

NATURAL RESOURCES COMMISSION

Fort Benjamin Harrison - The Garrison
6002 North Post Road, Indianapolis, Indiana

Minutes of March 21, 2006

MEMBERS PRESENT

Richard J. Cockrum, Chair
Jane Ann Stautz, Vice Chair
Kyle Hupfer, Secretary
Matthew T. Klein
Bryan Poynter
Chad Frahm
Richard Mangus
Mark Ahearn
Raymond McCormick

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Adam Warnke	Executive Office
Cheryl Hampton	Personnel
Linnea Petercheff	Fish and Wildlife
Gregg McCollam	Fish and Wildlife
Samuel Purvis	Law Enforcement
Scott McDaniel	Law Enforcement
Jim Hebenstreit	Water
John Bacone	Nature Preserves

GUESTS PRESENT

Jack Hyden	Jerry Wheeler	Doug Allman
John Goss	Gary Doxtater	Phillip Ohmit
Greg Seketa	Terry Receveur	Garett Twandy
Debbie Twandy	Justin Schneider	Jack Corpez

Richard J. Cockrum, Chair, called to order the regular meeting of the Natural Resources Commission at 10:10 a.m., EST, on March 21, 2006 at The Garrison, Fort Benjamin Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of nine members, the Chair observed a quorum.

Jane Ann Stautz moved to approve the minutes of January 18, 2006. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Director Kyle Hupfer gave a brief legislative update. He indicated that legislation passed lowering the minimum price for a doe license—\$10 for nonresident and \$5 resident. “We are working internally on a pricing structure” to be brought before the Commission at its May meeting. Director Hupfer also noted that the lifetime license fund was approved for “DNR to utilize for land acquisition, and for hunting and fishing purposes that require [Commission] approval. We don’t have any projects on the board right now.” Also passed is legislation for DNR director to designate free youth hunting days “allowing youth to be accompanied by a licensed adult with one weapon between them.”

Director Hupfer noted legislation merging the two advisory councils into one advisory council was passed that caused a “slight” restructuring of this Commission. Regarding the new advisory council, “The Governor has twelve members to appoint, eight of which must have been a member of an advisory council at some point prior to July of last year.” Director Hupfer said recommendations will be presented to the Governor. The chair of the newly formed advisory council will sit on the Commission, as well as an additional person by “direct appointment” of the Governor, to maintain a membership of twelve.

Director Hupfer reported that Glenn Salmon accepted the Blue Heron Award, during the International Association Fish and Wildlife meeting, on behalf DNR and the Commission. This award is the top award from the North American Wetlands Conservation Association. The award was presented for Department’s “work on Goose Pond. That is something for everyone to be proud of.”

John Davis, Deputy Director, indicated the DNR is “gearing up” for the 2006 recreation season, hiring intermittent employees, and “getting our properties in shape.” He said “burnings” were conducted on those DNR properties managed by “prescribed burns.” Davis provided Commission members with 2005 state park and nature preserve deer reduction results.

Division of Nature Preserves

Consideration of the dedication of Ambler Flatwoods Nature Preserve, LaPorte County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the tract contains a “very rare” boreal flatwoods, and has boreal plants “more typical in Michigan” than Indiana. The area was acquired as a result of a “true partnership” that included the Indiana Heritage Trust, U.S. Fish and Wildlife Service through the North American Waterfowl Conservation Act, Natural Resource Damage Assessment Program, The Nature Conservancy, and the Heinze Land Trust. Baccone explained that the Heinze Land Trust is a small land trust “active only in the Lake Michigan watershed.” The Heinze Land Trust would manage the site.

Raymond McCormick requested additional information regarding the Natural Resource Damage Assessment Fund. Bacone said funding for the acquisition originated from one of the damage sites at Trail Creek, next to Michigan City, involving Waste, Inc. Ambler Flatwoods has a “feeder stream” into Trail Creek. “To recover some of the damage there in Michigan City, you couldn’t do any recovery” at the damage location “so they decided a good way to help is to keep it in the Trail Creek watershed.” Bacone said a “little bit of funding” went to help acquire an

additional 20-acre tract. McCormick asked whether funding was tied to the watershed. Bacone answered in the affirmative.

