

NATURAL RESOURCES COMMISSION

May 16, 2017

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Patrick Early
Phil French
Doug Grant
R. T. Green
Jennifer Jansen
Mark Newman
Bruno Pigott
Robert Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen
Dawn Wilson
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Samantha DeWester	Executive Office
Cheryl Hampton	Land Acquisition
Danny East	Law Enforcement
Linnea Petercheff	Fish and Wildlife
Mark Reiter	Fish and Wildlife
Dan Bortner	State Parks
Phil Bloom	Communications
Marty Benson	Communications
John Bacone	Nature Preserve
Elizabeth Gamboa	Legal

GUESTS PRESENT

Paul Arlinghaus	Bill Avery	Herb Higgins
Grover Scott	Shane Coomes	Jack Corpuz
Erin Huang	Ed Bollman	Lynn Burry
Kent Reineking	Paula Reineking	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 9:56 a.m., EDT, on May 16, 2017 at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of eleven members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's January 17, 2017 minutes.

Patrick Early moved to approve the minutes of the meeting held on January 17, 2017, as presented. Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DNR DIRECTOR, DEPUTIES DIRECTOR, AND THE CHAIR OF THE ADVISORY COUNCIL

Director Cameron Clark provided his report. Clark introduced Samantha DeWester as the Department's General Counsel. He stated that DeWester was recently employed with the Indiana Department of Environmental Management, and had previously worked for the City of Indianapolis as a Deputy for the Office of Corporation Counsel, City Prosecutor and Public Access Counsellor. He noted that DeWester is "active in her community, and has done a lot of work with the Indianapolis Metropolitan Police Department." Clark noted that DeWester will work closely with the Department's Law Enforcement Division.

Clark stated that the Department's budget passed through the General Assembly as proposed. He noted that there were some unexpected line items. The Division of State Parks received nearly \$4 million in a line item to help with campground improvements. Clark stated that there was a small amount of money in the line item to help with the rehabilitation of the historic fire tower. Clark stated that the omnibus bill passed with very few changes.

Clark noted that the Northeast Indiana Conservation Fundraiser Banquet in Fort Wayne is scheduled for May 25, 2017. He also noted that Governor Holcomb will be present for the banquet that the Department anticipates will be a success.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated that the Hobart Marsh, a wetland mitigation for the Little Calumet River Basin Project, was opened and is the culmination of 30 years of work. He reported that new two shooting ranges were opened—Willow Slough Fish and Wildlife Area (fall of 2016) and Deer Creek Fish and Wildlife Area (spring of 2017).

Davis noted that this year marks the 50th Anniversary of the Division of Nature Preserves. Davis stated that various events are planned around the state to showcase habitat at the nature preserves. He stated that interpretive training is scheduled at McCormick's Creek State Park, where interpreters receive training from veteran interpreters. Davis stated that on May 16 and May 17, 2017 forestry open houses will be held at Starve-Hollow State Recreation Area and at Owen-Putnam State Forest.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, reported that the Division of Entomology and Plant Pathology is conducting its second Gypsy Moth treatment for the year using *Bacillus thuringiensis* (Btk) treatment. In June 2017, pheromone treatment will also occur, which is a treatment designed to disrupt the gypsy moth mating cycle. The treatment is intended to slow or stop the spread of the gypsy moth. Smith explained that Purdue University campus has been added to the treatment area due to recent infestation.

Smith stated that the Division of Historic Preservation and Archaeology hosted an annual preservation conference April 25 through April 28, 2017 in Wabash, Indiana. Next year the conference will be held in Columbus, Indiana.

Smith stated that the Division of Reclamation has completed federal audits of the Abandoned Mine Lands Program (AML). He noted that next week the Division of Reclamation will be hosting and providing tours for the new Mid-Continent Supervisor of the Federal Office of Surface Mining and Reclamation Enforcement.” He stated that the Mid-Content Supervisor will be reviewing some of the AML projects that completed in recent history.

Smith stated that the Division of Oil and Gas have been conducting interviews to fill the Division Director’s position. He stated that the Division of Water has received an increase in the number of calls due to recent flooding. He noted that with the start of boating season, it is anticipated that the Division of Water will also receive an increase in calls due to pier disputes. He noted that May 20 and May 21, 2017 is the second of the three free fishing weekends. The last free fishing weekends will be June 3 and June 4, 2017.

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council has not met since January 11, 2017.

CHAIR, AND VICE CHAIR

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission’s AOPA Committee, stated that there were AOPA meetings held on April 20, and on May 16, 2017. She noted that the matters involved seawall and pier disputes, but no specific matters resulted for Commission consideration.

The Chair thanked the AOPA Committee members for their time and service.

