

**ADVISORY COUNCIL**  
Meeting Minutes of April 18, 2012

**ADVISORY COUNCIL MEMBERS PRESENT**

AmyMarie Travis Lucas, Vice Chair  
Richard Cockrum  
Bill Freeman  
David Lupke  
William Wert  
Ross Williams

**NATURAL RESOURCES COMMISSION STAFF PRESENT**

Jennifer Kane

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Ron McAhron	Executive Office
John Davis	Executive Office
Chris Smith	Executive Office
Scotty Wilson	Law Enforcement
Bill James	Fish and Wildlife

**GUESTS PRESENT**

No guests were present.

**Call to order by Vice Chair, AmyMarie Travis Lucas**

In the absence of the Chair, AmyMarie Travis Lucas, Vice Chair, called the meeting to order at 10:57 a.m., EDT, at the Fort Harrison State Park Inn, 5830 North Post Road, Roosevelt Room, Indianapolis, Indiana. With the presence of six members, the Vice Chair did not observe a quorum. In the absence of a quorum, official action was not taken on any agenda item.

**Approval of minutes of meetings held on December 14, 2011 and the February 15, 2012**

Approval of meeting minutes was deferred to the next scheduled meeting.

**Election of Officers**

The Vice Chair announced that election of officers would be deferred to the next scheduled meeting.

**Consideration for recommendation of approval of preliminary adoption of a new temporary and permanent rule to coordinate historic preservation reviews for state agencies proposals that are governed by both federal and state Law; Administrative Cause No. 11-173H**

Ron McAhron, Deputy Director of the Bureau of Resource Regulation, presented this item. He said a primary function of the Indiana Historic Preservation Review Board (“IHPRB”) is to “pass judgment on or approve things” for the Indiana Register and the Federal Register. The IHPRB also reviews the expenditure of state funds for modifications to a state property. The DNR Division of Historic Preservation and Archaeology conducts a review, and the IHPRB passes judgment on the appropriateness of the project. “We have a lot of situations where there is a federal licensure or federal funds on the same project. A lot of Indiana Department of Transportation projects would be 80/20 [percent], federal and state funds”. Projects with federal and state funds would receive reviews from both federal and state agencies, with the same information, and “it ends up being sort of sequential.” He said the federal review process is first, which may result in a judgment that the property is not historic, or the modification does have an impact and mitigation is provided. The process then begins again with the state component. “So it’s a dual review of basically the same information.” The IHPRB only meets quarterly, which can cause timing problems for projects.

McAhron said Steve Lucas provided great assistance in drafting a proposed rule that “we think is workable and still protective”. The proposed rule would provide that when a project comes in, it will be identified as subject to both reviews, with reviews conducted simultaneously. “There is a robust public participation process in the federal component so there will be plenty of notice. We will also go to the [IHPRB] to inform members of the status of projects moving forward.”

McAhron provided examples of projects reviewed by the IHPRB. Its April meeting agenda lists two projects that involve removal of bridges. The two projects have been through the federal process. Another item is the modification to the Pepsi Coliseum at the State Fair Grounds. “There is no federal money involved in this project, but hypothetically, if there were, that may be significant enough that people on the Board would want the project to take the second tract for additional review by the state.”

McAhron said the proposed rule allows for the culmination of the federal Section 106 process to carry over for the state process to clear the project without having to go through IHPRB approval. “If for some reason the federal process was truncated, then you are still subject to go through the whole state review. Should you violate the terms of the federal process, all of the state sanctions would come to bear as well.” He said a temporary rule would be put in place, but the intent was simultaneously to proceed with a permanent rule with preliminary adoption at the Commission’s May meeting.

The Vice Chair said that her understanding of a “temporary rule” is that “we should only be doing things by temporary rule that are emergency in nature. Do you feel like you will

meet objection” in adopting an emergency rule rather than through the permanent rule process.

