

NATURAL RESOURCES COMMISSION
May 15, 2012 Meeting Minutes

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
R. T. Green
Anicia Richardson
Doug Grant
Donald Ruch
Robert Wright
Phil French
Thomas Easterly

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
Shelley Reeves	Executive Office
Phil Bloom	Communications
Lt. Col. Steve Hunter	Law Enforcement
Steve Kinne	Law Enforcement
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Bill James	Fish and Wildlife
Dan Bortner	State Parks and Recreation
Gary Miller	State Parks and Recreation
Sam Boggs	State Parks and Recreation
Robert Hogg	State Parks and Recreation
John Bacone	Nature Preserves
Monique Riggs	Water
Bruce Stevens	Reclamation
Phil Marshall	Entomology and Plant Pathology

GUESTS PRESENT

Andy Williamson	Diana Carrarza
Martin Carraraza	Jim Aydelotte
Anne Sterling	John Melia
Paul Arlinghaus	Barb Mort
Keith Ruble	

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 7:10 p.m., EDT, on May 15, 2012 at the DNR Regional Field Office, 14619 West State Road 48, Jasonville, Indiana. With the presence of nine members, he observed a quorum.

Bob Wright moved to approve the minutes for the meeting held on March 19, 2012. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Reports of the Director, Deputies Director, and Advisory Council

Director Robert E. Carter, Jr. was not present.

Ron McAhron, Deputy Director for the Bureau of Water and Resource Regulation, was not present.

Patrick Early, Chair of the Advisory Council, was not present.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. He said the Department is “full into our recreation season. We have been because of the weather for many weeks, but all of our gates are back up in business last weekend.” Davis said there was a “welcome back weekend” during which park admission was free.

Davis said Steve Ferguson, a long-time supporter of historic preservation, was involved, along with the Cook Group, in the restoration of the French Lick resort. The Department coordinated with Ferguson to acquire “a conservation easement on several hundred acres at Lake Monroe a couple years ago. This last Thursday Governor Daniels and Ferguson met on Ferguson’s 2,000-acre farm, which has been in Ferguson’s family since 1816, for dedication of a conservation easement to keep the farm as a working farm. That’s the least that they are doing, and they may eventually make a gift of some or part of the farm to the Department. Steve [Ferguson] did that partly because he has been appointed to the Bicentennial Commission by the Governor, which is chaired by Lt. Governor Beckman Skillman and Congressman Lee Hamilton, and he wanted to help publicize the idea that really anybody can help with the Bicentennial Celebration, especially if they are a landowner or have means to help us buy property, but even just by being involved in the [Bicentennial] Commission’s activities over the next four years.”

Davis announced Governor Daniels “this morning received the Teddy Roosevelt Award” from the Indiana Wildlife Federation for his work on Goose Pond, his efforts with the Healthy Rivers Initiative and the Bicentennial Nature Trust, “and all his other accomplishments, but most of all for consistency in championing conservation.”

Davis said the “Department planted a couple hundred trees at Morgan-Monroe State Forest” to begin a program that encourages people to take part in tree planting all over the State. The Division of Reclamation’s Jasonville Field Office, location of tonight’s meeting, is where the regulated industry and the agency can “work out all the protections that are there for the State of Indiana and all the good work that coal mining people do.”

Davis said in past years the Division of Fish and Wildlife practiced a two-year rule review cycle and wishes to return to this cycle. “We are going to ask our staff for suggestions on things that need to be improved. We are going to ask for public input and aim to come back to you with a [rule] package every couple of years.” Future petitions for rule change directed to 312 IAC 9 would be included in the two-year cycle, unless the issue was time sensitive.

Updates on Commission and Committee activities

The Chair said he and the Vice Chair met with Sandy Jensen and Steve Lucas regarding HEA 1207 and HEA 1273, which were enacted this year and that pertain to the functioning of administrative law judges. HEA 1207 removed provisions applying the Code of Judicial Conduct to ALJs at the NRC and the Office of Environmental Adjudication and changed them to at-will employees. HEA 1273 “could have significant impact on moving forward and how administrative law judges might be pooled. I say that only as a matter of interest, because as of this meeting, there really has been nothing that has happened yet [regarding HEA 1273]. But it was a matter that Steve and Sandy are paying very close attention to because it could affect this Commission and certainly other bodies that have administrative law proceedings.”

Jane Ann Stautz said the AOPA Committee met a few minutes before the full Commission meeting. A brief agenda, which included one action item, was completed.

