

NATURAL RESOURCES COMMISSION
Fort Benjamin Harrison State Park –The Garrison
6002 North Post Road, Indianapolis, Indiana

Minutes of November 14, 2006

MEMBERS PRESENT

Richard J. Cockrum, Chair
Jane Ann Stautz, Vice Chair
Kyle Hupfer, Secretary
Matthew T. Klein
Bryan Poynter
Damian Schmelz
Patrick Early
Chad Frahm
Doug Grant

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Burgess Brown	Executive Office
Cheryl Hampton	Human Resources
John Bacone	Nature Preserves
Lorri Dunwoody	Indiana State Museum and Historic Sites
Linnea Petercheff	Fish and Wildlife
Doug Keller	Fish and Wildlife
Bill James	Fish and Wildlife
Heidi McDonald	Fish and Wildlife
Kalie Ehenberger	Fish and Wildlife
Wayne Bivan	Fish and Wildlife
Jim Mitchell	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Jason Wade	Fish and Wildlife
Carol Newhouse	Fish and Wildlife
Dan Bortner	State Parks and Reservoirs
George Crosby	Water
Kenneth Smith	Water
Tom Lyons	Forestry

Mike Crider Law Enforcement
Samuel Purvis Law Enforcement

GUESTS PRESENT

Bill Reiman Dick Mercier
Jack Corpuz Joe Bacon
Eric Williams Pat Guinare

Richard J. Cockrum, Chair, called to order the regular meeting of the Natural Resources Commission at 10:05 a.m., EST, on November 14, 2006 at The Garrison, Fort Harrison State Park, 6002 North Post Road, Indianapolis, Indiana. With the presence of nine members, the Chair observed a quorum.

The Chair recognized two new members of the Commission. He introduced Robert D. Grant from Syracuse, Indiana. “Welcome aboard. We look forward to your participation.” The Chair introduced Patrick Early. “Mr. Early is Chair of the Advisory Council, which was recently formed.” He thanked the new members for volunteering for the citizens of the State of Indiana, and participating in the Commission’s deliberations.

Damian Schmelz moved to approve the minutes of September 19, 2006. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Director Kyle Hupfer gave his report. Director Hupfer noted that the Fish and Wildlife Fund “year to date is running \$2 million over last year this time reflecting for the first time in four years an increase in license sales even with the increase in fees.” Director Hupfer also noted that the increase in fees “did not impact sales at all.”

The Chair said, “The increase in fees is good news.” He asked whether the sales increase was in “any one area or across-the-board?” Director Hupfer indicated that the increase was across-the-board. He explained that the fee increase was regards to fishing licenses only, “but again we have sold more fishing licenses than in previous years.” Director Hupfer said the sale of combination licenses has increased as well as hunting licenses and youth licenses. “It’s just good news across-the-board. We will take credit for it but we cannot pinpoint the necessary reason for it.”

DNR, EXECUTIVE OFFICE

Consideration and Identification of Any Topic Appropriate for Referral to the Natural Resources Advisory Council

The Chair explained that the “newly reconstituted” Advisory Council was created by the Legislature to discuss issues important to the DNR and the NRC. “We wanted to make sure Commission members have an avenue to get items on the agenda.”

Director Hupfer explained that this item would be a “standing” agenda item. He said that Patrick Early, Richard Cockrum, himself, and the Deputies Director would meet in the next two weeks to format an agenda for the December 13 Advisory Council meeting “based on the discussions here and discussions we have had internally”.

Patrick Early said the Advisory Council has had one organizational meeting and one business meeting. “We are still just getting our feet on the ground.”

Bryan Poynter, Commission member, asked, “Are there any items that are being discussed or anything that has populated an agenda yet?” Early stated that last month the entire Advisory Council meeting focused on the “one buck rule”, and that “was the first real business meeting we had. We really didn’t get into a lot of other things.” The Advisory Council members are “now trying to learn the inner workings of the Department so we had several presentations by several the Division Directors.” He said a “strong agenda” has not yet been developed. “Again, we are still just trying to figure out what we are supposed to be doing.”

The Chair explained that for agenda items two, three, and four “state law requires the Commission to approve certain property manager positions.” The Commission has a Personnel Committee, with Bryan Poynter as Chair, which conducts personnel interviews and makes recommendations to the Commission.

PERSONNEL ACTIONS

Personnel Interview of Heidi McDonald for the Position of Assistant Property Manager of Minnehaha Fish and Wildlife Area, Sullivan Indiana

Bryan Poynter said, “I just wanted to make a general statement on the three matters of personnel. Once again, how thrilled I was to have such high quality candidates go through” the Division of Fish and Wildlife and the “work that has been done [by Wayne Bivans and] his Division in recruiting and retaining.”

Poynter introduced Heidi McDonald who is recommended for the position of Assistant Property Manager of Minnehaha Fish and Wildlife Area in Sullivan, Indiana. He said that McDonald has “outstanding qualifications, tenure with the Department at various times and has a biology background.” He added, “Once again, she’s highly skilled, highly educated, and well qualified. Not only that, [McDonald] loves to use the property. She loves the property and she uses the property.” He said McDonald has a background in hunting and fishing and comes from a family farm “so she knows conservation and she knows management issues.”

