

ADVISORY COUNCIL
Meeting Minutes of August 14, 2013

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
AmyMarie Travis Lucas, Vice Chair
Hon. Thomas Johnson
Ross Williams
Bart Herriman

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
Steve Hunter	Law Enforcement
Bill James	Fish and Wildlife
Phil Bloom	Communications
Ginger Murphy	State Parks and Reservoirs
Breana Sowers	Lake Michigan Coastal Program
Mike Molnar	Lake Michigan Coastal Program
Maggie Byrne	Lake Michigan Coastal Program
John Bacone	Nature Preserves
Cathy Draeger-Williams	Historic Preservation and Archaeology

GUESTS PRESENT

Don Gorney

Call to order

Patrick Early called the meeting to order at 10:27 a.m., EDT, at the Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis, Indiana. With the presence of five members, he recognized a quorum.

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. He said the Department has been in conversation with the Governor's Office regarding the state park inn system and how it ties into the local communities and the park, "make money or don't make money, and why, and what we might do to get a new inn". Also being discussed is possible amendment to license fees. Davis noted that the Legislature is preparing for its summer study committees.

Chris Smith, Deputy Director for the Bureau of Resource Regulation, provided his report. He explained that committees of legislators are assigned to specific groups of topics for summer studies. "During the off-season, they get together and are able to meet to discuss topics either that didn't get resolved in the previous session, or something that may take a little legwork to get them up and running, to make sure it gets through in a timely manner." The committees have members from both parties with four members from the House and four members from the Senate. The Department is usually involved in the Natural Resources Study Committee, the Water Resources Study Committee, and the Environmental Quality Services Committee. The Water Resources Study Committee will meet August 19 to discuss specifically issues of water supply. The Natural Resources Study Committee will meet sometime in the last week of August at Pokagon State Park in Angola. A second meeting is set for the first week of October in Spring Mill State Park.

Smith noted that the Department, as usual, has a great presence at the Indiana State Fair. "We have seen a lot of visitors, and have had a lot of kids fishing in the fishing pond, which is always great to see."

Davis noted that the Hoosier Outdoor Experience, which has been a growing phenomenon for the Department, is scheduled for September 21 and 22 at Fort Harrison State Park. Last year, approximately 30,000 attended. The event is aimed at those persons that do not usually use the Department's services. "It's a recruitment tool for us and an exposure for urban families hopefully to things that don't usually get to do."

Smith announced that Joseph Hoag, previously with the Public Access Counselor's Office, is the Department's new Chief Legal Counsel. The Department is in the process of hiring a new Director for the Division of Historic Preservation and Archaeology and is working to fill the vacant position of Director of the Division of Reclamation.

Bart Herriman thanked Chris Smith and other Department staff for following up on questions he had asked at the previous Advisory Council meeting. "Chris followed up very promptly and early. I want to say 'thank you for that.'"

Approval of minutes of meeting held on June 12, 2013

AmyMarie Travis Lucas moved to approve the minutes of the meeting held on June 12, 2013. Hon. Thomas Johnson seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation of dedication of the *JD Marshall* Underwater Nature Preserve in Porter County

Mike Molnar, Lake Michigan Coastal Program (LMCP) Coordinator, presented this item. For consideration is the dedication of the *JD Marshall* Underwater Nature Preserve. The *JD Marshall* was constructed in 1891 in South Haven, Michigan. In 1910, the *JD Marshall* was sold and refitted with parts from a sunken ship, the *Muskegon*, which is on the National Register of Historic Sites. In 1911, the *JD Marshall* sank during a storm resulting in four lives lost. The wreck of the *JD Marshall* is located just offshore of Indiana Dunes State Park. In 1979, the *JD Marshall* was rediscovered, and in 1982 the ship was raised by Michigan salvagers who attempted to haul off the shipwreck for spare parts. “The Indiana Conservation Officers stopped that process.” In 1985, Gary Ellis, formerly of the Division of Historic Preservation and Archaeology (DHPA), along with conservation officers conducted the first scientific survey of the *JD Marshall* shipwreck. The shipwreck was resurveyed in 2000.

