

NATURAL RESOURCES COMMISSION
Meeting Minutes of September 15, 2015

COMMISSION MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Patrick Early
Carol Comer
R. T. Green
Laura Hilden
Donald Ruch
Robert Wright

NRC, DIVISION OF HEARING STAFF PRESENT

Sandra Jensen
Dawn Wilson

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Chris Smith	Executive Office
Joe Hoage	Executive Office
Sam Hyer	Executive Office
Cheryl Hampton	Land Acquisition
Michael Portteus	Law Enforcement
Dan Bortner	State Parks and Reservoirs
Tom Swinford	Nature Preserves
Linnea Petercheff	Fish and Wildlife
James Kershaw	Fish and Wildlife
David Potts	Fish and Wildlife
Dan Carnahan	Fish and Wildlife
Craig Jansen	Fish and Wildlife
Sam Whiteleather	Fish and Wildlife
Savanna Vaughn	Fish and Wildlife
Bill Seegers	Fish and Wildlife
Jamie Smith	Fish and Wildlife
Andy Richards	Fish and Wildlife
James Skipper	Fish and Wildlife
Brian Schoenung	Fish and Wildlife
Joshua Singel	Fish and Wildlife
Andrew Gima	Fish and Wildlife
Phil Marshall	Communications
John Bacone	Nature Preserves
Dan Bortner	Parks and Reservoirs

GUESTS PRESENT

Dan Schmidt	Jack Corpuz	Jim Loudermilk
Erin Huang	Justin Browning	Andy Patterson
Barb Simpson	Deana Dyer	Michael C. Dyer
Joseph D. Sander	Herb Higgins	Josh Worth
Eric Radez	Bill Altmann	Rich Radez
Paul Arlinghaus	Brian Whitlow	Greg Yazel
Dale Sides	William J. Avery	

Bryan Poynter called to order the regular meeting of the Natural Resources Commission at 10:13 a.m., EDT, on September 15, 2015 at the Indiana State Museum, 650 West Washington Street, Auditorium, Indianapolis. With the presence of nine members, the Chair observed a quorum.

The Chair asked for a motion for the approval of the Commission’s July 21, 2015 minutes.

Patrick Early moved to approve the minutes for the meeting held on July 21, 2015, as presented. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

PRESENTATION BY INDIANA STATE MUSEUM

Tina Sullivan welcomed the Natural Resources Commission and members of the public to the Indiana State Museum. The Indiana State Museum and Historic Sites “celebrates, explores and stewards all that is authentically wondrous about Indiana.” She explained that the museum boasts more ice age bones than any entity in the Midwest, and with over 300 T.C. Steele paintings the museum holds the largest collection of home state artists of any state museum. Sullivan also explained that the museum holds the third largest collection of Lincoln artifacts including the original Emancipation Proclamation and 13th Amendment.

With respect to educational opportunities, Sullivan explained that the Indiana State Museum provides free field trips for all Indiana K-12 students and meets over 180 of Indiana’s academic standards. She reported that those students are only a portion of the over 600,000 annual visitors to the museum, and is heavily supported by volunteers and interns who gave over 17,000 hours of service in 2014.

Sullivan highlighted some of the current exhibits and announced the upcoming 2016 exhibit *Indiana in 200 Objects 200 Years of Indiana Art*. She also explained that the museum is undertaking improvements at various historic sites including: complete restoration of the T.C. Steele Historic Site’s gardens; construction of a visitor center at the Levi Coffin House State Historic Site, also a heavily visited museum property; and structural renovations at the Corydon Capitol State Historic Site.

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

Bryan Poynter, Chair of the Natural Resources Commission, thanked Sullivan and the Indiana State Museum staff for the presentation and for graciously accommodating the Commission's meeting.

Director Cameron Clark provided his report. He announced that the seventh annual Hoosier Outdoor Experience will be held on September 18 and 19, 2015 at Ft. Harrison State Park. The event is free to the public and it is anticipated that 20,000 to 30,000 people will attend the event. There will be 50 to 60 booths, offering "hands on" recreational activities, including fishing, mountain biking, canoeing, and an opportunity to shoot a bow, along with other activities and exhibits.

