NATURAL RESOURCES COMMISSION

Roosevelt Room, Fort Harrison State Park Inn
5830 North Post Road, Indianapolis (Lawrence), Indiana

Minutes of July 20, 2010 Meeting

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Patrick Early
Mark Ahearn
Thomas Easterly
Brian Blackford
Donald Ruch
Doug Grant
Robert Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Debra Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Chris Smith	Executive Office
Shelley Reeves	Executive Office
Cheryl Hampton	Executive Office
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Gary Langell	Fish and Wildlife
Bill James	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
James Kershaw	Fish and Wildlife
Steve Backs	Fish and Wildlife
Kari Evans	Legal
Scott McDaniel	Law Enforcement
Marvin Spainhour	Law Enforcement
John Bacone	Nature Preserves
Tom Swinford	Nature Preserves
Ginger Murphy	State Parks & Reservoirs
John Bergman	State Parks & Reservoirs

Dan Ernst	Division of Forestry
Jon Eggen	Division of Water
Jim Hebenstreit	Division of Water
Phil Bloom	Communications
Kara Vetter	Indiana State Museums & Historic Sites

GUESTS PRESENT

Justin Schneider	Jeremy Stackhouse	Alan Pope
Randy Cummings	Dustin Nichols	Kim Wittig
Karin McKenna	Rick Snodgrass	Dave Wagner
Marty Kraus	Brooks Langeloh	Lenny Farlee
Kurt Dorman	Karl Shank	Donald Scaggs
John Collins	Keith Dutton	Lynn Dennis
Tom James	James Turpin	Gary Dinkel
Jack Corpuz	Tim Nussbaum	Chad Zartman
Phil Nussbaum	Jeremy Shireman	Ron Snyder
Doug Petty	Greg Yazel	Joe Bacon
CeAnn Lambert	Clarence Williams	James Campbell
Don Shepherd	Herb Higgins	Randy Showalter
Judith Cieslak	Larry Owens	Judi Perez
Jack Hyden	Don LeCount	Greg Eley
Doug Allman	Matt Finney	Nancy Austin
Kristin Patterson	Steve Key	Don Gorney
Allen Pursell	Roger Chastain	Bill Herring
Gene Hopkins	Prescilla Herochik	John Goss
Joe Bacon		

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., EDT, on July 20, 2010, at the State Park Inn, Fort Harrison State Park, 5830 North Post Road, Indianapolis, Indiana. With the presence of ten members, the Chair observed a quorum.

Thomas Easterly moved to approve the minutes of the Commission's May 18, 2010 meeting. Mark Ahearn seconded the motion.

Commission member Doug Grant moved to amend the May 18, 2010 minutes. Ahearn seconded the motion to amend the minutes. Upon a voice vote, the motion carried.

Reports of the Director, Deputies Director, and Advisory Council

Director Robert Carter, Jr. provided his report. "The thing that DNR's been dealing with here lately is the Asian Carp issue." He explained that the Asian Carp is an invasive species which

has been invading Indiana's streams and rivers and has been present for approximately 15 years. Carter explained that Asian Carp are aggressive fish that can especially affect recreational boating and fishing. He added that the bighead carp are eating a lot of the plankton that our fish love and must have to survive on. "We're really aggressively trying to manage that." Director Carter informed that the Asian Carp has no natural predator, "so it's been tough and they're propagating out of control right now." He explained that other states have concerns also about the Asian Carp drifting upstream through the Mississippi watersheds, Wabash watersheds, the Great Lakes; both Lake Erie and Lake Michigan. He said that Lake Erie has shown evidence of Asian carp. He explained that the Department hopes to create natural and manmade barriers to keep the carp out of the Great Lakes. "It's taking a lot of time and a lot of energy from DNR's Division of Water, Phil Bloom with Communications and Division of Fish and Wildlife." Carter informed that DNR was "working closely" with the EPA and the Army Corps of Engineers and sister agencies, as well as Ohio, Illinois and Michigan DNR on the carp issue.

Director Carter relayed that DNR "is still trying to manage a tight budget." He noted that closing the fiscal year with a $1 billion dollar shortfall complicates the costly expense to control invasive species.

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. Davis explained that several trees were downed by high winds at the Veteran's home in Lafayette and that the Divisions of Forestry, Law Enforcement, Nature Preserves, and State Parks and Reservoirs responded to provide assistance in clearing the down trees.

Davis provided up update on the Ernie Pyle closure. He referenced the August 1 date by which the Friends group might have an alternative to the closure of the Ernie Pyle site. Davis informed that the Department has been in contact with the Friends group, local officials, the Hoosier Press Association and the Journalism School in Bloomington and said that all parties are "working toward a solution but don't feel they can meet the August 1, 2010 date." Davis said that the Friends group would provide an update on their progress at the September Commission meeting. He concluded, "I have high confidence that that's going to work out."

Ron McAhron, Deputy Director, Bureau of Resource Regulation, provided his report. He stated that DNR is "looking forward to the State Fair to put our message out in the DNR building, and look forward to folks visiting there to see what's going on." McAhron informed that the DNR was forming a new Water Resources Task Force that would be having their first meeting soon. He said that the task force will be looking at water availability and distribution across the state as well as challenges present in certain areas. The Division of Water will be actively involved as well as IDEM. So, we look forward to that and we'll try to keep you updated as things progress."

Patrick Early, Chair of the Advisory Council, reported that the Advisory Council met last month and said that items "dealt with" were on "today's" agenda.

CHAIR AND VICE CHAIR

Update on Commission and Committee activities

The Chair announced, "We say good-bye to Commissioner Larry Klein." Chairman Poynter explained that Klein's replacement would be present for the meeting in September.

Chairman Poynter stated that the matter of personnel is a statutory requirement that the Commission handles. The Chair pointed out that on nearly every NRC agenda there is a personnel issue to address and that they have "always been an issue of some awkwardness." Chairman Poynter noted that each of the DNR divisions have managers and division heads who do a great job hiring qualified experts for the various positions around the state. However, Chairman Poynter noted that recently that there has been interest by the NRC and the DNR's Executive office to streamline how the NRC addresses those personnel matters. Chairman Poynter explained that in the next several months an easier process will be developed. "It is an important issue, and one that by statute, the Commission has to deal with as it pertains to property managers and assistant property managers."

Mark Ahearn reported that the Commission's AOPA Committee would meet this afternoon at 1:30 p.m.

DNR, EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

The Chair asked whether there were any items for referral to the Advisory Council. No new topics were presented for referral to the Advisory Council.

PERSONNEL INTERVIEW

Consideration of personnel interview for the position of Property Manager at Yellowwood State Forest, Monroe County

Dan Ernst, Assistant State Forester with the Division of Forestry, presented this item. He explained the urgent need to fill the Assistant Property Manager position at Morgan-Monroe State Forest and Yellowwood State Forest. He said together the properties form "our largest state forest", and "we are trying to fill this position as quickly as possible due to the high recreation season and construction season." The position was submitted for a strategic hiring exception in May 2010, approved "a few weeks later", posted immediately, and then closed on July 17. Five candidates were selected for interviews, all of which meet or exceed professional requirements. "On a prior occasion," the NRC delegated authority to allow another division to conduct interviews and present recommendations to the NRC personnel delegate for conditional approval, subject to final approval at the next scheduled Commission meeting. Ernst said, "We

value the Commission's role in these appointments and recognize that this is not an ideal situation, but what we would like to request is that the Commission consider a similar process to allow us to get someone in place as quickly as we can. With the Commission not meeting again until September, we are really in a bind to try and fill this position."