Bryan Poynter moved to recommend Heidi McDonald for the position of Assistant Property Manager of Minnehaha Fish and Wildlife Area in Sullivan, Indiana. Damian Schmelz seconded the motion. Upon a voice vote the motion carried.

Personnel Interview of Jason Wade for the Position of Property Manager at Pigeon River Fish and Wildlife Area, Mongo, Indiana

Bryan Poynter also presented this item. “Once again, it’s thrilling to have [Jason Wade] be a part of our Commission meeting today.” Poynter noted that Wade exhibited a “passion for not only the outdoors, but has spent these past two or three months actually working on the property.” Wade is a wildlife specialist and has worked for the Department at other properties including Salamonie Reservoir. “We are thrilled to have him move up and assume the property manager position.” Poynter noted that Wade’s father was a property manager at Sugar Ridge Fish and Wildlife Area “many years ago.”

Bryan Poynter recommended appointment of Jason Wade as Property Manager at Pigeon River Fish and Wildlife Area, Mongo, Indiana. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Personnel Interview of Carol Newhouse for the Position of Assistant Property Manager at East Fork Fish Hatchery, Montgomery, Indiana

Bryan Poynter also presented this item. He said he interviewed Carol Newhouse for the position of property manager at East Fork Fish Hatchery in Montgomery, and Newhouse was present at today’s meeting. Poynter noted that Newhouse has a “passion for not only the outdoors, but for fish in particular.” She currently is employed with the Indiana Department of Environmental Management, and previously with the DNR’s Division of State Parks and Reservoirs. Poynter said that Newhouse “is truly making a sacrifice” in accepting the position “which will have a sacrifice of some monetary consequence and life choices for [Newhouse] and family, which we appreciate.”

Bryan Poynter moved to recommend appointment of Carol Newhouse for the position of Assistant Property Manager at East Fork Fish Hatchery in Montgomery, Indiana. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the Request for Dedication of Pine Station Nature Preserve, Lake County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said, “This is a truly unique area that is loaded with endangered species.” He noted that “not all that long ago from Lake Michigan to Ridge Road down in Hammond and Hobart, U.S. 6, there were about 100 of these long, linear sand beach ridges.” Bacone said this area and topography southern to Lake

Michigan is “highly desirable for developed industry and cities and towns. It’s almost gone accept for this piece and across the road Clark and Pine Nature Preserve.”

Bacone said the tract was acquired as part of a Natural Resources Damage Assessment settlement that DNR, IDEM, the Department of Justice, USDA, USEPA, and US Fish and Wildlife were involved in. “We are very fortunate this was still around to be acquired.” He said DNR is working with IDEM and others to restore the site and remove invasive species, a derelict Quonset hut and abandoned truck bodies. Bacone said DNR is also working with the city of Gary as trails systems are established in Northwest Indiana. “Adjacent to this [property] we hope to have a trail system to hook into.”

Matthew Klein, Commission member, commended the DNR for acquiring the property. “From IDEM’s perspective, this is a very challenging area of the state. This property is a real gem.” He added, “This truly is a great piece of property to acquire and preserve.” Klein inquired whether there were Karner Blue butterflies at the property. Bacone said there were not, but noted the federally endangered butterfly can be found at the nearby DuPont tract, which is another property acquired in a Natural Resources Damage Assessment settlement.

Matthew Kline moved to approve the dedication of Pine Station Nature Preserve in Lake County. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FORESTRY

Consideration of the Request for Establishment of a Horse Campground Stall Rental Fee at Deam Lake State Recreational Area

Tom Lyons from the Division of Forestry presented this item. He said the request is to establish a horse stall rental fee at the Deam Lake Recreation Area at the proposed horse campground. “There is not a horse campground there now.” He said the Department is in the process of converting “about half” of the family Class A campground into a horse campground. There are approximately 265 camp sites presently and half will remain family Class A camping sites. As part of the camp conversion, covered horse stalls will be constructed. “These are very popular items among horse campers, and most of the private horse campgrounds in the state and surrounding states provide horse stalls.”

Lyons said a \$7 per night rental fee would be established per horse per stall. He said the proposed fee is “very conservative” and “competitive”. Lyons noted that “most” of the private horse campgrounds charge “anywhere from \$8 to \$10. So, \$7 is a good starting point.”

Director Hupfer applauded the Division of Forestry. “We have asked [Divisions] to look for areas that they can improve utilization and improve economics of some of these facilities.” Director Hupfer said a need is being met for the horse riders. “The popularity [of horse camping] continues to increase, and we are taking a property that has been under utilized. There are very

nice Class A campsites.” He said, with Brown County being the exception, the Deam Lake horse camp site may be the “premier horse facility in the state of Indiana.” Director Hupfer also commented that the proposed fee is “very reasonable”.

Chairman Cockrum inquired whether the horse trails were separate from the Knobstone hiking trails. Lyons explained that the hiking trails are separate from the horse trails. Bryan Poynter asked about the cost to build the horse stalls. Lyons indicated that \$300,000 has been budgeted for the project. “The only cost is going to be materials and labor, because the Department of Correction labor crews are going to actually build the stalls and do most of the work in the campground.” Director Hupfer said the Department of Correction is being “aggressive in trying to find projects” and are doing “phenomenal work” for the DNR.

Damian Schmelz asked whether the existing electrical utilities in the campground can be used in the proposed horse campground. Lyons explained that the utilities were upgraded four or five years ago and would be sufficient for the proposed project.

