

**ADVISORY COUNCIL**  
Minutes of April 8, 2009

**MEMBERS PRESENT:**

Patrick Early, Chair  
John Bassemier  
William Wert  
Richard Cockrum  
James Trachtman  
Bill Freeman

**NATURAL RESOURCES COMMISSION STAFF PRESENT:**

Stephen Lucas  
Sandra Jensen  
Jennifer Kane

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT:**

John Davis	Executive Office
Ron McAhron	Executive Office
Jim Ray	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Rick Jones	Historic Preservation and Archaeology
Mike Molnar	Lake Michigan Coastal Program

**GUESTS PRESENT:**

Brett Nelson  
Jeff Krevda

Patrick Early, Chair of the Advisory Council, called the meeting to order at 10:38 a.m., at The Garrison, Fort Harrison State Park, 6001 North Post Road, Indianapolis, Indiana. With the presence of six members, there was not a quorum. The Chair noted that since a quorum was not present the agenda items would be discussed as presented, but “we would have to confirm anything that we did at the next meeting”.

**Discussion and recommendation for approval of Clark County land trade and declaration of surplus**

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, presented this item. Davis showed a map to help illustrate a proposed land trade with the Clark County Landfill. He said the Clark County Landfill is located south of the Clark State Forest. The landfill has been there for a “long time” and needs to expand its facility. He

said the “logical expansion is into a piece” the DNR owns and is located across Wilson Switch Road. Discussions are ongoing with the Department being “interested in at least talking about substitute property” for the land tract. The Clark County Landfill has proposed it “be allowed to expand in a portion of Clark State Forest.” In exchange for this parcel, the Clark County Landfill would purchase five tracts and convey those tracts to the Department. “We think it makes sense.” Davis explained that the Landfill does not have “much of a place to go”. He noted the landfill operation would not be any closer to the Clark State Forest that it is presently.

Davis said that the Department has to have “betterment, in the way we picture it, so we will have to have a value that exceeds the value of our property and acreage that exceeds 101 acres. That’s what we are aiming for.” He said a recommendation by the Advisory Council and approval of the Natural Resources Commission are sought now “because the approval by the Commission is what the Clark County Landfill will use to discuss with IDEM [its] permits, and [the Clark County Landfill] will have to show that it has or will have control of the property. We want to move on this and get this out of here so that next month we can have the Commission hopefully adopt this.”

William Wert asked whether harvestable timber was present on the parcel recommended for the land trade. Davis said there “is harvestable timber on the State Forest, and the Department would liquidate the timber before the land trade. There’s not much harvestable timber. It has been in our rotation. We harvest almost every place” on Clark State Forest.

Richard Cockrum asked whether timber existed on the five parcels proposed for trade. Davis responded that four of the parcels have timber. The fifth parcel does not have timber, but it contains a house which would be razed by the Clark County Landfill. Davis said if the land trade proceeds, the DNR would have only one landholding across Wilson Switch Road

Chair Early said, “I assume that [the Department] recommends the land trade.”

Davis responded, “We recommend approval. Yes, we do.”

The Chair asked whether any members present had questions or concerns regarding the proposed exchange of real estate. There were no additional questions, and none of the Advisory Council members expressed reservations. The Chair said that the Advisory Council would forward the item to the Natural Resources Commission “with unanimous approval of the members present”.

**Information Item: Review of proposed Underwater Archaeological Resource Management Plan; Administrative Cause No. 09-039B**

Mike Molnar, Program Manager of the Lake Michigan Coastal Program (LMCP), presented this item. He gave an overview of the proposed Lake Michigan Underwater

Archaeological Management Plan. Molnar explained the LMCP is currently within the DNR's Division of Nature Preserves and functions as an "umbrella organization which networks with a variety of programs across State Government" for activities within the Indiana portion of Lake Michigan and the adjoining watersheds of Lake, Porter, and LaPorte Counties.

Molnar said in 2004 the LMCP developed a program assessment and implementation strategy. The purpose of the strategy was to review where State policy, as it deals with coastal resources, was "weak and where we could strengthen it." One of the items recommended during the assessment program was the development of an underwater archaeological resource management plan for Lake Michigan.

Molnar said he had held preliminary meetings with the DNR's Division of Historic Preservation and Archaeology and its Division of Law Enforcement, as well as with the Commission's Division of Hearings, to lay groundwork for the proposed Underwater Archaeological Resource Management Plan. Molnar said the goal was to develop a plan for significant underwater archaeological resources in Indiana's Lake Michigan waters. Currently, a coordinated plan does not exist. "There were some early efforts by the Department in the 1980s. Staff from the Division of Law Enforcement and the State Archaeologist did some dives on historic wrecks within Lake Michigan. As it is now, we don't have an accurate count of the total number of wrecks out there." At least 15 to 20 sites have been identified, "just a handful of those have been discerned as to the actual specifics" of the shipwreck. He noted hand drawings of some the wrecks were completed, but the effort is in a "state of incompleteness".

Molnar said efforts in the 1980s and since to evaluate the shipwrecks were "very labor intensive." Fortunately, the Division of Law Enforcement recently acquired new technology, side-scan sonar, which has significantly enhanced the accuracy and speed of evaluations. Molnar provided side-scan sonar images of the shipwreck, *J. D. Marshall*, which he said lies offshore of Indiana Dunes State Park in approximately 30 to 40 feet of water. "You can see the detail that the side-scan is able to produce." He said that the Division of Law Enforcement has agreed to work "in kind" with the LMCP as part of a staff training program. The initiative could "save us a lot of money" in recording and documenting shipwrecks. He said the side-scan technology would also enable the LMCP to locate currently unknown shipwrecks. The "dive community" may be aware of other shipwrecks sites, and "we are going to bring them into" discussions as a "local partner".

