

NATURAL RESOURCES COMMISSION
Beach House Pavilion, Indiana Dunes State Park
1600 North 25 East, Chesterton, Indiana
Minutes of May 18, 2004

MEMBERS PRESENT

Mike Kiley, Chair
John Goss, Secretary
Damian Schmelz
Linda Runkle
Robert Murphy
Raymond McCormick, II
Jerry Miller

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Krystal Wethington	Executive Office
John Davis	Executive Office
Paul Ehret	Executive Office
Sean Fahey	Executive Office
Janet Parsanko	Executive Office
Mickey James	Executive Office
John Bacone	Nature Preserves
Mike Nickolaus	Oil and Gas
Jerry Pagac	State Parks and Reservoirs
Chris Henderson	State Parks and Reservoirs
Terry Coleman	State Parks and Reservoirs
Ted Bohman	State Parks and Reservoirs
Randy Brinzda	State Parks and Reservoirs
George Bowman	Water
Stephen Davis	Water
Brian Breident	Water
Mike Molnar	Soil Conservation
Jenny Kintzele	Soil Conservation
Burney Fischer	Forestry
John Friedrich	Forestry
James Kershaw	Fish and Wildlife
Randy Brinzda	Fish and Wildlife
Samuel Purvis	Law Enforcement
Roger Bateman	Law Enforcement
Jerry Shepherd	Law Enforcement

GUESTS PRESENT

Pete Hippensteel	Russ Haugenstein	Charlotte Read
John Urbahns	Tom Hazelett	Michael Ryan
Larry Lyman	Herb Read	

REGULAR REPORTS

Michael Kiley, Chair, called to order the regular meeting of the Natural Resources Commission at 3:00 p.m., on May 18, 2004, at the Beach Pavilion, Indiana Dunes State Park, Chesterton, Indiana. With the presence of seven members, the Chair observed a quorum.

Jerry Miller moved to approve the minutes of March 16, 2004. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Director Goss reported that over the past year improvements have been made to the Indiana Dunes State Park with “a lot of investments” planned for the park through the 2005 season. “We are really revamping the Dunes State Park.” Goss introduced Jerry Pagac, Director of the DNR’s Division of State Parks and Reservoirs. Pagac stated that DNR is investing in the Indiana Dunes State Park, and the “biggest single thing we are doing is totally redoing the campground.” He said the existing infrastructure would be replaced—new roads, utilities, which “necessitated closing the campground this season.”

Pagac said over 700 trees were taken out to accommodate the new infrastructure. “When you look at it, it actually opens it up quite a bit. The campground was very densely packed with trees. The trees remaining will grow faster.” He said many of the removed trees were diseased. Pagac also stated that the Division of State Parks and Reservoirs “would like to get out of the water and sewage treatment business.” Pagac said that previously the water source for the camp was from a well, which was shown over time to be recharged by surface water. He said the campground would now be hooked up to the local water utility. “We would like to do the same for sewer, but we don’t have the money to make that happen.”

Steve Lucas distributed materials from the Great Lakes Restoration Grants Program administered through the Indiana Lake Michigan Coastal Program and OCRM’s Coastal Zone Management Program. The subject is a wetland restoration in the Dunes Creek Watershed intended to reduce bacterial contamination that is discharged on the Lake Michigan beach immediately west of the Beach House Pavilion. In addition, he distributed a pamphlet outlining the Dunes Creek Watershed Management Plan administered through the Save the Dunes Conservation Fund and the Indiana Department of Environmental Management. These materials were assembled by Jenny Kintzele, ILMCP, Division of Soil Conservation.

Jerry Miller, Chair of the Advisory Council for the Bureau of Lands and Cultural Resources, reported that the controversial items from the agenda of the joint meeting of the Advisory Councils were not placed on the Commission’s agenda. He said, however, the items on the Commission’s agenda were recommended for consideration.

John Davis, Deputy Director, stated that Stephen Davis, DNR’s Lake Michigan Specialist, was assisting with Northwest Indiana natural resource damage issues. Davis announced that Nicholas Heinzelman, past Director of the Division of Land Acquisition, was re-hired as the Director of Natural Resource Damages. “He will be helping us particularly up here. I think you will see a lot

of natural resource damages settlements and action up here in Northwest Indiana in the next few months.”

Davis said work continues on negotiations for Goose Pond in Greene County. A meeting was held with “local folks”, and discussions continue with the landowner about possible purchase. “We had a very good response last week from Mayor Jimmie Wright, Linton, and the Greene County Commissioners.” Davis announced the dedication of two nature preserve. Bob Kern Nature Preserve in Fulton County is a “great addition to the wetlands complex on the south edge of Lake Manitou”. The Louis Calli Nature Preserve located in Jennings County near Vernon is “another great piece of property made possible by the generosity and creativity of Dr. Calli and the Division of Nature Preserves.” Davis said Chairman Kiley and others attended the dedications.

Raymond McCormick, Chair of the Advisory Council for Water and Resource Regulation, stated that Jerry Miller chaired the joint meeting of the Advisory Councils and deferred comment.

