

NATURAL RESOURCES COMMISSION

Ballroom, The Garrison
Fort Harrison State Park
6002 North Post Road
Indianapolis (Lawrence), Indiana

Minutes of January 11, 2011 Meeting

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Brian Blackford
Patrick Early
Michael Cline
Thomas Easterly
Phil French
Doug Grant
R.T. Green

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
Shelley Reeves	Executive Office
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Brian Schoenung	Fish and Wildlife
Bill James	Fish and Wildlife
Kara Vetter	Indiana State Museum
Bruce Beesley	Indiana State Museum
Laura Minzes	Indiana State Museum
Joe Frost	Indiana State Museum
Kristen Lutes	Indiana State Museum
Phil Bloom	Communications
Col. Scotty Wilson	Law Enforcement

Lt. Col. Steve Hunter Law Enforcement
John Bacone Nature Preserves

GUESTS PRESENT

Greg Yazel Herb Higgins
Mikel Thorne Charles Brown
Kevin Hardie William Garner
Jack Corpuz Greg Hopper
Rick Cockrum

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:18 a.m., EST, on January 11, 2011, at The Garrison, Fort Harrison State Park, the South Ballroom, 6002 North Post Road, Indianapolis, Indiana. With the presence of ten members, he observed a quorum.

Tom Easterly moved to approve the November 16, 2010 meeting minutes. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Election of Officers

Pat Early moved to re-elect for 2011 the same officers who served in 2010: Bryan Poynter as Chair, Jane Ann Stautz as Vice Chair, and Robert Carter as Secretary. Doug Grant seconded the motion. No other nominations were offered. Upon a voice vote, the motion carried.

The Chair said, "I appreciate the confidence of this Commission and its members. Hopefully, we have done good work as a team and as a Commission, and we will continue to do so in 2011."

Reports of the Director, Deputies Director, and Advisory Council

Robert Carter, Jr. provided the Director's report. He welcomed Michael B. Cline to his first Commission meeting and thanked him for attending. The Director said it was important to the Commission and to the DNR to have a presence by the agency head at INDOT.

The Director reported that for the first time in several months, State revenues were beginning to show modest improvement. With the Indiana General Assembly in session, the "DNR really has a lot going on." He said Governor Daniels appointed Scott Wilson as the new Colonel for the Division of Law Enforcement. Col. Wilson succeeds former Col. Michael Crider who retired at the end of 2010. "We'll miss Mike Crider, but we won't miss a beat with Col. Wilson." We're "excited about having Scotty." He said Col. Wilson has appointed Steve Hunter as the Division's new Lieutenant Colonel.

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. He said the agency was continuing with outreach regarding activities and plans for the Wabash River-Sugar Creek corridor. Development at Muscatatuck continues. He reported on a "good

meeting” with multiple agencies, including the U.S. Army Corps, concerning permit processing and land management.

Ron McAhron, Deputy Director, Bureau of Resource Regulation, provided his report. He concurred with the assessment by Deputy Director Davis with respect to meeting with the Army Corps. He added that he and his bureau are busy seeking to address new legislative developments pertaining to surface coal mining and petroleum production.

Patrick Early, Chair of the Advisory Council, said the group met on December 15. Several issues were discussed, including a proposal to remove the drawing process for fishing tournaments at Roush Lake. The majority of the meeting considered amendments proposed to size limits for black bass, with particular emphasis upon small mouth bass populations. After a thorough discussion, a compromise was achieved that “is scheduled today” for consideration by the Commission as to preliminary rule adoption.

CHAIR AND VICE CHAIR

Updates on Commission and Committee activities

Chairman Poynter provided an overview of Commission meeting plans for 2011. He said the next meeting is set for March 15 at The Garrison. Personnel in the DNR and in the NRC’s Division of Hearings are working with him to reinstate the tradition of holding two meetings outside Indianapolis. The plan is for one meeting in Northern Indiana and one meeting in Southern Indiana. Upon a personal commitment that “the Commission always be accessible to our citizens”, he said an informal open house would be arranged immediately prior to the road meetings.

The Chair added his welcome to INDOT Commissioner, Michael Cline, and asked him to offer a brief introduction. Cline responded that he has been with INDOT since 2006, and before coming to the agency, he was a private consultant. A native of Georgia, he said his entire professional career has been “involved in the transportation sector.”

John Davis reflected that INDOT recently helped DNR with paving the parking lot at the Fort Harrison Inn.

Chairman Poynter recognized the Vice Chair, Jane Ann Stautz, and thanked her for her personal commitment to the Commission and her leadership as Chair of the Commission’s Administrative Orders and Procedures Act (AOPA) Committee. Bryan Poynter said he was pleased to announce that the five current members of the AOPA Committee had consented to serve for the duration of 2011, and he was reappointing all five.

