

MINUTES

(Subject to approval of the task force)

ATV TASK FORCE

September 27, 2011

Capitol Bldg, Room EW05, Boise, ID

In attendance were: Co-chair Representative Judy Boyle and Co-chair Senator Steve Bair; Senators John Tippetts, Steve Vick and Elliot Werk; Representatives Marv Hagedorn, Marc Gibbs and Roy Lacey. Legislative Services Office (LSO) staff present were Eric Milstead and Charmi Arregui.

Other attendees were: Representative Donna Pence; Sharon Kiefer, Idaho Department of Fish & Game; Dave Claycomb, Idaho Department of Parks & Recreation; David Claiborne, Idaho ATV Association; Becky Johnstone, Backcountry Recreation Club; Troy Elmore, Idaho Department of Parks & Recreation; Adena Cook, BlueRibbon Coalition; Ray Houston, Legislative Services Office of Budget & Policy; Benjamin Davenport, Risch-Pisca PLLC; McKinsey Miller, Polaris; Dennis Tanikuni, Idaho Farm Bureau; Greg McReynolds, Trout Unlimited; Edward Bottum; Sandra Mitchell, International Rescue Committee (IRC); Herbert Pollard; John Robison, Idaho Conservation League; Dick Gardner, Bootstrap Solutions; Blake Fischer, Backcountry Hunters & Anglers; and Russell Westerberg, Idaho Conservation Officers Association.

Co-chair Boyle called the meeting to order at 10:03 a.m. and said she was anxious to continue discussions from the August meeting, and she thanked the parties who got together since the last meeting. **Co-chair Representative Steve Bair** expressed his appreciation to everyone, and invited attendees to voice their opinions, to provide input to this task force.

The first presenter was **Sharon Kiefer**, Idaho Department of Fish and Game (IDF&G), who expressed her apologies for **Randall Budge**, who was unable to attend this meeting. **Ms. Kiefer** explained that on August 25, IDPR and IDF&G met, and she said it was a productive meeting. She referred to notes from that August 25, 2011 meeting, which had been given to the task force members prior to this meeting, and those notes are available at LSO. She summed up the action items that IDF&G specifically committed to, relative to follow-up of concerns articulated. She pointed out that at the beginning of the meeting, both agencies had opportunity to express issues of concern, emphasizing that the meeting was productive, but that there are also follow-through items and some issues of concern which obviously do not melt away, and do remain, certainly on behalf of Idaho Department of Parks and Recreation (IDPR). At that August 25, 2011 meeting, IDPR and IDF&G jointly met focusing on the Motorized Hunting Rule (MHR) and **Ms. Kiefer** listed key points from that meeting, and referred to handout #1 which is available on LSO's website at: www.legislature.idaho.gov/sessioninfo/2011/interim/atv0927_kiefer1.pdf

Ms. Kiefer said that the IDF&G Commission is moving forward relative to that conversation about MHR concerns articulated from both sides of the table. At the present time, the IDF&G Commission is retaining the MHR; however, they are committed to a process trying to revise and to clarify the MHR. IDF&G has specifically committed to ensure that IDPR and other

stakeholders will be involved in review and comment of revised language. **Ms. Kiefer** pointed out this has to do with action items that the IDF&G Commission will be considering at their November 9, 2011 meeting in Coeur d'Alene at the Best Western Plus. The more policy-directed action is that the Commission will be proposing a moratorium to the MHR directing staff that they will not bring forward new expansions, new units of the MHR. The Commission will also direct the IDF&G, per the discussion with IDPR, to use that moratorium period to do a better job of evaluating the effectiveness of the MHR, both from biological objectives of the rule relative to achieving various herd objectives, as well as looking at the public, social side of the MHR relative to hunters and public satisfaction. The Commission will be directing IDF&G to conduct that evaluation and report back to stakeholders and IDPR; also, IDF&G has committed to joint efforts with IDPR and other stakeholders to improve IDF&G's efforts at communication, education, mapping and signing as related specifically to the MHR. IDF&G cannot pre-decide for the Commission, so this will be considered as any normal Commission action item, but the Commission has articulated their intent to have this discussion at the November meeting. **Ms. Kiefer** expects affirmative action on these items.

Co-chair Bair thanked IDF&G for the vast amount of information provided to the task force members, but asked if IDF&G has done a study on the effectiveness of the MHR, asking if it was the intent of the Commission and the department to have a full-blown study that will provide proof and evidence that the MHR is effective or ineffective. **Ms. Kiefer** replied that once IDF&G is directed to conduct an evaluation, IDF&G will decide how best to approach that. She recognized that studies had been requested on motorized recreation and also effects of recreational travel on wildlife. The genesis of the MHR was based on scientific literature, but IDF&G does not have a specific study relevant to specific locations and herds, and **Ms. Kiefer** said that IDF&G will be looking at the effectiveness of the MHR relative to place and objectives in time. While literature provides very strong background information, it is not specific to IDF&G's specific usage of the MHR. **Co-chair Bair** thanked IDF&G for their willingness to do studies, believing these studies to be absolutely crucial going forward in years to come.

Representative Hagedorn asked whether IDF&G intended to do these studies themselves or hire a third party and **Ms. Kiefer** said it was too early to determine that. She pointed out that in information provided to the task force, per their request, there was a large survey relative to mule deer management, which served as a genesis to actions taken for the mule deer initiative, and was conducted by a third party. IDF&G must step back and think about two components: (1) the actual biological effectiveness of the MHR, and (2) the social acceptance and effectiveness of the MHR, and how to effectively approach this, recognizing the skepticism of the MHR.

Ms. Kiefer then moved on to handout #2 provided to the task force prior to the meeting entitled: "Briefing for Legislative ATV Task Force: Background for a Policy Reconfirmation of joint IDF&G and IDPR Travel Plan Coordination and Proposed Technical Comment Policy by the Fish and Game Commission, 9/27/11" and the link is on LSO's website at: www.legislature.idaho.gov/sessioninfo/2011/interim/atv0927_kiefer2.pdf

Ms. Kiefer said she would be focusing specifically on the discussion IDF&G anticipates the Commission having and the anticipated action and direction the Commission may be going, per the commitments made and embodied in the notes from the August 25, 2011 joint meeting. **Ms. Kiefer** said that everyone has committed to undergo joint review and collaboration prior to

forest-wide travel plan comments as guided by the joint Wheeler/Williams letter. The task force received this letter prior to this meeting, a copy of which is available at LSO. As guided by the Governor's office protocol, **Ms. Kiefer** said that the Commission was prepared to reaffirm the policy intent of that letter dating back to 2008 and to operate and conduct themselves as described in that letter. She said that during the August 25, 2011 joint meeting, there was commitment that the Commission will consider policies clarifying the purpose and extent of formal comments submitted by IDF&G. **Ms. Kiefer** referred to page 2 of handout #2 (now on LSO's website). She said she wanted to articulate specifically what the Commission will be doing relative to policy direction to IDF&G. Obviously, the Commission will make formal comments on various land and water management plans and projects which is a responsibility of IDF&G in fulfilling their mission to preserve, protect and provide continuous supplies of wildlife. The Commission's direction will be specifically to direct IDF&G to not assert any position for or against a plan or project proposal that might come from a governmental decision-maker. Instead, the Commission will direct IDF&G to provide technical information and act as an expert assessing effects on fish and wildlife in their habitat and how those adverse effects might be mitigated. The Commission would also direct creation of a standard preface that would articulate this policy in all formal comments going to any deciding agency or body. **Ms. Kiefer** said she expected action from the Commission in November directing IDF&G relative to final completion of a standard preface on comments. She pointed out that the Commission does recognize there may be times that IDF&G may offer a position consistent with Commission policy when a project might affect proprietary holdings of IDF&G.

