

Citizen Petition: Allow individuals to collect mussel shells. (Admin Cause No. 21-FW-017)

Petitioner filed with the Natural Resources Commission a petition requesting to change 312 IAC 9-9-3 to allow for the collection of mussel shells in Indiana. A committee was assigned of DNR staff from the Divisions of Fish & Wildlife, Law Enforcement, and Legal. The petitioner requested changes to the rule to allow individuals to collect up to ten (10) mussel shells per species for educational purposes and to allegedly prevent citizens, especially children, from inadvertently committing a violation of the law.

Currently, the rule prevents collection of any mussel shells by the public in Indiana. However, the rule does allow collection for scientific purposes when an individual obtains a license from DNR. In addition, eleven species of mussels are on the state's endangered species list under 312 IAC 9-9-4, ten of which are federally endangered or threatened and found throughout Indiana's waterways. It is very difficult to accurately identify many native mussel species. If the proposed rule were adopted, individuals could unknowingly collect a mussel shell of an endangered species, putting that person in violation of state law, as well as federal law. For example, shell material of the federally listed clubshell can be found in many waterways throughout the state, and just picking up a piece of a dead clubshell would be illegal under federal law. Therefore, simply changing Indiana law would still leave citizens liable for violating federal law.

Indiana DNR's nongame aquatic biologist, Brant Fisher, performs mussel surveys throughout the state each year and the information provided by old shell material is invaluable. Mussel shells give scientists insight into reasons for mussel declines (and what needs to change before reintroduction). Old shell material also helps piece together the historical distribution of many of Indiana's rarest/extirpated mussel species and can help direct where future reintroductions may occur. Additionally, the collection and displacement of shells by the public would skew survey results. For example, mussels may not have existed historically in the displaced location. Such activities would cause incorrect conclusions to be drawn when evaluating the population of mussels or reviewing a request for a construction project at that original or displaced location.

Indiana's Mollusk and Crustacean Technical Advisory Committee reviewed this request and does not support a change to 312 IAC 9-9-3 to allow the collection of mussel shells. In surrounding states, Ohio and Michigan do not allow the collection of mussel shells except for scientific purposes under a license for that purpose. Kentucky does not allow the commercial harvest of mussels, but allows a person (without permits) to take six specimens of non-listed species each year – for personal use and not for re-sale. Illinois still has a commercial mussel license, but species that can be harvested and locations open to commercial harvest are very restrictive. Only individuals possessing a valid commercial mussel license may harvest and sell mussels in Illinois. If a person has a sportfishing license, the person may “possess up to 50 relic mussel shells for a personal collection.” The definition of “relic mussel shell” is defined as one “which apparently died of natural causes within the water and contains no meat or soft parts; it readily exhibits noticeable sediment, vegetation, algal or mineral stains, discolorations, soiling, weathering or other visual evidence on its interior surface which clearly and unambiguously shows the mussel shell has not been cooked-out or freshly cleaned.”

The DNR would like to note that individuals can view, investigate, and photograph mussel shell material while walking along rivers, streams, and shorelines of lakes and ponds without the need to take any home, much like someone would go birdwatching. Additionally, 312 IAC 9-9-3(b)(2)

allows for a permit (at no cost) to be issued by the Department to possess mussel shells for educational purposes. DNR staff has a collection of mussel shells of native, non-endangered species that can be provided to teachers, universities, and other non-profit organizations to use for educational purposes.

Finally, Indiana Conservation Officers have discretion in taking enforcement action when a person is seen collecting mussel shells, but it can be an infraction or a misdemeanor if the person knowingly collects them. The collection of endangered species of mussels or their shells is a Class A misdemeanor under state law in IC 14-22-34-12. While some individuals may collect mussel shells for a seemingly innocent purpose, others may collect them for the purpose of selling them, which is also illegal.

In conclusion, the assigned committee does not recommend a change in 312 IAC 9-9-3 as proposed by petitioner.

With respect to Information Bulletin #7, Petitions for Rule Change and for Nonrule Policy Document Change, I would like to petition for a ruling change to 312 IAC 9-9-3 Mussels.

FROM

Paul McAfee
 6530 W Wallen Rd
 Fort Wayne, IN 46818

pmcafee@toast.net
 260-489-5032

DESCRIPTION

Petition to change a rule regarding mussels as highlighted below. This wording may not be exactly what is needed, but the intent is to not make it against the law to pick up and take a dead mussel shell.