McAhron said, “We are going to meet opposition. We are going to discuss this at the Historic Preservation Review Board at the meeting on April 25<sup>th</sup>.”

The Vice Chair said, “That’s where I could see potentially somebody feeling like [the emergency rule] could usurp their authority a little bit.”

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, said the temporary rule is about “endorsing the idea of preliminary adoption of a permanent rule. The temporary rule only comes into play maybe if the [Advisory Council] decides that there is some reason we need to do this.”

McAhron noted that he looked at temporary or emergency rules “in a way as sort of a rule on training rules where we can send it out, see how it works, and then to inform the permanent rule promulgation process with real live examples. Here, we do have the safety net, if you will, that if there was a project that comes along the same people that are likely to be concerned on the Historic Preservation Review Board can call it out under a temporary rule, should we go there. This needs to be looked at.” McAhron said the Vice Chair made an excellent point regarding the cautionary use of temporary rules in order to expedite the process. He agreed with John Davis that the Department is seeking recommendation from the Advisory Council for the approval of a proposed rule.

Richard Cockrum asked whether the projects to remove bridges usually involve covered bridges. “I’m trying to figure out how the historic preservation ties in.”

McAhron said about two or three years ago, the Department reviewed a project that involved the rating of all highway bridges in the State of Indiana. There are a lot of old iron truss bridges, such as the bridge at 86<sup>th</sup> and Keystone near Castleton. “If it’s an iron bridge that is rusting and falling down or a covered bridge, that’s going to be two entirely different reviews”.

Cockrum then asked for clarification on what action the Department seeks from the Advisory Council.

The Vice Chair said that without a quorum official action could not be taken.

Davis said the Advisory Council could recommend, through member consensus, moving the proposed rule forward for the Commission’s consideration of preliminary adoption. McAhron added the proposed rule would also be presented for discussion at the Historic Preservation Review Board next week.

Members of the Advisory Council, by consensus, recommended the DNR “continue discussion with the Commission, as well as with the Historic Preservation Review Board,” regarding the proposed rule to establish a process by which a person may seek

dual review and action by the Department for a project that is potentially subject to both federal and state review.

**Consideration for recommendation of approval of preliminary adoption of amendments to rules governing fishing, the harvest, possession and sale of roe; Administrative Cause No. 12-064D**

Bill James, Chief of Fishery for DNR's Division of Fish and Wildlife, presented this item. He said statutory changes last year and this year prompted the proposed rule amendments, and there are three notable responses. The main response is the creation of licenses for the taking and for the selling of roe, eggs out of fish—primarily paddlefish and shovelnose sturgeon. For last year's statute, the Department responded "with a temporary or emergency rule". Last year's statute was amended in the most-recent session of the Indiana General Assembly, necessitating additional rules.

In addition to the main response, there are two other amendments proposed to help implement the statutory changes. A statutory prohibition on the use of crossbows for taking fish was amended to allow the use of crossbows for sport fishing in the Ohio River. James explained that years ago a \$100 charter boat fishing license was created to allow the licensee to take others fishing on a boat. The statute was amended to expand the licensure requirement to any fishing guide on foot. "If you are taking people fishing for hire, you are required to possess the fishing guide license, and there is mandatory monthly reporting to the Department."

James said the primary subject matter of the proposed amendments governs the roe harvester license. He provided a brief history and outlined the issues regarding Indiana's paddlefish population. "Indiana is blessed with really a pretty viable paddlefish population.... Paddlefish develop caviar that's very similar in quality of sturgeon caviar." Sturgeon fisheries in the Black and Caspian Sea regions are near collapse because they have been overfished for beluga caviar to satisfy international demand. The caviar industry has been forced to "look around the world for other substitute caviars, and the Mississippi River Valley in North America is really where the substitute caviar business is focused, primarily on paddlefish." There are seven states that still allow commercial paddlefish harvest. Three of those states border the Ohio River: Illinois, Kentucky, and Indiana. James said there are two species of sturgeon in Indiana. One is lake sturgeon which is state endangered and protected. A smaller sturgeon, the shovelnose sturgeon, also produces eggs that are viable for the caviar industry. The Wabash River is the eastern most—I don't know if I would call it 'the cradle of shovelnose sturgeon'—but it's an important and healthy population." He said the Wabash River sturgeon population gets pressure from Illinois and Indiana commercial fishing. The roe may be worth several hundred dollars a pound. "It's very lucrative, and because of the money involved, there's a real opportunity here for bad things to be happening."

