

NATURAL RESOURCES COMMISSION
Roosevelt Room, Fort Harrison State Park Inn
5830 North Post Road, Indianapolis (Lawrence), Indiana

Minutes of March 16, 2010 Meeting

MEMBERS PRESENT

Bryan Poynter, Chair
Jane Ann Stautz, Vice Chair
Robert Carter, Jr., Secretary
Patrick Early
Mark Ahearn
Thomas Easterly
Larry Klein
Donald Ruch
Phil French

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Debra Michaels

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Chris Smith	Executive Office
Cheryl Hampton	Executive Office
Dan Bortner	State Parks and Reservoirs
John Bergman	State Parks and Reservoirs
Terri Price	Water
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Bill James	Fish and Wildlife
Steve Hunter	Law Enforcement
John Bacone	Nature Preserves
Phil Bloom	Communications

GUESTS PRESENT

Glenn R. Cole	Sam Butler	Lora Neisler
Jerry Knap	Dale LaCognata	Jerry Schilling
William Myers	Kelly Nielsen	Sam Chimloj
Michael Heady	Richard Bedwell	Jeff Pratt
Don LeCount	Don Bonsett	Eric Miller
John Blast	Kathy Smith	Dick VanHouzer
Doug Allman	Chris Powell	Jack Hyden
Morris Day	William Davis	Holly Hadac
Shane McKee	Anne Sterling	Casey Pheiffer
Michael Thomasson	Tom Smith	John Stitzman
C Jay Sagers	Jerry Moll	Greg Groninger
Beth Ross	John Goss	Tom Walsh
Susan Davis	Jan Turner	Anna Lawrence
Jennifer Cunningham	Susan Knilans	Phyllis Price
Doug Davis	Kelsey Snoggins	Michael Lanham
Cindy Corwin	Bill Seegers	Don Morris
David Zehr	Martin Schwartz	Marcus Borkholder
Floyd Miller	Darryl Borkholder	Stephanie Byrde
Rick Miller	Jack Corpuz	Lester Eicher
John Zehr	Orlamar Borkholder	Joseph Miller
Lauren Roberts	Christopher Byrte	Cliff Carley
Robert Foyut	Mark Fink	Marian Patience Harvey
Tim Julien	Don Gorney	Jason Stephenson
Mike Loy	John Christopher	Ryan Carroll
Prescilla Herochik	Daniel Schepman	Ce Ann Lambert
Brad Thurston	John Blanton	Jerry Moll
Shane McKee		

Bryan Poynter, Chair, called to order the regular meeting of the Natural Resources Commission at 10:10 a.m., EST, on March 16, 2010, at the State Park Inn, Fort Harrison State Park, 5830 North Post Road, Indianapolis, Indiana. With the presence of nine members, the Chair observed a quorum.

Larry Klein moved to approve the minutes of the Commission's January 12, 2010 meeting. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Reports of the Director, Deputies Director, and Advisory Council

The Department Director, Robert Carter, Jr., provided his report. He said the sales of the *Outdoor Indiana* magazine have increased "quite a bit". "We've tripled our distribution in the email communication, and we're real happy about that." Director Carter said the Division of Law Enforcement has 22 new Conservation Officers presently in the Law Enforcement Academy who are due to graduate on April 16, 2010. He also noted the Natural Resources Foundation received a \$10,000 grant from the Friends of the National Rifle Association. "We thank the

National Rifle Association for that grant” that would be used for the Hoosier Outdoor Experience that will be held at Fort Harrison State Park in September. Carter encouraged everyone to attend the Indiana State Museum’s display of artifacts from the Lincoln Financial Corporation. Director Carter reported that Tom King is the new CEO for the Indiana State Museum. “We’re real happy to have Tom onboard.”

Chairman Poynter reflected, “I had the opportunity to see the Lincoln exhibit. There’s a permanent collection as well as a traveling exhibit. It is worthy of anybody’s visit to the museum to see that. It’s a treat to have it here at the Indiana State Museum.”

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. He said the Department would be sorting new Indiana legislation and “getting some issues for summer study committee.” The DNR continues to “frugally manage our business.” Davis observed that with the NCAA Final Four Tournament coming, Central Indiana inns are currently full. He advised that a meeting is set for later in March to discuss white nose syndrome and to determine whether Indiana caves will be open in 2010 after being closed in 2009.

Davis announced that a dedication for former Commission member, Father Damian Schmelz, would be held on April 30 at Donaldson Wood, Spring Mill State Park. He said Commission members could contact Ginger Murphy in the Division of State Parks and Reservoirs to be included on the invitation list.

Chairman Poynter noted that the Department is operating under some “pretty substantial” fiscal restraints. He asked Director Carter if “anything unusual” was going to happen that would pertain to the current budget issues.

Director Rob Carter replied, “As with all State agencies, we continue to see a shortfall in state revenues.” Carter noted that some divisions, for instance, State Parks and Fish and Wildlife are self-funded through use fees but other divisions including Nature Preserves and Outdoor Recreation rely on the revenues. Carter expressed hope that DNR will not have to cut services or close parks like some states have already had to do. Carter stated, “We hope to communicate with our constituents if we are forced to make a significant cut in a certain area.”

Ron McAhron, Deputy Director, Bureau of Resource Regulation, provided his report. He said, “We have done a lot of work on” cost recovery for Commission and DNR activities pertaining to conservancy districts as required by IC 14-33-2-20. McAhron noted that the Indiana General Assembly considered the matter but in the end took no action on it, so DNR’s work resumed and he believes the issue will be presented to the Advisory Council in April and returned for further consideration by the NRC in May.

McAhron asked Chris Smith, Administrative Assistant and Legislative Liaison for the DNR’s Executive Office, if he was going to report on the 2010 Legislation. Smith replied, “It’s a full schedule. I’d be happy to today, but I know there’s a lot going on.”

