

ADVISORY COUNCIL
April 30, 2019 Meeting Minutes

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
Bill Freeman
Tim Karns

NRC, DIVISION OF HEARINGS STAFF PRESENT

Sandra Jensen
Billie Davis
Scott Allen

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

Chris Smith	Executive Office
John Davis	Executive Office
Mark Reiter	Fish & Wildlife
Linnea Petercheff	Fish & Wildlife
Mitch Marcus	Fish & Wildlife
Brian Schoenung	Fish & Wildlife
Colleen Hartel	Fish & Wildlife
Mark Basch	Water
Vanessa Gonzalez	Water
Libby Gamboa	Legal
Steve Hunter	Law Enforcement

GUESTS PRESENT

Andrew Byrne Jordon Byrne

Call to Order

Patrick Early, Chair, called the meeting to order at 10:03 a.m., ET, at the Fort Harrison State Park Inn, 5830 North Post Road, Roosevelt Room, Indianapolis, Indiana. With the presence of three members, the Chair observed a quorum.

Reports of Deputies Director

Chris Smith, Deputy Director, Bureau of Water Resource and Regulation, provided his report.

Smith stated that May is National Historic Preservation Month and the Division of Historic Preservation and Archaeology will have several events scheduled. Smith noted that the Statewide Preservation Conference was recently held in Evansville, Indiana with over 150 attendees who work in historic preservation and archaeology. Smith said that last week the Indiana Historic Preservation Review Board met to discuss priorities for the Historic Preservation Fund grants

related to studies on Department properties. Smith said that each property holding division has submitted a priority list of properties.

Smith said that communities are redeveloping areas around rivers and lakes leading to an increase in questions and permit applications being received by the Division of Water. This trend has led to Department discussions on potential items for future Advisory Council discussion.

Smith stated that the legislative session has ended and the Division of Oil and Gas will need to create a carbon sequestration program for underground carbon dioxide storage. Smith said that there will be a summer study before the program is implemented. Smith said that legislation passed that authorizes the Division of Entomology and Plant Pathology to adopt emergency rules and requires the Division of Fish and Wildlife to establish a hunting guide's license.

Smith said that legislation made administrative changes with respect to the collection of fees for the Department's Lake and River Enhancement Program (LARE) on boat registrations to comply with new United States Coast Guard standards. He noted that the fees are still there, but they look different because of the change.

John Davis, Deputy Director for the Bureau of Lands and Cultural Resources, provided his report. Davis said that \$16 million dollars included in the Departments budget for a fish hatchery did not pass, but a budget increase of \$150 million for deferred property and facilities maintenance did pass.

Davis said that the Department is having conversations with Duke Energy about relocating power lines at Prophetstown State Park so the power lines do not span across the lake. Davis also said that there would be an announcement soon about the Next Level Trails, which is a \$90 million dollar investment announced by the Governor. Davis stated that there is a focus by the Division of Fish and Wildlife to recruit, retain, and reactivate the constituents and customers by introducing them to new outdoor experiences.

Freeman asked about how the overall budget will affect the Department.

Davis stated that there is a budget formula based on what was spent last year and that most of the Divisions are getting the funds they expected. Smith added that the Department's budget is on par with prior years, but the hatchery program not being funded was disappointing.

Freeman asked if the Division of Forestry was funded.

Smith said that The Division of Forestry was funded. He noted concern with the Senate version of the budget, which would have moved the Division of Forestry to a general fund, but the Division of Forestry budget remained a dedicated fund.

Davis said that the Department gets funding from several sources and gave as an example that the Division of State Parks has 70% of funds coming from gate fees, inns, and camping and 30%

coming from general funds. Davis said the Division of Forestry has a \$4 million dollar revenue stream and partial funding from the general fund, the Division of Fish and Wildlife is totally funded by license sales, and the Division of Nature Preserves uses general funds and funding from trusts or private money.

The Chair asked if the Department does not always get deferred maintenance funds in the budget. The Chair asked if the deferred maintenance funds will cover Department needs.

Davis said that the Department always gets preventative maintenance funds and capital funds, but the \$150 million dollar deferred maintenance is a lot of money to use in a span of two years. Davis said that the deferred maintenance funds do not go directly to the Department, but will go to the State Budget Agency (SBA) and the Department will apply for funds.