Senator Tippetts referred to page 2 of handout #2, 2nd bullet: "The Commission policy would direct the Department to not assert any position 'for' or 'against' a plan or project proposal from a governmental decision-maker." He asked if this was a change in policy or a reconfirmation of current policy. **Ms. Kiefer** said this was not a change in policy, but certainly is a reaffirmation of current policy, as well as being more direct about current policy. Similar language has been used, but nothing has been used as standard and across-the-board in all regions with all staff. This language will help improve understanding of Commission policy by all staff, as well as readers.

Ms. Kiefer commented that not a lot of time was spent in the joint August 25, 2011 meeting discussing IDF&G's statutory authority to enter into cooperative travel planning enforcement when there is a state wildlife nexus operating via state wildlife statutes. The reason not a lot of time was spent discussing this is due to general agreement between the two agencies about IDF&G's ability to enforce existing federal travel plans through MOUs when they fit the prescriptions of state statute. A handout at the August 9, 2011 meeting clearly laid out what those prescriptions were. **Ms. Kiefer** said that IDF&G continues to be involved in MOUs, while recognizing skepticism exists; Idaho Code specifically limits any enforcement actions to protect sovereign wildlife interests to the state when there is no legal travel activity that is allowed by a landowner or a travel plan. Wildlife is a state trust responsibility on behalf of Idaho sportsmen and citizens. **Ms. Kiefer** emphasized that the law requires an MOU, so it is a transparent documentation about the landowner and IDF&G relationship. Legal travel for Idaho citizens, including Idaho sportsmen, is jeopardized by illegal travel. Any enforcement actions by IDF&G relative to MOUs are under state law and state jurisdiction, not federal.

Senator Tippetts said he wanted to talk about material on the CD and was very interested in the

2007 Idaho mule deer hunter study and the opinions of hunters on the motor vehicle rule. Between 20% and 62% of all mule deer hunters were not familiar with this rule at that time; hunters were more inclined to believe that the rule did not apply to their hunting. He believes this applies to what this task force is addressing, even though the information is dated. He asked if any more current information was available about hunter opinions on the motor vehicle rule since this 2007 study. **Ms. Kiefer** said that current information was not available, but pointed out that the context of that was a much more broad, statewide survey and is why IDF&G has not taken a broader approach with the MOU. What IDF&G has done since 2006 is to focus more specifically on the local geography as proposals came to IDF&G about the motorized hunting rule.

Co-chair Bair said he thought he heard **Ms. Kiefer** state that with regard to joint enforcement, that IDF&G must enter into an MOU, asking if he understood that correctly. **Ms. Kiefer** answered “yes” and said that IDF&G cannot partner with federal authority in terms of travel plan enforcement without the benefit of an MOU. However, there are other aspects of IDF&G’s Title 67 that do not require an MOU, such as checking motorized vehicle OHV registration, since that is not related to state travel plans, but rather is a state law and IDF&G has authority to implement state law. With regard to federal travel planning enforcement, or private, or state, in the case of the Idaho Department of Lands (IDL), IDF&G must have an MOU which is prescribed by statute. There are only certain locations in which IDF&G has statutory authority. **Co-chair Bair** asked for help in understanding Idaho Code 36-104 (b) subsection 10 about general powers and duties of the Commission where it says: “ ... if requested by not less than ten (10) residents of any county in which the land is located **may** enter into cooperative agreements with those owners or possessors to enforce those restrictions when the restrictions protect wildlife or wildlife habitat.” He asked if he was missing something, since the language does not say “must.” **Ms. Kiefer** stated that the Commission has directed IDF&G that an MOU is necessary. She referred to a handout from the August 9, 2011 meeting where it said that statute does further require an MOU, adding that it has always been IDF&G’s practice. Specifically, BLM was told that IDF&G will not enter into a cooperative agreement with them and that cities have asked IDF&G to enter into motorized travel agreements and IDF&G told them “no, it does not fit the prescription of statute.” **Ms. Kiefer** said that the Commission’s practice has always been that IDF&G must have a cooperative agreement, even though she admitted it does say “may.” **Co-chair Bair** commented that in order for IDF&G to enforce on federal lands, it is the position of the Commission that IDF&G must have an MOU with that regulatory agency in order to do that. If IDF&G chooses not to, he believes that IDF&G doesn’t have to. **Ms. Kiefer** said she had misunderstood, confirming he was absolutely correct, and **Co-chair Bair** said that IDF&G does not have to exercise those enforcement powers, per statute. **Ms. Kiefer** agreed, adding that the Commission, relative to the wildlife trust of the state, has made these decisions about what is beneficial relative to IDF&G’s upholding Idaho Code 36-104.

Co-chair Boyle asked if there had been any discussion in the Commission or IDF&G about why the letter needed to be reissued and why it wasn’t enforced. **Ms. Kiefer** said that IDF&G was generally operating under that protocol forest-wide, even though that doesn’t mean a solid consensus on the recommendation; she added that she believes IDF&G can do a better job working together. That doesn’t mean the result will be the same, exact recommendation, believing that the letter doesn’t direct IDF&G to do that specifically; however, the Commission recognizes that IDF&G has strayed away from being as committed to that approach as IDF&G

should be, since other priorities got in the way. The Commission believes it is relevant and appropriate for them to again be part of that policy directive to IDF&G.

Mr. Troy Elmore, Off-Highway Vehicle Program Manager, Idaho Department of Parks and Recreation (IDPR), was the next presenter and he said he participated in the August 25, 2011 meeting discussed today. He also serves on the Interagency Off-Highway Vehicle Coordination Committee which meets quarterly with the Forest Service, IDF&G, BLM, and IDL where these types of issues are discussed and they work hard to get clear, concise rules and still provide ample opportunity to recreate in Idaho. He found it beneficial for parties to come together at this joint meeting, where he asked why this rule is necessary and what are the objectives, which IDF&G explained. He said that there is consensus as to the desired end goal; they both want to prohibit cross-country use and keep OHVs on established routes. The current situation is that there are 18,000 miles of designated trails in Idaho and about one-third are open to motorized vehicles; if the motorized hunting rule were gone today, he doesn't believe that goals achieved would be lost. Rules must be followed that are already in place; it is illegal to hunt from a motorized vehicle. He said that IDF&G has the desire and ability to meet wildlife management goals, and at the end of the joint meeting, IDF&G agreed to look at how this rule has been implemented and if the rule has had the effect that IDF&G desired. This rule has been in effect for nine years, and **Mr. Elmore** asked if IDF&G could show him any units where the populations are doing better than before the rule was implemented. He welcomes IDF&G providing that analysis, and he hoped that would occur sooner rather than watching the rule expand year after year for almost a decade. **Mr. Elmore** wants the public educated with regard to ethical, responsible use and for parties to share multiple use trails and public land, so it's important to have clear, concise rules to meet goals. The Forest Service travel plans do a good job of that, in his opinion, and there are many opportunities for non-motorized hunting as well. He advocates going back to clear, concise rules and enforcing existing travel plans without this complicated tier that seems to be confusing everyone. **Mr. Elmore** emphasized that IDPR wants to work collaboratively with IDF&G toward common goals with the same end result through education. He believes that conflicts occur due to confusion and questions, mentioning that the Forest Service uses a motor vehicle use map that is a very good enforcement tool, but a horrible navigation tool. IDPR has created an online mapping application to educate the public as to where OHVs can recreate, a one-stop shop for everybody planning hunts and recreation across jurisdictional boundaries. IDPR's mapping application website is: www.trails.idaho.gov. He believes that many conflicts are with the hunting public, adding that IDPR supports enforcement with concise, clear, easy-to-understand, reasonable rules. IDPR has no enforcement authority, so other agencies exercise enforcement.