The Chair reported on the well-attended tour of the Sunrise Mine. He acknowledged and thanked Sandra Jensen and Bruce Stevens, Director of the Division of Reclamation, for organizing the “pretty extraordinary” tour of the underground coal mine. “We had a first-hand tour, and it’s truly fascinating to watch and see. It’s different than if you read about it or see [coal mining] in a book or a picture. It’s just a continuing reason why we are moving around the State and having these meetings in places where the Department of Natural Resources touches people.”

The Chair then introduced Bruce Stevens and asked him to provide a brief insight on the Division’s responsibilities regarding coal mining activities.

Bruce Stevens welcomed the Commission to the DNR’s Jasonville Field Office. “We are pleased to have the Commission with us, and you are welcome anytime.” He said the largest presence in the Jasonville Field Office is Division of Reclamation employees. In addition, the building hosts DNR professionals from the Division of Forestry, the Division of Fish and Wildlife, the Division of Outdoor Recreation, the Division of Engineering, and the Division of Oil and Gas. “We are very fortunate to be a big part of the Department off-campus, as well as playing a big role in the community and employment in this area.” He said there were approximately 75 people employed currently in the Jasonville Field Office.

Stevens said the Division of Reclamation enjoyed hosting the Commission on its tour of the Sunrise Coal Company Carlisle Mine. The mine is located in “southern Sullivan County, just off U.S. 41. A lot of folks don’t realize the contributions coal mining makes to the State of Indiana.” Indiana “ranks typically 7th or 8th in coal production in the United States. There are about seven underground mines and 25 surface mines, which provide a large employment opportunity for the area. 95% of Indiana’s electricity comes from coal.”

Stevens said the Sunrise Coal Mine has a slope entrance at one portal and a shaft entrance at the north portal with “an elevator hoist dropping down 350 feet.” The mine is between eight and ten miles long. “It was better for us to access from the north portal so that we could get up close to the face where the mining was actually taking place.” Indiana’s underground mines are the version referred to as “room and pillar” mines. “Long wall mining is the other version, which is predominant in Illinois and Appalachia.” He said the Commission observed the continuous mining machine cutting coal and the resulting coal pillars that remain for roof support. The Commission “got to meet a lot of fine people from the coal industry, and I know that you walk away from that knowing that they are very skilled and very technically competent individuals.”

The Chair recognized Rob Hogg, Property Manager of Shakamak State Park, and asked him to provide a brief overview of the park.

Hogg thanked the Commission for visiting Shakamak State Park. He said INDOT was in the process of paving the park roads. “We are going to keep working on improving Shakamak as we would any state park.” He said there are 22 family cabins. Shakamak has three lakes that are “wonderful pan fishing—bluegill, crappie, and some bass.” The park was once known for its swimming tower and the 1938 Olympic Swim Trials, but the tower was removed and replaced by an accessible fishing pier. The current swimming pool is one of the top revenue producing pools in the Division of State Parks. Hogg invited Commission members and others in attendance, following the meeting, to dine at Shakamak State Park courtesy of the Friends of Shakamak State Park and volunteers from the Division of Reclamation. A special note of appreciation was made to State Parks and its staff for providing food and services during the dinner.

Hogg reported the Friends of Shakamak was formed two years ago. The group this year “sponsored a successful Easter egg hunt and a Hounds Hike where a person could hike with a pet for 3.5 miles.” The inaugural 5K race was held with 88 runners participating. He said a paddle event would take place on the third weekend in May, and a fishing derby is planned for Free Fishing Weekend. The park also hosts a kids’ camp in August, “which is a mentoring camp to get children into the outdoors. Approximately 220 kids attended last year.” He said Shakamak State Park also “hosts a Powwow in September and a Fall Festival in October.”

The Chair recognized James Aydelotte.

Jim Aydelotte, a Linton resident and former coal miner and employee at Shakamak State Park, said he participated in efforts to obtain State support for constructing the building “we’re now in.” He praised tourism opportunities at Goose Pond and elsewhere in Green County.

DNR, EXECUTIVE OFFICE

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

No additional topic was identified.

PERSONNEL ACTION

Permanent appointment of Mike Miller as Assistant Property Manager at Ouabache State Park

Dan Bortner, Director of the Division of State Parks and Reservoirs, presented this item. He said Mike Miller as Assistant Property Manager at Ouabache State Park, Matt Wronowicz as Assistant Property Manager at Brookville Lake-Whitewater Memorial State Park Complex, and Lynda Ellington as Assistant Property Manager at Shakamak State Park were being brought before the Commission for full time permanent status. "Spring came about a month early, so none of them were able to get off property.... We are pretty well swamped for this early in the season." Bortner said each candidate "has been working on the properties for a minimum of one year, and all have done a wonderful job for us."