Chairman Poynter reflected, "This is one of those areas that is a little challenging for us, because this is an extremely important property manager position." He offered to take responsibility for working with the division through the interviewing process, upon the condition the candidate would be brought to the September meeting for final approval.

Patrick Early asked if the Chair anticipated the Division of Forestry would contact him after a preferred candidate was identified.

The Chair responded, "Yes, I will interview that person and do what we normally do." He asked if any of the Commission members had objections or reservations regarding this approach. There were none expressed.

INDIANA STATE MUSEUM AND HISTORIC SITES

Consideration of request by Indiana State Museum and Historic Sites for approval of deaccession of items from its collection

Kara Vetter, representing the Indiana State Museum and Historic Sites [ISMHS], addressed the Commission. Vetter said that the ISMHS was requesting the NRC's approval of the spring 2010 list of items for deaccession. She explained that "as an active institution that is constantly improving its collection" the ISMHA must occasionally remove items from its collection. Vetter noted that there was "no logic" in maintaining objects that would never be placed on exhibit for educational outreach or research. She said that items found to be appropriate for the collection of other institutions are offered to those institutions within the State of Indiana. The remaining items are then sold at public auction, and the proceeds returned to the Artifact Acquisition Fund that is solely dedicated to building and improving the museum's collection.

Doug Grant moved to approve the deaccession of items. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Ten O'clock Line Nature Preserve, Brown County

John Bacone, Director of the Division of Nature Preserves, presented this item. Bacone informed that the proposed 33,339-acre Nature Preserve is located in the south west corner of Brown County State Park. He said that the tract of land has high quality upland and floodplain forest with at least 13 species of endangered, threatened, or rare plants and animals, including yellowwood trees and timber rattlesnakes. Bacone noted that the Division has been working with Indiana Trail Rider's Association and there are a number of horse trails that will continue to

exist in the nature preserve. He also explained that DNR has worked with the Hoosier Mountain Bike Association [HMBA] to accommodate the future potential for HMBA and the Division of State Parks and Reservoirs to connect to trails in the Yellowwood State Forest or the National Forest using the horse trails.

Bacone recommended the dedication of the Ten O'clock Line Nature Preserve.

Doug Grant moved to approve the dedication of the Ten O'clock Line Nature Preserve. Dr. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF STATE PARKS AND RESERVOIRS

Consideration of the preliminary adoption of amendments to 312 IAC 8-2-3 to reconcile with recent amendments to 312 IAC 9: Administrative Cause No. 10-034D

Steve Lucas, Director of Division of Hearings, presented this item. He reported that the proposed amendments are of a housekeeping measure. The primary purpose is to reconcile this rule section with amendments made through the Commission's comprehensive fish and wildlife rules enhancement project to 312 IAC 9. The amendments would clarify potential prior ambiguities, which existed regardless of the recent comprehensive fish and wildlife rules enhancement project, in cross-references between 312 IAC 8 and 312 IAC 9. "I think if the Commission gave this preliminary adoption, we probably wouldn't pursue this as a stand-alone, but would rather marry it with another more substantive rule but would go forward. Lucas presented the amendments for preliminary adoption.

Thomas Easterly moved to approve the preliminary adoption of amendments to 312 IAC 8-2-3 to reconcile with recent amendments to 312 IAC 9. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

The Chair noted that items for the Division of Fish and Wildlife were "quite substantive" and the majority of the comments were for those items (7 through 12). "As a matter of record, there a number of people who have asked to speak on a variety of different topics, and we will do our best to recognize as many as possible. There are a few incomplete cards and I don't know if you're for or against, so those are not going to be considered at this time. We have many others who have made their expression known if they are for or against, so we'll do those in the order that we have them here."

DIVISION OF FISH AND WILDLIFE

Comprehensive Fish and Wildlife Rule Enhancement Project: Report of smallmouth bass management

Mark Reiter, Director of the Division of Fish and Wildlife, presented this item. Reiter reported that the division was "not quite ready" to propose rule language. Reiter stated, "I'm working with a group of people who are very avid, smallmouth fishermen" and sought the opportunity to continue working with them to possibly bring some rule language to the next Commission meeting.

The Chair commented, "I know that this issue has been of consideration for some time. I would ask that this do come before our next Commission meeting so we that we can keep our schedule moving forward from that Comprehensive Fish and Wildlife Review Project."

Doug Grant moved to table Item 7 until the September Commission meeting. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

The Chair added, "Please do tell them we want this on the agenda for the next meeting."

Consideration for preliminary adoption of amendments to 312 IAC 9-7 and 312 IAC 9-8 governing the taking of catfish for both sport and commercial fishing; Administrative Cause No. 10-112D

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. Petercheff stated that the Division of Fish and Wildlife was proposing administrative rule changes governing catfish that would provide increased protection of the resource. She informed that the changes are in response to public concerns regarding increased harvest pressure on catfish, recently completed catfish research in the Wabash River, and ongoing cooperative fish management discussions with other Ohio River states. She stated that the changes also address the concerns brought forward to the Advisory Council in 2009 through the NRC's Comprehensive Fish and Wildlife Rule Enhancement Project. Petercheff noted that "currently" there is no limit to the number of large catfish that can be taken by sport and commercial fishing license holders, both in inland waters and the Ohio River.

Petercheff provided that on streams and rivers other than the Ohio River, the proposed change would increase the existing 10 inch minimum size limit on channel, flathead and blue catfish to 15 inches, which would apply to both sport and commercial anglers. She said that the amendments would allow both sport and commercial anglers to take only one flathead and one blue catfish per day if 35 inches or more in length and only one channel catfish per day if 28 inches or more in length.

Petercheff said that on the Ohio River, sport anglers would be able to take no more than one blue and one flathead catfish of 35 inches or more and one channel catfish of 28 inches or more each day. She said that an unlimited number of blue and flathead catfish less than 35 inches, and channel catfish less than 28 inches could continue to be taken, with no minimum size requirement on the Ohio River.

Petercheff said that for commercial anglers on rivers other than the Ohio River (such as the Wabash River), there would be an increase in the size limit from 10 to 15 inches for blue, flathead, and channel catfish, with a limit of no more than one blue and one flathead catfish that is 35 inches or more and one channel catfish of 28 inches or more per day.

Petercheff said that on the Ohio River, commercial anglers would be able to take no more than one blue and one flathead catfish of 35 inches or more, and one channel catfish of 28 inches or more per day. There would be no proposed bag limit for catfish under the 28 inches and no minimum size requirement.

Petercheff stated there are no proposed changes to the daily sport fishing bag limits on streams (including the Ohio River), with the exception of the large catfish, no minimum catfish size limit on the Ohio River, and no change to the daily sport fishing bag limit for catfish on lakes. "There is no commercial fishing permitted on lakes."

Petercheff concluded stating that the Department was requesting approval for preliminary adoption of the amendments**.**

The Chair stated, "As we consider this for preliminary adoption, one item that does stand out that I have an issue with, and I've heard that others have issues with, is allowing one channel catfish be taken per day, one flathead, one blue catfish be taken per day that is 35 inches or more in total length." He noted that somewhere between allowing the taking of an unlimited and one (1) would be a better way to go. Chairman Poynter noted that it seems quite restrictive, stating, "There's probably some room there in the middle."

