

NATURAL RESOURCES COMMISSION
Meeting Minutes, September 17, 2019

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Cameron Clark, Secretary
Martha Clark Mettler
Jennifer Jansen
Noelle Szydlyk
Jeff Holland
Phil French
Patrick Early
Bart Herriman
Bruce Walkup
John Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen Dawn Wilson
Billie Davis

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Chris Smith	Executive Office
Mike Smith	Executive Office
Tara Wolf	Communications
Steve Hunter	Law Enforcement
Elizabeth Gamboa	Legal
David Bausman	Legislative
Dan Bortner	Parks
Ron Hellmich	Nature Preserves
Mark Basch	Water
Vanessa Gonzalez	Water
Amanda Wuestefeld	Fish & Wildlife
Linnea Petercheff	Fish & Wildlife
Scott Johnson	Fish & Wildlife
Julia Geschke	Fish & Wildlife
Megan Abraham	Entomology

GUESTS PRESENT

Jeff Stant	Heather Shaw	Matthew Underwood
Perry Seitzinger	Richard Garrett	Tony VanNess
Jason Masnick	Allen Pursell	John Goss
Jamison Hutchins	Samantha Morton	Steve Muellen

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:04 a.m., ET, on September 17, 2019, at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of twelve members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's July 16, 2019 meeting minutes.

John Wright moved to approve the minutes, as presented. Martha Clark Mettler seconded the motion. Upon a voice vote, the motion carried.

REPORTS OF THE DNR DIRECTOR, DEPUTIES DIRECTOR, AND THE CHAIR OF THE ADVISORY COUNCIL

Cameron Clark, Director of the Department of Natural Resources (Department), provided his report. Clark introduced the Department's new division directors as Amanda Wuestefeld, Director of the Division of Fish and Wildlife, and Ron Hellmich, Director of the Division of Nature Preserves.

Clark said on October 12, 2019 the annual "Dutch Oven Cook-Off" will be held at Patoka Lake. Clark recognized Dan Bortner and acknowledged Bortner's recent appointment as the President of the National Association of State Park Directors. Clark noted the respect Bortner receives from colleagues in the state parks community.

Clark said that the Department will have representatives from ten divisions at Junior Achievement's "JobSpark" at the Indiana State Fairgrounds next week. The event allows thousands of eighth graders the opportunity to speak with representatives of over 150 businesses and agencies.

Clark said fourth grade students from Crestview Elementary School were at The Fort Golf Resort for "First Green", a Science, Technology, Engineering, and Mathematics (STEM) education and environmental outreach program for fourth graders. He said that this hands on education sets up learning labs that incorporate soil and water testing and environmental wildlife education administered by philanthropic organization, Environmental Institute for Golf.

Clark stated that on September 16, 2019 the Department, in collaboration with the Congressional Sportsmen's Foundation, hosted the first “Sportsmen Rendezvous” at Atterbury Fish and Wildlife Area for constituent groups, legislators, and the Department. He stated that the event allowed the attendees to see what the Department does, ask questions, and to take a tour of the property or participate in skeet, trap or archery activities.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis stated that September 28, 2019 is “National Public Lands Day” and Department’s properties will have free admission. He noted volunteer opportunities to work on trails, remove invasive plants, and to participate in river cleanup at several different properties.

Davis said that as part of “Invitation to Conservation”, the Department announced 72 grants for school field trips to state parks.

Chris Smith, Deputy Director of the Bureau of Water Resource and Regulation, provided his report. Smith said that the Division of Entomology and Plant Pathology will shift its focus from inspections of nurseries to inspections of agricultural export commodities.

Smith stated that the Division of Water received a \$325,000 grant from the Federal Emergency Management Agency (FEMA) for a program to repair or remove high hazard dams.