Jane Ann Stautz moved to approve Mike Miller as Assistant Property Manager at Ouabache State Park. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Permanent appointment of Matt Wronowicz as Assistant Property Manager at Brookville Lake-Whitewater Memorial State Park Complex

[See Bortner comments previously.]

Jane Ann Stautz moved to approve Matt Wronowicz as Assistant Property Manager at Brookville Lake-Whitewater Memorial State Park Complex. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Permanent appointment of Lynda Ellington, as Assistant Property Manager at Shakamak State Park

[See Bortner comments previously.]

Chairman Poynter said he enjoyed speaking with Lynda Ellington in the afternoon.

Jane Ann Stautz moved to approve Lynda Ellington, as Assistant Property Manager at Shakamak State Park. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Personnel Interview of property manager at Clark State Forest/Deam Lake State Recreation Area

The Chair announced this matter was withdrawn.

NATURE PRESERVES

Consideration of the dedication of Elliott Woods Nature Preserve, Vigo County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said Elliot Woods is a “high quality woods” that is part of Prairie Creek County Park, Vigo County. He recognized “Keith Ruble, Director of the Vigo County Parks, who is present at tonight’s meeting.” Bacone then recommended the dedication of Elliott Woods Nature Preserve.

Robert Wright said, “I’m familiar with this piece of property. It’s right adjacent to a county park. [Vigo] County got it at a very good bargain, and it will make a great nature preserve.”

Robert Wright moved to approve dedication of the Elliott Woods Nature Preserve. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Section Six Addition to Flatwoods Addition Nature Preserve, Posey County

John Bacone presented this item. He said the tract is an addition to the Flatwoods Addition Nature Preserve. “It’s kind of an interesting type of natural community. It’s a woods where most of the trees are small and stunted a little bit.” He said there were a variety of prairie plants. Two sections of the nature preserve were dedicated “years ago. The property was acquired with assistance of The Nature Conservancy and the Indiana Heritage Trust. The Nature Conservancy has already reforested most of the tract.” Bacone recommended dedication of Section Six as an addition to the Flatwoods Addition Nature Preserve.

R. T. Green moved to approve dedication of an addition to the Flatwoods Addition Nature Preserve as recommended b John Bacone. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Glacial Esker Nature Preserve, Noble County

John Bacone also presented this item. He said Glacial Esker is a “really spectacular geologic and natural feature that sits on top of an esker, which is a pretty rare geologic feature.” There are “very few in the State.” As the glaciers were leaving, ice melted, and there were collapses, which formed the natural chain of lakes in Chain O’ Lakes State Park. High quality marshes surround the area, and located on the gravelly slopes are high-quality oak woodlands. “It’s a pretty spectacular and high quality place that we are happy to be able to bring to you for dedication.” Bacone introduced Sam Boggs, Property Manager of Chain O’ Lakes State Park.

Sam Boggs said, “I want people to realize that Chain O’ Lakes State Park is not just an old farm field. There are some high quality natural areas.” He said there was also a Native American presence, “including a burial mound, which will be incorporated into the nature preserve.”

Doug Grant moved to approve dedication of the Glacial Esker Nature Preserve. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

HISTORIC PRESERVATION AND ARCHAEOLOGY

Consideration for recommendation of preliminary adoption of a new rule section to coordinate historic preservation reviews for state agencies proposals that are governed by both Federal and State law; Administrative Cause No. 11-137H

The Chair announced this matter was withdrawn.

FISH AND WILDLIFE

Consideration of report on petition for rule change seeking application of offenses related to animals, IC 35-46-3, to the post-take treatment of wild animals; Administrative Cause No. 12-022D

Mark Reiter, Director of the Division of Fish and Wildlife, presented this item. He said the Commission’s Division of Hearings received a petition for rule change from the Animal Legal Defense Fund and the Best Friends Animal Society. The petition sought rules to clarify that the exception in IC 35-46-3-5(a)(1) to animal cruelty prohibitions applies only to taking animals and not to the treatment of live animals after they’re taken. Reiter said the petition may have been precipitated by “Snapperfest” that is held in southern Indiana. Snapperfest is a contest involving snapping turtles. “I think some of the confusion has come into being because of a statement that we issued to the people who were emailing and writing us about not particularly caring for the activity that was going on.”

