

NATURAL RESOURCES COMMISSION

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

Minutes of November 16, 2010 Meeting

MEMBERS PRESENT

Bryan Poynter, Chair	Phil French
Jane Ann Stautz, Vice Chair	Tom Easterly
Robert Carter, Jr., Secretary	Donald Ruch
Mark Ahearn	Doug Grant
Patrick Early	R. T. Green
Brian Blackford	

NATURAL RESOURCES COMMISSION STAFF PRESENT

Stephen Lucas
Sandra Jensen
Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Chris Smith	Executive Office
Shelly Reeves	Executive Office
Mark Reiter	Fish and Wildlife
Linnea Petercheff	Fish and Wildlife
Mitch Marcus	Fish and Wildlife
Brady Givens	State Parks and Reservoirs
Dan Bortner	State Parks and Reservoirs
Scott McDaniel	Law Enforcement
Scotty Wilson	Law Enforcement
Phil Bloom	Communications
Steve Morris	Outdoor Recreation
Carman Jackson	Outdoor Recreation
Laura Minzes	Museums & Historic Sites
Bruce Beesley	Museums & Historic Sites
Jim Glass	Historic Preservation

GUESTS PRESENT

Holly Hadac	Jan Turner	Giner Christie	Steve Key
Beth Ann Ross	Rich Trivett	CeAnn Lambert	Nichole
Jack Hyden	Doug Allman	Glenn Lange	Bill Freeman
Tracy Eads	Jack Corpuz	Eric Jones	Debby Knox
Mitchelle Menker	Faye Booth	Anne Sterling	Sarah Hayes
Jeff Altman	Randy Wigle	Steve Cecil	Don Gorney
Carolyn Rose	David Stevens	Chris Powell	Suzanne Murray
J. David Stevens	Susan Davis	Jerry Moll	Charles Murray
Shannon Cross	Marc Kramer	Cynthia Myers	Laura Nirenberg
Joanie Rumble	Christin Tank	Holly Haddock	Max Jones

Bryan Poynter, Chair, called to order the meeting of the Natural Resources Commission at 10:00 a.m., EST, on November 16, 2010, at the Garrison, Fort Harrison State Park, Indianapolis, Indiana. With the presence of eleven members, the Chair observed a quorum.

Jane Stautz moved to approve the minutes of the Commission's September 21, 2010 meeting. Doug Grant seconded the motion. Upon a voice vote, the motion carried.

Reports of the Director, Deputies Director, and Advisory Council

Robert Carter, Jr., Director of the Department of Natural Resources provided his report. Director Carter reported that deer season began November 12th and that the Department has had record sales for hunting license. He said that Colonel Michael Crider is continuing his effort to raise money for the Sportsman Benevolence Fund "for the donation of deer meat for the needy." Carter said Division of State Parks and Reservoirs closed the season with "some really awesome numbers as well. So, we've had a good recreational season this summer."

The Chair said he was pleased by record hunting license sales. "That's especially indicative of probably the economy, but none-the-less good news for the Department of Natural Resources."

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, provided his report. Included was an update on cooperation with other States and the Federal government regarding efforts to control Asian carp. Chain link fencing at the Fort Wayne Eagle Marsh was completed 50 days from inception at a cost of approximately \$200,000. "We're pretty proud of how fast we moved there." The DNR had Purdue conduct a DNA study within the Fort Wayne Eagle Marsh, tracking the carp, as well conducting a spawning study that should indicate carp movement and reproduction within the area.

Davis recognized the presence of Colonel Michael Crider. "I think today is his last NRC meeting before he retires." Davis expressed personal appreciation for Colonel Crider's efforts during their years working together.

Ron McAhron, Deputy Director, Bureau of Resource Regulation, provided his report. He said his Bureau was coordinating with Homeland Security and IDEM concerning the current Indiana

drought. “We were fortunate this year. The dry spell hit after the normal peak demand—after grass-watering seasoning had passed. But we’re concerned that if we have a dry winter that that will set us up poorly for the spring”. McAhrn said DNR continues to coordinate efforts to further restrict water withdrawals. DNR has asked the Army Corps of Engineers to slow the normal release from the flood control reservoirs to help keep water resources available should the dry period be prolonged. McAhrn stated he would provide an update in January. “Hopefully, we’ll have some good steady rains in the meantime.”

Patrick Early, Chair of the Advisory Council, stated several agenda items considered by the Council were on today’s agenda and would be discussed during the meeting.

CHAIR AND VICE CHAIR

Updates on Commission and Committee activities

The Chair joined John Davis in praising the service of Col. Mike Crider. “As a trusted colleague and someone who has worked very closely with you and this Commission, I can’t thank you enough for all the work that you do. A lot of it goes way beyond the light of day on behalf of Hoosier hunters and sportsmen with the Benevolent Fund, and I know you’ll continue that afterward.... I can’t thank you enough for your friendship and leadership within the Division of Law Enforcement. I thank you for all your service.”

Chairman’s Statement to the Commission and Guests

I wanted to take this opportunity to comment on two agenda items that will be heard later this morning – Agenda Item #5 (coyote penning) and Agenda Item #8 (deer rule amendments).

Needless to say, individually, these items have elicited very strong emotions and passions and the majority in this room are here with interest in the outcomes. Thus, I wanted to make a few brief general comments regarding the proceedings of this morning as they apply to both of these items ahead of their introduction in the agenda.

First, this Commission insists that the integrity of the rule making process will be adhered to in all of its proceedings. They are at times cumbersome, time consuming and sometimes messy – for good reason. These two particular items are no different. In the matter of coyotes, this commission responded to citizen petitions for rule change equitably, fairly and thoroughly. In the matter of potential changes to the deer hunting rules, this commission, along with the Div. of Fish and Wildlife, has acted boldly to clarify, modify and simplify all of the fishing and hunting rules in the state over the past two years.

Second, in both of these particular concerns, at the direction of this Commission, the process for the collection of citizen input has been exhaustive. The Department of Natural Resources, including the Division of Fish and Wildlife and the Division of Law Enforcement, along with the Natural Resources Commission staffs have worked tirelessly to collect citizen input, respond to constituent comment, investigate, research, collaborate and formulate very good thorough rule packages.

Third, this is exactly what the citizens of Indiana should expect! The process works and I am very proud of the leadership of all those involved.

As has been the case in the past, as Chair of the Commission, I have insisted that civility and protocol be followed in all Commission activities. This includes integrity in the process, respect for those individuals and groups who hold opposing views and respect for Commission proceedings – including today.

I hope that with my expanded commentary on these two items at this time will aid in fostering a civil and efficient proceeding.

Regarding Agenda Item 8:

This Commission preliminarily adopted a bold rule package at our July meeting that was a result of biological review, stakeholder input and Div. of Fish and Wildlife deliberation. Almost immediately afterward, in response to numerous erroneous accusations and misinformation, I made it very clear in an open letter to nearly 250,000 deer hunters that this proposed package is not beyond further scrutiny. I stated that the Commission is committed to hearing all who care to share their thoughts and provided the necessary portal for their submission. We heard them by the thousands and are thankful for their input.

Later, I will ask this Commission to make a motion to withdraw the previously preliminarily adopted rule package and subsequently redirect the staff of the Department of Natural Resources to present a revised rule package for consideration *reinstating the general firearm seasons to its customary 16 day season length at our January 2011 meeting.*

However, this does not negate the imperative for a revised deer management plan highlighted by the need to minimize the pressures imposed by the deer herd in certain parts of our state and an emphasis on harvesting more does as a part of this management plan. There were *outstanding* components to the previously preliminarily adopted rule..., but the necessity to withdraw the currently adopted rule package and resubmit a package in January as outlined above *is* the correct measure.

Countless hundreds of hours have been invested to this point by our constituents, stake holders, the Div of Fish and Wildlife and others and I thank them for all that has occurred to this point.

Regarding Agenda Item 5:

I know of *no* issue that has become more *sensationalized and exaggerated*. Regardless of the human drama involved, realistically and frankly, this issue is remarkably similar to the current deer rule process.

