

Notice of Public Hearing

LSA Document #17-262

Notice of Public Hearing

Under [IC 4-22-2-24](#), notice is hereby given that on August 17, 2017, at 6:00 p.m., at the Plainfield-Guilford Township Public Library, 1120 Stafford Road, Plainfield, Indiana, the Natural Resources Commission will hold a public hearing on proposed amendments to add [312 IAC 9-1-3.2](#) defining the term "aquatic life". Amends [312 IAC 9-6-1](#) governing minnow traps. Amends [312 IAC 9-6-5](#) to require the tagging of fishing equipment left unattended. Amends [312 IAC 9-6-6](#) to open a section of Trail Creek and the Little Calumet River for fishing year-round. Adds [312 IAC 9-6-12](#) governing the gifting of fish. Amends [312 IAC 9-7-3](#) governing the taking of catfish. Amends [312 IAC 9-7-5](#) governing the taking of northern pike. Amends [312 IAC 9-7-6](#) governing the taking of black bass. Amends [312 IAC 9-7-13](#) to increase the bag limit for lake trout taken from Lake Michigan. Amends [312 IAC 9-7-14](#) governing species of fish with no bag limit. Amends [312 IAC 9-7-15](#) governing the taking of minnows. Amends [312 IAC 9-7-16](#) governing sport fishing on the Ohio River. Amends [312 IAC 9-8-1](#) governing general requirements and definitions for commercial fishing. Amends [312 IAC 9-8-2](#) governing commercial fishing on inland water. Amends [312 IAC 9-8-6](#) governing commercial fishing on the Ohio River. Amends [312 IAC 9-8-7](#) governing the roe harvester's license. Amends [312 IAC 9-8-8](#) governing the roe dealer's license. Repeals [312 IAC 9-7-9](#), [312 IAC 9-7-10](#), [312 IAC 9-8-3](#), [312 IAC 9-8-4](#), and [312 IAC 9-8-5](#).

[IC 4-22-2-24\(d\)\(3\)](#) Justification Statement: The Department of Natural Resources (DNR) is proposing amendments to several rules in this package.

[312 IAC 9-1-3.2](#): Definition of "aquatic life" is added to provide a comprehensive definition that can be used in other rules pertaining to aquatic species.

[312 IAC 9-6-1](#): Definition of "minnow trap": Increases the opening of the throat of legal minnow traps in subdivision (64) to be no more than two inches diameter (instead of the current one inch). This would allow larger crayfish to be collected.

[312 IAC 9-6-5](#): Requires the tagging of a fish-holding basket, live box, live net, or any other structure or equipment in which aquatic life is contained or held and left unattended. This does not include live wells or other devices that hang over the side of a boat or are located within a boat. Fish that are kept in unattended live baskets in public waters (lakes, rivers, streams, etc.) create an enforcement issue for a number of reasons. One, it is nearly impossible to determine ownership of these fish. Determining ownership helps establish who is responsible for the taking and potential sale of these fish. Fish located in public waters are property of the people of the state of Indiana, until reduced to one's possession by lawful means. Current regulations require fishermen to tag fish when gifting or leaving unattended in order to enforce bag limits, size limits, methods of taking, etc. It would stand to reason that the DNR should require the same when those live fish are kept unattended in public waters. Secondly, if live fish are kept collectively (from more than one fisherman) in a live box, this creates a larger problem for determining compliance with bag limits and size limits as well. Illinois currently has a regulation that requires these live boxes to be tagged with the owner's name and address, much like a trotline or limb line.