Molnar said issues have arisen in the last three to four years. One is the "Alpha Wreck" located along the beach at Ogden Dunes. He said the Alpha Wreck has received a "tremendous amount of press in Northwest Indiana", and there was an enforcement action associated with the wreck. With Lake Michigan's current low lake levels, "the shipwreck is partially exposed. It's no longer just underwater archaeology; it's terrestrial as well.... Anybody can walk up to it." This exposure illustrates "the gray areas in the management of these archaeological resources." Molnar explained that portions of the shipwreck were free-floating and were picked up. "There were some issues with people

actually picking up what they are calling just ‘flotsam’, things that washed up on the beach, and turning it over to a local historical society without a permit.”

Molnar said that the Briggs Project, a self-described group of four individuals interested in archaeological resources, has focused on the Alpha Wreck. The Division of Historic Preservation and Archaeology has been communicating with the Briggs Project for a number of years. The Briggs Project “feels there is a tie to the Underground Railroad.” He said the Briggs Project has “come into some issues with us in the fact that [it] has never received a permit to do any of the work.” The Briggs Project “is going around and giving presentations on the wreck, and, at one time, had a variety of artifacts in [its] possession.”

Molnar said Federal Admiralty Law addresses a variety of the underwater archaeological issues. “We are fortunate to have Steve Lucas, who is familiar with challenges among Admiralty Law, the Federal Ancient Shipwrecks Act, and State Historic Preservation Law, as they bear upon historic shipwrecks in Indiana public waters.” Molnar said he trusted Lucas and the Division of Hearings would continue to support the effort to protect historic shipwrecks within Lake Michigan. “We want to keep the wrecks for tourism, as a valued element of Indiana history, and for the continuing enjoyment of divers and other interested citizens.”

Molnar said local governance would be encouraged. A local historical society is “already engaged with the Alpha Wreck. Under Indiana statute and rule, DNR’s Division of Historic Preservation and Archaeology is the primary regulatory entity.”

Molnar said several statutes and rules address shipwrecks, but what constitutes “abandonment” is largely a function of Admiralty Law. “We are seeing some cases across the Great Lakes where this item is causing consternation.” He said a recent high-profile case involves a shipwreck that “has been lying in the Michigan waters of Lake Michigan for over 400 years, and now the French are coming forth and laying claim to it, using the argument that they didn’t know where it was. That’s why they didn’t salvage it. But now it has been found, and they want to stake their claim.” He said issues of this nature would need to be considered in the development of a management plan.

Molnar indicated Commission rules currently require that, “in order to excavate or study any underwater archaeological artifacts” within Lake Michigan, “you have to submit a plan to the Division of Historic Preservation and Archaeology, as a license application, but there is no standardized format for that right now. We’re seeing that as something that should be strengthened. One of the gray areas that we’ve identified is anything above the ‘ordinary high watermark’ of Lake Michigan, which is the delineation of the ‘public trust’, so anything above that goes to local control. Anything below that would be in State control. That’s something that we feel needs to be addressed so that everybody is on the same page.”

Molnar said another issue is that “Indiana Dunes National Lakeshore has joint management authority over the portion of the shoreline that they control. They have a

number of miles along the Indiana shoreline of Lake Michigan. We have been discussing a possible MOU with them to establish who does what as part of that joint management authority.”

Molnar added, “We’re going to be developing a scope of work. We have looked at other States across the country. There is not a template to develop an underwater archaeological management plan, but some of the States have done a pretty good job. Minnesota is the one that we feel we could mirror most closely, without revealing the locations of these sites, which might encourage looting. Minnesota goes through and does a site-by-site assessment, describing the conditions of each site, and identifying any possible management concerns, and then putting forth a management frame to preserve the shipwreck. One of the things that we’re looking at is local governmental involvement and also involving the local diving community to help the communities police themselves and preserve shipwreck sites for future recreational opportunities. As part of that scope, we’ll attempt to identify the management issues and how the protocols will be established to do these assessments. We’ll let out a request for proposals in early June. We do have some small funding to contract this out. We do not have staff we could ask in our program to do it. The side-scan work would be ongoing through the Division of Law Enforcement. We’re going to do public focus groups involving all of the folks who have an interest in this item, making sure that we get some consensus as we move forward. Otherwise, it’s not going to work. There would be outreach with the local convention and visitor bureaus. We’ll develop a plan and bring recommendations back for consideration by the Advisory Council, probably in February 2010.”

James R. Jones, III, Ph.D., State Archaeologist, expressed his support for the initiative. He added that the Director of the Division of Historic Preservation and Archaeology, James A. Glass, Ph.D., “asked me to pass along that he also supports this and wants to be involved with helping to develop the policy.” Jones concluded, “We will assist in any way.”

Bill Freeman asked for clarification that the project applied only to Lake Michigan.

Molnar responded, “Yes.”

Freeman continued, “It does not have anything to do with any other lake in Indiana.”

Molnar responded, “No, it does not.”

Freeman asked, “When you find a shipwreck, do you put a boundary around it to say it’s a historic site? Do you get the site registered, or is this not a part of the program? Is that what you’re trying to set up?”