Freeman asked who decides who will get the deferred maintenance funds for projects.

Davis said the SBA and the budget committee will decide which projects receive funding and the factors used to make those decisions.

Freeman asked if the Department could lobby to get priority for Department projects.

Clark stated the Governor included \$150 million dollars in the budget for deferred maintenance because his constituents and groups have voiced concerns Clark observed that the agencies competing for deferred maintenance funds is limited and it would be tough to spend that much money in two years.

The Chair said that the deferred maintenance money is specific in its use for maintenance of facilities and properties and those funds cannot be used for highway repairs or other similar projects.

Clark stated that the Indiana Department of Correction (DOC) facilities would be an eligible agency for deferred maintenance funds, but the Indiana Department of Transportation could qualify for federal funds so they may not be on the same funding scale as the Department or DOC.

Karns asked if the \$150 million dollar deferred maintenance pool was not spent in two years if the remaining money would roll into the general fund.

Clark stated that any remaining deferred maintenance funds could revert to the general fund.

Karns asked how long SBA has to approve and distribute deferred maintenance funds after the Department identifies a program and applies for funding.

Clark said that a form is submitted to SBA who sets the agenda for the budget committee. Clark remarked that it is unknown if SBA will be more lenient than in prior years but observed, "in this case we have a line item in the budget that's specific deferred maintenance. I would think

because we have that pocket of money that the budget committee would be taking those requests as they come in.”

The Chair asked if the Department already has list of properties and facilities that will be the priority for maintenance.

Clark stated that each division has a list of properties that are in need of maintenance.

Approval of minutes of meetings held on January 22, 2019

The chair called for a vote to approve the minutes of the meeting, held on January 22, 2019, as presented.

Tim Karns moved to approve the minutes of the meeting held on January 22, 2019, as presented. Bill Freeman seconded the motion. Upon a voice vote, the motion carried.

Consideration of administrative rule proposals governing fish and wildlife in 312 IAC 9

Linnea Petercheff, Division of Fish and Wildlife, presented this item. Petercheff stated that the Division is requesting approval of the rule proposals governing fish and wildlife. She noted that the rule revision process began in 2018 and input was received from the public through the “Got Input” process online and by mail.

Petercheff stated that most of the fisheries rule changes were requested by fisheries’ biologists with the exception of the bluegill bag limit. Petercheff stated that some proposed changes include adding new fish species to the endangered species list, eliminating the commercial harvest of roe-bearing species, and defining terms used in the 2019-2020 Indiana Fishing Regulation Guide.

Petercheff said there were anglers who requested a daily bag limit for bluegill through the “Got Input” process and that the changes proposed were not based on biologic or scientific information. She said to alleviate concerns about the 25 fish daily bag limit for vacationers fishing away from their home, a change is proposed to possess 75 bluegill.

Petercheff stated that some of the proposed rule amendments involving wildlife include making the ruffed grouse an endangered species of bird, adding a definition of “relaxing snare lock”, and adding rabbits to the list of mammals that a landowner or tenant can take without a permit if it is causing damage to property.

Petercheff said that rule changes that were requested by the public included eliminating the hunter orange requirement for ground blinds used for deer hunting, allowing air rifles and air bows to be used for deer hunting, and eliminating the requirement for a continuously burning light that can be seen for at least 500 feet while hunting furbearing mammals at night. Petercheff stated there are some changes to permits relating to migratory birds, and a proposal to eliminate education requirements for nuisance wild animal control permit holders who have had a permit for 25 years or more.

Davis stated that the Department's rulemaking process provides for the public to offer input but does not allow for discussion. He expressed the belief that it was important for the Department to bring the fish and wildlife rule proposals to the Advisory Council for discussion and dialog.

The Chair said that when a rule amendment goes to the Natural Resources Commission (Commission) and is preliminarily adopted it could leave the public with the perception they do not have a say in the process. Referral and discussion before the Advisory Council allows for discussion and changes to proposed rules prior to preliminary adoption. He noted that in the past there were times after preliminary adoption of a proposed rule amendment when changes were made, but it is helpful for the public to have input in the process before a matter goes before the Commission.