The Vice Chair identified the other members of the AOPA Committee as Mark Ahearn, R.T. Green, Doug Grant, and Robert Wright. She thanked Michael Cline for allowing Ahearn to serve on the AOPA Committee in his capacity as the INDOT Commissioner’s proxy. “Mark really brings a lot of experience and is very familiar with the issues.” She also praised the other members for their dedication.

Steve Lucas, Director of the NRC's Division of Hearings, added his appreciation for the service provided by Vice Chair Stautz and her committee. The level of the members' preparation, for what are often complex factual and legal proceedings, "was just amazing. It's a lot of work. Our process would be lost without their expertise and commitment. It's a great service to Indiana." As an illustration of the effort, he said the AOPA Committee had met immediately before the Commission meeting and would go back into session following the lunch break.

DNR, EXECUTIVE OFFICE

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

No new items were identified during the meeting.

PERSONNEL ACTIONS

Consideration of personnel interview of Kristen Lutes for the position of Property Manager of the Culbertson Mansion State Historic Site, New Albany

Bruce Beesley, Vice President for Historic Sites at Museums and Historic Sites, introduced Kristen Lutes as the recommended candidate for Property Manager of the Culbertson Mansion Historic Site. He said Lutes obtained her BA and MA from the University of Louisville.

Chairman Poynter asked Lutes to talk briefly about her expectations at the Culbertson Mansion. Lutes responded that the facility is a three-story French, Second-Empire mansion. The site has an active friends group. "I think every third-grader who attends school in Floyd County will visit." She said probably the most popular annual activity is its October "haunted house", but there are "lots of other events."

Brian Blackford moved to approve the appointment of Kristen Lutes as Property Manager of the Culbertson Mansion Historic Site. Doug Grant seconded the motion. On a voice vote, the motion carried.

Consideration of personnel interview of Joseph Frost for the position of Property Manager at Vincennes State Historic Sites, Vincennes

Bruce Beesley recommended Joseph Frost for Property Manager at Vincennes State Historic Sites. He said Frost graduated from Michigan State and has an MA from Ball State University.

Chairman Poynter also asked Frost to outline the facilities at the Vincennes Historic Sites. Frost responded the facilities are locations throughout Vincennes, Indiana's oldest city. Included are Fort Knox II, the Indiana Territory Capitol, and the Old State Bank. Fort Knox II played a key role in preparations for the Battle of Tippecanoe in November 1811. He said he was looking forward to participating in the bicentennial commemoration.

Brian Blackford moved to approve the appointment of Joseph Frost as Property Manager of the Vincennes State Historic Sites. Doug Grant seconded the motion. On a voice vote, the motion carried.

INDIANA STATE MUSEUM AND HISTORIC SITES

Consideration of request from the Indiana State Museum and Historic Sites for approval of deaccession of items from the collection

Kara Vetter, Registrar for the Indiana State Museum, presented this item. She said the State Museum is an active collecting institution. “The collection cannot expand infinitely.” Unnecessarily duplicative materials are sold at auction with proceeds returned to the collection fund. Vetter then recommended deaccession of items in the collection as set forth in the Commission packet.

Doug Grant noted that most items recommended for deaccession were of nominal value. He asked why the Commission was involved in the process.

Vetter responded items are sometimes recommended for deaccession with more than a nominal value. She noted currently for consideration was a W.A. Eyden impressionistic painting valued at approximately \$500. She said the painting is very similar to another painting in the collection but of lesser quality.

John Davis reflected deaccession was part of a transparent process which also included the Museum Board of Trustees. The agency must assure items are not deaccessioned to the detriment of the heritage embodied by the Indiana State Museum.

Steve Lucas added that, consistent with the philosophy outlined by Davis, the deaccession process is authorized by Indiana statute and rule. The Commission has a legal responsibility.

Doug Grant moved to approve deaccession of items from the collection of the Indiana State Museum as recommended to the Commission and set forth in the agenda item. Tom Easterly seconded the motion. On a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the dedication of an addition to Fourteen Mile Creek Nature Preserve, Clark County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the proposal would add 743 acres to the existing 859-acre Fourteen Mile Creek Nature Preserve within Charlestown State Park. The preserve contains a dissected landscape with deep ravines, sinkholes on relatively level uplands, and caves, with tributaries to Fourteen Mile Creek and frontage on the Ohio River. A number of very rare plants and cave invertebrates have been documented. Bacone recommended the addition for dedication.

Tom Easterly asked whether the entire park would eventually be recommended for dedication. Bacone responded that it would not. Many areas within the park are developed and would not qualify. He said there was, however, an area on the north end of the park which might.