Smith stated that the Division of Reclamation received a regional award from the Office of Surface Mining Reclamation and Enforcement (OSMRE) for the Division’s Abandoned Mine Lands Program. Smith stated that the program removed a dangerous high wall at Narrow Lake in Greene-Sullivan State Forest. He said the collaborative effort with the Division of Fish and Wildlife and the Division of Forestry, established a new contour grade for nearly 4,000 linear feet of high wall and created new cabin areas. In addition, the project resulted in the construction of a new boat ramp, trails, and the installation of a new fish habitat, all of which improved safety and recreational opportunities at the site.

Patrick Early, Chair of the Advisory Council, provided an update and stated that the Advisory Council (Council) has not met since the last Commission meeting.

The Chair noted the attendance of John Goss, the former Director of the Department of Natural Resources.

Goss stated, “It’s great to see you guys and I’ll be around a lot, because I just retired.”

CHAIR, AND VICE CHAIR

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission’s AOPA Committee, stated that an AOPA Committee meeting was held just before the Commission meeting to address one matter and discuss an

information item. Stautz informed the members that there will soon be a Guide to the Administrative Review Process available on the Commission's website that outlines the Division of Hearings' processes and provides information on legal representation and resource references. Stautz thanked the Division of Hearings staff for their efforts in putting the Guide together expressing the belief that the guide will be helpful to the public.

Information: Consideration of 2019 meeting dates (Indianapolis):

The Chair noted that the remaining 2019 Commission meeting date is November 19 and announced that the meeting is scheduled to take place at the Fort Harrison State Park Garrison in Indianapolis.

DNR, EXECUTIVE OFFICE

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

Stautz referred the "special event permitting process" to the Advisory Council. She noted that several matters have come before the AOPA Committee and suggested that an opportunity for the Advisory Council to review the process as it relates to timeliness of response to a permit application, safety procedures, and communication of the standards, criteria or, scoring system that may be used, would enhance transparency and public service.

DNR, DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Perfect Lake Nature Preserve in Steuben County

Ron Hellmich, Director of the Division of Nature Preserves, presented this item. Hellmich stated that Perfect Lake Nature Preserve consists of 84 acres located in Steuben County near Fish Creek and has a ridge over Perfect Lake with a great view. He said the proposed nature preserve has young pioneer to early successional mesic forest and the lake and wetlands make up 25 percent of the property. Hellmich noted that Perfect Lake is an undeveloped, mesotrophic lake, and healthy aquatic life. Hellmich noted that the eastern white pine, foxtail sedge, and thinleaf sedge that can be found at the proposed nature preserve are on the List of Endangered, Threatened, and Rare Species

Hellmich stated that United States Federal Judge William Lee, who in 1972 was awarded the Izaak Walton League of America National Conservation Award for his work in conservation, has protected the proposed nature preserve site. Hellmich said that the proposed nature preserve is owned by the ACRES Land Trust. Hellmich concluded that the Division recommends dedication of the Perfect Lake site as a nature preserve.

