

ADVISORY COUNCIL
October 24, 2022, Meeting Minutes

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
Tim Karns

NRC, DIVISION OF HEARINGS STAFF PRESENT

Elizabeth Gamboa
Aaron Bonar
Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Chris Smith	Executive Office
Ryan Mueller	Executive Office
David Bausman	Executive Office
Steve Hunter	Law Enforcement
Joe Caudell	Fish & Wildlife
Amanda Wuestefeld	Fish & Wildlife
Angie Haywood	Fish & Wildlife
Brad Feaster	Fish & Wildlife
Dave Kittaka	Fish & Wildlife
Dan Carnahan	Fish & Wildlife
Phillip Kacmar	Fish & Wildlife
Geriann Albers	Fish & Wildlife
Sam Whiteleather	Fish & Wildlife
Mitch Marcus	Fish & Wildlife
Terry Coleman	State Parks
Dale Brier	State Parks
Ron Hellmich	Nature Preserves

GUESTS PRESENT

Greg Schwipps	Josh Worth	Jeremy Farrar
Jimmy Linot	Michael Mitchell	Jarryd Mitchell
Scott Gray	Winston Bush	Micah Kendall
Corey Cooper	Jim Loudermilk	Matt Houze
Justin Browning	Marty Ramo	

Call to Order

Patrick Early, Chair, called the meeting to order at 10:01 a.m., ET, at the Fort Harrison State Park Inn, 5830 North Post Road, Theodore Room, Indianapolis, Indiana. With the presence of two members, the Chair observed a quorum.

Consideration and approval of minutes for the meeting held on February 21, 2022

The Chair made a motion to approve the minutes of the meeting held on February 21, 2022. Tim Karns seconded the motion. Upon a voice vote, the motion carried.

Reports of Deputy Directors

Chris Smith, Deputy Director of the Land Management Bureau, provided the following report:

On September 6, 2022, the Next Level Conservation Trust project committee awarded over \$23 million to 27 different projects protecting 38,000 acres of land in perpetuity. All 27 projects are listed on the Department's website.

Epizootic Hemorrhagic Disease (EHD) has impacted deer in Wayne, Union, Fayette, and Franklin Counties. As a result, the Department has reduced bonus antlerless quotas to one in those counties for this year.

The Division of Fish and Wildlife has begun reviewing proposals for a new point-of-sale license system to replace the current Legacy system. In addition to license sales, the new system will manage game check in, reserve hunt draws and volunteer management, among other things. There are five systems to review, and Department staff will meet with vendors before selecting.

On October 25, 2022, the Division of Fish and Wildlife will dedicate the upgraded Sugar Ridge Fish and Wildlife shooting range. The project was done through a partnership between the Division of Fish and Wildlife and the Division of Reclamation. Updates include a new handgun range, extension of berms, sidewalks and security.

The Division of Forestry recently held open houses at each state forest, giving the public an opportunity to review what the Division has done and will do in the upcoming year.

At the Natural Resources Commission meeting held on September 20, 2022, the Division of Nature Preserves dedicated the 23-acre Muskegon Nature Preserve, protecting the final resting place of the SS Muskegon. This site is the state's second shipwreck nature preserve.

The Department's Communications Director, J.D. Brindle, has accepted a new position and the Department is currently looking to fill the position.

The Department continues design work of the new lodge at Potato Creek State Park. The Spring Mill Inn will close to the public on November 13, 2022, and, after \$15 million in renovations, the Inn will reopen in the first quarter of 2024. The renovation project includes mechanical upgrades, HVAC, fire system, water lines, accessibility upgrades, and upgrades to guest rooms and the dining room.

The fall season and changing color of the leaves brings more people to the State Parks. The events are posted on the Department's website.