[312 IAC 9-6-6](#): Eliminates the closure of two streams for fishing from April 15 through June 15, thereby allowing fishing year-round in these two streams: the confluence of the west branch and east branch of the Little Calumet River where it enters the Portage Burns Waterway in Porter County up to the east branch to U.S. 20, and in Trail Creek in LaPorte County from the Franklin Street Bridge in Michigan City upstream to U.S. 35. The Division of Fish and Wildlife has moved stocking on both Trail Creek and the Little Calumet River upstream of the closed areas for biological and social reasons. On Trail Creek, stocking locations have been moved to allow the fish to spread out within the system both in the spring and fall of the year. This will also allow for imprinting further upstream, which when the trout and salmon return as adults, will draw them into upstream reaches of Trail Creek and provide additional fishing opportunities. On the east branch of the Little Calumet River, stocking of trout and salmon has been moved to Mineral Springs road just upstream from the closed area as a result of National Park Service rules. Only fall fingerlings are now being stocked in the Little Calumet, so there are no longer fish in the spring to protect.

Our research and data has shown that only about 4,000 fall fingerlings are caught from October to December, during the non-closure period. Of this we estimate that even if 50% do not survive, that would result in a mortality of 2,000 fingerlings. Of the remaining 2,000 fingerlings, approximately 3% would survive and return as adults. That would equal 60 adults that could return to the fishery. If their numbers are transferred to the spring fishery, the streams are being closed for 75 days to protect 60 fish. The DNR believes that it is more important to provide increased spring fishing opportunity for Hoosier anglers during the spring adult steelhead spawning period. Additionally, it would open lower sections of both rivers for fishing opportunities for large and smallmouth bass, crappie, walleye, pike, and catfish. All of these opportunities are currently not accessible due to the closures. Other Lake Michigan states that stock tributaries in the spring do not have closures to protect newly

stocked yearling steelhead or coho salmon. The same holds true with our St. Joseph River trout and salmon stockings.

[312 IAC 9-6-12](#): Restrict the "gifting" of sport-caught fish to licensed commercial fishermen, roe harvesters, roe dealers, and to others for the purpose of stocking pay lakes. There is a high demand for several of Indiana's commercial fish species. This idea has been generated out of the continued demand of our roe-bearing species (paddlefish, shovelnose sturgeon, and bowfin) and the more recent demand for trophy catfish taken from public waters and stocked in privately owned pay lakes. The DNR does not have a problem with the genuine spirit of "gifting" fish until the "gifting" is used as a disguise to profit those involved on the giving and/or receiving end of this exchange. These fish are being taken from our public waters with sport fishing methods and subsequently "gifted" to commercial fishermen or stocked in pay lakes, both of whom profit from this exchange.

[312 IAC 9-7-3](#): Allow no more than five channel catfish to be taken per day from these three locations: Fidlers Pond (Elkhart County), Failing Lake (Steuben County; also known as Gentian Lake), and Flat Fork Creek Park Ponds A and B (Hamilton County). This would promote or enhance sustainability of fishing opportunities at these three lakes where harvest is likely to negatively impact the quality of fish populations due to factors that might include: intense levels of fishing pressure and subsequent harvest, lake characteristics that result in low fish production potential, or other unique fishery characteristics.

[312 IAC 9-7-5](#): Increase the statewide minimum size limit to 24 inches for northern pike and modify the statewide daily bag limit of three to include no more than one per day over 30 inches. Hamilton Lake (Steuben Co.) would be the only exception to the statewide rule, where the daily bag limit would be six northern pike per day with no minimum size limit and the daily bag could include no more than one per day over 30 inches. The current regulation was established to distribute the catch and protect adults until they could spawn at least once. However, recent survey data indicates that the minimum size limit for northern pike should be increased to 24 inches because females are not mature until they reach this length threshold. Increasing the minimum size limit to 24 inches would better align with the current regulations established by neighboring states and protect females until they could spawn at least once. Implementation of a bag limit on the largest northern pike (not more than $1 \geq 30$ inches) will protect large fecund females that have the potential to reach trophy sizes. Opportunities to catch large northern pike at Hamilton Lake have declined and surveys indicate that the population has an over-abundance of small northern pike. Therefore, the proposed "Hamilton Lake exception" aims to: (1) allow anglers to utilize the abundant population of small northern pike; (2) enhance the size structure by increasing the number of northern pike ≥ 30 inches; and (3) ensure that natural reproduction of northern pike is sustained by large fecund females.

