

Notice of Public Hearing

LSA Document #12-403

Notice of Public Hearing

Under [IC 4-22-2-24](#), notice is hereby given that on December 6, 2012, at 6:00 p.m., at the Plainfield Public Library, 1120 Stafford Road, Plainfield, Indiana, the Natural Resources Commission will hold a public hearing on proposed amendments to [312 IAC 9-2-9](#) to clarify requirements for chasing wild animals with dogs during the hunting or taking season, [312 IAC 9-3-14](#) to remove the restrictions for nonresidents, restrictions on carrying firearms, and the license requirements to carry a handgun while chasing raccoons and opossums, [312 IAC 9-4-2](#) to add license requirements for taking waterfowl, [312 IAC 9-4-5](#) to add the season for taking lesser snow geese and Ross's geese and specify license requirements for taking geese, [312 IAC 9-4-7.2](#) to remove Rusty's blackbirds from the list of species of birds that can be taken without a permit, [312 IAC 9-4-15](#) to add the monk parakeet as an exempted species of bird, [312 IAC 9-6-1](#) to add a definition of Asian carp, specify the common names for the species of black bass, and amend scientific names, [312 IAC 9-6-6](#) to modify the location of one area closed to fishing and add a new area, [312 IAC 9-7-2](#) to add the use of the crossbow, add the ability to take Asian carp by various methods, remove Oliver Lake as an area where an individual may take smelt, and add bowfishing equipment and the use of the crossbow for taking certain species of fish on rivers and streams, [312 IAC 9-7-3](#) to remove Gibson Lake as a location where channel catfish may be taken without regard to a bag limit, [312 IAC 9-7-12](#) governing the size limit of walleye taken from the Elkhart River in Elkhart County, [312 IAC 9-7-13](#) to eliminate the daily bag limit for lake trout, [312 IAC 9-7-16](#) to allow the use of a crossbow and prohibit snagging on the Ohio River, [312 IAC 9-9-3](#) to remove the references to mussel harvesters and buyers licenses, [312 IAC 9-9-4](#) to add the rayed bean as an endangered species of mussel, and [312 IAC 9-10-10](#) governing the special hunting permit for a person with a disability by clarifying requirements and eliminating deadlines for submitting applications.

[IC 4-22-2-24\(d\)\(3\)](#) Justification Statement: The changes to [312 IAC 9-4-5](#) add the special late season for taking a lesser snow goose or a Ross's goose. This special season has been allowed by temporary (emergency) rule for several years as the result of a special federal conservation order. In an effort to eliminate the need for a temporary (emergency) rule each year, these same provisions are being included in the permanent rule. This new language is not likely to increase the sale of hunting licenses or waterfowl stamps because this special season has been allowed for several years, and the majority of these hunters already hunt other waterfowl during the regular seasons.

The change to [312 IAC 9-4-7.2](#) removes the rusty blackbird from the list of species that can be taken without a permit if committing or about to commit depredation or constituting a health hazard or nuisance. The federal law was recently amended in 50 CFR 21.43 that removes rusty blackbirds from this list; therefore, this change is needed to comply with federal law. A state permit would also now be required by removing the rusty blackbird from this rule pursuant to [IC 14-22-6-1](#) and [IC 14-22-6-2](#). The DNR believes that fewer than five state permits will need to be issued each year to authorize the taking of nuisance rusty blackbirds; the permit is free of charge and only requires staff time and the mailing and copying of the permit.

Changes to [312 IAC 9-6-6](#) clarify the area closed to fishing in the Little Calumet River in Porter County because the existing description of the area is problematic. New language also closes an area to fishing near the new sea lamprey control barrier in Trail Creek in LaPorte County 100 feet upstream and downstream of the structure. This addition is needed to prevent fishing from occurring near this barrier where the fish are likely to stockpile, creating an unfair advantage. This change that affects a little over 200 feet of Trail Creek is not likely to affect the sale of fishing licenses since there are many other places to fish nearby.

The changes to [312 IAC 9-7-2](#) remove Oliver Lake from the location where smelt may be taken in subsection (l). There are few, if any, smelt left in the lake, making this language confusing to the public. This will not affect the sale of fishing licenses because there are few if any smelt in the lake. Additional changes add Asian carp to the list of species that can be taken and add the use of the crossbow and bowfishing equipment for the taking of suckers, carp, Asian carp, gar, bowfin, buffalo, or shad from rivers and streams. The DNR wants Asian carp to be taken from these waters since they are an exotic species that negatively affect our native fish populations. The addition of bowfishing equipment and the use of the crossbow may increase the sale of fishing licenses by approximately 100 per year. Resident annual fishing licenses cost \$17 each. If an additional 100 of these licenses were sold each year, revenue for the Fish and Wildlife Fund (39745) would be in the amount of \$1,700, although non-DNR license retailers get \$0.75 per license. It is not possible to determine how many licenses would be sold at DNR properties vs. other retailers, and the DNR is unable to determine how many nonresidents may obtain an Indiana fishing license for this purpose.

The change in [312 IAC 9-7-3](#) removes Gibson Lake from the locations where channel catfish can be taken without regard to bag limit. Gibson Lake in Gibson County was closed to public fishing by Duke Energy in 2007

based on selenium levels in the fish, and it does not appear it will reopen to public fishing. Therefore, this rule is confusing to the public and unnecessary. Because it has already been closed to fishing by Duke Energy, this change should not affect the sale of fishing licenses.