John Davis said this portion of Charlestown State Park was “just becoming accessible to anyone.” New bridges allow much improved pedestrian access.

Jane Ann Stautz moved to approve dedication of an addition to Fourteen Mile Creek Nature Preserve as recommended by the Division of Nature Preserves. Tom Easterly seconded the motion. On a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration of preliminary adoption of amendments to 312 IAC 9-7-6 to modify size limits on black bass taken from rivers or streams; Administrative Cause No. 10-154D

Mark Reiter, Director of the Division of Fish and Wildlife, introduced this item. He said the proposal was a result of interest by fishermen as expressed in the comprehensive fish and rule enhancement project. “Fishermen said they were interested in enhancing smallmouth bass populations...and were asking us to consider a statewide 14-inch size limit for smallmouth bass.” In the December 2010 Advisory Council meeting, the Division of Fish and Wildlife brought its proposal intended to cause the “same kind of results” as sought by the fishermen through a slot limit protecting black bass from 12” to 15” long. Black bass smaller than 12” could be harvested, and a maximum of two bass longer than 15” could be harvested per day. The DNR proposal would have been limited to selected streams. Reiter said “those streams were mostly navigable streams” which were widely accessible by fishermen and where the DNR believes most smallmouth bass are taken. “After discussion in that Advisory Council meeting with the Council and listening to some of the groups that were interested, once again, in the original proposal, to go statewide with the maximum 14” statewide maximum length, we amended our proposal to be still a 12” to 15” slot limit but to go statewide. We feel like, as Pat said [earlier in the report by the Chair of the Advisory Council], that that was a reasonable compromise—something that we can live with but maybe a little more restrictive than we thought was necessary.” We “would request your approval and preliminary adoption” of the compromise as set forth in the Commission packet.

Chairman Poynter then recognized Richard Cockrum, former Commission Chair and member of the Advisory Council. “Rick, if you would please come forward.”

Cockrum addressed the Commission. “Thank you, Mr. Chairman. First of all, congratulations on your awesome campaign for reelection.”

Bryan Poynter responded, “I have a big war chest.”

Cockrum began his presentation. “As background, I was appointed on the Commission in the late ‘90s and discussed with Mark’s predecessor and others about improving the stream fishery in Indiana. It’s a passion of mine and a lot of the people that I interact with. To that end, we

have been looking at different ideas over the years. We did a slot limit, I think in '06, that seemed to be successful and some other management techniques. All of us recognize that habitat is the number one factor in streams. Smallmouth fishing in Indiana is good, but it could be great. Smallmouth fishermen are a very passionate group. Last Saturday there was a fly fishing show at the Fair Grounds that drew hundreds of people, many of whom fish our streams.”

Cockrum continued, “I only speak on behalf of myself, but I do interact with a lot of stream fishermen and a lot of different organizations. We were pushing a minimum 14” size limit statewide, but DNR staff was convincing that the slot limit from a biological standpoint would probably do more to improve the fishery. We agreed to that and being statewide, and that is what is before you. We certainly want to thank Mark and his team for working on it, Chairman Early for the patience that he and his Advisory Council had for deliberating this issue, and we are very supportive of this moving forward. I would be happy to answer any questions.”

The Chair stated, “Thank you, Rick. We appreciate your efforts.”

Kevin Hardie said he was a staffer for the Friends of White River, a not-for-profit organization established in 1985. “We have been very proud and pleased to work with the DNR over the years. I’ll make my comments brief, but they are wholehearted. That is we are very much in support of this measure. Many of our members fish, not only White River, but many of the other tributary streams as well. We have had a lot of dialog over the years, and we believe that this is a very important step that would have not only a benefit for the fishery but can also have some economic benefit for the State of Indiana by helping establish a fishery that is well-regarded throughout the Midwest. It has already come a long way in light of what happened in 2000, a January day like this. The tone was much more somber then than today.”

Chairman Poynter drew the Commission’s attention to sheets including emails from persons supporting the rule proposal. Included were comments by Chris Hoffman, Kevin Hardie, James Nimmer, and Nancy Stark. The Chair directed that the emails be made part of the record of the hearing officer, if the rule proposal is given preliminary adoption.

Jane Ann Stautz moved to give preliminary adoption for amendments at 312 IAC 9-7-6, as developed through the Advisory Council, to establish slot limits and modify bag limits with respect to black bass. Pat Early seconded the motion. On a voice vote, the motion carried.