The Commission adopted the report from Department of Natural Resources in March. A rule package was subsequently developed and it was published on the agenda for our May meeting. After significant outcry and public sentiment, this Commission, at my request, withdrew that item from the agenda prior to the meeting. This item had become *too* sensationalized and extremely polarizing. Prudence was required.

This action was not done in a vacuum or without much discernment by this Commission. It was the correct course of action. A group was formed who were willing to do what was necessary and what may have been asked of them. In addition, the Department of Natural Resources, including the Division of Fish and Wildlife and the Division of Law Enforcement, took the initiative to investigate the facts at hand before revising any rule package to be considered by this Commission.

Again, the voice of the citizens was heard.

I reported to this Commission in September that the working group assembled, as well as all mentioned previously, specifically sought opportunities to go and *witness* what was “alleged” to be occurring. There simply weren’t opportunities. The necessary hours were invested to understand what the issue, *in fact*, was; what the Department should do prudently; and ultimately, what this Commission should be asked to do.

All along, we promised those citizens who petitioned this Commission, and all of the other interested parties, that this issue would not be shoved under the carpet, but would be dealt with in the light of day. The hard work that was originally invested, *much like the deer rule package that was originally presented*, was in essence, completely *reworked* at our direction, and we are now presented with a substantively different rule package for consideration. Again, the correct course of action, and I applaud our Division of Law Enforcement and Division of Fish and Wildlife and this Commission for their efforts.

Conclusion:

Finally, in both of these matters, it highlights that this Commission and the Department of Natural Resources are *responsive to the citizens it serves*. This Commission has demonstrated its ability to be fair, prudent, and sensible and, arguably most importantly, resist the urge to be capricious in its methods. Admittedly, this often creates additional pressures and workloads to very competent overworked staff and, unfortunately, sometimes further delays timetables inconsistent with individual agendas. But, in these two matters, the citizens of Indiana should recognize that the correct outcomes resulted.

As it pertains to the remainder of the agenda, and in particular, the two items referenced here, I remind you that this is a public meeting, but it is not a public hearing. We wish that we could hear everyone today but, there are limits. The deer issue will be revisited in January, *with a new timetable as a result*, and more opportunity for formalized public input. The coyote issue is a preliminary adoption action. Again, more opportunity for formalized input awaits.

In an effort to be clear, this morning, I will first recognize those properly registered requesting to speak on behalf of organized groups. Next, I will do my best to recognize as many individuals as reasonable. If you are an individual or perhaps with a group of interested parties who wish to express more or less the same commentary, please attempt to organize a spokesperson and comingle your comments. Finally, if you simply wish to affirm what has already been said in previous comments and are properly registered I will attempt to recognize as many as possible into this proceeding.

I firmly believe that *with the respect and cooperation of everybody*, we could likely hear the collective voice today.

DNR, EXECUTIVE OFFICE

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

No new topics were presented for referral to the Advisory Council.

PERSONNEL INTERVIEWS

Recommendation for appointment to position of Assistant Property Manager at Tippecanoe River State Park

Dan Bortner, Director for the Division of State Parks and Recreation, presented this item. He recommended Brady Givens for the position of Assistant Property Manager at Tippecanoe River State Park. He said Givens was a 2005 graduate from Indiana University's Park and Recreation Management Program and has been employed at Pokagon State Park since 2006. "He's done everything from managing Department of Correction crews to becoming one of our experts on sewage treatment."

Givens addressed his pending appointment as the Assistant Property Manager at Tippecanoe River State Park. "I appreciate and am very excited about the opportunity. I look forward to getting to Tippecanoe River State Park and taking on new responsibilities and new challenges."

Donald Ruch moved to approve Brady Givens as the Assistant Property Manager at Tippecanoe River State Park. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

DNR DIVISION OF OUTDOOR RECREATION

Consideration of establishment and re-establishment of fees and discount system at Redbird State Riding Area and at Interlake State Recreation Area

Steve Morris, Director of Division of Outdoor Recreation, presented this item. Morris introduced Carmen Jackson, Project Manager for the Redbird State Riding Area and the Interlake State Recreation Area. He said the Interlake State Recreation Area is a 3,500-acre property being developed for off-road vehicle riding as well as hunting and fishing, adding that the Redbird State Riding Area "is more particularly directed to off-road vehicle riding."

Carmen Jackson provided brochures to each of the Commission members. She said that about five years ago the Commission established a riding fee of \$10 dollars per vehicle at the Redbird Riding Area. The fee was established as "a pilot fee for Redbird. Today we'd like to ask that this fee be a standard fee that applies to both Redbird and the Interlake State Recreation Area." She said a year after the establishment of the \$10 dollar riding fee, the Commission also

established an annual fee of \$175 for the Redbird State Riding Area. “We’d like to replace that annual fee with a discount, whereby we’re able to offer discounts of something like ten rides for \$70. The annual fee has not been selling at all, so we’d like to try something different by offering discount passes.”

The Chair asked Morris how many people visited Redbird yearly.

Morris responded the Redbird Riding Area has approximately 3,000 visitors per year. Redbird operates five days a week from April through November and two days a week from December through March.

R.T. Green moved to approve establishment and re-establishment, as recommended, fees and the discount system at Redbird State Riding Area and at Interlake State Recreation Area. Mark Ahern seconded the motion. Upon a voice vote, the motion carried.

DIVISION OF FISH AND WILDLIFE

Consideration of citizen petitions for rule changes pertaining to penning and running of coyotes and foxes and to the possession and release of furbearers, and recommendations by DNR committee which reviewed the petitions; Administrative Cause No. 10-074D

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She said the Commission received two petitions in April 2009 requesting the chasing and taking of coyotes within an enclosure, also known as “coyote penning”, be prohibited year-round. She explained the proposed rule language was the culmination of the petition process.

Petercheff said the DNR presented reports in the past on “coyote penning” that reflected concerns about the activity. These included concerns regarding disease transmission and fair chase. Reasons supporting the activity included training dogs to hunt and chase coyotes to “prepare the dogs to hunt coyotes in the wild,” as well as to keep dogs in shape and train them in an enclosure that prohibits them from being hit by a vehicle.

Petercheff reported DNR staff visited an enclosure in Greene County in September and witnessed a field trial. While illegal activities have taken place in some enclosures in other states, the DNR does not have evidence to indicate that coyotes are being purposely killed or tortured in the Green County pen. “This is not a kill pen.”

Petercheff said many provisions in the proposed rule are similar to those of other States, notably Missouri and Wisconsin. In developing the rule, the Department reviewed the rules for dog training enclosures from other States. She said the Commission must modify the field trial permit rule in 312 IAC 9-10-4 to require that these provisions be in place for field trial events under a field trial permit. The rule language would require an enclosure of at least 300 acres; have appropriate fencing to keep the coyotes and foxes inside the enclosure; provide food, water, appropriate escape areas for all coyotes and foxes within the enclosure; and provide habitat such as shade and windbreaks. There would also be a limit to the number of coyotes and foxes that could be released inside the enclosure, a limit to the number of dogs that could be released per

coyote and fox, and a limit to the number of hours dogs could chase coyotes and foxes. Petercheff said that the rules would require that all coyotes and foxes released inside the enclosure be spayed or neutered, or that only those of the same sex could be released, in order to prevent propagation in captivity (which would require a game breeder's license from the DNR), and to prevent dogs from chasing coyote or fox pups. She said the rules would require escape areas and that all coyotes and foxes released inside the enclosure be natives of Indiana caught in the wild, therefore, prohibiting the importation of a coyote or fox from another State. Petercheff concluded stating that the DNR currently allows coyotes and foxes to be possessed in enclosures much smaller than the Greene County enclosure.

The Chair commented, "Again, we'll do the best we can. I know there a lot of people that would like to have an opportunity to speak. I ask the Commission to be patient so that we can allow for ample time and consistent with what I mentioned earlier. I will try to call on those who have been here before on this issue or who are speaking on behalf of groups." The Chair then called CeAnn Lambert.

