hunts when
12 kids are out of school. So if we have taken weekends
13 off the table, that leaves a precious few days during
14 the Thanksgiving and Christmas Holiday period outside
15 of the actual holiday that we try to schedule a few
16 hunts during those weekday holiday periods, but not on
17 Christmas Day and not on Thanksgiving Day. And also
18 we try to conduct these hunts later in the year. Most
19 of these hunts are either late December or January
20 hunts when our park visitation has historically been
21 at its lowest point. But we do continue to get some
22 complaints about closure of the parks for hunting. We
23 do post this information on our internet home page
24 very prominently. If you'll go to the internet and
25 look almost anywhere under parks you'll see in red

1 letters "Restricted Access for Hunting" that leads you
2 to that listing. But we are certainly trying to avoid
3 impacting visitation by the general park users out
4 there.

5 COMMISSIONER MONTGOMERY: Can you look
6 at Enchanted Rock's schedule? I got a lot of
7 complaints over the holidays about the days of
8 restrictions? And the complaints seemed to be
9 meritorious to me.

10 MR. KOTHMANN: Enchanted Rock,
11 Pedernales Falls, and Inks Lake is the -- sort of the
12 Bermuda Triangle up there for us on --

13 COMMISSIONER MONTGOMERY: I'm sure
14 you've heard of this one before, but I -- I got a
15 bunch of phone calls on that.

16 MR. KOTHMANN: Yes.

17 COMMISSIONER FITZSIMONS: Yeah. You'll
18 get them when it goes the other way too, and they're
19 not -- and they're not out there hunting. Thank you,
20 Herb.

21 MR. KOTHMANN: We would like to publish
22 the proposed regulations in the Register, if possible,
23 and take these to public hearings for public comment.

24 COMMISSIONER FITZSIMONS: Well, if
25 there's no further questions or discussion, I

1 authorize the staff to publish the item in the
2 Register for the required public comment period.
3 Thank you, Herb.

4 CHAIRMAN IDSAL: We had planned on
5 having Item 7 taken up after lunch, but I understand
6 Mr. Turner and representative -- Representatives
7 Turner and Alexander are both here now; is that
8 correct? And if it's okay, we can proceed. I would
9 like to go ahead and finish the Regulations
10 Committee. And since our guys are here, I think we
11 should go ahead and wrap it up.

12 COMMISSIONER FITZSIMONS: Reconvening
13 the Regulations Committee. Our final agenda item of
14 the day, reviewing the Standards for Qualification of
15 Open Space Land Use Used for Wildlife Management. And
16 Kirby Brown has two special guests, Representative
17 Alexander and Turner, who I've had the opportunity to
18 work with on this issue.

19 And, Kirby, if you'll give us a little
20 background and --

21 MR. BROWN: Yes, sir. Thank you. For
22 the record, my name is Kirby Brown, Branch Chief for
23 Private Lands and Habitat for about two more weeks.
24 Senioritis is setting in so excuse me if that's a
25 problem.

1 House Bill 3123, there we go, was passed
2 in the 77th Legislature. That was authored by
3 Representative Alexander and Representative Turner,
4 and it provides that Texas Parks & Wildlife Department
5 with the assistance of the comptroller will develop
6 standards for wildlife management use in open space
7 regulations. There we go.

8 The comptroller will actually adopt the
9 rules. But we started this process right after the
10 bill was signed. The law took effect September 1st
11 and was set up to go into effect January 1 of this
12 year. So we had to have a very compressed process on
13 a very complicated complex subject in a very short
14 time frame.

15 We established public input the first
16 meeting with people that had been talking to us about
17 this during the session and previously and after the
18 session. So we used a large number of people and we
19 used them to set up an Advisory Committee.

20 The Advisory Committee was a broad
21 representation, including tax appraisers to landowner
22 groups, biologists who were working in the field, and
23 other conservation organizations. We met four more
24 times after that. So it's been pretty compressed
25 and -- and going pretty quick, but we've managed to do

1 a lot in a short time.