Molnar responded, “What we’re trying to set up is (1) to identify all the shipwreck sites, and, (2) through the development of a plan, put in place a management framework. There is also the opportunity to designate a qualified shipwreck” on the National Register or on the Indiana Register of historic sites.

Freeman asked, “Who would manage a shipwreck site?”

Molnar responded, “I think it would be primarily the State.”

Steve Lucas added, “Bill, I think you ask good questions. I’d like to follow-up and supplement what Mike Molnar said. You asked first if this initiative only applied to Lake Michigan. As Mike indicated, it would directly apply only to the Indiana waters of Lake Michigan. But the jurisdiction of the Division of Historic Preservation and Archaeology and the DNR and Natural Resources Commission extends to all navigable waters of Indiana, as well as our public freshwater lakes. A lot of the principles that he’s talking about, and that could be articulated in an underwater archaeology management plan, could also be helpful for the management of historic sites in other navigable waters and even in public freshwater lakes. It could have an expanded utility. For example, I’ve been told, and I don’t know whether it’s real or folklore, that there is a notable shipwreck at the bottom of Lake Maxinkuckee, a public freshwater lake. A plan for the protection of Lake Michigan shipwrecks could also be helpful to protecting a Lake Maxinkuckee shipwreck or other type of historic site in any of Indiana’s public waters.”

Lucas added, “With respect to your second question, Mike alluded to the 400-year old shipwreck in Michigan.... One of the problems there is that shipwreck has not been under Michigan State management. It has not been managed because nobody knew where it was. A lot of the Great Lakes waters in States like Minnesota and Michigan are very deep. The waters of the Indiana portion of the Lake Michigan are not very deep nor are they very far from shore. I’m sure we don’t know of all of them, but the State and the recreational divers have a pretty good idea of a lot of what’s in Indiana waters. We could as a State and as an agency improve our posture, relative to claims by France or someone else under the Admiralty Law, using the Federal Ancient Shipwrecks Act and Federal and State antiquities laws to their fullest extent and demonstrating Indiana is serious about managing this resource.”

Lucas asked Rick Jones, “The *J.D. Marshall* is eligible for or is on the National Register of Historic Sites, is that right?”

Dr. Jones answered, “It is on the National Register.”

Lucas continued, “So, for the *J.D. Marshall*, Indiana and the DNR can make a legitimate claim that we have done something for the management of the shipwreck. We could do more for the *J.D. Marshall*. For many Lake Michigan shipwrecks, DNR and the Commission have done very little.... Although I’m not 100% certain, I think Indiana is the only Great Lakes State which does not, on the State level, have a museum or other formal recognition of the importance of our nautical heritage. The initiative Mike has outlined could go a long way to changing that.”

Freeman asked “how far out does Indiana have jurisdiction on Lake Michigan?”

Lucas responded, “Jurisdiction is consistent with our State boundary.”

Molnar added that at the furthest point “that’s maybe eight miles”.

Chairman Pat Early asked, “So what we’re trying to do is keep people from salvaging and looting our shipwrecks? We want to keep them intact as they are now so they would become kind of like an underwater park.”

Molnar responded, “Yes, and designation as an underwater park is a particular option. Michigan has Thunder Bay Preserve which is around a concentration of shipwrecks. There are other options at the national level to establish National Marine Sanctuaries, that sort of thing. We’re also looking to develop outreach materials, whether it’s a website using the side-screen images to develop a 3D model to take a virtual tour, or whatever” might be developed through the planning process.

**Consideration of recommendation for approval of a new nonrule policy that provides dredging guidelines for reviews of permits in public freshwater lakes; Administrative Cause No. 09-045W**

James Ray, Chief of the Lake and River Enhancement (“LARE”) Section of the Division of Fish and Wildlife, introduced this item. “This particular item is furthering an effort by our staff and by others in trying to develop a nonrule policy for the review of proposed permits for dredging of public freshwater lakes. Lake projects for dredging range from just a few cubic yards up to thousands of yards of material. This would cover a whole range of different size projects.”

Ray said, “In the past few years, dredging of portions of lakes has become more commonplace, at least in part because of funding that has become available through the Lake and River Enhancement Program. That program isn’t the focus of this effort, but it does play a part in it. The purpose of the LARE Program is to reduce or reverse the impact of human influences on the quality of lakes and streams. From our perspective, and more generally from DNR’s perspective, this whole enterprise is going to be based on trying to protect the integrity of the lakes and to restore their quality, where that has become an issue, because of sediment deposition. With respect to dredging, the LARE Program focuses on deposits of sediments which have typically washed into a lake from the watershed.”

Ray explained, “There is also an increasing interest in the removal of muck from around the shoreline of lakes. Muck is essentially decomposing aquatic plant material that can build up over years and has become several feet deep in some places.... Where there are concerns is related to potential biological and ecological impacts to dredging activity, rather than hydraulic or hydrologic impacts that the dredging activity would have. Rather than this being an engineering issue, it’s more of a biological issue. That brings attention to the Division of Fish and Wildlife.”

Ray said, “There are statutory requirements and rules that require licensing of excavations in public freshwater lakes. ‘Dredging’ is a form of ‘excavation’. But currently there isn’t any real specificity for the regulation of dredging activities. Particularly with the advent of funding from the LARE Program for large dredging programs, there has become the need for greater attention to permit applications for dredging. As a result of that, we’ve discovered there is a need for helping to determine how the staff should evaluate these applications.” Following numerous meetings and drafts within the agency and with other interested persons, “going back almost three years now, the result is the document before you.” He said the Division of Fish and Wildlife “would propose” the Advisory Council recommend the document for approval by the Commission “as a nonrule policy document.”