CeAnn Lambert stated, "Although I would like to speak, it's more important to me that I have Holly Haddock, Vice-President, Michigan Wildlife Rehabilitators Association and Educational Director of the Indiana Coyote Rescue Center, speak." She said she was also anxious to assure that Christin Tank have an opportunity to speak. Lambert yielded her time to them.

Christin Tank said she used to live next to an active coyote pen in rural Florida. "I am with our own group." Tank said her family started Training Not Torture (www.trainingnottorture.org). "I have lots of family living here in Indiana, and I would hate them to witness what I have seen. I believe that my experience with coyote pens started about three years ago from fox enclosure and coyote enclosure put up next to my home, and I witnessed first-hand the animal cruelty of the penned wildlife.... We're not anti-hunting, and we're not anti-gun.... Our mission is simply to make the public aware of the barbaric nature in which these pens operate and what's happening to some of the penned wildlife within them. I'm sure everyone is aware of Florida's recent ban. We believe we helped make this happen. We had countless hours of research, and we learned the nature of these pens."

Tank continued, "There may have been a time in the past when they were truly about training dogs. However, since the invention of the field trial, we feel that they are about money, the betting, and the trophies at the end of the day. The higher the dog places, the more money the breeder can make. These pens do not train the dogs for outside hunts. They actually train to compete within the pens. So, how do you tell the dog it's okay to catch a coyote on the outside but not on the inside? We just don't feel it can be done. I can assure you that the pens are no different just because of the State boundaries. I have provided the Commission with a package containing photographs that I have personally taken and video that my mother took during one of the instances next to her home. To have seen it, it is horrific. Foxes and coyotes are very similar to dogs, and my problem is why it is not considered dog fighting when we have multiple hunting dogs attacking one animal in the corner of a fence. I just ask you to take a close look at the coyotes and foxes that were killed in February of 2007 at the Carolina running pen in Alabama. It was an uncover investigation. They're being penned into these corners, and the escape areas

are blocked, and there's absolutely no place to go. They become exhausted after wave and wave of fresh dogs are released into the pens."

Tank stated, "I'd also like to know about the rule seven dogs per coyote. If you have a 300-acre pen, that's 420 dogs versus 60 coyotes. Three hundred acres may seem large, but it's really not when the home range of a fox is 2,100 acres and coyotes is ten miles. Hunters try to reason that the thrill is in the chase and not the catch. But coyotes are easy to come by and can quickly be replaced within the pen. But, you know, they don't want to be honest and report every kill. Why should they make their sport look bad? I do have a problem with the spaying and neutering of wildlife as well as all vaccinations. Who performed them? I have spoken to multiply veterinarian offices in the Linton, Indiana area, and I cannot find one that has vaccinated coyote or fox, and only one of them has ever spayed one. They can carry a parasite illness *Echinococcus multilocularis*, which has no known cure and is fatal to humans. These penned animals can easily transmit the parasites to one another, along with rabies.... In 1994, there was an outbreak of a new strand of rabies in Alabama and Florida which is directly attributed to a fox pen. The participants of the pens try to claim that the coyote pens provide a means to manage the coyote population, but this belief is false. Dr. Martin Mane stated that coyotes cannot be controlled in the wild by an occasional capture of several or many. There is no evidence in the scientific literature that support such claims. In your packages, I have also included a document on how they train the hound with the need for a pen, was not written by someone with no experience with hounds rather than a hunter himself. And, also, your package will include quotes pulled from the premier fox hunting blog on the internet www.masterfox.net where they actually speak about how they kill them in the pens. Despite the intentions of the proposed rule, there is simply no way to regulate aberrant cruelty and abuse that occurs within these pens. We strongly are urging the Commission to ban fox and coyote pens in Indiana...."

Holly Haddock, Educational Director and Vice-President of the Indiana Coyote Rescue Center, next addressed the Commission. "In the DNR's coyote petition report, the DNR states five purposes of running pens that I won't use the time here to repeat. All of those purposes can be and are conducted in the wild, including on private lands without running pens. The DNR also acknowledges there is a lack of fair chase and that zoonotic diseases are spread. The DNR also acknowledges that the people's properties being used for private gain without any monies being given back to the taxpayers. The DNR also concludes that dogs are not always used to kill the animal.... Keeping eyes closed to the truth or tell of the running pen is not a compliment to the DNR. In 2007, the Indiana DNR admitted there were three running pens to their knowledge, now they admit to knowing only about one. Stating it isn't there doesn't make it so. In the report, the DNR states: (1) acknowledgement of only one running pen, and (2) doesn't provide for fair chase, and (3) running pens are cost prohibited to exist only during the coyote hunting and trapping season, which isn't the DNR's problem or concern, and (4) the DNR's waiting until 'all entities that are currently allowed to possess coyotes legally, are governed the same', which will never happen, and (5) coyotes are a 'species of animal that can create problems for farmers', which is already dealt with in our hunting laws, and (6) the DNR can't regulate and inspect due to a lack of funding, so, therefore, (7) the DNR is going to allow this to continue? The only place where live bait is routinely unquestionably and acceptably used is in fishing. If the DNR's going to continue to believe that coyotes are not harmed in running pens, then it must (1) tax them heavily to share the revenue with taxpayers to repay the taxpayers for the removal of their

property, and (2) follow the Illinois example of not allowing the animals to be killed, and (3) accomplish this by regulation and inspection. Regular and unannounced inspections need to be required with undercover work performed. This can be done first to weed out the unscrupulous running pens, but to allow this to continue then do nothing to enforce the law is unconscionable.”

Ann Sterling said she represented the Humane Society of the United States with more than 195,800 members and constituents in Indiana. I am also testifying on behalf of Project Coyote.”

The Natural Resources Commission has been strong in its stance against fox and coyote pens up until this point, and we thank the Commission and its staff for the time spent on this issue. However, we are opposed to establishing a permit system for fox and coyote pens, and request that the Natural Resources Commission vote down this proposal in favor of one that includes a provision for no new enclosures.

Harming wildlife is inherent in pens. Regardless of intent, dogs catch and tear apart the captive wildlife. The evidence of this is clear, in some cases the killing of animals is encouraged, in other cases it’s accepted as a byproduct by participants. Time and again—no matter the state, the size of the pen or the number of dogs released—fox and coyote pen operators admit to animals being killed by dogs. At some point, a portion of the animals are killed by dogs and the pen owner must restock.

If the Commission chooses to adopt a regulation package that codifies pens, the state will most certainly experience the problems inherent in southern pens – including illegal trafficking of wildlife and huge competitions involving dozens of animals killed. Make no mistake, these same permit provisions have been tried in other states and have failed to prevent dogs harming enclosed wildlife, disease outbreak threats and rampant illegal activity related to animal trading. Stopping fox and coyote pens before they proliferate in the state is a wise move to save the costly resources required for law enforcement.

I understand that the Commission has created a relationship with the one pen currently operating, but the Department of Natural Resources certainly cannot vouch for the actions of future operations permitted by the system. Good wildlife policy is not formed by creating a regulatory system to accommodate one individual. The DNR has stated that “regardless of the regulations in place governing the chasing of coyotes in enclosures, there will always be some illegal activities.”

In response to a recent law enforcement survey of southeastern agencies allowing pens, 75 percent of respondents describe the current level of illegal activity in their enclosures as “medium,” or “high.” Many of these states have similar permit regulations as those under consideration today. Additionally, 75 percent of respondents agree or strongly agree that the benefits of having pens do not outweigh the problems associated with them.

It is unwise and brash for Indiana not to learn from the experiences of other states. If Indiana were to permit these facilities, it would be moving in the opposite direction of other state agencies that are increasingly looking for ways to phase out or prohibit these facilities. Five major state investigations, and the DNR’s own investigation into the matter, have yielded over

50 arrests and over 1,000 citations during the past few years. The Florida Fish and Wildlife Conservation Commission prohibited fox and coyote pens with a unanimous final vote this month. And it should be noted that the state tried a permit system similar to the one proposed today and were never able to approach compliance with their regulations.