Molnar said the current discussion and proposal for dedication of the *JD Marshall* as an underwater preserve was initiated due to persons conducting an unpermitted survey of another shipwreck, for which conservation officers again intervened. “It really got the discussion going within the [DNR] that we needed to do more to identify and preserve our historic resources” within Lake Michigan. In 2008, the LMCP conducted stakeholder meetings to identify the scope of the work to initiate reinvestigation of the shipwreck. The reinvestigations began in 2011 under contract. Last year, the LMCP began discussing the concept of the *JD Marshall* preserve.

John Davis asked Molnar to outline the LMCP’s role in the proposed dedication.

Molnar explained the LMCP provides financial, technical, and coordination assistance. “We are charged with coordinating all of the state agency programs that address coastal resource issues within Lake Michigan watershed. ‘Coastal resources’ is broadly defined as ‘natural, cultural, and historic.’” The LMCP worked in coordination with the DHPA, and the Divisions of Law Enforcement, Fish and Wildlife, State Parks and Reservoirs, and Nature Preserves regarding the proposed dedication. The group met on six different occasions to discuss the proposed boundary of the preserve and site management, such as allowable uses and interpretation of the site. A management plan was developed, which included direct and indirect survey work. “Divers actually took a look at” the shipwreck. Side-scan sonar was also used to survey the shipwreck and debris field. The survey results indicated the shipwreck was being damaged by anchors. “Folks would just kind of go out there and throw an anchor out and either intentionally or unintentionally catch on some of the timbers. Being over 100 years old, [the timbers] are not rock solid. We want to preserve the resource for the future.”

Molnar said the *JD Marshall* was one of two sites that were discussed for potential nature preserve dedication, the other being the *Muskegon* shipwreck site. However, the *JD Marshall* was selected due to its proximity to Indiana Dunes State Park. “We felt that it

would be easier to manage given the fact that you can see out towards this site from the beach. The state park staff might be able to see anything going on, like somebody trying to re-raise the wreck or take off large pieces of the boat.” The *JD Marshall* shipwreck would be dedicated under the Nature Preserve Act (IC 14-31). “Mostly the preserves are dedicated to protect natural resources, but there is also a provision in the Act to promote the understanding and appreciation of cultural values by the people of State of Indiana.” Once the site is dedicated as an underwater preserve the site would be nominated to the Federal Marine Protected Area process, which would provide additional resources to manage the site.

The proposed *JD Marshall* Underwater Preserve is approximately 664 acres and is designed to encompass the known and unknown debris field associated with the shipwreck. “When the [*JD Marshall*] originally sank, materials were strewn out and about. It was raised and then moved...so additional items were cast out. The prevailing current is from the northwest so the preserve actually extends beyond the known debris locations.” Alternative preserve boundaries were discussed, but the one presented today is the boundary “which we feel is necessary to protect the resource given some of the uncertainties”. The boundary of the preserve would be designated by marker buoys following U.S. Coastguard standards. Mooring buoys would also be placed onsite for anglers and divers. Under the proposed master plan, anchoring within the preserve boundary would be prohibited except at mooring buoys due to the potential impact to the site. “There are really no other restrictions of use. People can still fish, troll though the area, kayak, paddle, and do whatever they want onsite within the existing legal framework.” The proposed Master Plan would authorize four mooring buoys. Molnar distributed a FAQ sheet, which provided additional restrictions. “Most of them are common sense restrictions.”

Molnar said, “The question comes up whether there will be other preserves established within our 241 square miles of Lake Michigan. As of this time, there are no plans to do so.” There are suspected up to 50 shipwrecks within Indiana’s portion of Lake Michigan, but the locations of only 14 are known. “If there is any desire to dedicate any additional preserves, those will be taken on a case by case basis following the same process.”

Davis noted the tri-fold pamphlet provided to Advisory Council members includes a map of the shipwreck and debris field designated by a dotted line. He asked about the date of the map. Molnar responded the map dates back to the original Ellis study in 1985.