McAhron concurred and stated, “We can go through those next time and see what the Governor’s actually signed.”

Patrick Early, Chair of the Advisory Council, reported the Advisory Council did not meet in February.

CHAIR AND VICE CHAIR

Update on Commission and Committee activities

Chairman Brian Poynter said that because the Commission will not be traveling as much during the summer of 2010 in order to be “cost sensitive”, the summer meetings would probably be scheduled to begin at 11:00 a.m. to allow Commission members time for updates and program discussions.

John Davis addressed the Commission concerning the tentative date of May 18 for the next Commission meeting. He said the hope had been to hold the meeting at the Indiana State Museum, but the State Museum does not have an available conference room. He said the State Museum could host the Commission on May 11 or May 25.

The Chair suggested one alternative would be to maintain the May 18 date and hold the meeting at the Conference Center in the Government Center South. After brief discussion, he requested alternatives be reviewed and an update provided later to the Commission members by email.

Vice Chair, Jane Ann Stautz, reported the AOPA Committee would meet today after the Commission meeting.

DNR, EXECUTIVE OFFICE

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

The Chair asked whether there were any items for referral to the Advisory Council. No new topics were presented for referral to the Advisory Council.

PERSONNEL ACTIONS

Consideration of personnel interview for the position of Property Manager for Public Access South

Bill James, Chief of Fisheries for the Division of Fish and Wildlife, presented this item. He said the Division of Fish and Wildlife was “pleased to recommend William ‘Bill’ Seegers” for the position of Property Manager at the Public Access South. This position oversees the heavy construction unit for the southern half of the state. He said for 15 years Seegers has worked part-time or full-time for the DNR. “We bring him to you with our highest recommendation. He has proven himself as an outstanding department employee and representative.”

Thomas Easterly moved to approve appointment of William “Bill” Seegers as Property Manager at the Public Access South. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of personnel interview for the position of Assistant Manager for J. Edward Roush Lake, Huntington, Indiana

Dan Bortner, Director of State Parks and Reservoirs, presented this item. He recommended Dave Story for consideration for the position of Assistant Manager for J. Edward Roush Lake. Bortner said Story has worked for the division for 15 years and “we feel he’s duly qualified. He has a good long history with us, and he knows what it takes to take care of these properties.”

Thomas Easterly moved to approve appointment of Dave Story as Assistant Property Manager at J. Edward Roush Lake. Patrick Early seconded the motion. Upon a voice vote, the motion carried.

Consideration of personnel interview for the position of Assistant Property Manager for O’Bannon Woods State Park, Corydon, Indiana

Dan Bortner also presented this item. He said Stan Baelz has been employed for several years as the Park Manager at Buffalo Trace Park, Harrison County. Bortner reported that Baelz also has experience with the U.S. Forest Service, the National Park Service, and Colorado State Parks. Baelz is from Harrison County and “is ready to step up into a leadership position, so we’re real excited that Stan has decided to come onboard with us.”

Jane Ann Stautz moved to approve appointment of Stan Baelz as Assistant Property Manager for O’Bannon Woods State Park. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF NATURE PRESERVES

Consideration of the dedication of the Low Gap Nature Preserve, Monroe County

John Bacone, Director of the Division of Nature Preserves, presented this item. He said the proposed Low Gap Nature Preserve is located in Morgan-Monroe State Forest and is “very significant for a number of rare species.” The Low Gap trail runs north and south. Bacone said both the Division of Forestry and the Division of Nature Preserves recommend dedication of the site as a Nature Preserve.

Patrick Early moved to approve dedication of the Low Gap Nature Preserve. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

Consideration of the dedication of the Miller Ridge Nature Preserve, Brown County

John Bacone also presented this item. He said the proposed nature preserve is in Yellowwood State Forest on the border with Brown County State Park. He referenced the yellowwood tree (*Cladrastis kentuckea*) as being the “most notable species found” in Yellowwood State Forest. “There is also a number of rare species in this high quality state forest.” He said that both the Division of Nature Preserves and the Division of Forestry recommend dedication of the site as a Nature Preserve.

Donald Ruch moved to approve dedication of the Miller Ridge Nature Preserve. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF LAW ENFORCEMENT

Consideration of Petition for Rule Change filed by Alan Abair, to amend rule pertaining to the use of the paragliders on public access sites; Administrative Cause No. 09-161L

Major Steve Hunter, Division of Law Enforcement, presented this item. He said the property for consideration is DNR’s Lake Wawasee Public Access Site. Alan Abair wishes to conduct paragliding activities at the access site and other DNR properties. Hunter said in the summer of 2009 there was a conflict of paragliding at the site and that Abair was contacted by conservation officers and was asked to “cease his activities”. A group of “out of state individuals” were also participating in the paragliding and were also told to cease activities. Major Hunter said this paragliding activity involved a motor boat towing individuals by means of a cable attached to the glider which disconnected from the boat, sailed around, and then landed on the Lake Wawasee Public Access Site.

In September, Abair filed a petition with the Commission. As reflected in the backup materials for this agenda item, the petition stated: “I am trying to get the rule number 312 IAC 8-2-9 amended or redesignated to allow paragliders to be launched and landed at the park at the boat launch area at sought end of Lake Wawasee.”

Major Hunter said, “Indiana boating laws apply to parasailing on Lake Wawasee. The property rules do not apply, but do apply to the public access site. Parasailing is prohibited there by property rule.” He explained that by property rule, Abair would need to apply for a special use permit. Major Hunter said Abair was given the indication that the Division of Fish and Wildlife would not be in favor of permitting paragliding on Lake Wawasee access site. He said the Division of Law Enforcement suggests that Abair apply for the special use permit.

Chairman Poynter observed. “I understand parasailing is different than paragliding which is different than tube kiting and tow kites and all this other stuff. What I heard you say, Major Hunter, is that the course of action Abair has is to file for a special permit. If he is denied that permit, he would then have an opportunity for an appeal. Is he here, by the way?”