Paul Ehret, Deputy Director, said most activity has been centered on national issues relative to placement of coal combustion waste at coal mines. He said the Department and approximately 25 other contributors participated in a “listening session” conducted by the Environmental Protection Agency held in Vincennes. Ehret said the EPA anticipates an additional 18 months for study of coal combustion waste. “The National Science Board has been authorized by Congress to study the issues.”

Ehret also attended a national meeting sponsored by the Department of Energy, Office of Surface Mining, and EPA held in Harrisburg on the same subject, with approximately 200 in attendance. He said demonstrations were given regarding reclamation of coal combustion by-products. “The interesting thing is that Pennsylvania utilizes, in their AML [Abandoned Mine Land] Program, probably about five or six million tons of coal combustion by-products every year to the equivalent amount that we dispose of during our entire program.”

Ehret announced that DNR is “about to embark” on the Lake and River Enhancement (LARE) Program grant considerations. He said 2004 is the first year to include weed control and dredging projects with the potential for one-third allocation of the LARE funding. “Previously, we had access to about a million dollars, which was primarily used for erosion control, watershed treatment. That amount has tripled.”

Ehret said there are “a lot” of issues relative to entomology and plant pathology. “It seems as though we are under attack.” He deferred to Robert Waltz, Ph.D., State Entomologist.

Waltz updated the Commission on recent events. In April the emerald ash borer, which has been “decimating many of the trees” in southeastern Michigan, was found in a township in northern Steuben County. The site is located in a campground. “The pest was brought in accidentally and has infested the area.”

Waltz said the DNR is in the process of further delineating and surveying the area. “Next week we hope to begin tree removal within one-half mile of the infested area.” Waltz noted that two sites were located, one to the north and one to the east, within the one-half mile radius. He explained that with the additional infested sites, the survey area would be broadened. “All ash trees will be removed” in the delineated area. He said a federal quarantine is in effect. “We have been getting a lot of support from the federal government in terms of expertise and financing.”

The Division of Entomology and Plant Pathology is working closely with the Division of Forestry.

Waltz reported that the first round of gypsy moth treatments was completed, treating approximately 4,000 acres with Btk, with another 7,000 acres to be treated in June with pheromone flakes. Approximately 50,000 residences were affected, and “we have had a fair amount of dialogue with individuals about various concerns, most of which have been answered positively.”

Waltz also reported that giant African land snails, which are “heavily forbidden” species, have been brought into Indiana. The pest is a terrestrial snail approximately four inches long, and it is a “tremendous problem” in the southern United States. “They reproduce very rapidly and are hermaphrodites. They destroy vegetation as well as eat paint on homes, and they carry human diseases.” Waltz said DNR is working closely with the Indiana State Department of Health and the federal government to remove the pests. “There are a lot of them in schools, pet stores, swap meets. We are trying to confiscate those.”

Waltz updated the Commission on the potentially fungus-like organism that affects oak trees causing the “sudden oak death”. The disease “has been killing many oak trees in California. Areas of California that are known to be infested have been restricted for some time.” He said new areas in California have been discovered, and it “turns out shipments of nursery stock were shipped all over the United States from heavily infested sites.” Waltz said currently there are four nurseries that may have received diseased material, and the preliminary “rapid test” shows the presence of the pathogen indicating a tentative positive. He did note, however, earlier tentative positives “turned out to be negative.” He also noted that infested camellias were shipped from California; but as yet no diseased camellias have been found in Indiana.

Kiley thanked Waltz for the updating the Commission on the current pest and pathogen issues. He inquired as to Indiana’s disposal of coal combustion waste. Ehret said the mines are taking the equivalent of 10% of all ash generated in the state every year. “The other 90% goes into either landfills that are in proximity to the power plants or holding ponds, a quarter of which is recycled into wallboard or concrete and structural fill.”

Goss announced that DNR is working with Partner Organizations, a nature conservancy magazine, in the marketing of the Heritage Trust license plate. He said the magazine has picked up the license plate campaign.

PERSONNEL

Consideration of Recommendations of Division of Fish and Wildlife for Permanent Appointment of Randy Brindza as a Property Manager for Lake Michigan Fisheries

Brian Breident, Lake Michigan Fisheries Biologist, presented this item. “Randy has served for us for about 13 months in this capacity and served in multiple aspects of that property management.” Breident said the Fisheries Office is shared with the Division of Law Enforcement, as well as the Division of Water. “Randy has been instrumental in directing maintenance, as well as he is responsible for the safe operation of our 36-foot research vessel.” He said Brindza was also instrumental in developing public access in Northwest Indiana. Breident recommended the

Commission permanently appoint Randy Brinzda as the property manager at the Lake Michigan Fisheries Office.