Patrick Early commented, "I think part of this came up as a result of our comprehensive review project." Early said there was concern that a lot of large catfish were being harvested and then sold to pay lakes, placing tremendous pressure on the large catfish population. Early concurred with Chairman Poynter saying, "I don't think that the sport fishing; the people that are fishing with rod and reel and who are catching the fish and using them for food, is what's putting pressure on the fishery."

The Chair replied, "Thank you, and I know that was an outgrowth of what we looked at during that process, so I appreciate your comment."

Thomas Easterly questioned whether the number limit on catfish would be revisited before public hearings.

Director Carter noted that "it's not uncommon to catch four or five that size." He added that since "a lot of people" use the fish for food that it would affect a lot of people.

Bill James, of the Division of Fish and Wildlife, commented, "Those are the biggest, oldest fish in the population and they're relative rare." James noted that the Division did not draw a distinction between who is selling and who is eating those fish because the complete intent was to "try to leave more of those big fish out there"

The Chair recommended that the Commission preliminarily adopting the proposed draft noting that there is concern with the bag limit of one on the large catfish. Chairman Poynter noted his hope that as a natural outgrowth of the public comments that the bag limit on the large catfish changes. The Chair then provided the opportunity for further questions or comments.

Patrick Early moved to preliminary adopt amendments to 312 IAC 9-7 and 312 IAC 9-8 governing the taking of catfish for both sport and commercial fishing. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration for approval of a new non-rule policy (Information Bulletin #63) establishing youth free hunting days; Administrative Cause No. 10-087A

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, also presented this item. She reported that the new non-rule policy sets forth the dates for the youth free hunting days for the years 2010 and 2011. She informed that the purpose of the policy was to document the youth free hunting days. Petercheff stated that in the past the Division of Fish and Wildlife obtained approval from the DNR Director for the hunting dates, but that there was no document providing the hunting dates, other than in the hunting guide. Petercheff concluded, "This policy will be especially helpful for conservation officers."

Patrick Early moved to approve the new non-rule policy establishing youth free hunting days. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Consideration for preliminary adoption of amendments to 312 IAC 9-1-7 and 312 IAC 9-10-13 governing falconry licenses; Administrative Cause No. 10-088D

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. Petercheff explained that in October 2008, the U.S. Fish and Wildlife Service finalized changes to the regulations governing falconry licenses. Therefore the Indiana administrative rule governing falconry licenses, required amendments in order to comply with the new federal regulations. Petercheff noted that the majority of the proposed changes are federal requirements, but that some provisions are established by the state, including the season for taking birds from the wild for use in falconry and the falconry hunting seasons.

Petercheff explained that falconry is the sport of caring for and training raptors for pursuit of wild game, and hunting wild game with the raptors. She said that currently there are approximately 80 licensed falconers in the State of Indiana. Petercheff stated that the DNR met with the Indiana Falconer's Association concerning this rule proposal.

Petercheff explained that the proposed changes include:

1) Defining some terms related to falconry,
2) Specifying when a person can re-take the test after failing it the first or second time,
3) Extending the dates for taking eyasses and nestlings
4) Allowing an apprentice falconer to possess a Harris's hawk after initially possessing a wild red-tailed hawk or American kestrel,
5) Exempting some falconers from a state educational permit when using their raptors in conservation education programs as long as no compensation is provided,
6) Clarifying who can accompany a license holder while the license holder is hunting,
7) Increasing the bag limit for squirrels to 2 per raptor per day,
8) Clarifying that a licensed falconer can hunt from a stationary vehicle when hunting crows, starlings, English sparrows, rock (feral) pigeons, and Eurasian collared doves as long as the vehicle is on private property, and
9) Clarifying that a falconry license holder can carry a handgun while hunting provided they have a personal protection permit.

Petercheff explained that due to all the new language required in the federal law, it was determined through the NRC's Hearing Officer, that all the language be placed in a new rule. She noted that some revisions were made to the new rule since the last Advisory Council meeting and placement on the NRC's agenda. Petercheff stated that before this Commission meeting she had discussed the additional modifications, which lead to additional changes that she noted were highlighted in the rule language passed out to the members at the meeting.

The Chair commended Petercheff for all her efforts and meeting with organizations "to make these rules happen." He then invited Kurt Dorman to provide his comments.

Kurt Dorman, President of the Indiana Falconers Association addressed the Commission. He thanked the Chair and the members for reviewing the proposed falconry amendments. He said "Linnea has worked very closely with us to seek regulations that are clear and precise. She has done a fantastic job." Dorman stated that the Association was in support of the proposed amendments.

However he explained that he had not been able to find reference to a "permanent revocation" as the term is used Section (e)(3) of the proposed rule language. He said during conversations "this morning" Sandra Jensen informed she is currently reviewing the language. Dorman noted page 16 of the report and referenced section (ss) concerning potential suspension, denial or revocation of a license under IC 4-21.5, which specifies that revocation can occur on a period of 30, 60, 90 days or one year terms. He expressed that a permanent revocation seems "a little harsh."

Dorman added, "We want to see this preliminary adoption occur, but not under the terms if we can't come to an understanding about this permanent revocation. He indicated that if the permanent revocation change would be considered a major change to the document, then his preference would be to "halt" the decision for preliminary adoption until the next NRC meeting.

Jensen commented on the revisions provided by Petercheff. The revisions to 312 IAC 14-22-11-15 state that a person whose license or permit has been revoked may, by written request to the director, have a hearing on the revocation. Reiterating Dorman's comment concerning the revocation for 30, 60, 90 days or one year, Jensen informed that the code also has a provision allowing every court having jurisdiction to revoke the license of the offender.

Jensen stated that the two mentioned provisions do not relate to Indiana Code section IC 4-21.5 as referenced in subsection (ss), under AOPA. She stated, "There's a lot of legal stuff that needs to be interpreted and evaluated here. I don't have a definitive answer for either Linnea or Kurt with regard to whether or not this is going to be a minimal change." Jensen continued, stating that "there's a lot of legal explanation that I need to provide, that I haven't had an opportunity to do" and stated her preference that the proposed amendments be brought back to the Commission's next meeting because it was uncertain whether the desired modification would be "significant" or not.

The Chair asked if there was any reason why preliminary adoption would be necessary "today."

Dorman answered, "Not necessarily, other than the fact that they've been working on it for 18 months."

The Chair indicated that absent some urgency he would prefer to have "clean package" brought back to the next Commission meeting.

The Chair entertained a motion to table this item until the September Commission meeting.

Doug Grant moved to table the preliminary adoption of amendments to 312 IAC 9-1-7 and 312 IAC 9-10-13 governing falconry licenses. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of preliminary adoption of amendments to 312 IAC 9-3-14.5 that govern the possession of furbearing mammals and 312 IAC 9-3-15 governing the taking of nuisance wild animals by landowners and tenants; Administrative Cause No. 10-100D

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She offered that the Department's proposed changes governed the possession of trapped furbearers. She stated that DNR staff met with representatives from the Indiana Chapter of Furtakers of America and the Indiana State Trapper's Association to discuss potential housing requirements.

Petercheff explained that the proposed amendments will allow untanned hides and unprocessed carcasses to be possessed until May 15 of the year the season ends or until June 15 of the year the season ends if a report is submitted to the DNR. She explained that this will allow trappers additional time to process the fur and sell it. Petercheff continued that these amendments will allow raccoons, red foxes, gray foxes and coyotes to be possessed live during the trapping season for the particular species of animal while all other furbearers that are trapped would need to be

released within the county of capture or euthanized within 24 hours of capture. According to Petercheff, the offered rule amendments will also establish housing requirements for furbearers kept live during the trapping season.