2 Basically, under this process we
3 developed rules. And in these rules it would require
4 that all qualifying tracts of land must have a
5 Wildlife Management Plan. And we're going to provide
6 that format for those plans from Texas Parks &
7 Wildlife, and those will be available. Also, we
8 provided a reporting format to those landowners who
9 are looking to have this Wildlife Management Use
10 Valuation for their property taxes, and that reporting
11 form will be very helpful to the appraisers and to the
12 landowner and know what they're required to do.

13 We wanted the rules to parallel Ag. So
14 these new rules parallel what they do in terms of
15 intensity requirements for Ag. And most counties have
16 established some type of minimum standards for new
17 tracts walking in, and we'll -- as we walk through
18 this process you'll see that parallel as to how those
19 standards actually apply now.

20 There are two situations possible when
21 someone seeks a Wildlife Management Use. They have to
22 have Ag, first of all. And so if they are qualified
23 for Ag and they walk in and the tract has not been
24 reduced in size, that's one issue. The other issue,
25 if a tract has been reduced in size and has that Ag

1 history when they walk in.

2 So for those tracts that have not been
3 reduced in size -- they've had Ag, it's been in there
4 continuously, they can still go to wildlife
5 management, whether it's a thousand acres, a hundred
6 acres, or five acres, those tracts that have that can
7 walk in today with that Ag process and get the
8 wildlife management with no problem at all, which is
9 the way the legislation originally had thought of when
10 we went through this process back with House
11 Bill 1358.

12 So those other folks who walk in and
13 have a piece of a former property -- I don't want to
14 call it subdivided, because people get confused with
15 subdivisions, but reduced from that smaller size --
16 we'll require that the county designate a minimum
17 ratio devoted to wildlife management use. The ratios
18 are determined by geographic area; we used a
19 biological basis to assess those. And the ratios only
20 apply when that tract is reduced in size.

21 Those ratios -- as we set them up with
22 our -- our staff and reviewed by a -- a group of
23 people that are part of the advisory board and then
24 others that we've been able to review this with -- in
25 East Texas, the ratios would be a minimum of

1 92 percent to a maximum of 94 percent. When you use a
2 formula that will come out to a -- kind of a minimum
3 acreage, and I'll discuss that in just a minute.

4 In Central Texas, it would be 93 percent
5 to a maximum of 95 percent. In southwest part of
6 Texas with the Panhandle, that's 96 to 98 percent.
7 And in the Trans-Pecos 97 to 99 percent.

8 So the ratio is determined by the
9 Appraisal District Board of Directors. Now, that's a
10 body that's appointed by elected officials. So
11 they're -- they're accountable to those elected
12 officials. They will designate a ratio from a per --
13 that percentage range that -- of the -- from maps that
14 I just showed you. So if the county is in
15 Central Texas they would designate a percentage from
16 that range that they were given.

17 In calculating the eligible ratio, it's
18 based on the total tract size minus 1 divided by the
19 total tract size. For example, if a percentage
20 selected in the county is 95 percent and the total
21 tract size minus 1 over the total tract size is the
22 formula, let's take a 20-acre tract, 20 minus 1 is 19
23 divided by 20, and that's 95 percent. So any tract 20
24 acres or larger would qualify for wildlife management
25 under this scenario with that 95 percent ratio.

1 There are two exceptions: Tracts within
2 a Wildlife Management Property Association. Now, we
3 wanted to separate the idea of a wildlife co-op or a
4 wildlife management association from the tax
5 requirement, so we used a name Wildlife Management
6 Property Association so people would understand the
7 difference. Although, it -- it's slight we think it
8 will work okay.

9 All properties within an area that have
10 deed restrictions, property-owner agreements, or
11 conversation easements, something that's tied to that
12 deed, legally obligating the landowner to perform
13 those wildlife management activities then those
14 properties can be a Wildlife Management Property
15 Association. The county must then select one percent
16 or two percent below the designated minimum. I
17 mentioned Central Texas. It was 93 to 95 percent, so
18 they would select one or two percent below the
19 93 percent, the minimum, in that ratio process.