Raymond McCormick moved to permanently appoint Randy Brinzda as the property manager for the Lake Michigan Fisheries Office. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Recommendations of the Personnel Committee for the Appointment of Assistant Property Manager at Clifty Falls State Park

Jerry Pagac, Director of the Division of State Parks and Reservoirs, presented this item on behalf of Commission Member Rick Cockrum. He recommended Kevin Snyder as Assistant Property Manager at Clifty Falls State Park. Pagac noted that Snyder was the Assistant Manager at the Indiana Dunes State Park and then transferred to Prophetstown State Park. He said Snyder moved back to Pennsylvania for family reasons, but he wishes to return to Indiana. Pagac recommended appointment of Kevin Snyder. He said Rick Cockrum interviewed Snyder by telephone and expressed support for the appointment.

Jerry Miller moved to appoint Kevin Snyder as the Assistant Property Manager at Clifty Falls State Park. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Consideration of the Recommendations by the Personnel Committee for the Appointment, under IC 14-10-2-2, of an Administrative Law Judge for the Natural Resources Commission, Division of Hearings

Linda Runkle presented this item. She said, "It was my privilege to serve with Jane Anne Stautz as the Personnel Committee for selection of a Commission Administrative Law Judge." She praised the qualifications of both of the final two candidates and indicated that making a final decision was challenging. Following their deliberations, she and Stautz determined to recommend Sandra Jensen. Runkle said Jensen has a great deal of applicable experience, currently with the Indiana Department of Environmental Management and formerly as a legal advocate with the Department of Natural Resources.

Jack Arnett moved to approve, under IC 14-10-2-2, the appointment of Sandra Jensen as an Administrative Law Judge for the Commission. Raymond McCormick seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the Dedication of the Lime Lake Nature Preserve, Steuben County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the proposed Lime Lake Nature Preserve contains an "interesting wetland complex" located in the extreme northwest corner of Steuben County. "This is a long series of fens meandering down to Lime Lake." Bacone noted that the property is "loaded" with rare species including the massasauga. He said DNR has been involved for the past few years in restoration of the

property. “It has an interesting island right in the middle of the fen—a big gravel dome. We have removed all the undesirable species and the prairie has come back. It is pretty spectacular.”

Bacone said the property has been acquired from four different owners over a 20-year period, and both Heritage Trust funds and Natural Heritage Campaign funds were used. “For about a 15-year period, The Nature Conservancy has been acquiring these lots from back taxes and from owners who could not develop it.” Bacone recommended dedication of the Lime Lake Nature Preserve.

Damian Schmelz moved to dedicate the Lime Lake Nature Preserve located in Steuben County. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Kiley observed the Lime Lake Nature Preserve was of “pretty good size.” Bacone noted that the DNR hopes to work with the Michigan DNR “ending up with a bi-state project.” Kiley asked whether a bi-state project exists. John Davis answered that a partnership exists with Illinois in relation to Willow Slue Fish and Wildlife Area.

DIVISION OF FISH AND WILDLIFE

Consideration of a Request by the Patoka Lake Regional Water and Sewer District for Approval of an Easement for the Installation of a Sewer Line through Dubois Public Access Site

James Kershaw, Public Access Supervisor, Division of Fish and Wildlife, presented this item. He explained that J. F. F. New has requested to install a sewer line across a portion of Dubois Public Access Site. “The requested easement would run adjacent to an already existing easement,” which would be approximately 15 feet wide and 1,025 feet long. “This easement would help the local economy, a big Ag economy.” Kershaw said construction would not impede the use of the access site, and the DNR would seek compensation at the standard rate in the draft nonrule policy Information Bulletin #28.

Jerry Miller moved to approve a request by the Patoka Lake Regional Water and Sewer District of an easement for the installation of a sewer line through the Dubois Public Access Site. Raymond McCormick seconded the motion, noting that the Advisory Council recommended Commission approval. Upon voice vote, the motion carried.

DIVISION OF FORESTRY

Consideration of a Request by Indiana Fiber Network, Inc. for an Easement for Installation, Maintenance, and Use of an Underground Fiber Optics Cable via Utility Corridor for the Transmission of Communications across Clark State Forest

John Freidrich, Properties Specialist with the Division of Forestry, presented this item. Freidrich said that Indiana Fiber Network has requested an easement to run a fiber optics cable across Clark State Forest. He explained the easement would run “right through the central part of Clark State Forest towards the town of Henryville along State Road 160.” He said Indiana Fiber Network

plans to place the fiber optics within the berm right-of-way of the state highway. “It’s not really going to affect much of the state forest.”

Freidrich noted one revision to the request before the Commission. Indiana Fiber Network wishes to amend the request for an easement from 16 ½ wide to ten feet wide. “They propose to follow the guidelines in the draft Information Bulletin #28 that sets compensation fees for the Department.” Freidrich stated that the Division of Forestry recommended approval.

Kiley asked, “It doesn’t cause us any trouble if they reduce the size, does it?” McCormick asked whether the easement reduction would reduce the amount of reimbursement. Freidrich answered that the reimbursement would be reduced by approximately a third to one-half. He said the DNR’s land managers realized it was sometimes necessary to grant easements, but the overall goal was to minimize interference with the natural or cultural resource purpose of a property, so a small easement was ordinarily preferable to a large easement.

Linda Runkle questioned the ability to complete construction within a ten-foot easement. Freidrich said he believed construction could be accomplished within the ten feet. John Davis added that most of the construction would be within the road right-of-way. The ten-foot easement would supplement the area provided by the right-of-way.