To prove even the most minor permit violations a costly law enforcement investigation is required. Upon visiting a pen, law enforcement cannot ascertain the source of animals standing in front of them, when they were stocked, how many are in the pen, how many may have died during a recent competition, and how many dogs have been released upon them lately. Even if these regulations were enforceable or could prevent wildlife harm or disease occurrence, which, again, other states have found impossible, the larger question here is not “can” we regulate pens, but “should” we. When passing a rule to restrict the live coyote trade to pens, the NRC and DNR could not have been clearer in its point that commercialization of live wildlife can be anathema to our wildlife management model. If passed, these regulations will codify the idea that buying and selling animals is endorsed by our wildlife agency.

Finally, the DNR was correct in noting that the image of hunting could be harmed by allowing pens. The majority of individuals would not understand the concept of neutering a coyote to have that animal placed in a pen to be chased by dogs in a competition, and how the DNR could justify spending resources, those of hunters or not, on regulating this activity as conservation. This regulation package is a mis-step, and includes a glaring omission in failing to prohibit the permitting of more pens. Indiana residents expect the NRC to spend its resources on efforts to conserve wildlife and habitat, not spend significant time and money to ensure that a very few people can continue to participate in a private-property practice that is dependent on commercializing wildlife in such a particularly brutal way.

Steve Cecil, President of the Indiana Wildlife Federation addressed the Commission. He said that the Indiana Wildlife Federation [IWF] is a state-wide organization of approximately 1,300 members representing individuals as well as more than 40 conservation clubs. “We are dedicated to the wise use of both consumptive and non-consumptive of our country’s fish and wildlife resources.” He said that many of the members hunt, fish and trap and some of them breed and hunt with dogs. Cecil stated that the IWF is fundamentally opposed to the proposed administrative rule changes that would allow fox and coyotes to be chased within fenced areas for several reasons.

1. “The IWF is a firm supporter of the North American Model of Wildlife Conservation, a set of conservation principles that is the basis for much of the success of fish and wildlife management in the last 150 years. The model was originally developed and is now maintained primarily by hunters and anglers. Most states and the federal government adhere to these principles.

The heart of the Model is the concept that wildlife is owned by no one, and held by government in trust for the benefit of present and future generations. This proposed administrative rule flies in the face of this principle of this principle by allowing the capture of fox and coyotes for the purpose other than food and fur and allows individuals to own these animals, preventing equal access by the public to publicly owned game.

2. Allowing the confinement of these animals in abnormally high numbers greatly increases the risk of disease that could easily spread to wild animals. All you have to do is to look at the outbreak of TB among a number of captive cervids in southern Indiana last year to know that disease regulations are never universally followed and the risk of animals escaping at some point from their captivity is always present.
3. And finally, we do not think that this practice falls into the determination of fair chase. To most sportsmen and sportswomen, fair chase means the unfettered ability of wildlife to escape when pursued. Putting up any type of fencing that attempts to keep animals from escaping, no matter how large an area violates fair chase hunting and pursuing ethics.”

Cecil concluded stating that IWF’s opposition to the proposed rule changes is consistent with their previous position regarding private ownership of public resource and of wildlife enclosure operations.

Laura Nirenburg, Founding Director of Wildlife Orphanage in LaPorte, Indiana, spoke next. “We’ve been watching this issue for three years. It’s interesting, because if you recall back to the summer of 2008,” when “Sandra Jensen presented her report, she specifically put in that report that if there were three pens illegal in the State of Indiana. I, too, would agree comfortably that the Division of Fish and Wildlife has, in fact, put a lot of effort into this.... Actually, what I’ve seen is that they’ve taken this illegal enterprise and they turned it into something that is quasi-legal. In doing so, they change their position to ‘this is only legal during trapping season’. Then on the new report that they issued, it says it is also currently legal to chase coyotes or foxes with dogs inside an enclosure outside of season with a field trial permit. So, I’m a little confused as how this natural progression came about with circumventing public input at the same time. But, that being said, this is where we are now. So, the point that I do want to stress is something that was in an article yesterday. And, information was provided by Mr. Bloom, who is the communications person for the IDNR. According the newspaper report, Mr. Bloom said ‘he admits that his Department couldn’t stop dogs from tearing apart a caught fox or coyote, but said it can’t be the facility’s intent and the regulations see to that....’ If we known that this is going to happen, it undermines the whole purpose of what the other side has been claiming—that these animals are not harmed. We know that they’re going to be harmed. Having words in regulations that claim that the intent has to be different isn’t going to prevent any of this from happening. So, I think it’s important that you know that.”

Rich Travey of Plainfield, Indiana, addressed the Commission. He stated that he “totally” supported comments from the previous speakers. “I have a lot of issues with this. I’m mainly a concerned citizen. I do work with some of these groups and volunteer. But I do see this as very similar to dog fighting, except it’s actually worse. In a dog fight, you have equally weighed opponents. The coyote is much smaller than some of these hounds that are being used. You have one on one with the dog fighting, as opposed to up to seven dogs per coyote. So, again, I feel that it’s very, very cruel. As a lifelong Hoosier, I’m also disappointed that our state would be thinking of allowing this when other States, including Florida, are banning it. It’s, again, someone said it’s a step backwards—I see that very clearly. And, as a volunteer for a rehabilitating organization, I’ve had to call the DNR to come and help with issues where wildlife has been shot illegally. The DNR has not been able to respond because they don’t have the staff.

How are you going to guarantee that these things that you say are not intended are going to be governed, when you don't have the law enforcement in place to take care of the issues that you are obligated to right now?"

Jack Hyden, President of Indiana Beagler's and Sportsman Alliance, addressed the Commission. "We have over 200 known members that are actually coyote hunters. We've spent the last four months talking to close to 200 different sporting dog groups across the State." Hyden said the Alliance whole-heartedly supported the DNR's rule package. But the Alliance believed "the rule package doesn't go far enough. We think there's no inferable data that shows that the coyote enclosures shouldn't be reduced to as little as 50 acres."

Hyden continued, "It seems like it's a whole lot easier to condemn somebody and condemn their actions than it is to defend them." He said groups like the Humane Society of the United States "have a lot of money" for advertisement. "It's easy to put these videos out that show horrific things. I'm standing here this morning to tell you that the stuff in the videos that they're showing is not happening in Indiana.... Some of those videos are coming from out West." In "the southern Indiana enclosure, if a dog catches a coyote it is banned for life."

Hyden said coyotes and foxes are supplied with "hundreds of pounds of food, along with fresh water and veterinary care. This is not a situation of dog fighting. This not where the dogs are turned loose so they can catch those animals and rip them to shreds like is being shown." He stated that the DNR Division of Fish and Wildlife visited the enclosure to investigate and observe the field trials. The DNR listened to what other people were saying, and "I've read the proposal, and I recognize the majority of what they have put in this rule package is now in place in many other States." He agreed that some States have banned dog training and field trialing in enclosures, "but there's many more States that have done nothing whatsoever and actually are leaving them open." Hyden added that other States have the same wording as in the proposed rule but with no minimum size for the enclosures. "So, from hundreds of sportsmen across the State, we're asking that you accept DNR's Division of Fish and Wildlife proposal, and ask them reduce the enclosures to a minimum of 50 acres."

Chairman Poynter asked Linnea Petercheff if she had any additional comments.

Petercheff responded to the question of "why more coyotes need to be released into the pen." She said coyotes are obtained from trappers during the trapping season. "Some of those coyotes may be adults, may be several years old, and may not have a lot of time left even in the wild. So, there's going to be an age-related mortality in that enclosure over the course of time." In past years, escape areas have always been provided, such as holes in the fence, or culverts. There have also been escape areas from the enclosures "so there's never been a consistent number of coyotes in the enclosure. The number of coyotes released in the enclosure hasn't been due to the number of dogs or dogs killing the coyotes, but rather due to natural deaths of coyotes within the enclosure...."

