

NATURAL RESOURCES COMMISSION

Meeting Minutes, May 17, 2022

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Dan Bortner, Secretary
Brian Rockensuess
David Holt
Phil French
Patrick Early
Bart Herriman
John Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Chris Smith	Executive Office
Ryan Mueller	Executive Office
David Bausman	Executive Office
Terry Coleman	State Parks
Amanda Wuestefeld	Fish and Wildlife
Phillip Kacmar	Fish and Wildlife
Jeremy Price	Fish and Wildlife
Danae Schneck	Legal
Steve Hunter	Law Enforcement
Trent Stinson	Law Enforcement
James B. Brindle	Communications
Ronald Hellmich	Nature Preserves
Laura Minzes	Nature Preserves

GUESTS PRESENT

Sarah Molinaro Josh Worth Greg Schwipps

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 6:29 p.m., ET, on May 17, 2022, at Turkey Run State Park – Turkey Run Inn at 1802 E. Park Road, Marshall, Indiana. With the presence of nine members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's March 15, 2022, meeting minutes. Bart Herriman moved to approve the minutes as presented. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DNR DIRECTOR, DEPUTY DIRECTORS, AND THE CHAIR OF THE ADVISORY COUNCIL

Dan Bortner, Director of the Department of Natural Resources (Department), provided his report. Bortner noted a busy recreation year. In April 2022, the Department's new leadership staff completed the "state parks pro-school" which is the Department's leadership orientation.

Bortner stated phase three of the Governor's Next Level Trails Program initiative announced an additional \$65 million that will be used to build 77 miles of new trails. With matching applicant funds, the investment is expected to be more than \$102 million. He noted grants awarded in phase three include 17 regional projects and 21 local projects.

Bortner said the Governor's ForestIN initiative aims to plant one million trees in five years and the Division of Forestry's goal for 2022 is to plant 264,000 new trees. After this year's trees are planted, a total of 647,000 trees will have been planted since the ForestIN initiative began in 2020.

Bortner said the Becoming an Outdoors Woman Workshop hosted by the Department was held April 29, 2022, to May 1, 2022, at Ross Camp in West Lafayette. The three-day workshop is for women ages 18 and older to learn outdoor skills and activities such as fishing, archery, wilderness survival, and wildlife tracking and shooting. Registration for the Workshop began March 1, 2022 and filled up in three hours with others being put on a wait list. There were approximately 100 participants from Indiana and several neighboring states. Forty-two Department staff and volunteers helped to run the event. The Department is looking forward to hosting next year's event.

Chris Smith, Deputy Director of the Land Management Bureau, provided his report. He reported that turkey hunting season closed on May 15, 2022, and there were 12,438 turkeys checked in by hunters, slightly higher than 2021. Smith stated the Pumpkinvine Trail, part of the Next Level Trails Program, was dedicated in Shipshewana on May 6, 2022. This is the first project of the second round to be completed and is the ninth project overall to be completed. The Pumpkinvine Trail extends east into Shipshewana's North Park. The trail connects Shipshewana, Middlebury, and Goshen.

Smith noted that the Natural Resources Foundation will host a fundraiser on May 19, 2022, focusing on the acquisition of public properties in northwest Indiana. Similar fundraisers have raised over \$1 million in the past.

Smith said the Spring Mill Inn renovation was paid from deferred maintenance funds and will begin in mid-November 2022. The project is expected to be complete in the spring of 2023. The inn is due for significant mechanical modernizations that will require temporary closure of the facility, including the Millstone Dining Room, conference facilities, and overnight lodging. The work will include replacing water lines, sprinkler systems, fire alarms, heating, ventilation, and air conditioning; installing new windows and doors; upgrading accessibility, guest rooms, and bathrooms, and replacing the pool.

Smith stated the Department started a beach-accessibility project at the Indiana Dunes State Park. Nadine Murray, who has health issues, made it her wish through the Make-A-Wish Foundation that there be a handicap accessible beach at Indiana Dunes State Park. The Make-A-Wish Foundation, several other grant partners, and three families helped with funding for a mat system to allow people with limited mobility to have access to Lake Michigan.

