

NATURAL RESOURCES COMMISSION
Fort Benjamin Harrison - The Garrison
6002 North Post Road, Indianapolis, Indiana

Minutes of January 16, 2007

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chairman
Robert Carter, Jr., Secretary
Richard Mangus
Mark Ahearn
Damian Schmelz
Brian Blackford
Thomas Easterly
Doug Grant
Lawrence Klein

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Linnea Petercheff	Fish and Wildlife
Glen Salmon	Fish and Wildlife
Bill James	Fish and Wildlife
Samuel Purvis	Law Enforcement
Felix Henseley	Law Enforcement
Tom Lyons	Forestry
Kathleen McClary	Indiana State Museum and Historic Sites
John Bacone	Nature Preserves
Phil Marshall	Entomology and Plant Pathology

GUESTS PRESENT

Rick McCaffry	Rick Cockrum
Barbara Grant	Dick Mercier

Jane Ann Stautz, Vice Chair, called to order the regular meeting of the Natural Resources Commission at 10:05 a.m., EST, on January 16, 2007 at The Garrison, Fort Benjamin Harrison, 6002 North Post Road, Indianapolis, Indiana. With the presence of ten members, the Vice Chair observed a quorum.

Damian Schmelz moved to approve the minutes of November 14, 2006. Bryan Poynter seconded the motion. Upon a voice vote, the motion carried.

The Vice Chair noted that Richard Cockrum submitted his resignation as Chair of the Commission. "He was a very valuable member of the Commission for a number of years." Vice Chair Stautz thanked Cockrum "for his years of service on the Commission. He is an avid supporter of the natural resources of our state. He brought a wealth of knowledge, experience, and background, and not to mention enthusiasm, for the work of the Commission."

The Vice Chair opened the floor for nominations to elect officers for positions of Chair, Vice Chair and Secretary.

Richard Mangus nominated Bryan Poynter as Chair. Mark Ahearn nominated Jane Ann Stautz as Vice Chair and Robert E. Carter, Jr. as Secretary. The Vice Chair said the recommended slate is "Bryan Poynter as Chair, I as Vice Chair, and Robert Carter as Secretary."

Damian Schmelz then nominated Jane Ann Stautz as a candidate for Chair.

Rob Carter was asked for his perspectives on the nominees. He reflected that he was confident either Bryan Poynter or Jane Stautz would be competent and effective as the Commission Chair.

Schmelz asked whether an election could be conducted by "secret ballot". Steve Lucas answered that meetings of the Commission were subject to the Open Door Law, and an election by secret ballot would violate that law. The vote for Chair was then taken by a show of hands, and a majority of the membership voted for Bryan Poynter.

Bryan Poynter said, "It is my privilege to serve as Chair." He commenced presiding over the meeting.

Poynter noted there was a nomination for Jane Stautz as Vice Chair. No other nominations were offered, and the Commission unanimously elected Stautz as Vice Chair.

The Chair also noted that Rob Carter was nominated as the Commission's Secretary. No other nominations were offered. Upon a voice vote, the Commission unanimously elected Carter as Secretary.

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

The Chair indicated that Patrick Early, the Chair of the Natural Resources Advisory Council, was not present at today's meeting. He said that Director Carter, Early, and himself would meet to discuss issues for the Advisory Council.

Report of the Director and Deputies Director

Robert Carter gave the Director's report. He thanked Richard Cockrum for his leadership of the Commission. He also thanked Kyle Hupfer for serving two years as Director of the DNR. "He

was a good guy to work from a law enforcement perspective. He was very supportive of me and the men in green.”

Director Carter said that a candidate had been identified to fill the position of Director of the Division of Historic Preservation and Archaeology (DHPA). He also noted that the search for a new CEO of the Indiana State Museum continued, and a consulting group had been contracted to assist in the search process.