Director Clark also announced that a number of representatives from the Division of State Parks and Reservoirs attended the meeting of the National Association of State Park Directors (NASPD) held in South Carolina last week. Indiana will host NASPD's annual meeting scheduled for September of 2016 in French Lick. Activities for the group will include programs held in Indianapolis and Patoka. "The event has generated a lot of excitement." The Director reported that 2016 is also the Centennial for the Indiana State Parks. A centennial coin has been developed to honor 100 years of organized state parks in Indiana. Chairman Poynter recognized Dan Bortner, Director of the Division of State Parks and Reservoirs, and noted Bortner has been appointed for another term on the NASPD Board.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, announced that September is Archaeology Month. In celebration, the Division of Historic Preservation and Archaeology (DHPA) has a schedule of events at various locations. Event information can be found on the DHPA's website. Smith also announced that Rachel Starkey has been promoted to Staff Archaeologist for the DHPA.

Smith also reported that Department's Division of Water is preparing for an anticipated evaluation of a request from Waukesha, Wisconsin to divert water from the Great Lakes-St. Lawrence River Basin (the "Basin"). Waukesha has indicated a need for an additional public water supply for its struggling community. This diversion request would be the "first proposal to divert Great Lakes water to what is considered a 'straddling community,'" a community that is not wholly within any county that lies partly or completely within the basin, whose corporate boundary existing as of the effective date of the compact, is partly within the basin or partly within two Great Lakes watersheds. The request will be reviewed under Great Lakes-St. Lawrence River Basin Water Resources Compact (IC 14-25-15) and 312 IAC 6.2. The request will be filed with the Great Lakes-St. Lawrence River Basin Water Resources Council (the "Council") and Smith anticipated the Division's review will begin early 2016. As a part of the process, each state in the Basin (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Wisconsin, and the Commonwealth of Pennsylvania), following a review, will vote on the request.

Smith reported that all reservoirs are now open after a period of closures due to the summer's heavy rainfall. Smith also announced Department staff changes. Nick Heinzelman accepted a Land Manager position with the Heritage Group. Smith said Heinzelman started his Department

career with the Division of Land Acquisition and subsequently served as the Director of the Indiana Heritage Trust. Tom Laycock is acting Interim Director until the position can be filled.

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council has not met since the July 21, 2015 Commission meeting.

CHAIR AND VICE CHAIR

Updates on Commission and the AOPA Committee

Vice Chair Stautz, Chair of the Commission's AOPA Committee, reported that the Commission's AOPA Committee has not met since the Commission's July 2015, but is scheduled to meet on September 24, 2015.

The Chair recognized Carol Comer, the new Commissioner for the Indiana Department of Environmental Management (IDEM), and asked her to provide a brief introduction. Comer said she previously served as IDEM's General Counsel and as Chief of Staff under Commissioner Easterly before his recent retirement. Comer added that several IDEM positions have shifted as well with Keith Baugues serving as Assistant Commissioner of Office of Water Quality and Paul Higginbotham as Deputy Assistant Commissioner.

The Chair noted that the Commission's Division of Hearings has a "very large workload handled at the high standard that everyone has become accustomed to. Those who need to do business with the Division of Hearings should understand that it is currently a small division of only three and that they are currently understaffed... The Commission is doing all that can be done to make some staff adjustment... The Commission appreciates the work done by Sandy, Dawn and Jennifer."

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 Old Hamilton Road Nature Preserve in Wayne County

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone explained the proposed nature preserve located near Richmond contains approximately 27 acres. The tract is a high quality fen and populated with a number of rare species. The area was one of the tracts acquired through part of a Conservation Heritage Area by Bicentennial Nature Trust

funding. Bacone noted that Whitewater Valley Land Trust owns and manages the tract. Bacone recommended the area be dedicated as a nature preserve.

Don Ruch moved to approve the dedication of the Old Hamilton Road Nature Preserve. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Old Northwest Boundary Line Nature Preserve in Wayne County

Bacone also presented this item. He explained that the property is a high quality forest remnant also located near Richmond. “This is quite a complex of lands that have been assembled by the Whitewater Valley Land Trust, most of them high quality forests but imbedded occasionally are high quality streams.” Bicentennial Heritage Trust helped fund this acquisition. The Whitewater Valley Land Trust also owns and manages this tract. Bacone recommended the area be dedicated as a nature preserve.

Don Ruch noted that he has worked with the Whitewater Valley Land Trust and stated that he has been through both the tracts recommended for dedication. “These are really nice properties.”

Don Ruch moved to approve the dedication of the Old Northwest Boundary Line Nature Preserve. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Information Item: Introduction of new assistant property managers

The Chair explained that the Commission no longer has responsibility for the appointment of property managers, but noted that the Commission has a continued interest in meeting the new managers. The Chair asked James Kershaw and Brian Schoenung of the Department’s Division of Fish and Wildlife to present the introductions.