Davis said, “The question that is on the table—or continuing to be on the table and discussed—is the no-anchor zone. There are fishermen that fish for perch.... We want them to be able to fish for perch. Right now, the sandy bottom, the anchor goes down and catches maybe or maybe doesn’t. If it catches on something on the sandy bottom in the debris field, it’s probably part of the wreck. We want to avoid that.” Perch school in the area of the shipwreck. “It’s not about structure, but more about temperature and water conditions.” The proposed preserve is approximately 660 acres, or a little over a mile long and ½ to ¾ mile wide. It is possible to go to the beach, be outside the swimming area and be anchored off the beach. “I’m not sure we allow people to [anchor

off the beach], or we certainly don't encourage boaters to go near the swimmers, which is pretty much dead-center.”

Molnar said the preserve would be approximately 500 feet offshore. At this distance, the water is about twelve feet deep and extends to where the depth is about 35 feet. Davis said the swimming boundary is approximately 200 or 300 feet from shore. Molnar added the buoys for the swimming area are placed at approximately chest depth.

Molnar said the debris field limit was reviewed recently. The 1985 Ellis study recommended additional survey work be conducted 1,000 feet off the main frame of the shipwreck in every direction. “We would be looking at 2,200 feet by 2,100 feet.”

Davis said recommended are buoys placed for tie-off for divers. The buoys would not be directly above the wreck but spaced around the wreck site. Molnar said the recommendation is two mooring buoys near the wreck site and off the main frame by 20 or 30 feet. “You would have to swim over from the mooring buoys.” The other two buoys would be placed farther east to address a Division of Fish and Wildlife concern for perch anglers. Davis said the proposed preserve “can evolve. We can have a nature preserve that is this big, but have a no-anchor zone that is what we want it to be, and change that if we discover new and bigger pieces of the wreck.”

Molnar said the bow section of the ship has not been located. “It is a sand environment, and so it is a dynamic system.” The bow “may re-emerge if we get a big storm blow through and uncovers it.”

The Chair asked, “Who would be opposed to this—just fishermen that want to anchor?”

Davis answered in the affirmative. “I almost wonder if we shouldn't place buoys around the wreck and so ‘no anchoring within 500 feet of this buoy’. Then you would have a zone of influence that would also provide an alternate.”

The Chair asked, “Is it illegal to try to salvage any wrecks that are in our waters?”

Cathy Draeger-Williams, with the DHPA, answered in the affirmative. She noted that that statutorily a person would need a permit, through DHPA, to do any archaeological field investigation.

The Chair observed, “Other than recreational diving, you are not allowed to do anything. But people can go recreationally dive these other wrecks. We are just creating this nature preserve, because it makes sense because it's right in front of the [Indiana Dunes State Park], and we know there is a wreck there”.

Davis agreed. “In fact, the propeller of the *JD Marshall* is located on the Dunes State Park beach, labeled, and people are directed to the idea that the shipwreck is offshore.”

Bart Herriman asked, “Do you anticipate those who would be opposed to this would... come to the Commission meeting to voice their concerns? It doesn’t look like anybody’s here.”

Davis said that the known opposition is within the Department. The Division of Fish and Wildlife, with its focus on fishing and anglers, and Division of Law Enforcement worry the preserve boundary is “excessive protection”.

Molnar said the shipwreck site is protected under existing statutes, but the management plan made recommendations to further protect and manage the site regarding impacts, such as anchor scarring.

The Vice Chair said, “Obviously, we are not trying to keep [the shipwreck site] a secret. We want people to use it as a natural resource and a cultural resource, and to know the history. I understand why you have to create a larger area for the debris field, but why not put the SCUBA buoys all around it.... If more debris or larger debris field is discovered due to a storm or dynamic situation..., why not then move the fishing buoys in or out as needed? It doesn’t seem like it has to be such a stressor for the fishing.”

Davis asked, “The fishing boat buoys being the diving buoys, too, right?”

The Vice Chair answered in the affirmative. She then asked regarding the reasoning for recommending only four buoys. “Are they expensive?”

