

ADVISORY COUNCIL MEETING

December 15, 2010

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
Richard Cockrum
Bill Freeman
David Lupke
James Snyder
Donald Van Meter
William Wert
Ross Williams

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
Mark Reiter	Fish and Wildlife
Brian Schoening	Fish and Wildlife
Bill James	Fish and Wildlife
Brian Schoenung	Fish and Wildlife
Marian England	Legal
Dan Bortner	State Parks and Reservoirs
Julie Planck	State Parks and Reservoirs

GUESTS PRESENT

Chuck Brinkman	Brian Waldman
Zack Pagac	Kevin Forsink
Juan Garcia	

Call to Order by Chairman, Patrick J. Early

The Chair called to order the meeting of December 15, 2010 at 10:35 a.m., EST, at the Fort Harrison State Park Inn, Roosevelt Room, Indianapolis, Indiana. With the presence of eight members, the Chair observed a quorum.

Approval of minutes of meetings held on October 13, 2010

Bill Freeman moved to approve the minutes of the meeting held on October 13, 2010. William Wert seconded the motion. Upon a voice vote, the motion carried.

Consideration of 2011 meeting dates and locations

The Chair asked Advisory Council members to review the proposed 2011 meeting dates. No member indicated schedule conflicts with the proposed dates. The Chair then asked members to calendar February 16, 2011 as the next meeting date.

Consideration of recommendation for preliminary adoption of amendments to 312 IAC 9-7-6 governing the taking of smallmouth bass in designated waters and largemouth bass in Big Lake and Crane Lake in Noble County by sport anglers; Administrative Cause Number 10-154D

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, introduced this item. He provided a brief history of the smallmouth bass proposal and then deferred to Brian Schoenung to provide additional information.

Brian Schoenung, fisheries biologist with the Division of Fish and Wildlife, provided an explanation of the smallmouth bass proposal. He said habitat is the primary issue affecting smallmouth bass in both quantity and quality. Improving habitat has been the Department's focus for several years. Some causes of smallmouth bass habitat deterioration are not in the Department's control. "We have to work with other government agencies to try and address those issues." Angler feedback indicated additional protection for smallmouth bass was needed.

Schoenung said rules have little impact on a resource unless there is angler harvest. The Department focused its efforts in waterways: (1) where there is angler harvest; (2) that are navigable where there is increased fishing activity; and (3) with smallmouth bass habitat. The waterways to be added at 312 IAC 9-7-6(k) are streams with these three qualifications. He said the proposal "worked best for a wide variety of different situations. Obviously, these streams are not the same as far as the population structures." The rule amendments would continue to address "black bass" because anglers have difficulty distinguishing among black bass species.

Schoenung said smallmouth bass population densities differ depending on the waterway. "If you protect over-abundant fish, then you are not going to have the impact that you desire." There are

situations where anglers are taking too many smallmouth bass, taking too few smallmouth bass, or taking the wrong size of smallmouth bass. The Department is proposing a slot limit that has shown results on the Blue River. The Blue River has high densities and slow growth of the smallmouth. “The goal there is to take a lot of smallmouth out so that the ones remaining can grow.” Some of the streams listed in the proposal do not have the characteristics of the Blue River, “but it’s the Department’s belief that even if there was a stream with low density population and high growth, typically you do not see a lot of smallmouth harvested under twelve inches. Essentially, what the rule would become then is a 15-inch minimum size limit with a two fish bag, which addresses the needs that anglers have expressed—more and bigger smallmouth bass.”

Schoenung noted many southern Indiana streams contain spotted bass, and these typically compete with smallmouth bass. Spotted bass do not grow as fast or reach the lengths of smallmouth bass, and the Department does not want to protect the spotted bass population in those streams. A 12-inch minimum size limit for black bass would sometimes favor spotted bass. Schoenung said the proposal “seems to meet the needs on these different streams. It is experimental. It’s not something that we’ve tried other than at the Blue River. We don’t know what the impact will be on the other streams where you have different population metrics.” He noted the Department has modeled different size limits on a number of different streams—Tippecanoe River, the West Fork of the White River, the East Fork of the White River. “Typically, we do not see a lot of shift in populations on size limits. It’s very difficult to model a slot limit, because you don’t know what the ratio of harvest is for fish under the slot versus over the slot. It plays a big role in how that population is manipulated.” The Department does not have a lot of good information on the specifics of how the proposal would impact smallmouth bass populations. The Department’s understanding of fish management and populations suggests the slot limit should work in a variety of scenarios with differing population metrics.

David Lupke noted that the proposal would continue to read “black bass” but would govern the taking of all three bass species. He asked whether subsection (d) should be amended to read “black bass” rather than “largemouth bass” as pertaining to the harvest of bass in lakes.

Schoenung responded the only black bass in lakes listed in subsection (j) are largemouth bass.