Reiter said the Division of Fish and Wildlife stated initially IC 35-46-3 was not applicable to activities at Snapperfest because the statute includes an exemption for wild animals that are legally taken and possessed under IC 14-22. IC 35-46-3-5 states “fishing, hunting, trapping, or other conduct authorized under IC 14-22” is exempt from the animal cruelty statute, as well as a few other exemptions. Conduct authorized by IC 14-22 is not cruelty to animals. “It doesn’t exempt anyone from animal cruelty.” IC 35-46-3-12(c) provides that “A person who knowingly or intentionally tortures or mutilates a vertebrate animal commits torturing or mutilating a vertebrate animal, a Class D felony.” A snapping turtle qualifies as vertebrate animal. A snapping turtle is protected by subsection 12(c) from animal cruelty.

Reiter said the Division of Law Enforcement interpreted that IC 35-46-3 “does continue to protect an animal after it’s taken.” For further clarification, the Department requested an opinion from the Indiana Prosecuting Attorneys Council (“IPAC”) regarding the need for additional rulemaking. Reiter said the opinions of the IPAC and of the Division of Law Enforcement are that the existing “anti-cruelty laws adequately protect wild animals post-take, and that further

detailed rules such as creating a detailed list of activities that constitute animal cruelty could serve to limit the ability to prosecute animal cruelty cases.” He recommended the Commission not pursue additional rulemaking to govern the post-take treatment of wild animals.

John Melia is an attorney with the Animal Legal Defense Fund (ALDF). ALDF is a national organization that seeks to protect animals through the legal system. “We have many members in Indiana, which really explains me being here.” Snapperfest is an annual event, held since 1996 in Ohio County, which includes the use of snapping and soft shell turtles. “In the course of this competition, a lot of times turtles are either held or swung from their necks or tails. Frequently, they are thrown, dropped, or tossed against the ground either inadvertently, to try to subdue the turtle, or out of some sort of celebratory gesture. In a lot of instances, these turtles are hurt and even killed from the activities of this event.” Melia said the ALDF’s petition provides links to videos of Snapperfest activities, and he recommended Commission members view the videos.

Melia said the Department’s initial response was that activities at Snapperfest were exempt from animal cruelty laws because turtles were taken legally from the wild. “What would stop anybody from taking animals from the wild for cruel purposes?” He added, “It sounds like the DNR has now changed [its] interpretation from [its] initial interpretation” and believes animals taken from the wild are protected under the animal cruelty statute. “Although we are very happy to hear this new interpretation, ALDF still believes that a new rule that does explicitly protect wild animals that have been legally taken is necessary.” The DNR’s interpretation change is evidence showing “more need” for a new regulation. “It’s obvious that the law, as it is currently written in statutory form, is not entirely clear and subject to confusion.”

Melia said the ADLF is proposing a rule to bind DNR to a single interpretation of the animal cruelty laws: “Animals that were legally taken from the wild are subject to animal cruelty protection.” He added, “We believe this consistency would be beneficial not only to wild animals in Indiana, but also to people who are trying to figure what is and is not lawful conduct.” He noted IPAC is opposed to a regulation that would specifically laundry-list competitions that would be banned or that would create a general ban on competitions that harm animals. ADLF “has no interest in limiting a prosecutor’s ability to pursue animal cruelty cases or creating regulations and onerous burdens for those people who are conducting animal oriented contests that are relatively humane.” ADLF is asking for clarification of the animal cruelty code to make sure animal cruelty protection applies to animals legally taken from the wild.

Reiter responded the DNR did not change its interpretation. “That’s always been the way we looked at it that [IC 35-46-3-12] does deal with wild animals post-take and prevents cruelty to them. We have always interpreted it to mean that.” He acknowledged the initial response given was “not complete enough.... We should have said that the...animal cruelty statute continues to cover wild animals and protect them.”

The Chair asked, “So, you are saying that there is a statute that does protect against animal cruelty, and it’s not a matter of interpretation but it is statute?” Reiter answered, “Yes.”

Davis said, “It’s not that we waffled. I think we incorrectly gave too quick an answer before we really looked” at the issue.

