

ADVISORY COUNCIL
June 25, 2019 Meeting Minutes

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
Ross Williams
Tim Karns

NRC, DIVISION OF HEARINGS STAFF PRESENT

Sandra Jensen
Scott Allen
Barrett Kyle

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Cam Clark	Executive Office
Chris Smith	Executive Office
John Davis	Executive Office
Mark Reiter	Fish & Wildlife
Linnea Petercheff	Fish & Wildlife
Mitch Marcus	Fish & Wildlife
Brian Schoenung	Fish & Wildlife
Steve Hunter	Law Enforcement

GUESTS PRESENT

None

Call to Order

Patrick Early, Chair, called the meeting to order at 10:08 a.m., ET, at the Fort Harrison State Park Inn, 5830 North Post Road, Roosevelt Room, Indianapolis, Indiana. With the presence of three members, the Chair observed a quorum.

Reports of Deputies Director

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis thanked the Committee for meeting to provide meaningful discussion about the rule amendments proposed by the Division of Fish and Wildlife. Davis said that the Division of State Parks' recreational season includes three holidays, Memorial Day, July 4th, and Labor Day that can "make or break us." He reported that Memorial Day weekend was bad. He noted that July 4th is a "disaster", the reservoirs are holding water to protect from flooding downstream, but many beaches are flooded. Davis said that parts of Harmony State Park are closed, and Brown County State Park is entirely closed because the water treatment facility is overwhelmed because Ogle Lake, which provides water for the park, is full of sediment because of flooding.

Chris Smith, Deputy Director, Bureau of Water Resource and Regulation, provided his report. Smith said that the Division of Water should start seeing an increase of permit applications for flood prevention construction or reconstruction of damaged structures because of the flooding.

Smith said that “R3” has changed to “Invitation to Conservation” and there are events and activities listed in the current issue of Outdoor Indiana related to this initiative.

Smith said the members of the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact), which includes the eight Great Lakes states and two Canadian provinces, will be meeting later in the week. He stated the effects of high water and beach erosion will be discussed at the meeting.

Approval of minutes of meetings held on April 30, 2019

The chair called for a vote to approve the minutes of the meeting, held on April 30, 2019, as presented.

Tim Karns moved to approve the minutes of the meeting held on April 30, 2019, as presented. Ross Williams seconded the motion. Upon a voice vote, the motion carried.

Consideration of administrative rule proposals governing fish and wildlife in 312 IAC 9

Davis noted that the Department of Natural Resources (Department) has four items from the proposed fish and wildlife rule package for additional discussion with the Advisory Council. Davis stated that the first involves the elimination of the commercial harvest of roe bearing species and the options that are available to Andrew Byrne and Jordon Byrne (Byrnes), who attended the Advisory Council meeting on April 30, 2019.

Brian Schoenung, Chief of Fisheries, Division of Fish and Wildlife, stated there have been declining fishers of roe-bearing species and in the last two years there have been no fishers on the Wabash River and two fishers on the Ohio River. He said that the management for the protection and sustainability of roe-bearing species is not adequate and the Department proposed the rule change to get out of the business of roe harvester and dealer licenses.

Schoenung said that because Indiana presently allows non-residents to purchase a license, Kentucky also extends to Indiana residents the ability to purchase a Kentucky license. One option “during this phase out period” is for the two Indiana license holders to apply for a Kentucky non-resident roe-harvester’s license at a cost of \$1,500 dollars, which is \$500 dollars more than the current Indiana license. He said the roe processor license in Kentucky is the same price as in Indiana. Schoenung noted that Kentucky has a cap of 18 non-resident licenses available for sale in 2018 and that Kentucky reported selling seven non-resident licenses.

Davis asked if someone could process the fish in Indiana and hold a Kentucky non-resident processing license.

Schoenung said that someone holding a Kentucky non-resident license could process the fish in Indiana.

The Chair said the concern is the Department could potentially put someone following the law out of business by eliminating the commercial harvest of roe-bearing species. He said that he agrees that the roe-bearing fish resource should be preserved. The Chair asked if the fishers could continue in business even if the Indiana roe-bearing harvester and processor licenses is eliminated.

Schoenung answered in the affirmative.

The Chair asked if the Byrnes were fishing on the Wabash River and if they are the only two roe-bearing fishers in Indiana.

Schoenung said that the Byrnes were not fishing on the Wabash River, just the Ohio River and that the Byrnes are the only two roe-bearing fishers in Indiana. Schoenung said that there are people living in Indiana who hold Kentucky licenses because the Kentucky license covers a larger portion of the Ohio River, from the mouth almost to Pennsylvania.