Molnar said buoys are “fairly expensive” and would be required to be placed in and out of Lake Michigan each year. “Given our current budget constraints, we just can’t buy a dozen and place them out.” Since the environment is sandy, an auger anchoring system is also required, which is approximately \$2,000 each.

The Vice Chair asked whether buoys can be added. “If it turns out that there are a lot of complaints, could we add more?” Molnar answered in the affirmative.

Cathy Draeger-Williams said that another concern for installing buoys too close to the shipwreck is that wind and waves can cause buoys to slam against the shipwreck. “We want to have a little bit of a buffer so we are not damaging the shipwreck ourselves.” Molnar added the 20-to-30-foot buoy offset seeks to address the concern and is a common practice for Great Lakes shipwrecks.

Davis asked at what distance from a site the placement of a mooring buoy becomes an imposition to divers.

Molnar stated he could not define the maximum distance a diver is willing to swim. “The 20-to-30 feet was based on recommendations from our consultant who has done work like this across the Great Lakes, and it is the commonly accepted practice.” Interpretive materials would be placed from the diving point, and a rope would be placed for divers to

follow. Water visibility ranges from two feet to 100 feet depending on wind direction, algae, and other situations. “We don’t want divers to have a safety issue.”

Herriman asked whether the Division of Fish and Wildlife would be opposed to the preserve itself. “Are they more concerned about the size of the preserve? What are their main concerns?”

Davis said the Division of Fish and Wildlife’s concern is about the no-anchor zone, but is not concerned about the size of the proposed preserve boundary “as long as we are saying you can’t fish.... It’s all about anchoring.”

The Chair said, “If all you are doing is asking [the Advisory Council] for opinions about things. It sounds like you don’t expect a lot of public input that is going to say ‘You can’t do this.’ It’s really, like you said, between the Division of Fish and Wildlife and [DHPA]. At least from my standpoint, it does seem rather excessive in size for the purpose of trying to protect the wreck.” But the Chair noted he understood the reasoning for protecting the debris field.

Molnar said five different preserve designs were considered. The recommended one is the design agreed upon by all Department Divisions at a July 10 meeting.

Davis said, “Agreed upon, but now not agreed upon. Now, there is a feeling by some of the Divisions, that they didn’t realize what they were agreeing.... We’re going to solve this.”

The Vice Chair noted the backup materials indicate that the shipwreck area has been colonized by round goby, “who are enemies of the perch, right? So the perch aren’t going to be right in this area.”

Bill James, Chief of Fisheries with the Division of Fish and Wildlife, responded the round goby is an invasive species that has colonized throughout the Great Lakes. Immature round goby are a food source for perch, but mature round goby occupy perch habitat.

The Vice Chair asked James to provide additional information regarding the Division of Fish and Wildlife’s concerns for the proposed no-anchor zone. “How big of a deal is that for perch fisherpersons?”

James answered, “We think it could be pretty significant. It’s over a square mile. The perch are mobile, and perch fishermen tend to track [the perch] around.... Perch aren’t going to necessarily go where an anchor buoy is and be there waiting for the fishermen.” If the preserve is dedicated, the Division of Fish and Wildlife plans to conduct surveys regarding any impacts to perch anglers.

The Vice Chair asked, “So, in a perfect world, in your perfect world, what would you see happen?”

James answered, “That it would be, hopefully, a balanced decision where we can more tightly define what is the no-anchor zone that is really most critically important to protect this resource.... Our fisheries staff thought we were talking about an area for no-anchoring that might be the size of a football field, not a square mile. We are trying to adjust to that.” He said the Division of Fish and Wildlife is very supportive of protecting these cultural resources. “Our singular concern is how we can balance this approach so that we have minimal impact on sport fishing, but yet provide protection that is going to be required.”

Davis noted that parts of the shipwreck washes ashore.

Draeger-Williams noted that the debris field in the 1985 survey was bigger than what has been determined more recently. The surveyors “weren’t able to get a precise [shipwreck] boundary because the sand covers and uncovers it. In time, some parts of the ship may be more exposed.”

The Chair then recognized Don Gorney.