20 Tracts within a Wildlife Management
21 Property Association would have to have a general
22 Wildlife Management Plan, but each individual tract
23 would also have to have a plan stating what they were
24 going to do, and then perform their three of seven
25 activities as -- as designed in the legislation.

1 For counties that have species of
2 concerns is the second exception: Whether they're
3 candidate, threatened, or endangered species, these
4 would be species listed by the Department then the
5 county would do the same method of determination for
6 these types of species. They too would be one or
7 two percent below the -- the minimum qualifying ratio
8 and a biologist or other qualified individual would
9 have to determine that the habitat for that species
10 was present. And like I said, TPW will list those
11 species for those counties.

12 Grandfathering: We wanted to make sure
13 that people who are qualified now that may not meet
14 these ratios but are qualified as of last year were
15 grandfathered into this. So someone that already was
16 qualified during the last year will be able to move
17 over into this without any problem.

18 There are a few outstanding process
19 issues, but overall the comptroller as a key issue
20 does not have enforcement authority. There is an
21 interim committee of the Legislature that will be
22 looking at this, and we'll probably take that to them
23 to see how they want to deal with that.

24 Secondly, just a part of that -- the
25 counties are only accountable to the courts. So a

1 landowner, if he is going to have the county do this
2 properly, has to go to court, and the landowner is
3 legally obli -- legally obligated for all court costs
4 and expenses, you know, and his own legal expenses.
5 So -- so it is difficult and it is an outstanding
6 issue.

7 Basically, that concludes my comments.
8 And I would like for Representative Alexander and
9 Representative Turner, the authors of the bill, to
10 make any other additional comments before we close.
11 And I would like to recognize members of the
12 comptroller's staff that are here. Where are you
13 guys? Right over here. Buddy Brievogel, who is the
14 manager of the property tax division; Bernie Little
15 and Dan Wilson, who have been tremendous help to me as
16 we've gone through this process; and also I'd be
17 remiss if I didn't mention Brandy Browning and Trent
18 Thomas of the representative's staff who have been on
19 this ever since day one, since last really, I guess,
20 March -- January, March, somewhere in there when we
21 started talking about this. So up to you guys.
22 Representative Alexander?

23 REPRESENTATIVE ALEXANDER:
24 Chairman Idsal and -- and Commissioners: Thank you
25 for this opportunity. We have a letter with

1 Legislative intent. I want to echo my appreciation
2 for the comptroller's office and for this man sitting
3 right next to me and to Joseph Fitzsimons for all the
4 time they spent on this and Chairman Turner for his --
5 for his help.

6 This is a very difficult complex
7 subject, but I think we made a win-win situation out
8 of this, and I'm just here to answer questions if
9 y'all have -- have anything? I -- I do know I'm going
10 to be serving on an interim committee with -- with
11 Edmund Kumble to address any further concerns any of
12 you have with this subject matter. And Commissioner
13 Fitzsimons, thanks for all your hard work on this.

14 COMMISSIONER FITZSIMONS: Thank you for
15 the original legislation. And there's a little
16 background here for -- I know that we've been
17 inundated with everything from deer diseases to
18 seatrout today, now we're on property taxes, but this
19 started if -- if you remember with Prop 11, which was
20 an idea whose time had come and -- and you gentlemen
21 made it happen, which essentially allowed people to
22 choose wildlife as an alternative or as a subset of
23 agriculture. The reality was that there were some --
24 if I may speak frankly, some appraisal districts that
25 chose to discriminate, and the -- the Chairman here

1 made sure that in this last session that 3123 made it
2 clear that the people of Texas meant what they said
3 when they passed the Constitutional Amendment. So I
4 want to thank you. Are there any questions about the
5 details of this, because it is --

6 COMMISSIONER RAMOS: Kirby made a
7 comment that people would have to end up in the court
8 system and I -- what's the what logic behind that? I
9 missed that.