The change in [312 IAC 9-7-12](#) will extend the 15 inch walleye size limit on the St. Joseph River up the Elkhart River in Elkhart County from its confluence with the St. Joseph River to the first dam (about 0.6 miles). The Elkhart River currently has a 14 inch walleye size limit. The confluence of the two rivers is a walleye fishing hotspot. The different size limits at this location make it tempting for some anglers to keep 14 inch walleyes they catch from the St. Joseph River and claim they were taken from the Elkhart a few yards away. Regulating this defined area with a single walleye size limit (15 inches) will clear up this issue and support walleye management objectives. This change is also not likely to affect the sale of fishing licenses since only a small area is affected and only the size limit is being changed.

The change in [312 IAC 9-7-16](#) add the crossbow as a legal means of taking exempted species of fish in subsection (c) and allow bowfishing equipment, crossbow, fish spear, jig, spear gun, or underwater spear to take species such as Asian carp on the Ohio River. Additional rule language has been added that clarifies that the snagging of paddlefish is prohibited in the Ohio River. In 2009, the rule language allowing the snagging of fish in the Ohio River was removed with the intent to prohibit that activity. However, enforcement of this prohibition has been difficult since snagging is not expressly prohibited as it is in the rule governing sport fishing in inland waters. The DNR does not know of anyone who purchases a fishing license simply to snag fish on the Ohio River. The addition of bowfishing equipment and the use of the crossbow may increase the sale of fishing licenses by approximately 100 per year. Resident annual fishing licenses cost \$17 each. If an additional 100 of these licenses were sold each year, revenue for the Fish and Wildlife Fund (39745) would be in the amount of \$1,700, although non-DNR license retailers get \$0.75 per license. It is not possible to determine how many licenses would be sold at DNR properties vs. other retailers.

The change to [312 IAC 9-9-4](#) adds the rayed bean to the list of state endangered species. The U.S. Fish and Wildlife Service recently added the rayed bean to the list of federally endangered species in 50 CFR 17.11, making the collection of these species prohibited by federal law without a federal endangered species permit. No mussels or dead shells can currently be taken without a scientific purposes license under [312 IAC 9-9-3](#). However, making it an endangered species could increase the number of scientific purposes licenses that are issued because of additional research on the species; however, this is likely to result in less than five license applications each year. Each scientific purposes license costs \$10, and the revenue is deposited in the Fish and Wildlife Fund (39745). Therefore, not more than \$500 in revenue is estimated for this change. Businesses, local government entities, and individuals could be affected if they plan any development in an area where the rayed bean is found. Construction in a floodway where this mussel is found could require additional mitigation or other measures to be taken to eliminate or reduce impacts to the mussel. However, this mussel is found only in the Tippecanoe River (eight counties), Lake Maxinkuckee (Marshall County), and Sugar Creek (Johnson and Shelby counties).

The changes to [312 IAC 9-10-10](#) eliminate requirements for submitting applications for a special permit for a hunter with a disability by a certain deadline, allow a licensed nurse practitioner (not just a physician) to sign a statement of disability, remove language that is no longer relevant (such as the use of the crossbow in subsection (f)), and make other technical corrections. These changes will benefit applicants who apply for this special permit by not having to submit an application as early in the year, especially if they are injured after that date, and will reduce the costs for applicants by allowing licensed nurse practitioners to sign and attest to his or her disability. This permit is free of charge; therefore, there will be no fiscal impacts to the state and no new costs for regulated entities.

The number of individuals who are directly affected by these changes is expected to be thousands of individuals that chase raccoons and opossums outside the season, approximately 100 individuals that hunt lesser snow geese and Ross's geese in the late season, five individuals/businesses that are impacted by rusty blackbirds or monk parakeets, and approximately 250 individuals that apply for the hunting permits for a person with a disability. Other individuals that will be affected, but numbers are unknown, are those that fish in the Little Calumet River in Porter County and Trail Creek in LaPorte County, those that wish to bowfish or use a crossbow on inland waters, those who fish in the Elkhart River near the St. Joseph River in Elkhart County, and the anglers that fish the Ohio River.

The number of people that hunt lesser snow geese and Ross's geese in the special late season was obtained from the DNR Division of Fish and Wildlife's harvest information, and the number of applicants for the hunting permit for person with disabilities was taken from the DNR Division of Fish and Wildlife's database of permits that have been issued the past few years.

The number of those who will use bowfishing equipment or crossbows, or both, is simply an estimate for a rule that impacts anglers statewide, but there is no state bowfishing association, survey, or other means to have a more accurate number. The estimated number of those impacted by the changes concerning the rusty blackbird and monk parakeet are based on the issuance of permits over the past two years.

The benefits and costs of the proposed changes were obtained from staff of the DNR Division of Fish and

Wildlife.

The other proposed rule amendments in this package do not impose requirements or costs under [IC 4-22-2-24\(d\)\(3\)](#).

Copies of these rules are now on file at the Indiana Government Center North, 100 North Senate Avenue, Room N501 and Legislative Services Agency, Indiana Government Center North, 100 North Senate Avenue, Room N201, Indianapolis, Indiana and are open for public inspection.

Bryan W. Poynter
Chairman
Natural Resources Commission

Posted: 09/26/2012 by Legislative Services Agency
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