The Director said that DNR’s biennium budget will be presented to the Indiana House Ways and Means Committee on February 5, 2007. As far as any proposed legislation, “We chose not to really push any particular bill, which gives us time to play defense on any surprises we may encounter.”

The Director said that he and other staff members plan to meet soon with Sullivan County officials to discuss possible acquisition of Minnehaha property. “We are still in the early stages, but hopefully in the next few months we will know more about our budget, how far we can go, and how many partners we will need.”

The Director recognized Glen Salmon, Director of the Division of Fish and Wildlife and other DNR staff, “for a record year of hunting and fishing licenses sold. I think we are over \$3 million from last year.”

John Davis, Deputy Director, Bureau of Lands, Recreation, and Cultural Resources, updated the Commission on ongoing and planned construction projects. He said the “state of the art” shooting range at Atterbury Fish and Wildlife Area should be open in the spring. Davis said also under construction is the new Ohio boat ramp at Charlestown State Park. A pool and water park is planned for construction at Abe Martin and a pool at O’Bannon Woods State Park in Harrison County.

Davis reported that several eagles have taken advantage of the lowering of the lake at Starve Hollow State Recreation Area. The lake was lowered to “stress the gizzard shad, which is an undesirable fish, and try to get rid of some of them in the lake. A dozen or so eagles have been diving, catching and swooping around” feeding on the fish.

Davis requested that Item 2 and Item 4 be withdrawn from the Commission’s agenda. The Chair granted the request.

Ron McAhrn, Deputy Director, Bureau of Resource Regulation, related that the Natural Resources Advisory Council had an “open forum” regarding the status of the emerald ash borer at its December meeting. He said that there was “good dialogue” between industry and academia from Purdue. The discussions “spurred” additional follow-up meetings. “We are going to work together to try to, if not beat the pest, at least slow the [emerald ash borer] down in cooperation with the federal government and the industry.”

McAhrn said that there are “outstanding candidates” that have applied for the vacant position of director of the Division of Historic Preservation and Archaeology. “We are going to get someone in there soon.” McAhrn noted that DNR has “underscored” its interest “in picking up on cultural tourism” with Director Carter. The DNR has an “excellent” opportunity for funds from Major Moves for additional DHPA staff and for use to improve the Division’s cultural resource database “to a little more current as our surrounding states” and to convert to a “more

user-friendly” electronic database. “Ultimately, [the database] will be developed as an economic tool.”

McAhron reported that the Division of Water will continue to be involved in the Water Shortage Task Force. He said the Task Force, which was mandated by 2006 legislation, conducted its first organizational meeting on December 6, 2006. The Task Force will next meet on March 22.

Damian Schemlitz inquired concerning the additional job responsibilities of the state’s Entomologist, Robert Waltz, Ph.D. McAhron said that Waltz accepted the position of State Chemist which is housed at Purdue University. “Bob has been such a great asset to us.” He said that DNR negotiated with Purdue University to “loan” Waltz “to us 10% of the time to help us in the transition” for the new director of the Division of Entomology and Plant Pathology, Phil Marshall.

PERSONNEL ACTION

Personnel Interview of Haley Couchman for the Position of Historic Site Cultural Administrator (Historic Site Curator 3) at Angel Mounds State Historic Site, Evansville, Indiana

This item was withdrawn.

Personnel Interview for the Position of Historic Site Cultural Administrator (Historic Site Curator 2) at Corydon Capitol Historic Site, Corydon, Indiana

Bryan Poynter presented this item. He said he conducted the interview of Rick McCaffry for the position of Historic Site Cultural Administrator at Angel Mounds Historic Site in Evansville. “It was my thrill to talk to him and fulfill our duty as Commission members.” He said McCaffry is a retired 30-year educator of history and a New Albany, Indiana resident. He invited McCaffry to briefly address the Commission.

McCaffry said that, as site manager, he would manage the Corydon State Capitol building “the centerpiece of the area”, as well as several other buildings. He said renovation of the office building is ongoing and will be made available to the community. McCaffry also noted that there is a gazebo onsite that the community uses “extensively”.