Kiley inquired of the Advisory Council recommendation. McCormick stated that the recommendation to the Commission was for the wider easement. “They didn’t come before us with the narrower easement.” Kiley asked whether the Division of Forestry had a “problem” with the reduced easement. Freidrich answered that reduced easement was not problematic. Kiley observed that the reduced easement would minimize disturbance.

Raymond McCormick moved to approve the amended request by Indiana Fiber Network, Inc. for a ten-foot easement for installation, maintenance, and use of an underground fiber optics cable via utility corridor for the transmission of communications across Clark State Forest. Linda Runkle seconded the motion. Upon voice vote, the motion carried.

Consideration of Amendments to Natural Resources Commission Information Bulletin #28, Easements on Department of Natural Resources Properties and Navigable Waters; (Administrative Cause No. 03-009A)

John Freidrich, also presented this item. He explained that the Commission approved guidelines to assist the landholding divisions in processing easement requests in a consistent manner. “It has worked very well over the years to help provide consistency, but we still run across a few situations where requestors don’t know how to provide compensation.” Friedrich said that persons seeking easements are asked to provide appraisals, but appraisals are “not cheap and can often cause the cost of an easement to be doubled.” Freidrich said an effort was made to provide consistency and to take some of the “burden” off the requestors.

Freidrich said a survey of surrounding states was conducted to investigate other state’s procedures for easement requests. Copies of the survey results, which “vary quite a bit” were provided to Commission members. He noted that Michigan charges a minimum fee of \$300 just to go before the governing authority. “Other states, as Indiana, do not have a fee. Michigan has the most complex fee schedule out of the four states surveyed.”

Freidrich explained that DNR's landholding divisions "came together", considered the survey results, and drafted the fee schedule contained in Information Bulletin #28. The draft fee structure was based primarily on Michigan's fee matrix. "We felt that the Michigan structure did several things. First of all, it provided an incentive for people to minimize the amount of disturbance." Freidrich referenced the request for easement reduction by Indiana Fiber Optics Network in the previous agenda item. "Second of all, it causes people to look for areas that are already disturbed—utility corridors, existing road right-of-ways, places that they are going to have less impact in previously undisturbed areas." He added, "Third of all, we think a fee structure like this will make it easier for people when they come before the landholding divisions to start requesting easements they will know up front what it is going to cost them." Freidrich, on behalf of the landholding divisions, recommended approval of the amendments to Information Bulletin #28.

Stephen Lucas said it should be noted that the amendments would establish a "Standard Compensation Schedule" that would allow a simplified method for determining valuation. At the same time, as reflected in section IV(D)(7) of the nonrule policy document, the "emphasis of this analysis is still fair market value." Presumably, the fee schedule in section V would be used and applied in "99% of the cases." If a valuation using the Standard Compensation Schedule did not "seem to fit with the true fair market value", the document would provide "some latitude."

Jerry Miller moved to approve amendments to Information Bulletin #28 that governs easements on Department of Natural Resources properties and navigable waters. Linda Runkle seconded the motion. Upon a voice vote the motion carried.

DIVISION OF WATER

Consideration for Preliminary Adoption of a New Rule, 312 IAC 6.5, Concerning Management of the Great Lakes Basin: Water Resources Development Act ("WRDA"), Coordination and Related Preliminary Matters (Administrative Cause No. 04-048W; LSA #04-65)

George Bowman, Assistant Director for the Division of Water, presented this item. He said for consideration was an initial set of rules to implement amendments to IC 14-21-1-11. The amendments were enacted by the most recent session of the Indiana General Assembly to make the Indiana statute consistent with the Federal Water Resources Development Act (commonly known by the acronym "WRDA"). He said these laws are designed to protect the Great Lakes from adverse consequences that can result if waters are transferred outside the Great Lakes basin.

Bowman explained that James Hebenstreit has been heavily involved in discussions with other Great Lakes States and the two Great Lakes Canadian Provinces concerning efforts to advance reasoned protections for the basin's waters. He said Steve Lucas is also involved in the discussions. The amendments currently presented for consideration would be just a beginning but would identify the Division of Water as the point-of-contact in Indiana. In addition, the DNR Director would be authorized to enter orders appropriate to IC 14-21-1-11. He said the Division of Water recommended the rule amendments be given preliminary adoption.

Raymond McCormick reported this proposal was reviewed by the April joint meeting of the Advisory Councils. The members recommended the Commission give the amendments preliminary adoption.

Linda Runkle said IDEM was “very interested” in water quality issues pertaining to Great Lakes water consumption and diversions. She said her agency was also involved in the developing work groups. Runkle said she would vote in favor of the rule proposal but wished to emphasize the importance of IDEM’s continued active involvement and the need for consultation, particularly regarding matters of water quality.

John Goss spoke to the sensitivity and importance of issues pertaining to water diversions and consumption. Meeting on the shoreline of Lake Michigan was an immediate reminder of Indiana’s critical linkage to the Great Lakes. He said the Council of Great Lakes Governors has taken the lead role with the diversion issue, and this role was supported by the extensive efforts of the Great Lakes Commission.