Ryan Mueller, Deputy Director of the Resource Regulatory Bureau, provided his report. He said the Division of Entomology and Plant Pathology is ready to start Btk treatment for gypsy moth. Btk is not toxic to the soil or hazardous to mammal health. One treatment area will be Chain O' Lakes State Park. Staff from the Division of Entomology and Plant Pathology and the Division of State Parks will educate the public prior to spraying.

Mueller said the Division of Entomology and Plant Pathology received \$169,000 in federal funding for education, research, and to survey the spotted lantern fly, which poses a risk to forests and vineyards. Treatment that began last year in Switzerland County will continue and current surveys show significant reduction in the treated area.

Mueller said May is National Historic Preservation Month. Indiana's theme this year is "That Exceptional One - Indiana's Early Female Architects and Builders." The Division of Historic Preservation and Archaeology produced a poster with images of 18 Indiana women. Every day in May, the Division will provide more information on its Facebook page about 38 women who practiced architecture, design, or built homes in Indiana. Additionally, the Division will share weekly Facebook Live broadcasts about these historic Indiana women.

Mueller provided the Administrative Bureau report. The Department, along with the Indiana Department of Administration (IDOA) has been approved to use deferred maintenance project funds for repairs to the Department's building at the Indiana State Fairgrounds. These building repairs will include repairing the roof, gutters, joints, masonry work, repainting, windows, and renovating the restrooms. The deferred maintenance project will be bid on in the next couple of months and repairs are expected to be completed by the 2023 Indiana State Fairground opening. Mueller reported the deferred maintenance programs on all IDOA site visits have been completed. The comfort stations at Mississinewa Lake are complete and the Lieber State Recreational Area project is near completion.

Mueller stated that as of April 15, 2022, the Department had 1,183 regular positions filled and 214 regular positions vacant. The Department currently has 84 openings in the “request to hire queue.” The Department faces challenges with unfilled vacancies but continues to meet customer service priorities.

Mueller stated the Department is involved with the legislative infrastructure bill and the Office of Management and Budget (OMB) and the infrastructure bill working group. The Department continues to review what funding opportunities are available and applied for \$25 million in federal funding for abandoned mine lands and the orphaned wells program.

Patrick Early, the Chair of the Advisory Council, reported the Council last met on February 21, 2022. The meeting was informational, and there was nothing new to report.

The Chair recognized Karen Hinton and the Division of State Parks staff for the hard work in preparing for the Commission meeting.

The Chair asked David Bausman to introduce the Department’s legal intern and Bausman introduced Danae Schneck who provided a brief background.

The Chair asked the Director of the Natural Resources Commission, Elizabeth Gamboa, to provide a report.

Director Gamboa stated Administrative Law Judge (ALJ), Aaron Bonar, has worked for the Division of Hearings since April 4, 2022, and she is pleased with his progress. She noted Bonar’s interaction with litigants and the good job he has done moving administrative cases forward. Gamboa said she met with Bausman regarding rulemaking to ensure the Commission’s Division of Hearings was maximizing support for the Department.

CHAIR AND VICE CHAIR

Information: Consideration of 2022 meeting dates:

The Chair noted the 2022 Commission meeting dates are, July 19, September 20, and November 15. The meetings are to be held at the Fort Benjamin Harrison – Garrison in Indianapolis. The Chair noted the possibility of the Commission meeting scheduled for September 20, 2022, being held at Indiana Dunes State Park.

Updates on Commission and AOPA Committee

Jane Ann Stautz, Vice Chair of the Commission and Chair of the AOPA Committee, reported the Committee had not met since the Commission meeting on January 18, 2022, but she is aware there may be reason to meet soon.

DNR EXECUTIVE OFFICE

Consideration and identification of any topic appropriate for referral to the Advisory Council

No items were identified for referral to the Advisory Council.

DNR DIVISION OF NATURE PRESERVES

Consideration of the dedication of the White Oak Cemetery Nature Preserve in Jay County

Ron Hellmich, Division of Nature Preserves, presented this item. The proposed Nature Preserve will protect 39.64 acres featuring a mesic upland forest and the associate natural community. He noted the preserve is owned by the Department and managed by the of Division of Nature Preserves.