James provided a brief history regarding the DNR Division of Law Enforcement's investigation of criminal activities related to the taking of paddlefish and sturgeon roe. The investigations, which occurred during the 1990s and more recently in 2007 and 2008,

resulted in 30 arrests and 300 charges, some being felonies. “One of the real legacies of that operation was to point out some of the real shortcomings in statute and rules in Indiana, which really begged the need for having a paper trail to track exactly through the harvest to sale to dealer to marketing, how those eggs are being legally taken and processed.” Both Illinois and Kentucky have roe harvester and roe dealer licenses and reporting requirements. “There is also a federal tie-in here, because any roe that is going to be exported from the United States has to go through the Department of the Interior, U.S. Fish and Wildlife Service Office of Scientific Authority. They have to issue export permits that verify that by shipping those eggs out of the country that it does not damage or hurt American fishery resources.” He said it was difficult for Indiana to provide the resource protection assurance due to inadequate reporting. The new legislation last year and the amendments this year establish detailed reporting requirements.

James said the legislation established a \$1,000 roe harvester license and a \$5,000 dealer/purchaser license. The cost of a harvester’s license “can be paid for with maybe two fish. That’s how lucrative the business is.... We don’t think sport fishing license dollars should be used to offset the cost of enforcing and managing the commercial fishery. The people involved in that should be user paid. I don’t think it does pay for it, but at least those dollars can help offset the cost in managing the fishery.” He said there are not a lot of people involved in the industry. There are nine licensed individuals, each, on the Ohio and Wabash Rivers, actively taking paddlefish and shovelnose sturgeon.

David Lupke asked whether any convictions resulted in the Division of Law Enforcement’s investigation.

Col. Scotty Wilson, Director of the DNR Division of Law Enforcement, answered in the affirmative. Some prosecutions are still pending. The Division of Law Enforcement conducted two covert operations. The earlier operation occurred between 1997 through 2000 in the southeastern portion of the State. “We had a lot of charges there. We had some convictions. We had some that didn’t make it, but regardless of the conviction rate, we keep pounding away at it.” Charges were brought through Indiana’s criminal code, as well as through the Internal Revenue Service’s tax code for tax evasion. Due to decimation of Europe’s beluga fishery, paddlefish roe was being mixed with beluga roe. Subsequently, there was evidence paddlefish roe was being packaged as beluga caviar.

Wilson said the required reporting on every level will assist the Department in assuring paddlefish or sturgeon roe is legally taken. “It won’t stop illegal activity totally, but it will give us another tool to address fish that may be taken from our other waters in Indiana that are closed” to the taking of paddlefish.

James said, “One thing Scotty [Wilson] has taught me over the years is that bad guys often times don’t just do one bad thing. If you are poaching paddlefish, you might be doing some other things that you shouldn’t do. Some of those 300 criminal charges involved illicit drugs, and, in at least one case, moon-shining so they brought in the State Excise Police.”

Ross Williams asked whether the paddlefish is killed when the eggs are harvested.

James explained the primary target is the female paddlefish, and the fish is killed when harvesting eggs. There is a market for paddlefish meat. Paddlefish are fairly slow growing, slow to mature, and may not spawn every year. Indiana is working closely with Illinois and Kentucky to standardize commercial and sport fishing rules on the Ohio River. "Just for good customer service, we try not to have a twilight zone out there."

John Davis said there is a way to check whether a paddlefish has eggs.