Raymond McCormick moved to approve the dedication of Ambler Flatwoods Nature Preserve. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Division of Water

Consideration of Preliminary Adoption of Amendments to General License Rule for Temporary Piers in Public Freshwater Lakes (Administrative Cause Number 04-164W)

James Hebenstreit, Assistant Director of the Division of Water, presented this item. He said the proposal would modify the rule governing general licensure for temporary piers. The general license authorizes “most people” to install piers in a public freshwater lake without seeking an individual permit. “Piers have become a growing issue of controversy over the last couple years because of the increasing number of people desiring access to our lakes.” In response to the growing controversy, and because of concerns for environmental and safety issues associated with the current general license, the Lakes Management Work Group developed the proposed amendments. Hebenstreit said the Lakes Management Work Group was originally formed by statute, was continued by the Department following expiration of the statute, and has been reconstituted by statute in the 2006 Indiana General Assembly. He said the group has discussed “pier issues and pier problems”, and as a result of rule modifications this proposal and others will be brought forward for preliminary adoption.

Hebenstreit explained that a rule amendment incorporates the “concept that you cannot have a pier that encircles or encloses a part of the lake and isolates it from the rest of the public.” Another amendment would prohibit a pier with a structure on it that would catch floating debris. “Both are situations we have come across.” Amendments are proposed to clarify that “permission is required from the landowner or riparian to place your structure or pier on or lakeward of their property.”

Jane Ann Stautz moved to give preliminary adoption to amendments to 312 IAC 11-3-1 governing the general license for temporary piers in public freshwater lakes. Chad Frahm seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of Amendments to Disqualify Piers that Extend More than Five Feet from the Shoreline, if Left in a Lake During the Winter, from a General License for Temporary Piers in Public Freshwater Lakes (Administrative Cause Number 06-023W)

James Hebenstreit also presented this item. Again, the proposal was developed and endorsed by the Lakes Management Work Group. He said the rule amendment would require most temporary piers to be removed from the waters of a lake during the winter months. “Part of the thinking behind that was to ensure that a pier is indeed temporary.” He said there are environmental concerns. There are also concerns that piers being left in larger lakes become hazards for snow mobile traffic, “although, I don’t think we have a lot of recorded accidents.” Hebenstreit said there are challenges with this proposal “in that we will have to investigate potential costs to individual property owners to put and take out piers on an annual basis.” He suggested this proposal “may generate more testimony and comment than the rule amendments discussed” in the

previous agenda item.

Bryan Poynter, Commission Member, spoke next. "I'm just curious where that issue was brought forth. Where did this issue originate?" Hebenstreit responded that on the smaller lakes persons will install piers with "four by four [inch] posts that are buried, basically becoming permanent structures." On smaller lakes, there is not necessarily a need to remove the pier. A concern is that maybe people on channels would not necessarily need to remove the pier." On large lakes such as Lake Wawasee, landowners typically remove temporary piers from the main body of the lake without a rule, because if they do not, "ice will take care of your pier." Hebenstreit added, "The state is charged with holding the lakes in trust for the public, and generally does not approve any permanent structures" in public freshwater lakes.

Ray McCormick asked, "This pertains more to lakes and not rivers?" Hebenstreit said the rules govern "public freshwater lakes" that are generally located in the northern third of the state. They would have no application to rivers.

Richard Mangus moved to give preliminary adoption to amendments to 312 IAC 11-3-1 to disqualify piers that extend more than five feet from the shoreline, if left in a lake during the winter, from the general license applicable to public freshwater lakes. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Division of Fish and Wildlife

Consideration of Request to Raise the Fee for a Nonresident Deer License

Gregg McCollam, Assistant Director of the Division of Fish and Wildlife, presented this item. He noted that the nonresident deer license rate has not been increased since August 2001. "The average cost of licenses in the surrounding states is roughly \$200." McCollam said Illinois, Kentucky, Ohio and Michigan charge \$365, \$165, \$149, and \$138 respectively for nonresidents to hunt their first deer. He said the increase to \$150 would generate an "additional \$100,000 for the year" which will be deposited in the Fish and Wildlife Fund. He explained the fund helps "pay for the operating budget" of the Division of Fish and Wildlife and the Division of Law Enforcement.

Chairman Cockrum said, "I know historically we have talked about the balance between user fee and general fund use. I like it that the staff has done its homework, and shopped around for what other states are doing, in trying to keep us in that same market. Kudos."