Ray added that “the participants in the formulation of the document in the past few years have included a couple of the dredging contractors, who generally support the document, including Jeff Krevda who is here today. The document has been reviewed by the 26-member, statutorily-established, Lake Management Work Group, which includes four [Indiana State] Legislators. The members who were engaged in the discussion about this universally agreed that it should be moved forward for your consideration, and, ultimately the consideration of the Natural Resources Commission.”

Ray explained, “Some portions of the document as it is drafted now simply provide background, and supportive information, so they wouldn’t necessarily have to become part of a nonrule policy. We would envision as this [document] moves forward, if you choose to support that, the document would go through some additional revision. There would be some wordsmithing, some reformatting, and some portions which are not altogether necessary as a nonrule policy document would be deleted.”

Ray then outlined the document itself. “I’ll go through it real quickly. I assume you’ve had a chance to look at it, and I’m not going to read it to you. Section 1 establishes the purpose of the document, which as it states, is to provide a framework for DNR’s consideration of excavations from public freshwater lakes, particularly in the context of dredging. Section 2 simply provides historical background for regulation of dredging and points out the statutory requirement for DNR to disapprove actions that adversely affect a lake’s natural condition. That same section also points out that there are some portions of lakes that no longer exist in a natural condition, and, therefore, would not be subject to the same level of regulatory scrutiny and the same level of permit conditioning.” Section 3 provides definitions for some of the common terms in the document. “One of them which is significant but which has not yet been defined, as you’ll see in the document, is ‘navigation channel’. As this has progressed, it became apparent that that was a term that is probably important to the context of this document, but that fell into place relatively recently, so there hasn’t been an attempt to define it yet.” This section also “provides some general regulatory considerations. Those largely reflect the need to consider whether the project will be harmful in some way.” Another aspect of this section that is “particularly relevant, and very germane to discussions that we had with proponents of dredging activities, because it delineates seasonal restrictions and provides conditions for allowing extensions that would exceed those seasonal restrictions.” The section also



identifies distinctions, similar to those applicable to the licensure of seawalls, based upon the condition of a shoreline—whether a pristine area, an area of special concern, one where a significant wetland is present, or a developed area. The types of dredging projects which are or are not likely to be approvable are described. Examples are provided of conditions which the Division of Fish and Wildlife might wish to impose. Consideration is given to whether a site qualifies as a lawful nonconforming use. Section 4 describes “maintenance-type dredging activities that would be anticipated and that would generally be considered acceptable. That same section also speaks to differences among projects because of their relative scopes or size and the volume of material to be involved.” The section also illustrates actions to reduce the negative impacts of a dredging project. A lot of what is currently in this section “is essentially support information. That’s information, and some of what’s in Section 3, wouldn’t necessarily have to be in the nonrule policy document.” He said this section also “reiterates and explains the rationale for seasonal dredging restrictions, and it might be repetitive.” Section 4 also provides a comparison of Indiana’s proposed approach for dredging and those of other Midwestern States. Section 5 “talks about some of the benefits of dredging...and some of the ecological risks of dredging.” The section contains a more-detailed consideration of the “justification for seasonal restrictions,” as well as a “short bibliography of dredging-related information. Appendix I provides information about dredging in other Midwestern States.”

Jim Ray concluded, “As I mentioned earlier, although this document probably needs further refinement, there is general agreement among all the affected and engaged parties, which we’re aware of, that this would be appropriate for the purpose for which it’s intended. The Lake Management Work Group has also given its blessing to the document to suggest or encourage that it be moved forward. I’ll end with that and would be happy to try and answer any questions.”

John Davis inquired, “Jim, I assume if a version of this gets passed as a nonrule policy document, the way you’ve described it, I would expect there would be the expectation that, as we learn things over the years, that there probably would be refinement, so in four or five years you might come back and indicate we need to change the nonrule policy, or, eventually we might get to the place where we were thinking about rules. That would be after evolution of this document.”

Ray responded, “That’s a good characterization and a very plausible progression. I think everyone who has been involved recognizes that it has been a challenge. It has taken three years to get to this point because there are so many questions. Everyone is relatively comfortable with what it says now, I think. But there is certainly room for refinement as we learn more by putting it in context and actually using the document.”

The Chair asked, “Is there just an absence of direction right now? There’s no permitting required?”

Ray responded, “There is permitting required under the statute and the rules, but there is no specificity. The rules don’t say exactly how you are to judge a permit application that

is for dredging.” There is no document to identify “under what basis and under what circumstances and using what facts does the agency decide whether to grant or how to condition a permit for a dredging project.”

Chairman Early continued, “So it’s ambiguous right now.”

Ray responded, “It’s ambiguous and difficult for various staff members, who might be asked to review a permit, to be consistent among themselves.”

John Davis added, “And difficult for somebody like Jeff Krevda to know, ‘Well, here’s one I can do. Here’s one that probably isn’t permissible.’”

