

ADVISORY COUNCIL MEETING

Minutes of April 13, 2011

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
AmyMarie Travis Lucas, Vice Chair
Rick Cockrum
David Lupke
William Wert
Ross Williams

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Cheryl Hampton	Executive Office
Scotty Wilson	Law Enforcement
Linnea Petercheff	Fish and Wildlife
James Kershaw	Fish and Wildlife

GUESTS PRESENT

Barbara Simpson

Call to order by Chairman, Patrick J. Early

The Chair called the meeting to order at 10:31 a.m., EDT, at the Fort Harrison State Park Inn, 5830 North Post Road, Roosevelt Room, Indianapolis, Indiana. With the presence of six members, he reported a quorum was not present. In the absence of a quorum, official action could not be taken on any agenda item, but motions and seconds would be entertained to determine if a consensus existed among the individual members in attendance.

The Chair introduced Colonel Scotty Wilson, the chief officer of the Department's Division of Law Enforcement. He reported Col. Wilson replaced Mike Crider, who retired on December 31, 2010.

The Chair also introduced Barbara Simpson who was recently appointed as the Executive Director of the Indiana Wildlife Federation. He invited Simpson to provide a brief comment.

Barbara Simpson, originally from Linton, Indiana, said “I just joined the Indiana Wildlife Federation in January. So far, I think it’s a dream job, but I feel somewhat like I’m drinking through a fire hose learning everything.” She said she planned to attend future meetings of the Advisory Council and the Natural Resources Commission and to become more informed on the issues. “I’m pleased to be here.”

Consideration for recommendation of approval of amendments to the Public Freshwater Lake Listing, Information #61; Administrative Cause No. 11-060A

Linnea Petercheff, Staff Specialist with the Department’s Division of Fish and Wildlife, explained that the Department has requested that Palestine Lake (Kosciusko County) and Tadpole Lake (Whitley County) be added and Full Lake, Hosey Lake, Viberg Lake (Allen County), Beigh Lake, Heckman Lake, and Heron Lake (Kosciusko County) be removed from the nonrule policy document, Information Bulletin #61, Listing of Public Freshwater Lakes. The nonrule policy document was initially approved by the Natural Resources Commission in the fall of 2010 to provide guidance to Department staff and the public for purposes of the Lake Preservation Act and to assist with permit processes.

Petercheff said that last year the Commission’s Division of Hearings received a request to de-list Heron Lake in Kosciusko County. After the request was received, the Department conducted additional research concerning qualification of Heron Lake. “We do not believe Lake Heron meets the requirements for ‘acquiescence’ from a landowner.” The Department has only issued one permit regarding Heron Lake, which was in the 1950s. There is an agreed order that prohibits public access to Lake Heron, and there is no public access site or county road to the lake. She said a church owns land adjacent to Heron Lake. The church’s property manager stated that, in order to access the lake, persons are required to have “strict written permission and a liability waiver. So, basically, there is no acquiescence, and we consider the lake to be private.”

Petercheff said through additional research and communications with conservation officers, fisheries biologists, and the Division of Water, Full Lake, Hosey Lake, Viberg Lake (Allen County); and Beigh Lake and Heckman Lake (Kosciusko County) were also recommended for removal from the list. She said Hosey Lake is a manmade impoundment and the remaining lakes are not accessible by the public. As a result of a recent Court of Appeals decision, which ruled that Dollar Lake in Whitley County is a private lake, it is also recommended Dollar Lake be removed from the public freshwater lake list.

Petercheff said since the Department has been issuing permits for construction activity on Palestine Lake in Kosciusko County, and it is a natural lake, it is recommended the lake be added to the list. Tadpole Lake in Whitley County, also a natural lake, is recommended to be added due to the acquiescence of the two landowners. “Anglers routinely park along an old county road and walk to the lake; there’s even a path that they

have worn to the lake. No permission is given by the landowners. They just let people come and go as they please.”

Petercheff explained that the remaining amendments to the nonrule policy document are technical and would provide more specific location information for Golf Lake in Lake County and Carlson Pond located on the Moraine Nature Preserve in Porter County. She then requested that the amendments be recommended for approval.

The Chair inquired of the significance of a lake being listed as a public freshwater lake. “As we classify the lakes or de-classify them, what is the significance of that to the average person?”

Davis said that construction activity on a “public freshwater lake” is subject to the Lakes Preservation Act (IC 14-26-2).