Raymond McCormick moved to approve the request to raise the fee for a nonresident deer license to \$150. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

NRC, Division of Hearings

Consideration of Rule Processing, Report of Public Hearing, Comments, Response by the Department of Natural Resources, and Presentation for Final Adoption of Rule Amendments to 312 IAC 9 Governing Wild Animal Possession, Mute Swans, Ground Hogs, Deer, and Various Other Amendments to the Fish and Wildlife Rules (Administrative Cause Number 05-118D; LSA Document #04-215(F))

Stephen Lucas, Hearing Officer, introduced this item. He said the rule proposal was presented for final adoption at the Commission's January 18, 2006 meeting, "but the *Indianapolis Star* didn't publish the notice exactly right." A second public hearing was "re-noticed" and held as scheduled on February 24, 2006. Two written comments were received; however, no member of the public appeared for the hearing. Lucas indicated that "99%" of the comments were before the Commission in January.

Lucas referred the Commission to a "clean copy" of the proposed amendments for consideration as to final adoption, as distributed today by the Division of Fish and Wildlife on blue sheets of paper. These differed in some aspects from language given preliminary adoption. Lucas explained that the Commission could give final adoption to the language as preliminarily adopted, to the amended version, or "could decline to do so." He then deferred to Linnea Petercheff from the Division of Fish and Wildlife.

Petercheff explained that the proposed rule amendments preliminarily adopted were a result of comments received prior to the public hearing process. She noted, however, that the rule language as presented to the Commission today, printed on blue sheets, incorporates additional modifications not contained in the Hearing Officer's Report. Changes have been made to the firearm license and the muzzle loading gun license to clarify which "license is required for which season." Petercheff noted the Division of Fish and Wildlife is continuing to review the rules governing hunting of deer for future amendments. Amendments are also made to clarify tagging requirements of deer in the field.

Doug Allman commented, "I would like the item of a temporary transport tag be revisited at some point." In talking with other sportsmen, he believes there is a consensus that "a more permanent transport tag as you have done in the past" would be preferable. "The idea of a piece of paper, if it's lost, there is some enforcement issues." Allman said that he did understand that with the electronic license sale system, "there were some issues." He added, "The deer hunters of this state would like a permanent type transport tag that is readily available that they can notch out upon harvesting that animal. I think that is a consistent message, if you ask the sportsmen."

Chairman Cockrum said, "I think your comments are well taken and will be taken under consideration." Director Hupfer indicated the issue had previously been considered. Allman said, "The point of sale license is nice and convenient" and added that the temporary tag printed in the Hunting Guide was "better. But there needs to be consistency other than a scrap piece of paper." Jane Ann Stautz commented, "I see a future business opportunity here." Director Hupfer offered that the tag could be printed in the Hunting Guide on "harder card stock".

Raymond McCormick asked for clarification regarding the definition of "family member". He referred Commission attention to bottom of page 19 of the Hearing Officer's report. "It says 'father, mother, brother and sister'. Now are the 'brother and sister' the 'daughter and son'? Or is it the 'brother and sister' of the farmer? I'm hoping it's the 'son and the daughter' that is considered the family member and not the 'brother and sister' of the farmer or landowner." Petercheff answered, "That is correct." She added the language referenced by McCormick is the Department's response contained in the Hearing Officer's Report, but it was not used in the rule proposal at 312 IAC 9-2-14. Reference is made to "members of one family, at least one member of that immediate family must actively farm that land."

McCormick continued, "I just want to make sure that you are promoting the use by a family member." Mark Ahearn inquired whether 312 IAC contained a definition of "immediate family". Petercheff answered that currently there is no definition, so the Department referred to

terminology used by the state's Department of Personnel. McCormick said, "We are trying to close this loophole of everybody hunting on a piece of ground without buying a license. Are we closing the family member loophole?" Jane Ann Stautz added, "You are also going to raise issues of 'father', 'grandfather', 'grandmother' especially if some are living there." McCormick said, "The intent here is just for the farmer or landowner that lives on that land and his sons and daughters. That's the intent, isn't it?" Director Hupfer answered affirmatively.

McCormick inquired whether the proposed language should be further modified to "close loopholes." Lucas said that the Commission "could recommend the Division of Fish and Wildlife draft a proposal to address your specific concern. I wouldn't recommend that you put that in the rule at this stage, because it might create a problem with the Attorney General in final adoption. But it could be done prospectively."

Chairman Cockrum said, "We are going to ask for a rule to define 'immediate family'" be prepared by the Division of Fish and Wildlife. That draft would come back to us at a later meeting for preliminary adoption.