Richard Cockrum observed, “There’s a lot of discussion on the [West Fork of the White] River here in town above the Broad Ripple Dam, about trying to get funding for dredging. I think the river is covered by LARE because it’s the Lake and River Enhancement Program. I don’t think rivers have ever gotten money but that’s probably because they haven’t applied. I guess I raise that as a point of information to keep that in consideration. I know there are people who live in that area who have already talked to members of Congress to try and get funds to do that. Even though it’s not a ‘public freshwater lake’, it’s above the low-head dam in Broad Ripple which has the same sedimentation.... Clearly, the bulk of the nonrule policy document is about public freshwater lakes, but in the whole Landings Area, sedimentation has happened dramatically, and the boat channel through the rest of the streambed is getting narrower and shallower.”

Ray responded, “I should point out that the statute that provides the funding for the Lake and River Enhancement Program explicitly states that the money is for sediment removal from lakes. Although it is a Lake and River Enhancement Program, that portion of it is dedicated explicitly to lakes.”

Cockrum inquired, “So, if they were to apply, the statute would have to be changed, or they would have to change the definition of that part of the river to be a ‘lake’?”

Davis responded, “Yes.”

William Wert observed, “I don’t know what a marl beach is. It was in purposes not applicable for dredging.”

Ray responded, “Marl is a soil type. It’s represented in the natural lakes in the northern part of the State.”

Bill Freeman asked, “Jim, why do you make the distinction between mechanical excavation and hydraulic suction equipment for giving an extension” of time?

Ray responded, “The rationale is that mechanical excavation is a dirtier process. Using something like an excavator or a bucket loader or a dragline creates a lot more turbidity

and sediment resuspension than hydraulic dredging does. Hydraulic dredging is very similar to a vacuum cleaner. Most of the material that is stirred up, by the end of the dredging device, which grinds up or loosens the material, is immediately sucked up into the piping. Although it's disturbed, that material is drawn into the suction equipment."

Freeman continued, the material "is deposited where?"

Ray responded, "The pipeline carries the slurry to a disposal area."

Freeman asked, "Is that all part of the permitting process—where they have that slurry deposit area?"

Ray responded, "No." He said, the DNR does not, under the Lakes Preservation Act, "have jurisdiction over that aspect of it. Once we get out of the 'shoreline', DNR doesn't have any jurisdiction."

Freeman observed, "It seems there could be ecological problems at the disposal area."

Ray clarified, "I will say that, when we're planning a project through the Lake and River Enhancement Program, we require that a sediment management plan be developed before we agree to consider funding of the dredging project. A big component of that plan is identifying a suitable upland site for disposal. If it's not a site where DNR otherwise has jurisdiction, within a 'floodway' would be a good example [of one where DNR does], there's a good possibility that IDEM or the US Army Corps of Engineers would have jurisdiction over an aquatic or semi-aquatic site."

John Davis asked if IDEM would have jurisdiction over an area greater than one acre under Rule 5.

Ray responded, IDEM's "Rule 5 comes into play where there's land disturbance. I can't speak for them, but technically I suppose it could apply in those instances."

Chairman Early said, "This goes back to Rick's question. I assume because the nonrule policy document would apply to public freshwater lakes because the funding that's created to do this only is available to public freshwater lakes. Do we have any kind of guidelines for dredging from a navigable river?"

Jim Ray responded, "The intent of this document, as you mentioned, is with specific regard for permitting under the Lakes Preservation Act which applies to public freshwater lakes."

Ron McAhron is the Deputy Director for the Bureau of Water and Resource Regulation. He added, "We're calling this 'excavation', and that's also covered under the Flood Control Act for floodway construction as well. To the extent that the moving environment versus the more settled environment doesn't change the parameters, the

types of considerations would be the same. Similar types of considerations ought to apply.”

The Chair continued, “I think what I’m hearing is this document would not apply to the rivers.”

Ray responded, “For the moment, it’s not intended to. It might be something that might be considered later, as this all begins to evolve, unless you were to choose to ask that it be made broader now.”

Davis asked, “What would happen right now if Rick’s people got money from the Federal Government to dredge the White River? They would come to the Division of Water, right, for a permit?”

McAhron responded, “They would come to the Division of Water and to IDEM. That’s really what I’m hoping. I don’t expect the Advisory Council to resolve this all today, but I want us to get into a mode where we have more transparent and readable rules and guidelines and policies that people, who want to invest money in this type of activity, can know at the front end what they’re getting into. As Jim said, even this particular document, even focused just on public freshwater lakes, has bounced around for two or three years. It causes controversy when people don’t know what’s expected. I hope this effort will give us a document that will eventually go on into projects for streams as well.”

Cockrum said, “I don’t want to delay the movement of this proposal. I’m just trying to give you a heads up. At some point, parts” of the West Fork of the White River are going to become effectively non-navigable.

Davis added, “My picture is that this nonrule policy document would add thought-through elements that would be part of the discussion” for how best to address dredging of all public waters, “even though this document does not apply to the dredging of White River.” If an applicant came forward and was ready to proceed with dredging of a river or stream, the DNR could look to the nonrule policy document “to provide these things that we’ve thought about” for appropriate conditioning of a permit. “I think the agency could find its way through it to issue a reasoned permit, even though the document doesn’t specifically say it’s for ‘rivers’.”

Cockrum reflected, “It allows for conditioning.”

The Chair asked if there were additional questions or comments from the members.

Richard Cockrum asked if IDEM tested sediments for contamination.

Ray responded that for a LARE grant, DNR worked closely with IDEM and would require whatever testing IDEM indicated was appropriate.

Cockrum asked what would happen if a dredging project were privately funded and did not seek a LARE grant.