Mr. Elmore said that IDPR is working with IDF&G on the Wheeler/Williams letter, believing that the letter is somewhat antiquated especially since there are new directors and some board members have changed. Both agencies worked well together on travel planning, even though each had different mandates. He believes that the motorized hunting rule creates conflict in that IDPR sees the goal one way and IDF&G sees it differently. **Mr. Elmore** likes the idea of not stepping on one user-group's toes to reach these goals and, in his mind, this means enforcing existing travel plans.

Representative Lacey commented that as to educating the hunting public, IDPR's website educates about trails, asking if this information could be linked in hunting regulations for

everyone purchasing a hunting license. **Mr. Elmore** said he could not speak for IDF&G and that it had already been discussed; IDPR would love to use this tool to provide opportunities and choices, and IDPR would support that whole-heartedly. He added it would be nice to incorporate safety for children. He believes that few people use travel plans and that IDPR would love to put their website link in IDF&G's hunting regulations.

Representative Hagedorn expressed his appreciation for the efforts of these agencies coming together and he asked if **Mr. Elmore**, as a hunter and ATV user, attended any of the Commission's meetings where they had talked about the motorized hunt vehicle rule. **Mr. Elmore** said he had been in numerous joint meetings and the rule had come up, but he couldn't say he'd been to a meeting addressing the motorized hunting rule specifically; he believes that most people do not understand what the rule does, where it applies, and they don't understand that it conflicts with the Forest Service travel plan. One first has to define "what is hunting," believing the rule is difficult to enforce and to educate the public. **Mr. Elmore** is still not convinced that the rule helps meet objectives, believing that the rule actually hinders and causes conflict.

Representative Hagedorn agreed with this, adding that seldom has he seen a great number of ATV users who are also hunters at these Commission meetings, wondering if there is much input, the end result being that we live with what we end up with. **Representative Hagedorn** said it was stated by **Ms. Kiefer** that conservation officers also had the ability for law enforcement of state laws, which is absolutely true, but he remembered that House Bill 602 created a license plate that included a small funding mechanism for enforcement. He asked if any of that funding mechanism goes to enforcement at IDF&G or do license fee dollars fund IDF&G. **Mr. Elmore** answered that House Bill 602 provided for law enforcement and the user groups helped put that together. The off-highway vehicle community would certainly welcome enforcement of clear, concise rules; he said that one dollar of the plate fee was given to county sheriff's instead of IDF&G. IDPR provides numerous grant opportunities to provide enforcement opportunities and equipment to enforce.

Representative Gibbs commented that he believes that IDF&G brochures need to point out where motor vehicle restrictions apply and, if applying for a controlled hunt, the brochure should clearly state the rules. Much has been said about clear, concise rules, and he agrees, especially after spending seven years on the IDF&G Commission and sitting in many public meetings. **Mr. Elmore** said he believes that there is opportunity to make things easier.

Co-chair Bair expressed confusion, since **Mr. Elmore** said the joint meeting went well and some concessions were made by IDF&G, placing a moratorium for two years, yet **Mr. Elmore** said that he would prefer that the rule go away, stating that IDPR can't have it both ways. Either IDPR is going to work with IDF&G to make the rule better or IDF&G may be asked to make the rule go away, asking which stance IDPR was taking. **Mr. Elmore** made it perfectly clear that IDPR would like the rule to go away; IDPR wants to work collaboratively with IDF&G to enforce existing travel plan regulations and not have to explain this cumbersome rule. IDPR is not asking to have it both ways; IDPR advocates that the rule go away and to provide opportunities for everyone in the forest dictated in forest service travel plans.

Co-chair Boyle commented that about one-third of Idaho trails are open for motorized vehicles

and asked if that was just under the travel plan or the motorized vehicle rule. **Mr. Elmore** answered that is outside of the rule; one-third of the designated routes in Idaho are open to motorized vehicles under the current travel plan regulations. Once units are added, under the motorized rule, that one-third is limited even further, losing even more opportunities under this rule.

The next presenter was **David Claiborne**, representing the Idaho ATV Association, Idaho Recreation Council and the BlueRibbon Coalition, who attended the joint meeting on August 25, 2011. He observed a high level of cooperation and respect between IDF&G and IDPR, even though the meeting did get off to a rocky start, which he thought was necessary for progress. He commended these agencies for coming together and he thought progress was made on how travel planning comments would be made. As he understood it, IDF&G will no longer be advocating closure of roads and trails, as has been done in the past, and would now restrict comments to technical advice and data as to what might be the biological effects of various alternative plans, rather than IDF&G actually saying that regardless of biological effects, IDF&G thinks that an alternative should be adopted that might take away the most miles for open trails. It was his understanding that IDF&G will retreat from that, since a previous cooperative agreement was not really being followed with regard to site-specific analysis. He believes that is the reason for reissuing the memo now to emphasize that to IDF&G field offices and for collaboration to take place between IDF&G and IDPR before comments are made about closures.

Mr. Claiborne said that everyone agrees on the cooperative enforcement between IDF&G and the Forest Service and, as users, he said he and his groups support that collaborative enforcement agreement of reasonable laws and they do not want users going off-road, but wants users to stay on designated routes and they do not want hunters shooting from motorized vehicles. This is why they do not think that a motorized hunting rule is necessary, since laws can be observed to achieve the same objective. This rule was a highly contentious rule in the joint meeting and a moratorium was suggested at the end of the day, believing that will happen, but doesn't think this will address the current problems. **Mr. Claiborne** said that he too wants to keep things simple, but simple as to who is in charge of the roads and trails. The rules have expanded a lot since the 1970s, but simplicity can be achieved with regard to who is in charge of who travels on the roads and trails and that is a goal to make it clear to users that when you are on federal land, the federal government rules, the state rules on state lands and the rancher rules on private land, but he doesn't think another layer needs to be involved. Two rules should not rule a road, based on who is present on that road, and he believes that is what is going on with the current rule. Simplicity should point out who is in charge of the road, and he believes that this rule undermines the federal travel planning process in which all stakeholders participate, including biological concerns. He believes that IDF&G is willing to withdraw from advocating road and trail closures in travel planning because IDF&G knows that the rule allows them to still do what they want to do and are not bound to follow the travel plan, which creates unfairness in the process. IDF&G invited the ATV community to assist in revision of that rule, and they will respect and cooperate with them. An example of the lack of clarity is when traveling and not hunting whether IDF&G still gets to regulate that traveler, and the indication was "yes" so he posed this question: if a person travels in a unit where the rule applies, can that person travel during non-hunting hours, and he was told by IDF&G that would be illegal, under the rule. **Mr. Claiborne** therefore believes that IDF&G is going beyond their authority to regulate hunting to regulate the act of traveling, believing that IDF&G has no authority to regulate travel.

Mr. Claiborne submitted comments to the task force about how this might be addressed through legislation in terms of limiting the Commission's authority to regulate the act of traveling, with respect to federal land. He believes that surveys completed to date do not adequately reflect what the public thinks because hunting is not defined, since IDF&G defines hunting as the travel to and from during non-hunting hours, perhaps even the day before or hours before hunting season opens. IDF&G asks the wrong questions in their surveys, in his opinion.