Davis added that the Department was withdrawing from the proposed permanent rule the amendments at subsection (j). These would provide a slot limit for largemouth bass on Big Lake and Crane Lake in Noble County. Instead, the Department would pursue a temporary rule for the slot limit on these two lakes because “the response from the fish would be short enough that it shouldn’t be a rule that we pass and then change in a year and a half to two years”. The slot limit for smallmouth bass for the permanent rule begins at what is designated as subsection (k).

Schoenung said the temporary rule would be put in place as a “reverse slot limit” where the Department would be pushing the harvest towards a narrow range of fish lengths in order to reduce the excessive number of small sized bass, reestablish a balanced population structure, and improve the quality of bass fishing.

Richard Cockrum noted largemouth bass size limits in lakes is 14 inches statewide and twelve inches in streams statewide. He asked how the rule proposal would be enforced when a waterway has both 14-inch and 12-inch size limit on different portions of that waterway. Schoenung respond the Division of Law Enforcement would have to address those issues.

Cockrum said one of the concerns regarding the slot limit is the enforceability. He said the Division of Law Enforcement has indicated slot limits are difficult to enforce because of cultural and language barriers. “It seems to me that the more complicated it becomes the harder it is to really have a rule. The 14 inches is something that I have been pushing partly out of frustration, because I have been asking for something to deal with smallmouth since 1998.” Cockrum noted that he agrees bass habitat has decreased, and habitat is the primary issue. The 14-inch slot limit “is not magic, but it is a number the public is familiar with and should be made effective statewide”.

Schoenung said there are existing rules such as those governing catfish that have different slot limits depending on the waterway.

The Chair noted there seemed to be resistance from the Department for a statewide 14-inch size limit proposal. “Why is the slot limit a better solution? Is it because there are streams that need a lot of the smaller fish to be harvested?”

Schoenung explained that a statewide size limit would not address the unintended protection of spotted bass. It provides additional protection to spotted bass, the wrong direction if the goal is to improve the quality and quantity of smallmouth bass. “It doesn’t make sense to adopt a regulation that protects a species that is competing directly with smallmouth and will never get to a size where that fish could be harvested.” The 12-inch size limit data showed a variety of results. He said the Blue River black bass slot limit was a direct result of studying the impacts of the 12-inch minimum size limit. Data indicated anglers were taking bass smaller than twelve inches which resulted in a stockpile of those size fish. Smallmouth bass typically live for seven or eight years, but currently the bass are reaching twelve inches at age six. “You could protect that fish in eternity with that size limit. It will never exceed that size limit because the competition is just too intense among the fish because of density.”

David Lupke asked whether anglers are harvesting fish less than twelve inches.

Schoenung said that creel surveys show there is not a lot of harvest of fish less than twelve inches with the statewide 12-inch size limit. On lakes where there are slot limits, there is good angler compliance. “It’s hard because most fishermen are interested in catching large fish. The same thing we have to do on lakes, we have to do on the streams—that is to sell this regulation to those anglers that are interested in that species to get them to take those small fish out.” Survey data from the Blue River shows the benefits of the educational effort and angler compliance with the slot limit. The Blue River is showing faster fish growth resulting in larger smallmouth bass. There is good angler compliance on lakes with slot limits, but anglers lose interest over time.

Schoenung said a lot of the streams listed at proposed subsection (k) do not have a density issue, so it would not be necessary for anglers to target smaller smallmouth. For the streams with high density, the Department would work with local angling groups to seek support for the slot limit.

Cockrum said the 12-inch size limit addressed uniformity of rules statewide, but he asked Schoenung to further address uniformity and growth rate. “What’s magic about twelve that is not about 14?”

Schoenung responded that raising the size limit would not guarantee faster fish growth. As far as uniformity, he understood policymakers wanted the Department to draft rules to be as simple as possible. Michigan and Wisconsin have booklets that color-code portions of streams according to the different size regulations. “Obviously, that’s complicated. It’s probably necessary or they wouldn’t have done it.” Indiana needs a minimum amount of protection for the species, and in areas where there is more potential for quality fishing, the Department wants additional rules to enhance the fisheries, such as at Blue River and Sugar Creek.

John Davis said the Department seeks species protection and enhanced fishing opportunities. He said the Department needs to strive for rule simplification, as well as balancing the reality that fisheries are becoming more complex. The Department is asking its constituencies to be mindful of “all sorts of things—the county that their firewood came from, exactly what the hunting regulations are on this piece of property or that piece of property. It gets more complex as we evolve our management.”

Cockrum said he was not previously aware of habitat competition between spotted bass and smallmouth bass. He asked whether a rule could be drafted to carve out the taking of spotted bass.

Schoenung responded that skilled anglers can easily identify spotted bass in the field, but identification may prove difficult for the occasional angler.