McAhron responded, “We’re going to have an interest, but even more directly IDEM is going to have an interest.”

Freeman asked, “Even to get a permit” for dredging without public funding?

McAhron responded, “Right, under the Dredge and Fill Program. We’re getting so many of these activities that are a little bit us and a little bit the Army Corps and IDEM. In that case, I don’t think there’s any question on the White River, but that’s true of most streams. IDEM is going to take an interest in resuspending unfortunate material or what you’re going to do with the material.”

Davis added, “We have a highly-affected system on the Grand Calumet River. As we’re trying to step through the pieces of how do you clean it up and cap it and dredge it, we ask, ‘How does it recontaminate up and down stream?’ All of those things are discussions between IDEM and DNR, and all those players, all the time. I’m sure the White River would be the same way.”

The Chair reflected, “We’re going to move this on. I think where we’re at is this is going to remove some of the ambiguities. It’s not an answer with everything, including the overlap we have among our governmental agencies. Since we can’t take official action, we’ll move this on by consent, if that’s okay with the members present. Is that okay with everyone?” There was unanimous consent by the members present.

**Consideration of recommendation for preliminary adoption of amendments to 312 IAC 9 (3<sup>rd</sup> Non-Substantive Rule Amendment Package) that make technical changes to rules governing reptiles, amphibians, fish, mussels, and permits in order to reorder language for improved clarity, simplicity, and continuity; Administrative Cause No. 09-058D**

Linnea Petercheff of the Division of Fish and Wildlife presented this item. She said this item was the last in a series of non-substantive amendments within the comprehensive review of the fish and wildlife rules. The package would address the regulation of reptiles, amphibians, fish, mussels and permits.

Petercheff then provided a brief overview of the proposed amendments. “We’ve clarified the requirements for taking and possessing soft-shelled and snapping turtles, bullfrogs, green frogs, and other native species of reptiles and amphibians. We’ve also updated the common and scientific names for all of our native species of reptiles and amphibians.” She said that “additional changes have been made regarding the possession and sale of dangerous reptiles in 312 IAC 9-5-8 to clarify that those who possess a dangerous reptile, under a wild animal possession permit, cannot then sell that reptile. That was the original intent, and there were a couple of words that we had to modify.” She added the changes

proposed to 312 IAC 9-5-8(i) “were being withdrawn due to the fact that they’re considered to be substantive.... We’ve also proposed changes to the captive reptile breeding permit” for clarification “and to remove language that’s no longer needed. For the fishing-related rules, we’ve clarified the stretch of the Little Calumet River that’s closed to fishing. A recent issue came up through the Division of Law Enforcement requiring additional clarification.” She said there were clarifications for the use of gizzard shad as bait.” The standards for sport fishing were reworded. “We’ve clarified the bag limit for possessing species of crayfish. Under mussels, we’ve clarified the possession of live mussels and their shells. We removed the language pertaining to mussel harvester and buyer’s licenses.” Petercheff said since 1991, the collection of mussels has been banned. “Additional changes were made to clarify the exemptions for aquatic vegetation control permits.” She continued, “We’ve also added a provision for allowing holders of a Federal special purposes possession permit for migratory birds to qualify for an educational permit. We’ve clarified provisions requiring hunting permits for persons with disabilities and added provisions for officers to do inspections for the education permits for fur buyers’ licenses. These would be done to be consistent with other licenses, and I believe these omissions were oversights. The last set of proposed rule amendments has to do with the wild animal possession permit. Those modifications include changing the requirement of an examination of the animal by a licensed veterinarian within 45 days after the license is issued.” She said, “We’ve put the definitions for Class I and Class II animals in the rules that reference these animals instead of having them in separate rules. We think that’s easier for everybody to understand.”

Petercheff observed, “There will probably be a couple of other additions in this package to deal with. There is a problem with an exempted fish definition that Sandy Jensen and I became aware of a few days ago.” Petercheff indicated other changes might also come into focus before the Commission was asked to give preliminary adoption.

Chairman Pat Early added, “I want to remind everybody that these are technical changes to the existing rules. We’ve gone to great lengths to keep anything substantive from going in here. These are just clarifications of what already exists. As part of our overall project, we’re trying to make it so that people understand better what the law is, and it should also make it more enforceable for our Conservation Officers.” We want to modify the rules “so there isn’t so much ambiguity in the law.” He then asked if anyone had questions. “We’ll do the same thing as previously today, then, and pass it along by consent” to the Commission.

#### **Consideration of recommendation for preliminary adoption of amendments to 312 IAC 9-10-4 governing game breeder’s licenses; Administrative Cause No. 09-059D**

Linnea Petercheff also presented this item. “The next one deals with the game breeder’s license. This proposal was basically initiated with a discussion in the Governor’s Office in a meeting with the Indiana Deer and Elk Farmers Association. Adam Warnke our Chief Legal Counsel, the Division of Law Enforcement, and I began meeting several

months ago. The Association's concerns regarded the possession of deer under a game breeder's license in particular. Their main issue had to do with the subjectivity of law enforcement officers doing inspections. We wanted to make sure there would be consistency statewide. After working through the rule language provisions, we came to agreement on these a couple of months ago."