Jack Arnett moved to give preliminary adoption to 312 IAC 6.5 concerning the management of the Great Lakes basin. Damian Schmelz seconded the motion. Upon a voice vote, the motion carried.

Consideration for Preliminary Adoption of Proposed Amendments to 312 IAC 11-2 and 312 IAC 11-3 Regarding “Group Pier” Licensure on a Public Freshwater Lake (Administrative Cause No. 04-025W)

George Bowman also presented this item. He said for consideration was a recommendation for preliminary adoption of a rule amendment that would disqualify “group piers” from a general license under the Lakes Preservation Act. The concept was intended to be an initial stage in responding to concerns from the Steuben County Commissioners, the Steuben County Plan Commission, and the Steuben Lakes Council expressed with respect to “funneling”. Where “funneling” occurs, dense residential development near the shoreline of a “public freshwater lake” results in high-density use of the lake for boating. Challenges are presented to navigational safety and to environmental protection.

Bowman said the current proposal would not prohibit the placement of a “group pier” within a public freshwater lake, but it would require that the managers of a group pier complete a review process with analysis by the DNR and notice to neighbors. He said the Division of Water shared the proposed language with several interested persons, and the Division now recommended the proposal for preliminary adoption.

Peter Hippensteel, Ph.D., spoke in favor of the rule proposal. He said he had helped bring the DNR and local officials together for a March 11 meeting at Tri-State University, Angola, to discuss the challenges facing development near Indiana’s inland lakes. He was encouraged that progress was being made. “I want to compliment the DNR and the NRC on its progress with this rule.”

Hippensteel expressed concerns that the term “condominium” in the proposed definition of “group piers” might not cover every form of dense residential development that would be promoted. John Davis suggested that reference might more generically be made to the “Horizontal Property” law. John Goss suggested the DNR seek Linda Runkle’s special expertise relative to zoning in addressing this aspect of the issue.

Hippensteel said he hoped the rule proposal given preliminary adoption would go beyond the current language proposal. He distributed suggested additional criteria pertaining to group piers:

- There should be a limit on the area covered by the pier related to the length of shoreline of the riparian owners. This area should include laterals and shore stations.
- Limits should be placed on the amount of wetland alterations, since both mechanical and chemical damage is associated with pier use.
- The pier placement needs to be consistent with shoreline zoning.
- The cumulative impacts on fishing, boating, swimming and the ecology of the lake must be considered. These large piers alter the public's use of the lake.
- The license should have an expiration or renewal date.

Chairman Kiley thanked Hippensteel for his continuing support and his insights into what was rapidly becoming one of the DNR's and the NRC's foremost issues. He asked that the additional concepts offered by Hippensteel be considered by the DNR agency professionals as the process moves forward. Other rule adoption would undoubtedly be required, but an important immediate step would be to begin treating "group pier" placement, under the Lakes Preservation Act, as a site-specific license rather than a general license.

John Goss said the Lakes Management Workgroup was being reconstituted this summer. The DNR would urge the group to focus upon challenges to the public trust for our inland lakes that are caused by riparian disputes, including those pertaining to funneling. He said Dr. Hippensteel's comments were directly on point.

Raymond McCormick said the joint meeting of the Advisory Councils considered this rule proposal. The Council members voted to recommended preliminary adoption of the "group pier" amendments by the Commission.

Jerry Miller moved to give preliminary adoption to the amendments to rules, as proposed by the Division of Water, to establish a definition for "group piers" and to require a site-specific license application be made for each new "group pier". McCormick seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF ENTOMOLOGY AND PLANT PATHOLOGY

Consideration for Recommendation for Preliminary Adoption of 312 IAC 18-3-18 to Regulate the Emerald Ash Borer: Emerald Ash Borer, Designation as a Pest or Pathogen, and the Establishment of a Quarantine in Jamestown Township, Steuben County (Administrative Cause No. 03-190E)

Robert Waltz, Director of the Division of Entomology and Plant Pathology, presented this item. He said the emerald ash borer (Coleoptera: Buprestidae: Agrilus planipennis) has been discovered at a site in Jamestown Township, Steuben County. Director Goss adopted an emergency rule on April 22, 2004 to declare the species a "pest or pathogen" and to authorize efforts to control the infestation. Control efforts are "now underway", but at least three years will be required if the efforts are to be a success. Because the emergency rule would expire within a year, a permanent rule is required to help address this very serious challenge. He recommended the Commission give preliminary adoption to the permanent rule.

Damian Schmelz moved to give preliminary adoption to 312 IAC 18-3-18 to declare the emerald ash borer a pest or pathogen and to support eradication efforts. Linda Runkle seconded the motion. Upon a voice vote, the motion carried.