Mr. Claiborne handed out a document entitled "All Terrain Vehicle (ATV) Legislative Task Force Examination of IDF&G ATV - "as take" rule" which is available at LSO.

Senator Vick commented on **Mr. Claiborne's** belief that only the federal government should be able to close trails, expressing concern about trails being closed and then remaining closed to all OHVs, instead of just during hunting season, asking if this had been discussed or considered.

Mr. Claiborne responded that has been considered, adding that in many areas roads and trails are closed seasonally based on the hunting season, and his organizations support seasonal closures.

Representative Gibbs asked if the organizations represented by **Mr. Claiborne** support IDF&G's ability to enforce federal travel plans on federal lands and the answer was "yes."

Representative Gibbs described a terrain mostly open with pockets of timbers and draws up canyons with multiple roads and trails for ATVs; he asked **Mr. Claiborne** if he agreed with the opinion of IDF&G that ATVs during hunting season artificially move elk out of their normal grounds up into higher country or into another area altogether, and did he believe it appropriate for IDF&G to have the ability to restrict travel in order to protect wildlife and game. **Mr.**

Claiborne responded that on federal land, IDF&G would not have the authority to regulate folks traveling on those roads or trails; if IDF&G has protection concerns, there is a process to address that through the federal travel management rule and would require IDF&G to show scientific data to support that assertion, which may cause a seasonal closure.

Co-chair Boyle asked if **Mr. Claiborne** had said that IDF&G does not have the authority to close roads and trails with the rule and **Mr. Claiborne** clarified that is what he believes and, under operative statutes, that defines the authority of the Commission with respect to regulation of vehicles and hunting. He thinks that IDF&G only has authority to regulate the act of hunting, and that IDF&G has gone beyond that to regulate the act of travel. **Co-chair Boyle** asked where in statute it points that out and **Mr. Claiborne** referred to Idaho Code 36-1101 (b) 1. (hunt from motorized vehicles) and 36-202 (j) which defines what hunting means. Based on this, **Mr. Claiborne** believes that based on these definitions, when traveling and not hunting or pursuing game, that IDF&G does not have authority to regulate the act of travel.

Representative Lacey asked **Mr. Claiborne** if he thought IDF&G has the right to protect our game animals in their habitat from undue pressure and **Mr. Claiborne** answered that IDF&G has that authority and IDF&G exercises that authority through hunting regulations, licensing and tags, seasons, and a number of tools to achieve that objective. **Representative Lacey** wondered if ATVs cause animals to move from their natural habitat to other places, unlike a biker or walker

and **Mr. Claiborne** answered that a generalization is difficult and that his ATV often does not disturb animals, such as a herd of antelope he had recently encountered, but other times animals do sprint. He said surveys have been done on displacement cause to animals and that **Mr. Elmore** might have more information on that subject. **Mr. Elmore** responded that he had a wildlife degree, but was not a biologist, and there had been a study done that looked at behavior of elk and mule deer responses on different types of travel, looking at roads, not trails, and reactions were different between species. **Mr. Elmore** said he would welcome new studies specifically about ATVs and trails.

Representative Hagedorn asked about a scenario such as after December 31st, when there is no more hunting, with deer and elk in a winter area where an ATV trail runs through that area, what would be the proper way to manage whether or not that ATV trail was open or closed and to manage animals with motorized hunting rules, since it would be past hunting season. **Mr. Claiborne** said that the existing travel plan takes into account all the effects that recreation has on wildlife populations to provide adequate protection. **Representative Hagedorn** wondered about land that was not federal land, such as state land, and **Mr. Elmore** said that there is not a process in place for that. He added that IDF&G makes recommendations to private landowners, but he believes that IDF&G is charged with the task of making reasonable recommendations to protect wildlife and be amenable to the landowner. **Mr. Claiborne** added that if the situation is off federal land, then IDF&G must take concerns to and work with the landowner and he believes IDF&G should have to do the same thing with federal land. The federal government also has the authority to make a special order in an urgent situation, and then bring all parties together for a permanent solution. He advocates for the federal travel plan because it is a balancing process where everyone is involved and analysis is made of all competing interests to arrive at a solution, rather than one party deciding for many. **Co-chair Bair** asked **Mr. Claiborne** how often these Forest Service travel plans are updated and **Mr. Claiborne** said he did not know. **Mr. Elmore** responded that the Forest Service revisits the motor vehicle user map annually and has the ability to make changes on an annual basis.

The task force recessed for lunch at 11:22 a.m. and reconvened at 1:05 p.m.

Co-chair Boyle called for approval of the August 9, 2011 minutes and **Co-chair Bair** moved **they be approved as written, seconded by Representative Lacey, and the motion passed unanimously by voice vote.**

Co-chair Boyle invited public testimony and **Herbert Pollard** spoke first, representing himself as a hunter, having worked for IDF&G for 30 years and 10 years for the National Marine Fisheries Service and is very familiar with rules. He has hunted since he was very young and understands the rules and regulations; the confusion amazes him, and he believes that regulations, definitions, travel plans, signs and maps all are easy to read and understand. People do use motor vehicles as an aid to hunting, and ATV use has increased to more than 100,000 in Idaho, and registered utility type vehicles (UTVs) number about 60,000 in Idaho. He believes that the registration rate is less than 50%, due to almost total lack of enforcement of regulations, except in a few counties, and everyone knows this. **Mr. Pollard** believes that registration provides education, safety and other benefits and that better enforcement is key. He believes a

system similar to boat registrations would be beneficial. Twenty years ago there were only 7,000 registrations on ATVs, ten years ago about 40,000, and now 100,000 registered, and possibly that many not registered. Most hunters have had unfavorable encounters with ORVs who cause problems, so he suggests readable license plates and law enforcement.

Blake Fischer, Backcountry Hunters & Anglers, expressed his appreciation for being allowed to speak, and he said his group has an anti-ATV policy, so-to-speak, and said they support IDF&G in maintaining this rule, believing IDF&G's job is to manage species with equipment restrictions and also time and tag limitations. As a bow hunter, he personally uses this opportunity to get longer seasons and better opportunities. If IDF&G wants to limit ATV use, or lack of ATV use, he doesn't believe that treads on anyone's rights as a user, but rather rule restrictions keep seasons open. He believes if this rule is repealed, it may send a message to all hunters and ATV users that ATV use is a free-for-all, recognizing abuse and enforcement issues. By stepping away from this rule, he thinks this would open floodgates for rampant abuse of ATVs and that would be serious.

Representative Hagedorn inquired about the motorized vehicle use restriction, asking where is it defined what that motor vehicle is. When driving a motor vehicle to the spot where you want to then walk in to hunt, is that motor vehicle considered an aid to hunting or when a hunter actually unloads his ATV from the truck, is then the ATV considered a motorized vehicle. Where do we define "motorized vehicle" and when is that an aid to hunting and where does the limitation of IDF&G to manage those motorized vehicles begin and end or where should the line be drawn. **Mr. Fischer** answered that due to lack of enforcement, ambiguity of the rules, and the vast interpretations of the rule, abuses will result regardless. However, education and awareness can stop much abuse to provide opportunity for future hunters, so that on public ground where ATV use is legal, animals will remain and won't have been pushed onto private grounds. He wondered if there will be money and means to accomplish that goal, believing it our purpose to protect public grounds and animals for the public.