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

No items were identified for referral to the Advisory Council.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Section Nine Seep Springs Nature Preserve, Owen County

John Bacone, Division of Nature Preserves, presented this item. He stated that Section Nine Seep Springs Nature Preserve is located within Owen-Putnam State Forest. He stated that the nature preserve contains a combination of circum-neutral seep spring, mesic-upland forest, and stream natural community types.

The Chair recognized Paul Arlinghaus, Director of Trail Development for the Hoosier Mountain Bike Association (Association). Arlinghaus commented on agenda items three and four.

Arlinghaus stated that since 2003 the Association has built over a hundred miles of trails on Department property. He said the trail construction approval normally takes one to three years. He stated that the Association uses the best efforts to avoid high use in sensitive areas and in nature preserves. Arlinghaus stated that the Association coordinates with the Department to ensure access to the trails. Arlinghaus indicated that in the Section Nine Seep Springs Nature Preserve and Pleasant Grove Nature Preserve that mountain biking is not specifically mentioned. Arlinghaus is requesting confirmation that mountain biking on the proposed nature preserves is a possibility. He stated that the Association is not interested in filling the nature preserves with trails, but the intent is to make sure that the long term goals for the nature preserves consider biking trails as an appropriate activity.

Arlinghaus noted that concerning to him is another clause in the Master Plan, which seems to prohibit participating in games or sports on the nature preserve. He stated his understanding from the Department is that some activities like a 5k race or a trail race would be permitted and Arlinghaus stated that he would like to confirm that information.

The Chair asked whether Arlinghaus's concerns had to do with awareness and making sure the Department continues to work with the Association on trail riding in the new nature preserves.

Arlinghaus answered in the affirmative. He said that the intent is to make sure that the Department does not prohibit mountain biking all together.

Davis stated that the Department included language that could allow mountain bike trails on a nature preserve. He explained that any specifics on where trails might be constructed would be decided on a site by site basis. Davis said that a trail may be allowed in one nature preserve and not another depending on the site, season, other considerations, and would be based on the proposed activity.

Arlinghaus stated that there would be times when it might not be environmentally friendly to have a trail and other times where it might not be harmful to the protected habitat. He said he understood the possibility that some areas might not be suitable for mountain bikes or trails.

Bacone stated that the nature preserve Master Plan is written to incorporate a common sense flexibility. He said the Department does not want to inadvertently stop something that might be allowed and that would not be harmful to a nature preserve.

Bruno Pigott moved to approve dedication of the Section Nine Seep Springs Nature Preserve. Jennifer Jansen seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Pleasant Grove Nature Preserve, Owen County

Bacone, also presented this item. He stated that proposed nature preserve is also located entirely within Owen-Putnam State Forest. He stated that the proposed Pleasant Grove Nature Preserve contains sandstone cliffs and has a high quality forest remnant. He stated that there is an existing horse trail on the proposed nature preserve.

R. T. Green moved to approve dedication of the Pleasant Grove Nature Preserve. Jennifer Jansen seconded the motion. Upon a voice vote, the motion carried.

DNR, FISH AND WILDLIFE

Consideration of preliminary adoption of biennial fisheries rule amendment package (312 IAC 9); Administrative Cause No. 16-145D

Linnea Petercheff, Division of Fish and Wildlife, presented this item. She stated that in 2016 the Department began the biennial rule change process resulting in the proposals that are presented for Commission consideration.

Petercheff stated that 312 IAC 9-6-1, which governs minnow traps, is proposed to be amended by the size of the minnow traps to 2 inches. Proposed is amendment to 312 IAC 9-6-5 to require the tagging of fishing equipment left unattended. The proposal would amend 312 IAC 9-6-6 to open a section of Trail Creek and the Little Calumet River for fishing year-round. She stated that the Department is adding 312 IAC 9-6-12 to govern the gifting of fish knowingly or intentionally for the purpose of stocking a private lake for which customers pay for the opportunity to fish. The proposed package would amend 312 IAC 9-7-5 governing the taking of northern pike, increasing the size limit to 24 inches and changing the bag limit to three, with no more than one fish over 30 inches. Petercheff noted, however, there is an exception for Hamilton Lake in Steuben County. She stated that the amendment to 312 IAC 9-7-6 governs the taking of black bass to be decreased to 14 inches long in several lakes in the Hoosier National Forest and the Shakamak State Park. The purpose of the black bass decrease is to reduce bass harvest and increase largemouth bass numbers to help reduce the gizzard shad population.