Consideration for Recommendation for Preliminary Adoption of Amendments to 312 IAC 18-3-12 for Larger Pine Shoot Beetle Quarantine Extension to Decatur, Jennings, Ripley, Union, and Vigo Counties (Administrative Cause No. 04-096E)

Robert Waltz presented this item. For consideration is a recommendation for preliminary adoption of a rule amendment that reflects the expansion of the larger pine shoot beetle to Decatur County, Jennings County, Ripley County, Union County, and Vigo County. To remain in compliance with APHIS regulations, and to preclude a statewide quarantine, a permanent rule must be adopted.

Damian Schmelz moved to give preliminary adoption to amendments to 312 IAC 18-3-12 to add Decatur, Jennings, Ripley, Union, and Vigo Counties to the larger pine shoot beetle quarantine. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration of Recommendation for Adoption of Information Bulletin #44: Listing of Beneficial Organisms Exempted From Licensure Under 312 IAC 18-3-15 (Administrative Cause Number 04-055C)

Robert Waltz also presented this item. He began by directing attention to an updated version of the proposed nonrule policy document that had been circulated earlier to the Commission members. Waltz said the document was an essential element of the new licensure requirements, under 312 IAC 18-3-15, that must be met before the release of a beneficial organism or a pest or pathogen. The Natural Resources Commission gave this section final adoption on January 20. Following approval as to legality by the Attorney General and signature by the Governor, the section became effective on May 1. As provided in 312 IAC 18-3-15(d), the Director of the Division of Entomology and Plant Pathology “may establish a listing of organisms that are exempted or that may be released under a general license.” The listing must be submitted to the Commission for approval. He said the listing contained in the proposed nonrule policy document is as anticipated by subsection 15(d).

Waltz explained that the organisms set forth in proposed Information Bulletin #44 were already widely distributed in Indiana. A good example is the earthworm species described in the document. To require completion of the full licensure process by every bait dealer distributing these common species of earthworms would serve no valid regulatory purpose and would be a great financial burden on the dealers and on the agency. Waltz said, in most instances, species were exempted, but as set forth in the modified draft distributed in handouts to the Commission, a few would be authorized by a general license. He recommended the nonrule policy document be approved and that it be published in the Indiana REGISTER as Commission’s Information Bulletin #44.

Damian Schmelz moved to approve the proposed “Listing of Beneficial Organisms Exempted from Licensure under 312 IAC 18-3-15”, with the modifications contained in the version distributed to the Commission immediately before the meeting, as a nonrule policy document (Information Bulletin #44). Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF LAW ENFORCEMENT

Consideration for Recommendation for Preliminary Adoption of Amendments to 312 IAC 5-14 Governing the Inspection, Maintenance, and Operation of Watercraft Carrying Passengers for Hire (Administrative Cause No. 03-153L)

Maj. Samuel Purvis, Indiana State Boating Law Administrator, presented this item. For consideration is the first comprehensive set of amendments to the rules governing boats carrying passengers for hire since they were implemented approximately 20 years ago. He said the amendments seek consistency with federal standards, where practicable, and seek to apply proven practices in the industry. A Conservation Officer trained in good marine practices and standards performs the requisite watercraft inspections.

Maj. Purvis said it was fitting that these amendments be considered during a meeting on the shores of Lake Michigan. Fifty of the 75 watercraft currently subject to the rules are operated on the Indiana waters of Lake Michigan.

Purvis thanked Lt. Jerry Shepherd of District 10 for his work with local boat captains. He said Conservation Officer, Roger Bateman, brought a wealth of knowledge to the table in drafting the proposed amendments. Maj. Purvis recommended preliminary adoption.

In response to a question from the Commission, Officer Bateman explained the differences between an annual inspection and an inspection performed every five years in dry dock. The former is directed primarily to assure properly working equipment onboard, and the latter seeks to assure the integrity of the watercraft.

Linda Runkle moved to give preliminary adoption to the amendments to 312 IAC 5-14 governing boats carrying passengers for hire as set forth in recommendations from the Division of Law Enforcement. Raymond McCormick seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of Report of Public Hearing, Comments, and Recommendation for Final Adoption of 312 IAC 5-12.5 Governing Watercraft Excise Tax Decal Placement Exemption (Administrative Cause Number 03-160L; LSA Document #03-316(F))

Steve Lucas, Hearing Officer, presented this item. He said for consideration was a proposed rule amendment that would allow excise tax decals to be placed on the mast or boom of a sailboat if they would not otherwise be clearly visible when the sailboat is underway. He said the proposal resulted from a petition for rule change originated by Daniel McArdle, Commodore of the Clear Lake Yacht Club.

Lucas said McArdle testified during the public hearing that placement of a decal on the bow of a sailboat caused drag and put Indiana sailors at a competitive disadvantage in sailboat races. No negative comments were received concerning the rule proposal. Lucas recommended that the amendments be given final adoption.

In addition, Lucas reported that McArdle said at least two Indiana races this summer would draw significant out-of-state competition. These are a Great Lakes regional sailboat race on Clear Lake and a national sailboat race on Lake Maxinkuckee. McArdle expressed hopes the proposed amendments could be made applicable prior to these races. As a result, Lucas also suggested the Commission adopt a nonbinding resolution recommending that Director Goss adopt a temporary rule to this same effect for the summer of 2004.