The Chair asked, "How long has this been going on?"

Petercheff replied the Indiana Fox-Hunters Association has been around since the 1950's. Approximately three sanctioned field trials were permitted for each of the past few years. Although under new ownership, IFHA is the same organization "that has been around for many years" and that has conducted field trials under the rules of the Masters and the National Fox Hunter's Association that limit the number of hours of chase. The dogs are graded on endurance, the number of scents they pick up, and if they are first versus last in the pack. "They're not graded on whether or not they get a coyote or they kill a coyote. That's a very rare situation."

Petercheff said the habitat within the enclosure is very much the natural habitat of a wild coyote in Indiana. The DNR observed that "lots of food" was provided, and there was water from a natural stream or pond. "As far as the finding issue, there's only one known pen in Indiana. We regulate hundreds of game breeders and wild animal possession permit holders, and one additional permit holder is not likely to be an issue for the Department staff." She said there may have been previously more pens in the State, which is why the DNR assumed there were three pens "a couple of years ago. But Colonel Crider asked his officers to determine whether or not there were any others in the State, and there have been no others that have been found to still be operating but this one. This is the only that is issued field trial permits for sanctioned events."

Petercheff reiterated the rule package limits the number of dogs to 175. Even when considering the number of acres and the number of dogs per coyote, the rules would "not multiply that out and allow 420 dogs. We limited that." She said there are permit holders who have veterinarians that spay, neuter or vasectomize a coyote that is kept in an enclosure as a pet for a known purpose, "so that's still a possibility. Just because if that isn't found in the Linton area doesn't mean that there aren't vets available. Again, we've reviewed this issue extensively."

Patrick Early asked Petercheff if there had ever been any complaints or wildlife violations against the Linton facility other than the petition to abolish it.

Petercheff replied that she was unaware of any violations at the Linton facility.

Mike Crider concurred with Petercheff's reply.

R.T. Green asked, "How long has the caged chase been going on, as far as with the fenced chase?"

Petercheff replied that the Association had been in existence since the 1950s, and fenced chasing has taken place for "a good 20 years."

Green asked, "And, have they been permitted?"

Petercheff answered that the sanctioned field trials have been permitted. "They're sanctioned, and we've issued permits for a number of years."

Green asked, "Has this facility been in use for that length of time in the Linton area?"

Petercheff said the facility has been in use for “at least 20 years” but is now under new ownership. “Some changes have been made to the fencing over the past year.”

Patrick Early asked, “So, this proposed rule actually gives us the ability to regulate something that’s not currently being regulated, correct? I mean, it’s being sanctioned by field trials, but now we’re saying we’re going to regulate this facility. It’s the only one—at this time, at least?”

The Chair replied, “Correct.”

John Davis addressed Petercheff. “I think a field trial permit doesn’t indicate that there’s a fence or not, right?”

Petercheff replied, “Correct.”

Davis stated, “So, we have field trials that happen all over, and this is the only fenced facility that we know about?”

Petercheff replied, “Right.” She added, “And the laws governing field trial permits don’t stipulate how many hours or the size of land that can be used. Of course, they typically take place in the wild. But they’re governed under the rules of the sanctioning body for that particular field trial. So, these are actually increased regulations for field trials that have taken place over the years.” When in 2008 the Commission prohibited the sale or possession of live coyotes that were taken outside the season, “it did not prohibit these enclosures.”

Chairman Poynter said he believed that what “I’ve heard is that the proliferation of these into the future is of major concern to at least those who have made presentations today.... Your concern is based on what might be happening if other enclosures were to be allowed and such.”

The Vice Chair, Jane Ann Stautz, reflected: “Mr. Chairman, with regard to the proliferation issue, which I do have concern about how you might go about, avoiding some of the situations that others have raised or have indicated that may be occurring in other States, would be a consideration of some type of moratorium placed on these types of enclosures in the future for any new field trial permit applications or field trials beginning at an established date—whether that be, for example, maybe January 1, 2012. Given the fact that you do have the current field trials that have been conducted there without complaint for over 20 years, that would allow the opportunity for those to go through this permitting process, if again the proposed rule would go forward and through the hearing process. That would be a recommendation or a suggestion there.”

Poynter reflected, “I think that is a fair consideration given what we have heard today and what we know to be the case. I know that we have a revised proposed rule here in yellow that adds a few additional words that were scripted after the publication of the agenda. Vice Chair, do you want to make a motion to that affect to modify what we have in front of us?”

Stautz responded, “Yes. I would move to instruct—I don’t have the exact language—it’s again a consideration after hearing again the comments today to incorporate a provision or instruction

there to include a provision that would place a moratorium on allowing this type of penned activity beyond January 1, 2012.”

The Chair stated the Vice Chair had moved for preliminary adoption of “the proposed rule, as amended in front of us in yellow, and be further modified as she has instructed. Is there a second to that motion?”

Pat Early said he had “just one question. That’s a moratorium on any new enclosures, correct? Not prohibiting the activity after January 1, 2012?”

The Chair responded, “The proliferation of any new facilities.”

Stautz continued, “I’m trying to find a balance of respect for the fact that there is an operation that has been operating here without complaint with the fair chase rules but without any type of potential proliferation.... I am not for proliferation of these types of activities going forward so I’m trying to find a balance.”

Steve Lucas said, “Assuming that the Commission gives something preliminary adoption, I want to be as clear as I can in terms of what we should be taking to the public. Are you suggesting an amendment that would require any application for a permit...would need to be administratively complete by January 1, 2012?”

Stautz responded that the amendment could be stated this way.

Early said, “I will second Jane’s amendment.”

The Chair then called the motion for a vote. He reported that nine members voted for the motion and two against.

Ahearn asked, “Was that a vote on the amendment or was that vote on amended rule?”

Poynter replied, “That was a vote on the amended rule proposal.”

Tom Easterly reflected, “We haven’t voted on the proposed rule for preliminary adoption with the amendment though, right? We voted on an amendment.”

Poynter responded, “No..., we took a vote on an amendment to the proposed rule that—

Easterly interjected, “We never voted, then, on the proposed rule whether it should go forward.”

Poynter continued, “I would ask Jane Ann to make your motion as you would see fit so that we can be clear for the record and that the Commission members can be clear as well as to what we are voting on.”

Stautz responded to the Chair’s request: “Then I would move that the Commission adopt the proposed rule for preliminary adoption, as amended, with the inclusion in 312 IAC 9-10-

16(j)(2)(C), the addition of “and proximate cause of mortality”, as well as inclusion and incorporation of a language requiring or placing a moratorium of any new field trial permit application or field trials beginning January 1, 2012.”

Patrick Early stated, “I second.”

Poynter reflected, “What we need to make sure of here because before I take a vote on this, I’m not sure I that I agree.... I don’t think we are saying we are putting a moratorium on field trials, we are putting a moratorium on the proliferation of penned enclosures.”

Stautz responded, “Pens. Correct.”

Ahearn added, “Right, granting new licenses under this rule.”

Stautz said, “Yes, under this rule.”

Poynter clarified, “We are not saying we can’t have field trials. That’s not what we are saying here.”

Stautz responded, “Right.”

Poynter asked Donald Ruch and Tom Easterly if they were “clear on what we’re saying.”

Easterly said he was unclear if the Commission was voting on the amendment or on preliminary adoption. “If you’re against the amendment, then you have to be against the whole thing.”

The Chair asked, “Is there some part of it you wish to have further discussion on?”

Easterly responded, “I think moratoriums are bad public policy. Either an activity is the right activity, or it’s not the right activity.”

The Chair continued, “Thus, you voted against.”

Easterly responded, “Yes.”

The Chair reflected, “That’s your prerogative.”

Easterly continued, “But I’m not against licensing something properly.”

Chairman Poynter stated he believed another vote was appropriate for clarity. He restated the motion by Stautz as seconded by Early. He then called for a vote.