Hellmich stated the site is an open oak woodland dominated by oaks and hickories, primarily white oak, and shagbark hickory. The cemetery itself is not being dedicated but is imbedded inside the preserve protecting the historic value of the cemetery. He noted Ball State University Applied Anthropology Laboratories are looking at two archeology discoveries at the preserve site.

Hellmich recommended dedication of this site as a State Nature Preserve.

Jane Ann Stautz moved to approve the dedication of the White Oak Cemetery Nature Preserve in Jay County. Brian Rockensuess seconded the motion. Upon a voice vote, the motion was carried.

DNR DIVISION OF FISH AND WILDLIFE

Report to the Natural Resources Commission on citizen petition to amend 312 IAC 9-7-3 regarding catfish rules; Administrative Cause No. #21-FW-032

Jeremy Price, Fisheries and Aquatic Research Supervisor with the Division of Fish and Wildlife, presented this item. In August 2021, the Indiana Catfish Conservation Association (ICCA) submitted a citizen petition requesting changes to the catfish harvest rule. Those changes included reducing the harvest length limit for large catfish to one fish per day over 30 inches for blue and flathead catfish and 24 inches for channel catfish, imposing a ten fish daily bag limit on catfish taken from rivers and streams, and banning the interstate transport of live, adult catfish.

Price said the petition was biological in nature and the Division of Fish and Wildlife fish biologist used population assessment data, commercial and recreational harvest data, peer-reviewed scientific literature, and external agency reports in assessing the status of Indiana's catfish fishery and the merits of the proposed rules. Data analysis and information is included

within the Department's response to the citizen petition. The Department does not support implementing the proposed rules submitted by the ICCA.

Price said the Department does not support changes to harvest length limits of the catfish. Price noted some data is not currently available in Indiana, but data in other jurisdictions suggest catching trophy catfish is not a primary motivation of catfish anglers. The Department does not support a bag limit for catfish on rivers because very few recreational anglers harvest ten or more catfish per trip and recreational fishing harvests three times more than commercial catfishing. The Department also does not support banning interstate transport of live adult catfish because it could impact the aquaculture industry as well as fish haulers and suppliers who deal in commercially grown catfish for stocking or consumption. Price also noted the federal government regulates interstate commerce.

Price said the Department identified two areas where they can improve their understanding of catfishing and catfish population. The Department needs to enhance population assessments in commercially and recreational fished rivers to better understand and be informed for future harvest regulation discussions. The Department also needs a catfish angler social survey to provide insight into the catfish community.

The Chair asked for comments and questions from the Commission.

Stautz asked about the timing and how long it would take the Department to develop and conduct a catfish anglers survey. Price responded that a social survey could be developed and completed by next year.

The Chair asked about the citizen petition process and how the Department interacts or works with the petitioner regarding their petition. Price said he did not interact with this petitioner, but the Department assigned a committee that developed its response based on the fish biologist's information.

Rockensuess asked how the survey is conducted. Price responded that it is an online survey, and the Department sends an email out to select groups with the link to take the survey. The Department can target those people who hold fishing licenses.

Holt clarified the petitioner requested regulations be added to the rule and the Department does not intend to amend. Holt asked if the Department would consider amending the rule once more research has been done.

Price confirmed the petitioner requested the changes and the Department does not agree those changes are needed. He said the data does not show there is a catfish population shortage. The intent of future data collection is to improve the precision of population data and the social survey will help the Department understand the anglers' needs.

Early clarified there is already a size limit on certain catfish and asked if that included commercial catfishing. Price said an angler and commercial fisher may take one fish over the

size limit, but there is not a limit on the number of fish they harvest in streams. The limit for lakes is ten for channel, for blue and flathead catfish.

The Chair recognized Greg Schwipps. Schwipps said he represents the ICCA and thanked the Department for their hard work in preparing the petition response. Schwipps acknowledged the fish biologist turnover in the Department's Big Rivers Fisheries Program and said the ICCA had a close working relationship over the years with past fish biologists. Schwipps said ICCA member Josh Worth was in the boat with Department staff while conducting studies into fish populations and noted the nets were lacking adequate fish. Schwipps noted the Department recommended that ICCA submit the petition for a rule change to address a perceived decrease in the catfish population. Schwipps expressed concern that the former Big Rivers Assistant Fisheries Biologist who had drafted the report was no longer in that position.