Ryan Mueller, Deputy Director of the Department's Regulatory Bureau, provided the following report:

The Office of Surface Mining, Reclamation and Enforcement (OSMRE) recently announced the winner of the 2022 winners of the abandoned mine land reclamation awards. The winning projects represent the nation's highest achievements in abandoned mine land reclamation and demonstrate outstanding results in restoring previously mined land. Sugar Ridge Fish and Wildlife Area (FWA) received the Interior States award, representing the best project in its region. This was a former coal mine and the project mitigated over 200 feet of a dangerous highwall ranging from 25 to 50 feet in height on Sugar Ridge FWA and addressed acid mine drainage water issues.

The Division of Reclamation has awarded \$19 million to plug orphaned and abandoned oil and gas wells. This is part of the initial phase of funding authorized by the federal infrastructure bill which awarded \$25 million dollars. The Division continues to seek additional bids to award the remaining \$6 million in federal funding. Mueller is hopeful that the initial funding will address approximately 400 of the 1,400 orphaned and abandoned wells statewide.

Consideration of Rules Regulating Collection of Minnows

Dave Kittaka, District Fish Biologist with the Department of Natural Resources, presented this item, using a power point presentation. Kittaka discussed current rules regarding bait fish collections and methods. Kitka reported:

The rules for bait-fish collection have changed over the years. 312 IAC 9-6-1 defines legal method of capture for bait fish and 312 IAC 9-7-1.5 describes the species that may and may not be collected using bait-fish collection methods. Amendments to various rules now prohibit bait-fish collection of bait fish within 500 feet of a dam. Ohio River rules are slightly different with the exception of gear type and size.

Passive bait-fish collection involves placing gear with funnels on each end in a river or lake. The fish swim in the trap but cannot swim out. Active methods include: "dip-nets" which is regulated for size and net size. Minnow seines are also popular method. The seine size is regulated by the rules. Cast or throw net is another active method where a weighted net, which opens as it is thrown, is cast. The net sinks to the bottom of the water and is drawn closed as it is raised out of the water.

The "minnow authority" covers minnows as well as other fish that may be collected using bait-fish collection methods. Bait-fish methods may not be used to collect species defined as a sport fish or a game fish in Indiana. Eleven species of endangered fish must be released alive. Invasive fish are to be killed immediately.

Kittaka outlined plans to create a webpage on the DNR website to explain the rules and provide links to the administrative code. Photographs and infographs will be used to mitigate any language barriers. Once the page goes active, it will be promoted through social media and an article will be included in next year's Fishing Guide, including a QR code to access the rules. No new rules are being proposed; rather, the focus will be on communicating the current rules.

Smith added the Department received a citizen petition on bait fish collection, but the activity described in the petition is already prohibited by the rules. The Department will clarify and communicate with the public on what the current rules are.

Kittaka recognized that a "Companion App" for anglers to access information as they are fishing to identify species is a good idea. Smith added that the Department has requested proposals for the Fish and Wildlife point of sale program to include technology for including the information. The Department is also working on the DNR's app to include the information.

Consideration and Discussion of the Department's Response to Citizen Petition for Catfish Rule Changes Submitted by the Catfish Conservation Association

Phillip Kacmar, Big Rivers Fisheries Biologist with the Division of Fish and Wildlife, presented this item. Kacmar reported:

The Department received a Citizen Petition from the Indiana Catfish Conservation Association (ICCA) requesting changes to lower the trophy size for catfish, impose a bag limit of ten catfish per day, and ban the travel of adult catfish across state lines.

The Department responded to the petition and provided a recommendation at the Natural Resources Commission meeting on May 17, 2022. The Commission requested the Department reevaluate the response and provide the information to the Advisory Council.