Major Hunter responded, “No.” Abair was not present.

The Chair added, “He contacted our office by email.” A copy of the email was copied on yellow paper and distributed to Commission members at their seats immediately prior to the meeting. “Out of respect for the petitioner’s concern and his request, I think there’s enough confusion around some of these definitions, that if we fasten on to his specific request regarding paragliding, it would only lead to further frustration. In reading some of the background material from the committee..., my personal opinion, and I would invite the DNR and Commission to weigh in on this, it might make sense to defer to the Advisory Council to look at this in a much more broad-based way.”

John Davis reflected: “Mr. Chairman, I think that is an excellent suggestion. I think exactly what we should do is to clarify all these different terms. You know there are just a lot of different situations. We have our own properties, our reservoirs. We have property on Lake James and Lake Wawasee, and we have lots of different scenarios and lots of different activities. I think Steve Hunter is exactly right to outline what this person has as an option to do now, which is just to apply for a special permit for right now. We will take that on to look at all the terms, different scenarios, and also what kind of crowd would result on a lake, and times.” The Commission packet refers to boardsailing, kite boarding, tube kits, tow kites, and paragliders. If these are recreational activities that people want to pursue, we need to have a handle on what they are and how they should be administered.

Tom Easterly said, “I have a process question. If we wanted to do something like this, wouldn’t we want to change a rule or a law and put the requirements that you have to meet in order to do this, so we’d have to go through the normal process where you propose a rule, and there’s a hearing? I think just saying ‘yes’ to this with no conditions around it, doesn’t make a lot of sense.”

Chairman Poynter added, “I agree. And, there’s even more complication to this because I don’t want him to be frustrated, and I don’t want more issues for the Division of Law Enforcement officers up there. That gets to be a circle. I think there’s enough confusion about these sports, that there are probably things that we have yet to even uncover. I read in the background that there’s different rankings and qualifications that they have for their associations. That’s beyond my scope. I think it would be best if one of the members of our Commission offered a motion to send this to the Advisory Council for further review so we can look at it in a more comprehensive fashion.”

Larry Klein asked, “Are we creating a storm out of nothing? If it’s one fellow? If there is a process by which Abair could obtain his permission to do this already in place, let that happen first and just advise him that the petition is premature. Apply for your permit, like you’re supposed to, and then come what may. You’re talking about one guy. Now we’re talking about promulgating rules through the State of Indiana and investigating reservoirs.”

The Chair responded, “There are existing rules. That’s part of what I’m looking at here.”

Klein added, “As opposed to kicking it off to some other group for study—what if he gets his permit?”

The Chair responded, “Well, I think the recommendation from Major Hunter is that they wouldn’t get their permit.”

Easterly added, “And then they have to appeal and then that goes on.”

Mark Ahearn reflected, “And then that gets it on Jane’s agenda” on the Commission’s AOPA Committee.

Jane Ann Stautz interjected, “That’s right.”

Ahearn continued, “Are we going to request the Advisory Council look at this and say either we need a change in policy, we need clarification in existing rules, or the existing rules are sufficient as written, or some combination.

The Chair responded, “Yes.”

Ahearn continued, “I think that’s what we’re waiting to have them come back and tell us, so that we address it in a rule-making mode, rather than adjudicatory mode.”

Chairman Poynter replied, “Again, we’re bound somewhat by limitations of the rule-making process. And, I think this might be a little easier and a little more amenable to the citizen’s petition that we did receive, or his request, for this rule to be changed. I think he has an intention, and some of the unintended consequence of his request, yields a bigger question for us to look at, as it pertains to types of properties, hours of operation, qualifications for safety and all sorts of other things, in a little bit more of a comprehensive way that then can be brought to us to amend the existing rules, if necessary, to add perhaps nonrule policy documents, if it’s outside the scope of a rule, etc. That would be what I would hope that the Commission would do here so that we can move this forward efficiently.” We would not be approving Abair’s petition to amend the rules to authorize paragliding specifically at the Lake Wawasee Public Access Site.

Thomas Easterly moved to direct this item to the Advisory Council for recommendations as to the possible need for rule adoption regarding the referenced sports on DNR properties. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Comprehensive Fish and Wildlife Rule Enhancement Project

Sandra Jensen, Hearing Officer, presented this item. She said the Division of Hearings was asked to provide “timeframes and benchmarks” on items the Advisory Council recommended for rule adoption.

She explained rule amendments relating to the chasing and taking of raccoons and opossums would be presented for preliminary adoption under Agenda Item 11. Jensen said the DNR was

committed to bringing forward the rule changes that would implement telecheck for deer and turkey; however, fiscal issues require this item be tabled for further consideration at the September or November Commission meeting. After consulting with representatives of the Division of Fish and Wildlife, Jensen reported the determination that the rule amendments relating to the display of hunter orange on occupied ground blinds, the establishment of comprehensive deer license, and the use of crossbows by senior deer hunters should be brought forward as part of the DNR's comprehensive deer rule amendment package which is being prepared for preliminary adoption for the May Commission meeting. Jensen said that the Department was involved in an ongoing review of fisheries and fishery management. The Department's intends to report on the issue of size limits for small mouth bass at the July Commission meeting.

Jensen said the Department ubmitted a timeline for bringing forward language for preliminary adoption or reports relating to the items the Advisory Council recommended for further study by the Department. She noted that Department professionals were present to address any questions pertaining to that timeline.

Chairman Poynter clarified that this report resulted from the Commission's request for an ongoing update on the status of substantive rule amendments resulting from the Comprehensive Fish and Wildlife Rules Enhancement Project.

Jane Ann Stautz asked whether the Department remained "on target" for bringing forward its report regarding the small mouth bass size limit. Jensen deferred to Linnea Petercheff, who confirmed that the item was scheduled for the July meeting.