Jane Ann Stautz asked whether the ongoing maintenance and upkeep of the facility would be kept in-house. Director Hupfer said, “We, again, will use offender labor. This has really made a difference.” He added that Department of Correction labor crews were cutting grass, picking up trash and removing debris and trees. “Across the [DNR] we have maybe 25 or so [labor] crews.” He said crews are providing all the labor at the DNR’s nurseries. Director Hupfer said the usage of the labor crews is “really helping [the DNR] from a budgetary standpoint.”

The Chair noted, “I have seen examples in vehicle maintenance and repair, and some really amazing work being done at a low cost.” The Chair suggested that the Commission’s spring meeting should be held “where we can see the demonstration or some those [Department of Correction labor crew] projects, because it has been a real savings to the tax payer and a real improvement of some of our facilities.”

Bryan Poynter asked, “What role is the Hoosier Horse Council or some of the other affinity groups are playing...either now or ongoing?” Lyons indicated that the Division of Forestry works “real closely” with the Indiana Trail Riders’ Association, which is the main Indiana based organization that are also connected to the Hoosier Horse Council.” He said members of the Indiana Trail Riders’ Association are currently volunteering labor at Deam Lake State Recreation Area, and have provided input on the project. Director Hupfer also noted that Association members provided all labor for installation of a new trail at Yellowwood State Forest, for which the DNR provided the materials. Director Hupfer said the Department meets with the Association “regularly” to set improvement priorities for horse utilization at DNR properties.

Bryan Poynter said the Association is a “great” group. “They really work hard, and I’d hope that they were willing to because they utilize the properties more than the average citizen. They are willing to make an ongoing commitment to maintain upkeep and provide input.” Lyons said, “I’m sure they will. They are an excellent group to work with.”

Damian Schmelz asked, “Has there been any downsides of using correctional labor?” Director Hupfer indicated that the labor crews are “very well” supervised. “We’ve gotten very few complaints.” The Chair said, “I think it’s a very good question.” Director Hupfer added that the labor crews are from minimum security facilities, with two facilities “actually sitting on DNR properties—one at Chain O’ Lakes State Park and one at Jasper-Pulaski Fish and Wildlife Area. Director Hupfer noted that the offenders that make up the labor crews “do not have violent crime histories or histories sexual predation or murder. These are minimum security folks that don’t really pose a threat.” Lyons added that the crews have “some amazing skills.”

Bryan Poynter moved to approve establishment of a horse campground stall rental fee at Deam Lake State Recreational Area as recommended by the Division of Forestry. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration of Request for Preliminary Adoption of Amendments to 312 IAC 9 concerning the following: General Requirements for Deer, Maximum Taking of Antlered Deer in a Calendar Year; Hunting Deer by Bow and Arrows; Hunting Deer by Bow and Arrows by Authority of an Extra Deer License. Extending the Restriction of Taking only One Buck a Year for another Five Years; Administrative Cause No. 06-185D

Stephen Lucas noted the Commission’s Division of Hearings had received in advance comments on the rule proposal, and he noted the comments were contained in document printed on green paper and distributed prior to the meeting at the Commission table.

Linnea Petercheff from the Division of Fish and Wildlife presented this item. She gave a brief overview of the proposed amendments. An amendment would extend the restriction for taking a maximum of one buck per year for the entire deer hunting season from September 1, 2007 to September 1, 2012. “That gives our staff another five years to evaluate harvest data and conduct other surveys to evaluate whether this rule affects the deer herd.” She said the amendment is not based on a “biological issue”, but is a “social issue”. Petercheff noted that several proposed amendments to terminology were technical and not substantive.

Petercheff introduced Jim Mitchell, Ph. D., DNR’s deer biologist. Mitchell noted that over the past 30 years hunters have been allowed to take one buck with archery equipment and a second buck with firearm equipment. “Twenty years ago we changed that to allow two bucks with archery plus one with a firearm,” then the bag limit was changed 15 years ago to allow the taking of two bucks with both archery equipment and a firearm. “At that time we began to have some protests with people that were concerned about the age of our bucks. They were afraid that we were going to develop a very young deer herd, which would mean small antlers.” He said that at that time, DNR staff “did not feel that was the case”, but a survey was conducted of those that purchased deer hunting licenses that resulted in greatest percentage of those surveyed “were willing to give up the two bucks that were allowed at that time.”

Mitchell explained that the “one buck rule” is a general statewide restriction, and it does not affect any of the special hunts, such as hunts on state parks or nature preserves, or on military bases, and where there are other “special situations.” Bryan Poynter asked whether the deer urban zones were included. Mitchell responded that one extra buck can also be taken in an urban zone.

Mitchell said the proposed rule is not biologically based and does not impact DNR’s ability to manage Indiana’s deer herd or to protect the health of the resource. “This is strictly a social issue.” He said the one buck restriction was instituted five years ago. “The protests are not as strong or not as voluminous now” as was in the first year of the restriction. “This is an extremely volatile issue.” Mitchell said a survey of 10,500 deer hunters who bought licenses in 2005 (as well as 2,000 hunters who hold a lifetime license) was conducted this past summer. The survey results “ran about 70% in favor of remaining with the one buck rule and 24% in opposition to it.”