Again, the Chair observed a vote of nine in favor and two opposed. Those opposed were Easterly and Ruch.

Easterly clarified that he was against the moratorium.

Ruch clarified, “The amendment I’m in favor of. It’s the packet as a whole, so I’d say, ‘No’.”

The Chair reflected, “Okay. I think we’re clear.... Thank you for everybody’s patience on this issue. I know it has been one of great concern.”

Consideration of recommendation for preliminary adoption of amendments to 312 IAC 10, in response to HEA 1232, pertaining to the removal of log jams and masses of wood debris from floodways; Administrative Cause No. 10-063W

Linnea Petercheff presented this item. She said the Indiana General Assembly this year enacted new legislation regarding the removal of logjams and masses of wood debris from floodways. The legislation exempts most of these activities from DNR licensure, except licensure is still required for the removal of logjams from salmonid streams and from natural, scenic, or recreational river or streams. She said the DNR was now proposing several amendments to conform the rules to the new statutes. “There is a new definition for a ‘mass of wood debris’ in proposed 312 IAC 10-2-29.5. 312 IAC 10-4-5 would be added to address licensure for a natural, scenic, or recreational stream or river. Here there would be “specific conditions requiring activities that take place outside the pawning season permitting access to one side of the waterways and requiring that appropriate sediment control measures of plant and vegetation on the banks when work is completed. There are only three of these rivers right now in Indiana. In 312 IAC 10-5-0.3, we’ve renewed the references to a general license for log jams. We then modified the requirements for being approved for the removal of a logjam or mass of wood debris in a salmonid stream. That’s the general license with notice to the Department in 312 IAC 10-5-6. There are seven named salmonid streams, plus Lake Michigan, as well as the waterways where trout are stocked each year by DNR. 312 IAC 10-5-6.5 establishes a general license with notice for removal of log jam or masses of debris in a natural, scenic, or recreational river or stream, only with hand-held tools used in the waterway. Removal of log jams from the bank or use of heavy equipment would require a Construction in a Floodway permit.”

John Davis reflected, “I think this pulls our rules into agreement with the law. Is that correct, Ron?”

Ron McAhron replied, “Yes, last session greatly limited our involvement in logjams down to the specific places. If I may say, Linnea has done a great of addressing those specific areas.”

Davis added, “We are going to continue to have conversations around the State about logjams. In particular, the Governor announced what I think is a very forward visionary program about buffering streams. We’re trying to acquire property in Scott County..., and they have a tremendous issue with logs. Our Division of Fish and Wildlife and our landholding divisions are going to be dealing with exactly how we interact with local communities.” He said he would be attending the Scott County Drainage Board on November 17 to discuss how DNR would deal with logjams. “Our biologists feel like debris is very, very conducive to fish and wildlife propagation.”

Donald Ruch moved to accept the preliminary adoption of amendments to 312 IAC 10, in response to HEA 1232, pertaining to the removal of log jams and masses of wood debris from floodways. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Consideration of recommendation for preliminary adoption of amendments to 312 IAC 9-5-4 governing endangered reptiles and amphibians; Administrative Cause No. 10-170D

Linnea Peterson also presented this item. She said that the DNR Division of Fish and Wildlife, with support from the Reptile and Amphibian Technical Advisory committee recommends that the four-toed salamander be removed from the list of endangered species, and that the plains leopard frog and mole salamander be added to the endangered species list. Petercheff reported the DNR is required by State law to review the list of endangered species every two years and make appropriate amendments. Under State law, “endangered species” means any species or subspecies of wildlife whose prospects of survival or recruitment within Indiana are in jeopardy or are likely to within the foreseeable future due to factors such as the destructive habitat, overutilization for scientific purposes, effects due to diseases or pollution and other natural manmade factors.

Petercheff noted that extensive research has been conducted on the four-toed salamander over the past five years to determine its Indiana population. She said seven new county records verify or reconfirm the population in 20 counties throughout the state. The four-toed salamander can be found in moist areas under leaf litter, logs, and moss in the spring and summer. Petercheff said that because of four-toed salamander’s distribution across the State, the Department no longer feels it needs to be listed as an endangered species, but it will continue to be monitored.

Petercheff said DNR proposes to add the mole salamander to the endangered species list. The species is known to exist only in a single population in one county. She said the mole salamander inhabits floodplain forests located near gum and cypress swamps. The agency’s concern arises due to its isolation, small geographic range, and narrow habitat tolerance.

Petercheff added that the Plains leopard frog is also proposed to be added to the list as a result of new population information and habitat loss. Recent surveys have not found the Plains leopard frog in areas where previously found in the past ten years. Locations where the Plains leopard frog was found in the past have been converted to agriculture and no longer provide suitable habitat.

R. T. Green moved to approve preliminary adoption of amendments to 312 IAC 9-5-4 governing endangered reptiles and amphibians. Mark Ahearn seconded the motion. With a voice vote, the motion carried.

Discussion of possible modifications to amendments given preliminary adoption in July 2010 meeting to 312 IAC 9-1 and 312 IAC 9-3 governing the taking of white-tailed deer; Administrative Cause No. 10-070D (LSA Document #10-569)

Chairman Poynter stated, “I think I was clear in my initial commentary that I’d like to ask this Commission to propose removing this preliminarily adopted package and we’ll reconvene and

instructive the department to bring a new and revised rule package back at our January 2011 meeting.

Patrick Early moved to remove this agenda item and bring forth for a revised package at the January 2011 Natural Resources Commission meeting. Mark Ahearn seconded the motion. By a voice vote, the motion carried.

INDIANA STATE MUSEUM AND HISTORIC SITES

In accordance with deferral directive from the May 2010 meeting, consideration of the Ernie Pyle State Historic Site for deaccession

Bruce Beesley, Vice President for the division of State Museum and Historic Sites, presented this item. He said Commission deferred the issue of the deaccession and conveyance of the Ernie Pyle State Historic Site for a six-month period in order to explore options, continue dialogue and pursue planning. On August 1, the DNR received a letter from the Friends of Ernie Pyle expressing their willingness to assume the ownership and operation of the site and outlining plans for the Friends group in its expansion and support of the site. The State Historic Sites and the Friends of Ernie Pyle have entered into a “facility use agreement” allowing the Friends group to operate the site during the summer and fall. “Our goal has been to turn over an in-tact site in advance of the real estate and the transfer of exhibits and the artifacts at the site.” On October 15, the Advisory Council unanimously recommended the deaccession and property conveyance.

Stephen Key, Executive Director and General Counsel for the Hoosier State Press Association (HSPA), speaking on behalf of the Friends of Ernie Pyle, addressed the Commission. He said the HSPA represents the paid circulation of approximately 175 Indiana newspapers. He said also present was Cynthia Myers, Vice President of the Friends of Ernie Pyle, Phil Hess, member of Friends of Ernie Pyle, and Max Jones, new board member and editor of the TRIBUTE STAR in Terre Haute. “We are here before you to support the effort to convey the historic site and the museum and the artifacts involved to the control of the Friends of Ernie Pyle.” He said the Friends of Ernie Pyle Foundation was created in 1980 and is a certified 501(c)(3) not for profit organization. He added that the Foundation had in the past raised funds to help support the historic site and museum. “Most notably, \$250,000 was raised from the Scripps Foundation out of Cincinnati that built the Quonset hut museum located next to the actual home.”

Key said if the property site is transferred, the Friends and Hoosier State Press Association will create a nationwide fund raising effort to permanently preserve and maintain the site and extend “the legacy Ernie Pyle, not only in Indiana, but around the country. One of the things is to create a small traveling exhibit that could be displayed at in Dana, the Indiana State Museum, the Ernie Pyle Journalism Hall in Bloomington, and also possibly at the Museum in Washington D.C. or the WWII Museum in New Orleans and other logical sites. We’ve already started a dialogue with the Indiana Headquarters of the American Legion. We’ll expand that dialogue with other veteran organizations such as the VFW, Amvets, and the Disabled Veterans Organization.”