Prior to the introduction of Agenda Item #10, the Chair commented with respect to Agenda Items 10, 13 and 11 that public comment would be limited to ten minutes. "It's not meant out of any disrespect, but I have to make some judgments about who is speaking on what subjects, and if you're for or against. So, I hope you respect that."

NRC, DIVISION OF HEARINGS

Consideration of recommendation of DNR Committee formed to consider citizen petitions regarding the chasing and hunting of coyotes and foxes with dogs; Administrative Cause Nos. 09-069D, 09-073D, and 09-074D

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She said in 2009 the Commission received a petition requesting that dogs not be allowed to chase, kill, injure, maul, pursue, track, hunt, harass, or disturb in any matter, a coyote or fox in the wild. The Commission also received two petitions requesting that dogs not be allowed to hunt, injure, maul, pursue, track, harass, take or kill a fox or coyote in a confined area.

Petercheff explained that the Coyote Petition Report provides information on the purpose of running enclosures, concerns about running enclosures, as well as information relating to the taking of coyotes and foxes in Indiana and their sale and importation into Indiana. A revised petition was submitted to the Commission, following the November 2009 meeting, regarding the hunting of coyotes in the wild with dogs. The revised petition requested that it be made “unlawful to hunt, injure, maul, pursue, track, harass, take or kill coyotes or foxes where the coyotes or foxes come into live contact with the dogs.” The intent of the revised petition was to stop unethical hunters who hunt with dogs for the sole purpose of attacking and killing live or wounded coyotes or foxes.

Petercheff said the Department does not currently authorize running or training enclosures through a special permit or authorization, but she acknowledged “some states have those permits in place.” By authorizing trappers to live-trap coyotes and foxes during the trapping season, and to possess them during the remainder of the trapping season without a special permit, the present law allows for the legal sale of coyotes throughout the remainder of the season. She acknowledged because the definition of “take” also includes “chase”, chasing coyotes and foxes is allowed.

Petercheff stated that dogs can be an effective tool in hunting coyotes and foxes and reported the DNR’s belief that individuals should be able to continue to use dogs for this purpose in the wild. The number of hunters using dogs to hunt coyotes and foxes in Indiana is unknown, but she noted the use of dogs for coyote hunting is allowed in all Midwestern States. According to Petercheff, individuals need to be able to continue to hunt with as many tools as possible “while still maintaining fair chase” because coyotes are moving into urban and suburban areas where they are in conflict with humans and pets. With limitations imposed on the discharge of firearms by many city ordinances, the methods of taking these nuisance animals are limited.

Petercheff said the DNR recommended the Commission amend the rules to disallow individuals from chasing or killing coyotes or foxes, in a confined area, with the use or aid of dogs. She said the Division of Fish and Wildlife is aware of one location in Indiana, in Green County, that currently provides the purpose of dog training in such an enclosure.

The Chair announced he would first call upon individuals in favor of adopting the Department’s recommendations on this item.

CeAnn Lambert, representing Indiana Coyote Rescue and Ban Live Bait Dog Training, addressed the Commission. She thanked the Department for their decision to revise its report to disallow running pens in Indiana. “The Department spent a lot of time and work on this second and revised report, and it shows.” Lambert said her comments would pertain to her revised petition that was referenced by Petercheff. She said it was not her intent to deny ethical hunters the ability to use dogs while trapping, retrieving and hunting, but she wanted to stop “unethical hunters who hunt with dogs for the sole purpose of attacking and killing live coyotes and foxes.”

The Chair asked Lambert if she was in support of the language as presented. Lambert responded, “Yes, yes.”

In response to the Department's report, she stated that coyotes originally occur in Indiana with packs of 20 coyotes being reported in Lake County in 1816. She said the expansion of urban and suburban areas into the coyote's natural habitat causes conflicts. Hunting a coyote with five or six "kill dogs" is not fair chase. She concluded, "I would like for conservation officers to have as many tools as possible to be able to interfere in behaviors that are abusive by dogs to coyotes and foxes in the wild."

John Goss, Director of the Indiana Wildlife Federation, spoke on behalf of the Sportsmen's Roundtable and the Indiana Wildlife Federation. He said the Sportsmen's Roundtable had not yet had time to circulate the recommendations and requested time to develop consensus on both recommendations. Goss, as the Director of the IWF, offered his support for the recommendations made by the Department. He stated the IWF has a long history in opposition to high-fence hunting preserves and asks that a new version of enclosures for dog training or killing coyotes and foxes not be allowed. The Federation believes in prohibiting the commercialization of Indiana wildlife and urged the Commission to eliminate a possible "new adventure into the enclosed training and hunting of coyote and fox."

The Chair said, "So you are in support of the language?"

Goss confirmed, "Support DNR".

Ann Sterling of the Humane Society of the United States said she was representing the 183,000 members and constituents in Indiana. "We support the petition to not allow the pens to be operating in Indiana." Sterling said she was also representing the Indiana Animal Shelter Federation, who also was in opposition to running pens.

The Chair called upon individuals who asked to speak against the petition.

Jack Hyden, President of the Indiana Beagles Alliance, addressed the Commission. He said the chasing of a coyote with a dog for the purpose of bringing the coyote around to the gun is as much fair chase as the deer hunter who use chemicals to mask their odor, hide 20 feet in a tree, and pour deer urine on the ground to catch the attention of an unsuspecting buck. Hyden said, "The Alliance's position is, this is all fair chase. And, hunting coyotes with a dog is tradition and should continue to be allowed."

Hyden said the Alliance would have somewhat of a problem with a very small pen but explained that the training pens allow a hunting dog to build abilities and learn to track coyotes efficiently. He urged the Commission to establish a committee of coyote people and Department staff to further consider this issue.

Doug Allman, resident of Fishers, and member of the Indiana Wildlife Federation, Indiana Deer Hunter's Association board member, and member of the Sportsmen's Round Table stated that he supports fair chase dog hunting.