Mitchell said that the impact of the “one buck rule” will not be known “unless we go away from it for a few years.” He said that a significant number of those surveyed indicated that “it would be worthwhile to find out” if the current restriction of one buck has any impact on the deer population. Mitchell reflected that the Department “does not care in terms of biology or herd management; it’s a social issue. What does the hunting public want?”

The Chair asked Patrick Early about any discussions the Natural Resources Advisory Council had regarding the rule proposal. Early said the Council did receive “some testimony, but hardly a statistical sample.” He noted that approximately eight individuals representing various groups provided comments. “At least in that small sample, people seemed to be generally in favor of extending this for another five year period of time.” Early said the Council did not take any “formal action”. He said, “It seemed to be the general direction of the whole meeting that it made sense to get more data, extend it five years and continue to look at whether or not there really is a significant effect.”

Dick Mercier said, on behalf of the Indiana Sportsmen’s Roundtable, “We do support the preliminary adoption of the rules today in both [agenda] Items 7 and 8.” He thanked Director Hupfer for his initiative “for the benefit of the sportsmen in Indiana.”

Bryan Poynter inquired of the kinds of data and information DNR collects for its evaluation. Mitchell survey conducted last summer was statistically and scientifically sound. He noted that at the beginning of each firearm season 30 biologists are sent to check stations to “look at the teeth of the deer that are harvested.” He said the biologists can determine “accurately” whether the deer taken was a fawn, a year and a half old, or and older deer. “Once you get beyond two and a half, it becomes difficult to say whether it’s two and a half or three, but you know very clearly between two and a half and seven or eight.” He said 3,000 antlered deer have been looked at per year for the last 20 years; 48,000 antlered deer have been reviewed in the last 15 years; and another 50,000 antlerless deer have been reviewed. In 1990, approximately 65% of deer taken were one and a half years old excluding fawn males or button bucks. In the last two

years, the percentage has dropped to 50%. The percentage decrease “trend started before the implementation of the one buck rule and has continued.” Mitchell noted that biological data has been collected and is being reviewed.

Director Hupfer said DNR “does not have the capability to pinpoint and say the one buck rule has made this change, and we necessarily will not know that in five years out...because there are so many other things that have changed in the last eight to ten year period when it comes to deer... This is why we have looked to the will of the sportsmen of the state.” Poynter said, “No, you were very clear, and I appreciate that the fact that it is a recreational choice. It’s a hunter choice.” Poynter concluded, “It’s nice to know that there is some data there you can study, and five more years will provide that much more data.”

Damian Schmelz moved for preliminary adoption of amendments to 312 IAC 9-3 governing general requirements of hunting white-tailed deer as recommended by the DNR. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

Consideration for Request for Preliminary Adoption of Amendments to 312 IAC 8-2-3 governing the Possession of Firearms on DNR properties, and 312 IAC 9 governing Hunting Deer during the Special Youth Season; Hunting Deer by Firearms; Hunting Deer by Bow and Arrows; Raccoons and Opossums; and Wild Turkeys; Administrative Cause No. 06-168D

Director Hupfer presented this item. He explained the proposed rule would allow possession of handguns in “various situations” on DNR properties, and he provided background information regarding the proposed rule amendments. “About six months ago, I learned after talking with some constituent groups there was a prohibition on carrying a handgun while you were archery hunting. With some of the issues that archery hunters face that time of year...we do have some rural crime issues, dogs, coyotes...these issues started a long time ago.” Director Hupfer noted that rules and regulations were researched to find “every instance in which by rule we had somehow limited the ability to possess a handgun by those folks who have gone through the legislative mandated process of a background check and were basically able to carry a handgun in all other situations other than those specifically prohibited by legislation, such as a school and some that have been prohibited by ordinance, such as a city-county courtroom.” He noted that an emergency rule was adopted to eliminate the prohibition to possess a handgun (as allowed by a valid handgun carry permit) on a DNR property or while engaged in hunting. “We thought the [prohibitions] were very inconsistent with the legislative intent that is out there...Our state parks, our fish and wildlife areas, and our forests are really no different than Wal-Mart.”

Director Hupfer noted that the Division of Law Enforcement researched regulations in surrounding states, and “with the exception of Illinois, which has a no-concealed carry, Michigan would basically be identical to us. Ohio has some prohibitions against carrying [handguns] in government buildings, and Kentucky, I believe, is the same as us after [the adoption] of this rule.” He noted that there “haven’t been shooting rampages at any of these facilities.” Director

Hupfer concluded, “Folks who are criminals and desire to come onto and DNR property and cause harm or rob someone, or use a gun in a nefarious way are not going to be dissuaded by a property rule.”

Steve Lucas reported that public comments had been received by the Commission’s Division of Hearings in advance of today’s meeting, and he noted the comments were contained in document printed on green paper and distributed prior to the meeting at the Commission table.

Chairman Cockrum asked whether law enforcement issues have occurred regarding where an individual had been stopped for carrying a handgun or “is it a non-issue out there?” Lt. Col. Mike Crider, from the Division of Law Enforcement, responded, “I think it’s basically a non-issue. Folks that bring a handgun in inappropriate places are dealt with.” He explained that the conservation officers are “well trained and they automatically assume that firearms are present even in fishing type situations. No, this is really a non-issue for us.”