Raymond McCormick then moved to approve for final adoption, in the version supported by the Division of Fish and Wildlife and distributed on the blue sheets, the rule amendments to 312 IAC 9 governing wild animal possession, mute swans, ground hogs, deer, and various other amendments". Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Rule Processing, Report of Public Hearing, Comments, Response by the Department of Natural Resources, and Presentation for Final Adoption of Rule Amendments Governing Deer Shooting in Enclosures and Multiple Amendments Regarding Exotic Mammals (Administrative Cause Number 05-144D; LSA #05-261(F))

Stephen Lucas, Hearing Officer, presented this item. He explained that one of the Commission's options is to give final adoption to language that was published for preliminary adoption reflected in the report as Exhibit A. Lucas said "another option" would be final adoption to modified language that is supported by the Department and distributed prior to the meeting on yellow sheets. "Of course, another option would be not to give it final adoption." Lucas then deferred to Linnea Petercheff from the Division Fish and Wildlife.

Linnea Petercheff described to Commission members the modified proposed language printed on yellow sheets. "These include the responses we made to public comment" and are separated from the Hearing Officer's report "to make it easier for you to see what would be given final adoption."

Jack Hyden, President of the Indiana Beaglers Alliance, said "a lot" has been discussed over the past two years regarding deer hunting preserves. Hyden said that he previously asked field trial participants and those attending annual meetings for "sporting dog" groups "what their feelings were about deer hunting preserves and the deer farmers?" He said "80% to 90%" of the responses "consistently have been that there isn't a problem from the average sportsman with the existence of deer hunting preserves and the hunting behind a high fence." Hyden said that to compare a hunting preserve to a "hog lot" would be "simply untrue. I am just here to let you know that I know there are thousands of sportsmen in the state of Indiana that do support the existence of hunting preserves and hunting behind a high fence with some restrictions."

Doug Allman indicated that he was present on behalf of the Indiana Deer Hunters Association (IDHA). He noted that the IDHA has been involved in the discussion of the issue, as well as other sporting groups. "I disagree that sportsmen are in favor of this type of hunting activity. Survey after survey shows that the hunting community is against it." He said the deer breeding and hunting preserve industries attempted to amend the governing statute to allow "more profitable" activity under the deer breeder license. "We do not need to hunt animals that are captive reared, raised as livestock, artificially inseminated, and then turn them out as if they were wild animals." He asked the Commission to "move forward" with the proposed rule package.

Gary Doxtater said he was a member of "many of the groups that testified" before the Commission, but today he was commenting on his own behalf. He said that he "learned" during conversations with legislators regarding the rule proposal, the legislators "felt that they didn't like the ethics behind hunting behind a fence, but they were concerned about the folks who have invested into this industry." Doxtater pointed out that the U.S. Fish and Wildlife Service and the Department report that "deer hunting alone" adds "\$600 to \$700 million every year" to the economy. If Chronic Wasting Disease (CWD) "gets into Indiana and it's all around us," Indiana "could be faced" with a similar situation as Wisconsin. He said Wisconsin's Department of Natural Resources spends "half of their budget" to check the spread of the CWD. "Importation of deer for hunting purposes increases the chances of CWD coming into Indiana. Now is the time to stop it and reduce that risk."

Richard Mangus addressed Mr. Doxtater. "Your argument is that to import deer for behind-fence hunting would increase a lot of risk?" Doxtater answered, "That is correct." Mangus said he understood "most of the deer were raised by the farmers." Doxtater explained that in 2000 Wisconsin has "tied down" a deer breeding farm operation that "out of 80 deer, 76 were infected with CWD." Since 2000, CWD has "spread to six other operations" in Wisconsin. He said the "odds of CWD goes up with more activity of raising deer." Mangus inquired whether the Department could "pass a rule" prohibiting deer importation. Doxtater indicated the Department has worked with the State Board of Animal Health to try and achieve this result, but "there are big bucks for big bucks." Doxtater said that he cannot emphasize enough the "impact that Wisconsin is going under right now." Mangus said, "I heard a lot about crossbows. 'Crossbow is going to ruin deer hunting.' Did it?" Doxtater answered, No."