[312 IAC 9-7-6](#): These changes in subsection (d) would remove the slot limit for largemouth bass on the three lakes in Shakamak State Park and four lakes in the Hoosier National Forest in Perry County, making the largemouth bass size limit the statewide limit of 14 inches. Gizzard shad were found in large numbers on three lakes in Shakamak State Park and four lakes in the Hoosier National Forest during recent fisheries surveys this year. Other lakes where gizzard shad have taken over have shown a dramatic decrease in bluegill sizes and large decreases in bluegill angler numbers (most recently West Boggs Creek Reservoir and Patoka Lake). The lakes are currently managed under a 12 to 15 inch protected largemouth bass size slot limit. This slot limit is designed for optimum largemouth bass harvest; however, since gizzard shad are now abundant it needs to be changed to a 14 inch largemouth bass minimum length limit (the statewide rule in [312 IAC 9-7-6\(c\)](#)). The 14 inch minimum length limit is designed to reduce bass harvest and increase largemouth bass numbers. The increase in the largemouth bass population is needed to help reduce the gizzard shad population by predation, which in turn will benefit the bluegill population by reducing interspecific competition. Increased gizzard shad predation is our only feasible method to helping save the bluegill fisheries at these lakes.

The changes in subsection (i) would promote or enhance sustainability of fishing opportunities at these waters where harvest is likely to negatively impact the quality of fish populations due to factors that might include: intense levels of fishing pressure and subsequent harvest, lake characteristics that result in low fish production potential, or other unique fishery characteristics.

[312 IAC 9-7-9](#) and [312 IAC 9-7-10](#): Language for these two rules has been incorporated into [312 IAC 9-7-14](#). No changes are made to the language currently in these two rules for crappie and redear sunfish.

[312 IAC 9-7-13](#): This change increases the daily bag limit for lake trout taken in Lake Michigan and its tributaries to three per day instead of two. Lake trout are a frequent target by charter fishing boats in summer and by recreational anglers in spring and fall. However, since Michigan's limit is three lake trout and Indiana's is two, frequently these boats leave Indiana waters to catch lake trout in Michigan. Furthermore, anglers catching three lake trout in Michigan waters cannot fish Indiana waters upon their return as their legal Michigan bag limit of lake trout exceeds that of Indiana. These factors combine to cost Indiana anglers additional fishing opportunities as well as costing the state one-day license sales from charter trips. If the bag limit was raised in Indiana to three fish, some charter boats would remain in Indiana to fish, which would possibly increase the sale of one-day fishing licenses. Additionally, having the same bag limit as Michigan would simplify regulations and be less confusing for anglers, as many of them fish in both states' waters during the same fishing trip.

[312 IAC 9-7-14](#): This change would limit the taking of bluegill, redear sunfish, crappie, and all other species

of fish listed in this rule to an aggregate bag limit of 15 fish of any species. This change would promote or enhance sustainability of fishing opportunities at waters where harvest is likely to negatively impact the quality of fish populations due to factors that might include: intense levels of fishing pressure and subsequent harvest, lake characteristics that result in low fish production potential, or other unique fishery characteristics. The locations would be Fidlers Pond (Elkhart County), Failing Lake (Steuben County; also known as Gentian Lake), and Flat Fork Creek Park Ponds A and B (Hamilton County).

312 IAC 9-7-15: This change would prohibit the use of a cast net, seine, or any other device used to collect bait extending from a dam downstream 500 yards, including the Ohio River. Asian carp are known to congregate below dams and can be easily confused with other bait fish. These tail water areas are popular areas for people to collect bait. Implementing this rule would help prevent the spread of Asian carp into other aquatic systems and assist law enforcement by eliminating the conflict of bait collection and mis-identification of target bait species (some species look very similar).