Petercheff agreed with Davis, and indicated that the significance of a listing as a public freshwater lake to an angler “just simply means that there is access through a campground, marina, or some form of accessibility.”

The Chair inquired whether the public freshwater lake list included naturally occurring lakes only or also included manmade lakes.

Petercheff explained that the statutory definition of a “public freshwater lake” includes at least four requirements, such as being in existence as of March 12, 1947; of natural origin or part of a water course; and be substantially at rest in a depression in the surface of the Earth as naturally created. She said the Department discovered that Hosey Lake in Allen County was created by a manmade dam.

David Lupke asked, “If a lake is considered a public freshwater lake because access has been permitted for decades, and a new landowner comes in and prohibits public access, does that immediately change the status?”

Petercheff said that this same question has been posed to the Department’s legal staff.

Rick Cockrum asked, “What is driving this? Have there been problems?”

Petercheff said the administrative appeal involving Heron Lake prompted the Department to conduct further research regarding the public freshwater lakes list. She noted that the designation of a few of the listed lakes continue to warrant additional research. “The list is getting really close to a complete list that everybody in the Department is comfortable with”.

Stephen Lucas, Director of the Commission’s Division of Hearings, said the public freshwater lakes listing is a nonrule policy document and does not have the force and effect of law. “It’s essentially DNR’s best thought of which lake should be listed and which should not be listed.” From a legal perspective, the direct significance of being

listed as a “public freshwater lake” is whether the lake is subject to the Lakes Preservation Act. “You can certainly have a public lake that is not a public freshwater lake, and the simplest example is Lake Michigan.” He said the Lakes Preservation Act exempts Lake Michigan, but the lake is public and regulated as a navigable waterway. The Department prepared the public freshwater lake list at the request of the 2009 Indiana General Assembly. Anyone affected by the inclusion of a lake on the list can contest its inclusion. In the alternative, an affected person might seek administrative review to add a lake to the list. An adjudicated decision by the Commission or by a court could have legal significance, but listing does not.

David Lupke moved to recommend approval of amendments to the nonrule policy document, List of Public Freshwater Lakes. Rick Cockrum seconded the motion. The motion was supported by consensus.

Consideration for recommendation of approval of preliminary adoption of amendments to 312 IAC 9 governing the possession limits of wild animals that are lawfully taken; Administrative Cause No. 11-053D

Col. Scotty Wilson, Director of the Division of Law Enforcement, presented this item. He noted that the proposed rule amendments provided in the agenda packets have been slightly modified and the version for review is printed on yellow paper. He said the amendments are proposed in order to further clarify the possession limits of wildlife, “clearly defining the possession restrictions of wild animals where bag limits are established and at what point those legally taken wild animals no longer count towards possession limits”.

Wilson noted that “wild animal” includes mammals, birds, reptiles, amphibians, fish, crustaceans, and mollusks. The Department has received questions regarding the application of possession limit, whether possession limit: only applies when afield; includes legally taken and processed fish and game; includes wild animals taken the previous season that has been processed. Wilson noted that possession limit has been debated for the last 26 years he has been with the Department, and is being actively debated on sportsmen’s blogs today. He said a committee was established consisting of four conservation officers and a commanding officer from different regions of the State to explore the topic of possession limits and provide recommendations. Biologists, other conservation officers, and additional individuals also provided input. The current proposed rule amendments are recommended by the committee.

Wilson said that other states (Washington, North Dakota, Pennsylvania, Alabama, Mississippi, and Texas) are addressing issues of possession limits. North Dakota defines “possession limit” as meaning “maximum number of particular fish and game, except water fowl and migratory game birds that a hunter legally licensed by this state may have in his or her actual possession during any phase of any single hunting trip, venture, or expedition of more than one day. The possession limit at one’s personal permanent residence is unlimited. No more than a daily limit may be taken on any one day.” He

gave other examples of state rules for possession limits, such as possession limits applying only while hunter is in the field, but would not include processed fish and game located at the hunter's permanent residence.

Wilson said the committee recommendations were to provide a clear interpretation of "possession limit" and initiate the change of the administrative rule to more clearly define "possession", "possession limit", "processed", and "permanent residence". The proposed definition of "possession limit" is reflective of input received and would exclude fish and game processed and stored at an individual's permanent residence. Federally established possession limits for migratory birds and waterfowl would continue to apply, but with additional guidance to the public. He said that Department divisions are in agreement with the rule amendment proposal, and he then asked the Advisory Council to recommend to the Natural Resources Commission preliminary adoption.