The Chair noted that he has received “a lot of response” from persons on the rule proposal rule regarding allowance on state parks. “A lot of the other parts [of the proposed amendments], I think, are easily defensible.” Concerns he was not able to address were those regarding state park field trips. Even so, “I am a firm believer in the public hearing process....Notwithstanding some reservations on parts of [the proposal], I am comfortable as Chair with the public hearing process. That’s why we have it, and we will find out.”

Jane Ann Stautz asked that safety considerations be reviewed in the state parks “especially if there are tour groups or field trips.” Director Hupfer said, “Our parks are no different than any place else in the state. People are taking a field trip to the zoo and there are people, who have handguns, and there are people taking their kids to the shopping mall and there are people that have handguns at the shopping mall, and at church, and basically everywhere else you go.” He said the Legislature has “made it clear that properly permitted legal citizens who have gone through this process have a right to possess that handgun.”

Damian Schmelz noted that William Walters, former director of DNR’s Division of State Parks, submitted comment in advance of today’s meeting. “I hope he will be able to come and offer his comments in person.” The Chair replied, “I’m sure he will be welcomed.”

Bryan Poynter moved to give preliminary adoption to amendments to 312 IAC 8-2-3, 312 IAC 9-3, and 312 IAC 9-4 governing the possession of handguns on DNR properties and during hunting activities. Chad Frahm seconded the motion. Upon a voice vote, the motion carried.

Information Item: Federal Ban on Interstate Movement of Some Species of Fish

The Chair asked Bill James from the Division of Fish and Wildlife to give a brief update on the federal ban on interstate movement of some species of fish.

Bill James explained that the federal ban is an attempt to prevent the spread viral hemorrhagic septicemia (VHS). VHS “has not been present in the middle of North America previously; it’s known in Europe, Japan, North Atlantic and even the Pacific, but it is now in the lower Great Lakes”. He said private, state, and federal fish hatcheries may be at risk, as well as bait farms (minnow farms) and private aquaculture facilities. James noted that historically VHS was a disease of trout and salmon; however, “it’s mutated and it’s affecting everything but trout and salmon”. In the Great Lakes VHS has been “implicated in killing muskies, small mouth bass, white bass, and yellow perch, and even some of the exotic species like round goby.” James said that USDA APHIS, on October 24, “with just a few hours notice” shut down the borders of eight states to the movement of 37 different species of fish.” James said that USDA APHIS will define, in an interim federal regulation, the testing and fish health criteria which are needed to resume shipments of these fish species.

DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY

Consideration for Preliminary Adoption of Proposed 312 IAC 18-3-20 that Adds a Provision for the Control of Hydrilla (*Hydrilla verticillata*) as a Pest or Pathogen; Administrative Cause No. 06-168E

Doug Keller, Aquatic Nuisance Species Coordinator with the Division of Fish and Wildlife, presented this item on behalf of the Division of Entomology and Plant Pathology. He said Hydrilla is a federal noxious aquatic plant that has not been regulated in Indiana. “Even though it is a federal noxious plant that does not mean that each state would regulate the plant.” He explained that Hydrilla is a “very aggressive” exotic submerged aquatic plant, which “quickly crowds out” other native plant species and causes fish population imbalances, reduces recreational opportunities, and would “negatively affect” real estate values around lakes.

The proposed rule would prohibit possession of the plant including the transport of the plant on any aquatic equipment. DNR would have authority to regulate any infested body of water to prevent the movement of the plant to any other body of water. Keller said Hydrilla was found this summer in Lake Manitou in Rochester. Hydrilla is “widely spread” in the Gulf Coast states, in the Eastern Seaboard states, and Pacific Coast states. “It’s always around coastal areas. Lake Manitou is the only body of water in the Midwest that contains [Hydrilla].” Keller noted that a temporary rule is currently in effect, which imposes watercraft use restrictions at Lake Manitou to “prevent boaters, anglers”, and any other recreational users from moving Hydrilla to another body of water.

Keller said that eradication plans are underway. “We are possibly facing somewhere in the neighborhood of a half million dollars per year to eradicate [Hydrilla] out of Lake Manitou. It’s not going to be a one-year eradication program; it’s going to be multiple years possibly costing as much as \$2 million”. Damian Schmelz inquired of the possible origin of the introduction of

Hydrilla into Lake Manitou. “Is it attractive to aquarists?” Keller answered, “No. [Hydrilla] should not actually be in trade. It’s a federal noxious aquatic plant that cannot be shipped across state lines.” He noted, however, Hydrilla was a popular aquarium plant in the U.S., “but that was decades ago.” Keller explained that Hydrilla is spreading by watercraft movement. Fragments of Hydrilla are being transported on equipment from one body of water to another. The Lake Manitou introduction “most likely came from an East Coast body of water.” He said nearest body of water infested with Hydrilla is located in Pennsylvania. “It jumped completely over Ohio and landed in northern Indiana.”

Doug Grant asked, “If [Hydrilla] is in a lake, how long does it take before somebody finds it?” Keller answered, “We suspect [Hydrilla] has been in the Lake Manitou for at least a couple of years. Detection of a new population where there are very few plants is very difficult.” He noted that “at first, it was difficult” to find Hydrilla in Lake Manitou. Lake Manitou was “intensely surveyed” and Hydrilla populations were found in “quite a few areas” covering approximately 50 acres. Keller also noted that surrounding lakes are being surveyed for Hydrilla.