312 IAC 9-7-16: These changes require the tagging of setlines and trotlines that are left unattended in the Ohio River, making it consistent with requirements for setlines and trotlines set on inland waters ([312 IAC 9-7-2](#)). The use of fish spears, spear guns, and underwater spears are already allowed in subsection (h) for these species of fish but are being combined in subsection (c) to help users understand what equipment can be used to take these species.

312 IAC 9-8-1: Adds definitions of commercial fishing gear, hoop nets, screened eggs, seines, and slat traps to clarify legal commercial fishing gear and requirements for screened eggs. Requires the tagging of a fish-holding basket, live box, live net, or any other structure or equipment in which aquatic life is contained or held and left unattended. This does not include live wells or other devices that hang over the side of a boat or are located within a boat. Also prohibits the possession of sport fishing gear or participation in a sport fishing activity while onboard a boat in which commercial fishing gear is actively being set, retrieved, or transported, is en route to set or retrieve commercial fishing gear, or that is transporting fish captured with commercial fishing gear.

The commercial fishing task force has experienced a greater number of fishermen (both commercial and sport fishermen) that are using live baskets or live nets to keep fish alive before processing them or selling them. Many of these live baskets are used to keep sturgeon and paddlefish (roe-bearing species) alive and fresh until such time when the roe can be removed and sold to potential buyers. At present, roe harvesters have to travel great distances to sell the roe from these fish. As a result, they are pressed for time to get the unprocessed roe to the dealer for processing before the fish or the roe begins to spoil. Current federal regulations and state regulations in Indiana restrict the removal and processing of the roe to dealers with a registered HACCP plan, filed with the USFDA. Therefore, most roe harvesters attempt to keep the harvested fish alive and fresh long enough to facilitate the transport to a roe dealer, or to allow the dealer to come to them (which could be once or twice a week). Many of these roe harvesters use live boxes to keep these fish alive, and do it in a clandestine fashion in order to prevent theft of the fish. Others keep their fish in live baskets that are near their residence and can be easily seen. Trophy 'cat' fishermen have also been known to use these same procedures to facilitate the catch and release of large catfish during catfish tournaments, or to facilitate the live transportation of trophy catfish to pay lakes. Therefore, the tagging/labeling of these live baskets/boxes is important to know whose fish they are.

It is understood that many people that purchase a commercial fishing license, particularly in inland waters, only use the nets for a couple of months out of the year and use them in conjunction with their sport fishing gear (bank poles and trotlines). Allowing sport fishing activities (in which catch is not reported) to coincide with commercial fishing activities (in which fish that are kept are required to be reported) can lead to inaccurate commercial fishing harvest reports or complete noncompliance with commercial fishing monthly reports. If checked by an enforcement officer, a commercial fisherman running nets could just simply claim that all fish were caught via sport fishing methods. The required commercial fishing monthly harvest reports are an important tool for fisheries managers because they allow managers to analyze trends in commercial harvest, and they imply potential changes to the fisheries over time. Therefore, compliance and accurate reporting are necessary to be able to properly analyze these trends, and the addition of this proposed rule should increase reporting compliance of commercial fishermen.

312 IAC 9-8-2: Changes in subsection (h) clarify the reporting requirements to match current state forms and remove language for Lake Michigan license holders since no commercial fishing is allowed in Lake Michigan.

Language currently in [312 IAC 9-8-4](#) and [312 IAC 9-8-5](#) is inserted into this rule as subsections (i) and (j) to help commercial fishing license holders see all of the rule language in one place. This also helps prevent duplicate language in multiple rules for the same license holders. Changes in subsections (i)(3) and (j)(3) clarify legal commercial fishing gear and prohibits their use in a tributary of the Wabash River. Some of these are already illegal with the prohibition on the use of wings or leads on nets. Others are archaic language used to describe the devices, or the devices are no longer used. Many of the approved commercial fishing devices allowed by rule have not been used by commercial fishermen in years, sometimes decades. Commercial fishing harvest reports from commercial fishermen indicate that many of the items of gear reported to have been used does NOT include items such as dip-nets, basket-nets, basket-traps, or trap-nets. Some of these terms can be

used synonymously with each other and can virtually mean the same thing. In addition, it has been documented that these nets have been modified in ways that they can no longer be considered the device that they were intended to be used (i.e. hoop net). Documented cases where hoop nets with leads were used as entanglement devices allowed commercial fishermen to use them as 'hoop nets with leads', when in reality they became a 'gill net with a turtle net at the end of it'. Defining these two devices affords greater clarity to both commercial fishermen and enforcement personnel, without affecting the effectiveness of the device.