10 REPRESENTATIVE ALEXANDER: Well, you
11 have to wind up there today anyway. This is going to
12 eliminate a lot of going to court, because we're
13 telling --

14 COMMISSIONER FITZSIMONS: There's some
15 pending lawsuits.

16 REPRESENTATIVE ALEXANDER: Yeah.
17 There's some pending lawsuits.

18 REPRESENTATIVE ALEXANDER: And it
19 doesn't remove your option.

20 COMMISSIONER RAMOS: Right. But don't
21 you go to your Appraisal District?

22 MR. BROWN: Your -- your review process
23 is you go to the appraiser then to the Appraisal
24 Review Board, and if you're not satisfied then you go
25 to the district court. Where you have the Appraisal

1 Review Board backing the appraiser -- one county
2 requires it for wildlife management -- you must have
3 1200 acres. We think that's not logical, and we have
4 advised the county but the county has continued in
5 that process. Those landowners who do go to the
6 courts then -- you know, they have to pay their way,
7 pay their legal fees and go through the whole process.

8 COMMISSIONER RAMOS: Yeah. I guess what
9 you're trying to do, you're trying to create some
10 uniformity throughout the state with an objective
11 standard as compared to each county doing their own
12 thing, as you might say.

13 MR. BROWN: Exactly.

14 REPRESENTATIVE ALEXANDER: With the --
15 the biology being the driving force on what's fair in
16 each region.

17 COMMISSIONER RAMOS: Sure.

18 REPRESENTATIVE ALEXANDER: And Chairman
19 Turner, do you --

20 REPRESENTATIVE TURNER: Well, you had a
21 question and then I'll -- I'll make a comment or two.

22 COMMISSIONER MONTGOMERY: Just a quick
23 question. Just wondering about the politics as well
24 as the legal position. Would it help -- could we get
25 and would it help to seek approval or -- or support of

1 this from the Texas Association of Counties? Would
2 they take that on or would that help? Are there a
3 political or legal position?

4 REPRESENTATIVE ALEXANDER: Were they
5 involved in the process, Kirby?

6 MR. BROWN: No, they were not. They
7 were invited, but -- but --

8 COMMISSIONER MONTGOMERY: They may not
9 take it. I don't know.

10 REPRESENTATIVE ALEXANDER: I can sure
11 call them and see. That -- that would be helpful.

12 MR. BROWN: Their request during the
13 legislative session was, they just wanted to see some
14 fair standards that would be applied fairly across all
15 counties.

16 COMMISSIONER MONTGOMERY: That may make
17 it hard for a renegade county to be against the
18 associations for them.

19 REPRESENTATIVE TURNER: I -- I don't
20 desire to go to the Texas Association of Counties and
21 tell them they have renegade counties really.

22 COMMISSIONER MONTGOMERY: Counties of
23 different opinions.

24 COMMISSIONER FITZSIMONS: Which ones?

25 REPRESENTATIVE TURNER: Maybe in mine

1 and Commissioner Angelo's area there may be a few
2 renegade counties.

3 Let -- let me say that, first, I would
4 like to commend Parks and the comptroller for the
5 methodology you're using here in establishing and
6 approving the rules and determining the rule.
7 Chairman Alexander and I have had years of experience
8 now in introducing legislation in which the agencies
9 never ask our Legislative intent. So this is a real
10 treat; I want you to know that. And we appreciate
11 that -- that, and I wanted to share that with both you
12 and the comptroller.

13 This has been a very open process.
14 There has been all the room for participation by
15 everyone, including the Association of Counties to
16 participate in the process. Needless to say the ones
17 who usually don't go to the school board meeting are
18 the ones that have a problem on Saturday morning at
19 Dairy Queen.

20 I think there's one thing that I
21 would -- some of you caught on. There's -- there's
22 one thing, I think, that we need to think about and
23 that is some people have talked about adding
24 requirements or subtracting requirements for
25 qualification. Prop 11 did that in a previous session

1 of the Legislature established the three out of seven
2 things that you had to do to comply. So when we talk
3 about changing those kind of things, it's in statute
4 and -- and it would take law. It would take another
5 piece of legislation in a subsequent session to change
6 those things. So I think this -- I think this set of
7 rules adequately covers, as -- as Chairman Alexander
8 said, it provides assurance that biology -- good sound
9 wildlife biology will be driving the rules. And --
10 and I think that's a must. And as Chairman Alexander
11 said, we're here to answer any questions you might
12 have. And -- and we have our staff people here who
13 really know the answers so -- Thank you.