Holly Hadac commented that in the past five years, according to the Centers of Disease Control, coyotes represent .2% of rabies cases in the whole United States.

Hadac discussed the role of fair chase in ethical hunting observing that the general public would not tolerate hunting without fair chase. She noted a statement made by Colonel Crider of the Department of Natural Resources, Division of Law Enforcement, “by definition, hunting is a pursuit of a wild animal with the intent to capture or kill. Pursuit, the actual chase, precedes a kill. Without it, hunting is merely killing. The chase then authenticates a hunt and in turn, the kill puts an end to the chase. In this view, the kill is the exception and escape is a rule. Simply put, a chase is fair if the animal has a reasonable chance of escaping a pursuit of a hunter. If the animal has little or no chance, the chase is not fair.”

Chairman Poynter asked Sandra Jensen how many comments were received from the public. Jensen made referenced to the large expanding file folder placed on the conference table before the Commission. She responded the file folder contained comments which met the criteria set forth in Information Bulletin 55. She also informed that there was another folder half the size that did not meet the requirements.

The Chair then asked the Commission members if they had any questions or comments regarding the Department’s report to “Consider Citizen Petition Regarding the Chasing and Hunting of Coyotes and Foxes with Dogs.”

Patrick Early moved to approve the report to Consider Citizen Petition regarding the Chasing and Hunting of Coyotes and Foxes with Dogs. Mark Ahearn seconded the motion with a question. Ahearn proceeded to inquire “where we go from here.”

Sandra Jensen explained that “typically” with a citizen’s petition the committee will review the petition and develop its recommendation. If the recommendation of the committee is for a rule amendment, then the draft rule language will be brought forth to the Commission for preliminary adoption.

The Chair replied, “That’s what we asked and that’s what we received, is that this would go forward to create ruling which to match the recommendation of the Hearing Officer.”

Ahearn ask who would “take the lead” in drafting the rules?

Jensen answered, “The Division of Fish and Wildlife, with my assistance.”

Larry Klein asked, “So there’s going to be another round of hearings as the rule’s promulgated. Again, then, it will be back here twice more?”

Jensen replied that rule language consistent with the Department’s report would come forward for preliminary adoption. Everyone would have an opportunity to see it, and the Commission would have an opportunity to review it. At that time, “it would go forward in its normal course for fiscal review, for public hearings, and come back again for final adoption.”

Ce Ann Lambert asked the Commission, “Are we talking about both petitions here. When you say “adopt the DNR’s revised report” does that mean that you won’t be hearing anymore on the taking of coyotes and foxes outside the wire, by dogs?”

The Chair responded, “No, there are two specific citizen petitions here. That is one of them, so I assume that both of those citizen petitions would be addressed in rule language that would come forward.”

John Davis replied, “I don’t think there would need to be a rule for that, because the recommendation says we continue to allow.”

The Chair responded, “Because it is an existing rule, correct?”

Davis replied, “It’s not prohibited.”

Sandra Jensen said that the Department was recommending that hunting by use of dogs in the wild continue to be allowed, as at present, and noted the only thing that would be coming forward would be ruling to fulfill the Department’s recommendation to prohibit the taking of fox and coyote with dogs in enclosure areas. She said that the report was intended to address all three of the citizen’s petitions that came forward and the Commission’s request for a more comprehensive review.

Ce Ann Lambert commented, “So that means my petition for “in the wild” is dead now?”

Jensen replied, “Right” adding that the Department was not recommending any changes with respect to the hunting of coyotes in the wild.

The Chair commented, “And, that’s what we ask the Commission to do. I misspoke, and I apologize. The issue that we would be directing through this motion, would be to adopt this report, of which the outcome of that would be a potential rule change language that you would see through our normal rule-making process, as it pertains to hunting in enclosures. And, that their recommendation is to not make any further changes to the existing rules that exist regarding our presenting hunting laws, as it pertains to dogs.”

Linnea Petercheff provided that the rule package would be ready for preliminary adoption at the May, 2010 Commission meeting.

Patrick Early moved to approve Hearing Officer’s report to Consider Citizen Petition Regarding the Chasing and Hunting of Coyotes and Foxes with Dogs. Mark Ahearn seconded the motion, as amended. Upon a voice vote, the motion carried.

Recommendation for preliminary adoption of amendments to 312 IAC 9-3-14 that govern the chasing and taking of raccoons and opossums, Administrative Cause No. 10-038D

Linnea Petercheff, Staff Specialist for Division of Fish and Wildlife, presented this item. Petercheff explained that the proposed amendment to extend the opossum and raccoon running

season to February 1 through October 25 was recommended by the Natural Resources Advisory Council through the Comprehensive Fish and Wildlife Rule Enhancement Project. Additionally, the Department is proposing to open the raccoon and opossum hunting and trapping season on the same date (Nov. 8), adding seven more days to the trapping season. Petercheff acknowledged a request by some individuals that the season open before November 8 but said the Division of Fish and Wildlife believes opening the season earlier is unwarranted.

Petercheff explained that the Indiana Sportsman's Roundtable developed a taskforce consisting of a representative from the Indian Bowhunters Association, Indiana Deer Hunter's Association, Indiana Tree Dog Alliance and Fur Takers of America who ultimately agreed to extend the running season for raccoons and opossums until October 25.

John Goss, on behalf of the Indiana Sportsman's Roundtable ISR, said the ISR voted "unanimously in favor of the extension" to the running season. Goss noted that the agreement has not been communicated to all the members of the groups represented by the Sportsman's Roundtable but stated his belief that "everybody's going to be okay with that."

Patrick Early asked Goss if the Indiana Bowhunters Association was part of the group that suggested the October 25 date.

Goss replied, "Yes", adding that he believed the Association presented the amendments to the membership during their annual meeting in December.