[312 IAC 9-8-3](#): Repeals the rule authorizing commercial fishing on Lake Michigan. Commercial fishing was closed in 1997 pursuant to [IC 14-22-14-9](#) and may not reopen. There is no need to have a section of commercial fishing regulations designated to commercial fishing on Lake Michigan if there is no commercial fishing allowed there. Commercial fishing on Lake Michigan does not look like it will open up again in the foreseeable future due to the yellow perch population.

[312 IAC 9-8-4](#) and [312 IAC 9-8-5](#): Repeals this language since it has been added into [312 IAC 9-8-2](#) in subsections (i) and (j).

[312 IAC 9-8-6](#): Adds the language "at which time all fish taken by the gear must be removed" to prevent commercial fishermen from leaving fish (particularly roe-bearing species and trophy catfish) in their nets for extended periods of time in order to comply with harvest or size restrictions. Simply stated, this addition makes it clear to commercial fishermen that the fish have to be removed from the net each time the net is tended.

Also clarifies that commercial fishing gear cannot be used beyond the bank of the Ohio River, the ordinary high watermark of the Ohio River, or within 50 yards of the mouth of a stream. An often asked question is "Where does a tributary end and the river begin?" This is an important question to answer accurately because commercial fishing is permitted on the main stem of certain rivers but restricted in all but a few tributaries. This is a concern because our roe-bearing species and many other commercial species commonly school in the mouths of many tributaries, and the use of commercial fishing gear in these areas could threaten already stressed populations. The need for this change stems from the varied interpretations by commercial fishermen as to the location of the dividing lines between our rivers and their tributaries. The locations of these dividing lines are particularly subjective in high water and flood conditions. There is a need to clarify where the dividing line is between a river and its tributaries in order for commercial fishermen to know which waters are open to commercial fishing and which waters are restricted. This problem has arisen out of questions generated by both commercial and sport fishermen when attempting to either clarify and/or push the limits of their fishing opportunities.

Due to the absence of the definition of "river" in [IC 14-22](#) and to prohibit commercial fishing activity in tributaries closed to commercial fishing, a rule modification is necessary. This issue is also tied closely to commercial fishing activity being conducted beyond the "ordinary high watermark" on our rivers open to commercial fishing, which is addressed in a separate proposed rule change.

The need for this change stems from the varied interpretations by commercial fishermen of the boundaries of a river. The determination of the boundaries of a river varies greatly depending on who is providing the definition. High water and flood conditions create opportunities for some commercial fishermen to expand the scope of their fishing range into waters that are intended to be restricted to commercial fishing. This situation is closely tied to the subjective determination of the dividing line between a river and its tributaries. Due to the absence of the definition of "river" in [IC 14-22](#) there exists a need to clarify the limits of commercial fishing activity for the Ohio River, the Wabash River, and inland rivers open to commercial fishing. The appropriate limits for commercial fishing activity should not go beyond the ordinary high watermark as defined in [312 IAC 1-1-26](#). Prohibiting the use of commercial fishing gear beyond the ordinary high watermark will limit the use of commercial fishing activities to public waters and restrict the encroachment of fishing activities onto private property.

