

Economic Impact Statement

LSA Document #06-272

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The Indiana Department of Natural Resources (DNR) estimates that the proposed rule will impose requirements or costs on some small businesses that apply for permits to do construction in floodways or along the shorelines of public freshwater lakes in areas where cerulean warblers are documented.

The proposed rule change to add the cerulean warbler to the state's endangered species list ([312 IAC 9-4-14](#)) may affect some small businesses. If a permit application for construction in a floodway or construction along a public freshwater lake is received by the DNR, the project site will be reviewed to determine whether or not cerulean warblers have been documented in that project site. If the proposed project under that permit will destroy habitat for cerulean warblers, the DNR may request that the habitat destruction be minimized or require that additional property or easements be obtained to acquire and protect habitat for the cerulean warbler to minimize the loss of habitat.

The proposed rule in [312 IAC 9-3-3](#) clarifies the license requirements for hunting deer in the firearms and muzzleloader seasons to state that a firearms license is required in the firearms season and a muzzleloader license is required to hunt deer with a muzzleloader in the muzzleloader season. These changes simply correct the administrative rule, but these licenses are already required. The changes also list the youth license and lifetime license that can be used to take deer during these seasons. When changes were made to the statutes, the DNR did not change the administrative rules to match the correct statutes, and lifetime and youth hunting licenses have been legal to use to hunt deer for many years. The other proposed modification would allow rifles with only pistol cartridges to be used when hunting deer during the firearms season and will not affect any small businesses.

The proposed rule change to hunt deer by bow and arrows ([312 IAC 9-3-4](#)) only clarifies the license types that are legal to use for hunting deer in the archery seasons. The changes to the endangered species list for mammals ([312 IAC 9-3-19](#)) removes the southeastern bat from the state's list of endangered species and clarifies that all of the species listed are endangered, not threatened. The changes to the endangered species lists for reptiles and amphibians, fish, and invertebrates ([312 IAC 9-5-4](#), [312 IAC 9-6-9](#), and [312 IAC 9-9-4](#)) only clarify that all of the species are protected as endangered species, not threatened, as well as correct several common and scientific names for consistency with current scientific literature. These species are already recognized and documented as endangered species in Indiana.

Estimated Number of Small Businesses Subject to this Rule:

The DNR estimates that approximately 50 small businesses may be directly affected by some of the proposed rule changes. The DNR has the authority to promulgate rules in accordance with the requirements found in [IC 4-22-2-23](#), [IC 14-22-2-6](#), and [IC 14-22-34-11](#).

Estimated Average Annual Administrative Costs That Small Businesses Will Incur:

The only administrative expenses for individuals or businesses as a result of the rule changes are the result of the addition of the cerulean warbler to the state's endangered species list ([312 IAC 9-4-14](#)). None of the other rule changes will affect small businesses. Only those small businesses that apply for a permit to do construction in a floodway or along the shoreline of a public freshwater lake ([IC 14-26-2](#), [IC 14-28-1](#), or [IC 14-29-4](#)) where cerulean warblers are known to exist as will be affected by this rule change.

The requirements that may apply to a small business are only for those businesses that will have to obtain permits to do construction in a floodway or do other construction projects that will reduce or eliminate nesting habitat for cerulean warblers. If a permit application for construction in a floodway is received, that project site will be reviewed to determine whether or not cerulean warblers are found in that area. Permits are required to do construction in a floodway per state statute in [IC 14-28-1](#). If the proposed project under that permit will destroy habitat for cerulean warblers, the DNR may request that the habitat destruction be minimized or require that additional property or easements be obtained to acquire and protect habitat for the cerulean warbler to minimize the loss of habitat. The DNR estimates that it will cost less than \$500 per year (approximately two day's worth of work) for a permit applicant to revise their proposed project to either minimize destruction of habitat for the cerulean warbler or to obtain an easement on additional land that will protect that land and provide habitat for the cerulean warbler.

Estimated Total Annual Economic Impact on Small Businesses:

The DNR estimates that there will be a minor economic impact on small businesses as a result of compliance with these rules. The only rule change in this package that will affect small businesses is the change to add the cerulean warbler to the state's list of endangered species.

- Justification of Requirements of Costs on Small Businesses Where Rule Is Not Expressly Required by Law: State statute ([IC 14-22-34-11](#)) requires the DNR to review the state's list of endangered species at least every two years and amend the list by the additions or deletions that are appropriate. These additions and deletions are based upon research conducted by our biologist, approval from the Nongame Bird Technical Advisory Committee, as well as other scientific data ([IC 14-22-34-10](#)). The definition of endangered species is found in [IC 14-22-34-1](#).