Schwipps said the report references studies that contain old information and pointed specifically to a page of the report that cites studies from 2007 and 2017. The angler's information in the report is from over 20 years ago. Schwipps suggested commercial fishing may have decreased because there are fewer catfish to catch, and that using data from 2017 is pointless as there are invasive fish, such as Asian carp, in Indiana's waters. In addition, the demand for pay lakes has grown exponentially in the last 20 years.

Schwipps further noted that page 10 of the Department's report cited surveys from commercial and recreational anglers from 2003, 2004, and 2005. Schwipps stated less than 1% of anglers sell live fish, but the information does not make sense because the pay lakes are still able to buy fish in abundance. He said he disagrees with the suggestions in the report that commercial fishing harvests less fish than recreational fishing, that most commercial fishing is hobby fishing, and that few businesses fish for profit. Schwipps said the survey from Lawrence County published in 2021 is a subset of anglers that could be harvest-driven and does not represent the entire state. The survey said most anglers said fish populations have not changed and Schwipps said he rejects the idea that catfish populations have remained the same. He said there is more accurate and updated survey information available. He noted the Division of Fish and Wildlife 2018 Got INput process resulted in 55 comments, and more than half of those who commented requested changes to catfish rules.

Schwipps said the Department has said for 20 years that certain types of fish are hard to study and the Department does not consider anecdotal information from anglers who are seeing a decline in catfish populations. Schwipps said allowing commercial fishers to complete surveys and self-report their catches are not reliable measurement methods, and thus should not be considered scientific data.

Schwipps said Tennessee and Alabama have outlawed the interstate travel of live adult catfish because "they knew pay lakers were taking fish out of state." He said there is a misperception that catfish sport anglers are only concerned with trophy fish and tournament anglers are out to make money. He said ICCA is worried about adult breeding-size catfish and there are studies that show they are becoming increasingly rare. The concerned anglers are voicing what they are seeing and that they want to conserve the fish for the future of fishing.

Schwipps said the justification for the Department not wanting to make a change to the rule does not make sense because the Department says the sport anglers are catching more fish than commercial fishers. Schwipps asked why there is a bag limit of catfish on lakes but not in streams and said the current rule protects people who overharvest catfish from rivers.

Schwipps stated that pay lakes have created a situation where every catfish has a dollar amount. The pay lakes will pay money by the pound to anglers who catch large catfish in streams and rivers and bring them to a pay lake. Adult catfish are thus under attack from both commercial fishers and recreational anglers.

David Holt asked about ICCA and how the organization operates, how people join, and if the people pay dues. Schwipps said the ICCA began 20 years ago and was recognized by the Indiana Wildlife Federation as the chapter of the year. Now it is a group of catfish anglers who are concerned over the fishes' status in Indiana. The ICCA does not require dues and does have a Facebook page, but it is hard to motivate people who have become despondent over inaction in addressing fishing concerns. Schwipps noted the 2018 Got INput process is an example of the Department not listening to concerns from catfish anglers.

The Chair recognized Josh Worth. Worth stated the Department says there is no evidence the catfish harvest is unsustainable, but "unlimited" fishing is not sustainable. There is a need for bag limits that would protect not only the large fish but all fish from leaving the river.

The Chair thanked the citizens for their public comments and reassured them that their efforts and concerns regarding catfishing are not futile.

The Chair asked if the Department was looking at continuing the conversation with anglers. Price stated he has been supervising the Big Rivers Fisheries Program for seven months and the Department is committed to fostering working relationships with recreational anglers and commercial fishers to develop any needed solutions.

Jane Stautz recommended the citizen petition to amend 312 IAC 9-7-3 to the Department's Advisory Council for continued discussion and recommendation to the Commission. Early agreed the Advisory Council should review the citizen petition. Early noted credibility in the ICCA points regarding the reliance on old data instead of listening to the fisher's anecdotal information.

Phil French agreed the topic should be reviewed by the Advisory Council and the catfish viability should be researched more.

Schwipps thanked the Commission for listening. He said his opinion is there is a loophole regarding the bag limits and the possession rule. His understanding is a catch is not considered part of an angler's bag limit or in the angler's possession once the fish are off the boat and in the fish hauling trailer.