James agreed. Through rule, a syringe with a #10 needle is recommended to detect the presence of eggs. Use of the syringe does very little damage to the fish.

Lupke asked whether paddlefish were sexually dimorphic.

James said that the sex of a paddlefish can be distinguished only if the paddlefish is running milt. "The males will have white milt that may show when the fish is picked up and handled. The females tend to be fatter and rounder especially during April due to the presence of eggs. There is no other difference between males and females."

Freeman asked about the number of states that allow the taking of paddlefish.

James said there are seven Midwestern states that allow commercial fishing of paddlefish. There are several states bordering the Ohio River, but only Illinois, Kentucky and Indiana allow commercial fishing. Ohio, West Virginia, and Pennsylvania do not allow commercial fishing of paddlefish, because they do not have a commercially viable source of paddlefish.

Freeman said the older paddlefish will continue to be killed. He asked, "How are you going to maintain the population...with no daily limit?"

James said the Department, in coordination with Illinois and Kentucky, is constantly monitoring the reporting and tracking the age structure of the fish. "We spent a lot of years with all of the Mississippi River states that have paddlefish doing a micro-tagging study. Thousands have been collected from the wild.... There's a lot of ongoing monitoring where we are tracking: is the population remaining healthy? We are using that as our barometer."

Lupke asked whether Asian carp are impacting the paddlefish population.

James said, "Not measurable yet. We would expect at some point there will be direct competition.... They are both filter feeders feeding on the primary production that's out there, zooplankton. Paddlefish are not predators.... They are big, gentle giants." He said paddlefish are found in only two places in the world, the Yangtze River Valley, China; and the Mississippi River Valley.

William Wert asked, “Have you had good input from the legitimate side of the caviar business as far as these new rules?”

James said DNR met with industry representatives in October. “All the paddlefish fishermen joined us down at Sugar Ridge Fish and Wildlife Area for our first meeting. We talked about temporary rules. Because of the creation of these two licenses—the harvester and dealer licenses happened a year ago—there wasn’t time to get a permanent rule in place before the next season came up. So, we used the emergency rule provision. That’s what we have in place now.” DNR is working closely with the industry in the development of a permanent rule. Commercial anglers “pointed out some problems they had with the initial statute. Chris [Smith], members of the legislature, and our staff tried to work with those commercial interests to address those concerns.” He believes the industry was satisfied with the statutory amendments. Historically, there was tension between the regulated community and the DNR. The relationship has improved recently.

James said the temporary rule expires December 5, 2012. The proposed permanent rule incorporates additional standards “because we have been learning as we go”. By temporary rule, commercial anglers are required to submit monthly reports. The proposed rule includes a provision that would allow a commercial angler to notify the Department of its intent to cease operations for the remainder of the year. “This proposal and the statute make it a lot harder to operate illegally, because you have to come up into the light of day at some point to get on the market.”

Wilson indicated that Indiana and other states along the Mississippi and Ohio Rivers have been monitoring the paddlefish population since 1992. Indiana and other states have progressively adopted rules to address the issues. An Indiana conservation officer has been assigned full-time to monitor commercial fishermen on the Ohio River.

The Vice Chair commented, “Now there is an absolute paper trail required from the harvest to selling the actual eggs for the purposes of creating food stuffs. What was going on before, a lot more illegal fishing could go on—my understanding is and correct me if I’m wrong—is that the paper trail wasn’t there.... Now it’s more difficult to sneak into the market. Is that correct?”

Wilson agreed with the Vice Chair. “We recognized and documented the problems, and the emergency rule was put in place.” A permanent rule was adopted in 1998, which prohibited sportfishing for paddlefish, and the permanent rule has been amended several times in past years.

Lupke asked, “Are we winning the battle in Indiana and losing it in Kentucky?”

James responded that in 2008, there was no size limit on commercially caught paddlefish in the Ohio River. As a result of the criminal investigation, DNR “pressed Illinois and Kentucky to join us in adopting more protective measures for paddlefish. That wasn’t very easy.” DNR attended legislative and commission meetings in Illinois and Kentucky.