The Chair said, “We are thrilled that you take your life experiences and bring them to the state. We look forward to your administration” at the historic site. On behalf of the Commission’s Personnel Committee, the Chair recommended Rick McCaffry for the position of Historic Site Cultural Administrator at Corydon Capitol Historic Site in Corydon, Indiana. Richard Mangus seconded the motion. Upon a voice vote, the motion carried.

Personnel Interview of Stephen Mund for the Position of Assistant Property Manager of Crowsley Fish and Wildlife Area, North Vernon, Indiana

This item was withdrawn.

Personnel Interview for the Position of Assistant Property Manager 4 at Starve Hollow State Recreation Area, Vallonia, Indiana

The Chair also presented this item. He said he conducted the interview of Laura Wistler for the position of Assistant Property Manager at Starve Hollow State Recreation Area. He said that it is always “interesting” to conduct the interviews of the candidates. “Their personalities seem to come out over the phone.” He introduced Laura Wistler as the candidate for the position and invited Wistler to address the Commission.

Laura Wistler said that Starve Hollow State Recreation Area is used by hikers, anglers and hunters. She said the recreation site is in a maintenance phase with additional upgrades to the area. Wistler said that she was an interpreter at the Land-between-the-Lakes located in southern Kentucky in which she also worked with animal rehabilitation.

The Chair recommended Laura Wistler for the position of Assistant Property Manager at Starve Hollow State Recreation Area. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion was carried.

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of Elizabeth Youngman Woods Nature Preserve, Brown County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the Elizabeth Youngman Woods is a “322-acre tract of high quality of forest” located three miles north of Brown County State Park. Bacone said Youngman gave the tract to the DNR “quite a few years ago”. He noted she was an “involved person with Indiana natural areas, nature preserves, and The Nature Conservancy.” He also noted that there is an old homestead within the tract that is being excluded from dedication. “There is a person who works for Brown County State Park who lives there and helps take care of our property.”

Bacone said the Brown County State Park trail system extends through the Youngman tract. He provided an aerial map of the proposed nature preserve. “Youngman Woods almost adjoins two high quality natural areas.” Bacone noted that Indiana University’s Lilly-Dickey Woods and a forest tract owned by The Nature Conservancy were nearby. He then recommended the area be dedicated as a nature preserve.

Damian Schmelz inquired whether the excluded homestead “would come to the [DNR] eventually.” Bacone explained that the property is owned by the DNR, but it is being excluded from dedication. He said the area, which includes a barn, an out building, and a septic system is “right in the middle of the property”.

Damian Schmelz moved to approve the dedication of Elizabeth Youngman Woods Nature Preserve located in Brown County. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Consideration of Preliminary Adoption of Amendments to 312 IAC 8-2-3 governing Hunting on DNR Properties regarding an Amendment Pertaining to Hunting on Dedicated Nature Preserves; Administrative Cause No. 06-173N

John Bacone also presented this item. He said, “Traditionally, recreational hunting is not allowed on nature preserves except those that on fish and wildlife areas and forest properties.” Currently, hunting is generally prohibited on nature preserves by 312 IAC 8-2-3. Bacone said that with the “ever-increasing” deer population and resulting damage to vegetation, a rule amendment is needed so that hunting would be allowed “when we see reasons to do so”. The proposal would allow hunting on a nature preserve under written authorization by the Director of the DNR’s Division of Nature Preserves.

The Chair asked whether there has been consideration regarding allowance of hunting by firearms, or bow and arrows, or both, on nature preserves. Bacone answered that whether to allow hunting by firearms or by archery equipment would depend on the circumstances at a particular property. Recently, for example, hunting has been allowed by emergency rule with firearms on Twin Swamps Nature Preserve in rural Posey County. In other circumstances, hunting might be limited to bow and arrows.