14 COMMISSIONER FITZSIMONS: I -- I have
15 one question on the -- the Wildlife Management Plans
16 are very popular and this is more staffing for the
17 wildlife division, I guess, of Parks & Wildlife. Did
18 the Wildlife Management Plan will include necessarily,
19 as you say, the three out of seven that was in the
20 original.

21 MR. BROWN: That's correct. The
22 Wildlife Management Plan that is provided to the
23 counties for this tax appraisal can be developed by
24 the landowner. They can get assistance from -- from
25 any number of sources, including consulting biologists

1 and our biologist. We -- we'll provide that if we the
2 time as we go through this. But it is a process that
3 we've created so that the landowner can do it
4 themselves, and it's very understandable and we have
5 about a 190-page book -- you always hate to tell
6 someone that -- on how to do this. But it's a process
7 where they can pick and choose from that book, so it's
8 really not that complicated, and -- and it hasn't been
9 a burden to staff as this point, but --

10 COMMISSIONER RAMOS: Who -- who
11 determines the adequacy of the Wildlife Management
12 Plan?

13 MR. BROWN: In -- in truth the appraiser
14 does, and the appraiser will -- will continue to do
15 that. And what we're trying to provide them is
16 clearer guidelines on what is adequate and what is
17 not, because they are all over the board, and we think
18 we'll be able to do that.

19 COMMISSIONER RAMOS: And then what will
20 happen in the -- in the second year? Okay. So you
21 qualify year one, what happens in the second year, you
22 have a new management plan every year as a
23 prerequisite for maintaining the -- the valuation or
24 not?

25 MR. BROWN: No. You're really looking

1 at your activities -- three of the seven activities
2 being performed in that year as -- as part of your
3 management plan. As long as that appraiser is aware
4 that you are performing those then -- then similar to
5 Ag you just have to prove that you are doing that.

6 COMMISSIONER RAMOS: What -- what I'm
7 saying is, like with an Ag use valuation you qualify
8 in the -- in the first year at any given point the
9 appraiser can say "I want you to satisfy me." What
10 I'm asking is, is there a system in place to where you
11 insure that that landowner will comply with the
12 management plan and perpetuate it into the future?

13 MR. BROWN: Like Ag that is the way it
14 should be. And the -- and the appraiser will make
15 those determinations, but they will request that the
16 landowner provide receipts, photographs, go out on
17 site and look at what is going on. So we do -- you
18 know, from the counties we found that there is -- they
19 are doing that.

20 COMMISSIONER FITZSIMONS: But that's no
21 different from Ag.

22 CHAIRMAN IDSAL: That's no different
23 from Ag.

24 COMMISSIONER RAMOS: Well, but -- Yeah.
25 But theoretically Ag is a little bit different. The

1 way I see it is, if you have a management plan you've
2 got certain objectives. If you're running a cattle
3 operation you don't have to give an objective to the
4 taxing agency for a cattle operation. Here, you have
5 a management plan in hopes that you're going to
6 improve your deer population. So what I'm saying is,
7 if that's the goal of the plan are we going to
8 somehow -- or I guess it's going to be up to the
9 district to insure that those goals are accomplished.
10 Because if they -- if they blow off the plan, for
11 example, okay -- in the second year, let's say, you
12 say I'm going to shoot 20 does and the guy shoots 5,
13 does then that give the Appraisal District the right
14 to suspend a --

15 REPRESENTATIVE TURNER: I don't think
16 any of the plans are going to be that detailed and
17 that minute in how they control such as a number of --
18 of doe that are going to be harvested. I think we're
19 talking about controlling the population within
20 biological rationale or reasoning.

21 COMMISSIONER RAMOS: But without a
22 survey or --

23 REPRESENTATIVE TURNER: If any of the
24 plans are that -- are that detailed and that -- that
25 pointed it would be difficult, but I -- I don't see

1 any of these plans. Primarily, they're going to
2 comply with three of those seven prerequisites and --
3 and there has to be proof that they did that. And I
4 would that in -- at the second or third year if you
5 wanted to substitute one of the other issues instead
6 of one of the original three you had picked, you could
7 do that with the approval of -- of the Appraisal
8 District.