Lt. Col. Steve Hunter said the Division of Law Enforcement has never interpreted that wild animals possessed post-take were exempt from the animal cruelty statute. "Given the Department's first response, I can understand where [ADLF] is coming from..., but we never had the interpretation that you could take a fox or raccoon and treat it any differently than say a domestic house cat." Hunter added there was undercover work done the day of the Snapperfest. "A couple of issues that came out were the turtle possession and the animal cruelty." He said the person hosting the event did not have a hunting license, but a hunting license is not required to possess or take snapping turtles. A person who attended the event alleged the host purchased snapping turtles. "We thought we could pursue that and maybe make some cases on the commercial end." He said when the undercover operation became common knowledge, it was abandoned, but the video taken by the undercover officer was released to the public. A new rule clarifying that wild animals are covered under the animal cruelty statute "is not necessary because the Department believes, and has always believed, wild animals do fall under the animal cruelty statutes. The animal contest part is what complicates the issue."

Robert Wright moved to accept the Department's recommendation to decline the petition for a rule change to clarify that wild animals post-take are not exempted from IC 35-46-3. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Consideration for preliminary adoption of amendments to 312 IAC 9 governing commercial fishing, fishing guide licenses, and roe harvesters and dealers licenses; Administrative Cause No. 12-064D

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She distributed a revised rule amendment package printed on yellow paper. She said amendments were proposed to rules for commercial fishing and establishing a new roe harvester and dealer licenses. A new definition of "inland water" is added to match the new statutory definition in IC 14-8-2-131.7 effective July 1, 2012, and a definition of "seine" is added to clarify the difference between a net and a seine. 312 IAC 9-6-2 is proposed to be amended to clarify the measurement of paddlefish starts at the foremost point of the eye. Amendments to 312 IAC 9-7-17 would change "charter boat operator license" to "fishing guide license" to comply with IC 14-22-15. "Anybody who takes an individual fishing for hire on public waters, with or without a boat, is required to have a license." 312 IAC 9-7-19 is amended to require a roe harvester's license to take paddlefish on the Ohio River. Definitions would be added at 312 IAC 9-8-1 to define terms used throughout the commercial fishing and roe harvester and dealer license rules. New subsection (g) would be added to 312 IAC 9-8-1 to prohibit the cutting or mutilation of live roe-bearing species to check for eggs, but a ten-gauge needle may be used for this purpose. "Right now, that language is in the commercial fishing rule for the Ohio River, but we would like it to pertain to other roe-bearing species."

Petercheff said amendments to 312 IAC 9-8-2 change terminology for locations for commercial fishing on inland water; removes the reference to "assistants" since assistants are now described in 312 IAC 9-8-1(e); specifies that shovelnose sturgeon can only be taken with a roe harvester's license; and allows license holders to submit an inactive license form if they stop commercial fishing for the year. 312 IAC 9-8-4 would be amended to change the length of a seine to 100

yards on the Wabash River to comply with IC 14-22-13-1(b) and would require gear to be removed from the shoreline or the waters fished upon the completion of fishing. “There was a recent issue where some nets were left in the water, and they washed up on the shoreline and entrapped ducks.” Technical corrections are made to 312 IAC 9-8-5 regarding commercial fishing on inland water and to requires fishing gear be removed from the shoreline or the waters fished upon the completion of fishing. 312 IAC 9-8-6 is amended to specify that (1) shovelnose sturgeon and paddlefish can only be taken with a roe harvester’s license; (2) commercial gear cannot be used within 50 yards of the mouth of stream, bay or inlet; and (3) commercial gear must be removed immediately after the completion of fishing. Other amendments to this section would correct tagging requirements for seines and nets; allow a license holder to submit an inactive license form; and require that gear be removed from the shoreline or the waters fished upon the completion of fishing. 312 IAC 9-8-7 and 312 IAC 9-8-8 are added to administer the roe harvester’s and roe dealer’s licenses. Petercheff reported these license requirements were established through a temporary rule adopted effective December 5, 2011. She recommended preliminary adoption of proposed rule amendments as distributed to Commission members on yellow paper before the meeting.

Doug Grant moved to give preliminary adoption to amendments to 312 IAC 9 governing commercial fishing and establishing a new roe harvester and dealer licenses, as revised. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

Consideration for preliminary adoption of amendments to 312 IAC 9; Administrative Cause No. 12-071D

Linnea Petercheff also presented this item. She provided Commission members with a revised rule amendment package printed on green paper. Petercheff said the rule amendments are a compilation of a number of different fish and wildlife rules. The amendments include several technical changes and amendments due to changes in federal law. 312 IAC 9-2-9 would be amended to clarify the use of dogs to chase wild animals. Amendments to 312 IAC 9-3-14 would remove restrictions for non-residents since these were removed from statute effective July 1. They would clarify a person may possess a handgun under IC 35-47 while chasing raccoons and opossums. 312 IAC 9-4-2 would be clarified by listing licensure requirements. 312 IAC 9-4-5 would include the special late season for geese that was previously set by temporary rule. Amendment to 312 IAC 9-4-7.2 would remove the rusty blackbird from the list of birds allowed to be taken. The rusty blackbird was removed from the list in federal law, and special exemptions were added. A federal permit is now required. The monk parakeet would be added to the birds listed at 312 IAC 9-4-15 that “can be taken at any time without a permit”.