Consideration for preliminary adoption of amendments to 312 IAC 9 governing the hunting of white-tailed deer; Administrative Cause No. 10-215D

Mark Reiter also introduced this item. He said “this proposal is the result of several actions and desires and efforts from various groups. Last year’s comprehensive fish and rule enhancement project brought to light several desires of the public pertaining to deer hunting that included the desire for a comprehensive deer hunting license, with expanded use of crossbow, and particularly during the firearms season, by older hunters, and by use of the ‘Earn a Buck Program’, and the review of all deer seasons and bag limits that addressed herd management.”

Reiter continued, “During about that same time, the Division of Fish and Wildlife was developing a new objective for managing Indiana’s deer herd. The management objective of the previous 30-some years for the Division of Fish and Wildlife was to produce a stable to slightly-increasing herd. This is not a logical objective in this day and age when deer populations have met or exceeded social carrying capacities in many areas in the Midwest. The Division of Fish and Wildlife’s new objective is to affect a focused deer herd reduction, in a strategically targeted manner, to more adequately balance ecological, recreational, and economic needs of the citizens of Indiana. In July of this year, the Division of Fish and Wildlife proposed changes to seasons and bag limits for deer hunting that matched with that objective. That proposal included a reduction in the number of days for deer hunting with firearms and muzzleloaders and was extremely unpopular.”

Reiter added, “The Natural Resources Commission, just a couple of months ago, withdrew that proposal. However, in withdrawing that proposal, Chairman Poynter asked the Division of Fish and Wildlife to formulate a different deer season, bag limit, hunting proposal that retained the traditional 16-day firearm season but still addresses the new deer management objective of targeted deer herd reduction. So that is what our proposal is all made up of today.”

Reiter then outlined to the Commission the current proposal for preliminary rule adoption: “In terms of general revisions to deer hunting regulations here in the State, we’re adding the use of nonresident youth license types as required by a statute change last year. It requires hunter orange on ground blinds. It increases the maximum the maximum length of a cartridge case to be used in a rifle from 1.625 to 1.8 because of the design of a new pistol round that’s now being chambered in rifles. It modified the Lake and Porter County urban deer zones to include the entire counties. It expands the youth season bag limits to the county quota number. It starts the military refuge season on October 1 instead of November 1...”

Reiter said “The meat of the proposal is these things: This proposal extends the urban deer season through the end of January, and as part of that urban deer zone, adds “Earn a Buck” component to urban deer zones season. A hunter must take an antlerless animal before taking an antlered animal in an urban deer zone, during the urban deer zone season, while hunting with an urban deer zone license. That sounds kind of confusing, but it all plays out quite well.” He said the amendments would “also allow the use of crossbow during the urban deer zone season in the urban deer zone. Also, this proposal adds a late antlerless-only firearms season from the day after Christmas through the first Sunday in January in counties that presently have a bonus antlerless quota number of four or more. It also creates a license bundle that allows a hunter to take an antlered animal during the archery or firearms or muzzleloader season and two bonus county antlerless deer during any of those seasons. The one-buck rule is still in effect so there is just one buck allowed to be taken with that license. This proposal also extends the archery season through the traditional closure between the firearms and muzzleloader seasons, adding five days to the archery season. The archery season under this proposal would start on October 1, as it always has, and run straight on through the first Sunday in January. Probably the most controversial of all those components is it allows the use of the crossbow through the entire archery season with a separate crossbow license. In a nutshell, that’s the proposal.”

The Chair reflected, “Mark, you did a nice job of summarizing the proposal, because it has been a very controversial issue, and it’s one that has been given a great deal of deliberation.” Both the Commission and the Advisory Council have dealt with the issue during meetings. “Are there any questions from the Commission, which pertain to this revised package, so we understand what was changed from the package that was withdrawn in November?” No questions were posed, and the Chair again thanked Reiter for his presentation. He then received comments from interested citizens.