Petercheff stated that the amendment of 312 IAC 9-7-13 increases the bag limit for lake trout taken from Lake Michigan to three per day. She stated that the amendment to 312 IAC 9-7-14 governs the species of fish for which there is no bag limit. She explained that rule language regarding bluegill and sunfish currently under 312 IAC 9-7-9 and 312 IAC 9-7-10, respectively,

was moved under this rule. She stated that the amendment to 312 IAC 9-7-15 governs the taking of minnows. 312 IAC 9-7-15 prohibits an individual from using a cast net, seine, or any other device to collect minnows at a location extending from a dam downstream 500 yards on inland water; or the boundary waters of this state, except for the Ohio River. She noted that the reason for the rule is to prevent the spread of Asian Carp, which look like other species of fish.

Petercheff noted that there are several rules amendments related to commercial fishing. She stated that the Commercial Fishing Task Force, which included conservation officers and fisheries biologists, worked with commercial anglers to address their questions. She noted that the proposed amendments provide clarification and protection for the resources. She stated that some season dates are changing and there are additional tagging requirements. She stated that language was added at 312 IAC 9-8-6 to provide clarification on commercial fishing of shovelnose sturgeon and paddlefish on the Ohio River. Petercheff stated that amendments to 312 IAC 9-8-7, which governs the roe harvester's license, would clarify that a roe harvester must provide true and accurate daily transaction reports. An amendment at 312 IAC 9-8-7(f)(7) would allow a roe harvester to also sell screened eggs to an Indiana-licensed roe dealer.

Petercheff concluded, and then introduced the Division of Fish and Wildlife's Fisheries Management Program Manager, Steve Donabauer.

The Chair recognized Lynn Burry, member of the Board of Directors with the Indiana Wildlife Federation.

Burry stated that he supports and is excited about rule amendments at 312 IAC 9-6-5 to require the tagging of fishing equipment left unattended and the new rule at 312 IAC 9-6-12 governing the prohibition on the gifting of fish. Burry stated that he would like to see 312 IAC 9-7-3 include daily bag limits and possession limits. Burry suggested the Commission look at 312 IAC 9-7-3 and 312 IAC 9-7-16 relating to the sport fishing on the Ohio River again in the future. Burry stated that they support and encourage the adoption of the rule amendment package as presented. Burry also submitted written comments.

Robert Wright moved to give preliminary adoption of amendment to rules governing fisheries under 312 IAC 9 as presented. Phil French seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF LAW ENFORCEMENT

Consideration of report from DNR Rule Review Committee regarding citizen petition to amend the rule governing boating restrictions on Geist Reservoir, specifically to add a boating restriction to a bay of Geist Reservoir known as "Juice Box Cove"; Administrative Cause No. 17-016L

Elizabeth Gamboa, Staff Counsel for the Department, presented this item. Gamboa stated that the matter was initiated by Stephanie McAllister on behalf of The Springs of Cambridge Homeowners Association at Geist Reservoir. She explained that the McAllister petition seeks to

amend 312 IAC 5-9-2 to establish boating restrictions, an idle zone, in an area on Geist Reservoir (known by the locals as “Juice Box Cove”). Gamboa noted that there are other areas with similar speed restrictions on Geist Reservoir, such as “Cocktail Cove” (312 IAC 5-9-2(b)(7)). Gamboa noted that a conservation officer, familiar with the area, was present to answer any questions. She stated that the Department is in support of the rule amendment.

Doug Grant moved to approve the amendment to add a boating restriction to a bay of Geist Reservoir known as “Juice Box Cove.” R.T Green seconded the motion. Upon a voice vote, the motion carried.

NRC DIVISION OF HEARINGS

Consideration of Hearing Officer Report, including proposed findings and recommendation by the Natural Resources Commission to the U.S. Army Corps of Engineers regarding Kent’s Harbor Marina’s ratemaking petition; Administrative Cause No. 16-165P

Dawn Wilson, Hearing Officer, presented this item. She stated that in accordance with the guidelines set forth in the 4th amendment to Information Bulletin #20, Kent Reineking, on behalf of Kent’s Harbor, filed a Petition on December 21, 2016 with the Natural Resources Commission, Division of Hearings seeking rate increases for facilities operated on Brookville Lake, including lodging and slip rental.

Wilson stated that Kent’s Harbor last requested an increase in 2014 and the increase of less than 2% became effective in 2016. She explained that this Petition seeks rate increases for the 2018 season on lodging and boat slip rentals within the marina. She stated that upon notice by Kent’s Harbor, the opportunity for slip renters to submit written comments and to request a public hearing was provided. She indicated that no comments were submitted to the Division of Hearings and no public hearing was requested on the proposed rate increase.

Wilson noted that in determining whether to recommend that a proposed rate increase be granted, the Department’s Division of State Parks and Reservoirs (Division) is tasked with analyzing similar facilities and comparing rates with those sought by Kent’s Harbor.