312 IAC 9-6-1 governing fishing activities would be amended to change scientific names and add species. Areas closed to fishing on the Little Calumet are clarified at 312 IAC 9-6-6, and the area within 100 feet upstream and downstream of the sea lamprey barrier on Trail Creek would be closed to fishing. Since the Department does not believe smelt are present in Oliver Lake in LaGrange County, 312 IAC 9-7-2 would be amended to remove reference to the lake. Asian carp would be added as a species that can be taken on designated waters, and the use of bow-fishing equipment or a crossbow would be authorized throughout Indiana to take certain species on rivers and streams. The reference to Gibson Lake is removed from 312 IAC 9-7-3 due to a

public fishing closure on the lake. Amendments to 312 IAC 9-7-12 would clarify the taking and possession of walleye from the St. Joseph River in St. Joseph and Elkhart Counties to make the size limit consistent. 312 IAC 9-7-13(d) would be amended regarding the bag limit for lake trout. 312 IAC 9-7-16 would be amended to add crossbow as legal fishing equipment on the Ohio River to be consistent with a statutory change effective July 1. Language would be added to clarify that the snagging of paddlefish is prohibited in the Ohio River. “Back in 2009, we struck out language that authorized snagging on the Ohio River. By removing that language, we thought we were making it not legal. But since that time [the Division of Law] Enforcement, in particular, found that has been an issue so we are adding this language to specifically prohibit snagging. It’s the same language used for inland waters.” The Department has not issued mussel buyer’s licenses for over ten years so 312 IAC 9-9-3 would be amended to remove language regarding the license. 312 IAC 9-9-4 would be amended to add the rayed bean (Federally listed since March 2012) to the list of State endangered invertebrates. 312 IAC 9-10-10 is amended to eliminate requirements for submitting applications for a special permit for a hunter with a disability by a certain deadline and to remove language that is no longer relevant and other technical corrections.

Robert Wright moved to give preliminary adoption to various amendments to 312 IAC 9 as recommended by Petercheff. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

STATE PARKS AND RESERVOIRS

Consideration of the Indiana Department of Natural Resources, Indiana State Parks and Reservoirs Prospectus “For the Development and Operation for the Adaptive Reuse Project for the Indiana Dunes Pavilion, Chesterton, Indiana, Porter County”

Dan Bortner presented this item. He said in November 2011, the Division of State Parks and Reservoirs issued a prospectus for the adaptive reuse operation and maintenance of the pavilion at the Indiana Dunes State Park. The prospectus included a full service restaurant and banquet facilities, eating facilities, merchandise sales, a snack bar, and shower facilities. “Based upon the submissions we received, we’ve selected the proposal we feel best fits our vision for what the pavilion can be.” Bortner said the Division of State Parks and Reservoirs requested Commission approval to conduct negotiations with the selected operator.

Thomas Easterly asked, “Is that all?”

The Chair asked Bortner to provide additional information to clarify the Department’s request.

Bortner explained IC 14-18-2-6 requires that before the Department “can sit down and conduct negotiations, we have to tell you that we’ve selected somebody. You have to give us the blessing that allows us to do that.” The prospectus provided the Department’s goals for the property, and proposals were submitted based on those goals. Bortner said he would provide additional details regarding the selected proposal if the Commission requested.

Davis provided historic context. The pavilion was built in the 1920s and was used for fine dining in the past, but it is “now mostly being used as a snack bar and bathroom facilities. It’s a

fantastic location. There aren't any other restaurants along the Indiana shoreline. Nobody has a view like we have."

Bortner added, "We have a building that has a million dollar smile, and we are selling nachos.... We want to get this back to what was originally intended." If the Department does not reach an agreement with the selected operator, it would review another proposal.

Davis said the Department has met with controversy before about adding new buildings, but the selected proposal does not add any more disturbances to the area. "Again, this is about us being able to negotiate with people. There is no guarantee that we'll get to conclusion."