If the cerulean warbler isn't listed as an endangered species in Indiana, it could become extinct in this state. State law in [IC 14-22-34-11](#) does require the DNR to add species to the endangered species list when necessary. Furthermore, it is the mission and statutory authority of the DNR to protect populations, and the populations of cerulean warblers have been declining for many years. It is now necessary to list them as endangered so that their habitat can be protected to provide for their continued existence in Indiana. The U.S. Fish and Wildlife Service (USFWS) is also considering whether or not to list the cerulean warbler on the federal endangered species list. A decision is expected in the next two months. If the cerulean warbler is listed on the federal endangered species list, it must be listed on Indiana's endangered species list since it nests and breeds in Indiana. cerulean warblers are a species of special concern in Ohio and Michigan and a threatened species in Illinois. The cerulean warbler is declining throughout its range, prompting the USFWS to review its status for federal listing. They nest in multiple areas around the state, but they are scattered and sparse, with only six confirmed breeding sites in Indiana. The DNR could wait until the cerulean warbler becomes listed on the federal endangered species list, but it may be too late by that time to keep them from being extirpated from Indiana.

Cerulean warblers are already protected from being taken from the wild, including their nests and eggs, under the federal Migratory Bird Treaty Act. However, this law does not protect their habitat. Because this species is very rare in Indiana, it is only found in a few scattered areas around the state and is not likely to affect very many permit applications. Approximately 1,500 environmental reviews are done each year that would include a determination of whether or not endangered species are found in that project site. Even with all of the birds currently on the state's endangered species list, 27, very few permit applications (less than 50 a year) involve sites where endangered species of birds are found.

None of the other proposed rule changes will affect small businesses.

- Supporting Data, Studies, or Analyses: The number of permit applications was taken from the number of permit applications received in one year by the DNR and the fact that cerulean warblers are only confirmed in six sites, and probable in 59 other sites in Indiana. This data was obtained from the Indiana Breeding Bird Atlas.

Regulatory Flexibility Analysis of Alternative Methods:

- Explanation of Preliminary Determination: In [312 IAC 9-4-14](#), the additional requirements that may be needed for small businesses that apply for permits to do construction in a floodway or along the shoreline of a public freshwater lake could be reduced with one of the following options:
 - (1) not add the cerulean warbler to the state's endangered species list at this time (wait until further decline is documented and the status is even more critical); or
 - (2) wait until the U.S. Fish and Wildlife Service adds the cerulean warbler to the federal endangered species list.

The DNR would not be able to exempt small businesses from this proposed rule. If small businesses were exempt, there would essentially be no need to add the cerulean warbler to the endangered species list, because their take and possession is already prohibited under the federal Migratory Bird Treaty Act. The current federal law only protects the birds, nests and eggs; it does not prevent habitat from being destroyed. Furthermore, the law needs to be the same for all entities, both individuals and businesses, in order to protect habitat for the cerulean warbler. Furthermore, it takes approximately one year for an administrative rule to become law, from the time that it is given preliminary adoption by the Natural Resources Commission until it is approved by the Governor and takes effect; therefore, it is important that the DNR start this process while there is a chance to prevent the cerulean warbler from becoming extinct in Indiana.

- Supporting Data, Studies, or Analyses: The proposed change to add the cerulean warbler to the state's endangered species list was based primarily on evidence of that decline from the following scientific research:
 - a. USGS roadside breeding bird survey data show a long term decrease in Indiana (-8.9%/year for 1966-2002; -11.3%/year for 1980-2002) and in the region (Region 3: -6.4%/year 1966-2002; - 8.9% 1980-2002). This is in contrast with several other woodland warbler species (e.g., worm-eating, black-and-white, and hooded warblers, and ovenbird) with populations that have been stable or slightly increasing in Region 3 over the last 35+ years.
 - b. Indiana Summer Bird Count data a consistent pattern of decline for northern, central and southern regions of the state. Statewide, 5.4 birds were reported per 100 party-hours from 1985 to 1990 compared to 3.6 per 100 party-hours from 1999-2003.
 - c. A long term compilation of statewide reports for cerulean warbler, compared to those of other species,

show a pattern of decline relative to other forest passerine populations (source Ken Brock compilation).

These data are independent from the breeding bird survey data.

d. The combined experience of members of the Nongame Technical Advisory Committee with specific areas in the state where populations have declined. None reported locations with increasing populations. The rapid rate of decline in this species requires that the DNR recommend endangered status. The Indiana Breeding Bird Atlas only has six confirmed breeding sites in Indiana.

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