Davis stated that he appreciates the Advisory Council forum that allows the Department to have a conversation about matters that might go in front of the Commission and to allow for open dialog with members of the public.

Freeman observed that one of the amendments would add the sisco species to the endangered species list but noted that the amendment will not change the declining habitat of the fish. He inquired how adding the fish to the endangered species list changes the habitat and if it a forgone conclusion that the sisco species of fish will be lost.

Brian Schoenung, Chief of Fisheries, Division of Fish and Wildlife, stated that adding a fish to the endangered species list would not alter the habitat, but it does allow the Department to give more focus and attention in reviewing environmental impacts to the lakes where the endangered fish exist. He stated that the Division has formed an internal committee to implement requirements to ensure that a species of fish is not lost by identifying areas of concern and contributors to poor water quality. Schoenung said that then the Department can focus on best management practices on the lakes where there is concern.

The Chair asked if adding ruffed grouse to the endangered species of birds will help save the species.

Mark Reiter, Director, Division of Fish and Wildlife, said that adding a species will not help the habitat but by adding ruffed grouse, it will allow environmental reviews to more fully consider its habitat.

Freeman asked if there was a hunting season for ruffed grouse.

Reiter confirmed that there was not a hunting season for ruffed grouse.

Karns ask for more information regarding the proposed changes in the daily bag limit for bluegill not being based on biologic or scientific data.

Schoenung stated that daily bag limit of 25 for bluegill has come up several times in the past and there are concerns that continue to be discussed. He noted that from a biological standpoint, the

25 fish bag limit for bluegill is not restrictive enough to impact the population levels although the bag limit could spread out the harvest over time thereby elevating the species. Schoenung said the scientific concern is that people taking greater numbers of bluegill could impact the populations in individual lakes but there is not sufficient scientific studies to say that a bag limit would help. Schoenung acknowledged there are some lakes that will never have good bluegill populations. Schoenung stated that there is a lot of public support for an increased bag limit for bluegill.

Freeman said that he was concerned about people who make a living in commercial harvest of roe-bearing species and asked if there is a large number of commercial fishers harvesting these species.

Schoenung stated that there are two commercial fishers licensed to take paddlefish and shovelnose sturgeon and that the proposed rule amendment would impact them. Schoenung said that eight years ago the U.S. Fish and Wildlife Service, Section for Scientific Authority, notified the Department and other states that have roe fisheries about inadequate regulations jeopardizing caviar exports. Schoenung stated that the group of eight state agencies developed a “management target for the species”, but the challenge is that none of the states were able to collect data to identify if they are meeting the target due to a lack of revenue. Schoenung stated, “within Indiana, we have a pretty strong sense that our regulations on those particular species are inadequate right now and that we are probably seeing some over harvest.” He said that law enforcement has identified that there is disregard for the current regulations of harvest of roe-bearing species and from a management standpoint, it is difficult for the Department to spend time and resources when there are only two people utilizing the resource and not a lot of revenue for the Department is generated.

Davis asked how much revenue is generated from two commercial fisher licenses.

Schoenung said that the amount of revenue generated from two commercial fisher licenses is approximately \$1,800 dollars.

Davis said that on the Ohio River there is “concurrent jurisdiction” so that a Kentucky fishing license allows people to fish parts of the Ohio River that are in Indiana, with the exception of the embayment of creeks. Schoenung added that the agreement with Kentucky includes commercial and sport fishing.

The Chair asked if the majority of commercial fishing is done on the Ohio River.

Schoenung stated that there is substantial roe harvesting of shovelnose sturgeon on the Wabash River, but those fishers are licensed in Illinois.

The Chair asked if other surrounding states have eliminated their commercial fishing licenses.

Schoenung said that other states have not eliminated commercial fishing licenses.

The Chair asked if the two fishers who have commercial fishing licenses could get a license to fish in another state.

Schoenung stated that he was not certain but that he thought fishers would be eligible to get a commercial fishing license in Kentucky.

The Chair recognized Andrew Byrne, commercial fisher.