Jerry Moll, with the Hoosier Tree Dog Alliance said "We're the ones that proposed this initially." Moll said he wanted to thank Linnea Petercheff for all her hard work. He also thanked the Natural Resources Advisory Council, Indiana Sportsman's Round Table, Indiana Deer Hunter's Association, Indiana Bowhunters Association, The Fur Takers of America, and Indiana Trappers for their compromise on the amendments.

Jack Corpuz, from Indianapolis, commented, "Although the Sportsman's Roundtable and the Board had given approval to this, the membership has not" noting that several members of Indiana Bowhunters Association, the Deer Hunters Association, and Sportsman's Roundtable, are not satisfied with this proposed rule. He said that the Deer Hunters Association's website indicates a 9 to 1 ratio in favor of keeping the dogs out in the woods for the month of October.

Corpuz stated that "currently" the coon dog hunters are allowed 320 plus days a year for hunting. The archers are allowed a month in the early season. Corpuz observed that it is shared resource noting that there are probably many more archery hunters in Indiana than there are coon dog hunters. He urged the Commission to consider that coon hunters and archery hunters have to be able to use the same woods, stating that a problem is presented when coon dogs have been running in the woods the night before a person is deer hunting in that woods.

Doug Allman agreed with Corpuz stating that he has "no problem with the extension from the time period back behind season" but observing that "night time dog running impacts deer movement."

The Chair commented, “Pat I know that your Advisory Council dealt with at length. Do you have anything to add?”

Patrick Early explained that the Advisory Council directed the Sportsman Alliance to work on a compromise approximately two years ago. Early added that “personally, I’m opposed to extending it into October, because I agree with what Jack and Doug just said.” Despite his stated surprise that this is the agreement they reached Early noted that the sportsman’s groups had apparently done what was asked of them.

Allman added that he had only learned of this agreement less than two weeks before and explained that the groups’ leaders may have reached this compromise but “the rank and file aren’t aware of this.”

The Chair thanked Petercheff for her clarification. He then asked the Commission members for any further questions.

Mark Ahearn commented to the Chair, “As a Commission, in the same way that we can vote down for preliminary adoption, we could also amend if we thought that’s what we wanted to do as a group. We may not want to entertain that discussion, or we may to entertain it when we get to the final adoption.”

Larry Klein commented, “We’re talking about eleven days here, right? Nobody has an issue with the earlier start; they have an issue with extending and lengthening the season by eleven days.”

Jane Ann Stautz said, “If the Commission would decide to preliminary adopt as recommended here, during the course of the hearings and the discussion, if there’s further consensus, or may have the opportunity to adjust the date at that time as well.”

The Chair stated that the Commission is “tasked” with preliminary adopting this recommendation that would extend the season explaining that through the formal process these issues can be more formally vetted and the “natural outcropping might yield a different result when this does come back for final adoption.”

Mark Ahearn commented, “It seems that maybe there’s enough difference of opinion on this that eventually we’re going to confront the issue of what do you think the right or correct thing to do is, and we’ll just have to make that call.”

The Chair commented, “Good comments from the Commission members.” He then asked if there were any further suggestions or comments.

Patrick Early moved for preliminary adoption to the amendments to 312 IAC 9-3-14, governing the chase and taking of raccoons and opossums, with the option to revisit the ten-day compromise. He said, “Like some others, that was not something that I knew was in the offing until just in the last few days. I have had significant feed-back from deer hunters over the last year and a half, that they’re strongly opposed to that.” Early said he wanted to ensure that

everyone gets to share the woods and resources equally. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

The Chair commented, “Obviously, the message is clear that this is going to be an issue of priorities. So, when this issue comes back around, I challenge all the organizations to make it clear and understand the process that anything that changes during this preliminary adoption period has to be a natural outcome of any written comments that are made.” The Chair then thanked all the Commission members for their input.

Consideration of recommended report of the Natural Resources Commission with respect to the Petition for Dissolution of the Marian Heights Conservancy District; Administrative Cause No. 09-203C

Sandra Jensen, Hearing Officer, presented this item. Jensen provided a “revised” report to the Commission. She informed that on December 3, 2009, the Vigo County Circuit Court referred to the Commission a petition for the dissolution of the Marion Heights Conservancy District. She explained that the process for the dissolution of a conservancy district is the same as the process for the establishment of a conservancy district.

Jensen explained that the petition for dissolution by Marian Heights Conservancy Districts (the “MHCD”) indicated that they had experienced a loss or change of circumstances by which they had lost their benefits. The MHCD had the authorization to provide water services for a group of customers within a geographic location. Marion Heights was also approved to provide sewer service. However, they did not act upon that authority, consequently there was no infrastructure or assets associated with sewer service.

Jensen informed that Marion Heights had entered into a contract with Indiana-American Water Company for (the “IAWC”) to purchase the MHCD assets “and provide water service on behalf of all the customers of Marion Heights Conservancy District.” The process required the approval of the Indiana Utility Regulatory Commission (the “IURC”). IAWC and MHCD jointly petitioned the IURC on the approval to sale the assets. During the time of the public hearing, the IURC had not yet issued its decision. “So, my original report to you indicated that if the IURC had approved the sale of assets of Marion Heights to Indiana-American Water Company, that in fact with change of circumstances would be completed, Marion Heights would have in-fact lost its benefit.”

Jensen told the Commission that after submittal of her original report; the attorney representing IAWC notified her that the IURC approved the sale of MHCD’s assets to IAWC, therefore causing the district to lose its benefits. Based upon the content of the report and information provided by the petitioners, she recommended the revised report be approved and submitted to Vigo County Circuit Court.