Jane Ann Stautz moved to approve the dedication of the Perfect Lake Nature Preserve. Jennifer Jansen seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Report to the Natural Resources Commission on citizen petitions to amend 312 IAC 9 to: Increase muskellunge size limit at Bass Lake from 36 inches to 44 inches, Administrative Cause No. 17-097D (Agenda Item # 5); Increase Muskie size limit at Loon Lake in Noble and Whitley Counties from 36” to 44”, Administrative Cause No. 17-147D (Agenda Item # 6); Allow spearfishing of panfish or salmon on Lake Michigan, Administrative Cause No. 18-029D (Agenda Item # 7); Change the spring wild turkey season to start earlier in April; Administrative Cause No. 17-059D (Agenda Item # 8); Allow the use of 28 gauge and .410 shotguns and shot smaller than number 7 ½ for wild turkey hunting, Administrative Cause No. 18-058D (Agenda Item # 9); Allow crossbows that use an arrow propelled by compressed air to hunt deer, Administrative Cause No. 17-003D (Agenda Item # 10); Eliminate the bonus antlerless quota for Franklin County and change all other deer licenses to allow only one antlerless deer to be taken in Franklin County, Administrative Cause No. 17-150D (Agenda Item # 11); Allow baiting of deer or clarify current rule language regarding the prohibition on the baiting of deer Administrative Cause No. 17-142D (Agenda Item # 12); Create an all-season antlered buck license and an all-season antlerless deer license, Administrative Cause No. 17-138D (Agenda Item # 13); Eliminate the requirement that a continuously burning light be seen for at least 500 feet while hunting on private property between sunset and sunrise, Administrative Cause No. 17-130D (Agenda Item # 14); Allow the use of a vehicle when hunting predators, Administrative Cause No. 19-019D (Agenda Item # 15); List ruffed grouse as an endangered species in Indiana, Administrative Cause No. 19-103D (Agenda Item # 16); and Amend the native species list in Indiana by including the subspecies name for each snake, expand the native species list of snakes that can be sold under the reptile captive breeder’s license, and allow another method of marking the snakes instead of PIT-tagging, Administrative Cause No. 17-088D (Agenda Item # 17)

The Chair explained that agenda items 5 through 17 are citizen petitions reviewed by the Department that are being presented together by the Division of Fish and Wildlife.

Linnea Petercheff, Division of Fish and Wildlife, presented agenda items 5 through 17. Petercheff explained that the 13 citizen petitions were received between May of 2017 and August 2019. Petercheff reminded the members that, the Commission at its meeting on November 14, 2017 approved the Department’s request to review citizen petitions received as part of the biennial rule review process. Petercheff said the Department ended the “Got Input” process on November 1, 2018 and each of the citizen petitions was review by the appointed committee on its own merit. Petercheff stated the Department is recommending proposed changes to some rules, as recommended in the citizen petitions, and is not recommending changes suggested in other citizen petitions.

Petercheff stated the Department recommends changes as detailed in the committee reports submitted to the Commission as agenda items 10, 16 and 17. For agenda item 10, the Department recommends an amendment to 312 IAC 9, to allow an air crossbow to hunt during the deer firearm season. For agenda item 16, the Department recommends adding ruffed grouse to the

endangered species list. For agenda item 17, the Department supports some amendments to the list of native species to include the subspecies snake names and to allow another method of marking the snakes instead of PIT-tagging. With respect to item 17, Petercheff stated that the Department does not support a requested amendment that would expand the list of native species of snakes that can be sold under the reptile captive breeder's license.

For agenda items 5, 6 and 7, Petercheff said that the Department does not support the suggestion to increase muskellunge size limit at Bass Lake and Loon Lake or to allow spearfishing of panfish or salmon on Lake Michigan.

For agenda item 8 and 9, Petercheff stated the Department does not support changes to the spring wild turkey season to start earlier in April or a rule amendment to allow the use of 28 gauge and .410 shotguns and shot smaller than number 7 ½ for wild turkey hunting.

Early asked the reasoning behind the Department's position regarding the use of 28 gauge and .410 shotguns and shot smaller than number 7 ½ for wild turkey hunting.

Petercheff responded that the Department has concluded that shot sized smaller than number 7 ½ will travel farther posing a safety concern.

Early inquired if the Department could review the caliber of shotguns for a possible future rule change.

The Chair noted that the Commission will take one vote on the citizen petitions the Department is recommending and a vote regarding the citizen petitions the Department is not recommending. He said the Department and Advisory Council may choose to look at a rule proposal on the calibers separate from the current citizen petition.

For item 11, Petercheff stated that the Department does not support changes eliminating the bonus antlerless quota or an amendment to allow only one antlerless deer to be taken in Franklin County. She noted that there were some recent changes to the rule and reasons the Department would like additional antlerless deer to be taken in Franklin County.