Changing the bag limit to 10 per day on streams and rivers is the change that would most protect and benefit the catfish population. The Department proposes changing the bag limit to an aggregate of ten catfish per for catfish between 13 inches and the trophy size for each catfish species, and only one catfish over the trophy length limit for the species to be harvested over all waters that are non-commercially fished. This would result in the state's rivers, streams, and non-commercially fished lakes having the same bag limit as lakes and reservoirs. The commercial fishing waters include the Ohio River, the Wabash River below Highway 231 in West Lafayette, the west branch of the White River below the confluence of the Eel River in Greene County, the east branch of the White River downstream of the confluence of the Lost River in Martin County and the main stem of the White River below the confluence of the Two Forks, and the Patoka River 300 yards downstream of the dam below the State Road 164 bridge in

Jasper County. There would still be a limit of 13 inches minimum length on rivers to protect catfish until their first spawn since rivers are dependent on natural reproduction.

The Department's decision not to change the trophy size for catfish is due to interstate agreements to have similar catfish regulations. A change would require meetings with the surrounding states to discuss shared catfish management, especially in the boundary waters. If a change in trophy size is recommended, it would be most applicable to change the channel catfish limit to the bag limit to 2 fish of 24 inches because of low prevalence of catfish reaching 28 inches. If this change is applied, DNR is concerned how surrounding states would respond. Currently, Indiana's regulations are easy to understand in interjurisdictional waters because Indiana has the same limits with bordering states.

There are no bag limits for fish between 13 inches and trophy size on rivers and streams in Indiana. He said that commercial fishers are limited to one catfish over trophy length for each species per day but may take unlimited fish between 13 inches and trophy length for the species. Currently for all rivers and streams, there is no daily limit for fish between 13 inches and trophy length per species and a bag limit of one per day per species of fish over trophy length. The proposals would protect smaller and medium streams not subject to commercial fishing, but not larger commercially fished rivers. The Department's proposal is to impose a bag limit of ten fish per day on the rivers and streams that are not commercially fished for fish between 13 inches and trophy size. The Department is not recommending a change for commercially fished rivers. The reason for limiting the bag limit in the smaller streams and rivers is to protect the smaller catfish that are more susceptible to overfishing.

There have been studies for the last seven years, but the data collected with regard to numbers and sizes is not showing major concerns. With regard to whether commercial fishers are selling primarily to pay lakes, a 2020 survey showed that 90 % of all commercial fisherman are fishing for consumption, 6% of commercial fishers reported selling fish and 1% are selling to pay lakes. Most of the commercial fishers report freezing the fish for personal use. There are about 10 commercial fishermen on the Ohio River and about 180 who fish all other commercial rivers. Kacmar said the Department is not seeing a decline in trophy fish, but the studies have only been conducted since 2016.

Kentucky and Ohio have no regulations for fish below the trophy limits. Trophy regulation started in 2016. It takes a catfish 13 years to grow to trophy size limits, so it is difficult to say if the bag limits have impacted the trophy length.

The Chair recognized Greg Schwipps, who spoke on behalf of the Indiana Catfish Conservation Association. Schwipps reported as follows:

The ICCA stands behind its original petition proposing three rules: the legal harvest of one blue catfish over 30 inches instead of 35 inches, one flathead catfish over 30 inches one channel catfish over 24 inches and imposing a ten fish daily bag limit on catfish

taken from all rivers and streams of ten, and banning the interstate transport of live, catfish over 13 inches.

The ICCA has been involved in this matter for several years but there has been turnover in the Department biologist position.

A study conducted in 2009 showed a serious decline in catfish population anywhere commercial fishing was allowed. The study led to regulations imposed in 2015; however, the situation has worsened. There is more recreational pressure to sell big fish and better technology making the harvest of bigger fish easier. The survey cited by the Department from 2011 was completed by commercial fishers and does not represent conditions across the state. Pay lakes are stocked by commercial anglers who sell large fish. The Department's conclusion that less than 1% of anglers sell live fish is questionable. He disagrees with the suggestions that commercial fishing harvests less fish than recreational fishing, that most commercial fishing is hobby fishing, and that few businesses fish for profit.

The proposed regulations are in line with what other states have done and the proposed regulations are overdue.