The Chair also asked whether adjacent landowners to nature preserves would be notified of the hunts. Bacone said neighbors and the media would be notified. Notices would be published in the hunting and fishing guides, and signage would be posted at the nature preserve.

Poynter expressed concern that proper notification at the nature preserves may be an issue. Bacone said appropriate signage would be posted. “Some properties have a big history of use by hikers and some properties are pretty much almost like wilderness areas that aren’t very well known. We have to have a different approach depending on those situations.”

John Davis noted that the considerations made for hunting on nature preserves would be “site specific”. To run a nature preserve hunt similar to the state park hunts is “person intensive”. He added, “When we can figure out a way to add a season to a property that still gets all the proper notice, but isn’t a special hunt, then we can save having a lot of folks having to be there on the ground to run the hunt”. Bacone said the Division of Nature Preserves has been working with Dr. Jim Mitchell, DNR’s Deer Biologist, and other district biologists “to help craft” a season at a nature preserve.

Lawrence Klein asked whether all properties in the nature preserve system would be affected by the rule amendment. Bacone explained that not all nature preserves are owned by DNR; some are owned by private land trusts and The Nature Conservancy. “It would be up to the owner to allow a hunt.”

Damien Schmelz moved to give preliminary adoption to amendments to 312 IAC 8-2-3 as recommended by the Division of Nature Preserves. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of Report of Public Hearing and Comments, and Recommendation for Final Adoption of Amendments to 312 IAC 9 governing Fish and Fisheries; LSA Document #06-262(F); Administrative Cause No. 06-081D

Sandra Jensen, Hearing Officer, presented this item. She said the proposal would amend, in general, rules governing fisheries. Of “particular interest” to the public is the establishment of a catch-and-release season for trout on inland streams, the designation of three stream segments in Elkhart County as catch-and-release only, the establishment of a bag limit on brown trout and the creation of a slot and bag limit for black bass taken from segments of the Blue River and Sugar Creek

Jensen noted that two public hearings were held for the proposed rule package—one at the Atterbury Fish and Wildlife Area and the other at Columbia City. Of the “numerous” comments received, the vast majority supported the proposed rule and the greatest number of comments received pertained to amendments relative to black bass and trout. She indicated that a “handful” of comments were in opposition to the proposed designation of 2.8 stream miles in Elkhart County, as catch and release and artificial bait only, citing that the designations would create a “restriction of natural resources from the public of Indiana”. Jensen noted that the 2.8 miles proposed for catch and release constitute only “3.5% of all the stream miles that are stocked in the state of Indiana.” She recommended that final adoption be given to the rule amendments.

John Davis said the Division of Fish and Wildlife wished to suggest one change to the language published for preliminary adoption. He directed the Commission to page 44 of the Hearing Officer’s Report, and he said that the word “bait” in 312 IAC 9-7-13(h) should be amended to “lures”.

Mark Ahearn inquired of the difference between the word “bait” and “lure”. Bill James, Chief Fisheries Biologist from the Division of Fish and Wildlife, explained that the amendment was proposed by a public comment that was received during the hearing process. He said that the commenter “had a good point”. James explained that the term “bait” has broader “perceptions”, which would include “minnows, worms, and any other natural foods”. He said the intention of the proposed rule “is all about manmade, artificial lures” that can be used. James noted, however, that subsection (h) also specifies that “food products and scented baits would not be legal in this area. That term ‘bait’ is probably problematic”. He requested that the proposed rule as contained in the Commission’s packet be amended by deleting the word “bait” and insert “lures” in 312 IAC 9-7-13(h). He then recommended that the proposal be given final adoption as amended.

Mark Ahearn requested the minutes reflect that the amendment to subsection (h) “is permitted by statute as a logical outgrowth”.