Brian Scheonung, Chief of Fisheries, introduced Andy Richards as the new assistant property manager of Cikana Hatchery. Richards previously served as the hatchery biologist since 2004. Schoenung advised that Richards is a 1986 Ball State University graduate with a Bachelor of Science degree in Biology and a minor in Natural Resources.

Schoenung next introduced James Skipper, the new assistant property manager of the East Fork Hatchery. Schoenung stated that Skipper was hired as a laborer at East fork in 2012 following his 2011 graduation from Auburn University with a Bachelor’s Degree in Fisheries. Schoenung noted that East Fork, constructed in 1987, is the newest cool and warm water hatchery in Indiana.

Schoenung also introduced Andrew Gima as the new assistant property manager at Mixsawbah Hatchery, which was constructed for the propagation of salmonids. Schoenung explained that Gima is a 2006 graduate of Purdue University with a Bachelor’s of Science Degree in Fisheries and Aquatic Sciences and also holds a Master’s Degree in Fisheries and Allied Aquaculture

from Auburn University. Gima has worked with the University of Washington as a Fish Hatchery Technician, the United States Fish and Wildlife Service as a Biological Science Technician and Fish Culturalist, and the Louisiana Department of Wildlife and Fisheries as a Biologist Supervisor.

Schoenung introduced David Potts as the new assistant property manager of Public Access South. Schoenung offered that Potts began his career with the Department's Division of Fish and Wildlife in 1983 as an intermittent laborer at Public Access through other positions, including equipment operator. Schoenung noted that Potts will manage 366 public access sites located throughout the State.

James Kershaw, Public Lands Program Manager for the Division of Fish and Wildlife, introduced Josh Singel as the assistant property manager at Goose Pond Fish and Wildlife Area, the newest and most diverse fish and wildlife area. Kershaw noted that Singel holds a Bachelor's Degree in Biology with a minor in Psychology from Purdue University. Singel also worked as a Waterfowl Banding Technician at LaSalle Fish and Wildlife Area and as a laborer at Willow Slough Fish and Wildlife Area.

Kershaw also introduced Sananna Vaughn as the new assistant property manager at Pigeon River Fish and Wildlife Area, which covers approximately 12,000 acres in LaGrange and Steuben Counties. Kershaw noted that Vaughn has worked as an intermittent laborer at Tri County Fish and Wildlife Area and graduated with a Bachelor's Degree in Wildlife Management from Purdue University.

The Chair welcomed each of the new assistant property managers expressing the Commission's gratitude for their hard work.

Consideration of report from Department of Natural Resources regarding citizen petition to amend the rule governing the issuance of nuisance wild animal control permits to reduce conflicts of interest; Administrative Cause No. 15-039D

Linnea Petercheff, Operations Staff Manager for the Division of Fish and Wildlife, presented this item. She explained that the Department's Report is in response to a citizen petition filed by David C. Clark, attorney, on behalf of Charles and Mary Chuman of Dune Acres, Indiana. The citizen petition requested that designated shooters listed on a deer control permit issued to a municipality not be elected or appointed officers or employees of that municipality or other entity. Petercheff provided a brief background regarding the issuance of these types of permits explaining that towns, such as Dunes Acres, Beverly Shores, and Ogden Dunes have received permits from the Department over the past few years to control deer. The permits specify how many deer can be taken, the timeframe authorized, the designated shooters, the disposition of the deer, and establish other conditions. Petercheff noted that if there is a violation of the permit, the Division of Law Enforcement can be contacted through Central Dispatch. She noted that the permittee determines the shooting sites and the designated shooters. The concerns listed in the Chuman petition should be directed to the local entity, such as a town council or other local authority. Petercheff said the Department understands the concerns of the Chumans, but the Department does not believe that language needs to be added to the rule to prohibit

municipalities from allowing council members to participate as shooters under the permit. “There’s no proof that these council members violated a condition, and restricting the shooters without proof of a violation could unnecessarily limit the town’s ability to take deer. We believe this is a local issue and should be resolved locally.” Petercheff noted that there have been no other concerns relative to this issue on any other permit issued by the Department.

Petercheff explained that the Department has statutory authority governing rulemaking that requires rules be based on the welfare of the wild animal, the relationship of wild animal to other animals, and the welfare of the people. She said the Review Committee determined that the request for rule amendment does not meet the required criteria. Petercheff stated that the Review Committee, after its evaluation of the petition, does not propose any change in the rules to prohibit a municipality’s employees, elected or appointed officers from participating in the taking of deer under a nuisance deer control permit issued to that municipality.