Key said the “hope is to move forward with resolutions that would go toward the national organizations to support this fund drive. When you consider there’s 22,100 American Legion

and VFW posts by themselves, if we could get each of those posts to pass a hat and collect \$50 from each post, that would bring in alone more than \$1 million dollars, which would be plenty to take interest off of the principle to preserve what we think would be a good budget for the site.” The HSPA would contact newspapers across the country and foundations like Scripps Howard and other journalists’ foundations to raise money. Our goal is not just to preserve the status quo but to be able to do other additional things to help us spread the legacy of Ernie Pyle.”

Key thanked John Davis for his assistance and involvement with transfer of the Ernie Pyle site. “We would hope that as part of the transfer of the property, that there also be a corresponding transfer of artifacts that have been with the museum traditionally and historically. As part of that transfer, I know that there’s planning, and I think that Mr. Davis is committed to a sharing of other artifacts, and [they] also plan to do the same with the artifacts that exist at the Indiana University School of Journalism, so that all these artifacts will get more exposure between the three locations and maybe some parts of the traveling exhibits that might go in other places.” The HSPA is confident and believes its plan for fund raising “is a sound one. I think looking back on this in a few years, this Commission will be satisfied with the decision to transfer that property and how we cooperated with the Friends of Ernie Pyle.”

The Chair asked for additional comments.

John Davis thanked the Friends of Ernie Pyle and all that were involved in the transfer. “I want to commit to them that we will do everything we can to see that there’s cooperation, sharing, joint activities, and would like to also ask that if you do take action. The item calls for deaccession. We wanted also to include the conveyance, and then we will take over and work with the group and get all these items, the land and the building, transferred. We appreciate everyone’s patience.”

The Chair asked for a motion to include the conveyance language in addition to the deaccession.

Early moved to approve deaccession and conveyance of property at the Ernie Pyle State Historic Site. R. T. Green seconded the motion. Upon a voice vote, the motion carried.

Chairman Poynter thanked “the Friends of Ernie Pyle group for their patience through the process. I know it will be a wonderful relationship, and I’m glad that this came to an opportunity where we could make this work for everybody. Thank you for your efforts.”

NRC, DIVISION OF HEARINGS

Consideration of report of public hearing and recommendation for final adoption of amendments to applicable provisions of Code of Judicial Conduct at 312 IAC 3-1-2.5 for Commission administrative law judges and the Division of Hearings; LSA #10-162(F); Administrative Cause No. 09-121J

Steve Lucas, hearing officer, presented this item. He said the item was mostly a housekeeping measure. Legislation was enacted in 2005 that applies the applicable provisions of the Code of Judicial Conduct to the administrative law judges and staff of the Commission’s Division of

Hearings. Parallel legislation applies to the Office of Environmental Adjudication which performs similar adjudicative functions for IDEM. The legislation requires that to the extent applicable, “we are to adhere to the Code of Judicial Conduct.” The Commission adopted 312 IAC 3-1-2.5 three years ago to implement the legislation. “Since the rule was implemented in 2007, the Supreme Court changed the Code of Judicial Conduct. So, we need to re-tool these provisions to accommodate the changes made by the Supreme Court.” In addition, the administrative law judges provide mediation services within the Commission and for the Department of Natural Resources, as well as for other agencies. “This provision would clarify that we can continue to provide mediation services and also [mediation services] could be provided outside that umbrella if the mediator were performing without compensation.” He then offered the amendments for final adoption.

Mark Ahearn moved to approve the final adoption of the amendments to applicable provisions of Code of Judicial Conduct at 312 IAC 3-1-2.5 for Commission administrative law judges and the Division of Hearings. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Ahearn stated, “We fortunate and served well by administrative law judges. It’s a demanding task that requires them to be part lawyer, part judge, part philosopher, part fortune teller, part scholar, full-time diplomat. There’s a lot to it.”

The Chair commented, “I believe that has been reiterated about every meeting, and I would certainly reiterate the same not only of the administrative law judges, but to the other staff.”

Consideration of report of public hearing and recommendation for final adoption of amendments to 312 IAC 9-3-14 regarding raccoon and opossum chasing and taking; LSA #10-230(F); Administrative Cause No. 10-038D

Sandra Jensen, hearing officer, presented this item. Jensen said that the proposed amendments for final adoption to 312 IAC 9-3-14 would amend the start date for trapping season for raccoons and possums from November 15 to November 8. The amendments would also change the “chasing season” from February 15 to October 14 to include from February 1 through October 25. The amendments would extend the chasing season by 24 days.

Jensen noted the proposed rule package was granted preliminary adoption in March 2010. Since preliminary adoption, the Office of Management and Budget approved analyses which determined there were no fiscal impacts to government. Publication requirements were fulfilled, and a public hearing was conducted. After considering public comments and the Department’s responses to them, Jensen recommended the Commission give final adoption to the amendments.

Chris Powell, President of the Hoosier Tree Dog Alliance, addressed the Commission. Powell expressed appreciation for the Commission’s process that allows sportsmen and the State of Indiana to “take ownership of the natural resources and the rule-making process.” The challenge for sportsmen was to bring together the different sporting groups. He said that some members of the Alliance were skeptical of the adoption of the rule package. The Indiana Deer Hunters Association, the Indiana Bow Hunters Association, Fur Takers of America, and the Sportsmen’s Roundtable supported the rule package. “To be quite frank, thousands of sportsmen were

watching to see if our process works” and expressed the opinion that “the adoption of this proposal will send a positive message to hunters and sportsmen in the State of Indiana.” Powell said this endeavor reveals that all sporting groups can work together to work out differences, be considerate of one another, and respect one another. “There is a process in place that can represent each sporting group in the State of Indiana.” Powell thanked the Commission and recommended final adoption of the rule amendments.

The Chair commented, “Thank you for the groups for working together.”

Donald Ruch moved to approve final adoption of amendments to 312 IAC 9-3-14 regarding raccoon and opossum chasing and taking. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of public hearing and recommendation for final adoption of amendments to 312 IAC 9-3 and 312 IAC 9-10 governing the possession and sale of exotic mammals, taking exotic mammals from the wild, and game breeder licenses for cervidae; LSA Document #10-104(F); Administrative Cause No. 09-166D

Sandra Jensen, hearing officer, also presented this item. For final adoption are amendments proposed to 312 IAC 9-3-18.5 and 312 IAC 9-10-4, the addition of 312 IAC 18.6, and the repeal of 312 IAC 9-10-21. The amendments to 312 IAC 9-10-4 would incorporate the substantive content of 312 IAC 9-10-21, and the amendments to 312 IAC 9-10-4 would add exotic cervidae to the game breeder license to comply with IC 14-22-20-5. Jensen said the proposed amendments to 312 IAC 9-2-18.5 would clarify possession and sale requirements for exotic mammals and would authorize a person to take an exotic mammal that has escaped from captivity, if the mammal is destroying or substantially damaging property or is a known immediate threat to public safety or the health of wild animals.

Jensen said the addition of 312 IAC 9-3-18.6 defines “wild hogs” and would prohibit the importation, possession, selling, transport or offer for sale, bartering, trading or releasing hogs into the wild. A new section would also prohibit a person from offering wild hogs for hunting.

Jensen said the rule amendments were preliminarily adopted in January 2010. There was concern raised by citizens at the January 2010 meeting, concerning the proposed amendment to 312 IAC 9-3-18.5(b)(3), which would allow for a person to take or otherwise shoot an escaped exotic mammal. The Commission directed the Department to work with concerned members of the public to address the concerns. Through the Department’s discussions with the citizens, a consensus was achieved. Jensen explained that the proposed language was amended from what was preliminarily adopted before the proposed language was posted to the Indiana Register.

Jensen said all public notice requirements had been fulfilled. She reported that the comment period was open for approximately nine months and the public hearing held on October 28, 2010. No citizen appeared for the public hearing. The comments received are included in her report.