Petercheff explained that currently, there are no provisions in place that specify how a furbearer that is trapped live and possessed must be housed throughout the trapping season. The proposed language includes requirements for proper cage sizes, food, water, and adequate lighting and ventilation. These requirements are very similar to those for furbearers kept under other types of licenses issued by the department.

She also advised that the rule amendments require the euthanization of furbearers that have been kept live during the trapping season at the end of the trapping season unless they are kept under a game breeder license. To help prevent the spread of diseases or parasites the rule amendment would prohibit these furbearers from being released into the wild after being retained in captivity. State statute in IC 14-22-20-2 does not require a person to obtain a game breeder's license for a furbearing mammal until five (5) days after the end of the season.

Petercheff also explained that the rule will remove the requirement for resident landowners or tenants to notify a conservation officer within 72 hours of taking a nuisance mammal listed in this rule. Petercheff then stated that the DNR recommended preliminary adoption of the rule amendments.

CeAnn Lambert, representing Indiana Coyote Rescue and Ban Live Bait Dog Training, addressed the Commission. She supported the rules except she believed the trappers' facilities should be inspected and the animals possessed should be examined by a vet. Lambert stated she felt that trappers and anyone housing wildlife should be subjected to the same high standards as game breeders, rehabbers and those who have wild animal possession permits. Lambert stated, "I don't know why trappers should skip by and not have the same requirements that we have when they're housing them."

Chairman Poynter responded, "I'm sure you'll be at a public hearing and sounds like a good comment."

Prescilla Herochik, an advocate for Indiana Wildlife, representing herself, addressed the Commission. She asked, "What data relative to the welfare of animals justifies allowing the trappers to hold them?" The Chair deferred to Linnea Petercheff.

Petercheff responded that the DNR has allowed trappers to possess live furbearers for many years, "basically with no requirements at all". She said that trappers need to be able to capture urine from some of the species, particularly fox and coyote, during the trapping season when it's most valuable." Petercheff noted that there have never been any housing requirements for them, but the Department believes it is appropriate now.

Herochik replied, "That isn't the question I asked though. What I asked was, what data relative to the welfare of these animals justifies allowing trappers to hold them?"

The Chair commented, "Instead of rhetorical comments, I think she gave the best answer she could."

Herochik asked Chairman Poynter whether there was any other explanation or data relative to the welfare of these animals other than what was stated by Linnea?"

The Chair replied that at this time there was not.

The Chair asked Herochik whether she had a statement instead of questions.

Herochik replied that rehabbers have very stringent rules that they have to comply with. Herochik observed that many of the requirements that apply to rehabbers are not required of the trappers noting that the trappers "have no need for an application, they have no need for a re-application, they have no need to carry a permit with them, they have no need for pre-application training and experience, they have no need as to tests for animals." Herochik continued, commenting that trappers "are not required to have continuing education, they are not required to have any reference books; not required to be over age 18, they are not required to have an inspection before issuance of the license, they are not required to have veterinarians signing on and they are not required to have any treatment for trap-related injuries." She also observed that trappers don't have to dispose of carcasses by burning, burying, giving to a vet, putting in the trash, destroying in accordance with a chemical label, keeping for educational purposes or donating to a university. She noted that "trappers, apparently, can just skin the animal and put it in with the other animals to allow them to cannibalize and stay alive that way."

Herochik noted that raccoon hides bring $8 dollars and coyote hides sell for $4 dollars and that trappers collect urine instead of "looking out for the welfare of the animals." Herochik stated her position that trappers should have to kill the animals trapped within 24 hours, release them within 24 hours, or apply for another type of permit within 24 hours. "The same animals that rehabilitators take care of are the same animals that these trappers hold. The animals have the same needs for nutrition, for shelter, for ability to move around as they do when the rehabbers have them so there is absolutely no justification for allowing them to have different rules, to have water-downed rules that don't make them comply with the basic needs of the animal." Herochik added that she assumed that the NRC is familiar with the enabling statute, which is 14-22-6-2, which says, "any rules that are going to be adopted are to be based upon data, which is relative to the welfare of the animals and that's not what's been done in this case."

Judith Cieslak, from Valparaiso Indiana and representing herself, addressed the Commission. She stated that she is opposed to allowing trappers to hold any animals until the end of the season. Cieslak concurred with Herochik noting that there appears to be a "double-standard" regarding the care of these animals by rehabbers in comparison to the care required to be given by the trappers.

Kim Wittig, an animal rehabilitator, addressed the Commission. She informed that she had a baby raccoon brought to her, which cost her $160 dollars. She expressed curiosity at how a trapper, who gets $8 dollars a hide, is going to afford appropriate care for the animals.

Karin McKenna from Chesterton Indiana and representing herself, addressed the Commission stating, "I am opposed to this rule on the basis that we should not be holding furbearing mammals. It's not in keeping with our mission, wildlife held and the public trust." McKenna asked the Commission to please reconsider this.

The Chair then offered the opportunity for motions from the Commission members.

Thomas Easterly moved to approve preliminary adoption of the amendments to 312 IAC 9-3-14.5 and 312 IAC 9-3-15 governing the possession of furbearing mammals and the taking of nuisance wild animals by landowners and tenants. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

The Chair added, "I do look forward to welcome those who made comments for and against today to be at the public hearings when they are scheduled."

Consideration of preliminary adoption of amendments to 312 IAC 9-1 and 312 IAC 9-3 governing the hunting of white-tailed deer; Administrative Cause No. 10-070D

Mark Reiter, Director of the Division of Fish and Wildlife, presented this item. He said the proposed rules "are a part of a new direction in deer management for the State of Indiana" and if approved, the success of the rules would be evaluated at the end of five years. Reiter stated that previously, the objectives for rules associated with deer management allowed for increases in the deer herd. Reiter explained that the Department has changed direction and is now focused on reducing the deer herd to address ecological, recreational and economic needs of the citizens of Indiana. He stated that deer are not evenly distributed throughout Indiana and the proposed rules will strategically target those areas of high populations.

Reiter said the rule changes are an outgrowth of the Advisory Council, through the Comprehensive Fish and Wildlife Rules Enhancement Project and considers "increasing numbers of deer damage complaints, increasing numbers of deer vehicle accidents, and a history of legislative action in response to constituent complaints about deer." He advised that the DNR's Division of Fish and Wildlife and Division of Law Enforcement developed this rule proposal with the input of the Bloomington City Council, Indiana Bow Hunters Association, Indiana Deer Hunter's Association, Quality Deer Management, Indiana Sportsman's Roundtable, Indiana Wildlife Federation, and Indiana Woodland Owner's Association, The Nature Conservancy, a sporting goods retailer, and the Indiana Farm Bureau. "I know some of those people are here, and I want to thank them again for participating. It was quite an exercise, but I think very productive."

Reiter said that by the end of the five year period, DNR is hopeful that deer populations will have reduced but a sex ratio of 60% female and 40% male will have been maintained. He said that the Department also hopes that success of this proposal will be evidenced by "a reduction in the number of deer vehicle accidents, a reduction in the county antlerless quotas, and a reduction in a number of degradation and control permits for deer."

Reiter acknowledged that the proposed rule changes are not going to be popular, but expressed that they present a change in direction that people find difficult to understand. Reiter explained that other states are also headed in this same direction.