Cameron Clark moved to accept the Department’s recommendation. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of approval of proposed amendments to Information Bulletin #2, Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered, Threatened, or Rare (also described as Special Concern); Administrative Cause No. 15-109D

Linnea Petercheff also presented this item. She explained that the Department requests approval of amendments to Information Bulletin #2 consistent with changes made to state and federal regulations as well as changes to several scientific names. Added to the bird species of special concern are the Ruffed Grouse and the Rufa Red Knot due to a decline in population and a rise in threats to the population. The Rufa Red Knot is currently on the federal endangered species list. She noted that the name of the “Northern Cavefish” is proposed to be amended to “Hoosier Cavefish.” She explained that the administrative code already reflects this change. Petercheff noted that identification of species as “endangered” or “of special concern,” assists with the receipt of federal funding specific to the species identified for research regarding the birds and their habitats. The scientific name of the “Least Tern” is amended to “Sternula Antillarum.” Other amendments reflect changes to scientific names of other species and amends the listing of extirpated, endangered vascular plants, as recommended by the Division of Nature Preserves.

The Chair inquired of Don Ruch whether the proposed amendments were accurate.

Ruch noted that the common name for “few flower sedge” should not be shown in italics.

Jack Corpuz commented that he started hunting Ruffed Grouse in the early 1960s. He agreed and was hopeful that the special identification the Commission and the Department will pay special attention to the species’ progress, specifically the Division of Forestry as it moves ahead with its forestry initiative.

R.T. Green moved to approve the amendments of the nonrule policy document, Information Bulletin #2, Roster of Indiana Animals, Insects, and Plants that are Extirpated, Endangered,

Threatened, or Rare (also described as Special Concern) with incorporation of Donald Ruch's modification. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of report on rule processing, public comments, analysis, and recommendations regarding final adoption of amendments to rules governing the taking and possession of catfish (312 IAC 9-7 and 312 IAC 9-8); LSA #14-510(F); Administrative Cause No. 14-142D

Sandra Jensen, Hearing Officer, presented this item. Jensen explained that some longer term Commission members may recall a 2011 withdrawal of an earlier proposal to regulate the taking of catfish. She offered that both the Department of Natural Resources and the Commission concluded in 2011 that there was a need to gather additional information to consider the most appropriate means of protecting the catfish resource. Jensen added that in 2011, the Department reaffirmed its continued interest in adopting a rule that properly protects the fishery.

Jensen explained that since 2011, the Department has considered scientific studies, harvest reports, anecdotal evidence and input from the public in concluding that protections for catfish are appropriate. She also highlighted the Department's efforts to coordinate the restrictions included in this proposal with restrictions that are proposed or are already in place in Kentucky and Illinois. Jensen observed that the restrictions in the neighboring states are not identical but they are similar. Jensen stated that regulations on taking catfish exist in states as far away as Texas and Arizona, noting that this rule is consistent with protections afforded catfish in many other states. Jensen advised that the Department's response to the public comments received throughout this rule adoption process, located at Exhibit C of the hearing officer's report, provides greater detail of the efforts made to ensure the appropriateness of the proposed rule.

Jensen offered that the Commission granted preliminary adoption at its meeting in November 2014 and the Notice of Intent was posted to the Indiana Register on December 24, 2014. Since that time the Office of Management and Budget, as well as the Office of Small Business and Entrepreneurship, have reviewed the fiscal analyses prepared by the Department and granted approval to move forward with the adoption of this rule.

Jensen advised that a "well-attended" public hearing was conducted, as scheduled, on August 24, 2015 and directed the Commission members to the public comment summaries at Exhibit B of the hearing officer's report. She also explained that written comments, reproduced at Exhibit A, were received through the Division of Hearings online comment form.

Jensen explained that the proposed rule language was submitted to the Legislative Services Agency for posting to the Indiana Register. At that time the Legislative Services Agency recommended that revisions be made to the language proposed at 312 IAC 9-7-3(d), 312 IAC 9-7-16(i), 312 IAC 9-8-2(g), and 312 IAC 9-8-6(g). Jensen offered that the revisions recommended by the Legislative Services Agency do not alter the rule proposal in a substantive manner, but align the added language of the rules with language already existing in those rules.

Jensen offered for final adoption the rule proposal, as incorporated in Exhibit D of the Hearing Officer's Report.