The Vice Chair commented regarding the closed season for trout in 312 IAC 9-7-13. She noted that earlier in the rule adoption process, the DNR questioned whether the proposed closed season was “sufficient” for stocking of the streams. “I really didn’t see much of a comment so I assume it was fine.” James responded, “That was really an internal question of how much time do our hatcheries need to stock the trout before the opening day on the last Saturday of April?” He said

that “originally stocking would be the month of April.” He indicated that the hatchery staff requested “the last two weeks” of April for stocking. “That minimizes the closed season to about two weeks instead of a month.”

Jane Stautz also asked whether the Department anticipated asking the Commission to amend 312 IAC 9-7-13 by adding new streams or segments of streams that would be catch-and-release, only, due to stocking by DNR or by private organizations. “We really aren’t allowing the Director any discretion in here to add additional streams as needed or as requested for catch-and-release. How is that addressed?” James responded that if the proposed amendment were approved and implemented, and “proves very successful in the three streams in Elkhart County, I think there would be support and maybe demand from trout fishermen to extend that to other areas if similar conditions and expectations can be met.”

Richard Cockrum congratulated Bryan Poynter in his election as Chair. He noted that there were “a lot” of comments and suggestions in the Hearing Officer’s Report regarding the Brookville tail waters fishery. Cockrum said the proposed rule is a “policy shift to some degree and has been in the works for a long time.” He gave “kudos” to the Division Fish and Wildlife for conducting surveys of streams and smallmouth bass populations in order provide the “science” to support a catch-and-release season. He also gave “kudos” to the private trout clubs for stocking brown trout in the northern river systems and the Brookville tail waters where stocking began five years ago. “In fact, there was a presentation to the Commission five years ago about private groups” stocking the Brookville tail waters, and that “has been hugely successful”.

Cockrum said the Brookville trout water is a two-mile stretch, and it has “grown into an extremely popular fishery.” He said Jim Phillips, a member of the St. Joseph River Valley Fly Fishers, requested that Cockrum relate to the Commission Phillips’s support of the proposed rule amendments. “There is a shift in policy and we are now starting to look at the streams as a resource in the sense that every one of them is unique.” Cockrum reflected that the Hearing Officer’s Report contains comments from 13 different groups that are in support of the amendments.

Richard Mangus inquired of the reasoning behind the elimination of pitchforks as a legal means to take fish. James responded that there has been a permissible use of pitchforks to take fish on record for “many, many years. Upon review by staff, there doesn’t really seem the need to allow” pitchforks.” James also commented that the elimination of a pitchfork as a permissible means to take fish may be “more of an image thing” than biological. He said fish spears, gigging, bow and arrows and other lawful means for taking fish are still available. Mangus said, “In my younger days, we used to hunt carp with pitchforks.” James noted that the proposed rule amendment does not eliminate fish spearing. He said that fish taken by pitchforks tend to slip off the barb-less fork tines. “A fish spear, which has barbs, sticks into the fish, and you can recover those fish.”

Chuck Brinkman, representing the Indiana Wildlife Federation, agreed with the comments made by Cockrum concerning the rules amendment to black bass. “I have talked to people in the northern part of the state and down to the southern, and I actively participate very actively in a smallmouth fishing group, and we have a website, and I see no negative comments regarding the black bass. We see also seeing positive comments coming from Ohio as well as Illinois.” Brinkman encouraged the Commission to give final adoption to the proposed rules, and “to continue to do more to some of the other streams as well.”

Thomas Easterly moved to give final adoption to amendments to 312 IAC 9 governing fish and fisheries as presented by the hearing officer, but with the word “bait” stricken from the first sentence of proposed 312 IAC 9-7-13(h) and replaced with the word “lures”. Richard Mangus seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing, Analysis, and Recommendation for Final Adoption of Amendments to 312 IAC 18-3-12 Governing the Larger Pine Shoot Beetle Quarantine; LSA Document #06-134(F); Administrative Cause No. 06-073E

Jennifer Kane, Hearing Officer, presented this item. She said the proposed rule adds Dearborn County to the pine shoot beetle quarantine. Kane said the proposal would “essentially remove Dearborn County from the exempted area” listed at 312 IAC 18-3-12. She indicated that throughout the rule adoption process no comments were received and no member of the public attended the hearing held on December 15, 2006.