Reiter then provided a summary of proposed deer rule changes. He indicated that the proposed changes will allow crossbows to be used during the archery season by hunters who are 64 years old or older and hunters of any age will be allowed to use crossbows during the firearms and muzzleloader seasons and during the urban deer season in an urban deer zone. Reiter continued that the proposed changes will also allow a youth hunter to take the number of antlerless deer allowed in the county in addition to one antlered deer. The urban deer season will be extended through the end of January under the proposal as well. Reiter added that in urban deer zones a hunter will be required to take one antlerless deer before being allowed to take an antlered deer under these proposed changes.

Reiter explained that the firearms season would decrease from 16 days to 9 days. According to Reiter, this portion of the proposal is receiving the largest number of comments. He explained that the shortened firearms season is to create a "sense of urgency to take a deer", which is intended to cause hunters to take an antlerless deer instead of waiting on only bucks. That same "logic" is also applicable to the shortening of the muzzleloader season, according to Reiter.

Reiter explained that antlerless only firearms seasons are being established in October and from Christmas through New Year's Day for counties having an antlerless quota of 4 or more. This is a season that is only allowed in areas where populations are greatest.

Reiter explained that there are also some miscellaneous amendments relating to definitions, nonresident youth hunting licenses, a hunter orange requirement for youth hunters, and the requirement for hunter orange on ground blinds. The proposed changes will also modify the rifle cartridge dimensions.

The final amendment discussed by Reiter is the intent to open firearms season on military reserves and national wildlife refuges on October 1 instead of November 1.

The Chair added, "I know this issue has been in the public lime-light for a number of years as this process has gone forward and the Advisory Council has dealt with this." He then offered the opportunity for questions or comments.

John Davis shared that the Department also wants to enable local communities to deal with deer in the urban parts of Indiana. Davis noted that the Department wants to address the deer herd in all ways and is also looking at things that may not be rules. Reiter concurred with Davis noting that there are things that are not rules that the Department is going to do to work with "military bases and communities who have ordinances that prohibit discharge of firearms; all those things that we need to do to be able to get those deer in problem areas."

Patrick Early applauded the Department's involvement of so many constituents groups in addressing a lot of the findings of the Advisory Council. Early expressed his opinion that the rule proposal should be moved forward because overall there are so many positive features in it.

However, Early expressed the importance of listening to the public comment regarding the reduction in the general firearm season. Early explained that he questioned the shortening it the season to the Thanksgiving week only. He stated that his main concern was not the shortening of the season but was the fact that the season occurred during Thanksgiving week. Early noted that while many people deer hunt during the Thanksgiving holiday "they also look at Thanksgiving as a family holiday and they spend time, they leave town, they go with their families and do whatever." Early stressed the importance of the Commission listening to what people have to say and evaluate "whether or not that's the right thing to do."

Chairman Poynter commented, "Let's not discount those thousands of citizens that two years ago, when we started the Comprehensive Fish and Wildlife Review process, we had multiple hearings through the Advisory Council. Those meetings, in particular, were the most attended with very substantive comments."

Chairman Poynter inquired about Reiter's intention to re-evaluate this rule amendment in five years noting that he did not see language to that effect in the proposal. Reiter replied that to include an expressed five year sunset provision in this rule amendment it would have to be put in so many places that it would have made the rule writing very complicated. Reiter acknowledges that some of the stakeholders had also raised this issue and agreed that if necessary the Department would accommodate the inclusion of a sunset provision. Reiter advised that his hope had been that the Commission would make it their position that this will be revisited in five years. Reiter added, "we are interested in having a hard deadline to evaluate this very strongly."

The Chair noted his intent to make the public aware that this will be reevaluated in five years. The Chair instructed Sandra Jensen and Steve Lucas to hold "at least" two public hearings in different parts of the state noting his intent that every citizen's voice be respected and his opinion that every opinion matters.

Davis expressed his appreciation for Chairman Poynter's action in expressly stating the Commission's expectation that the Department will have a responsibility to evaluate the outcome of these amendments and inform the Commission within five years.

The Chair then invited those who asked to make comments, beginning with persons in favor of the amendments who were representing organizations with multiple members.

John Goss with the Indiana Wildlife Federation addressed the Commission. Goss thanked Chairman Poynter and Chairman Early "for managing a process" that resulted in the development of this rule proposal. Goss expressed his belief that each of the amendments to the deer rules need to be addressed in one package and not as individual pieces. Goss reminded the Commission that legislators have expressed concern that the Department was not proactively managing Indiana's deer herd and particularly noted a bill that passed the House that would have added two weeks to the gun season. Goss explained that the Department and hunters had to act in developing a plan in order to stop those types of legislative actions. He noted his opinion that this proposal is a good start.

Goss expressed his belief that having multiple opening days should result in increased activity on the opening days of each season that he thought should accomplish the objectives of the rule proposal. Goss concluded stating that the Indiana Wildlife Federation endorses proposed rule package as written.

Gene Hopkins, President of the Indiana Sportsman Roundtable [ISR] addressed the Commission. Hopkins informed that the ISR represents approximately 35 of the sporting groups across the State of Indiana. Hopkins said that the ISR did not consider the proposal as a gun season reduction, but instead viewed it as spreading the gun season out. He urged all the sportsmen consider this proposal, truly understand it and debate it. He encouraged everyone to look at the proposal honestly and come forward with recommendations that are based upon logic and not emotion.

Hopkins then read a prepared statement from the ISR.

> "Thanks for taking the time to address this very important topic. We recognize that change is difficult, but it's important that we put forth the best effort to manage this important resource and recreational activity. In recognizing the process that was used by creating the Task Force and taking the public input prior to the Task Force, allowed us to include a cross-section of stakeholders at a high level for this critical day. Tough questions were asked and participation was excellent. We did hold a series of meetings across the state, as well, to get the public input, not just our member input. Stakeholders went through a large degree of give and take. We do recognize the need to address the reality of our state-wide deer herd appears to remain at a higher level than targeted. But, we caution that this is not a state-wide reality, so solutions must remain targeted so that the areas where it can be demonstrated through verifiable data if there is indeed a population problem can be targeted for this reduction. We also want to emphasize that there is a real root cause here in the over-population of certain areas and that being hunter access. And, I know that others have talked about hunter access, but we can't look at season changes as being the only solution to this. The silver bullet is really through access. We also need to address the areas of what to do with the deer. Hunters take so many deer that they can eat and they can use with their friends and families, but after that, we need something to do with the extra does that you want us to take. With this background, the Roundtable members have voted 100% to support the proposal. We did have a membership meeting, and came back with 100% consensus support from all of our member organizations. We do support the proposal as a whole, and it's important that it remain whole or our members would require us to revisit support if you changed any significant level. And, again, thank you and the IDNR for addressing this issue and for your inclusive process during the past few months. We look forward to working together with everyone to help communicate and educate the public during the following weeks of the process. Thank you."

The Chair noted his appreciation for the involvement of the ISR in developing this proposal.

Tom James, Vice-President of the Indiana Quality Deer Management Association [QDMA] addressed the Commission and stated, "we just want to let the Board know that we actively support all of the regulations as they are written." He expressed the opinion that the proposal

will increase the harvest of antlerless deer, and that the expansion of this opening date phenomenon is important to meeting that objective. James informed that QDMA has an Indiana branch membership of 500 plus members and 50,000 members nationwide.