Karns asked if the “non-resident” licenses are phased out in Indiana whether Kentucky could then disallow Indiana residents purchasing licenses.

Schoenung said that he was assured by Kentucky officials that any Indiana resident who purchases a Kentucky license before Indiana’s license is eliminated would be “grandfathered in”.

Karns asked if the grandfathered Kentucky license for an Indiana resident was by rule, statute, or by word of mouth.

Schoenung said that the grandfathered Kentucky license for an Indiana resident was by word of mouth.

Davis stated that if the Advisory Council decided to send the elimination of the commercial harvest of roe bearing species to the Natural Resources Commission (Commission), after preliminary adoption there would be an opportunity for the Byrnes to have more input in the process.

Schoenung stated that eight states that offer roe-bearing fishing seasons with some limited to sport fishing and some offering commercial fishing. Some states have more control and restrictions than others do. Schoenung said that approximately eight years ago the U.S. Fish and Wildlife Service had some concerns about the management protocols not being sufficient for the long-term sustainability of roe-bearing fish. Schoenung said the Department met with the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Service and agreed on a standard to achieve long-term sustainability of the fish. However, none of the states has resources to collect the data to ensure that they are meeting the standard.

Schoenung noted that the Department's commercial fishing program revenue is approximately \$7,000 dollars in license fees and the staff time to process the fishing licenses far exceeds the amount of revenue generated. Schoenung said that it does not make sense for the Department to spend resources to attempt to collect the data, develop and implement new rules and, and work with Kentucky on a new process while the current regulations are not being followed. He noted that many commercial fishers violate the current regulations and it is hard for the Department to ensure compliance with the regulations intended to ensure the sustainability of the fishery. Schoenung said that there is a sport fishing season for shovelnose that would continue if the commercial harvest of roe bearing species is eliminated.

Karns said he understands the administrative burdens to the Department but that this proposal shifts the burden to another state, because it will not change the amount of fish that are taken from the Ohio River. He noted that the Byrnes appears to be operating their business within the regulations. Karns said that the concern is that, in the future, Kentucky could change their rules and not continue to offer a non-resident fishing license because there is no reciprocity. He stated, "I don't like the rule, as written, just for the purpose of trying to save money when there are commercial interests and it's not really, in my opinion, going to change the way the fish is protected."

Schoenung said that Kentucky could change their regulations for roe-bearing species in recognition that the species is not sustainable outside a cultured fishery. Schoenung said that it is too hard for states to monitor the fishing to ensure that a harvest is not having a negative impact.

Karns asked if the Indiana fishing license fees were set by statute or rule.

Schoenung said the fishing license fees were set by rule.

Karns asked if Indiana and the other states had talked about increasing the fishing license fees to get the funds to do research on the roe-bearing species.

Schoenung said that even if every license from every state cost \$10,000 there still would not be enough money to do the research necessary to ensure the fishing is sustainable and that regulations are being followed.

Steve Hunter, Director, Division of Law Enforcement, stated that approximately four years ago the Department a lot of resources to enforcing roe-harvesting regulations through undercover investigations Hunter suggested that the fishery should be regulated on a broad scale similar to the way migratory birds are regulated but acknowledged that is not the present situation.

Karns asked if Indiana stops issuing commercial fishing licenses will the enforcement of the regulations stop.

Hunter said that enforcement of fishing regulations would not stop, but that there would not be a need for as many resources as have been used in the last five years.

The Chair recognized the administrative burden as well as the concern for the sustainability of the fishery. He noted that the two Indiana license holders may be forced to get a Kentucky license and that Kentucky could change their law. Schoenung offered that Kentucky has the same data regarding the fishery's sustainability and may change its law regardless. Schoenung also noted that other options, such as private farmed fisheries are also available.

The chair inquired about a five years sunset on the license so those who currently have an Indiana license can keep it for a period of time into the future or if the rule could disallow the issuance of new licenses but allow current license holders to renew existing licenses.

Petercheff said that someone could get a permit to operate a private fishery. She said there could be language in the proposed rule to allow for a five-year sunset on commercial fishing.

Jensen said there could be language in the proposed rule to allow for a five-year sunset and that renewing a current license could continue while prohibiting the issuance of new licenses. If a person allowed an existing license to expire, it could not be replaced.

Davis said that a five-year sunset would allow the Department time to have a discussion with Kentucky to ensure the Byrnes could get Kentucky non-resident licenses.

Schoenung said that he anticipates that when people hear that Indiana will grandfather anyone with a commercial fishing license that there would be an increase in applications for commercial fishing licenses.

Smith asked if a rule could be backdated to allow only those licenses that were current before the rule process started to be grandfathered.