John Robinson, Public Lands Director, Idaho Conservation League, said he was representing 20,000 supporters who hunt, fish, hike, backpack and very much enjoy Idaho's public lands. He supports the motorized rule, and was glad to hear themes of agreement, since motorized travel and regulations often are controversial. There is broad agreement on the need to provide opportunities to a wide range of recreationists on both motorized and non-motorized trails. There is also support to replace indiscriminate cross-country travel with a designated trail system designed with input from user groups. There is also broad support for meaningful education programs to ensure that regulations are clear and easy to follow, as well as support for cooperative enforcement agreements with IDF&G, and conservation officers on public lands. A study examined the displacement of elk from recreationists, and movement rates and probabilities of displacement were highest from ATV riding. Travel plans and the motorized hunting rule provide protections and help reduce conflicts allowing recreationists to still enjoy the forests who aren't actively hunting. If the rule were weakened or eliminated, **Mr. Robinson** believes that other restrictions would be needed to avoid displacing elk. Regulations can be confusing, but he does not support eliminating this rule. The public enjoys recreating, but must be mindful about how actions affect other hunters, recreationists and wildlife. IDF&G believes this rule is a helpful tool and the League supports IDF&G's efforts to have sufficient game and

access, as they see fit.

Greg McReynolds, Trout Unlimited, testified next and said that his group supports IDF&G's rule, as well as many sportsmen. He asked the task force, if there are future meetings, to please include sportsmen on agendas, pointing out that ATV groups had been invited, and everyone is equally impacted by the rule. **Representative Hagedorn** said he, as a sportsman, gets frustrated when he walks in several hours to hunt, since he cannot take his ATV there, sets up to hunt, and a hiker interferes with his hunt; he asked how that situation might be fixed, if access is being restricted to hunters, but not to non-hunters. **Mr. McReynolds** answered that ideally, long-term, plans would be on the ground being more representative of everyone, but he believes IDF&G does the best they can. He believes IDF&G's clear authority is over sportsmen, seasons and the taking of game, so IDF&G has tools available to make sure that hunters have game and long seasons. He said probably there is a better solution, believing that one won't be arrived at for years so, in the meantime, this rule is the next best thing.

David Claiborne was asked to address a handout entitled: "All Terrain Vehicle (ATV) Legislative Task Force Examination of IDFG ATV - "as take" rule" which is available at LSO. **Mr. Claiborne** addressed recommendations on page 4 of this handout, asking this task force to present a legislative response to the general body as follows, the first of which amends 36-1101(b), Idaho Code, to include the following:

1. The motor vehicle that a person uses for purposes of travel and/or access to hunting areas located on federally-owned and/or federally-managed lands shall not be considered a "method of take" or an "aid to hunting", and shall not otherwise be regulated or restricted by the department of fish and game or the Commission.

The following is proposed to amend 36-202, Idaho Code:

2. With respect to the act of "hunting" on federally-owned and/or federally-managed lands, "hunting" does not include the act of traveling, whether by motorized or non-motorized vehicle, to and from the location a hunter chooses to engage in the activity of hunting, and shall not be regulated or restricted by the department of fish and game or the Commission.

Mr. Claiborne pointed out that the first recommendation was their response to making sure that the motorized hunting rule was not being used to restrict the use of designated routes. The second recommendation covers the definition of hunting in 36-202, Idaho Code. This is an attempt to limit the perceived authority of the Commission to regulate how a person travels on lands where the land manager has a designated route system in place.

Co-chair Boyle asked if this was about access versus the actual act of hunting and **Mr. Claiborne** confirmed that, adding that their focus was on the issue of travel and access. During the actual act of hunting, when pursuing or stalking game, he believes the Commission does have the authority to regulate that. **Representative Hagedorn** asked how to differentiate between someone walking in with a rifle to a place where a shot is fired at an animal, and is the walking

considered to be travel until the trigger is pulled. **Mr. Claiborne** responded that is a difficult question that many struggle with; the act of hunting begins when in pursuit of an animal. Traveling, when not in pursuit of an animal, means access, until the hunter actually engages in hunting. A person on foot with a rifle on their back is hunting; a person on an ATV with a rifle strapped to the back of the case is not hunting and cannot shoot from the ATV. **Representative Hagedorn** said the problem is defining terms, which may be almost impossible. **Mr. Claiborne** said that he wants to get a process started to clarify the current confusion. He added that clearly someone traveling on a designated trail in darkness, outside of hunting hours, is traveling, not hunting. **Mr. Claiborne** believes that IDF&G currently believes that the minute a hunter leaves the truck, that he is hunting, even though in the dark before hunting hours begin, and that is where he wants energy focused, to reign in this expansive IDF&G definition, so that a hunter can engage in permitted methods of travel to access the area in order to hunt.

Representative Lacey inquired about the scenario of being on an ATV, with a gun rack across the front, going 20 miles per hour across several ridges, sees elk and steps off his ATV and starts shooting, believing that the entire time that hunter is on that ATV, he is looking for game and thinks the abuses could be rampant if hunting does not begin until the moment one steps off the ATV and shoots. He believes the recommendations made by **Mr. Claiborne** would leave much room for abuse. **Mr. Claiborne** responded that IDF&G can regulate shooting from a trail or certain roadways, so IDF&G, in his opinion, does not need to restrict the act of travel to regulate what one does when on the route. IDF&G could say a hunter cannot shoot from an ATV or has to be so many feet off a trail to shoot, but doesn't want IDF&G to prohibit travel on a designated trail altogether.

Senator Tippets asked about someone who is going to be hunting who gets on an ATV and travels to an area to hunt, but can't be hunting or looking for animals along the way, asking if that was **Mr. Claiborne's** intention with the recommendations. **Mr. Claiborne** replied that the language may need to be reworked, and that the intention is to create some legislative response that would treat all motorized vehicles the same. It's perfectly legal to drive in a truck on an established roadway, to see an animal, and get out of the truck to pursue that animal; he submits that same permission should be allowed to ATVs, motorcycles, or any OHV.

Co-chair Boyle asked if **Mr. Claiborne** was trying to redefine what hunting was in the second recommendation; he responded that it does address how hunting is defined, trying to restrict the definition, believing that hunting has a broad definition in existing Idaho Code, to exclude the circumstance of travel.

Co-chair Boyle invited input from the task force members, and **Representative Hagedorn** said that several members had worked on draft legislation based on requirements of the resources IDF&G protects and the users, both sportsmen and ATV users, often the same people. This draft, RSDREBM026, was before the members, and is available at LSO. **Representative Hagedorn** said this draft creates a central clearinghouse so users can go to one organization to find out all information needed, whether hunting, traveling, or licensing instead of having to go to ITD, IDP&R, DOL, IDF&G, the U. S. Forest Service, BLM, private property owners and others. For an ATV user or a hunter to find out what is legal or not is very cumbersome; this

draft creates a central clearinghouse in IDPR where all information can be distributed. It would be up to IDPR to communicate and educate all property users throughout the state; this draft does not address specifically the motor vehicle regulations and IDF&G, which may take much more study and discussion between all users. **Representative Hagedorn** believes it is very clear there are conflicts between users that need to be figured out by IDF&G and IDPR.

Co-chair Bair read the legislative intent to the task force, saying that he believes that IDPR does a terrific job with maps and information available on their website. However, he thinks that what is difficult for new ATV users is confusion about where to go to get a license, the sticker process, hunting rules, having to go to different agencies or websites. It would be much simpler if IDPR were an informational clearinghouse in order to provide all information on ATVs in one place, which is the purpose and intent of the draft legislation.

Senator Werk said this draft was a good idea; he did ask about whether the draft defines governance structure, pointing out this could present issues. In section two, there is a specific reference on lines 38-39, page 1, to include two or more off-road vehicle user groups or associations, pointing out that there was an example at this meeting of sportsmen coming in feeling like there are different interests, asking if that needed to be expanded to include potential groups who might be interested and have a role in the process, getting back to governance as well, and input.