Jane Ann Stautz moved for preliminary adoption of 312 IAC 18-3-20 to add Hydrilla (*Hydrilla verticillata*) to the species regulated as a “pest or pathogen”. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF INDIANA STATE MUSEUM AND HISTORIC SITES

Consideration of Request for Recommendation for Final Approval to Deaccession Items from the Collections of the Indiana State Museum and Historic Sites

Lorri Dunwoody, Registrar for the Indiana State Museum, presented this item on behalf of the Collections Review Committee. She noted a correction that the Collections Review Committee approved the deaccession list during its meetings between May 31, 2005 and April 25, 2006 rather than January 31, 2006 as indicated on the report. She explained that items with a “hold” designation will be retained in the Indiana State Museum’s collection. “It is common practice for the Museum to review collections... The reason why we do this is to upgrade the quality of our collections.”

Doug Grant asked whether the donor of a “high-priced” item recommended for deaccession is notified. Dunwoody said, “It depends.” She explained that when an artifact is donated, the artifact is reviewed and “it is a legal transfer of ownership” to the Museum. Dunwoody noted, however, the donor may request notification if the artifact is recommended for deaccession. “Usually that does not happen, because it goes through the Collections Review Committee first to review whether [the artifact] is appropriate for the collection.” Most items with great worth are not deaccessioned.

Director Hupfer indicated that, as the Chair of the Board of Trustees for the Indiana State Museum, the “high dollar” artifacts are not being deaccessioned. “Those are hard to come by.”

He explained that the Indiana State Museum has limited space for its collections, and there has been “significant effort” in the last few years to do a “better job cataloguing” the collection. Director Hupfer offered to Commission members a “behind the scenes” tour of the Indiana State Museum. Dunwoody explained that an artifact is reviewed according to its relevance to Indiana and its history.

Bryan Poynter asked, “Where does this stuff go?” Dunwoody explained that artifacts deaccessioned go to “special sale almost always. Sometimes [an artifact undergoes] witnessed destruction, and sometimes it goes through our conservation lab so they can do testing, which they can’t do” on items in the Museum collections.

Damian Schmelz moved for approval to deaccession items from the collections of the Indiana State Museum and Historic sites. Jane Ann Stautz seconded the motion. Upon voice vote, the motion carried.

DIVISION OF LAW ENFORCEMENT

Consideration of Request for Approval of a Nonrule Policy Document for Temporary Boating Restrictions and Closures on Lakes (Information Bulletin #51); Administrative Cause No. 06-150L

Maj. Samuel Purvis, Indiana State Boating Law Administrator, presented this item. He noted that the proposed nonrule policy document formulates a “policy that the [Division of Law Enforcement has] been using in-house for about ten years.” In 1996, a committee was formed of Lieutenants from the northern half of the state to address “high water flooding on our natural lakes.” High flooding situations “come up about once every four years”. Purvis noted that earlier this year lakes in LaGrange County and Noble County had “high water, and several of those lakes had boating restrictions on them to idle speed. We didn’t close any lakes; we just put them at idle speed.”

Purvis said the proposed nonrule policy document sets forth criteria for imposition of an idle speed or an actual lake closure. “If [high water is contributing to] property damage to piers and wharfs, we would do a boating restriction... Where wave action could cause damage to real property, a person’s home, we would actually close the lake”. Purvis noted an increase in public interest regarding the restrictions imposed this year, especially those living on the lakes. “If we could get our internal policy into a nonrule policy, and adopted by the Commission, then people could go to the [Commission’s] website and see what conditions exist and get a better sense on making a restriction”.

The Chair asked for clarification of the meaning of “public waters” as referenced in the proposed nonrule policy document. “Does this include impoundments like Monroe or Morse?” Purvis

answered, “We have probably a little different take on a property that we already manage, but the original policy did only speak to ‘public freshwater lakes’...but was expanded to public waters.... It could be a catastrophe involving a bridge or storm damage, trees, debris in the water where we would want to make an official closure to keep people out and still use our boating laws on prudent [watercraft] operation”.

Director Hupfer noted persons “shouldn’t be putting a boat” in rivers and streams during high water. “Are you taking that responsibility then for every one of those situations to put out a ‘no boating’ announcement? I mean, common sense would dictate some of that, but do we really want to take that obligation on us..., or do we want to limit it to the lakes like we’ve done in the past?”

Maj. Purvis asked Steve Lucas if he could offer additional insight. Lucas responded, “This is essentially public waters that are lakes,” although the nonrule policy document did include language to allow the DNR to use it as a reference document for rivers and streams. More notably, however, “There are lakes that are not public freshwater lakes.” Examples would include Wolf Lake and George Lake in Hammond. Another example of a lake not fully regulated as a “public freshwater lake” is Geist Reservoir. The main thrust of the nonrule policy document was directed to lakes.

The Chair noted, “The perception on the rivers...is that at a certain [water] elevation it becomes an idle zone, the entire river because of damages to property, yards, and basements. That’s a perception. I don’t know if that something that has been negotiated with” the Division of Law Enforcement? Purvis answered, “No. It would probably fall under the statute of ‘prudent operation’.... That’s what we operate under on rivers.... We make cases on ‘prudent operation’ to take people off the water before they get into a rescue situation.”

Chairman Cockrum asked, “So, in summary, this is a memorialization of an internal policy, to make it into a nonrule policy document, so the public can see the criteria?” Purvis responded that the Chair was correct.