For item 12, Petercheff stated that the Department does not support changes to allow baiting of deer or to clarify the current rule language regarding the prohibition on the baiting of deer. Petercheff said that it would be hard to draft rule language that would address all situations due to topography and habitat changes.

For item 13, Petercheff stated that the Department does not currently support changes to have an all-season antlered buck license and antlerless deer license. Petercheff stated that the Department does not have a complete response to the petition currently, because it is reviewing the complete hunting license structure.

Clark added the Division of Fish and Wildlife spent time simplifying the license structure as part of a broader rule package that will address the citizen petition to have an all-season antlered buck license and antlerless deer license in that future proposed rule package.

For item 14, Petercheff stated that the Department does not support changes to eliminate the requirement that a continuously burning light be seen for at least 500 feet while hunting predators on private property. She noted that the petitioner was requesting the change to hunt coyotes at night without a light, but the Department has safety concerns with others not being able to see a hunter.

For item 15, Petercheff stated that the Department does not support changes to allow the use of a vehicle when hunting predators. She noted Indiana Code 14-22-6-7 prohibits using a light on a vehicle to search for a wild animal while a person is in possession of a weapon to hunt. Petercheff stated that there is a variety of options for hunting predators and the Department believes hunting from a vehicle does not provide fair chase for the animal.

The Chair recognized Matt Underwood with the National Wildlife Turkey Federation (NWTf).

Underwood stated that he was speaking on behalf of the state chapter of the NWTf who supports the Department's with respect to the spring wild turkey season and stated that the science supports the Department's recommendation.

Underwood stated that the state chapter of the NWTf supports the citizen petition to allow the use of 28 gauge and .410 shotguns and shot smaller than number 7½ for wild turkey hunting. He noted there is technology that allows the 28 gauge and .410 shotguns to be effective hunting equipment. He stated that 34 other states allow those gauges for turkey harvesting. Underwood said the NWTf recommends the Advisory Council review the issue further.

The Chair recognized Jeff Stant with the Indiana Forest Alliance.

Stant stated that he represents the Indiana Forest Alliance who is opposed to the Department's recommendation to list ruffed grouse as an endangered species in Indiana. He stated that the clear cutting of trees on public lands would cause damage to interior forest dependent species. Stant said that ruffed grouse populations have successfully reproduced in areas where there was early successional growth and they are now declining because of the loss of aspen and white pine trees.

The Chair recognized Allen Pursell with The Nature Conservancy.

Pursell stated that he is the Director of Conservation for The Nature Conservancy and agrees with the Department's recommendation to list ruffed grouse as an endangered species. Pursell said the primary factor leading to the decline of the ruffed grouse is the loss of young forest habitat and the rapid decline in population justifies listing the species as endangered.

The Chair recognized Richard Garrett.

Garrett identified himself as a member of the Board of Directors for the Indiana Audubon Society, the mission of which is to stimulate interest in birds and their protection. He said the Indiana Audubon Society, founded in 1898, is the oldest conservation group continuously

operating in Indiana and supports the citizen petition for ruffed grouse to be listed as an endangered species.

The Chair recognized Perry Seitzinger.

Seitzinger stated that he is the President of the Ruffed Grouse Society, Indiana Chapter. Seitzinger provided history on the ruffed grouse populations from (insert first year he mentioned) to (insert last year he mentioned). On behalf of the Ruffed Grouse Society, Seitzinger offered support for an amendment to add ruffed grouse to the list of endangered species.

The Chair recognized Heather Shaw.

Shaw stated that she is the Wildlife Biologist for the Ruffed Grouse Society and she echoed support for ruffed grouse to be listed as an endangered species.

The Chair recognized Jason Masnick.

Masnick stated that he is the petitioner who sought an amendment to the list of native snake species to include the subspecies name, to expand the native species list of snakes that can be sold under the reptile captive breeder's license, and to allow another method of tagging snakes. Masnick said that he feels the current rule is overly exclusive, allowing eight native species of snakes to be bred and sold in captivity. He said the Department's recommendation does not address genetic mutations of snakes. Masnick also stated that the Department could allow native species of snakes to be worked with and bred providing they are not collected from the wild.