Jensen explained that one written comment raised concerns about the published language at 312 IAC 9-3-18.6(b), which allowed a person 24 hours before killing a trapped wild hog. The concern was that allowing possession for 24 hours before killing increased the potential for the sale or release of the wild hogs and the comment suggested that the wild hogs be required to be killed immediately. Jensen noted that the Department's response to the public comments agreed with the comment but also observed that killing the hog at a trap site could expose a land area to potential disease and would foul the trap area. Jensen reported that in an effort to minimize opportunities for transporting or releasing of wild hog while avoiding the potential spread of disease, the Department offered a revision at 312 IAC 9-3-18.6(b) and (e) to require captured wild hogs be euthanized immediately at the site or transported to another site for immediate euthanization. According to Jensen, the revision eliminates the 24-hour window making euthanization immediate but also allows for an individual who has trapped a hog to remove it from that property so as not to expose possible livestock to possible disease. Jensen stated that a revision to 312 IAC 9-13-18.6(b) and (e) are offered in a copy attached to the report. Jensen stated that the revisions are supported by written comment, "and are in my opinion within the scope of the rule as originally published." The revisions "are appropriate for consideration by the Commission."

Jensen recommended the final adoption of 312 IAC 9-3-18.5 and 312 IAC 9-10-4 and the repeal of 312 IAC 9-10-21 be granted final adoption without revision. She further recommended that 312 IAC 9-3-18.6 be granted final adoption with the revisions as requested by the Department.

Patrick Easterly moved to approve for final adoption of amendments governing the possession and sale of exotic mammals, taking exotic mammals from the wild, and game breeder licenses for cervidae. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

Doug Allman, addressed the Commission. He said he and others were unaware of some of the changes included in this rule proposal regarding the escape of exotic mammals. Hunters were under the impression exotic mammals would be "fair game if they escaped." He referenced instances when exotic deer have been released to the wild or have escaped and not been recaptured. "Red deer show up around Robinson Lake", and "hunters take deer, elk and red deer and things like this." He said "reading these rules, it appears people are in violation of the law, and we're concerned about that." Allman then asked Jensen if he was correct in his assumption, that taking of exotic mammals was in violation of the law elaborating that the rule is "designating only by the landowner or tenant. And, that has to be if animal is suffering or causing damage." Allman continued that "I'm concerned we're going to have people in violation of the law that are under the impression that they're legally allowed to do so."

The Chair told Allman that his comments brought up some "good points."

Linnea Petercheff addressed Allman's concerns. She explained that during the discussion about preliminary adoption in January there were members of the Indiana Deer and Elk Farmers Association who expressed to the Commission their concern that the proposal being made at that time would allow an escaped animal, some of which are of significant monetary value, to be shot without giving the owner time to recapture it. That prompted the Commission's request for the Department to work with IDEF and resulted in the revised language that is included in this rule.

Petercheff explained that the Department and IDEF came to an agreement on the currently rule language and then tried to match it with accordance to the statute that covers the taking of domestic animals that have escaped.

Allman responded IDEFA was probably satisfied with the rule's language, but he said "it's not satisfactory to the sporting groups that are out there and who represent hunters that could be put in situations where they commit illegal acts by taking these animals in a wild situation. We've always been under that impression that it's we're allowed to take, and should take, these animals. If you look at wild hogs and what you're doing with wild hogs, you want to kill these animals." Allman added, "if you look at the fact that we're calling them domestic animals, and you can't take them under that statute, then these people are selling them into shooting preserves and then taking domestic animals. So, I think there's confusion between State statute and what you're trying to do"

Allman acknowledged these issues were not going to be resolved immediately, but he expressed support for the original language DNR brought forward for preliminary adoption in January. He expressed the hope that the Commission would take this concept forward and do something further. "I don't want to see hunters put in a situation where they're breaking the law by taking these animals."

John Davis commented the rule language at page 21 appears to say "that an individual can take an exotic animal if the animal has escaped and it's a threat to public safety or the health of wild animals." He expressed a belief that any escaped exotic animal is a threat to the health of wild animals.

Allman expressed concern this interpretation might "not be accepted in court." The Sportsmen's Roundtable and many deer hunters had similar concerns. He expressed hope for a remedy.

The Chair asked Sandra Jensen, "Procedurally, is there was a way to address this?"

Jensen responded, "I'm not saying that he doesn't bring up some good points, but I will say upfront that I can't remember all of the public comments that were received in writing" and were directed to his concerns. Changes can be made to a rule if the changes are a "logical outgrowth" of the proposal, but comments seeking the changes must be in writing. "So, even though the comment is here verbally, the statute says 'written', and I don't think we can do it today."

The Chair inquired whether Allman's concerns could be addressed later. Jensen responded "Right. After this, I think we could look at it."

Poynter again observed Allman raised good points and suggested that he, the Roundtable or the Deer Hunter's Association come back through Jensen with something for the Commission to clarify the point. Allman replied that Poynter's suggestion was consistent with his thoughts.

Consideration of report of public hearing and recommendation for final adoption of 312 IAC 22-4 to govern cemetery restorations; LSA Document #10-59(F); Administrative Cause No. 08-106H

Steve Lucas, Hearing Officer, presented this item. He said for consideration was proposed 312 IAC 22-4 that would govern licensure for activities in qualified cemeteries to probe for fallen grave memorials, to recover grave markers, and to restore them. A license for expedited restorations, guided by a coordinator trained by the Division of Historic Preservation and Archaeology, would obviate the need for compliance with stringent plans pertaining to traditional archaeological projects. A very similar process has been implemented for the past two years through consecutive temporary rules, and this process has met with general success. He said James Glass, Ph.D., Director of the Division of Historic Preservation and Archaeology, was present to answer substantive questions concerning the conduct of cemetery restorations. Lucas then presented 312 IAC 22-4 for consideration as to final adoption.

Brian Blackford moved to give final adoption to 312 IAC 22-4, as published for preliminary adoption, to govern cemetery restorations. Phil French seconded the motion. Upon a voice vote, the motion carried.

Consideration of report of public hearing and recommendation for final adoption of 312 IAC 20-4 to govern modifications to historic sites and historic structures on State lands or by State funding; LSA Document #10-42(F); Administrative Cause No. 08-096H

Steve Lucas also presented this item. He said for consideration was proposed 312 IAC 20-4 to facilitate reviews of qualified projects to alter, demolish or remove historic sites and historic structures that are owned by the State or when the projects are funded, in whole or in part, by the State. As with the previous agenda item, a very similar regular regulatory structures has been implemented through temporary rules for the past two years. He reflected upon comments in the hearing officer report from James Glass, Division Director, that for “those projects which have little or no impact on cultural resources, the rule facilities an expeditious and cost-effective disposition.” He then presented 312 IAC 22-4 for consideration as to final adoption.

Thomas Easterly moved to give final adoption to 312 IAC 20-4 to facilitate reviews of qualified projects to alter, demolish or remove historic sites and historic structures that are owned by the State or when the projects are funded by the State. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

DNR DIVISION OF HISTORIC PRESERVATION AND ARCHEOLOGY

Consideration of request for approval of nonrule policy document to address alterations of historic sites and historic structures on State lands or by State funding; Administrative Cause No. 10-181H

Steve Lucas also presented this item. He said for consideration was a nonrule policy document that would implement the spirit of the process described in the previous agenda item. The effectiveness of the second temporary rule covering the process expired in October. Although

lacking the force of law, the nonrule policy document would continue the process pending review of 312 IAC 20-4. If the rule becomes effective, the nonrule policy document would terminate. If a person is dissatisfied with the Division Director's approval of a project, a more formal review would be performed through the Historic Preservation Review Board. A special meeting of the Board could be called to minimize any delay in completion of the review. He presented the nonrule policy document for consideration and possible approval by the Commission.

Brian Blackford moved to approve the nonrule policy document to address alterations of historic sites and historic structures on State lands or by State funding as set forth in the Commission materials. Mark Ahearn seconded the motion. Upon a voice vote, the motion carried.

Adjournment

The meeting was adjourned at approximately 12:16 p.m., EST.