Don Gorney, Director of Bird Conservation and Education for Amos Butler Audubon, said he opposed the designation of the *JD Marshall* shipwreck site as a state dedicated nature preserve. He read a portion of the Nature Preserve Act: “It is necessary and desirable that areas of unusual natural significance be set aside and preserved for the benefit of present and future generations.” He added, “We are not preserving anything natural, that I’m aware of, in this situation. We are preserving an historic site. We’re preserving a shipwreck that really is not within the purview of the Division of Nature Preserves. It’s a historic site. I’m not sure why this isn’t being designated as an historic site.” Gorney said a few years ago he had discussions with James Barrett, who wrote the Nature Preserves Act in 1967, regarding mountain bike trails constructed at Fort Harrison State Park. “Jim was shocked that the DNR was allowing mountain bike trails in nature preserves, because that is also against the purpose of the Act.... I think he is an expert on that since he wrote the law.” Gorney contended dedicating the *JD Marshall* shipwreck site as a preserve “continues that devaluing of...the purpose of the Nature Preserves Act.”

Davis asked John Bacone, the Director of the Division of Nature Preserves, to address Gorney’s comments. Bacone responded, “I think the answer to the historic site, park, or protected area or recreation area, or any designation we could give, would only be a designation for DNR, and only a label and a policy that we have. The only protection that we have to give beyond our own internal labeling of something, like calling it a ‘state park’, is the dedication that the real estate transaction, which is a dedication defined in the law, is kind of ‘super conservation easement’ that is only removable by the Governor’s consent. So, it is a higher form of protection.” He said the Division of Nature Preserves met and discussed with DNR’s Office of Legal Counsel the proposed preserve dedication. “There is no question that, in general, a nature preserve is intended to be for natural areas. But the iterations...included ‘cultural’ as one of the reasons why a nature preserve could be dedicated.” The dedication would provide the highest level of

protection a tract of land or an area can have “because it requires a lot of extra steps to have a ‘take’ of a nature preserve. This is a way to really protect a significant cultural resource.”

Herriman asked whether the words “cultural resources” are included in the statute. Bacone answered in the affirmative.

Vice Chair, AmyMarie Travis Lucas, cited the portions of the Nature Preserve Act that address the protection of “cultural resources”: “When you read [IC 14-31-1-7(7)], under terms of statutory construction, I think it is talking about preserving a natural area for the purpose of a cultural protection.”

Sec. 7. To secure for the people of Indiana of present and future generations the benefits of an enduring resource of areas, the state shall, acting through the department, acquire and hold in trust for the benefit of the people an adequate system of nature preserves for the following uses and purposes:

...

(7) To promote understanding and appreciation of the esthetic, cultural, scientific, and spiritual values of the areas by the people of Indiana.

...

Bacone said the Department has a number of dedicated nature preserves that have aquatic features, and some are entire lakes, ponds, and rivers, but they are usually attached to uplands.

Gorney said, “We can parse this, and two attorneys can disagree. I think it’s clear. I know Jim Barrett thought it was clear. This is natural areas. That’s what [the Act] talks about, preserving the natural areas themselves.”

The Chair thanked Gorney for his comments. “We understand your point.” What needs to happen is a balance between the Lake Michigan Coastal Program in the Division of Nature Preserves and the Division of Fish and Wildlife “to make sure that the needs of the citizens are being met”. He asked whether Advisory Council members had additional concerns regarding the proposed dedication and whether members agreed to allow the Department to review the proposal “to try to come up with something that serves everybody and still protects the resource?”

By consensus, the Advisory Council asked the Department to review further the parameters of the dedication in order to serve the citizens of Indiana and to protect the cultural resource, the *JD Marshall* shipwreck.

Davis thanked the Advisory Council and said, “Mr. Chairman, we appreciate that. We will be in solution to go to the Commission”.

Consideration of a change in the DNR Cave Closure policy with discussion of proposal to allow visitation of certain caves within Spring Mill State Park and Harrison-Crawford State Forest

John Davis presented this item. He distributed a map illustrating the spread of the white nose syndrome (WNS) in portions of the East, Midwest, and South. In 2009, the Commission amended a nonrule policy document (Information Bulletin #25), which provides standards for managing caves and karst resources, to affirm the temporary closure of caves on DNR properties in response to WNS.