Pat Early added the Advisory Council is a public meeting and invited the ICCA to participate in future discussions.

Bart Herriman questioned whether this agenda time would have a vote or if there would be a vote to refer the matter to the Advisory Council.

The Chair responded that a vote is not needed to refer an item to the Advisory Council but that there would be a vote on the Department's Committee Report, which is not to accept the proposed rule changes identified in the citizen's petition. He noted the Department has made a commitment to review the current catfish rule and work with the petitioner for solutions.

Early asked if the citizen petition could be tabled instead of voting since the matter is being referred to the Advisory Council. The Chair responded that he cannot think of a procedural reason why this matter could not be tabled.

Stautz recommended the matter be tabled for clarity.

Brian Rockensuess moved to table citizen petition to amend 312 IAC 9-7-3 regarding catfish rules. Phil French seconded the motion. Upon a voice vote, the motion was carried.

NRC DIVISION OF HEARINGS

Consideration of revised Hearing Officer report (following recall) on rule processing, public hearing, and hearing officer analyses with recommendation regarding final action to amend 312 IAC 8-2-3, and 312 IAC 8-2-10, property rule amendments; LSA #21-341(F); Administrative Cause No. 21-FW-018

Billie Franklin, Hearing Officer, presented this item. Franklin stated the revised Hearing Officer Report is a reconsideration of revised language to the property rules previously adopted by the Commission on January 18, 2022, and the previous report is attached as Exhibit A.

The Commission previously approved the amendments to the rule language due to logical outgrowth of comments received on the rule. However, the Office of the Indiana Attorney General (OAG) determined that the language change did not meet the criteria for logical outgrowth of the comments. After several discussions with the OAG and the Department, a Notice of Recall was filed with the Publisher on March 8, 2022. The Notice of Recall is attached as Exhibit B. The Department revised its response, which is attached as Exhibit C.

Franklin recommended the Commission grant final adoption of the original rule language as provided in the report. A copy of the rule language is provided as Exhibit D.

Jane Ann Stautz moved to give final adoption following recall to amend 312 IAC 8-2-3, and 312 IAC 8-2-10, property rule amendments, as presented. Phil French seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for final action on readoption of 312 IAC 19, governing standards for Research, Collection, Quotas, & Sale of Plants (Ginseng); LSA #22-29(F); Administrative Cause No. 22-NP-002; and Consideration of recommendation for final action on readoption of 312 IAC 26, governing standards for Grant Programs; LSA #22-30(F); Administrative Cause No. 22-SP-003

Franklin presented these two agenda items together. She noted that the Commission's Division of Hearings Director is authorized to grant preliminary approval for re-adoption, but the Commission retains authority to issue final approval of the readoption. The previous Director of the Division of Hearings approved preliminary adoption on October 1, 2021,

The Notices of Intent to readopt both rules were published in the Indiana Register on February 16, 2022. Franklin noted a person has 30 days to submit a written request to have a particular section of the rule readopted separately and no such request was received.

Franklin recommended the Commission readopt 312 IAC 19 and 312 IAC 26, without amendment, for final adoption.

John Wright moved to give approval of final adoption of 312 IAC 19, governing standards for Research, Collection, Quotas, & Sale of Plants, and 312 IAC 26, governing standards for Grant Programs, as presented. Brian Rockensuess seconded the motion. Upon a voice vote, the motion was carried.

Consideration of approval of amendments to Nonrule Policy Document #36, to update URL links and make other technical amendments; Administrative Cause No. 20-WA-010

Franklin also presented this item and noted the Nonrule Policy Document #36 provides procedural guidelines for interpretation of the Conservancy District Act. The proposed amendments will correct an inaccurate statutory citation, update URL addresses, and update the Commissions email contact information.

Franklin recommended the Commission approve the eleventh amendment to Nonrule Policy Document #36.

John Wright moved to approve the amendments to Nonrule Policy Document #36, to update URL links and make other technical amendments, as presented. Brian Rockensuess seconded the motion. Upon a voice vote, the motion was carried.

The meeting was adjourned at approximately 7:23 p.m., ET.