Raymond McCormick moved to give final adoption to 312 IAC 5-12.5 to allow excise tax decals to be placed on the mast or boom of a sailboat if they would not otherwise be clearly visible when the sailboat is underway. He also recommended the Department of Natural Resources Director adopt a temporary rule to the same effect to apply during the 2004 boating season. Jerry Miller seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearings and Recommendation of Proposed Rule Amendments to 312 IAC 16 Governing Plugging, Abandonment, and Mechanical Integrity of Wells Drilled for Oil and Gas Purposes, for Consideration as to Final Adoption (Administrative Cause No. 03-152G; LSA #03-251(F))

Steve Lucas, Hearing Officer, presented this item. He said two public hearings were scheduled on proposed amendments to the oil and gas wells with respect to plugging, abandonment, and mechanical integrity.

One of the aspects of these rules was generally unpopular with the petroleum production industry and drew considerable negative comment during the public hearing in Evansville and afterwards. This aspect was focused upon a proposed new “tagging” requirement as described more particularly in the Commission’s written materials. Michael Cash, Vice President of the Indiana Oil and Gas Association, urged that the “tagging” rule would create onerous expenditure of labor, material and equipment rental amounting to several thousands of dollars per well and would significantly affect the number of wells plugged annually in the State of Indiana.”

Lucas said he offered a written report to the Commission dated March 1, 2004 in which he identified industry concerns, including the possibility the tagging requirement might pose an annual fiscal impact on the agency of \$500,000 and require a formal fiscal analysis under IC 4-22-2-28(b). On March 1, he recommended deferral of action on final adoption and the institution of a facilitated process to determine if a consensus might be achieved between the Division of Oil and Gas and the regulated community.

Soon after issuance of the March 1, 2004 report, representatives of the Division of Oil and Gas conferred with representatives of the Indiana Oil & Gas Association to determine if they might agree upon a mutually acceptable regulatory structure. Lucas praised this effort and of leadership in the Division of Oil and Gas and the Indiana Oil & Gas Association. He made particular note of the work of Mike Nickolaus and Mike Cash and reported they had come to closure on a regulatory structure with which both could live. The tagging proposal would not be implemented, but additional requirements to help protect water quality would be required, including the placement of additional cement to help assure proper plugging.

In addition, Lucas distributed to the Commission correspondence from Verner P. Partenheimer, an attorney in Princeton who is a prominent advocate for several members of the petroleum production industry. Partenheimer’s analysis showed a notable costs increase associated with the consensus regulatory structure, but as applied by Michael Nickolaus, these costs would not

approach the threshold for the required application of IC 4-22-2-28(b). He expressed appreciation to Partenheimer and to Nickolaus for their efforts concerning the financial impacts.

Lucas offered for consideration as to final adoption the amendments upon which the Division of Oil and Gas and the Indiana Oil & Gas Association reached closure. He noted that Mike Nickolaus was present to address the proposal. Nickolaus said he would attempt to answer any technical questions and that he supported final adoption, as amended.

Director Goss said a lot of serious work had gone into crafting a workable regulatory approach that would help assure protection of groundwater without causing adverse impacts to the petroleum industry. These efforts included those of the Department's Chief Legal Counsel, Janet Parsanko, as well as the Division of Oil and Gas and the regulated community, and they started even before the Commission gave the rule proposals preliminary adoption.

Jerry Miller moved to give final adoption to the amendments to 312 IAC 16, pertaining to plugging, abandonment, and mechanical integrity of wells drilled for oil and gas purposes, as set forth in the attachment to hearing officer's report of April 30, 2004. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Consideration of Report of Public Hearing and Recommendation for Final Adoption of Rule Amendments to Marina Rules With Respect to Pumpout Facilities (Administrative Cause No. 03-192A; LSA #04-4(F))

Steve Lucas, Hearing Officer, presented this item. He said amendments proposed to the rules governing pumpouts at marinas on public waters would make explicit that a marina must have a working pumpout. In addition, the DNR's Division of Law Enforcement would be authorized to grant exemptions, for a period not to exceed five years, under limited circumstances. These were where a marina showed either that it did not service and was unlikely to service boats with marine sanitation devices; or, that a marina operator entered a written agreement for adequate vessel service by a neighboring marina. He said the changes were sought primarily by the Division of Law Enforcement to support a more balanced and equitable regulatory program.

Jack Arnett moved to give final adoption to the amendments to pumpout facility requirements at marinas as attached to the hearing officer's report. Linda Runkle seconded the motion. Upon a voice vote, the motion carried.

Consideration of Public Hearing and Comments and Recommendation for Final Adoption of Rule Amendments to 312 IAC 10-5 Governing Flood Plain Management General Licensure (Administrative Cause No. 03-105W; LSA #03-215(F))

Steve Lucas, Hearing Officer, also presented this item. He said for consideration was a major restructuring of the general licensure provisions for activities under the Flood Control Act (IC 14-28-1). In some instances, the general licenses also apply to activities regulated under the Navigable Waters Act (IC 14-29-1).