Petercheff said, "In addition to the changes in meeting with that group, we've made changes in the clarification process in making these easier to understand and taking care to be consistent with the statutes. The one is to remove the Southern flying squirrel from the list to match up with the existing statute that only allows a game breeder to possess furbearing mammals and non-migratory game birds. We've also clarified how white tailed deer can be obtained and possessed in accordance with the statute. We've clarified the purposes for keeping an animal under this license in compliance with those two statutes. We've clarified how they can be obtained. For example, furbearing mammals can be trapped during the season and kept under this license which is different from the other species." She said modifications "had been made to fencing and other housing requirements for white-tailed deer, and those are provided primarily for the Indiana Deer and Elk Breeders Association, making it clear both for the breeders and Conservation Officers what exactly [the breeders] need to have. We clarified the identification and registration disease testing requirements regarding the State Board of Animal Health. We had a provision no white-tailed deer products could be sold with current state statutes. We cleaned up the record-keeping requirements. The last piece was addressing inspections by Conservation Officers. We spent a great deal of time discussing this, but we came to an agreement on this language to help eliminate stress to the animals and to help prevent the spread of disease."

Richard Cockrum asked, "Was there any discussion of the use of pharmaceuticals?" He said the proposed rule would allow "pharmaceuticals for 'prevention of illness, disease, injury, stress, or malnutrition.' That seems like an open book to use whatever the breeder wants to use—steroids, growth hormones, or antibiotics."

Petercheff responded, "I know they do use the antibiotics, and they need to tranquilize if a deer gets injured."

Cockrum continued, "But it doesn't say for treatment of illness. It says for prevention for all of those purposes. It seems to me I could use any pharmaceutical I want."

John Davis agreed. "Yes. Prevent them from being too small."

Cockrum said, "Exactly. I didn't know if that was discussed."

Petercheff responded, "It was language that we discussed just briefly. They provided us with that language and said it was in compliance with State and Federal laws. Those are approved by a State or Federal agency, and you'd need a veterinarian to give a breeder a particular substance to treat a deer."

Cockrum reflected, “I don’t think you a veterinarian. I think you can go to farm supply and buy pharmaceuticals for feed. You don’t need a veterinarian.”

Petercheff added, “I don’t remember any conversation about steroids. I thought their main concern had to do with vaccinations for injuries that the deer have, and they need to be able to have them treated.”

The Chair suggested, “We might look at clarifying that part of the language.”

William Wert said, “I’m just curious. If a Cervidae were found to have chronic wasting disease, how do we dispose of that animal? Is there regulation on that?”

Petercheff responded, “I believe they could be buried or burned. The head would be sent in.... BOAH further defines what has to be done.”

Chairman Early asked if there were additional comments or questions. Hearing none he said, “Once again, we’ll move this on with consent of the members.” All the members in attendance expressed their consent.

**Review and discuss substantive rule amendment process regarding the Comprehensive Fish and Wildlife Rules Enhancement Project; Administrative Cause No. 08-061D**

Sandra Jensen of the Commission’s Division of Hearings presented this item. “We have almost a thousand substantive suggestions for amendments to the fish and wildlife rules. We will be in the process of sorting them shortly. Our goal is to sort them by topic and provide them in a package to the Advisory Council with the idea of letting you decide how you want to review them—whether you want to have public hearings and allow people to come in and allow additional information. We do have a meeting with the steering committee for this project on May 5 to do a preliminary review of the sorting. The biggest bulk of comments are hunting, relative to deer. We have a big section of them that came in late that have to do with trout fishing at the Brookville Tail Waters. Most of them are hunting and fishing.”

John Davis reflected, “The steering committee will probably look at those and come up with an idea as to how we might want to group the comments.”

Jensen responded, “I think the big thing that we have to consider at this point is we asked everybody for their suggestions. We want everyone to understand that we’re going to look at everyone’s suggestions. For some of these there are big bulks of them. Some of them are going to be maybe controversial. Others of them, we may receive one or two suggestions on a topic. In the Division of Hearings, what Steve Lucas, Jennifer Kane, and I would offer to the Advisory Council is our assistance in dealing with some of the smaller ones. We could set those up and schedule them for hearings in our offices and allow those folks to come forward and comment, so at least we’ve addressed their



comments, and we could report back to the Advisory Council. You could then make an ultimate decision for how to address them. The Advisory Council could then concentrate on the controversial ones or the ones where there were numerous suggestions.”

Chairman Early reflected, “We have a steering committee meeting scheduled for May 5. We do want to be very sensitive to the fact that we said we would listen to everybody’s points. We also want to move the process along as quickly as we can. What we will probably try to do is to identify, possibly not by priority but what seem to be the ones that were the major items of interest from the public, for what we will put on our next Advisory Council meeting agenda. At this point in time, we are thinking of going ahead and having several of those items on our June meeting agenda. That would likely mean that we would be having a public meeting on some of the more common themes that have been brought up. Those also may be some of the more controversial. Before we get bogged down in the public hearing part, we can discuss what all of the topics are as we’ve broken them down and determine which ones we would like for Sandy, Jennifer, and Steve to handle somewhat administratively and which ones we would deal with, from a public hearing standpoint, directly in the Advisory Council.”

The Chair reviewed the process being implemented. “There are three phases of the changes for fish and wildlife rules that we are going to make. The first one was to go ahead and reaffirm the existing rules, so they were readopted last fall by the Commission. The second phase was to go through all of these technical corrections which were to really clarify things that already existed in the law. The third phase, and certainly the one which is going to attract the most attention from people, are the proposed substantive changes. For example with the crossbow rule, there’s a very strong lobby that wants crossbows to be legal for all of archery season for deer. I’m sure that will be one of the hearings we are having where there will be both proponents and opponents coming in and stating their case.”