ICCA has information available from the "Wabash River Studies," which shows there are almost no fish caught by the Department that are in the protected slot limit, meaning the Department can't find fish over the trophy length. If the larger fish cannot be found, the law protects fish that do not exist. Schwipps advocates adopting the rules to protect the fish because sport and commercial fishers are selling every big fish they can catch, and it takes a long time to grow the catfish.

The Chair recognized Josh Worth, who is also with the ICCA. Worth stated:

In 2018, Worth provided information for a Wabash River catfish article for the Outdoor Indiana Magazine, volunteered his time helping biologists pull nets and has spent hours on the phone with DNR employees. He worked on a plan in coordination with DNR and all catfishing tournament clubs in Indiana to fill out a uniform tournament result sheet to better track catch rates. . In 2020 while pulling nets with Department staff he noted there were no fish in the nets.

Data shows horrific number numbers of blue catfish in inland rivers and almost no blue or flathead catfish over 35 inches and no channel catfish over 28 inches. The Department has said certain catfish are hard to study, but the Department says they know the fish are there. There seems to be a double standard in the data that is used. Much of the data cited by the Department was prior to the pay lake boom and the spread of the invasive Asian carp.

Recreational fishers are not keeping an overabundance of fish, but some fishers are dropping hoop nets in the water and netting thousands each year without limits. The rules protect a small number of people taking more fish than they should while many

fishers are not able to catch fish because of the overfishing. Net fishing makes fishing in some areas not practical because they take up large areas or wipe out large areas of fish. Common sense rules are requested so the fish population is not wiped out.

Ohio does not have a bag limit but does not allow commercial fishing in their waters. The number of fish caught by some of the best anglers in the state has declined since 2017. At that time, about 15 boats would participate in the small river series and people would catch fish. Last year, the fishers were unable to catch fish. There used to be three tournaments a year and last year the tournament had three boats because of the lack of fish. Catfish are the third most popular fish taken in Indiana and should be protected.

The Chair recognized Jeremy Farrar, an angler and the Director of Rod Rippin' Catfish Trail, who provided the following:

The Trail fishes the Ohio River from Leavenworth Indiana down to John T. Meyers Dam. When fishers fish in commercial waters where there are hoop nets, the fish weight and the number of trophy fish increases. In commercial fishing areas, the number of larger fish decrease. Commercial fishers who fill out DNR surveys have a vested interest and reason to not reporting honestly.

Indiana, Illinois, and Kentucky are leading the way at protecting fish and the Department is asked to continue to protect the fish population. He supports the ICCA petition and recommendations to protect catfish. The 28 inch limit for channel cats protects fish that do not exist. The money paid for catfish and the pay lakes that want bigger fish in their lakes is a problem in some states and the business of fishing is interfering with fish conservation. The diminished trophy fish population, especially in commercial areas, is a problem. It does not make sense to have a rule that protects a 28 inch channel catfish when he has never seen a 28 inch channel catfish.

Schwipps clarified that the ICCA is asking for the ten fish daily bag limit to apply to all rivers and streams; the size of the trophy size limit to be more practical to a fish size that actually exists; and a rule against shipping live fish outside of Indiana. Schwipps added the bag limit should apply to commercial fishers.

Schwipps cited the 2009 Donabauer study that said the fish should grow up to 15 inches to allow the fish to breed one time. Schwipps stated the Department chose not to follow that recommendation then and that is why the request is still a minimum of 13 inches.

The Chair acknowledged the number of anglers present at the meeting and noted the importance of continued discussion on the topic of catfishing. The Chair noted the Department is thoughtful and puts a lot of effort into doing research before making recommendations.

With regard to the science or data involved in not changing the trophy size limits, Kacmar said the main reason for not changing the size limit involved the interstate agreement with surrounding states, especially in the boundary waters, and the size limit being consistent throughout the state is less confusing for fishers.