Bryan Poynter moved for approval of Information Bulletin #51, a nonrule policy document for temporary boating restrictions and closures on lakes. Chad Frahm seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of Report of Public Hearing and Comments, and Recommendation for final adoption of 312 IAC 10.5 Governing Regulation of Dams; LSA #06-92(F); Administrative Cause No. 05-195W

Sandra Jensen, Hearing Officer, presented this item. As mandated by IC 14-27-7.5-8, the proposed rule adds 312 IAC 10.5 governing regulation of dams to establish criteria for assigning

hazard classifications to dams in the event of a potential uncontrolled release of water. The Commission gave preliminary adoption to the proposed rule at its November 15, 2005 meeting, and the Notice of Intent to Adopt the rule was published in the May 1, 2006 *Indiana Register* with Kenneth Smith from the Division of Water assigned as small business regulatory coordinator.

Jensen said a public hearing was held on October 24 in Brown County. “The reason [Brown County] was selected was because...there is a large congestion of [dams] in Brown County or nearby...and was chosen for convenience for persons that might be affected by this rule.” She indicated, however, that no member of the public attended the public hearing, nor were any comments received outside the public hearing process. Jensen explained that the proposed rule “formalizes the practice that has been ongoing by the Division of Water in regulating and classifying hazard levels to dams since the enactment of IC 14-27-7.5.” She noted that the proposed rule does not “impose anything necessarily new, and it is not expected that there will be any small business or regulatory impacts.” Jensen said the proposed rule provides definitions and provides a “mechanism for a person to seek reconsideration of a hazard classification as made by the Division of Water so it goes a little beyond what is already available.” Jensen recommended the Commission give final adoption to the proposed rule as presented.

Damian Schemlitz moved for final adoption of 312 IAC 10.5 governing regulation of dams. Matthew Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Comments and Recommendation for Final Adoption of Amendments to 312 IAC 9 Governing Hunting Deer by Bow and Arrows, and Other Miscellaneous Amendments to Rules Governing Management of Fish and Wildlife; LSA Document #06-193(F); Administrative Cause No. 06-077D

Sandra Jensen also presented this item. She said the Commission gave preliminary adoption of the proposal at its May 16, 2006 meeting, and she presented a brief overview of the various amendments to the rules governing the management of fish and wildlife. The definition of “immediate family” is added at 312 IAC 9-1-9.6 to clarify the use of the term as it appears in 312 IAC 9-2-14, “which the Commission adopted and became effective in June 2006”. An amendment to 312 IAC 9-3-5 identifies the types of licenses that may be used to take an extra deer and removes the city of Madison from the list of urban deer zones. Amendments to 312 IAC 9-3-16 would extend the season for taking and possessing cottontail rabbits from January 31 to February 15 except within the boundaries of certain fish and wildlife areas, and an amendment to 312 IAC 9-3-17 would standardize the season for hunting and possessing of gray squirrels and fox squirrels statewide to the period from August 15 through January 31. “This amendment has the effect of extending the squirrel season for areas of North of State Road 40.”

312 IAC 9-4-11 is amended to add a youth hunting season for wild turkeys, and removes Big Oaks National Wildlife Refuge from the list of areas where turkey hunting is allowed outside of

the regular season. Spring turkey hunting prohibition in several counties or parts of counties is eliminated. In 312 IAC 9-5-7 and 312 IAC 9-5-9, scientific and common names of several reptiles and amphibians are also amended. Lastly, amendments to 312 IAC 9-10-4 adds the requirement that white tail deer possessed under a game breeders license must be kept in a perimeter fence at least eight feet high, and other amendments are made to record keeping and game breeder license renewal.

Jensen said the Notice of Intent to Adopt a Rule was published in the *Indiana Register* on July 5, 2006, identifying Gregg McCollam as the small business regulatory coordinator. The Commission's Division of Hearings received the Office of Management and Budget's letter of fiscal approval on September 2, 2006. She noted that the proposal "would impose costs and requirements on small business and regulated entities only related to the amendment in 312 IAC 9-10-4." Jensen said the small business impact analysis was forwarded to the Indiana Economic Development Corporation (IEDC), and the IEDC responded indicating that "they had no objection to the fiscal impacts associated with this rule." IEDC's comments were posted on the Commission's Web site, were available at the October 23, 2006 public hearing, and available for public inspection and copying in the office of Division of Hearings as required by statute.

Jensen noted that the "majority" of comments received were "in favor" of the proposed amendments. She indicated, however, that two negative comments were received regarding the proposed amendment adding the definition of "immediate family". She noted that the two comments "tended toward at least the inference" that the amendment was a "further restriction upon landowners who, in some circumstances are exempt from license requirements for hunting, fishing, or trapping on their own property." Jensen explained that the proposed definition of "immediate family" does not impose an additional restriction. "It's my belief that the restrictions commented about were pertaining to the rule that was adopted in June 2006, which did add some criteria to the statutory exemptions that existed."