Now there is a 32-inch minimum size limit on the Ohio River for commercially caught paddlefish in all three states.

James said a statutory amendment was also enacted to regulate on-foot fishing guides under the charter boat commercial fishing license.

Richard Cockrum said that the proposed rule would require a fishing guide to complete a report prior to the client leaving. “So you get to the parking lot, and the client says ‘I gotta run, I’m late’...is one of the problems. How many fish did we catch today? I guess the question from the law enforcement side, how does that matter? How do you even enforce it if the guide thinks “I caught 20 fish”, and I think “I caught 40”? It’s catch-and-release.... Does there need to be further delineation on inland water guides, or should the word ‘taken’ be changed to ‘harvest’? ...Is it that critical if it’s all being released at the end of the day?”

James responded there is a mixture of reporting requirements on inland waters for both catch and release and harvest. There is a lot of fish harvest from inland waters for pan fish, walleye, catfish, and stripers. “It’s really hard to separate the two. There is biological value in that data, even if it’s an estimate.”

Cockrum said, “I don’t want to make it so cumbersome that we make criminals out of people that are just trying.”

James said that if the reporting is seen as a substantial issue by the public, “I would expect that to come to light during the public comment period.”

Wilson said there would need to be probable cause and evidence to justify an arrest regarding alleged false reporting.

The Vice Chair said she agreed with the concept of reducing paperwork, but “biologically speaking, it’s important to know. I mean a certain number of fish do die on catch and release. How much catch-and-release is going on? That’s viable information to have, right?”

James answered in the affirmative. He said DNR has good interaction with a number of guides now on some of the natural lakes and some of the rivers. “They are very interested in knowing what the trends are showing. We are working to try to develop that information into public reports...that show the catch rates. Are the numbers of fish going up or going down? ...For the most part I am very pleased to see the support from people.”

Davis asked Cockrum if his concerns were addressed.

Cockrum responded the proposed reporting requirement seems cumbersome. “I take Bill [James’] point to heart that if this is a problem, these people will have an opportunity to



come in and talk, but it does seem rather heavy handed that [the client] can't leave until you fill out the report."

Davis asked, "Why does somebody need to not leave?" This concern does not need to be addressed presently, but "I want to make sure that we don't pass this by, ...and we ought to make sure we have this conversation during this period and fix the rule. It does seem ridiculous to me to make that kind of situation happen when really we both trust the fisherman and guide to fill out the form."

Cockrum said, "I appreciate that. The people that do this for a living need to take a look at it. ... They want to protect the resource. It's their livelihood. It's the best way to get [DNR the data it] needs, and to make sure the law is followed but not make it too cumbersome that it's not workable". He added that he was not opposed to the rule.

James said the Department looks forward to input from guides in the public comment period.

William Wert said, "I still think it would be nice if we could somehow at least offer our endorsement of what we've seen here to take to the Commission."

The Vice Chair agreed. "I would say that we agree that you should go forward to the Commission with the adoption of amendments of the rules governing fishing, harvest, possession, and sale of roe..., but with special sensitivity to public discussion of the referenced aspects of the proposed rules."

### **Legislative Update**

The Vice Chair noted that the Advisory Council was "on the chopping block during the last legislative session. "[O]ne of the big issues was not having a quorum. Perhaps we can all encourage our friends to show up."

Cockrum said effective July 1, 2012, the Advisory Council membership is reduced to seven. Davis added currently there are only eight members appointed out of twelve authorized.

Chris Smith said the Department is working with the Governor's Office to appointments worked out correctly. The amended statute continues to require political balance. With the amendments, at least one meeting must be held in January when officer elections should occur. Future meetings would be scheduled at the request of the Chair.

Davis asked members to contact the Department if they do not wish to continue.

### **Adjournment**

The meeting adjourned at 12:10 p.m., EDT