9 COMMISSIONER RAMOS: Well, it -- it
10 sounds to me like the plan is county wide as compared
11 to ranch specific.

12 MR. BROWN: Oh, no, sir. It is -- it is
13 ranch specific. And -- and if they do as part of
14 their plan they say they are going to kill about 20
15 deer a year, usually they put a plus or minus in
16 there, we know some years it's very tough to -- to
17 harvest your deer. And we've talked to counties
18 through educational programs that have been put on by
19 us, consulting biologists and others that give them an
20 idea of -- of what we're looking for is that long-term
21 process.

22 COMMISSIONER RAMOS: I think it's a
23 great program, but I -- I'm just wondering if someone
24 may not want to qualify just to get the -- the benefit
25 and then not follow through. That's my concern.

1 MR. BROWN: There are those; and the
2 counties of course do follow up on that.

3 COMMISSIONER FITZSIMONS: Commissioner,
4 it's not unlike the way we've use Wildlife Management
5 Plans already, which has been a very successful
6 program that -- that Kirby's had a lot to do with the
7 success. And integrating that with the MLDs, and the
8 different levels of MLD, and you're required to have a
9 Wildlife Management Plan in order to be an MLD. And
10 so at the beginning there's going to be a
11 determination, first of all, if there's a legitimate
12 habitat, so that you don't have the problem of
13 somebody claiming a parking lot or a caliche pit as --
14 as a -- as wildlife management. So I think the --
15 we've got a good program and, you know, what I'm
16 concerned about is being able to staff now on the
17 wildlife side all the demand that we'll have for
18 Wildlife Management Plans. That's been the problem.
19 Which is a good problem to have.

20 COMMISSIONER RAMOS: It won't
21 necessarily require a biologist.

22 MR. BROWN: That is correct.

23 COMMISSIONER RAMOS: Theoretically, the
24 landowner could say "I'm qualified and here's my
25 plan."

1 COMMISSIONER FITZSIMONS: Right. Well,
2 it's got to be approved.

3 CHAIRMAN IDSAL: Is it a fair
4 observation to say that the incentive to make sure
5 that --

6 REPRESENTATIVE ALEXANDER: It's got to
7 be approved.

8 CHAIRMAN IDSAL: -- people are abiding
9 by the three requirements that they choose is that the
10 Appraisal District will put you back on the tax rolls
11 if you don't?

12 COMMISSIONER FITZSIMONS: Yes, ma'am.

13 MR. BROWN: And -- and pay rollback.

14 COMMISSIONER FITZSIMONS: There are a
15 lot of incentives on both sides to make sure people
16 are doing what they're supposed to be doing. That's
17 one of the great things about the way you've designed
18 it.

19 REPRESENTATIVE TURNER: And just like Ag
20 the -- the -- the enforcement responsibility comes
21 back to the locally-appointed board and that's the way
22 it should be.

23 COMMISSIONER RAMOS: The only point I
24 was making is that you could establish a plan year one
25 and maintain that same plan for ten years or twenty

1 years as compared to having an annual plan consistent
2 with the habitat, the rainfall for each specific year.

3 MR. BROWN: And -- and that is true.

4 Most of them will do a single plan, and the only
5 changes is -- will be when they modify the activities
6 they're going to do at a later date.