Glenn Lange said he was a wildlife biologist by education and experience. "I have been a wildlife biologist for more than 30 years." He said he represented the Indiana Chapter of the Wildlife Society, a professional organization that represents wildlife biologists and ecologists. Wildlife biologists are "very concerned" with the spread of CWD. "This is our major issue with these kinds of facilities." Lange said CWD is a "real threat". He said he agreed with the suggestion by Commissioner Mangus regarding prohibiting deer importation, "but that is up to the State Board of Animal Health." This Commission recommended prohibiting importing deer into Indiana "a few years ago, but the Board of Animal Health ignored that." Lange referred the Commission to the Society's mission statement and comments from other wildlife biologists included in the record. "We support this particular rule wholeheartedly and hope that you will agree that we need to totally eliminate these kinds of facilities, if at all possible."

John Goss thanked Director Hupfer and the Department for "moving this ahead." He said this issue was "probably one of the toughest" to address during his previous tenure as Department Director. "I think it is time to act now before Indiana gets in a more difficult position with this industry." Goss recognized past President of the Indiana Wildlife Federation Paula Yeager's efforts for "educating Indiana about [CWD] and the problems with unethical hunting". He said hunting behind high fence was "not just a hunter's issue. It's something people all over care

about.” Goss, on behalf of the Fair Chase Alliance, also noted other organizations that “worked hard” to support the rule proposal: Izaak Walton League of Indiana, Indiana Deer Hunters Association, Indiana Bow Hunters Association, Wildlife Society of Indiana, Indiana Wildlife Federation, and Indiana Sportsmen’s Roundtable. “We ask you to please vote, ‘Yes’.”

Jerry Wheeler, Vice President of the Indiana Wildlife Federation (IWF), spoke on behalf of the 42 affiliated local conservation clubs and over 1,000 individual IWF members across Indiana. “We strongly support” the proposed rule amendments. He also noted that the “public does not support high fenced hunting.” Wheeler indicated that 652 IWF members signed a petition that reads:

I support a permanent ban on canned hunting in Indiana. High fenced shooting of deer and exotic mammals is unethical, diminishes public image of hunting, and increases the threat of disease to our native wild deer.

Wheeler concluded, “On behalf of the 652 Hoosiers who signed this petition and the other members of the IWF, I urge the Commission to adopt this rule.”

Terry Receveur, representing the Indiana Bow Hunters Association, spoke next. “We, as sportsmen, have a certain standard within the general population of having the ability to go out and match wits, per say, with those wild creatures that we, as hunters, pursue. What canned hunting does is it takes that away.” He said hunting is “not about killing; it’s about the experience.” Receveur said, “90% of the population is basically in support of hunting, of which 80% basically have no opinion. It’s that 80% of the population that will ultimately determine our future on hunting. We have to maintain our standard with that population.”

Phillip Ohmit, retired Indiana Conservation Officer, and representing the Indiana Deer Hunters Association, Indiana Bow Hunters, and Indiana Chapter of National Wild Turkey Federation, indicated that during employment as a conservation officer he relayed to the deer breeding industry that “they couldn’t hunt under a game breeder license.” Regarding deer importation, Ohmit noted, “You can get \$15,000 to \$20,000 for these ‘shooter bucks’ that come into the state.” He likened the issue to narcotics importation. “They will bring it in when the money is there.”

Greg Seketa, representing the Indiana Sportsmen’s Roundtable, said the record is “complete” and “I think it’s now time for a vote to bring this matter to conclusion.”

Director Hupfer thanked the Commission members for their time in considering “what is a voluminous record. I don’t know if there will be a tougher issue to deal with, at least not any time soon.” He said he spent “hundreds of hours and sleepless nights” considering the issues. “The fact of the matter is what is being done is illegal.” The Legislature “acted and set up a mechanism for exotic mammals to be potentially hunted, but only if this Commission took action to approve it, which we never have.” He noted that the rule amendments “chill the field. We cannot move forward with an open door on these operations.” Director Hupfer also noted that the final adoption of the rule amendments is “not necessarily the end. We know there is going to be litigation.” He said discussions are ongoing to “soften the landing” of the industry. “We need to take action to make sure the loopholes are closed.”

Raymond McCormick, Commission member, moved to give final adoption to rule amendments governing deer shooting in enclosures and multiple amendments regarding exotic mammals. Bryan Poynter seconded the motion.