The Chair said he understands the interstate agreement on the boundary waters and said the Department could make changes to the size limit of trophy fish on water that does not share a boundary with another state. The Chair acknowledged changing the trophy fish size may cause some confusion but that it could be a meaningful step to protect certain fish species.

Karns added it would be nice to know the disposition of commercial fish caught in Indiana and if there were efforts by the Department to do additional research beyond the survey to find out where the fish are going and determine whether the fish harvested are being sold to pay lakes.

Smith asked if there was a size limit for the movement of live fish such as a commercial fisherman who is selling small food fish to a processor which is different than moving all live fish.

Schwipps said the ICCA petition requests a 13 inch limit to maintain consistency and to allow fish stocking by the Department hatcheries. Schwipps encouraged looking at Alabama and Tennessee laws that outlaw the interstate travel of live adult catfish because of the sale to out of state pay lakes. He noted that ICCA is not concerned with harvesting and selling of catfish to in-state pay lakes but is concerned with transporting the fish to out of state pay lakes. He said the out of state transportation of fish presents a problem where large fish are harvested, the states cannot enforce or monitor, and the states are losing revenue while private pay lakes profit. Schwipps said once the fish are off the boat and in the truck the fisher can go back out and catch more, which is a loophole in “possession and bag limit.”

Justin Browning, an angler, commented he understands that once the fish are on the truck there is no way to know where the fish were harvested. For the Department Conservation Officers to catch someone violating the bag limit they would need to catch them with more than their bag limit on the boat. He said the possession limit is unenforceable because there is no way of knowing when and where the fish were caught.

The Chair acknowledged there is work to do and the Advisory Council and the Department will continue to look into improving catfishing in Indiana.

Update on Proposals for Deer Regulations Based on Comments from the Got Input Process

Joe Caudell, Division of Fish and Wildlife presented this item with a Power Point presentation. Caudell reported as follows:

The Department’s proposals will simplify deer rules making them easier for hunters to understand. Proposed changes include a statewide annual bag limit for antlerless deer and removing the bonus designation from both the county quota system and the antlerless license for firearm, archery, and muzzleloader; changing the bundle licenses to allow hunters to harvest one antlered and antlerless deer; combining archery license

and crossbow licenses into one license; removing minimum caliber restrictions on muzzleloaders; and reducing check in time from 48 hours to 24 hours.

Hunters were surveyed and liked most of the ideas such as changing the bag limit to a county quota which would allow a hunter to look at a map to determine how many deer they can harvest in a particular county. The Department has more control over how many does can be harvested in a particular area. 74% of hunters liked the idea of bag limits. A lot of hunters also liked removing the bonus designation and having an antlerless quota.

Not allowing hunters to harvest a doe on Fish and Wildlife properties with a firearm is the current standard, but the language needs to be added because of the change in language on the bonus designation. 54% of hunters supported this and 29-30% were neutral.

Adding crossbow equipment on the archery license was supported, even from archery hunters.

19,000 responses to surveys were received.

Some other proposals had less priority, not a lot of public support, and would be more challenging to get approved by Office of Management and Budget (OMB). Reducing the check-in time for turkey and deer would be more restrictive without a biological reason. Changing the archery and muzzleloader licenses to buck only was not supported. There is not a lot of support for either a velvet buck hunting season or switching Indiana deer management to a trophy management system.

Hunters will still be able to purchase an antlerless license allowing a hunter to take six does total in the state. A deer taken during a deer reduction or special draw hunt would not count against the total six total bag limit.

Approximately 70% of hunters harvest one deer, 20% harvest two deer, and 67% harvest three deer. About 1% of hunters harvest six doe and one buck.