Patrick Easterly moved to approve the revised report for the petition for dissolution of the Marion Heights Conservancy District. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of public hearing and comments, and recommendation regarding final adoption of 312 IAC 9-10-4 governing the game breeders license; LSA Document #09-486(F); Administrative Cause No. 09-059D

Sandra Jensen, Hearing Officer, presented this item. She said that the rule amendment package would provide clarity with respect to possession, housing and sale of wild animals possessed under a game breeder license. The amendments also address the conduct of inspections by conservation officers and the ability of the license holders to correct noted violations. She informed that the Commission granted preliminary adoption of the rule package in May 2009 and since the preliminary adoption, all the procedure requirements for the adoption of the rule “have been fulfilled.” Jensen reported that a public hearing was held on January 7, 2010 and “was well attended by game breeder license holders” who were all in support of the rule as proposed.

Jensen noted that at the preliminary adoption there was concern expressed that the fencing requirements were insufficient to address the potential spreading of disease from inside the enclosure, to Indiana wild deer populations. She noted that the concern was also raised in a written comment received during the public comment period. Jensen noted that the comments suggested that the proposed eight foot fence height was insufficient and suggested that the fence be ten feet high or that an eight foot fence be required to have a Y or T-shaped extension at the top. She continued by noting that the comments also suggest that trees close to fencing could possibly fall during a windstorm and should be cut around the perimeter as well as a double fence required in order to avoid any body contact between animals inside and outside the fenced area.

Jensen advised that the Department response to the written comments explained that the fencing required by the rule, as published, is the same as the requirements of the Indiana Board of Animal Health. The Department acknowledged that the majority of escapes were the result of gates being left open or fallen fences due to tree damage or wind storms. She said that the Department also acknowledged if the tolerance to deer breaching a fence is low, some researchers recommend a 3 meter, or 10-foot high fence. Jensen stated the 10-foot fence issue left her “in a little bit of a quandary as to what to do with that” and therefore said she would defer to the Commission for their determination on the fencing requirements only. Jensen informed the Commission members that the fencing requirements are identified in 312 IAC 0-10-4 (k)(1). Jensen concluded, “That is the only part of the rule that I have any question about, whatsoever.” She said that the remainder of the rule pack “is fully supported by all of the comments that have come forward.” She recommended that the rule, as published, be given final adoption with the exception of subsection (k)(1), which she deferred to the determination of the Commission.

Michael Thommason, attorney for the Indiana Deer and Elk Farmers Association (IDEFA), addressed the Commission. He said that the rule was a product of collaboration between the IDEFA and DNR. “The staff has been delightful, they have been cooperative, and they have listened.” He stated that the Governor’s office has taken an interest in this particular product, realizing that farmers raising cervid elk and deer as primary product is an important industry. Thommason concluded stating that IDEFA “highly” approves and supports the rule.

Thommason noted language error on page 15, (B) of the report which reads, “Periodic crowding of animals of less than four (4) months of age may be necessary for the following.” He said that the language did not make sense. “It was discovered late in the game” and it was decided that the language would better read “Periodic crowding of animals for a period of up to four (4) months, may be necessary for the following.” He stated that animals under four months can’t receive tuberculosis inoculations. “That’s the only glitch in this thing. It’s a great rule, and we appreciate this opportunity.” Thommason noted that he understood through discussions with Jensen and Linnea Petercheff that this rule language would be corrected at a later date through the exotic mammal rule.

The Chair noted that Sandra Jensen had informed him of the error in the rule.

Mark Ahearn asked Thommason if “something bad would happen” if section (B) were removed from the rule.

Thommason replied, Yes, I think so. There are times when you’re going to have animals together for a period of time, which may fall contrary to overcrowding.” He stated that section (B) needed to be in the rule, in order prevent violation of any other rule, “because there are particular reasons for having this kind of provision in there.”

Brad Thurston, a retired physician, who stated that he has raised deer for over 30 years, addressed the Commission with respect to the fence requirements. He explained that there is only one source of research that supports the need for a fence over eight feet high. According to Thurston, the 24 captive deer used in that research project were actually taught to jump over that height of fence. Thurston stated that even after being taught and being “pushed” with dogs, people and other forms of harassment only 15% were able to jump over an eight foot fence. Thurston noted that the state of Michigan has a ten-foot fence rule for the reason that “The eight-foot has to be an effective height.” He said that with Michigan’s heavy snow cover, you can have a fence height that is less than an effective eight-foot.”

Thurston said that he has studied deer diseases for the past 15 years and expressed his opinion that this rule has the best possible rule to prevent disease transmission. “This has been a remarkable effort, for the first time in 30 years I’ve been doing it, that the DNR has come to the table and we’ve been able to work together and form the best possible policy for both sides.” Thurston said he “strongly” recommended adoption of the rule as presented.

Donald Ruch asked for Thurston’s to comment on the advantage of a single fence over a double fence for the prevention of spreading diseases.

Thurston replied that the reason people have pushed for a double fence was concern of nose to nose contact with wild deer. He stated that a double fence takes up a “huge” area because the fences have to be wide enough that you can mow between them. Thurston also noted that it’s a huge cost, it costs about five-dollars (\$5.00) a linear foot.” He said that in one case it was discovered that disease was transmitted from the wild into the pen by ravens and not nose to nose contact. Thurston noted that a more effective method than a double fence would be a single “hot

wire.” He noted that a single hot wire on the inside of the fence, will keep the captive animal away.

Thurston referenced Mark Ahearn’s question concerning periodic crowding. He informed that many of the farmers perform artificial insemination and tuberculosis testing, which often requires periodic pen crowding. He said the test results are then read several days later. If the cervid are moved, another test would have to be performed in 90 days, which could result in a recatch by use of tranquilizers. He noted that the “periodic crowding” makes it much safer and humane for the animals.

The Chair said “There is great good will that has been created through this process, which certainly we don’t want to disrupt and we know you have been very active in working with our staff.” He noted that the Commission also received comments during previous meetings concerning the validity of fencing and security. The Chair then asked Mark Reiter, Director for the Division of Fish and Wildlife, if he had any comments concerning the fencing issue.