Gary Miller, Assistant Director of the State Parks and Reservoirs, said there were two proposals submitted in response to 18 prospectus packets sent to potential developers. Both proposals submitted "were good. No question about it.... We interviewed both teams.... This one that we are selecting was more completed in the very beginning, has more dollars invested, and more return to DNR, but we want to reserve the right if negotiations break down...to move on to the next proposal." The statute requires the Department to request approval from the Commission before entering a negotiation process.

Davis said, "We are asking today for your permission to negotiate with the chosen operator."

Bortner said the group selected "actually had people in place that have some track records on some things, and we just see a better opportunity there."

Easterly asked, "Can you give us some assurance that the minimum expected services are in the proposal or something like this?"

Davis and Bortner agreed to provide the Commission with updates regarding the negotiations.

The Chair applauded the Department for its efforts in preparing this agenda item. "You've done an incredible amount of due diligence just to get to the point to bring it to the Commission."

Bortner said the intent of the prospectus is not to expand the footprint on undisturbed area.

The Vice Chair asked whether some of the tile and mosaic work would be restored. "It was a beautiful site, especially in its heyday. I know a lot of it is in disrepair and would need work. Is that a factor in the design in consideration of restoration?"

Bortner responded, "It certainly is." He added that architects from both groups have "solid plans. We've spoken with the Division of Historic Preservation and Archaeology. We want this brought back to its original design."

Miller noted the proposal also included historical displays and interpretation of the pavilion, the park, and other historically significant aspects of the surrounding area.

The Chair asked the Department to provide the Commission with periodic project updates.

Miller said a final lease agreement could be provided to the Commission.

Davis said a map would be prepared for Commission members to tour on their own when traveling to North Liberty for the September meeting.

Thomas Easterly moved to approve the proposal for the development and operation for the adaptive reuse project for the pavilion at Indiana Dunes Dunes State Park. Anicia Richardson seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of report on rule processing, public hearing, written comments, and hearing officer analyses and recommendation regarding final adoption of rule amendments to 312 IAC 9-3-2 to remove the expiration language to continue the requirement that an individual must not take more than one antlered deer during specified hunting seasons; LSA Document #12-65(F); Administrative Cause No. 12-018D

Sandra Jensen, Hearing Officer, presented this item. She said for consideration was final adoption of an amendment to 312 IAC 9-3-2(u) to remove the expiration date and continue indefinitely the prohibition on taking more than one antlered deer during the special youth, archery, firearms, and muzzleloader seasons. 312 IAC 9-3-2(u) became effective in the fall of 2002 with sunset language of five years. In 2007, the Commission gave final adoption to an amendment to extend the prohibition another five years until September 2012. She said the rule is commonly referred to as the “one buck rule”.

Jensen said the comments received for the proposed amendment “are the same as they have been in the past, essentially. The majority of the comments are in favor of maintaining this rule as it has been for last ten years.” Those favoring the amendments said the “one buck rule” has had an impact on the number of antlered deer that are reaching maturity. Those in opposition say there is insufficient scientific data to support any impact to the deer herd. “As stated in the past, this rule is essentially a social issue more so than it is a wildlife management issue.” There is anecdotal evidence to indicate a balance was achieved since 2006 for the harvest of antlered deer and antlerless deer. Jensen recommended final adoption as the amendment was proposed.

Donald Ruch moved to give final adoption of amendment to 312 IAC 9-3-2 to remove the expiration language and to continue the requirement that an individual must not take more than one antlered deer during specified hunting seasons. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of report on rule processing, public hearing and written comments, and hearing officer analyses and recommendation of final adoption of rule amendments to 312 IAC 9-10-3 governing aquatic vegetation control permits; LSA Document #12-109(F); Administrative Cause No. 11-064D

Steve Lucas, Hearing Officer, presented this item. He said for consideration was final adoption of amendments to 312 IAC 9-10-3 that would eliminate the five-day advance notice requirement for posting at the site of an aquatic vegetation control activity. The modification followed a citizen petition for rule change, a favorable report on the petition by the DNR review committee, and preliminary adoption by the Commission in March. He said removal of the five-day requirement was justified because (1) improved herbicide options reduce the likelihood of harm to the environment or danger to people or animals; (2) changing weather conditions often require delays to herbicide applications and reposting at considerable expense to applicators and the public; and, (3) a five-day notice is often an unrealistically short period anyway considering the frequency of weekend usage on Indiana's inland lakes. No opposition was expressed to the proposed change. The hearing officer also recommended a technical correction to subsection (b)(1)(C) consistent with comments by the Legislative Services Agency.