Jensen said an amendment is also proposed to correct a technical error in 312 IAC 9-3-5. As preliminarily published, the language of 312 IAC 9-3-5(a)(1) "infers that hunting an extra deer is authorized by all types of lifetime licenses, and that is absolutely inconsistent with statutory authority because deer hunting is not authorized in any manner by a lifetime license issued under IC 14-22-12-7(a)(1) through IC 14-22-12-7(a)(3)." The revision specifies that extra deer may be taken under a lifetime license issued under IC 14-22-12-7(a)(4) and IC 14-22-12-7(a)(5). Jensen also explained that technical amendments to the published language at 312 IAC 9-5-7 and 312 IAC 9-5-9 further correct certain scientific and common names of reptiles and amphibians. She said, "It is believed that these revisions are not in any way substantially different from the rule as published and should not cause any problem with final adoption." Jensen recommended final adoption of amendments as presented.

The Chair thanked Jensen for clarifying "why [the Commission] was revisiting the definition of 'immediate family'. That makes sense." Jane Ann Stautz inquired of the reason for the removal of Madison from the list of urban deer zones. Jim Mitchell explained that Madison is immediately adjacent to the Clifty Falls State Park, and deer populations "had built up" on the

state park and on the land surrounding the state park including the city of Madison. In order to address the increased deer population, Madison was established as an urban deer zone. Because of the special deer hunts at Clifty Falls State Park, “the local officer thought that it was no longer necessary to have both.”

Bryan Poynter moved for final adoption of various rule amendments to 312 IAC 9 governing hunting deer by bow and arrows, and other miscellaneous amendments. Chad Frahm seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Comments and Recommendations for Final Adoption of New Rule 312 IAC 3-1-2.5, which Identifies the Applicable Provisions of the Code of Judicial Conduct for an Administrative Law Judge of the Commission; LSA Document #06-9(F); Administrative Cause No. 05-137J

Sandra Jensen also presented this item. She explained that the rule proposal was “prompted” by 2005 statutory amendments to IC 14-10-2-2. The amendments “specified that the administrative law judges of the Natural Resources Commission may be removed for cause under the applicable provisions of the Indiana Code of Judicial Conduct.” Jensen explained that the rule proposal “simply identifies” those provisions of the Code of Judicial Conduct that are applicable within the context of the responsibilities of an administrative law judge.

Jensen said the Hearing Officer’s report identifies and explains particular canons within the Code of Judicial Conduct that “we have deemed inapplicable.” She explained that “some of the [inapplicable canons]...are inconsistent with statutory and rule provisions that [the Commission’s administrative law judges]...are responsible to abide by.” The Commission gave preliminary adoption to the proposed rule on January 18, 2006. The Notice to Adopt a Rule was published in the *Indiana Register* on May 1, 2006, and Stephen Lucas was identified as the small business regulatory coordinator. Jensen indicated that there was no fiscal impact to state government or costs to small business associated with the proposal.

Jensen noted that the proposed rule has been “widely publicized” throughout a variety of legal forums including meetings of the Indiana State Bar Association’s Environmental Law Section, “who have voiced support for the legislative action, which became Senate Enrolled Act 619”. She noted, however, that no one appeared for the October 13, 2006 public hearing held and no comments were received outside the public hearing process “with exception of a comment from Senator Gard early on.” Jensen noted that Senator Gard sponsored SEA 619, and said that Senator Gard indicated that the proposed rules “would be of assistance” in clarifying the applicable canons within the Code of Judicial Conduct. Jensen then recommended the rule amendments be given final adoption as presented.

Damian Schmelz moved to give final adoption of 312 IAC 3-1-2.5 adding standards to identify the applicable provision of the Code of Judicial Conduct for administrative law judges of the

Natural Resources Commission. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of Proposed Updates to or “Sunsetting” of Specified Commission Nonrule Policy Documents (2nd of 3 Parts); Administrative Cause No. 06-002A

Stephen Lucas, Director of the Division of Hearings, presented this item. He explained that this is the second of three parts of a “comprehensive review” of the Commission’s existing nonrule policy documents, and he gave a brief overview. Lucas noted that a statutory responsibility of the Commission is to keep its nonrule policy documents current. “With time, some of [documents] become stale and some require amendments.”

Lucas said that Information Bulletin #15, addressing zebra mussels, and Information Bulletin #39, addressing aquatic nuisance species, were recommended for “sunset”. He added, however, that he expected professionals within DNR would subsequently tender new documents to the NRC to provide a “more comprehensive approach” to aquatic nuisance species. He characterized the information bulletins as “somewhat dated and not really in step with the modern view of how to deal with invasive species.”

Lucas stated he was informed that Information Bulletin #17, which addresses wetlands habitat, is used by several divisions “almost on a daily basis”. The professionals who use Information Bulletin #17 wanted him to emphasize to the Commission that it is “particularly important in the regulatory process of the DNR.”

He explained that Information Bulletin #25, which addresses management of cave and karst resources, is also applied frequently. Agency professionals have suggested this bulletin needs to be expanded and updated, but new language is not yet ready. The request is that Information Bulletin #25 be retained for now in its current format. In the not-too-distant future, amendments are likely to be offered by agency personnel to incorporate “new information and experiences they have had” since its original adoption.

Lucas concluded by recommending “sunsetting” Information Bulletins #15 and #39, with the remaining nonrule policy documents being retained “in their current version although with some technical updates” as shown in the Commission packet.

Matthew Klein moved to sunset update and approve or to sunset 14 nonrule policy documents as recommended. Chad Frahm seconded the motion. Upon a voice vote, the motion carried.

ADJOURNMENT

At approximately 12:31 p.m., EST, the meeting adjourned.