AmyMarie Travis Lucas asked whether the Department has concerns regarding whether the proposed amendments might encourage hunters to process and freeze fish and game to avoid the proposed possession limits.

Wilson responded, "I am not concerned about it, because I think that if it is going on, it's going on right now under the current definition, which is ambiguous at best." If hunters follow a daily bag limit, there is nothing for conservation officers to address. "But if they are going over the bag limit, and they are taking more than their fair share, then we will probably hear from it with some probable cause. Somebody is going to turn them in."

Travis Lucas also asked if the federal regulations are amended for migratory birds and waterfowl, how quickly the Department can amend its rules so as not to conflict. Col. Wilson responded the Federal government usually provides notice of amendments prior to a season. John Davis added that the DNR Director could adopt a temporary rule to conform to a Federal law change.

William Wert moved to recommend approval of preliminary adoption of amendments to 312 IAC 9 governing the possession limits of wild animals that are lawfully taken. David Lupke seconded the motion. The motion was supported by consensus.

Consideration for recommendation of approval for preliminary adoption of amendments to 312 IAC 2-4-12 governing fishing tournaments and 312 IAC 8 governing activities on DNR properties; Administrative Cause No. 11-052A

Linnea Petercheff also presented this item. She said the proposed rule package contains several rule amendments specifically governing DNR properties. She said in December 2010, the Advisory Council recommended approval of to 312 IAC 2-4-12 to 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. This amendment has been added to the current rule package for efficiency. Technical corrections are made to 312 IAC 8-2-3, which governs firearms, hunting, and trapping on

a DNR property, to clarify that a person cannot construct or place a tree blind or other hunting blind on a DNR property except as authorized under rules governing deer hunting blinds on state and federal properties and those rules governing waterfowl hunting blinds. Petercheff said the amendment to 312 IAC 8-2-3(j) would allow certain reptiles and amphibians to be taken on a DNR property under a scientific purposes license under 312 IAC 9-10-6.

Petercheff said the proposed addition of 312 IAC 8-2-3(k) is a substantive change to prohibit the use of lead shot while hunting mourning doves on a DNR property. For several years signs have been posted on DNR Fish and Wildlife Areas and reservoirs notifying hunters of the prohibition against lead shot on dove fields. In 2008, the Division of Fish and Wildlife distributed educational materials, which explained concerns about the use of lead shot and the intention to allow only non-toxic shot in the future. Starting in 2009, all Fish and Wildlife Areas began prohibiting the use of lead shot for hunting mourning doves, and the prohibition was extended to state reservoirs in 2010. Lead shot has not been allowed for several years at Goose Pond and Pisquah Marsh. "All manufacturers of shotgun shells now have non-toxic shot available for use for hunting doves and many other species, and it's readily available for most of the shotgun sizes."

Petercheff said that 312 IAC 8-2-8(i) would be amended to replace references to specific airborne devices (e.g. hang glider, ultralite, hot air balloon) with "airborne human transportation device" or "motor-driven airborne device". The amendment would not change the requirement that an individual would need to have a Department license to use such a device on a DNR property. The reference to "tow kite flying" at 312 IAC 8-2-9(d) would be stricken since the activity would be addressed with the proposed amendment at 312 IAC 8-2-8(i).

David Lupke noted that in the past controlled speed events have occurred on Roush Lake. He asked whether the change in property management from the Division of State Parks and Reservoirs to the Division of Fish and Wildlife would affect activity on the lake.

James Kershaw, Public Lands Program Manager with the Division of Fish and Wildlife, stated that the Division does not have any plans to change management practice. He noted that a group activity would need to be permitted through the special event permit process.

Rick Cockrum asked whether a permit was needed to scuba dive.

Scotty Wilson responded that a permit is required on DNR properties. A person can obtain a permit to scuba dive at the property's office.

AmyMarie Travis Lucas moved to recommend each of the amendments to 312 IAC 2 and 312 IAC 8, as set forth in the Advisory Council materials, for preliminary adoption by the Natural Resources Commission. William Wert seconded the motion. The motion was supported by consensus.

Adjournment

At 11:37 a.m., EDT, the meeting adjourned.