Kane noted that the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (APHIS) declared Dearborn County infested with pine shoot beetle and added the county to the quarantine area. Indiana is required by APHIS to adopt a rule that adds Dearborn County to the pine shoot beetle quarantine area and enforcing that quarantine. She explained that if the proposed rule were not adopted, “the entirety of the state would be subject to quarantine.” Kane said that approximately $\frac{3}{4}$ of Indiana is under the pine shoot beetle quarantine.

Kane said that no small business impacts are imposed other than those imposed by the federal quarantine. She recommended final adoption be given to the proposed amendments as contained in the Commission’s packet.

The Chair requested an explanation of the frequency to which rules concerning the pine shoot beetle have appeared on the Commission’s agendas. Kane explained that the Commission gave final adoption to a previous rule (LSA Document #05-213) in 2005, which would have added Dearborn County to the quarantine area, but the Attorney General’s office rejected the rule reasoning that the proposed rule would have impact on small businesses. Kane said that the current rule proposal was initiated in 2006, and more detailed analyses were conducted. “It was determined that there were no new small business impacts but for what the federal government had already imposed.”

Phil Marshall, Division of Entomology and Plant Pathology, explained that the state quarantine parallels the federal quarantine. “If we don’t adopt this, then they will quarantine all the remaining counties.” He noted that the pine shoot beetle is a threat primarily to the U.S. pine tree industry. “Although the pine industry is not as strong as the hardwood industry in Indiana, we still need to be a good partner around the country.”

Damien Schmelz moved to give final adoption to the amendments to 312 IAC 18-3-12, which governs standards for control of the larger pine shoot beetle, to add Dearborn County to the quarantine area. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

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

Steve Lucas, Director of the Division of Hearings, presented this item. He said the effort was for Phase III to be the final phase of a comprehensive process to affirm, update or sunset all of the Commission's nonrule policy documents. The effort was mostly successful, but for a variety of reasons, there were still a handful of nonrule policy documents to complete the process. The few yet un-reviewed would be presented to the Commission during the remainder of 2007.

Lucas said he would be happy to attempt to answer questions concerning any of the 13 nonrule policy documents within Phase III, but most were either recommended for retention unchanged or with only technical changes. He said his comments would be directed to the three nonrule policy documents where there were notable changes.

Lucas reflected that Information Bulletin #32 provided guidance in 2002 concerning the Lake Michigan Coastal Restoration Grants by which Indiana was eligible for a one-time federal grant of \$1.75 million for its Lake Michigan Coastal Area. This geographic area includes approximately the northern half of Lake County, the northern half of Porter County and the northwestern third of LaPorte County. He said funding has been awarded and most funds distributed have been distributed under this one-time grant. Lucas emphasized that Indiana continues to receive substantial annual funding as a consequence of its participation in the Coastal Zone Management Program, but Information Bulletin #32 applied exclusively to the 2002 grant. As a consequence, he said the recommendation was for this nonrule policy document to be sunsetted.

Lucas said Information Bulletin #41 provided an historical background and reflected conceptual intent regarding the implementation of the "public trust doctrine". In particular, the nonrule policy document chronicled the activities of the Lakes Management Work Group and the statutes and rules that were recommended by the group. He said the mission of the Lakes Management Work Group was directed to Indiana's "public freshwater lakes", inland lakes located mostly in the northern 1/5 of Indiana. In addition, the "public trust doctrine" also had application to Lake Michigan and other navigable waters of Indiana. Lucas said this area of the law has been extremely active in the past five or ten years, in part because of the activities of the Lakes Management Work Group and in part because of the extensive administrative litigation regarding riparian rights and public rights within public freshwater lakes. He said the proposed changes to this 2004 nonrule policy document were substantial, and he expected additional amendments within the next few years as this dynamic legal area continues to develop.