Herb Higgins spoke as Treasurer of the Indiana Bow Hunters Association. He said “the current package of recommended changes to the deer hunting regulations covers a breadth of topics. With these will come both individual and organizational input as to agreement or disagreement. Today, we’d like to challenge the Natural Resources Commission and the Division of Fish and Wildlife to review the proposals as they’ve been set forth. Expanding youth hunting activities no doubt will be looked upon as a good thing. Every sportsman knows that the kids of today are the hunters of tomorrow. Only by increasing these opportunities can we continue to encourage such involvement. Pushing for stronger regulations will also be looked upon as a good thing. Keeping hunters safe in the fields is just good common sense. Creating new urban and crossbow licenses is a positive reaction to the long-heard cry for better management data. These new licenses will allow the DNR to properly capture statistics by hunting type and weapon method in both active hunter numbers and harvest numbers. All these are good, but none fall within the set proposal objective of that being to focus the deer herd reduction in a strategically targeted manner. Liberalization of crossbows does not. Harvest data shows this would merely be a shift of taking more deer in the early season. Crossbow hunters will mostly be the gun hunters of today. Today’s deer hunter will only harvest as many deer as he can use, no matter what weapon methodology he uses. The increase in the urban season, and the requirements to initially take an antlerless deer does not. Again, today’s deer hunter will only take as many deer as he can use, no matter where he is hunting. The only items within the proposal that come close to the objectives are the late-season antlerless gun and the licensed bundle at reduced price. The late gun season will only result in harvest if the hunter has capacity to use the deer at that point in time. The license bundle will result in a harvest shift from bucks to does, however, it will be limited and will not necessarily meet the criteria of being done in a strategically targeted manner. With that said, we ask the Commission and the DNR to review any incentive for quick monetary gain against the catastrophic long-term effects of proposing low-priced out-of-state-tag licensed bundling will have to Indiana’s public ground and the impact to private-ground leasing. Need we remind you that you are in charge of insuring a balance of ecological, recreational, and economic opportunities for the citizens of Indiana. The initial proposal was data driven. It promised an opportunity of reaching the proposed objective. The second proposal comes nowhere near impacting proposal objectives as stated. IBHA challenges the Commission and DNR to focus on the topics of access and a more-robustly funded deer donation program. These are the items that are most restricted to the proposal objectives. These are the items that will allow for more focused deer reduction and having an increase in deer herd harvest. No matter what proposals are moved forward with, we do ask that anything be put in a five-year limitation before fully adopted.”

Greg Yazel said he lives in Decatur County. He said he farmed and hunted in Rush County and Decatur County. “I am a grain farmer, cattle farmer, have been all my life, and I’m also a deer

hunter.” He said Rush County was typical of most Central Indiana counties, where there are low deer densities. “I think Rush County harvests annually 300 plus-or-minus a year, and we also have a lot of pressure. That’s the reason I was glad to see one of the rule changes was to limit the late season antlerless to bonus counties of four or more.” He said he also supported other changes that would seek to reduce deer populations only in targeted areas. Yazel said he was opposed to “adding any kind of new season or methods into the general season—primarily talking about crossbows in the general archery season. I have no problem with the disabled or the youth, and putting them” in the targeted urban areas. He said he opposed liberalizing the opportunity to use crossbows because once the herd size is reduced, the only options available to stabilize populations would be to shorten seasons or “reduce the number of tags allotted. I don’t think the DNR wants to reduce the number of tags allotted. That’s money generated.” Yazel closed by saying, “I do want to thank everybody. I know it’s a monumental task.”

Chuck Brown said there were many hunters “who would like to be here.” He urged the Commission to conduct an evening meeting or a special meeting to address “some of these hotbed issues.” He said he read the original proposal and heard the word “unpopular”. Brown wondered “if there was any type of data presented to a lot of people from other States about the number of deer harvested.” He said data supported the proposition that reducing a 16-day harvest to a nine-day harvest with a split season would result in taking more deer. The primary goal of the rules should be to provide the best management of the deer herd for the health of the deer and for the environment. Enjoyment derived from hunting should be secondary. Brown said there were aspects of the second proposal that he supported, including the “Earn a Buck” concept. The goal should be to obtain a one-to-one ratio of does to bucks taken, and with the overall application of the rule amendments, “I don’t see that ratio changing.” He contended January hunting would have “an almost zero effect on your deer population” because weather conditions are unfavorable for hunting. “I won’t even go into some of the ethics in harvesting deer that far along and bearing.” He contended the second proposal also failed because it did not change the dates for hunting. In Virginia, “the first week of hunting season was for bucks and does, but the second five days was for doe only. If you could use some interpretive seasons inside the season, and work on the harvest, I think you would probably see better results. I don’t see lengthening seasons as being the key. The youth season should have the desired effect.”

The Chair reminded those present that the current proposal was for preliminary adoption. If the Commission voted to give preliminary adoption, there would be significant additional opportunities for comment. He then called upon Chad Stewart, Deer Research Biologist for the Division of Fish and Wildlife, for his perspectives.

Chad Stewart said he did not have a great deal to add. “It has been a long process, and we understand why the first proposal was pulled. But we do believe the second set of proposals is based on scientific knowledge. Based on reports and previous surveys that we’ve had, it does balance the need of working toward our targeted goal and keeping the season in balance with what the hunters desire.” He added, “Obviously, we believe that this proposal is a solid second effort. We would appreciate your support.”

The Chair brought the Commission’s attention to comments by Clarence Williams that were distributed at the table before the start of the meeting. He said Williams was unable to attend but

wanted his perspectives known. The Chair directed that the comments be made part of the record of the hearing officer, if the rule proposal is given preliminary adoption. He then called upon Pat Early, Commission member and Chair of the Advisory Council, for his perspectives.

Pat Early reflected that “the difficulty in something like this, because we’ve dealt with it for quite a while and certainly have appeared to have gone back and forth, is that coming up with any kind of changes is always going to affect some people positively and some people negatively. When Mark and Chad came to us in the first place and said that there is a lot of pressure, from a lot of sources, to come up with a management plan that results in a slightly reduced deer herd..., we asked them to provide us with their best ideas on how to do that. That was the first proposal that came through.” He said the public process worked. Commission members learned the management plan in the first proposal was supportable from a biological perspective, “but there was no way that it had the kind of social acceptance that was going to make it something we could get through without a lot of intervention and fighting for years and never getting to where we needed...” He continued, “We asked Chad and Mark to go back to the drawing board and come up with a plan that still targeted that reduction and was something that they thought was viable. I think they’ve done that. There are some things about this plan that people aren’t going to like. Obviously, the Bow Hunters Association is not fond of increasing pressure earlier on. There are varying thoughts about how effective crossbows are as weapons. I would let you know that a lot of other States have adopted using crossbows, and it has not been the end of time for deer herds. What it has done in some cases is...attracted people, who otherwise couldn’t hunt, back to the sport. Particularly, that’s true with children, and, perhaps women, and it maybe keeps some older folks in the game a little bit longer. With the trends that we see with declining participation in hunting, I think anything that we can do or that we can consider that gives more opportunity and increases participation is something that we have to at least look at. When it’s combined with our experts telling us it is a viable plan, and is something that we should consider, I think that’s also something we have to take into account. Finally, although certainly not the primary reason, it does generate another revenue source. If a lot of people adopt [the crossbow] as an additional weapon, it probably won’t bring that many more people into deer hunting, but it may have them using a weapon they weren’t otherwise using. So, there’s another license that results from that, and in these days, that’s not a bad thing.” Early concluded, “although we realize” the second proposal now for consideration “is not perfect and doesn’t make everybody totally happy, it does seem to be a viable plan.”

Early then moved to give preliminary adoption to the second proposal to amend 312 IAC 9, as the article pertains to the hunting of white-tailed deer, in the form set forth in the Commission’s January packet. Phil French seconded the motion.

The Chair asked the Commission if there were additional comments or questions. None were offered. He then asked for action on the motion. Upon a voice vote, the motion carried.

Chairman Poynter then recognized a question from the audience. The question was “Can you address the timeframe in which this would occur?” The Chair asked Steve Lucas for his perspectives on timing.

Lucas responded that the Division of Fish and Wildlife would prepare draft fiscal analyses for the rule proposal for submission to the Indiana Office of Management and Budget. Once the Division of Fish and Wildlife completes its draft, “the next real meaningful stage in terms of process is that we do a ‘Notice of Intent’ which is posted in the Indiana *Register*. After the ‘Notice of Intent’ and the fiscals are put together, those go to OMB people, and we wait for their review.... The ‘Notice of Intent’ is what starts the clock really. The rule needs to be completed and published within one year of publication. That ‘Notice of Intent’ is at least a few weeks off.”

The Chair reported the statute “calls for at least one public hearing. I would envision that there would be an opportunity to be more conducive to the public—more of a regional approach, whether that’s North and South or multiple we’ll leave to the staff. There will be opportunities, and this issue will be well vetted. This Commission has shown it listens, and there will be much opportunity for public input.”

John Davis added that, “at the end of all that process, it comes back here for final adoption.” The rule adoption process is lengthy, and “I don’t personally believe this rule adoption will be in effect for 2011-2012.”

Chairman Poynter said he agreed. “Many hunters have asked that question. I would say that it is most unlikely it will be in effect for the next hunting season.”

The Chair recognized another question from the audience. A citizen asked whether the duration of the amendments would be limited to a five-year trial period. The Chair responded that his expectation is the success of any language given final adoption would be assessed within five years of its effective date. Reiter added, “The language we submitted for preliminary adoption doesn’t say it’s ‘sunsetting’ after five years..., but it has always been our intent to make some adjustments to our management and to review the results and to decide to go on with more or to back off. That has always been our intent.”

Chairman Poynter recognized another request to speak from a citizen.

William Garner said, “I hadn’t planned on speaking this morning, but I just came up here to listen. Two years ago, I had a hip replacement. My doctor told me that ‘You are no longer to climb up in tree stands or tall ladders.’ I am primarily a bow hunter..., but that limits me as far as early season. I wanted to use a crossbow so I can continue my bow hunting. You say, ‘You can use a blind.’ But where I hunt is very hilly...in Brown County. It’s impractical to carry a blind back. I have to hunt on the ground so a crossbow enables me to sit on the ground like I do during gun season and hunt. I only take about two or three deer a year, but I have not applied for a disability permit yet. I don’t know whether I’d be able to get one because I can still draw a bow, but I can’t climb up in a tree stand. So, the crossbow provision would really help me. That’s all I’ve got to say.”

The Chairman then recognized another question from the audience. A citizen asked when a fee for any new license in the proposed rule would be set. The Chair asked for the perspectives of Linnea Petercheff from the DNR’s Division of Fish and Wildlife.

Petercheff responded, “The fees for all the deer hunting licenses are put in a nonrule policy document. We would anticipate presenting that at the time the Commission gives final adoption” to any aspect of the proposed rules. A nonrule policy document is not required to go “through the lengthy rule adoption process.”

Vice Chair Jane Stautz asked whether the Advisory Council might consider ways to help promote funding for processing deer to distribute to the needy. Col. Wilson said this initiative was one which former Col. Crider supported avidly, and Mike Crider intended to continue with the effort. The Chair reflected that Stautz had a “great point.” The Benevolence Fund and improved hunter access were as or more important than anything the Commission could do through rule adoption and fees. John Davis reported Col. Crider recently reviewed with the Advisory Council “his efforts to gather information about what other States were doing in partnership with groups and to understand the mechanics about how we offer that to...the processors and the hunters.”

Recommendation for preliminary adoption of amendments to 312 IAC 2-4-12 to remove Roush State Fish and Wildlife Area from the lakes which are subject to drawings for fishing tournaments; Administrative Cause No. 10-201D

Mark Reiter presented this item. He said management of J. Edwards Roush Lake (also known as “Huntington Reservoir”) was transferred in December from the Division of State Parks and Reservoirs to the Division of Fish and Wildlife. 312 IAC 2-4-12 governs exclusively fishing tournaments on State Park lakes. Also, the competition for fishing tournaments on Roush Lake is not as intense as on some other State Park lakes, and a drawing has not been required in the past. The Division of Fish and Wildlife has an internal policy for the treatment of fishing tournaments under a special event license, and this policy would be implemented. In practice, there would be little change from how State Parks has managed Roush Lake. He noted the Advisory Council recommended this item for approval as to preliminary adoption.

Tom Easterly moved to give preliminary adoption to a rule amendment to remove the lake at Roush State Fish and Wildlife Area from the lakes which are subject to drawings for fishing tournaments. Michael Cline seconded the motion. On a voice vote, the motion carried.

NRC, DIVISION OF HEARINGS

Consideration of rule processing, consideration of public comments, analysis report of public hearing, and recommendation for final adoption of amendments to 312 IAC 9, governing the use of gizzard shad, threadfin shad and alewife as bait; LSA Document #10-501(F); Administrative Cause No. 10-075D

Steve Lucas presented this item on behalf of Sandra Jensen, Hearing Officer. He said for consideration was proposed final adoption to amendments that would alter the definition of “cast net” at 312 IAC 9-6-1 to allow the use of larger diameter cast nets and to add specifications for cast nets used on waters where gizzard shad and threadfin shad could be collected and used under the proposed amendments to 312 IAC 9-6-8. A definition of “threadfin shad” would be

added at 312 IAC 9-6-1. Also, an amendment to 312 IAC 9-6-8 would allow the collection and use of alewives as bait in Lake Michigan.

He reported the Hearing Officer characterized the overall public response to the proposed amendments as being favorable. She recommended the proposal, as published in the *Indiana Register* in October, for final adoption.

Greg Yazel said he was among several supporters who had long worked to make a reality these modifications to rules governing the collection and use of baitfish. He thanked the DNR for working with them, and he asked the Commission to give the rule amendments final adoption.

Tom Easterly moved to give final adoption to the amendments to 312 IAC 9 governing the use of gizzard shad, threadfin shad, and alewives for bait as published for preliminary adoption. Brian Blackford seconded the motion. On a voice vote, the motion carried.

Consideration of rule processing, consideration of public comments, analysis report of public hearing, and recommendation regarding final adoption of amendments to 312 IAC 9-10-9 governing wild animal rehabilitation permits; LSA Document #10-418(F); Administrative Cause No. 10-015D

Steve Lucas also presented this item on behalf of the Hearing Officer, Sandra Jensen. For consideration are proposed amendments to 312 IAC 9-10-9 which govern wild animal rehabilitation permits. The amendments would make numerous clarifications and impose additional requirements. The most significant of the proposed amendments include testing for new permit applicants and continuing education requirements for all permit holders, as well as additional housing and release requirements associated with animals taken for rehabilitation.

He said the Hearing Officer reported several written comments urged the draft requirement to release juvenile mammals and birds at their point or county of origin “is impractical”. The comments said orphaned juvenile mammals are frequently rehabilitated in groups that should be released together—a likely impossibility if each of the animals is required to be released in the county of origin. The release of a single mammal alone may be “tantamount to a death sentence”. The written comments said juvenile birds would likely be driven from the territory by their parents. In both instances, commentator urged greater regulatory flexibility.

One bird rehabilitator noted songbirds and perching birds are not hunted or consumed, and, for this reason, sought an exemption from the requirement to maintain records relating to the use of pharmaceutical products or chemicals on these birds. Other written comments reflected strong opposition to any rehabilitation of coyotes, arguing that coyotes are becoming a nuisance to other wildlife (particularly ground nesting birds) and to agricultural animals.

In responding to these comments, the DNR suggested several changes to the proposed amendments. (1) Each wildlife rehabilitator should be limited to releasing no more than two coyotes annually. (2) Juvenile mammals that were housed together during rehabilitation could be released in any county where at least one of the mammals originated. (3) Juvenile birds could

be released outside the county of origin. (4) Requirements to maintain records of pharmaceutical products or chemicals would apply only to mammals or reptiles.

Lucas said Jensen recommended final adoption with inclusion of the substantive revisions supported by the DNR, but with some stylistic changes to DNR's language as set forth in Exhibit D, beginning at page 61 of her report.

R. T. Green moved to give final adoption for amendments to 312 IAC 9-10-9, pertaining to wild animal rehabilitation permits, as recommended by the Hearing Officer. Phil French seconded the motion. On a voice vote, the motion carried.

Consideration of rule processing, report of public hearing, and recommendation for final adoption of amendments to 312 IAC 8-2-4.5, governing the placement of a fish attractor on a property administered by the Department of Natural Resources; LSA Document #10-566(F), Administrative Cause No. 10-160P

Jennifer Kane, Hearing Officer, presented this item. She explained that the proposed rule amendment adding 312 IAC 8-2-4.5 would require a license from a property manager before a person could place a fish attractor on a property administered by the Department of Natural Resources. The rule also provides for consultation within the Department before issuance of a permit for placement of a fish attractor. If the Department's Division of Water determines a fish attractor poses more than a minimal potential for harm, the rule proposal affirms the additional permitting requirements for placement of fish attractors in sites within a floodway under IC 14-28-1 or a navigable waterway under IC 14-29-1.

Kane said a fish attractor is typically constructed of pieces of PVC pipe connected by a line or vegetation (such as a discarded Christmas tree). The placement of most fish attractors may be properly exempted from licensure, under the Flood Control Act, as constituting an activity that "poses no more than a minimal potential for harm" under IC 14-10-2-4(b).

Kane said this rule proposal is identical to a previous rule proposal, LSA #09-921, which was given preliminary adoption at the November 2008 meeting. Under IC 4-22-2-25, the Commission has one year from the date of the publication of the Notice of Intent to adopt a rule and obtain the approval or deemed approval of the Governor. "There was not sufficient time to comply with the remaining statutory requirements governing rule adoption regarding LSA #09-921."

Kane said the proposed rule amendments would apply exclusively to waterways within or along DNR properties and are designed primarily to support administrative transparency with respect to property management activities. "It's prudent for property managers to monitor if and under what circumstances a citizen should be authorized to place materials in the property's waterways. Strict application of the Flood Control Act (IC 14-28-1) would require a license application through the DNR's Division of Water for placement of any fish attractor in some waterways. Most fish attractors are physically inconsequential, and licensure under the Flood Control Act would serve no meaningful purpose." Kane noted that 312 IAC 8-2-4.5(b)(3) would require the Department to develop a memorandum of understanding concerning characteristics

of a fish attractor likely to pose more than a “minimal potential of harm” relative to the Division of Water’s review.

Kane said the absence of a clear regulatory guidance has caused confusion to the public and allowed inconsistencies regarding placement of fish attractors among DNR property managers. The rule is designed to provide adequate permitting to: (1) assure effective property management; (2) avoid double licensure; and (3) generally favor the less intrusive and free licensure associated with property management as compared to licensure under the Flood Control Act. Kane said that if a significant structure is sought to be placed as a fish attractor, licensure would be required under the Flood Control Act.

Kane noted the effective date in the Digest of the Notice of Intent was listed as January 1, 2011. This is an error carried over from the 2008 rule proposal. In compliance with IC 4-22-2-36, the effective date must be deferred until at least 30 days after filing the Final Rule with the Publisher. To avoid confusion that can arise from a spring amendment to rules affecting lakes and streams, she recommended a further deferral of the effective date until January 1, 2012. She then recommended final adoption of the rule amendments as presented.

ADJOURNMENT

The meeting was adjourned at approximately 11:34 p.m., EST.