Update on Study of Fiscal Impact of Lifetime Licenses

Caudell also presented this item with a Power Point slide presentation. He reported as follows:

Economic research was used to determine the price of a lifetime license. If the license is priced too high, not enough people will buy one. If priced too low, a lot of licenses would be sold but revenue would be lost. The Department worked with an economist from Purdue University Agricultural Economics to determine how pricing strategies of deer licenses affect deer hunting and harvest behavior by hunters. Data was obtained through a “choice pyramid” in which hunters were presented with several license combinations and their respective prices. A model was then formed to predict what people would do given certain choices. With annual licenses, fewer people would purchase as the price increases. If lifetime licenses get too expensive, fewer people

would purchase annual licenses. When lifetime licenses are at revenue-maximizing price, hunters purchase annual licenses. In Indiana, a life-time license equals 40 years of annual licenses. The number of hunters and anglers buying licenses is important because the Department receives federal match funds. The information was also prorated based on the age a hunter because a lifetime license would be equivalent to 40 years of annual licenses. It was determined hunters would be willing to spend \$5,000 on a lifetime bundle. Prorating based on age was also examined. The prorating was based on the new prices.

The study was done to determine the relationship between the number of hunters that would purchase lifetime licenses and how to set prices to ensure the Department is properly funding. Additional questions will be added to the deer management survey.

Wuestefeld added the Department would now be able to certify those hunters and anglers to receive matching funds for several years based on a better formula than what was used in the past. The Department wanted is currently in the information sharing stage, but whatever is decided, the Department must make sure the price points are correct to generate the appropriate income.

Consideration of Recreational Streams

Chris Smith presented this item and provided the following information:

The Department is not presenting a consistent message what a designation of a navigable waterway means. The Commission hosts the list of navigable waterways on its website and navigable waterways are searchable by county or by waterway.

A navigable waterway is a determination that is made and determines who can use the waterway and how the waterway can be used. A navigable waterway can be used by the public with access to the water surface, the streambed, and access to the bank up to the high watermark. The waterway can be declared navigable by the Commission, by the legislature, by the court, or by the county commissioner.

Some waterways have been determined non-navigable, meaning they are privately owned, requiring the owner's permission for access to or use of the waterway. There are also waterways in the state that have not been declared navigable or non-navigable. The Department's Legal Counsel has examined the statute to determine what the Department should be telling people regarding the undetermined waterways, and it is determined that "undetermined" waterways are private property because they have not been determined to be navigable.

The Department has public access sites on some of the undetermined waterways and the Department has taken a risk by inviting the public to use these access sites; thereby, inviting the public onto someone else's private property. A possible solution that will allow people to use the public access ramps is through a statute that allows the Commission to declare those waterways with public access sites a recreational stream.

The public may float and use the top of the water of a recreational stream but may not use the bank or get out of the boat.

Bausman added the process is similar to the rulemaking process where a petition would be filed for the portion of waterway being defined as a recreational stream, and a public hearing held in the county where the stream is located. The Commission would vote on the designation.

Smith said the public has been using the undesignated waterways, but the Department has been telling the public not to get of their boats. Smith is not aware of any complaints from property owners.

Bausman added people are researching the Department or Commission website or local units wanting legal assurances on what to do and he said there is a gray area.

Karns asked if there was an adverse possession easement because the issue has been happening over a period of time and whether the Department can stay out of any arising issues to let the property owner address the legalities with whoever they believe is trespassing on their property. Karns asked whether the statute be used as a defense for someone who is accused, and the Department not be involved.

Bausman said with more of the state's waterways being used the issue of using an undesignated waterway is going to be coming up more frequently. He is not aware of any case law that would deal with adverse possession on an undesignated waterway.

Karns said his concern is that if no one is complaining and the Department begins having the waterways declared as recreational streams, one person will challenge it and get a declaratory judgement that will apply to all the undesignated streams in the state.

Smith said the Department will start with a couple of the larger waterways first and take them to the Commission for approval.

The Chair said he sees having waterways declared recreational streams should be positive for the property owners because it gives them clarity on the specific use of the waterway.

Adjournment

The meeting adjourned at 11:57 a.m., ET.