Jensen said that she did not know for certain but reported something like that could probably be done. She recognized that the rule would need to identify the date on which a license must have been valid in order for it to be grandfathered.

Karns asked if there was any effort to regulate commercial fishing of roe-bearing species at a federal level.

Schoenung said that the only way the U.S. Fish and Wildlife Service would be able to regulate the species is through the creation of a list. Schoenung noted that some fish are protected because of a similarity to endangered fish. He noted that in other states there are petitions to have some fish added to a threatened or endangered list.

The Chair said that he is hearing from the Department experts that the roe-bearing species sustainability is a biological issue and the commercial fishers have other options that will not put them out of business. He noted the process for rule change is a lengthy process with preliminary adoption, public hearings, and will not become a rule until sometime in late 2020.

The Advisory Council unanimously agreed with moving the elimination of the commercial harvest of roe bearing species on to the Commission as part of the administrative rule proposals governing fish and wildlife in 312 IAC 9.

Davis said the next item for discussion is to add a daily bag limit of 25 for bluegill under 312 IAC 9-7-14.

Schoenung stated that the suggestion for a daily bag limit for bluegill through the “Got Input” process and based on a 2017 survey, 67% of anglers said they would support a bag limit of 25 for bluegill. He noted bag limits are not very effective in managing fish populations. He said that bag limits spread out fish harvest and size limits manage the fish population. Schoenung noted that this rule proposal would impact only a small segment of the population because most anglers don’t take more than 25 bluegill anyway. He observed that this is a “perception issue” that it is a limitless resource with some people believing those who take great quantities are “game hogs”. The greatest value to this proposal would be to reinforce that there is a limit to the resource and people have an impact on the resource.

Hunter said the bluegill population would not be impacted by imposing a bag limit and in the interest of “keeping the rules as simple as possible” he did not see the need to go forward with it. Hunter observed that the proposal was further complicated by the need to amend the possession limit for vacationers fishing away from their home.

Davis said the Department felt that there should be some conversation before the bag limit goes to the Commission.

The Chair said that just because responded on a survey that they would be supportive of a bag limit is not a sufficient reason to create a regulation that could cause someone to inadvertently violate the rule, or to consume additional time for law enforcement for something that would not serve a biological basis.

The Advisory Council agrees not to recommend to the Commission to add a daily bag limit of 25 for bluegill under 312 IAC 9-7-14 as part of the administrative rule proposals governing fish and wildlife in 312 IAC 9.

Davis said the next item for discussion is to eliminate the hunter orange requirement for ground blinds for deer hunting under 312 IAC 9-2-15. Petercheff offered that this proposal came through the “Got Input” process and specifically requested the elimination of the hunter orange requirement for ground blinds on private property.

The Chair asked if the Department currently requires hunter orange on ground blinds.

Petercheff answered in the affirmative and confirmed that hunter orange is required on public and private properties.

The Chair asked if there would be a public safety issue by eliminating hunter orange for ground blinds.

Petercheff said there is a safety concern particularly on public property. She noted that hunters are required to wear hunter orange during certain firearms seasons but the hunters are not visible inside the artificial ground blinds.

Hunter said the Division of Law Enforcement is not comfortable eliminating hunter orange on ground blinds, on public land, and even on private land, it serves a safety purpose. Hunter also observed that requirements for hunters to wearing hunter orange are the same on public and private land so he did see a reason to make a distinction with respect to ground blinds.

The Chair asked if the Department position was to keep the hunter orange requirement stated in the rule presently.

Mark Reiter, Director, Division of Fish and Wildlife, said that it was suggested by the public and the Department wanted to have a dialog with the Advisory Council about the hunter orange requirement for ground blinds.

Karns said that he does not see a reason to distinguish between public and private property regarding hunting requirements where safety is a concern.

The Advisory Council agreed not to not to move forward with a proposal to eliminate the hunter orange requirement for ground blinds for deer hunting under 312 IAC 9-2-15.

Davis said the next item for discussion is to eliminate the requirement of a continuously burning light and requested that Petercheff explain the proposal.

Petercheff said that a citizen's petition to eliminate the requirement of a continuously burning light was filed with the Commission. Petercheff explained that the light must be visible for at least 500 feet while hunting furbearing mammals between sunset and sunrise on private land. She offered that the petitioner feels like the light has an impact on his ability to hunt-furbearing animals at night because he uses thermal imaging and night vision equipment. She said the light provides safety for the hunter and allows a property owner know where a hunter is on their property.

