



# Missouri Hunters for Fair Chase and the Native Missouri Wildlife Conservation Amendment

## JANUARY 2018 EXECUTIVE SUMMARY

Recent developments in the progress of the MDC appeal of the industry lawsuit ("Hill v MDC") have led the MHFFC board to re-evaluate the timing of our effort to put the Native Missouri Wildlife Conservation Amendment (NMWCA) to a vote of the people.

### What has Changed?

The appellate court considering Hill v MDC took the unusual step of declining to rule, instead transferring the case directly to the Missouri Supreme Court, saying:

***"We would reverse the judgment of the trial court. However, because of the general interest and importance of the questions involved here, we transfer this case to the Missouri Supreme Court."***

Despite opting not to rule, [the appeals court provided comprehensive legal analysis and detailed statements](#) regarding how it would have ruled. For example:

***"... the Commission's efforts to restore and conserve free-ranging cervids would be threatened without the **authority to regulate all cervids capable of infecting free-ranging cervids with this fatal disease.** We would find the Commission's authority to regulate free-ranging cervids, therefore, to **include the authority to regulate importation and possession of other cervids...**"***

Those are broad terms used without mitigating exceptions. If the court had actually ruled, that language could have been construed as providing all necessary authority.

The eventual Supreme Court ruling will be carefully analyzed by all stakeholders. One possible outcome might be consensus that the MDC has clear unchallengeable authority to:

- Expand CWD regulations to cover all cervid species, regardless of purpose of confinement.
- Expand the import ban to cover all cervid transport.

If that comes to pass, and if the MDC elects to take those steps, the NMWCA would be redundant and thus not needed.

But those are big "ifs", and CWD doesn't wait while judicial and political processes play themselves out.

## **Our Current Plan**

The Supreme Court will hear oral arguments on Hill v MDC in January 2018. Some insiders suggest their ruling could come in the first half of 2018. There are no guarantees but there is confidence the Supreme Court will rule in the MDC's favor. Whether they will employ language as sweeping as that suggested by the Appellate court is completely unknown.

Given these things known and unknown, and the May 2018 deadline for initiative petition signatures, the Missouri Hunters for Fair Chase board has determined our most productive course of action is to suspend efforts to place the NMWCA on the November 2018 ballot.

Depending on what action is taken by the Missouri Supreme Court, and MDC response to that action, we will re-evaluate the situation, confer with our supporting organizations and decide whether to re-file the NMWCA. It would be amended as necessary to reflect the situation at the time, to appear before Missouri voters on the November 2020 ballot.

But we are not disengaging from this urgent battle. While events play themselves out we will shift our mission to one focused on educating the public and organizations with a stake in the health of Missouri wildlife regarding the challenges of CWD, both biological and political.

We do not intend to duplicate any efforts of the MDC in that regard, but an NGO (non-governmental organization) can communicate in ways that a governmental organization cannot — especially while engaged in litigation directly related to the topic.

Continued support from the conservation community remains very important to us. We are extremely grateful for support offered to date, and plan to continue promoting an agenda that best protects the future of wild deer and elk in Missouri.

## SUPPORTING DETAILS

### **The problem:**

Chronic Wasting Disease (CWD) is a known threat to the long term viability of deer species. It persists in the environment and is contagious by contact. It is a true conservation nightmare.

The two human activities posing the highest known risk of spreading CWD via new outbreaks are:

1. The transportation of Infected live animals by the confined cervid industry.
2. The transportation and improper disposal of Infected cervid carcasses by hunters.

The MDC has clear authority to regulate hunter activities. But a complex mix of legal, regulatory and statutory factors currently obstruct MDC regulation of the confined cervid industry, including their transportation and confinement of live cervids.

### **The status in Missouri:**

After nearly a decade of testing tens of thousands of wild and penned deer statewide, the first CWD case was found in 2010 in a Linn County pen confining red deer and white-tailed deer. In 2011 it was found in a nearby Macon County pen owned by the same person. In 2012 it was found in wild deer less than 2 miles from that Macon County pen.

It has since spread to wild deer in other areas of the state, currently comprising nine "core areas" and "surveillance zones", within 41 "CWD Zone" counties that account for over a third of Missouri's acreage. Fortunately, CWD in Missouri is still at a very low prevalence wherever detected, and most of Missouri still appears to be CWD-free for now.

In 2015 the MDC imposed limited new CWD related regulations, prompting an industry lawsuit ("Hill v MDC") that resulted in those regs being first blocked then overturned. An MDC appeal is now pending in the MO Supreme court.

The confined cervid industry is very active in Missouri, with over 200 breeding facilities and 46 big-game shooting preserves trafficking in both native and exotic cervid species. There are an additional unknown number of operators confining only elk or exotic cervids (e.g. Fallow Deer, Axis Deer, Red Deer/Stag and Sika deer) that do not commingle them with white-tailed deer, thus evading MDC regulations, even the regulations challenged by Hill v MDC.

### **Intent of the NMWCA**

By its response to Hill v MDC the trial court showed MDC authority was at risk. After the court ruled against the MDC, many conservation insiders expressed confidence the trial court action would be

reversed on appeal, giving the MDC a win. The MHFFC board has shared that optimism from the beginning, but recognized that even a complete victory in Hill v MDC could leave gaping holes in MDC ability to effectively regulate CWD threats.

The scope of Hill v MDC is limited to regulations impacting breeding facilities confining white-tailed deer, and shooting facilities. It leaves big question marks regarding MDC authority to regulate elk and exotic cervids in facilities other than shooting pens. Any MDC attempt to regulate those animals will likely lead straight back into court.

Confined elk have been statutorily defined defined as livestock by the Missouri legislature since 1995, a fact explicitly acknowledged by the MDC since May 2003 in their own regulation ([3 CSR 10-9.230](#)) which states "*...Elk defined as livestock pursuant to the Revised Statutes of Missouri section [277.020](#) that are held separate so as to prevent commingling with mule deer and white-tailed deer **are exempt from permit requirements.***"

Given these facts it is unclear if a future court battle over elk regulation would be resolved in the MDC's favor.

Regulation of exotics is even more murky. They exist in a legal/regulatory vacuum that the MDC has not yet probed — in fact the MDC has privately signaled they may not attempt to regulate exotic cervids at all. That is unacceptable as it does not address the known risk. CWD is a cervid disease, and CWD prions don't read statutes or regulations.

Also, the risk of spreading CWD via transportation of live cervids applies to ALL transportation, not just importation. Loading a live cervid onto a trailer and moving it risks moving CWD to a new location, period. The MDC has never clarified their reasoning for prohibiting only importation, nor indicated if they intend to broaden the ban to all transport if Hill v MDC is overturned.

Bottom line, rational response to the threat of CWD makes it absolutely necessary that all transportation of all live cervids be prohibited.

The NMWCA bans all transport. The NMWCA makes clear that the MDC has regulatory authority over all cervids including elk and exotics. The NMWCA eliminates the need for more long and expensive legal battles.

If you are the night watchman at a bank, your job is to make the bank secure. You do that by locking all the doors. You cannot just lock most of them and declare you did a good enough job. The bank is not secure until all the doors are locked.

The NMWCA locks all the doors, and does so without the need for MDC to spend more taxpayer conservation dollars on attorneys, or risk years of delay before implementing necessary regulations.