Allen Pursell with The Nature Conservancy and part of the stakeholders group addressed the Commission. Pursell said he wanted to commend Reiter and the Division of Fish and Wildlife for their work with the stakeholder group and all the efforts. Pursell noted that the philosophy of this proposal is to no longer increase the deer herd but to actually reduce the population to maintain the highest quality of deer. Pursell said that as a forester and a conservationist, he was concerned with what's "happening in the forest" particularly in the past ten years. He noted that the Nature Conservancy is one of the largest landholders in Indiana, who, in conjunction with the Department, purchases "significant amounts of land" for nature preserves. Pursell stated that their land is being impacted by the high densities of deer noting particular concern for rare, threatened and endangered plants. Pursell strongly supported and encouraged preliminary adoption of the proposal.

The Chair remind those in attendance that this is a preliminary adoption consideration adding that there will be additionally and ample opportunities for further comment.

Joe Bacon, representing the Indiana Deer Hunters Association, addressed the Commission. Bacon said that having several opening days for gun season would be a "total new direction" for reducing Indiana's deer herd. Bacon commented that having an opening date during the Thanksgiving holiday would be advantageous for persons having both Thursday and Friday off work. "For those people who wish to take a vacation, getting all those nine days would only require taking three days vacation for the people that are limited." Bacon concluded that the Indiana Deer Hunters Association "strongly suggested" approval of the proposed package "in all parts and not split apart."

Justin Schneider, representing the Indiana Farm Bureau [IFB], addressed the Commission. Schneider thanked everyone involved in "the process"— the Commission and the Division of Fish and Wildlife staff. "Mark and his staff have done a phenomenal job working through this." He said that the IFB was committed to educating the IFB members on the DNR's proposal for deer herd reduction and management.

Schneider continued stating that the IFB supports the "entire package" as written. He said he felt it was "very crucial" to get on record the discussions concerning the October two-day season. Schneider relayed there was a lot of debate whether that season should be in September or October. Schneider expressed that from the perspective of deer reduction it was "crucial" for this to occur in mid-October when there's a "significant" forest and corn crop out because that will decrease cover and increase opportunities. He thanked the Commission and said "we urge adoption."

Herb Higgins with the Indiana Bow Hunters Association [IBA] addressed the Commission. He echoed Justin Schneider's comments concerning the early October timeframe for the gun season saying, "it makes sense in timing." Higgins stated that the creation of a new cross-bow license "is crucial for two reasons." (1) in order to compile correct hunting and harvest statistics, and (2)

to remind the Commission that we're still under a trial period for the one-buck rule." Higgins noted that if the decision is made to allow harvest of one antlered deer under archery and another under firearms, the use of a crossbow in the archery season increases the potential for undue harvest increases. He concluded stating that the IBA was in support of the proposed rule changes.

Chairman Poynter then invited persons opposed to the proposed rule changes who represented an organization, to provide comments.

Brooks Langeloh, representing Whitley County Chapter of the Indiana National Wild Turkey Federation (INWTF), expressed appreciation for the ability to comment. Langeloh commented that the INWTF was in agreement with deer herd reduction goal. However, the INWTF's survey strongly favored "no change" to the firearms and muzzleloader seasons and strongly opposed any changes with regards to season dates and bag limits under deer rule changes.

Langeloh stated that the survey showed that 91% of the hunters would be willing to harvest more antlerless deer "if money were not an issue" due to an additional license requirement. He expressed concern about the Department's ability to accurately and effectively evaluate the success of this rule change because to the drastic nature of the amendment and the upcoming changes such as license bundling.

Langeloh stated that hunters were from Allen, Whitley, Kosciusko and Noble counties, were all in agreement with the proposed rule changes, with the exception of the shortening of firearms and muzzleloader seasons. Langeloh stated that the season change for firearm and muzzleloaders would have an adverse affect on antlerless reduction and urged the Commission to consider an alternative.

Langloh stated that the ISR and hunters supported the additional weekend in October but suggested that the later antlerless seasons start on December 26th noting "we don't need non-hunting kids and families driving around on Christmas Day seeing Rudolph dead in the back of somebody's vehicle." Langeloh also suggested that the Department charge an addition $5 or $10 to allow unused antlerless permits to be used during the last antlerless season

Langeloh concluded stating support for the addition of antlerless seasons but asking the Commission to solidly consider the comments of the "overwhelming majority" of hunters before shortening seasons.

Chairman Poynter stated, "There are several who have asked to speak, and I know that there are varying opinions from organizations and personal. If there are no other entities against this that represent organizations, I'm going to pick who drove the furthest."

Jeremy Shireman from Corydon, Indiana, representing himself, addressed the Commission. "I do live in one of those counties where there are eight bonus antlerless tags so this really impacts our ability to manage the herd on our land by shortening the seasons and moving the dates back." Shireman reported that 77% of the total harvest is accounted for during firearms and muzzleloader season, 32% of the deer kill, and 30% of the antlerless deer kill during the general

firearms season is during the last seven days. He said that during the same time period, only 15% of the antlered deer taken during the firearm season were taken during the last seven days. Shireman relayed that during the years when the season moved from the second weekend to the third weekend, there was a decrease in the overall firearms harvest noted that the years when the dates moved forward from the third weekend to the second weekend, there was an increase in harvest.

Clarence Williams from Newburg, Indiana addressed the Commission. Williams provided the Commission with some handout material. Williams stated that the proposed rules are "the biggest change to ever come down the pike in his 41 years of deer hunting. You have to realize there's a much bigger and the real stakeholder who's out there in the form of 250,000 deer hunters. These are people who haven't been heard from yet."

Williams commented that this rule proposal does not correlate to the comments received from over 1,000 hunters who in 2009. He commented that the DNR's on-line survey showed the "overwhelming majority" of the hunters preferred no season change. Williams then referenced the table on page 2 of his handout, describing the differences in the deer herd population for referenced years 2000 and 2006 with deer season changes arguing that an early hunting season helps reduce the deer herd. He offered that the data revealed that more deer, both bucks and does, are taken in the earlier seasons because of the rut.

Williams stated that he researched the concept that by reducing the firearms season would result in any decrease in the deer population and could find none. He elaborated that he could find no studies or deer models to that effect. However, Williams advised that he did find just the opposite noting that several states are considering increases for their seasons. He particularly noted that the State of Wisconsin is proposing to increase their present nine-day firearm season to a sixteen-day season. He concluded that this proposal "is a huge jump of change that DNR says may help, but there's actually no positive proof that it does help." Williams stated that the muzzleloader season should be not change because [they] kill 80% antlerless deer during muzzleloader season.

Williams said, "What I'm asking the DNR and the Commission to do is partner with the firearm hunters and don't take anything away and they will respond favorably." He suggested expanding the use of crossbows to all of archery season. He stated that last season's archery harvest results in Ohio, which allows the use of crossbow, showed a 91,526 deer reduction. "It works out that archery equipment, which crossbows are included, can be a huge help in controlling the herd." He said that Michigan and Pennsylvania had similar results.

The Chair reiterated that there would be "hours" of debate on the issue. "The citizens like you who take the time to send us emails and give the comment and input are appreciated. He informed that "today's process" is to provide the Commission with "a flavor and feel" for the comments in order to consider preliminarily adopting, or not. "As we come back for a final adoption, we anticipate there will be all sorts of things that are considered through public comment."

Director Carter asked Williams whether Williams said that crossbows were responsible for 91,000 kills in Ohio. Williams replied that crossbows killed 54,000 of the total 91,000 deer taken during the archery season adding "that can be replicated here" if crossbows are allowed to hunt in the early archery season.

Chairman Poynter, expressing understanding that people had driven from far away to attend the meeting, explained that this was not intended as an opportunity for exhaustive public comments and that multiple public hearings would be conducted for those who want to express their opinions. He assured everyone that the public hearings would be held in the evening, after business hours to enable citizen attendance.