Wilson stated that the Division completed its comparative review of the rates associated with the Petition. She stated that the Division’s comparative analysis showed that Kent’s Harbor’s proposed slip rate increases are comparable to other similar marinas in that the proposed rates fell within the averages calculated by Kent’s Harbor and the Division. The Division also found the proposed rate increases to be reasonable and justified.

Wilson stated that for the proposed rate increases that are 2% or less, in this instance, slip rates, information in the record evidences that the rate increases sought by Kent’s Harbor are within the average range of slip rates for comparable facilities. She explained Information Bulletin #20 provides for the delegation to the hearing officer to recommend rate increases sought that are 2%

or less. Wilson noted that the proposed slip rates fall under 2% increase and no Commission action to approve those increases is necessary.

Wilson stated the proposed rate for lodging represents an increase of 11% to 17% over current rates. She noted that information in the record shows that the rate increases sought by Kent's Harbor are within the average range of lodging rates for comparable facilities. Wilson explained that Information Bulletin #20 provides that, for increases sought that exceed 2%, when no hearing is required, the hearing officer, in consultation with the Department, will prepare a written report to the Commission, which includes written findings and a proposal to the Commission for recommendations to the Army Corps of Engineers.

Wilson stated that Information Bulletin #20 provides that a hearing officer's or the Commission's recommendation for rate increase shall not be withheld unless the rates proposed exceed the fair market rates charged by operators of other similar privately-owned resort developments comparable to the project in the area.

Wilson stated that the Hearing Officer's report is a joint report with Jennifer Kane as the other Hearing Officer. She recommended the Commission approve the proposed findings and recommendation for rate increases for Kent's Harbor as presented in the highlighted column in Exhibit C of the report. Wilson explained that the Commission is asked to consider the Hearing Officer's proposed findings and recommendation, and approve the findings and recommendation for subsequent approval of the U.S. Army Corp of Engineers for final approval.

Phil French moved to approve the Hearing Officer's findings and recommendation to the U.S. Army Corps of Engineers in the matter of the Petition for rate increase by Kent's Harbor Marina. Bruno Pigott seconded the motion. Upon a voice vote, the motion carried.

Consideration of amendments to 312 IAC 4-5-4, governing conservation officer promotion eligibility; LSA #16-531(F); Administrative Cause No. 16-069L

Jennifer Kane, Hearing Officer, Division of Hearings explained that proposed is an amendment to 312 IAC 4, which provides standards for the recruitment, selection and promotion of Indiana's conservation officers. She noted that the amendment to 312 IAC 4-5-4(a) would increase the years of service from three years to five years before a conservation officer is eligible for promotion.

Kane said a public hearing was held on April 26, 2017, as scheduled, and noted that Capt. Keith Dinn with the Department's Division of Law Enforcement was present. She said the Division of Law Enforcement approved a new Standard Operating Procedure, which established guidelines for the evaluation and selection of applicants for promotion for the ranks of corporal through lieutenant. The Division of Law Enforcement administers the promotional process consisting of the following elements: (1) 26 pre-qualification (baseline) competencies; (2) Promotion Exam (offered at least one time every two years); and (3) Oral Interview.

Kane said the five-year promotion eligibility standard is a national trend. “Increasing years of service from three years to five years before an Indiana conservation officer is eligible for promotion supports highly competent, experienced, and capable law enforcement supervisors.” Kane noted that an emergency rule is in effect governing the same subject matter, but would expire at the effective date of this permanent rule. Kane recommended the proposed rule amendments, as presented, be given final adoption.

Jennifer Jansen moved for final adoption the amendments to 312 IAC 4-5-4, governing conservation officer promotion eligibility, as presented. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of approval of amendments to nonrule policy documents in order to update the contact information for the Natural Resources Commission and its Division of Hearings; Administrative Cause No. 17-041D

Jennifer Kane also presented this item. She noted that the Commission has the authority to approve nonrule policy documents and amendments to those policies. Currently, the Commission has 51 nonrule policy documents and six resolutions.

Kane explained that the Commission’s Division of Hearings recently relocated to Room N103 in the Indiana Government Center North, which necessitated the amendment of several Commission’s nonrule policies to update the Division of Hearings’ contact information. Kane said that for purposes of efficiency, because the proposed amendments were strictly technical with no substantive amendments proposed, a list of the affected nonrule policy documents (with Internet links) was provided for Commission consideration. Kane noted that hard copies of the policy documents were available for Commission review. Kane then recommended that the Commission approve the amendments to each of the listed policy documents to update the contact information for the Division of Hearings.

Jane Ann Stautz moved to approve amendments to nonrule policy documents, to update the contact information for the Natural Resources Commission and its Division of Hearings, as presented. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 10:34 a.m., EDT.