Donald Ruch moved to give final adoption to amendments to 312 IAC 9-10-3 as recommended by the hearing officer. Tom Easterly seconded the motion. On a voice vote, the motion carried.

Consideration of rule processing, public comments, analysis, and recommendation regarding final adoption of rule amendments to 312 IAC 18, governing entomology and plant pathology; LSA Document #11-663(F); Administrative Cause No. 11-133A

Jennifer Kane, Hearing Officer, presented this item. She said for consideration were proposed amendments to 312 IAC 18, which establishes standards for operation and maintenance within an infested area declared under IC 14-24-4, and which establishes quarantine standards needed to implement the statute. 312 IAC 18-1-13 is amended to update the definition of "pest" or "pathogen" to include a broader spectrum of microorganisms, including viruses and fungi. The amendment to 312 IAC 8-2-2 would allow the Department director to establish quarantine boundaries that facilitate public and industry compliance. "Previously, if a pest or pathogen was present in an area, the statute required declaration of an 'infested area' by township. The definition is amended to change 'township' to 'area'. This change is more biologically sound for effective pest and pathogen management."

Kane said effective July 1, 2009, P.L. 69-2009, SEC. 11 added IC 14-24-5-3(e) to comply with the U.S. Environmental Protection Agency's requirement for the production of pest and pathogen free seedlings. Subsection (e) would be amended to that requires the Division of Entomology and Plant Pathology to communicate to nurseries that methyl bromide soil fumigation is a preferred treatment method to produce pest and disease free forest seedlings. Following the statutory amendment, 312 IAC 18-2-22 was given preliminary adoption by the Commission in September 2009. Amendments to other sections within 312 IAC 18 were added to the proposed rule package "as presented today" and were given preliminary adoption in May 2011. "Due to the recommendation made at the September 2009 meeting, the exclusion of a specific list of State Chemist approved chemicals, such as methyl bromide, in the proposed amendment would provide industry flexibility." The proposed amendment would align the rule with the statutory requirement that soil fumigation is preferred to produce pest and disease free forest seedlings, and pre-plant soil fumigation is an official control treatment to assure pest free nursery stock used in reforestation, afforestation, or another natural resources purpose.

Kane said the Indiana Invasive Council is supportive, and the one written comment also appears supportive. She recommended that the amendments set forth in Exhibit A of the Hearing Officer's Report be given final adoption.

Donald Ruch moved to give final adoption to amendments to 312 IAC 18 as recommended by the hearing officer. Robert Wright seconded the motion. On a voice vote, the motion carried.

Consideration of preliminary adoption of a rule to provide for review of testing results and review of continuing education; Administrative Cause No. 11-189A

Steve Lucas presented this item. He said for consideration was preliminary adoption of new 312 IAC 2-5 that would provide a consistent agency approach to reviewing test results and continuing education programs, if the DNR administers testing and continuing education that is required by law for the performance of a vocation or avocation. The concept was developed in part following comments to the Commission by Martha Mettler Clark of IDEM. An early draft proposal was reviewed by the Advisory Council in December 2011. He thanked DNR Divisions for their participation in formulating the draft and singled out Monique Riggs of the Division of Water, Linnea Petercheff of the Division of Fish and Wildlife, and Jack McGriffin of the Division of Reclamation for their efforts.

Lucas said the draft rule would emphasize informal discussions with unsuccessful test applicants and with persons wishing to sponsor continuing education seminars (or persons wishing to obtain credit for attending continuing education seminars) at the DNR Division level. These discussions would be with a Division Director or with a designate of a Division Director. Administrative review under IC 4-21.5 would also be recognized.

Dr. Ruch asked if the agency anticipated the failure rate for testing was likely to increase significantly. Lucas responded that today failure rates vary greatly among programs, and he had no opinion concerning whether these rates were likely to change in the future for all programs or for a particular program. With respect to testing, he believed the proposed rule would help provide a consistent agency approach and better public understanding. With respect to continuing education, the hope was the rule would provide a pathway for the consideration of seminars from entities outside the DNR. In some instances, specialization within a vocation requires specialized training. The intention is for the rule to make clear how a person offering or seeking to attend a niche continuing education program could seek DNR credit approval. Ruch reflected, "That makes sense."

Tom Easterly moved to give preliminary adoption to proposed 312 IAC 2-5. Donald Ruch seconded the motion. On a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 8:29 p.m.