7 COMMISSIONER RAMOS: In year two you may
8 start supplement feeding deer.

9 MR. BROWN: Right.

10 COMMISSIONER RAMOS: And you might be
11 able to -- to expand it.

12 REPRESENTATIVE TURNER: Some years you
13 don't need to supplement feed as much and, you know,
14 there's a lot of --

15 COMMISSIONER FITZSIMONS: Thank you very
16 much for all your work. I -- I -- this presentation
17 doesn't -- certainly belies the fact all the -- and
18 the year of work that's gone into this, and Kirby's
19 hard work and tolerance and long very -- no one can
20 say that these meetings weren't public. And I -- like
21 the Chairman pointed to some people that didn't show
22 up to the meeting that seemed to have the most
23 comments later. Thank you. And this is a briefing
24 item so it requires no action or --

25 REPRESENTATIVE TURNER: I'd like to make

1 one comment here. And -- and first, I would like to
2 thank the staff, as -- as Kirby did, I would like
3 thank the staff at comptroller for what they did in
4 helping make this possible. That was a necessity.
5 But Kirby has been a major player. And I want you to
6 know that those of us in the Legislature are going to
7 miss Kirby Brown being at Texas Parks. And I -- I
8 would say that it -- it -- it's going to be a loss for
9 the state. I don't know who's going to take the job,
10 it's -- it's -- but it's going to be hard shoes to
11 fill, and we'd like to thank you for the ability and
12 the efforts you've given him the opportunity to help
13 us with this project. And he's going to pay me for
14 this after we leave.

15 MR. COOK: Mr. Turner, obviously, you --
16 you don't know all of the Kirby stories.

17 REPRESENTATIVE TURNER: You know, it
18 reminds me a little of in the Army when we were
19 overseas, we often said, "he who sees and knows and
20 says nothing will be richly rewarded afterwards."

21 CHAIRMAN IDSAL: Thank you all very
22 much.

23 REPRESENTATIVE ALEXANDER: Thank y'all.

24 COMMISSIONER FITZSIMONS: Thank you very
25 much.

1 REPRESENTATIVE TURNER: Thank you.

2 COMMISSIONER FITZSIMONS: Thank you very
3 much. Anything else before the Regulations Committee,
4 mindful of the fact that it is not the only
5 committee? We stand adjourned with a motion.

6 COMMISSIONER RAMOS: So moved.

7 COMMISSIONER FITZSIMONS: Second.

8 CHAIRMAN IDSAL: Do we need a motion to
9 recess?

10 COMMISSIONER FITZSIMONS: No. This is
11 adjourning the Regs.

12 COMMISSIONER MONTGOMERY: We're done.
13 Second?

14 COMMISSIONER MONTGOMERY: Second.

15 COMMISSIONER FITZSIMONS: All in favor,
16 Aye.

17 ALL COMMISSIONERS: Aye.

18 COMMISSIONER FITZSIMONS: All opposed,
19 same sign.

20 (No Response.)

21 COMMISSIONER FITZSIMONS: We're
22 adjourned.

23 CHAIRMAN IDSAL: At this time, I would
24 like to announce that pursuant to the requirements of
25 Chapter 551 Government Code referred to as the Open

1 Meetings Law an Executive Session will be held at this
2 time for the purpose of consideration of
3 Section 551.071 of the Texas Open Meetings Act
4 regarding pending litigation and legal advice and
5 section -- is that right? -- and Section 551.072 of
6 the Texas Open Meetings Act regarding real estate
7 matters. Thank you.

8 (WHEREUPON, an Executive Session was
9 held.)

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1 THE STATE OF TEXAS)
2 COUNTY OF BEXAR)

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4 I, DICIE LEE EYTCHESON, a Certified
5 Court Reporter in and for the State of Texas, do
6 hereby certify that the above and foregoing 111 pages
7 constitute a full, true, and correct transcript of the
8 minutes of the Texas Parks and Wildlife Commission on
9 JANUARY 16, 2002, in the Commission Hearing Room of
10 the Texas Parks and Wildlife Headquarters Complex,
11 Austin, Travis County, Texas.

12 I FURTHER CERTIFY that a
13 stenographic record was made by me at the time of the
14 public meeting and said stenographic notes were
15 thereafter reduced to computerized transcription under
16 my supervision and control.

17 WITNESS MY HAND this the 28th day of
18 *March*, 2002.

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JOSEPH FITZSIMONS, CHAIR

DONATO D. RAMOS

PHILLIP MONTGOMERY, III

JOHN AVILA, JR.

KATHARINE ARMSTRONG IDSAL

ERNEST ANGELO, JR.