Representative Hagedorn responded that the key is collaboration, adding that everyone working together will create the rules of governance in order to make this work, believing that members defining rules of governance would be burdensome and could be construed as micro managing, since the users need to define governance. He believes that more than off-road users should be consulted and sometimes they don't belong to sportsmen groups.

Co-chair Bair added that this information that will be published by IDPR is in addition to what IDPR already publishes and is simply information about policy already established at IDF&G. Whatever policy concerning ATVs that IDF&G establishes through vetting and hearings, as voted on by the Commission and the department, then gets submitted for dissemination. There is no policy for making authority by IDPR. **Senator Werk** inquired if there would be a website for all information, expressing concern about combining agencies without a governing board; **Co-chair Bair** emphasized that this draft would not combine policy, but simply deal with information dissemination.

Senator Vick agreed that a central clearinghouse for information would be good, but asked how much it would cost and how would it be paid for. **Representative Hagedorn** reiterated that this was a draft and discussion must take place with all parties under current budgets; he believes that IDPR has a very good infrastructure currently to support many of the aspects of this draft, rather than each agency posting information separately, hoping there would be minimal cost. **Senator Vick** asked about federal coordination and **Co-chair Bair** said the state does not have the authority to mandate federal participation.

Co-chair Boyle asked **Mr. Elmore** about the brochure he handed out, asking if the brochure

encompasses information discussed in the draft legislation. **Mr. Elmore** answered that IDPR has the ability to educate the public about laws that pertain to OHVs and IDPR does that now. The brochure includes information in Title 67 and 49 that pertains to the operation of OHVs, mapping applications, ability to link with IDF&G from IDF&G's hunt planner, a web page dedicated to questions and answers about changes in legislation and rules. There are educational programs, and in **Mr. Elmore's** opinion, he believes much of this is already being done and doesn't believe it would require a statute change to continue doing this. His first reaction was that he believes all of the intent of the draft is being done under current rules, so he was not sure a legislative change would be necessary. He believes that collaboration is key to continue education on rules and can be done under existing structure, adding that IDPR's program has dedicated funding from the motorized recreation users, and they try to benefit those users as well as to meet legislative goals.

Senator Tippetts agreed that IDPR has a very good tool providing maps, asking if IDPR incorporated in IDPR's maps IDF&G's motorized vehicle rule. **Mr. Elmore** answered that the mapping application was funded by recreationists and those users are not excited about the motorized hunting rule, and IDPR also has issues with the rule. IDPR made a conscious effort to *not* put that rule in the application, believing the rule complicates and does not help the ultimate goal. The rule is the only piece of information that IDPR has not actively promoted or advertised. IDPR has a DVD and there is a website where all partners participate in a "stay on trails" campaign with messages and links to various websites, and he agreed that a better job can be done about where information is housed, pointing out there is a distinct difference between hunting and recreation and rules that apply to both groups.

Representative Gibbs asked **Mr. Elmore** if there is a technological reason for not including IDF&G's ORV restrictions in IDPR's information. **Mr. Elmore** replied that is a great question for an IT contractor hired by IDPR, adding that it must be a possibility. **Representative Gibbs** asked if the reason the restrictions were not currently in IDPR's information was an unwillingness to provide that information at this time. **Mr. Elmore** said that was not entirely accurate; he said he was given a board agenda item to map all the OHV routes in the state of Idaho due to deficiencies in emblems and conflict needed to be resolved about telling users where to go. They understand that federal land managers were going to put together an application similar to IDPRs, but IDPR did not want to wait any longer. **Mr. Elmore** had dedicated funding to do this work and IDPR mapped all non-motorized trails as well, and the board asked him to do this when he was hired at IDPR. Many improvements could be made with better funding.

Representative Lacey said to avoid conflict and make this situation better for everyone, it seemed to him that in a spirit of cooperation that IDPR should work with IDF&G to get this done, adding that he didn't like loggerheads. He asked what would be the chance, as registration fees are paid, that IDPR's brochure be included, especially if the IDF&G information was on IDPR's map, and might resolve conflict. **Mr. Elmore** said that was a great idea, adding that IDPR mailed this brochure to 138,000 household's owning OHVs in Idaho, made it available online, and have made it available to other agencies for kiosks at public events. He would love to see this brochure in the hands of every enforcement officer and recreationist, depending on budgets.

Representative Hagedorn expressed his appreciation for IDPR's educational efforts, as well as IDF&G, under their statutory limitations; the objective with the draft legislation is to try to bring all parties together to force collaboration. Currently, IDF&G has no statutory requirement to provide IDPR with information, nor do other agencies, and all users need a single clearinghouse to solve one of many problems still to be faced, such as enforcement. Many ATV users depend on IDF&G conservation officers to enforce ATV control in the field, when only funded by licensed IDF&G holders, emphasizing enforcement and funding issues yet to be solved. Problems are now trying to be solved independently by many agencies, and he sees this draft legislation as the first step toward collaboration.

Senator Vick asked **Representative Hagedorn** if he envisioned through this draft legislation that IDPR would be required to post the motorized hunting rule maps on IDPR's website.

Representative Hagedorn said he believed that the draft would require IDF&G's appropriate closures to be transferred to IDPR to be displayed in whatever format IDF&G provides. That collaboration is going to have to happen for the users and if IDF&G provides that information consistently to IDPR, then the information would be much more user-friendly. **Senator Vick** wondered about the vision for the draft legislation and **Representative Hagedorn** said that his vision, as a hunter and ATV user, is to go to one place to get all the information needed, believing that will take collaboration between IDF&G and IDPR, which will solve other problems as well.

Senator Vick asked **Mr. Elmore** if this draft might require more resources and possibly an increase in ATV registrations. **Mr. Elmore** said this would cost a considerable amount of money. The information now available was from data received from the U. S. Forest Service. However, the BLM doesn't have an adequate GIS layer of trails, so this information requested does not currently exist in any sort of GIS format.

Co-chair Boyle mentioned that in IDPR's brochure, there is a link to IDF&G's website for people who want to see regulations and restrictions, and **Mr. Elmore** said that IDPR has done everything they can to educate the public. With regard to the rule, he said that IDPR did not spend resources on the rule, since IDPR hopes the rule will go away.

Senator Werk suggested that IDF&G may want to comment on this discussion. **Co-chair Boyle** invited **Ms. Kiefer** to respond, and **Ms. Kiefer** said that IDF&G has seen a version of the draft legislation, pointing out that IDF&G is trying to improve cross communication relative to technical information, but from a user perspective, there are still shortfalls in having to reference multiple sites for data. **Ms. Kiefer** said that from a purely technical perspective, she would not underestimate **Mr. Elmore's** caution that IDF&G would have to look at this approach in phases to achieve the goal of this draft. IDF&G, in trying to describe the rule, gave the task force at the last meeting an overlay on a map of what that might look like; clearly, it would envision much technical assistance and financial resources from the department and from sportsmen. Relative to an overall collaborative framework of information, IDF&G is trying to achieve cross-communication, but information is still not all in the same place. Technical challenges will result, due to lack of good maps and places not yet designated.

Co-chair Bair asked if there aren't currently maps showing what roads are closed for hunting on IDF&G's website. **Ms. Kiefer** answered that one challenge for IDF&G is to do a better job with specific maps; IDF&G goes by hunt area, not by actual game management unit, designated for the motorized hunting rule. Since some hunts are by area, those maps and definitions need better work, and this draft would be impetus to move that along.