Also makes [312 IAC 9-8-6\(l\)](#) read the same as [312 IAC 9-8-2\(h\)](#) and to conform to what commercial fishers are expected to report on the state forms reporting the monthly harvest. Language for commercial fishing reporting guidelines are currently not similar for inland waters and the Ohio River. The proposed changes are an effort to 'clean up' the current language to make reporting requirements more similar and clear for all commercial fishers. Also, all reports should be required to be written in ink to prevent smudging or accidental erasing of data on them. The DNR has already made efforts to modify the monthly harvest reports for the commercial fishers to ease some potential confusion, and should do the same with the corresponding regulations. These proposed regulations will help get more accurate harvest information out of the commercial fishing reports, which in turn will increase our ability to analyze trends regarding commercial fisheries.

For the Ohio River reporting guidelines, new language to require commercial fishermen to report the number of catfish of each species and the number of "trophy" catfish of each species is necessary to conform to what our required monthly reports are asking. The Ohio River monthly reports were modified around 2012 in an effort to gain more detailed information about the number of catfish and "trophy" catfish harvested, but the reporting requirements were not updated in the regulations. This could allow fishers to leave that portion of the reports blank because the regulations do not explicitly state that numbers of catfish are required to be reported.

[312 IAC 9-8-7](#): Allows the sale of processed roe (caviar) to anyone, but only allows the selling of roe or unprocessed roe only to licensed Indiana roe dealers. This is not well defined in the current regulations, and we do not want random individuals possessing roe. Only licensed roe harvesters and dealers should be permitted to

possess roe. This allows the DNR to keep track of where the roe originated from and where it is going and is consistent with requirements in [IC 14-22-13-2.5](#).

[312 IAC 9-8-8](#): Requires a roe dealer's license to purchase screened eggs, not just roe, or to process roe or screened eggs into caviar for human consumption. Also requires records to be maintained for a period of five years.

There is not expected to be any change in the sale of sport fishing or commercial fishing licenses, roe harvester licenses, or roe dealer licenses as the result of these rule changes. Fish caught under a sport fishing license already cannot be sold ([IC 14-22-9-7](#)). The restriction on collecting minnows in [312 IAC 9-7-15](#) within 500 yards of a dam will help prevent the spread of Asian carp to other aquatic systems, hence reducing the amount of money that may have to be spent for future research or eradication projects. The locations where commercial fishing gear can be used in inland waters ([312 IAC 9-8-2](#)) are not significantly different than currently allowed, just clarifies it in the rule.

The DNR has the statutory authority to allow the taking of wild animals and to establish the methods, locations, and means of taking wild animals in [IC 14-22-2-6](#). The DNR is also required to develop rules that are based upon "(A) The welfare of the wild animal; (B) The relationship of the wild animal to other animals; and (C) The welfare of the people" in [IC 14-22-2-6](#). "Wild animal" is defined in [IC 14-8-2-318](#) and includes fish. The Natural Resources Commission has the statutory authority to adopt rules pursuant to [IC 14-10-2-4](#).

The benefits and costs of the proposed changes were obtained from staff of the DNR Divisions of Fish and Wildlife and Law Enforcement. Sources of information for determining costs and benefits were obtained from staff of the DNR Division of Fish and Wildlife and Law Enforcement.

The number of commercial fishing license holders, licensed roe dealers, and licensed roe harvesters was obtained from the DNR Division of Fish and Wildlife's databases of license holders.

Individuals requiring reasonable accommodations for participation in this event should contact the Natural Resources Commission at:

Indiana Government Center North
100 North Senate Avenue, Room N103
Indianapolis, IN 46204-2273
Attn: ADA Compliance

or call (317) 232-4699. Speech and hearing impaired callers may contact the Commission via the Indiana Relay Service (711) or (800) 743-3333. Please provide a minimum of 72 hours notification.

The proposed rule amendments together with any data, studies, or analyses relied upon under [IC 4-22-2-24\(d\)](#) may be inspected and copied at the Natural Resources Commission, Division of Hearings, Indiana Government Center North, 100 North Senate Avenue, Room N103, Indianapolis, Indiana.

Bryan W. Poynter
Chairman
Natural Resources Commission

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An [html](#) version of this document.