John Davis explained that this agenda item, even though presented as a rule proposal, was “intended to initiate conversation so that we could come out of the [Advisory Council meeting] with a rule that...we would have agreement on, but we wouldn’t come back here with the rule itself.”

The Chair said it appears there is disconnect between the objectives of the fishing groups and those of the Department. “There are certain bodies of water that there is just a lot of competition and you would need to take the smaller fish out to enhance the bigger fish.... Is that the reason the Department is so strongly in favor of doing a slot limit as opposed to increasing the limit?”

Schoenung answered in the affirmative.

The Chair then asked Richard Cockrum to comment on whether the objectives of the Department and angler groups might be bridged to satisfy all involved.

Cockrum asked the Chair to hear comments from those present who represent angler groups.

Bill Freeman said the proposal is “already convoluted. So, if it truly is the best biological way to do it, don’t stay so married to the keeping it as ‘black bass’ and not separate the three species. Maybe we separate it into two species, but maybe not all three—spotted bass and lump smallmouth and largemouth together.” He said avid anglers harvest more fish than the occasional angler. The Department has to “really look at the people who are harvesting the most fish.”

Schoenung said to address the policymaker’s preference for rule simplicity and to provide for species protection, the Division of Fish and Wildlife would not be opposed to adopting a statewide slot limit rather than listing specific streams.

David Lupke reflected a statewide slot limit would simplify the rules. He said anglers are looking for better fishing opportunities.

Schoenung responded that Indiana has not had a statewide slot limit for bass, so all biological impacts are not known. The streams listed at subsection (k) are Indiana’s primary bass streams, and the Department plans to evaluate those streams to study the impact of the slot limit. He said the Department would share the data with the Advisory Council.

Dean Shadley, representing Indiana’s Sportsmen’s Roundtable, said there is an “overwhelming opinion that we need a change. The rules need to be concise, and they need to be statewide. I think that this twelve to 15-inch slot would probably fill that bill.... I think we can live with a twelve to 15-inch statewide.”

Brian Waldman, Director of the Indiana Smallmouth Alliance (“INSA”), stated, “We obviously see both sides and excellent points have been brought up. We would be happy with either from the biological standpoint, though we do favor the twelve to 15-inch slot. One concern of course was with the consistency and simplicity that has been discussed here by several members. [The INSA] would be open to the idea of the twelve to 15-inch slot across the board. Our group would fully support that and we would be glad to see that.”

Cockrum said he received a communication from the Friends of the White River, which endorsed the 14-inch limit. “I think that was out of the need to have a regulation to improve the fishery. I think they could be sold on a slot if we go that route.”

The Chair said a reasonable compromise would be to ask the Department to go back and a twelve to 15-inch slot to see if there are biological implications that may not be apparent today. The slot size limit may be acceptable to angler groups and the Department.

John Davis said that the Department would notify the Advisory Council if it found there were additional issues requiring discussion. He asked the Chair whether, if no further discussion is required, the Department could appropriately present to the Commission in January a rule amendment proposing a twelve to 15-inch slot statewide.

Cockrum said he did not want a proposal to be held up because of competing ideas for a slot limit versus a 14-inch statewide limit. He suggested moving forward with a rule proposal, but with the caveat the Department would return to the Advisory Council if further discussion is required. He asked if spotted bass could be excepted from the slot limit or 14-inch size limit.

Schoenung responded, "I would prefer not to go that route."

Cockrum asked whether the Department was comfortable with the recommendation of a statewide slot limit being presented to the Commission.

Schoenung said a statewide slot limit would be acceptable as long as the Department established a monitoring program to evaluate the rule's impact.

The Chair said, "I will take that as a motion from Rick Cockrum to endorse from the Advisory Council a statewide slot limit."

James Snyder seconded the motion.

Upon a voice vote, the motion carried.

Consideration of recommendation for preliminary adoption of amendments to 312 IAC 2-4-12 to remove Roush State Fish and Wildlife Area from sites which are subject to drawings for fishing tournaments; Administrative Cause No. 10-201D

Mark Reiter, Director of the Division of Fish and Wildlife, presented this item. He explained that J. Edward Roush Lake was transferred very recently from the Division of State Parks and Reservoirs to the Division of Fish and Wildlife. The proposed rule amendment at 312 IAC 2-4-12 would remove J. Edward Roush Lake (referenced in the rule section by its former name, "Huntington Reservoir") from the list of lakes that are subject to rules governing fishing tournaments. Tournaments on J. Edward Lake would be adequately processed under the Division of Fish and Wildlife's tournament guidelines, which limit the number of boats similarly to the existing rule. The number of tournaments on fish and wildlife areas does not warrant a pre-season draw process. "It's on a first come first serve basis." Reiter said over the last few years, there have been no more than one or two tournaments a year on J. Edward Roush Lake.