Mark Reiter said that the Division of Fish and Wildlife is “very very concerned about disease transmission.” We have evidence that ten-foot is required and we would like to see if there wasn’t a way where we can get to that ten foot, on down the road through some common agreement.

John Davis made reference to another rule “traveling” through the Commission’s process.

Sandra Jensen commented that rule being amended in this rulemaking is the same rule that was preliminarily adopted in January of 2010 for additional amendments to address the Cervid Game Breeder License. She explained that the rule has already been submitted to the Office of Management and Budget (OMB) for fiscal review and any additional fencing requirements would likely pose some fiscal change. Therefore, Jensen noted that the rule would probably have to be recalled from OMB and resubmit it with the additional fiscal information. Jensen observed, however, that an amendment to that rule would pose a much shorter delay than allowing that one to go all the way through the process and then start this again at some later point.

The Chair asked if it would be reasonable to adopt the proposed rule “as it stands” and “charge the further discussion through the exotic rule going through the addressing of the fencing issue.”

Jensen replied, “I certainly think that it makes perfect sense. One of the things that I heard from Mr. Thommason speaking on behalf IDEFA and others at the public hearings was that this is great for them because it’s a black and white that they’ve never had before. They want this to go forward.” Jensen stated that she “personally” felt that conservation officers would benefit as well.

The Chair asked Michael Thommason for his thoughts.

Thommason commented, “I think that is the only way to go on this,” noting that two years worth of effort has gone into this rule.

The Chair said, “So, we’ve created more good will. I like that.”

Rick Miller, President of IDEFA, expressed to the Commission his belief that no other farmer or rancher goes to greater lengths to protect the health of their animals.

Jane Ann Stautz noted that the fencing requirements contained in this rule are consistent with those requirements of the Indiana Board of Animal Health. She observed that in further considering the fencing requirements the Department should communicate and consider consistency with the Board of Health.”

The Chair noted that the Commission’s mission goes beyond this industry and is to ensure that “we protect the people’s animals”, as well. And, I think that’s where we hear, there is a discrepancy on height of a fence, and that’s what we’re addressing.

Doug Allman noted that he would like for the rule to include a ten foot fence requirement. Allman noted that he sat on the cervid committee for two years and at one time there was an agreement for ten-foot fencing with a single strand of barbed wire. According to Allman the industry’s own expert testimony concluded that deer could jump an eight-foot fence.

Patrick Early moved for the approval the proposal “as it stands” with the Commission looking at the fence issue as part of the exotic animal rule. Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried.

Consideration of final action on readoption of rules governing oil and gas (312 IAC 16); LSA Document #10-33(F); Administrative Cause No. 10-003G

Sandra Jensen, Hearing Officer, presented this item. She explained that the rules are proposed for readoption without any amendments. A Notice of Intent to Readopt the proposed rule was posted to the Indiana *Register* on January 13, 2010. No comments were received from the public. Jensen recommended the readoption of 312 IAC 16, without amendments.

Thomas Easterly moved to approve the readoption 312 IAC 16, rules governing oil and gas. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of final action of readoption of rules governing other petroleum regulations (312 IAC 17); LSA Document #10-38(F); Administrative Cause No. 10-004G

Sandra Jensen, Hearing Officer, presented this item. She advised that the rules are proposed for readoption without any amendments. A Notice of Intent to Readopt the proposed rule was posted to the Indiana *Register* database on January 20, 2010. No comments were received from the public. Jensen recommended the readoption of 312 IAC 17, without amendments.

Thomas Easterly moved to approve the readoption of 312 IAC 17, rules governing other petroleum regulations. Larry Klein seconded the motion. Upon a voice vote, the motion carried.

Consideration of final action of readoption DNR property use standards (312 IAC 8); LSA Document #10-37(F); Administrative Cause No. 10-002P

Steve Lucas, Hearing Officer, presented this item. He said for consideration was recodification of 312 IAC 8 which governs public use of a DNR property. Generally, a “DNR property” is land and water owned or licensed by the DNR but does not include public freshwater lakes or navigable waterways. Unlike most rules which are administered by one division or possibly two, Lucas said 312 IAC 8 applies to all divisions which manage property and to the Division of Law Enforcement. “The report to the Commission for this recodification is longer than most, and looks as if it was written by a committee, because it was.” He thanked John Bergman for serving as the small business regulatory coordinator and Marian England for undertaking the formidable task of organizing the interested divisions. He also thanked Dale Brier, Lee Casebere, Ric Edwards, Dan Ernst, Major Steve Hunter, Mitch Marcus, Laura Minzes, Ginger Murphy, and Mike Mycroft for their efforts in putting together the essential parts of the report. Lucas recommended that 312 IAC 8 be recodified without modification.

Mark Ahearn moved to readopt 312 IAC 8 without amendment. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

Consideration of Second Amendment to nonrule policy document that assists with determining “Riparian Zones within Public Freshwater Lakes and Navigable Waters”; Administrative Cause No. 10-019W

Steve Lucas also presented this item. He said amendments were proposed to a nonrule policy document that outlines guidelines to help determine boundaries between riparian zones on public freshwater lakes and navigable waters. “The document is today applied more commonly to disputes on public freshwater lakes.” Lucas said the nonrule policy document is frequently used by the public and sometimes becomes central to adjudications. The need to be current and accurate may be more pressing than with some other nonrule policy documents. Proposed changes included a cross-reference to the definition of “lake” at 312 IAC 1-1-21, a cross-reference to a partial listing of public freshwater lakes that became effective on January 1, the correction of a clerical error in the *Third principle* for delineating boundaries, language simplification in the *Fourth principle*, and references to new rule provisions for minimum distances between “group piers”.

Larry Klein moved to approve, as recommended, amendments to “Riparian Zones within Public Freshwater Lakes and Navigable Waters”. Mark Ahearn seconded the motion. On a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 12:08 p.m., EST.