Reiter said that the petition for rule change to eliminate the burning light requirement is specific to private property. He said the petitioner felt like he could hunt without the use of a light and may not have considered that the light was for the safety of making others aware of where the hunter is located on a property.

Davis said that the burning light broadcasts the presence of the hunter so that other hunters will know a hunter's location.

Karns said that he does not see the need to make a change to the rule to eliminate the burning light requirement for hunting and would want to know where a hunter is if he were on an adjoining property.

The Chair said that the burning light requirement deters trespassing and keeps hunters safe.

Smith noted that by not making a change to the burning light requirement it would keep hunting requirements uniform on both public and private property.

The Advisory Council agrees not to recommend to the Commission to eliminate the requirement of a continuously burning light that can be seen for at least 500 feet while hunting furbearing mammals between sunset and sunrise on private land under 312 IAC 9-3-18 as part of the administrative rule proposals governing fish and wildlife in 312 IAC 9.

The Chair asked if the items to add a daily bag limit of 25 for bluegill, eliminating the hunter orange requirement for ground blinds for deer hunting, and eliminating the requirement of a continuously burning light would not be included in the proposed rule package that would go to the Commission for preliminary adoption.

Smith stated that the daily bag limit of 25 for bluegill and eliminating the hunter orange requirement for ground blinds for deer hunting would not be included in the proposed fish and wildlife rule package.

Smith and Reiter agreed that because eliminating the requirement of a continuously burning light was a citizen's petition that a report will be provided to the Commission at the next meeting. Reiter said that the report would indicate that the issue was brought to the Advisory Council and was not recommended to be included in the proposed fish and wildlife rule package.

Tim Karns moved to recommend inclusion in the rule proposals governing fish and wildlife in 312 IAC 9 amendments to eliminate the commercial harvest of roe bearing species, and removal of proposals to add a daily bag limit of 25 for bluegill, to eliminate the hunter orange requirement for ground blinds for deer hunting, and to reject the citizen petition to eliminate the requirement for a continuously burning light. Ross Williams seconded the motion. Upon a voice vote, the motion unanimously carried.

Reiter asked to discuss in more detail the proposal to allow air rifles and air bows to be used for deer hunting during the deer firearms season under 312 IAC 9-3-3. Reiter stated that many other states are not allowing air rifles and air bows to be used for hunting because the manufacturers of that equipment do not pay the excise tax under the Pittman-Robertson Act (PR), like firearms and bow manufacturers do. He noted that the PR tax money that is collected by the Internal Revenue Service is given to the states and that half of the revenue for the Division of Fish and Wildlife is from that tax money.

The Chair asked why air rifles and air bows are exempt from the PR tax.

Reiter stated that air rifles and air bows are exempt because of the way the law is written.

The Chair asked if air rifles and air bows are lethal enough to hunt.

Reiter said that air rifles and air bows are lethal and they are effective for hunting. Reiter stated that the proposal to allow air rifles and air bows for deer hunting will likely be controversial

The Chair asked how the rule proposal to allow air rifles and air bows was proposed.

Reiter stated that the proposal to allow air rifles and air bows was a citizen's petition.

Smith observed that if the air rifle and air bow pass the requirements by which other deer hunting equipment has been evaluated it would be difficult to reject the equipment only because of the PR tax issue.

Davis offered the opinion that because of funding sources and the people served that rejecting the equipment because PR tax is not imposed on that equipment may be a valid consideration. The Chair said that if the Department chose they could have a separate license with fees for air rifles and air bows for revenue because the equipment is not taxed the same as firearms and archery bows.

Reiter said creating another fee and permitting process is not the direction preferred by the Department because it creates an administrative burden.

Davis said he believed it should be part of the conversation that the manufacturers of this equipment do not pay PR and expressed that he would be satisfied with a recommendation not to proceed with this proposal until PR is paid with respect to this equipment.

Williams asked why the petitioner would want the air rifle and air bow to be legal for hunting.

Petercheff said that people said that the air rifle and air bow are easier to use and they are quiet.

Reiter stated that an air rifle is not a cheap piece of equipment and there is equipment needed to fill the air tank.

Davis said, "It helps us if the Advisory Council says the PR thing is an issue, I think, in our future conversations with people that its thing we talked about here and it's at least a matter of concern."

The Chair stated that the concern is not the safety of the air rifles and air bows, but the concern is that they are not subject to the PR tax.

Tim Karns moved to include in the discussion about the proposal to allow air rifles and air bows to be used for deer hunting during the deer firearms season the concern that the manufacturers of the equipment are not subject to PR. Ross Williams seconded the motion. Upon a voice vote, the motion unanimously carried.

Adjournment

The meeting adjourned at 11:33 a.m., ET.