312 IAC 9-9-3 Mussels

Authority: IC 14-10-2-4; IC 14-22-2-6

Affected: IC 14-22-2-4; IC 14-22-17-3

Sec. 3. (a) Except as otherwise provided under this section, an individual must not take **live** mussels **and mussel shells** from the

waters of the state.

(b) An individual must not possess **live** mussels **or more than 10 mussel shells of any one species** except with a:

(1) scientific purposes license under 312 IAC 9-10-6; or

(2) special purpose possession permit for mussel shells obtained from the department for educational purposes only

under IC 14-22-2-4.

(c) An individual must not import, possess, or release into public or private waters, a zebra mussel, quagga mussel (*Drissena* sp.), or Asiatic clam (*Corbicula* sp.).

(d) An individual who takes a mussel listed in subsection (c) does not violate this section if the mussel taken is killed immediately upon capture.

(e) An individual may possess a live mussel listed in subsection (d) if the mussel is held under a scientific purposes license issued under 312 IAC 9-10-6.

(f) No license under IC 14-22-17-3(1) or IC 14-22-17-3(3) shall be issued to:

- (1) take;
- (2) possess;
- (3) ship;
- (4) sell;
- (5) buy; or
- (6) export;

mussels or mussel shells.

(Natural Resources Commission; 312 IAC 9-9-3; filed May 12, 1997, 10:00 a.m.: 20 IR 2727; errata filed Jun 2, 1997, 3:20 p.m.: 20 IR 2789; filed May 28,

1998, 5:14 p.m.: 21 IR 3729; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed Nov 24, 2008, 11:08 a.m.: 20081210-IR-312080672RFA;filed

Jul 6, 2010, 1:55 p.m.: 20100804-IR-312090616FRA; filed Mar 15, 2013, 2:33 p.m.: 20130410-IR-312120403FRA; errata filed Dec 6, 2013, 11:12 a.m.:

20140101-IR-312130537ACA; readopted filed May 20, 2014, 9:43 a.m.: 20140618-IR-312140017RFA; readopted filed Sep 18, 2019, 1:16 p.m.: 20191016-

IR312190325RFA

JUSTIFICATION

CHILDREN & CURIOUS ADULTS BECOME CRIMINALS

With the current law, it is illegal for a child to take a mussel shell home. It is illegal for an interested person to collect some mussel shells to learn more about them without a scientific or educational use. There are currently a lot of criminals in this state.

RULE NOT ENFORCED

Of course, children are not arrested, shells confiscated, or fines issued. It is always noted that this rule is not enforced and we are safe from the mussel police. However, what is the point of a law if it is not enforced? The general thought is that it is a “tool” to be used when prosecuting people who take live mussels for sale. If that is the case, shouldn’t the wording be changed to make it clear who is a criminal and who is not?

This sort of tactic worked very well with birds when it was made illegal to possess any part of a bird, nest, or egg unless it was a game bird, which had its own set of rules. The difference is that birds can be enjoyed and studied without taking them, and they don’t leave such interesting and useful artifacts, such as their shell, when they die. With mussels, it’s very difficult to study and enjoy them without picking them up and taking them.

RESTRICTS INTEREST IN MUSSELS

Mussel species in Indiana are among the most threatened species in the state. Nearly half of them are either extirpated or listed as endangered or species of special concern.

There are direct reasons for this, such as overharvesting and water pollution, but there are also indirect reasons, mainly that most people don’t know much, nor care much, about mussels.

If people see lots of Asian clams or zebra mussels in the water, why would they think that overharvesting is an issue? The water must be clean, and is clean where the zebra mussels are, so what’s the big deal? Without the ability to collect a few shells and learn about the different species, how are people going to care about the real issues facing this highly imperiled order of animals!

URNS NATURALISTS INTO MUSSEL POLICE

I have often heard naturalists warn children and adults that it is illegal to take a shell with them. Of course, when that happens, the children just drop the shell and forget about mussels. Adults just have to sneak them out if they really want them. This sort of activity does not help mussels at all. Mostly it just makes people feel bad about mussels.

CONCLUSION

Mussels are fascinating! Many are the naturalists who have done a presentation on mussels and find that most people “had no idea” how cool they are. Mussels do not fly around in your backyard. You can’t attract them with mussel feeders. You can’t hunt them. It is very easy to see why people “have no idea”.

There are few mussel experts in the state, and they’re fighting a difficult battle. Mussels are very important indicators of healthy rivers and ecosystems. More attention needs to be brought to their plight, and one way to do this is to allow people to learn about and enjoy mussels. The current ruling does not allow this.