Lucas said general licenses have been developed over the years, piecemeal, on a subject-specific basis. As a result, there is considerable repetition of standard clauses in each individual rule section. The amendments would place general standards in opening sections of 312 IAC 10-5, with standards applicable to particular activities set forth in sections later in the rule.

In addition, the amendments include a few substantive changes. Notable among these is an amendment that would allow access to a general license for qualified activities in an “Outstanding River”. Lucas said an “Outstanding River” designation might be for a variety of reasons, including its use for recreational purposes. An illustration is the Kankakee River. With the amendments, the Kankakee and other rivers similarly situated would become eligible for a general license for logjam removal if the Division of Water’s Environmental Unit gives advance project approval.

Lucas said the Starke County Surveyor wrote to express support for the latter rule amendment. Jody Melton and John Nelson of the Kankakee River Basin Commission both testified in favor of this amendment. Melton also asked that the Department Director be encouraged to adopt a temporary rule to this end for the 2004 construction season.

Lucas said he recommended final adoption of the proposed rule amendments. In addition, he suggested that the Commission consider giving its support to a nonbinding resolution recommending the DNR Director adopt a temporary rule for the current construction season.

Damian Schmelz moved to give final adoption to the amendments to 312 IAC 10-5 governing general licensure under the Flood Control Act and Navigable Waters Act as set forth in the hearing officer’s report. He also recommended the Department of Natural Resources Director adopt a temporary rule to allow qualified projects on Outstanding Rivers to apply a general license for the 2004 construction season. Robert Murphy seconded the motion. Upon a voice vote, the motion carried.

Consideration of Approval of Amendments to Information Bulletin #36, Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33) (Administrative Cause Number 04-055C)

Jennifer Kane, paralegal for the Commission’s Division of Hearings, presented this item. She explained that Information Bulletin #36 set procedural guidelines for the interpretation of the Conservancy District Act (IC 14-33). She noted that the Commission approved amendments to the bulletin that added language specific to conservancy districts located in Hendricks County at its September 2003 meeting. Kane said the Indiana General Assembly amended IC 14-33-4-2 by deleting the extraordinary requirements for Hendricks County, which becomes effective July 1, 2004. She said Information Bulletin #36 has been amended consistent with the legislation.

Jerry Miller moved to give approval to amendments to Information Bulletin #36 setting procedural guidelines regarding conservancy districts. Jack Arnett seconded the motion. Upon a voice vote, the motion carried.

Information Item: Lake Michigan Fisheries Update

Brian Breident, Lake Michigan Fisheries Biologist, presented this item. He listed several “bright spots” that occurred last year. “One of those happens to be the cooperative stocking of brown trout.” He explained that Indiana has worked “very closely” with the Great Lakes partners, and said there is an agreement with Illinois to stock brown trout. “That stocking would not have taken place had it not been for the push of some of the local groups.” Breident said the stocking

of brown trout has been a “real boon” to Indiana shore anglers, and he noted that brown trout consume the exotic species round goby.

Breident introduced Mike Ryan, with the Northwest Indiana Steelheaders. He said the Northwest Indiana Steelheaders along with Salmon Unlimited, and many of the charter operations participated in public meetings held in 2001 and 2002. “We didn’t operate in a box; we operated with public comment.” He said the local groups requested the stocking of brown trout, and “we acted on it. We are hopeful that this year we will get 35,000 to 50,000 brown trout from Illinois with no cost to the state of Indiana other than transportation costs.”

Breident said there is cooperation with the U.S. Fish and Wildlife service to stock yearling lake trout near Michiana Reef located five miles off shore “straight up from the Port of Indiana.” He explained that Michiana Reef is a gravel-cobble complex, and has received 72,000 lake trout yearlings last year, with 60,000 being stocked this year.

Breident said an experimental fish barrier was constructed near Romeoville (Chicago vicinity) to prevent exotic species such as big head carp, silver carp, and black carp from moving up or down stream to or from Lake Michigan. He explained that big head and silver carp are “voracious planktivores. If they made it to Lake Michigan, they would take the bottom out of our food chain.” Breident said the federal government had discussed eliminating the construction of a second barrier due to financial constraints. “Fortunately, that has been reinstated, and the Corps of Engineers is going to build it.” He said the fish barrier would be located one mile downstream from the first barrier.

Breident reported 200,000 yellow perch, with an average size ten inches, were harvested last year from the Indiana waters of Lake Michigan. He said the Lake Michigan fishery is managed in cooperation with other states. “Indiana currently has a suspended commercial license, but you are still able to maintain a license.” If the perch population continues to experience recover, there will undoubtedly be initiatives to reinstate the commercial harvest season.

ADJOURNMENT

At approximately 4:45 p.m., the meeting adjourned.

COMMISSION TOUR (May 19)

Tom Post, Northwest Region Ecologist for the Division of Nature Preserves, led the Commission on a tour of the Moraine Nature Preserve located in Porter County. The Commission also met with the caretaker of the nature preserve, retired Conservation Officer, Jim Weeks.

NEXT MEETING

July 20, 2004, The Garrison, Ft. Harrison State Park, Indianapolis