Byrne said that he is a licensed commercial fisher that he has fished the Ohio River for 10 years. Byrne stated that currently Kentucky and Indiana sell a non-resident commercial fishing license to an out of state fisher from the other state, but if Indiana eliminated the commercial fishing license then Kentucky would no longer sell the non-resident commercial fishing license. Byrne said that eliminating commercial harvesting of roe would impact him and his cousin financially noting that he has \$60,000 dollars invested in a processing facility. Byrne said that he is not opposed to rule changes but that he does not agree with eliminating the commercial harvest of roe.

Byrne said that if the Department looked at his fishing data they would see that more fish are being caught. Byrne added that in 2018 he caught a thousand pounds of caviar, which was more than he had ever caught, and in 2019 he reported having already caught more than a thousand pounds of caviar. Byrne said that he and his cousin are in one boat and are the only two people in Indiana commercial fishing for roe-bearing species on the Ohio River.

The Chair asked if there is additional information on the people who ignore commercial fishing regulations and if eliminating the commercial harvest of roe-bearing fish would stop the people who are ignoring the current regulations.

Schoenung said there have been some individuals prosecuted who did not have commercial licenses. He said the cost of a law enforcement investigation into illegal fishing far exceeded the amount of revenue generated by the commercial fishing license.

Karns observed that even if the commercial harvest of fish is eliminated there would still be people fishing illegally and the same resources would have to be allocated for investigation and enforcement.

Byrne stated that he and his cousin have never had a fishing citation after 10 years. He offered that they should not be punished because other people fish illegally.

Freeman asked if the processing facility was just for processing the roe.

Byrne stated that his facility processes the roe and the paddlefish meat for sale and he does not harvest any other species.

Freeman asked to explain how the revenue is generated from the commercial fishing license.

Schoenung stated that three fishing licenses that are required for commercial fishing for roe-bearing species on the Ohio River. The licenses include the commercial fishing license, the roe harvester license, and the roe processor licenses, the fees from which help the Department regulate the commercial fishing industry.

Freeman asked if there was a way to determine how many pounds of fish are illegally being taken out of the river.

Schoenung stated it would be hard to determine how many pounds of fish are being illegally harvested from the river. He said that the vast majority of commercial fishers are licensed in Kentucky because the license is cheaper and the fishers have access to a greater section of the river. Schoenung said the Department does not have the data to support the level of harvest because it is hard to get good age data on the fish. He said the Department does not want to have a program that caters to one person. Schoenung said that the same amount of work, time, and resources are used regardless of how many licensed fishers there are and the revenue that is generated from the program is not enough to cover the amount of work that goes into the program.

Byrne stated that in the past the Department did allow paddlefish to be open to sport fishing and that could be done again to allow for funding to study the fish. Byrne noted that there have been and will continue to be issues with people who break the law regardless.

Freeman said that the Department is to protect natural resources for the citizens in Indiana and the Department is saying that the size of the fish is getting smaller, but that Byrne is saying the amount of fish caught is larger. Freeman asked Byrne if he has noticed that the size of the fish is smaller.

Byrne said “no” and added that he measures the fish and files reports documenting the fish that are caught.

Clark asked if there are Kentucky residents who hold an Indiana non-resident roe harvest license that might be impacted if Indiana eliminates the commercial roe harvest license.

Schoenung did not respond with respect to whether there are Kentucky residents who hold Indiana roe harvester licenses but instead responded that there are Indiana residents who hold Kentucky roe harvester licenses.

Clark inquired “...so if we do away with ours, from a reciprocal standpoint, does Kentucky react and do away with their licensing..” of Indiana residents?

Byrne responded that he would speculate that Kentucky would respond in that way.

Schoenung stated that he would need to discuss that with Kentucky authorities and “hammer that out.”

Clark said, “I had an opportunity to go to Oklahoma last fall. [Oklahoma] DNR has an actual research facility for the roe species there... If you have a recreational or a commercial license

you are required to bring your catch to this facility and they process it for you.” Clark noted that Oklahoma has made a significant investment in the study of the roe resource and in Indiana without a budget or legislative effort, the Department would not be able to sell enough licenses to fund a program like the one in Oklahoma. Clark said that the data that Oklahoma receives is valuable in managing Oklahoma’s fish and roe species. Clark said that if Indiana is going to have fishers measure the length and submit forms on the fish species that the data will be significantly less than a fish biologist could get.