Co-chair Bair referred to the draft legislation, page 2, line 18; it provides in subsection 4 that the Legislature be given a report on the status of the informational clearinghouse, and pointed out that January 15th was early in session for that, since in the middle of rules, and proposed that January 31st might be a much better date. **Co-chair Bair** said it was his understanding that this task force was a subcommittee of the Natural Resources Interim Committee, and that for any official act to take place, approval must come from this task force and be submitted to the Natural Resources Interim Committee and then to the germane committees during session.

Co-chair Bair moved that the task force send RSDREBM026 to the Natural Resources Interim Committee for their consideration, and the motion was seconded. Representative Gibbs asked if the motion included lines 38 & 39 on page 1 (to include collaboration with sportmen's groups as well as ORV users) and line 18, page 2 (changes date to January 31st). Co-chair Bair agreed to amend his motion to include that language.

Senator Tippetts asked for clarification, since the motion was to refer this draft to the Natural Resources Interim Committee, adding that he did not hear any recommendation from the task force; therefore, he asked if this motion would refer the draft without recommendation.

Co-chair Bair agreed to further amend his motion to include "with a do pass recommendation" and the motion was seconded. Mr. Milstead said that the current language reads "no less than two off-road motor vehicle user groups" and asked if the task force wanted a like number of sportmen's groups. **Co-chair Bair** said that would be appropriate.

Representative Hagedorn recommended that all three departments (IDF&G, IDPR and IDL) talk about this and the resource requirements it might take to accomplish this goal, wondering if IDF&G had started down the GIS road yet in their planning and if IDF&G could piggyback on other department's efforts to update IDF&G's mapping. **Co-chair Bair** said that the Governor has a GIS initiative, which was confirmed by **Representative Hagedorn**, who added that collaborating on that part is a good start in understanding what the requirements would be to make this happen for users. If the three departments could be preparing a comment on that for the Natural Resources Interim Committee, that would be appropriate.

Senator Tippetts said he had hoped that the original motion would not include a recommendation, since he is comfortable with the interim committee looking at this draft, but there are still unanswered questions regarding costs in sharing information to determine if feasible. **Senator Tippetts made a substitute motion that RSDREBM026 be referred to the Natural Resources Interim Committee without recommendation, with a change on page 1, lines 38 & 39, to include collaboration with sportmen's groups as well as ORV users, and a change on page 1, line 18, to change the date to January 31st. The substitute motion was seconded by Senator Vick, and the substitute motion passed by voice vote.**

Co-chair Boyle asked for discussion about the motorized vehicle rule, believing that the task force had simply “kicked the can” down the road, saying that she didn’t believe that was what the Pro Tem and Speaker had asked this task force to do. **Co-chair Bair** commented that he had taken the letter to the Pro Tem, asking for clarification, and that the Pro Tem said that the letter was provided as guidance and that this task force was not required to bring forth legislation. **Co-chair Boyle** asked if the Pro Tem thought this task force needed to try to solve this problem; **Co-chair Bair** replied “yes.”

Representative Lacey commented that, as stewards of the land, IDF&G also issues citations. He said that after listening to hunters and ATV users, it seemed to him that nobody had a problem with IDF&G being out there, unless he misunderstood something. **Co-chair Boyle** pointed out that the task force was to look at the IDF&G rule and come to some resolution, which is what the draft legislation tried to address.

Senator Tippets said his comment was not about the enforcement issue but rather IDF&G’s motorized vehicle rule, agreeing that progress has not been made in solving this issue, even though much discussion has taken place about confusion with the rule, but he submits this is not the whole problem. He said it would be nice if this task force could look at this issue in more depth and make some recommendation on IDF&G’s rule and whether it is appropriate for game management. He personally has difficulty with this rule and the impact it has on people who want to hunt in certain areas and can’t. He doesn’t believe there is an easy solution, and he thinks it needs to be determined if this rule is an appropriate way to manage game or not, that being the issue. He believes this task force should have that discussion and make some recommendation to the Natural Resources Interim Committee.

Representative Hagedorn said he believes there is merit in the discussion whether or not statutorily IDF&G has the authority to create the motorized vehicle rule the way current statute is written, believing it prudent to recommend to the interim committee that the Attorney General review the statute to determine whether or not IDF&G has the authority to have the motorized vehicle rule.

Co-chair Bair said that **Assistant Chief Deputy Brian Kane** had cited the authority that IDF&G had in order to create that rule, asking if that was correct. **Ms. Kiefer** said her impression of **Mr. Kane’s** discussion was that his task was to review the legislative history of the rule; **Ms. Kiefer** certainly did not hear a review and didn’t believe it was his stated task to actually determine the scope specifically of statutory authority related to the motorized hunting rule. **Mr. Kane** provided legislative history of the rule.

Co-chair Bair said he was involved in the IDF&G Commission in 2002 when the rule was implemented and he listened to IDF&G’s representative from the Attorney General’s office regarding whether there was legal authority to use this as part of the rulemaking process to manage game. He believes this task force needs to have this discussion with IDF&G’s attorney or bring **Mr. Kane** back to determine whether there is statutory authority with regard to the point where traveling ends and hunting begins. **Co-chair Bair** thinks that IDF&G does have the authority, but that is his interpretation.

Co-chair Boyle referred to the minutes from the August 9, 2011 task force meeting, page 14, believing that **Mr. Kane** gave legislative history of the MOU, and not the rule itself, so perhaps what the task force needs to do is ask **Mr. Kane** a specific question about the rule. **Mr. Milstead** confirmed that the gist of **Mr. Kane's** testimony was on the legislative history of the MOU.

Representative Hagedorn moved that the task force request **Mr. Kane** to provide an opinion on the rulemaking authority for motor vehicles based on Title 36 and to provide that opinion to the Natural Resources Interim Committee.

Representative Hagedorn said if an opinion is provided to the task force or if **Mr. Kane** again appeared before this task force, this would still be passed on to the Natural Resources Interim Committee. **Co-chair Bair** said that, depending on the opinion, if IDF&G does not have that authority, perhaps this task force would then draft legislation to submit that to the interim committee. **Mr. Milstead** said that one approach could be to ask for a written opinion to be delivered to this task force and, subsequent to that, a decision could be made. **Representative Hagedorn** said he made the motion since the task force was talking about rulemaking authority, and that would not necessarily require legislation, if the opinion came back that IDF&G has rulemaking authority. If IDF&G does not have rulemaking authority, the task force's job is done and IDF&G would then know they cannot make those rules. **Co-chair Boyle** said that if the opinion comes back saying IDF&G has that authority, someone might want legislation taking that authority away from IDF&G. **Co-chair Boyle** asked for input on whether the task force agreed with her to ask **Mr. Kane** for this opinion, and not IDF&G's Deputy Attorney General, believing that **Mr. Kane** may be more unbiased. **Co-chair Boyle** requested **Mr. Milstead** to write a letter for the task force to **Mr. Kane**, and to first email that to the co-chairs for their approval and **Mr. Milstead** agreed to do that. **Senator Werk** reminded the task force that a motion was on the table for a second, believing that a motion was not necessary. **Representative Gibbs** seconded **Representative Hagedorn's** motion. **Senator Vick** asked what the reason was for this motion requesting this opinion from **Mr. Kane**, rather than having the Attorney General determine who does the opinion. **Co-chair Boyle** stated that the task force wants an opinion that is as non-biased as possible. She believes that if the Attorney General requests this opinion from IDF&G's Deputy Attorney General, someone might view that as biased, especially since this same deputy attorney general several years ago told IDF&G it was within the rights of IDF&G to do so. She thinks **Mr. Kane** might be more non-biased. **Representative Hagedorn** pointed out that since **Mr. Kane** had already testified before this task force, he's familiar with the discussion, thinking it would be most appropriate for this opinion request to go to **Mr. Kane** because of his familiarity with this issue.