The Chair continued, “With a thousand different comments, there is a whole scope of changes that people are proposing and we would consider. Those are things that are not currently in the law and are substantive changes. The Advisory Council would be sending on what our recommendation is to the Commission.... After the May 5<sup>th</sup> meeting of the steering committee, it would be our intention, I think, to publish that those things are going to be on that June agenda as quickly as possible. We will make sure that everyone on the Advisory Council understands the ones we are going to be dealing with. We want the public to understand we’re going to do that. We may need to plan to have a bigger room, if we can accommodate that, for those series of meetings. I would suspect that our June, August, and probably October meetings would all involve these public hearings, and that would be the bulk of what we’re dealing with during that time.”

Sandra Jensen added, “Where the suggestion form was located on the NRC’s website, that location has now been modified to provide a basic short ‘thank you’ for comments with a link that goes to a paragraph which explains the site is going to be used to announce upcoming events. We’re going to use that as an information portal. If you know you’re going to consider particular substantive issues in June, August, and October,

we'll put public hearing information on that Commission site. It will be there so people will have forewarning."

Davis continued, "We'll want to put those out, for substantive changes, on as many different media avenues as possible, including the Wild Bulletin, which goes to thousands of constituents who would be particularly interested in these. We'll figure out other places to put them to get the word out."

Chairman Pat Early observed, "It is likely that the Advisory Council meetings will take slightly longer than ordinary. Polling you guys, do you think it is reasonable that we should plan on being going until 1:00 p.m., say, instead of to Noon. If it happens to move on more quickly, that's fine, but I expect that for the more controversial ones, we're going to have a lot of people sign up to speak. We can limit the amount of time they have to speak. We have the right to do that and may need to, but the problem is, if you have 30 people who want to speak, and you limit it to three people speaking, I think you can run into problems that this wasn't really an open process. I think we can keep the people speaking to a reasonable period of time."

Richard Cockrum said, "I think that's fair, and a lot of times you can ask people to not be repetitive and at some point to just stand up to say who you are and if you're for it. When you get the fourth, fifth, or sixth person saying the same thing, it starts to get the same testimony. I do think you have to be sensitive to the fact that people drive here and take the time, and they deserve to be heard."

Lucas added that a technique sometimes used by the Division of Hearings for a public meeting with large attendance is to "apply an honor system by which each individual speaker would be limited to three minutes, or some other stated time, until all had an opportunity to speak. I don't really enforce a clock. It's mostly peer pressure. Those who feel their comments would take longer than three minutes are told they could reserve a longer time after all others have spoken. Usually, most people will adhere to that pretty well. You can take a lot of comments from different people in a short period. It keeps things moving along but lets everyone speak."

The Chair said, "Those are both good suggestions, and we'll try to incorporate them. If it's agreeable to the Council, let's plan on leaving a little bit more time for the next three meetings than we've normally left." The Advisory Council members acknowledged their concurrence in extended meetings for June, August, and October.

The Chair continued, "I guess the second thing is I appreciate everybody being here today, and I realize that the legislature is in session, and we now have an empty seat with the resignation of Dr. Hasbrook. He just couldn't fit it in his schedule well enough, so he has resigned. We're working on filling that slot for the next time, but it's really important that we have a quorum. As we publish these things, it's going to be difficult if we publish that we're going to be having this, and then we don't have the meeting because we don't get a quorum. If you cannot be here, and certainly there's always going to be people who cannot, try and take a look at your schedules and let us know well in

advance, so when we start publishing when we're going to have a meeting we can make adjustments. We may even change the date of a meeting to try and keep these things happening rather than finding out a week before that we're only going to have five or six people." He thanked Linnea, Sandra, and Jennifer for their hard work on the project.

### **Reports by Deputies Director**

Chairman Early asked if either of the Deputies Director had anything additional to report to the Advisory Council.

John Davis responded, "I do have a couple of things that I'd like to mention. One, I'd like to thank everybody who is here for making the trip. We appreciate that effort."

Davis continued, "I wanted to let everybody know that Donald E. Foltz, who Governor Welsh appointed Director of the Department of Conservation in 1961, died" on April 3. "Don was involved when all the various pieces that became DNR were being drawn together. He was from Clinton, Indiana."

Davis added, "One thing that Rick Cockrum pointed out, and I wanted to mention on my math, is that he ran the YCC Program in the 1970s."

Cockrum emphasized, "The late '70s! Of course, I was very young then."

Davis continued, "Believe it or not, he took youth hired by the Youth Conservation Corps, and they had funding for a couple of years, and they built the first 35 miles of the Knobstone Trail. They started at Deam Lake, and they came up through Clark State Forest, along with a lot of other things. It was quite an accomplishment. It's kind of ironic that we're back to YCC now and again have funding.

Cockrum reflected, "Yes, I saw that announcement, and I thought this is a great program. It was a great program years ago. If I can help in any way, just let me know. Governor Daniels embraced it to put young people to work in some of our State Parks over the summer using some of the Federal Stimulus money."

Ron McAhron said, "I appreciate you all helping moving some of these rule-type things forward. Also, I'm really amazed by the undertaking for review of all the fish and wildlife rules. I don't have a thing to do with it, but I admire your spunk."

### **Adjournment**

At approximately 12:06 p.m., the Chair reported the meeting was adjourned.