The Chair thanked those who spoke and stated that procedurally the Commission would take a vote on the citizen petition reports in which the Department is recommending to move forward with rule amendments and then take a second vote on the citizen petitions for which the Department is not recommending any rule amendment.

Mettler said, "I want to clarify on the listing of the ruffed grouse. That's a stand-alone decision that doesn't predispose any forestry management activities of any particular site that will allow you to evaluate what's best for the ruffed grouse."

The Chair answered in the affirmative.

Mettler asked about the Department's process in making revisions to create a single point of purchase license for an all-season antlered buck license and antlerless deer license. She asked if there will be a chance for other interested parties to review the Department's single point of purchase license proposal.

Wuestefeld said there are currently over 90 types of deer licenses and explained that the Division of Fish and Wildlife is reviewing how to simplify deer hunting licenses. She stated the Division intends to develop a proposed solution that will be discussed with constituents and vetted through the Governor's office before a proposed rule will be brought to the Commission for preliminary adoption.

The Chair also noted letters that were sent to the Commission from Ruffed Grouse Society, Pheasants Forever, Inc. and Quail Forever National Wild Turkey Federation, Congressional Sportsmen's Foundation, Indiana Wildlife Federation, The Izaak Walton League of America, and a handout that was provided by the Indiana Forest Alliance.

Bruce Walkup moved to accept the Committee's Reports regarding citizen petitions identified in items numbered (10, 16, and 17) to amend 312 IAC 9 to allow crossbows that use an arrow propelled by compressed air to hunt deer, to list ruffed grouse as an endangered species in Indiana, to amend the native species list in Indiana by including the subspecies name for each snake, and also allow another method of marking snakes instead of PIT-tagging. John Wright seconded the motion. Upon a voice vote, the motion was carried.

John Wright moved to accept the Committee's Reports rejecting citizen petitions identified in items numbered (5, 6, 7, 8, 9, 11, 12, 13, 14, 15, and 17) to amend 312 IAC 9 to increase muskellunge size limit at Bass Lake from 36 inches to 44 inches, to increase muskie size limit at Loon Lake in Noble and Whitley Counties from 36" to 44", to allow spearfishing of panfish or salmon on Lake Michigan, to change the spring wild turkey season to start earlier in April, to allow the use of 28 gauge and .410 shotguns and shot smaller than number 7 ½ for wild turkey hunting, to eliminate the bonus antlerless quota and change all other deer licenses to allow only one antlerless deer to be taken in Franklin County, to allow baiting of deer or clarify current rule language regarding the prohibition on the baiting of deer, to create an all-season antlered buck and antlerless deer license, to eliminate the requirement that a continuously burning light be seen for at least 500 feet while hunting on private property between sunset and sunrise, to allow the use of a vehicle when hunting predators, and expand the list of native species of snakes that can be sold under the reptile captive breeder's license. Martha Clark Mettler seconded the motion. Upon a voice vote, the motion was carried.

The Chair noted that Patrick Early, Chair of the Advisory Council, had requested the Department give additional consideration to allowing the use of 28 gauge and .410 shotguns, as well as shot smaller than #7 ½ for wild turkey hunting and report back to the Commission or have the matter considered by the Advisory Council.

DNR, DIVISION OF WATER

Consideration of Hearing Officer report in preparation for Advisory Council summarizing public meetings and making recommendations to the Natural Resources Commission regarding renewal of water contract by The Golf Club at Eagle Pointe, for a Water Sale Contract from Monroe Lake under IC 14-25-2 and 312 IAC 6.3; Administrative Cause No. 19-110V

Vanessa Gonzalez, Division of Water, presented this item. Gonzalez stated that a contract for the sale of water entered into under IC 14-25-2 must provide for compensation to the state at the rate of no less than thirty-three dollars per one million gallons of water. She said that R. N. Thompson Eagle Pointe Golf Resort held a contract with the state that began on July 27, 2009.