Patrick Early explained the process of preliminary adoption stating, "It just now starts the process and does not mean that what we adopt today are the new rules." He noted that public input may result in a determination that something needs to be changed that will not change the whole objective of this proposal. Early explained that "today's process" does not "close the book" on the proposed rules. Early informed that comments taken during the public hearings would be "taken into consideration" helping the Commission to determine whether or not modifications are needed before the final rule adoption.

The Chair added that in addition to the public hearing, a portal would soon be available through which written public comments could be submitted.

Doug Grant moved to approve the amendments to 312 IAC 9-1 and 312 IAC 9-3 governing the hunting of white-tailed deer. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of report of public hearing and comments, and recommendation of final adoption of amendments to 312 IAC 11 governing the placement of structures on public freshwater lakes; LSA #09-856(F); Administrative Cause No. 08-065W

Steve Lucas, Hearing Officer, presented this item. He said the proposed amendments would have "broad application to the licensure of group piers within public freshwater lakes. As described in the hearing officer report, important policy determinations are made. These are within the discretion of the Commission." Preliminary adoption was given to the rule proposal during its meeting of September 16, 2008. Lucas said "the placement of structures on public freshwater lakes is the issue which is litigated most aggressively before the Division of Hearings and before the Commission's AOPA Committee. It's an issue of high profile with impacts to both the public as a whole and to private riparian owners along public freshwater lakes." He said he believed the proposal was "in the form that could be given final adoption as essentially preliminarily adopted", if that was the desire of the Commission, but he suggested the effective date for adoption be deferred until January 1, 2011 to avoid major regulatory changes during the current boating season."

Ron McAhron reflected, "I very much appreciate that we got two specific standards in the group pier rule." The hearing officer report emphasizes the importance of the 50% maximum width allocation for new group piers in proposed 312 IAC 11-4-8(c)(6). "I appreciate Steve's points that there are some issues that may continue to bubble up as a result in that rule."

Dr. Donald Ruch moved to approve final adoption of amendments to 312 IAC 11 governing the placement of structures on public freshwater lakes. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of public hearing and comments, and recommendation of final adoption of amendments to 312 IAC 11, governing public freshwater lakes, to define and establish standards for a general license to place an aerator; LSA Document #09-806(F); Administrative Cause No. 09-147W

Steve Lucas, Hearing Officer, also presented this item. Again, the proposal applies to public freshwater lakes. "It's first cousin to the amendments that were given final adoption with the previous agenda item. There are a couple of substantive items that are particularly noteworthy, not the least of which is that this would incorporate by reference a nonrule policy document pertaining to establishing zones for riparian areas. Probably the single most litigated issue along the shorelines of public freshwater lakes is the appropriate delineation of riparian zones. We have a nonrule policy document now which is very helpful." This amendment would make the nonrule policy document "a little bit easier to find, although based upon the amount of current litigation and citizen and attorney references to the document, people are finding it just fine now. But it would be helpful to connect the parts, so I would urge that the cross-reference to the nonrule policy document be given final adoption, regardless of the policy question pertaining to aerators."

Lucas said "with respect to aerators, I think the Commission could give final adoption as preliminary adopted. You will see there were responses, including form the Lake Management Group, which reflected dissatisfaction with a general license for qualified aerators, which this rule amendment would create. As reflected in the hearing officer report, I think that's purely a policy call…. I would look to you [as Commission members] to make the policy call because you're the policy makers. I know that a lot of people within DNR worked a lot on this rule proposal, and I will, if I may, defer to Ron McAhron to talk about it from the DNR perspective."

McAhron said regarding the aerator rule proposal, "We looked at what was primarily a safety concern expressed by the Division of Law Enforcement. The entire DNR group worked to create a rule that addressed and undergirded Law Enforcement's interest in those safety concerns, and, at the same time, sought not to unduly burden our staff and the property owners. So we went toward the general license concept. We were intending to say to property owners 'if you do things in this manner, you don't need to go through the full permit process.' We need to, can, and will come back with standards for the outliers or the things that don't fit in the general license. In retrospect, perhaps [developing substantive standards] would have been a preferred way to approach this from the beginning, but there was a pressing safety concern and pressing interest from Law Enforcement to get something on the books that people could see and

understand. I think the rule is fairly clear on the expectations from a safety standpoint. We wanted to get something in place quick, simple and straight forward, and then come back with standards for individual licenses. I very much appreciate the needs for standards and for the AOPA Committee to have this as a backdrop when these things come before them."

Jane Ann Stautz, Chair of the Commission's AOPA Committee, responded. "I very much appreciate the Department bringing this forward to address the situation, particularly, if you recall from last fall, when we had to raise questions around safety and considerations with regard to the placement of aerators. I would like to reinforce what had been said with regard to individual licensure, the need to have clear standards and guidelines for that process and what would be considerations for qualifications in order to be eligible to be issued an individual license for placement of an aerator that would not fall under this general licensure provision. Again, appreciate that work and would recommend that we go ahead and adopt this as presented."

Donald Ruch moved to approve final adoption of amendments to 312 IAC 11, governing public freshwater lakes, to incorporate by reference the nonrule policy document pertaining to riparian zones and to define and establish standards for a general license to place an aerator. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of public hearing and comments, and recommendation of final adoption of amendments to 312 IAC 9-4-10 and 312 IAC 9-4-11 governing the hunting and taking of ruffed grouse and turkey hunting seasons; LSA Document #09-984(F); Administrative Cause No. 09-165D

Sandra Jensen, Hearing Officer, presented this item. She said that the rule package was proposed to amend administrative rules pertaining to the hunting of wild turkey and ruffed grouse. The amendments to 312 IAC 9-4-10 will reduce the length of the hunting season for ruffed grouse on public land only. Jensen said that the amendments to 312 IAC 9-4-11 would increase the number of days included in the fall firearms season for wild turkey in 43 counties and offer a second opportunity to take wild turkeys with archery. The amendments would also require a turkey hunter who is hunting during a season that overlaps with the deer muzzleloader season to wear hunter orange.

Jensen advised that the rule package was granted preliminary adoption by the Commission in November 2009 and since that time all statutorily required rule adoption processes have been fulfilled. She said that public comments were received from approximately November 2009 through June 25, 2010 and a public hearing was held on June 24, 2010. Jensen noted that the comments were included in her report at Exhibits A and B, "respectively". She stated that the public comments generally favored the amendments to 312 IAC 9-4-11, pertaining to wild turkey. Jensen said that the public comments relating to the proposed amendments to 312 IAC 9-4-10, express that the lack of habitat management as a cause for the decline of the ruffed grouse. Jensen said that it was also the general consensus of those offering comments that the ruffed grouse population decline was related to lack of habitat and not hunting.

Jensen stated that there are comments that reflect the belief that hunters should not be penalized by the loss of hunting opportunity because of the low populations, when the hunters are not in any way responsible for the decline. However, she noted that there are probably an equal number, if not a greater number of comments that reflect "a similar sentiment" but at the same time realize that while a loss of hunting opportunity is not desirable, it is one piece of several that "hopefully" will bring about a long term solution to the population decline. Jensen said that these individuals also insist it will take a concerted effort, not only of the hunters, but of other private individuals, as well as federal agencies; those that control public lands, to improve land management to increase the habitat for this particular species as well as others that require similar habitat.