Barb Simpson, Conservation Policy Director, of the Indiana Wildlife Federation, explained that the Indiana Wildlife Federation is a non-profit organization representing a variety of conservation club organizations representing some 600 individuals. She stated general support for the rule proposal, but suggested additional related matters for future consideration. Simpson stated that a further increase in the minimum size to 15 inches would be beneficial to maintaining appropriate levels of mature catfish for spawning. She recognized that there is no overall bag limit for catfish, but suggested that the Department monitor the catch or harvest of catfish for the purpose of maintaining accurate data regarding the health of the fishery. Simpson expressed the need for equity between fees associated with sport fishing versus commercial fishing. She highlighted that sport fishing licenses cost \$17.00 while the commercial fishing license fees, which allow the use of nets, are set by statute at \$4.00. Simpson stated that the Indiana Wildlife Federation's primary concern arises from the exploitation being made of natural resources that are held in trust by the Department of Natural Resources for the public.

Jack Corpuz supported Simpson's sentiments with respect to considering future additional size increases and aligning the fees charged to sport anglers for fishing licenses as compared to the statutorily set fees for commercial fishing. "I would have to say that at this particular point in time we need to stop the commercialization of our natural resource to protect it for the people of the State of Indiana."

Patrick Early moved to give final adoption of the proposed rule amendments to 312 IAC 9-7 and 312 IAC 9-8, as contained in Exhibit D of the Hearing Officer's Report. Vice Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion was carried.

Consideration of recommendation for final action on readoption of 312 IAC 7 governing trails and scenic rivers; LSA #15-109(F); Administrative Cause No. 15-003T

The Chair requested this item and the remaining three items be presented together.

Dawn Wilson, Hearing Officer, presented this item along with Agenda Items 10, 11, and 12, as requested by the Chair. The items reflect a recommendation to approve readoption of numerous Articles within 312 IAC, without amendment. Specifically, Trails and Scenic Rivers (312 IAC 7), Timber Buyers, their Agents, and Timber Growers (312 IAC 14) and Forest and Resource Management (312 IAC 15) are all set to expire on January 1, 2016. Wilson, on behalf of Hearing Officer Sandra Jensen, also presented Articles regarding Oil and Gas (312 IAC 16) and Other Petroleum Regulation (312 IAC 17) that are scheduled to expire on January 1, 2017 for readoption.

Wilson said the Director of Hearings gave preliminarily readoption to these articles. Small Business Regulatory Coordinators were appointed and provided the required analyses of potential impact to small businesses. The proposed readoptions were posted in the Indiana Register on various dates and no requests were received to adopt any of the rule sections

separately. The proposals were submitted to the Office of Management and Budget and the Legislative Council. The State Budget agency recommended that the readoptions be approved, with the most recent approvals being received for the Timber rules in 312 IAC 14 and 312 IAC 15 on September 2, 2015, and the Oil and Gas rules in 312 IAC 16 and 312 IAC 17 on September 10, 2015.

Wilson recommended the Commission readopt 312 IAC 7, 312 IAC 14 and 312 IAC 15 without amendment. She also recommended, on behalf of Hearing Officer Jensen, the Commission readopt 312 IAC 16 and 312 IAC 17, also without amendment.

Don Ruch moved to approve readoption of 312 IAC 7 in its entirety without amendment. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 14 governing timber buyers, their agents, and timber growers; LSA #15-156(F); Administrative Cause No. 15-004F

See previous discussion.

Don Ruch moved to approve readoption of 312 IAC 14 in its entirety without amendment. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 15 governing forest and resource management; LSA #15-157(F); Administrative Cause No. 15-005F

See previous discussion.

Don Ruch moved to approve readoption of 312 IAC 15 in its entirety without amendment. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 16 and 312 IAC 17 providing standards regarding oil and gas; LSA #15-224(F); Administrative Cause No. 15-078G

See previous discussion.

Don Ruch moved to approve readoption of 312 IAC 16 and 312 IAC 17 in their entirety without amendment. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Chris Smith advised the Commission that the Department's Division of Oil and Gas would soon present a significant revision of the oil and gas rules for consideration on preliminary adoption. Smith explained that preparation of the revised rules is presently being completed and the readoption of the existing oil and gas rules, 312 IAC 16 and 312 IAC 17, was undertaken early to ensure those rules would not expire before the new and amended oil and gas rules are adopted and in effect.

Adjournment

The meeting adjourned at approximately 10:56 a.m., EDT.