Davis said the caves were closed because WNS is a fungus that attacks bats. WNS started in New York, “and then it spread over the years. This fungus spreads bat-to-bat, although there have been a few anomalies or jumps from pretty big distances that looks like maybe it could have been a human carry.” A cave that is infected has the fungus in the soil, on the walls, and everywhere. “Boots, equipment, rope, things used in caving, could be bringing fungus elsewhere.” The caving community is very aware of and concerned with WNS, but cavers have lost the ability to go to many of the caves all throughout the Midwest. The Federal Government recommended Indiana close its caves, and the Federal Forest Service also closed its caves. The U.S. Fish and Wildlife Service asked the Department to consider cave closure.

Davis said the Department “began a long conversation—really before we changed the policy—with the cavers about why we were doing this and what the loss would be.” The Department has continued conversations with the caving community, and through those conversations, a protocol was established for equipment decontamination. “The cavers in Indiana have some statewide organizations, and say ‘We’re responsible. We’re the people you call when you have a problem in a cave.’” The caving community was involved in locating the missing person who killed himself in a cave in southern Indiana. Department staff can go into a cave and “promise to decontaminate before and after. We want to take other people...in caves. There’s a generation of people missing out on this opportunity.”

Davis said the proposal is to alter Section 5 of the nonrule policy document, but language has not yet been formatted. “We do not have a final agreement with these cavers, but I wanted to tell you where we were.” The Department is in discussion with the caving community to formulate a cave entrance policy and procedure with the Property Manager of Spring Mill State Park for entrance into non-hibernacula caves, caves that do not provide roosting habitat. The policy would require notice from cavers to the property manager and that the cavers would decontaminate. It may not be necessary to amend Section 5, which states the closure remains in effect until rescinded by the Department. “We could rescind, based on the agreement, and inform the Commission...that that’s what we are doing.” The Department would be changing from “all our caves are closed to a negotiated entrance. We still feel that it is important, even though we are infected.... We are a source now for people who might go in if we open our caves and then travel to another cave, such as Carlsbad Cavern. There is a high degree of awareness all over the country, but we still feel it is part of our duty to stay cautious.”

The Vice Chair asked whether the negotiated entrance would also apply to Harrison-Crawford State Forest. Davis responded that the Department has spoken with the caving community regarding opening caves at Harrison-Crawford State Forest, “but Harrison-Crawford is a more sensitive area with more hibernacula habitat. These things tie into a lot of other discussions. We are also in discussion with the U.S. Fish and Wildlife about our forestry management procedures, and do they impact the bat, and how they impact the bat.” Caves on Harrison-Crawford State Forest are more difficult to control since there is no gate similar to what exists at Spring Mill State Park.

The Chair asked whether WNS kills all bats. Davis responded WNS kills 90% of the bats in the cave. The remaining bats return to the infected cave, and 90% of those bats are killed. WNS fungus is a cold-loving fungus. “If you have a mild winter, which we’ve had...since Kentucky and Indiana has been infected, it hasn’t killed 90% a year. [The fungus] doesn’t grow as fast. They don’t know all the factors, but it is pretty deadly.” Even though WNS is present in Europe, where there are fewer bats, they seem environmentally or physiologically “better able to fight off the fungus”.

Hon. Johnson noted that in Section 5, the term “White-nosed” is used, when other information regarding the fungus the term is “White-nose”. Davis said the use of “White-nosed” was a clerical error.

Chris Smith asked how surrounding states are addressing WNS. Davis said most surrounding states closed their caves, but a few have entered into agreements with the caving community. Kentucky has used the caving community quite a bit in its research of WNS and has a limited cave closure, “which is what we would be going to”. Virginia and West Virginia have opened their caves, but those caves have virtually no bats. The U.S Fish and Wildlife Service “would still like to have all caves and all human activity to not happen.” He said there are caves in Indiana that do not show signs of infection.

Adjournment

The meeting adjourned at approximately 12:15 p.m., EDT.