Stephen Lucas inquired as to which form of the rule amendments the Commission would give final adoption. McCormick responded that his motion was directed to the version on the yellow sheets that is supported by the Division of Fish and Wildlife. Mark Ahearn asked “How does that substantively differ than what was forwarded in the agenda?” Lucas explained the form presented by the Department on the yellow sheets “is primarily what DNR offered as responses” that were included in the Hearing Officer’s Report. Director Hupfer added, “It is a compilation so that you see it in one place.” Ahearn asked Lucas, “You are comfortable, Steve, with the concept under IC 4-22 that this is a logical outgrowth?” Lucas answered that he could not speak for the Attorney General, but that to him, the modified language by the Division of Fish and Wildlife “seems reasonable” relative to what was given preliminary adoption.

The Chair called for the question. Upon a voice vote, the motion carried. Richard Mangus voted against the motion.

Consideration of Report of Public Hearing and Comments, and Recommendation for Final Adoption of Amendments Establishing a Youth Deer Hunt (Administrative Cause Number 05-156D; LSA #05-262(D))

Stephen Lucas presented this item on behalf of the Hearing Officer, Sandra Jensen. He summarized by reading the Hearing Officer’s recommendation, “After full consideration of the rule package and the overwhelming general support for the package, it is recommended that the rule package, as originally proposed, be given final adoption.”

Director Hupfer commented, “This represents a consensus view of every sportsmen organization I could get around a table. It is time to step into the 21st century as far as hunting recruitment and retention.”

Jane Ann Stautz moved to approve for final adoption rule amendment adding 312 IAC 9-3-2.5 establishing a youth deer hunt. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Comments, and Recommendation for Final Adoption of amendments to 312 IAC 16 governing Intermediate Strings of Casing (Administrative Cause Number 05-081G; LSA #05-248(F))

Stephen Lucas presented this item on behalf of Hearing Officer Sandra Jensen. He said the rule amendment clarifies matters pertaining to an intermediate casing in the oil and gas industry. An intermediate string is also sometimes referred to as a “minestring” and is used to offer additional protection to underground coal resources. Primarily, the rule modifications implement statutory changes that were made to address an issue that “20 years ago was extremely contentious, but today seems to be pretty much straight forward.” On behalf of the Hearing Officer, Lucas presented the amendments for final adoption.

Bryan Poynter moved to give final adoption to amendments to 312 IAC 16-5 governing the regulation of intermediate strings of casing. Matthew Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Comments, and Recommendation for Final Adoption of amendments to 312 IAC 16 adding Definitions (Administrative Cause Number 05-126G; LSA #05-288 (F))

Stephen Lucas also presented this item on behalf of Hearing Officer Jensen. The rule proposal pertains to oil and gas definitions, and is “in some measure” related to the prior agenda item. Lucas said the rule proposal “helps bring together the new legislation giving some finite meaning to language that might otherwise be subject to multiple interpretations.” Lucas noted that it was his understanding that the rule proposal was not controversial, and he presented the amendments for final adoption.

Jane Ann Stautz moved to give final adoption to amendments to 312 IAC 16-1 adding definitions to the rules governing the regulation of oil and gas production and development. Chad Frahm seconded the motion. Upon a voice vote, the motion carried.

Consideration of Rule Processing, Report of Public Hearing and Comments, and Recommendation for Final Adoption of Rule Amendments making the Entirety of Turtle Creek Bay an Idle Speed Zone (Administrative Cause Number 05-104L; LSA #05-263(F))

Stephen Lucas, Hearing Officer, also presented this item. The rule amendment would extend an “idle speed zone” within Turtle Creek Bay on the Ohio River. Lucas noted that the public hearing was held in Switzerland County, and the only citizen comments were favorable to final adoption. He then deferred to Maj. Samuel Purvis, State Boating Law Administrator.

Maj. Purvis explained that Turtle Creek bay was a “small embayment” along the Ohio River that currently has an idle zone “from the mouth of the river to the bridge”, then the creek “opens up”. He noted that, over time, the area has become shallower, with tree stumps exposed. “It’s a pretty small area of water to high speed boat.” Purvis said that boaters who use the area on a “fairly regular basis think there is an idle zone anyway.” He noted that there was “no opposition” from the landowners and the users of the embayment. Purvis noted that conservation officers visited local marinas and spoke with boaters that use the area, and those boaters also voiced no opposition. He said the proposed amendments would enhance public safety, and the Division of Law Enforcement supported their final adoption.