Representative Hagedorn's motion that the task force request **Mr. Kane** to provide an opinion on the rulemaking authority for motor vehicles based on Title 36 and to provide that opinion to the Natural Resources Interim Committee was seconded by **Representative Gibbs** and passed unanimously by voice vote.

Co-chair Boyle invited draft legislation which could be presented to this task force or the interim committee and **Mr. Milstead** offered to work through those issues with any members.

Co-chair Boyle asked for discussion on the MOU and **Representative Gibbs** said he was in support of the continuation of the MOU and IDF&G's authority to enforce this travel plan. He believes there is one federal officer for more than four million acres, so obviously IDF&G is literally the only enforcement authority on these restricted travel routes, so he continues to support the MOU and the fact that it be reestablished or updated. **Co-chair Bair** said that when he first heard about this enforcement issue, he thought the state of Idaho should not be doing this at all, but in examination of the issue, he found out that about only one percent of all citations are written by IDF&G dealing with travel plans and only several hundred annually by the Forest Service. Consequently, he doesn't believe it to be an issue that concerns him any longer, and he supports the MOU.

Co-chair Boyle commented that when **Mr. Brunelle** spoke to the committee on August 9, 2011, it caused her to believe that the MOU covers a lot more than the enforcement of a travel plan; this is the mechanism that gives IDF&G almost a super-agency status regarding the environmental impact statements. IDF&G can go even where county commissioners are not invited to start a claim of anything, whether it's road obliteration, grazing permits, grizzly bear habitat, bighorn sheep, and she is not sure if it's appropriate for one state agency to have that kind of pull. **Co-chair Boyle** said she knew that IDF&G Commissioners have some issues with not realizing what their employees were commenting on in written comments, and IDF&G can bring forth written proposals and policies, but if IDF&G leaves that part open where there is communication behind closed doors, the Commissioners have no way to know what employees are really saying. She believes this is where much of the IDF&G mischief has happened, causing much conflict and heartburn with IDF&G. She believes that this MOU covers a great deal more and her constituents have major heartburn with this because of the bighorn sheep, and **Mr. Brunelle** discussed this several times when questioned. She believes this task force needs to take a very hard look at what this MOU actually entails, believing it to involve much more than travel plans. **Co-chair Bair** said he agreed with her, pondering what this task force might do about this MOU. **Co-chair Boyle** said she would like to see the MOU totally revised and limited so that IDF&G does not have these vast powers that nobody really knows about.

Representative Gibbs asked the question, if IDF&G is not the responsible party for our state government to make comments on those particular issues, then who would be better qualified. **Co-chair Boyle** answered that the Governor has charge of written comments, she believed, and he designates which agencies can actually provide those written comments, coordinating with all agencies on comments, and it's up to the Governor to decide. She said that it's not for anyone else to say that certain agencies have to comment on certain plans. Written comments are one thing, but the development of EISs is much different. She said she worked for a congressman and that she understands how EISs come to be and many times in their drafting, there are only bureaucrats present and people with agendas, the public being excluded, and she doesn't think one agency should be allowed to be at the table and others not. She thinks that intergovernmental meetings must include counties in the development of EISs since all citizens are affected so there is a more balanced view of what is going on.

Senator Werk said what the task force seemed to be discussing is what portion of state government we want interacting with the federal government, that being the first issue, and with regard to fish and game issues, he thinks the IDF&G Commission should be doing that and that it

is highly appropriate for the Commission to do so. The Commission has the expertise and they answer to sportsmen in a much bigger way than most agencies answer to a constituency. IDF&G is the most exposed agency along these lines. The initial contacts between federal and state were scientific, which he thinks is highly appropriate, even though at times perhaps a scientist was a loose cannon, he believes those instances to be an internal agency issue about communication and control. He doesn't believe there to be any giant, overarching conspiracy about closing roads and making hunting difficult. From what he remembers, communication and the people handling communication are experts and what they are charged with seems appropriate to him. The political process at the county level is much different. County governments have the opportunity to comment and he hopes those comments are being provided or offered at appropriate times. He does not see any overarching conspiracy, any abuse of power on a large scale, and he has not seen evidence that the MOU is causing some kind of super-agency authority that is unduly influencing decisions, especially since those federal decisions tend to get made in a different sphere of time.

Senator Tippetts said he certainly does not see a conspiracy; however, he does think it is important for everyone to understand that IDF&G has been tasked with managing game and IDF&G does that very well. There are times when that task bumps against other interests and citizens in the state, for instance public access to public lands. He believes that when issues of conflict result, that it is then up to the Legislature to make policy decisions, and the Legislature has responsibility to weigh that and to protect other public interests. He was not saying that IDF&G has done anything wrong, just that their responsibility sometimes conflicts with other interests.

Senator Werk agreed, adding that the discussion about whether IDF&G can regulate travel on roads, the management of wildlife is very broad and there are intermingled issues going on which make this issue complex, agreeing there to be a role for the Legislature. With regard specifically to the MOU, except with regard to some lack of control within the agency, he has not seen any big red flags coming out of this discussion.

Senator Tippetts asked whether this MOU, as it relates to enforcement of forest travel policies, is within the scope of what this task force was asked to do. If it is, this is a big enough issue that perhaps the task force should consider another meeting to have more information presented on this issue.

Mr. Milstead was asked to comment on the three Senate bills mentioned in the charge of this task force, all Senate bills from last year, and he said that the letter establishing the task force does refer to those three bills; he said he believed that it was SB1159 that specifically either eliminated or prohibited in some fashion IDF&G from entering into either MOUs with federal agencies or was more specific to simply agreements relating to motorized vehicle use. **Co-chair Boyle** commented that SB1159 did not come out of the Senate Resources and Environment Committee, so was not seen by the House Resources and Conservation Committee. **Co-chair Bair** read from SB 1159 with regard to roads. **Co-chair Boyle** asked if this one pertained to roads, asking if that was everyone's understanding, and the other members agreed.

Senator Vick asked for clarification, commenting that it seemed to him that SB1159 dealt with road closures and that is what this task force was charged to look at, believing it to be pertinent

for the task force to discuss this MOU either now or at a future meeting. **Co-chair Bair** said that with regard to whether the tenants of the MOU concerning NEPA and those other issues were discussed in this meeting or not, that probably was not appropriate. However, as far as that piece of code that he just read, which speaks to enforcement of federal laws and regulations on roads, there is a paragraph in the MOU speaking to enforcement, believing that the task force does have a responsibility to visit regarding page 5 of the MOU under subsection V. A. where it says that the IDF&G and the U. S. Forest Service will cooperatively enforce motor vehicle restrictions on forest lands pursuant to section 36-104 (b) 10, Idaho Code. Both agencies will assist each other in the enforcement of applicable laws and regulations by reporting violations or suspected violations to the responsible conservation officer or forest officer. **Co-chair Bair** said that the question here is whether the task force is going to support IDF&G's continuance of enforcement of ATV rules on Forest Service property.

Co-chair Boyle said that the task force needs to find out from **Mr. Kane** if legally IDF&G can do that, since one hinges upon the other. The opinion from **Mr. Kane** will determine if this task force needs another meeting or not. **Co-chair Boyle** thanked everyone for their participation.

The meeting was adjourned at 3:05 p.m.