The golf club was purchased by Pointe Services Association who changed the name to The Golf Club at Eagle Pointe (Eagle Pointe).

Gonzalez said the contract has a new ten-year term to pull water from Monroe Lake to irrigate the golf grounds and to fill the waterfall feature at the golf club. She stated that Eagle Pointe is requesting 115 million gallons per year, the volume is consistent with the intake capacity, and the request would increase the total contractual limits to 20.68% of the available volume in the Monroe Lake.

Gonzalez noted that two public meetings were conducted by the Department on February 27, 2019 as required by IC 14-25-2-2.5 with one meeting in Monroe County and the other in Brown County. She said that one person, the general manager of Eagle Pointe, attended the public meetings in support of the proposed contract application.

Gonzalez offered the Department's recommendation that the available water volume from Monroe Lake is adequate to satisfy the withdrawal limit of 115 million gallons of water annually. She said that the potential impact to recreational facilities of the reservoir is expected to be negligible.

Gonzalez stated that the Advisory Council recommended that the Commission approve the Water Sale Contract Application of the Golf Club at Eagle Pointe, LLC at a meeting held on April 30, 2019 and the Division of Water requests that the Commission approve the water sale.

Mettler asked for clarification on the total amount of water being used from Monroe Lake.

Gonzalez confirmed that all of the water contracts from Monroe Lake total 20.68% and that in the contract application, the applicant is required to provide a backup fund and if they do not, then during a drought, they would not be able to withdraw water.

Patrick Early moved to approve the Hearing Officer's Report, as presented, and to authorize entry of the contract with The Golf Club at Eagle Pointe. Noelle Szydyk seconded the motion. Upon a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of recommendation for final action on re-adoption of 312 IAC 9, governing standards for Fish and Wildlife, LSA #19-325(F), Administrative Cause No. 19-081D (Agenda Item # 19); and 312 IAC 18, governing standards for Entomology and Plant Pathology, LSA #19-373(F), Administrative Cause No. 19-082E (Agenda Item # 20)

Billie Davis, Hearing Officer, presented this item. Davis stated that for consideration is the final re-adoption of 312 IAC 9 and 312 IAC 18 in their entirety and without amendment. Davis said 312 IAC 9 provides standards for the Division of Fish and Wildlife and 312 IAC 18 provides standards for the Division of Entomology and Plant Pathology.

Davis stated that preliminary re-adoption was granted for 312 IAC 9 on June 20, 2019 and 312 IAC 18 on June 26, 2019. She added that moratorium exception under Executive Order 13-03 does not apply and budget approval is not necessary for re-adoptions.

Davis said that between June 24, 2019 to June 26, 2019, the Small Business Regulatory Coordinator (SBRC) for these two rule re-adoptions submitted their required fiscal analyses that were forwarded to the Legislative Council by email on July 5, 2019 for 312 IAC 9 and July 17, 2019 for 312 IAC 18, as required by IC 4-22-2-28(i).

Davis stated the Notice of Intent to re-adopt the rules were published in the Indiana Register on July 3, 2019 for 312 IAC 9 and July 17, 2019 for 312 IAC 18, providing that a person has 30 days to submit a written request to have a particular section of the rule readopted separately. She noted that no request was received on either proposed re-adoption.

Davis recommended the Commission approve the re-adoption of 312 IAC 9 in its entirety and 312 IAC 18 in its entirety, without amendments.

John Wright moved to readopt 312 IAC 9 and 312 IAC 18 without amendment. Cameron Clark seconded the motion. Upon a voice vote, the motion was carried.

Adjournment

The meeting was adjourned at approximately 11:04 a.m., ET.