David Lupke moved to recommend for preliminary adoption of amendments to 312 IAC 2-4-12 to remove Roush State Fish and Wildlife Area from sites which are subject to drawings for fishing tournaments. William Wert seconded the motion. Upon a voice vote, the motion carried.

Information Item: RFP for sand and gravel removal at Prophetstown State Park, Tippecanoe County

John Davis presented this item. He said IC 14-35-1 governs mining on State lands, such as Prophetstown State Park. He provided Advisory Council members with maps of Prophetstown State Park, but reflected that since their printing, the Department has acquired additional acreage

north of Swisher Road. The southwestern portion of the state park property (shaded in pink on the maps) has sand and gravel. The adjacent land tract to the north of Swisher Road, but not owned by the Department, has already been mined for sand and gravel. The existing lake would be increased in size as a result of the mining, adding more opportunity for fishing, picnicking, and some boat rentals. The Department would receive revenue from the sand and gravel, revenue that would translate into land acquisition for the park.

Davis explained that under IC 14-35-1, when in the public interest, the Department may grant permits for the removal of sand and gravel under land belonging to the State if the removal does not materially interfere with the purpose for which the land is held or used by the State. IC 14-35-1-8 requires a permit must be approved by the Commission and subsequently signed by the Governor. "We thought it proper to bring this to you just to let you know that this is an action anticipated by the General Assembly." If permitted, mining would not disturb the historic portions of Prophetstown State Park and would be "part of the overall attractions of the park."

Bill Freeman asked whether the Department will enhance the habitat of the enlarged lake.

Davis said for ten years the Department has been in discussions with Vulcan Materials, the sand and gravel company mining the adjacent land, regarding adding materials to the lake to enhance habitat. As part of its compensation to the Department, Vulcan Materials would re-route Swisher Road to the southern end of the lake "so that the road will be more park-like. There will be terracing around the lake, as well as within the lake, to provide habitat."

The Chair asked whether action by the Advisory Council was required.

Davis requested that the Chair report to the Commission regarding the proposal.

David Lupke asked whether the Department anticipated any negative impacts or had concerns regarding the anticipated mining of sand and gravel at Prophetstown State Park.

Davis responded that "for about ten years there has been a sand and gravel mining operation adjacent to the park and north of Swisher Road. The Department's plan is ultimately to re-locate the Park's gatehouse back towards I-65." There is another sand and gravel mining operation on the other side of I-65, and there have been trucks filled with gravel and sand exiting the area. "I don't think there is a new public impact or a bunch of heavy equipment that hasn't been there... There is nothing new for the remaining four adjacent property owners. It seems like if there was going to be a reaction, there would have been over the past ten years."

Donald Van Meter asked whether the Division of State Parks and Reservoirs supports the mining proposal.

Davis answered in the affirmative. "It's a plan that has been part of how we have been able to acquire property."

William Wert inquired concerning the amount of revenue the Department would receive from mining the sand and gravel.

Davis responded the Department has preliminary tonnage estimates from test drilling that occurred during the acquisition of the property. The Department has an estimate of the quantity of overburden that would be “used for the terracing projects and creating a more park-like entrance.” But the revenue estimate is not yet generally available.

Information Item: Agency coordination for drought preparedness in 2011

Ron McAhron presented this item. He noted that with the fall rains the drought has ended, but the Department had a water shortage plan that was formulated by the Water Shortage Task Force. The plan anticipated a low precipitation rate in the spring and carrying over into the summer months where water demands are higher. “Our response was focused on trying to go through increasing steps to have water withdraw facilities cut back.” For 2010, Indiana had a wet spring and an abnormally dry July through September. By the time the plan’s “triggers kicked in, the demand for water had naturally subsided.” In cooperation with Homeland Security and IDEM, the Department issued a water shortage warning and contacted the significant water withdraw facilities in 26 Central and Southern Indiana counties. The Department received good responses from these significant water withdrawal facilities. The Department also worked with the Weather Service and cooperated with the Army Corps of Engineers in opening the flood control reservoirs in preparation for a serious drought situation. “I think the system worked.”

McAhron said the Department has a registration program for entities that have the capacity to withdraw 100,000 gallons per day. Those registered received the water shortage notification. “We dovetailed real nicely with IDEM, which works with water supply folks, and that is our main focus, to where we were both contacting the facilities and monitoring how things were really going for them.” He noted two private entities were having problems during the drought, but both had alternative options for water supply.

Van Meter asked whether a public announcement was made in areas like Indianapolis to not water lawns.

McAhron responded that announcements had been made in the past but not this year. As the drought triggered the steps to further curtail water usage, the drought impacts were lessened by the increased precipitation and by the normal fall decrease in water demands.

Adjournment

At 11:41 a.m., EST, the meeting adjourned.