Lucas reflected that Information Bulletin #43 updated the procedural application of "Federal Consistency" for the same Lake Michigan Coastal Area as referenced regarding Information Bulletin #32. He said despite its name, "Federal Consistency" is not a mandate on the States but rather a delegation of authority from the Federal Government to States that are participating in a Coastal Zone Management Program. As a consequence of the delegation, Federal Agencies are generally required to conform their activities to Indiana law within our Lake Michigan Coastal Zone. The amendments provide greater clarity as to application of Federal Consistency in Indiana, and they include a flow chart. Lucas said "Federal Consistency" has proven a valuable tool in Indiana on at least a couple of occasions, but it has not been pursued as aggressively here as in some other States.

Damian Schmelz asked if it were correct that nonrule policy documents had a "lifespan of ten years". Lucas responded that rules applied for seven years and then must either be recodified or are sunsetted. He said that the Indiana General Assembly has not set forth a particular time-frame for the existence of nonrule policy documents, although an agency has a responsibility to

keep them current and to provide the public with ready access to them. Lucas indicated a purpose of this process was to keep the nonrule policy documents up-to-date, and they are available on the Commission's website. "Also, the Commission has the prerogative to state a timeframe for the validity of a particular nonrule policy document, or for all of your nonrule policy documents, if you wished, but there is no statutory requirement."

Deputy Director John Davis reflected, "Mr. Chairman, I'm just thinking of Brian [Blackford] and Mark [Ahearn] and Commissioner [Thomas] Easterly just to emphasize that Federal Consistency, I think, is a thing that is worth considering as an empowerment for Indiana. It is for a limited area, but it seems to be for other States, that as Steve said, it can be a powerful tool to require that the Federal Government comply with State law."

Commission Member, Lawrence Klein, asked for background concerning the Lakes Management Work Group. Lucas responded that the Work Group was a creation of the Indiana General Assembly that expired and was continued informally by former DNR Director, John Goss. More recently, the legislature has reconstituted the Lake Management Work Group, and the entity has just recently held its first meeting. "It includes members of the General Assembly and citizen members." Deputy Director Ron McAhrn reflected that Governor Daniels appointed the citizen members. The Indiana General Assembly selects its four members.

Klein asked what the primary charge of the Lake Management Work Group was. Lucas responded that the Work Group "is not focused on Lake Michigan, but they are focused on the 'public freshwater lakes'. It certainly includes, for example, Cedar Lake in Lake County. They are looking at the whole breadth of what I would call 'public trust issues'. These include navigation, and what should construction limitations be along lakes, and should there be capacities for numbers of boats. They have a very broad charge relative to 'public freshwater lakes'. I think you could say just about anything they thought was important for the integrity of lakes they could talk about and make suggestions for legislation or for rules."

Klein asked about the relationship of the Lake Management Work Group to the Natural Resources Commission. Lucas responded that the Work Group was an entity unto itself. The members "do not have a direct relationship to the Commission, but they certainly could recommend legislation and they could recommend rules. If they were to recommend rules that were within the jurisdiction of the Commission, and that could be very likely, then those rules would come to the Commission."

Commissioner Thomas Easterly, the representative from IDEM, inquired concerning nonrule policy documents, generally. "These are nonrule policy documents. As I understand that, then, they in-and-of-themselves have no additional legal requirements, is that correct?"

Lucas responded, "That's correct. They cannot have the force and effect of law. They can help explain how the agency does things, but they don't have the force and effect of law."

Doug Grant moved to approve the recommendations, as set forth in the Commission materials, for the 13 unrelated nonrule policy documents constituting Phase III. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Adjournment

Meeting adjourned at 11:23 a.m., EST.