Raymond McCormick moved to give final adoption of amendments to 312 IAC 5-7-5 to establish an idle speed zone on the entirety of Turtle Creek Bay. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of Processing, Report of Public Hearing and Comments, and Recommendation for Final Adoption of new rule 312 IAC 11-5-2 governing lawful nonconforming uses for structures subject to licensure under IC 14-26-2 (commonly known as the “Lakes Preservation Act”) (Administrative Cause Number 05-068W; LSA #05-274(F))

Stephen Lucas, Hearing Officer, presented this item. He explained that, as with the proposals offered previously in the meeting by James Hebenstreit, the subject of the rule proposal originated from the Lakes Management Work Group. “Lawful nonconforming uses are what some refer to as ‘grandfathering’. I think this rule proposal is a little bit of a sleeper, in that, in the long term it will probably have quite a bit of significance in terms of how lakes are managed.”

Lucas indicated that it was a “real problem” to determine “what to do with structures within lake” that were lawful when constructed but that no longer conform to statute or rule. The problem is particularly acute for temporary structures, “the most obvious being temporary piers.” He explained that the rules address structures that have been in the lakes “for years” as well as addressing how structures would be considered if future amendments make “the rules a little different or a little more stringent.”

Lucas said there was “fair attendance” at the public hearing held in Warsaw with attendees asking “a lot” of questions. “There was a good discussion, and ultimately every person in the room said they were supportive of the concept.” Lucas emphasized that attendees also voiced the need, however, for an education campaign for public understanding as to “how this is going to work, what their options and responsibilities are, and what happens when they let time go by” without exercising their option to establish a lawful nonconforming use. He referred the Commission members to the list of additional actions the Commission could consider relative to the rule proposal on page seven of the Hearing Officer’s report. Lucas said whether the Commission wished to take any action on those items was at their discretion, but he recommended the rule proposal be given final adoption.

Chairman Cockrum asked, “How will that education occur? Was there any discussions how that happens?” Lucas said there was “a lot” of discussion. “One of the challenges from the agency’s perspective is that there are multiple divisions that have a role pertaining to the Lakes Preservation Act. Probably on the ground, the people within DNR that citizens are most likely to see are folks from the Division of Law Enforcement.” In a regulatory sense, the Division of Water has historically had primary responsibility, and the Division of Fish and Wildlife would also be involved. Lucas said the Conservation Officers from the northern tier of counties have said they “felt like they could work with people at the local level.” He also heard from citizens involved in local lake associations who are “anxious to work in that regard.”

Maj. Sam Purvis added. “One of the areas left out is our relationship with the lake owner association groups and their newsletters of getting that information out.” He said the newsletters reach “most of the lakefront property owners in those communities.” Purvis also commented that information can be given to the small number of pier construction companies, “because they do the repetitive business. Those are probably our two target areas.” Chairman Cockrum added, “I asked the question because I think it is a very reasonable request of the people using the freshwater lakes, but I’m also cognizant of the resources available to dedicate to that. It sounds like you found an economical way of educating people using the newsletter.”

Jane Ann Stautz emphasized that an effective outreach program was essential to successful development of this regulatory mechanism. She moved to give final adoption to rule amendments adding 312 IAC 11-5-2, governing lawful nonconforming uses for structures subject to licensure under IC 14-26-2, in the same form as given preliminary adoption. She included in the motion the following actions to help assure that implementation of the process would be effective and equitable:

- (1) An outreach effort should be pursued to communicate to local riparian owners the opportunities afforded by qualifying a structure as a lawful nonconforming use. Included in this effort would be on-site communication through local Conservation Officers, the preparation of a user-friendly brochure in paper and online form to outline procedures and answer questions, and cooperation with local lake-owner and similar associations to help disseminate information. The Lakes Management Work Group should also be consulted as another key forum to assist with this outreach.

(2) Identify a location or locations for the maintenance of documentation pertaining to requests for, and approvals of, lawful nonconforming uses. Consideration should be given to making elements of the documentation accessible online, but a geographic location is probably also needed for the delivery and retention of paper documents. Consideration should be given as to the most effective Division to maintain the records, including whether retention is feasible regionally instead of at Indianapolis.

(3) Report to the Commission by January 2008 concerning whether the development of this process has made sufficient progress for implementation, as scheduled in the proposed rule, or whether some deferment would be reasonably required.

Chad Frahm seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting adjourned at 2:06 p.m., EST.

Next Meeting: May 16, 2006, (1:00 p.m., CDT) at The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis.