

NATURAL RESOURCES COMMISSION
Meeting Minutes, March 16, 2021

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Dan Bortner, Secretary
Bruno Pigott
Laura Hilden
Noelle Szydlyk
Marc Milne
Phil French
Bart Herriman
John Wright

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen Dawn Wilson
Billie Franklin Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Chris Smith Executive Office
Mike Smith Executive Office
Steve Hunter Law Enforcement
Terry Hyndman Law Enforcement
JB Brindle Communications
Steve Weinzapfel Reclamation
Amanda Wuestefeld Fish & Wildlife
Linnea Petercheff Fish & Wildlife
Joe Caudell Fish & Wildlife
Dale Brier Parks

GUESTS PRESENT

Samantha Morton Paul Arlinghaus
Charles Olson Jack Corpuz
Matthew Berlgen

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:00 a.m., ET, on March 16, 2021, at Fort Harrison State Park, Garrison, 6002 North Post Road, Ballroom, Indianapolis. With the presence of ten members, the Chair observed a quorum.

APPROVAL OF MINUTES

The Chair asked for a motion for the approval of the Commission's November 17, 2020 meeting minutes. Bruno Pigott moved to approve the minutes, as presented. Dan Bortner seconded the motion. Upon a voice vote, the motion carried.

ELECTION OF OFFICERS

Bruno Pigott made a motion to slate the officers now standing for the 2021 term - Bryan Poynter, as Chair, Jane Ann Stautz, as Vice Chair, and Dan Bortner, as Secretary. Phil French seconded the motion. Upon a voice vote, the motion was unanimously carried.

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

Dan Bortner, Director of the Department of Natural Resources (Department), provided his report. Bortner noted the retirement of John Davis and the leadership Davis provided as Deputy Director for the Bureau of Lands and Cultural Resources. Bortner said the job has been posted and Chris Smith will temporarily assume the duties until the position is filled.

Bortner said the Department will operate under seven points of focus that will include customer service as the highest internal and external priority and the first pillar that all other decisions will be measured against. He said two would be fiscal responsibility, to be good stewards, seek efficiencies, and increase revenue streams. Bortner said the third will be communication, to focus on positive messaging to ensure all voices are heard. Bortner said the fourth point of focus will be diversity and a succession plan, to attract and retain a diverse workforce and customer base. He said fifth is personal growth to attract and invest in high quality people and to encourage employee development so they will be more committed and confident. Bortner stated the sixth point of focus will be to build a flatter organization to eliminate duplication and seven is to enhance the Department brand and strive towards excellence.

Bortner said the Department will be asking the Commission to approve the plan to consolidate the Division of Outdoor Recreation with the Division of State Parks and consolidate the Division of Oil and Gas with the Division of Reclamation.

Bortner noted that Starve Hollow State Recreation Area and Deam Lake State Recreation Area are currently in the process of being transferred from the Division of Forestry to the Division of State Parks. He also said the Department will plan to move Covered Bridge Retreat from the

Division of Forestry to the Division of State Park Inns and the Division of Fish and Wildlife campgrounds to the Division of State Parks. Bortner said the properties that are being transferred to the Division of State Parks were simple moves and some of the other properties that the Department plans to transfer have other recreation components and more time is needed so the moves are done correctly.

Bortner said the Next Level Trails Program was paused due to the pandemic but is operating again now with nearly \$30 million in grants being awarded in round two that will include funding for 18 trail projects. He said that another \$35 million in grants will be awarded in November 2021.

Bortner said the Department expects another busy recreation season and currently revenue is up with an increase of 32% in gate revenue, 38% in annual pass revenue, and 44% in reservation revenue. Bortner stated that the properties' inn and campground reservations are already 98% full for Memorial Day weekend, 70% for July Fourth weekend, and 60% for Labor Day weekend.

Bortner congratulated Amanda Wuestefeld, Director of the Division of Fish and Wildlife, for being selected in February 2021 as Purdue's College of Agriculture honoree for The Distinguished Agriculture Alumni Award.

Chris Smith provided the report for the Bureau of Lands and Cultural Resources. C. Smith stated with good weather, the properties have been busy, and the Department sold more than ten thousand gift packs for future stays at one of the inns or campgrounds. He noted that seasonal hiring is currently taking place and said the newly renovated Abe Martin Lodge Annex will be ready for business next week.

C. Smith said, in February, the Moontown Brewing Company, in collaboration with the Natural Resources Foundation, released their second beer, an Imperial Coffee Brown Ale named "Turkey Run", in the Pints for Parks Series. Moontown Brewing Company, located in Whitestown, has agreed to do a beer for each of the state parks in order of when the park opened.

C. Smith stated the Department partnered with the Indiana Destination Development Corporation to launch the Indiana State Nature Passport, a free digital icon that can be downloaded to a phone. The Passport encourages visitors to discover new places, enjoy the outdoors and gives opportunities to win prizes. C. Smith noted the website at www.VisitIndiana.com/Explore.

Noelle Szydlyk, Indiana Destination Development Corporation, reported that since March 11, 2021, 6,575 people signed up for the Indiana State Nature Passport, over 2,100 people checked in at properties, and 3,200 stickers were mailed out to people who registered the first week. She said that several people had also already earned prizes and some of those prizes include sunglasses, a water bottle, a trucker cap, and a backpack. Szydlyk noted that currently no money has been spent on marketing, there will be funding used for marketing in the future but to date, it has all been grassroots and media hits.

C. Smith stated that the Division of Fish and Wildlife, in partnership with Friends of Goose Pond, held the annual March Madness event virtually at the end of February. C. Smith noted the opportunity for people to donate a portion of their tax refund to the Indiana Nongame Wildlife Fund and explained that for every five dollars donated, Indiana is eligible to receive nine dollars in federal funds.

C. Smith stated that the Loblolly Marsh Nature Preserve in Jay County had a wildfire last week that impacted approximately 40 acres. He noted the fire started because of a neighboring property disposing of ashes that were not completely extinguished. Five local fire departments responded to get the fire under control.

C. Smith said the Division of Forestry hosted their virtual open house on February 11, 2021. He said the Division's nursery is working hard to get trees shipped out and reported that all the orders will be filled by the end of the month. C. Smith stated that Department staff and other volunteers have helped where the Department of Correction normally provided inmates to work. C. Smith also thanked the Commission's, Division of Hearing's staff for helping at the nursery.

Chris Smith also provided a report relating to the Bureau of Water Resource and Regulation. C. Smith said the Division of Historic Preservation and Archeology has been assisting the Division of State Parks with tree removal to prevent damage on the great mound at Mounds State Park. C. Smith noted the Civilian Conservation Corps role in Brown County State Park's recent addition to the National Register of Historic Places, which makes it the state's largest historic district.

C. Smith stated that the Division of Fish and Wildlife and the Division of Entomology and Plant Pathology joined forces to find, contain and destroy zebra mussels from the Ukraine that were identified in aquatic moss distributed to approximately 30 states for use in aquariums.

C. Smith Said the Division of Water is finishing the water supply contract with a local vendor for the well facility that was part of the Army Ammunition plant at Charlestown State Park.

C. Smith said the Division of Water had a meeting with Ports of Indiana to meet their new staff members, talk about infrastructure projects, and the permit process for putting infrastructure in the floodway at their Mount Vernon, Jeffersonville, and Burns Harbor facilities.

C. Smith recognized Steve Weinzapfel, Director, Division of Reclamation's presence at the meeting and noted anticipated action to consolidate the Division of Reclamation and the Division of Oil and Gas. C. Smith said the Division is monitoring the White Stallion Energy bankruptcy where approximately four mines are in the process of soliciting bids for the properties.

Mike Smith, Deputy Director of the Bureau of Administration, provided his report. M. Smith reported that all state agencies had to meet a 15% budget cut, which represents \$7.5 million annually for the Department, beginning this fiscal year until the next biennial.

M. Smith reported the Department's efforts to eliminate duplication and increase efficiency has helped the Department meet their budget. M. Smith noted that consolidation of the Division of Outdoor Recreation and the Division of State Parks will save the Department over one half of a

million dollars a year. He said the Division of Nature Preserves received a federal grant that will save over \$1 million a year, and because of the increase in park visitation the Division of State Parks was able to make up several million dollars annually that was cut from the budget. M. Smith said the Department was able to meet the budget reduction in creative ways without significant impact to programs or staffing.

M. Smith stated that, included in the current budget proposal is language that would pay off the state's bond debt to include Prophetstown State Park Aquatic Center and all remaining State Park Inns' debt, which totals over \$10 million in debt relief for the Department. He stated the Governor's budget also returned \$2 million of the \$7.5 million reduction for fiscal years 2022 and 2023. M. Smith said he is pleased with the budget that includes a base reduction.

Sandra Jensen, Director of Natural Resources Commission, reported that the Advisory Council met virtually on January 12, 2021, where officers were slated and elected. She noted the Department provided valuable updates and there was a great discussion between the Council members and the Department staff.

CHAIR, AND VICE CHAIR

Updates on Commission and AOPA Committee

Jane Ann Stautz, Chair of the Commission's AOPA Committee, stated that the AOPA Committee met prior to the Commission meeting to consider a riparian zone matter that highlighted the continued importance of Information Bulletin #56 (IB #56), that refers to Riparian Zones within Public Freshwater Lakes and Navigable Waters. She noted that IB #56 is one of the most frequently referenced bulletins and suggested the Administrative Law Judge should review and update citations with more recent case law.

Information: Consideration of 2021 meeting dates:

The Chair noted that the remaining 2021 Commission meeting dates are, May 18, July 20, September 21, and November 16 and announced that the meetings are currently scheduled to take place at the Fort Harrison State Park Garrison or Inn in Indianapolis.

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.

Consideration of the merger of the Division of Outdoor Recreation into the Division of State Parks, Administrative Cause No. 21-AD-010

Dan Bortner presented this item. Bortner stated the consolidation of the Division of Outdoor Recreation and the Division of State Parks will eliminate duplication and better serve customers. He gave an example of the trails and stated there used to be one division over trails outside of Department properties and multiple divisions responsible for managing trails inside of Department properties. He said consolidation will result in all the trails being managed by one division.

Phil French moved to approve the merger of the Division of Outdoor Recreation into the Division of State Parks. Noelle Szydyk seconded the motion. Upon a voice vote, the motion carried.

Consideration of the merger of the Division of Oil and Gas into the Division of Reclamation, Administrative Cause No. 21-AD-014

Bortner also presented this item. Bortner said the consolidation of the Division of Reclamation and the Division of Oil and Gas will save money and share resources of inspectors and administrative personnel.

John Wright moved to approve the merger of the Division of Oil and Gas into the Division of Reclamation. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF LAW ENFORCEMENT**Consideration of the addition of a new nonrule policy document, Information Bulletin #80, which lists qualified organizations that are approved to conduct underwater surveys; Administrative Cause No. 20-WA-041**

Dawn Wilson, Commission's Division of Hearings, presented the procedural portion of this item. Wilson stated that Information Bulletin #80 (IB #80) is necessary to fulfill the requirements of IC 14-15-6-2.5. Wilson stated that she made some technical revisions and noted the revisions were provided to the Commission. Wilson stated the Department would be able to provide additional substantive information on IB #80.

Terry Hyndman, Lieutenant Colonel, Division of Law Enforcement, stated the Department consulted the United States Coast Guard for assistance in identifying qualified individuals to inspect for-hire passenger vessels and determined that qualified inspectors are certified by one of four organizations. Hyndman said the most efficient method that met the requirements of the legislation was to identify the four certifying organizations.

Chris Smith added the proposed nonrule policy applies to the passenger for hire watercraft so that they are receiving regular safety inspections. He noted that it was getting cost prohibitive for the businesses with larger boats to take the boats out of the water for inspections, so businesses worked with the Indiana General Assembly to pass the statute. C. Smith stated the Division of Law Enforcement is not trained for this type of inspection, so IB #80 gives the protocol for those inspections to be completed.

Hyndman said that there are seven big boats in Indiana, three that carry more than 40 passengers, four that carry more than 100 passengers, with one of those designed to carry 460 passengers.

Jane Ann Stautz moved to approve the addition of a new nonrule policy document, Information Bulletin #80, as presented. Phil French seconded the motion. Upon a voice vote, the motion carried.

DNR, DIVISION OF FISH AND WILDLIFE

Report to the Natural Resources Commission on citizen petition to amend 312 IAC 9-3-18(f), to allow the 330 Conibear™ trap to be set half-submerged in water, instead of fully submerged; Administrative Cause No. 20-FW-046

Linnea Petercheff, Division of Fish and Wildlife presented this item. Petercheff stated the Department reviewed the citizen's petition pertaining to the use of 330 Conibear™ traps and allowing them to be submerged only halfway instead of completely submerged in water. She said this type of trap is one of the most effective methods for removing beavers and is listed as a humane and effective trap in the Association of Fish and Wildlife Agencies Best Management Practices for trapping beavers and otters. She said the original intent to make it fully submerged was to prevent accidental captures of dogs and other animals, but the Department believes it can be safely partially submerged.

Petercheff said there are a few states that still require the traps to be fully submerged, but Wisconsin, Michigan, and Kentucky allow the traps to be partially submerged. Petercheff Stated the Department does support the citizen petition to amend the rule to all the 330 Conibear™ to be halfway submerged. Petercheff noted that both 312 IAC 9-3-18(f) and 312 IAC 9-10-11 would need to be modified to allow this because the same requirements are in the nuisance wild animal control permit rule in 312 IAC 9-10-11. She stated that the Department plans to come back in a future meeting to request preliminary adoption of these rule changes.

Bruno Pigott moved to accept the Committee's Report and recommendation regarding the citizen petition to amend 312 IAC 9-3- 18(f), to allow the 330 Conibear™ trap to be set half-submerged in water, instead of fully submerged. Bart Herriman seconded the motion. Upon a voice vote, the motion was carried.

Report to the Natural Resources Commission on citizen petition to amend 312 IAC 9-7-2(m) to allow underwater spearfishing of all game fish at all lakes of at least 100 acres, update spearfishing definitions, and exclude “free shafting” as a legal gear; Administrative Cause No. 20-FW-042

Petercheff also presented this item. Petercheff stated the citizen petition requests that the underwater spearfishing rule be amended to be able to spear all game fish besides black bass at all lakes of at least 100 acres in size and update the spearfishing definitions in the rule.

Petercheff stated Division of Fish and Wildlife staff reviewed and discussed the petition and there is a lack of research on the effects of spearfishing in freshwater lakes. She noted concern over user conflicts because when spearfishing is underwater, a “diver down” flag must be floated, and other vessels must stay 150 feet away from a diver. Petercheff said that no other states around Indiana allow spearfishing.

Petercheff said the Department is opposing the change to the spearfishing rule, but the Department is doing some additional research to learn more about spearfishing in freshwater.

Bruno Pigott moved to accept the Committee’s Report and recommendation regarding the citizen petition to amend 312 IAC 9-7-2(m) to allow underwater spearfishing of all game fish at all lakes of at least 100 acres, update spearfishing definitions, and exclude “free shafting” as a legal gear. Bart Herriman seconded the motion. Upon a voice vote, the motion was carried.

NRC, DIVISION OF HEARINGS

Consideration of Hearing Officer report on rule processing, public hearing, and hearing officer analyses with recommendation regarding final action to amend 312 IAC 9, governing wild turkeys, beavers, and equipment for deer hunting; LSA #20-602(F); Administrative Cause No. 20-FW-043

Sandra Jensen, Hearing Officer, presented this item. Jensen stated the proposal is to amend 312 IAC 9-3-3 to allow muzzleloaders that have the powder loaded from the breech end and require only that the bullet be loaded from the muzzle end to be used during the muzzleloader, firearms, and youth deer seasons. Jensen also noted for consideration is an amendment to 312 IAC 9-3-11 to allow trappers to take beavers at any time of day on the opening and closing day of the season and 312 IAC 9-4-11 to allow turkey hunters to use a 28-gauge shotgun and .410 caliber shotgun for turkey hunting.

Jensen said the Commission gave preliminary adoption to the proposed rule amendments on November 17, 2020, and the Notice of Intent was published in the Indiana REGISTER on November 25, 2020. She explained that all other statutory obligations and rule processing requirements were fulfilled, and all necessary agency approvals were received that addressed budget concerns.

Jensen stated written comments were accepted from November 17, 2020, through February 12, 2021, and through a virtual public hearing was conducted on February 9, 2021, eight members of the public offered additional input. Jensen noted that members of the public suggested that the Commission should continue to conduct virtual public hearings even after in-person public hearing are allowed to resume as it offers people a greater ability to participate.

Jensen stated that most of the public interest focused on the proposed amendments to 312 IAC 9-3-3 and 312 IAC 9-4-11 and she noted that the public input and the Department's response was available in her report. Jensen said the comments on the amendment to allow trappers to take beavers at any time of day on the opening and closing dates were minimal. Jensen offered that the comments regarding the turkey hunting season were mostly positive.

Jensen stated that most commenters opposed the proposed amendments to 312 IAC 9-3-3 that would allow the new style of muzzleloader to be used during the muzzleloader season but observed that most of the commenters agreed with the new muzzleloader being used during firearms season. Jensen said the Department considered these comments and in consultation with the Hearing Officer, developed revised rule language to allow the new muzzleloader to be used during the firearms season and youth deer season, but not during muzzleloader season. Jensen stated that the revision necessitated a contemporaneous amendment to 312 IAC 9-3-3(a)(4) and noted that the revised language was provided in Exhibit C of her report. Jensen reported that Indiana Code § 4-22-2-29(b)(4) authorizes the adoption of a revised version of a proposed rule, including provisions that did not appear in the published version of the rule, if the revision is a "logical outgrowth" of the proposed rule and is supported by written comment.

Jensen stated that her opinion is that the revision is a logical outgrowth of the rule as proposed and there were numerous comments to support the change but observed that the final determination is made by the Office of the Attorney General. Jensen stated her recommendation that the Commission grant final adoption to the revised rule amendments as provided in the report.

Jane Ann Stautz moved to give final adoption to amend 312 IAC 9, governing wild turkeys, beavers, and equipment for deer hunting, as presented. Phil French seconded the motion. Upon a voice vote, the motion carried.

Chris Smith stated that Director Bortner will sign an emergency rule to temporarily amend 312 IAC 9-4-11 to allow turkey hunters to take a turkey with additional equipment because the permanent rule amendment will not be effective in time for the upcoming turkey hunting season.

Adjournment

The meeting was adjourned at approximately 10:48 a.m., ET.