The Chair said that if there were a rule change on hunting dates then that affects a person’s hobby, but by eliminating the commercial harvest of roe-bearing species, it affects a law-abiding person’s business and livelihood. He said that he understands the need to balance the resource, but the concern is that Kentucky and Illinois will still be able to harvest roe-bearing species and Indiana is considering a change that has a significant impact on a few people. The Chair stated “it would be nice if [the Department] could find some middle ground that does not put these gentlemen out of business.”

Freeman asked if there would be a possibility of adding language to a proposed commercial harvest rule change that could grandfather in existing commercial license and ~~do~~ not issue any new licenses.

Schoenung said there is currently a cap on the amount of licenses and it comes down to if the Department is willing to manage a program for one individual. He noted that the Department has to be good fiscal stewards of Indiana’s resources. Schoenung said that the most of the Department’s revenue comes from sport fishing and the federal excise tax associated with sport fishing that the Department cannot get from commercial fishing, which means that the commercial fishing is subsidized by revenue from sport fishing.

Karns asked how much revenue Kentucky receives from their commercial fishing program and stated that the interest should be there for Indiana and Kentucky to collaborate, to monitor, and study the roe-bearing species to find out the impact.

Schoenung said that for the last six years the eight states that have commercial roe fishing have applied for a grant for commercial fishing data collection and Indiana has not been awarded any funding. He noted that the Oklahoma data collection model that Director Clark spoke about collects and sells a percentage of the roe to fund that program. Schoenung said that several states have attempted to find resources necessary to get the science and data on roe-bearing species and having sport fishers subsidize the commercial fishing program is not something the Department supports.

The Chair said the concern is the Department could potentially put someone out of business by eliminating the commercial harvest of roe-bearing species. He offered that the Advisory Council will need to make a recommendation to the Commission and encouraged the Department to look at all available options. The Chair said that the issue of commercial harvest of roe-bearing species is understood and that there will be continued discussion before a decision would be made.

Smith asked what other state fish and wildlife agencies had already adopted rule changes on increasing the size limit and reducing the bag limit for sauger, walleye, and saugeye.

Schoenung said that Kentucky, Ohio already adopted rule changes, and West Virginia is doing additional research.

Consideration of a Water Sale Contract Application of the Golf Club at Eagle Pointe, LLC under IC 14-25-2 and 312 IAC 6.3

Vanessa Gonzalez, Division of Water, presented this item. Gonzalez explained that a contract for the sale of water under IC 14-25-2 must provide compensation to the state of not less than \$33.00 per one million gallons of water. The current Golf Club at Eagle Pointe, LLC (Eagle Pointe) contract has been in place since July 27, 2009 and expired March 17, 2019. Gonzalez said that Eagle Pointe would like to enter into a new ten-year water supply contract with the State of Indiana to irrigate the golf course grounds and fill the waterfall feature.

Gonzalez stated that Eagle Pointe is requesting a contract that provides for an annual maximum of 115 million gallons of water per year, which is an increase of 30 million gallons of water a year from the previous contract. She noted that the volume is consistent with Eagle Pointes' intake capacity of 250 gallons of water per minute.

Gonzalez said that Indiana has the right to 160,000-acre feet of water supply storage and the volume is equivalent to 122 million gallons of water per day. She stated that annual limits of all current water withdraw contracts from Monroe Lake is 20.42% of the available water supply volume and the proposed Eagle Point contract would increase the contractual limits to 20.68% of the available water supply volume.

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 meeting 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.

Smith asked if there was any water prioritization discussions with the proposed contract.

Gonzalez stated said that prioritization of water is addressed in the proposed contract observing that in the case of a drought water for golf course would not be allowed.

Tim Kearns moved to approve the Hearing Officer's Report, as the Advisory Council's report to the Commission under 312 IAC 6.3, and that the Advisory Council recommend that the Commission approve the Water Sale Contract Application of the Golf Club at Eagle Pointe, LLC

under IC 14-25-2 and 312 IAC 6.3. Bill Freeman seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting adjourned at 11:13 a.m., ET.