Jensen said that after considering all the public comments as well as the Department's response, included in her report as Exhibit C, it was her recommendation that the proposed amendments be granted final adoption, with the following two clerical revisions: (1) at 312 IAC 9-3-11(b)(2)(A) change the reference from "subsection (b)(2)" to "subsection (b)(1)"; and (2) at 312 IAC 9-4-11(b)(2)(B) change the reference from "312 IAC 9-3-4(c)(2)" to "312 IAC 9-3-4(e)".

Jensen informed that the revisions were incorporated into the rule language in Exhibit D of her report. She then offered for final adoption the proposed amendments with the clerical revisions.

The Chair commented, "Again, there are several who have asked to speak," on this item.

Jack Corpuz, representing the Indianapolis Chapter of Ruffed Grouse Society (RGS), addressed the Commission. Corpuz stated support for the proposal but sought to have a five year sunset provision added. He explained that the RGS would like to see a review of the population of the grouse in that timeframe. In support of his request, Corpuz noted that the hunters are going to be giving up half of the present season and expressed a desire to see whether it was making a difference in the populations.

Director Carter commented, "Why don't the Feds say anything?"

Corpuz replied, "Actually, Hoosier National Forest, two years ago in their new forest plan, mentioned it and they selected a plan that would have increased logging and would have increased early successional habitat which is what we really need in Indiana for the grouse." Corpuz explained that after the Hoosier National Forest selected that particular option, large numbers of people from anti-hunting organizations urged them not to cut. Corpuz stated that as a result there is a 20-year plan that does not include any cutting. Corpuz acknowledged that the State of Indiana in the last five years has started cutting, and they started cutting quite a bit but the market for the timber is very limited. Corpuz mentioned the grouse summit that occurred two years ago emphasizing that the problem has been recognized and options for addressing it were developed but "we can't get it done." Corpuz added that the National Chapter of the Ruffed Grouse Society has also reviewed this proposal and they agreed too that a shortened season is necessary but they also suggest the five-year sunset provision.

Randy Showalter, Director of Conservation Operations in the Midwest for the National Wild Turkey Federation (NWTF), addressed the Commission. Showalter said that he was in favor of

the changes for the fall turkey season. He noted that the NWTF had a four-year evaluation on fall turkey hunting in Indiana that revealed low participation and low harvest levels. Showalter noted that the most important part of the fall season is that it has no impact on the spring season when most turkey hunters participate. The result, according to Showalter, is that there is a lot of room for expansion here in Indiana and that is what this proposal does so "we would certainly be in support of that."

Doug Allman, resident of Fishers, Indiana and member of the Indiana Wildlife Federation, Indiana Deer Hunter's Association board member, and member of the Sportsmen's Round Table, stated that he could not support the amendments concerning ruffed grouse. "Basically, we went through this two or three years ago; we had a grouse summit. I've seen nothing change with the plan of action." Allman noted that there is still no actual plan to address the grouse populations.

Allman expressed his opinion that even though there is cutting occurring in the state forests, the openings aren't big enough. He also expressed frustration that there is no evidence of collaboration between the Department with the Hoosier National Forest or the US Fish and Wildlife Service to address this.

Allman stated that he would be "willing to give up grouse season" if provided with a plan and data showing that hunting is contributing to the low population but added "I don't think this is the answer."

Keith Dutton, grouse hunter, and Ruffed Grouse Society member addressed the Commission stating his support for the positions of both Jack Corpuz and Doug Allman. I reluctantly support cutting grouse season for awhile. I'm an avid grouse hunter. Hanebutt note that ruffed grouse as well as other species have been in peril for a long time because "we haven't addressed the issue of habitat for so long. That's where Doug is right. We don't have a plan." He noted that Indiana is starting to cut now in Yellowwood and various places but questioned whether the action was too late. Hanebutt accepted that the season might have to be decreased for awhile, but he agreed with Doug Allman that a comprehensive and aggressive plan is needed.

The Chair added, "I know that Keith has a lot of background on this, and it's been well documented in the case for and against."

Thomas Easterly commented, "I keep hearing that people want a review in five years, but don't we have an automatic sunset at least every seven years, where we would have to review this rule and readopt it?"

The Chair replied, that the Commission does recodify existing rules, but noted that a recodification is not the same as the sunset provision.

Stephen Lucas added, "what is being done here is a whole restructuring which is a voluntarily and courageous act by the Natural Resources Commission." Lucas stated that commission member Easterly was correct in that there is a sunset provision, as well. "In fact, that was kind of the mini-step that was taken here. It was a recodification in all of the fish and wildlife rules, as a recodification, as a blanket form."

Thomas Easterly moved to approve the final adoption of amendments to 312 IAC 9-4-10 and 312 IAC 9-4-11 governing the hunting and taking of ruffed grouse and turkey hunting seasons with the clerical revisions. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of amendments to nonrule policy document, Information Bulletin #55, regarding receipt of citizen comments filed with the Natural Resources Commission; Administrative Cause No. 10-080A

Sandra Jensen, Hearing Officer, presented this item. Jensen provided that Information Bulletin #55 specifies the manner in which the Commission's staff receives and processes citizen's comments filed with the Commission. She stated that most of the comments filed relate to pending administrative rules. Jensen said that the amendments proposed for Information Bulletin #55 addresses the following issues.

1) Clearly specifying that citizen comments received prior to the posting of rule language by the Commission or publication of a Notice of Intent to adopt a rule will be forwarded to the applicable Department Division or treated as a citizen's petition for rule change under Information Bulletin #7.

2) Clearly specifying that comments will be accepted by regular mail, by electronic means only if offered through the Commission's online form, or by telephone only if authorized by the Commission at preliminary adoption.

3) Removing the obligation on the Commission's staff to encourage people making anonymous comments to provide the required identity and residency information.

Jensen noted that the offered revisions were previously discussed with the Commission members that make up the AOPA Committee.

Chairman Poynter asked Jensen when the Commission would "ever" authorize receipt of telephone comment.

Jensen responded that there are some instances where the Division of Hearings staff thought the acceptance of telephone comments "might be beneficial" giving the example of rule amendments involving subject matter that is "highly technical". Jensen explained that when these situations arose it was her expectation that the staff would advise the Commission at the time of preliminary adoption of the desire to be able to accept comments by telephone. Jensen noted that accepting telephone comments would be an exception to the rule, but noted "we just don't want to foreclose that possibility."

Lucas provided an example stating, "If you're talking about something that's hyper technical--and we're not geologists, soil scientists; and we're not civil engineers—it's helpful to hear from those people."

The Chair asked, "And that would have to be part of the preliminarily adoption package, expressly noted?" Jensen answered in the affirmative.

Robert Wright moved to approve amendments to nonrule policy document, Information Bulletin #55, regarding the receipt of citizen comments filed with the Natural Resources Commission. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Information Item: Performance of Natural Resources Commission's Division of Hearings and application of metrics; Administrative Cause No. 10-078A

Sandra Jensen also presented this item. She explained that the Division of Hearings first reported its metrics measurements for the years 2006 and 2007 in July 2008. The Division had previously identified areas where our performance could be measured in terms of timeliness or quality and ranked those items into the categories of exceeding expectations, meeting expectations or failing to meet expectations. She also noted that where statutory time frames are associated with the item being measured the standard rating, in almost all cases, greatly exceeds the statutory requirement. Jensen observed that on most measured items the Division of Hearings is either meeting or exceeding standards but there are areas where the Division could improve. Jensen sought input from the Commission members.

ADJOURNMENT

The meeting was adjourned at approximately 12:31 p.m., EDT.