

ILLINOIS ENDANGERED SPECIES PROTECTION BOARD

MINUTES OF THE 165<sup>th</sup> MEETING

MIDEWIN NATIONAL TALLGRASS PRAIRIE, WILMINGTON, IL

20 FEBRUARY, 2015

(Approved at the 166<sup>th</sup> Meeting, May 15, 2015)

BOARD MEMBERS PRESENT: Vice-chair Joyce Hofmann, Ms. Lenore Beyer-Clow, Dr. Janice Coons, Dr. Jeremie Fant, Mr. Vernon LaVia, Mr. Jim Robinett, and Mr. Randy Schietzelt

BOARD MEMBERS ABSENT: Chair Dan Gooch, Secretary Jeff Walk, and Mr. Wayne Rosenthal

BOARD MEMBER VACANCIES: none

OTHERS PRESENT: Mr. Bob Bluett and Ms. Ann Holtrop (Illinois Department of Natural Resources); Ms. Jeannie Barnes (Illinois Natural History Survey); and, Ms. Anne Mankowski (Endangered Species Protection Board)

165-1 Call to Order Welcome and Introduction of Guests

Vice-chair Hofmann called the meeting to order at 9:05 A.M. She welcomed three newly Governor-appointed members; Dr. Janice Coons, Dr. Jeremie Fant, and Randy Schietzelt and noted that recently appointed IDNR Director Wayne Rosenthal is a new statutory, non-voting member and that he was unable to make it to the meeting due to a scheduling conflict. She asked other Board members and staff to introduce themselves. She noted that there was a quorum and then asked audience members to introduce themselves.

165-2 Adoption of Agenda

Vice-chair Hofmann asked for a motion to approve the agenda. Mr. LaVia **moved** to adopt the agenda, Mr. Robinett seconded the motion, and the agenda was **approved** unanimously.

165-3 Approval of Minutes from the 164<sup>rd</sup> Meeting (11/14/14)

Vice-chair Hofmann asked if there were any corrections to the draft minutes from the 164<sup>th</sup> meeting and there were none. She noted the minutes **approved** as submitted.

165-4 ESPB Staff Report

Ms. Mankowski, Director of the Illinois Endangered Species Protection Board, gave her report (Attachment).

In addition to her written report, she noted that she, Vice-chair Hofmann, and Secretary Walk had recently completed annual on-line Open Meetings Act training and had confirmed compliance of several procedural items that the Board has been discussing, including: the Board's distribution of pre-meeting Board member materials to only Board members is compliant; meeting minutes, including public comments presented, are not required to be verbatim, but only a summary of information presented; and, that the Board remains understaffed to engage subsidiary committees, including former technical advisors or experts, in a manner compliant with openness requirements.

165-5 IDNR Staff Report

Ann Holtrop, IDNR Division of Natural Heritage Acting Chief, briefly reviewed that the Department's

Impact Assessment Section would not be moved from the Office of Realty and Environmental Planning into the Office of Resource Conservation as had been planned, the Division of Natural Heritage held a Division meeting in January, and the 10-year review/update of the Illinois Wildlife Action Plan was underway with a draft expected for public distribution in May or June and a final document due to the US Fish and Wildlife Service by October 1, 2015.

165-6 INPC Staff Report

No report was presented.

165-7 Semi-Annual Review of Whether to Keep Closed Minutes from Previous Closed Meetings

Ms. Mankowski reviewed that the Open Meetings Act requires that the Board semi-annually review and approve keeping closed the minutes from previous closed-sessions and she circulated a list of previous closed session minutes. The Board is required to make a determination that (1) the need for confidentiality still exists as to all or part of those minutes, or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection. She noted that all closed sessions have been held to review personnel matters, the discussion of personnel matters is allowed under closed session, and those minutes are allowed to remain closed because the need for confidentiality still exists. Ms. Beyer-Clow **moved** that since all closed minutes involve personnel matters, the need for confidentiality still exists as to all or part of those minutes and the minutes should remain closed, Mr. Robinett seconded the motion, and it was **approved** unanimously.

165-8 ESPB Budget – Review and Take Action Regarding Overtime Cash Pay Limit for Staff

Ms. Mankowski reviewed that the Board identifies staffing needs of at least five positions; four natural resource professionals (an Executive Director, one Listing and Recovery Coordinator for Plants and one for Animals, and a Data Specialist) and one clerical position (Executive Assistant). The Board is currently staffed at 20% and has been staffed at  $\leq 25\%$  since 2001.

The Board has been unable to gain headcount to hire staff directly and unable to secure assistance to hire staff contractually, so relies on Ms. Mankowski to cover the duties of all positions. She has averaged over 135% full time hours for over 6 years.

The Board has discussed several times the significant amount of overtime Ms. Mankowski is required to work and the desire to reduce her overtime. At the Board's 163<sup>rd</sup> meeting, held August 14, 2014, the Board set a limit for cash pay of overtime at 200 hours for the current fiscal year as part of an FY2015 spending plan brought forth by Ms. Mankowski. The Board did not identify which areas of workload should be eliminated and the Board has not received assistance with hiring additional staff.

Ms. Mankowski has made effort to reduce her overtime, but since most time is spent on required functions and is necessary for responsible and meaningful agency performance, she cannot reduce her overtime by the amount she and the Board would like. In January, she met the cash pay overtime limit of 200 hours and began accruing overtime as earned equivalent time (EET) that must be liquidated as leave time. She cannot liquidate EET and still work the hours necessary to accomplish Board duties, so this arrangement is untenable.

Ms. Mankowski made a recommendation for a motion and there was discussion refining the wording before Mr. LaVia **moved** to eliminate an overtime cash pay limit and allow Ms. Mankowski and Executive Officers to manage overtime accrual and compensation according to Board and staff needs and continue working to identify which duties are and are not done. Ms. Beyer-Clow seconded the motion and it was **approved** unanimously.

165-9 Proposed Approval of Process, Elements, and Format for Petitions to the ESPB for Changes to the Illinois List of Endangered and Threatened Species – Adding a Species, Removing a Species, or Changing the Status of a Species already on the Illinois List

Ms. Mankowski reviewed the proposed petition process and forms for anyone to make recommendation to the Board for changes to Illinois List. After some discussion, Mr. Schietzelt **moved** to approve the process and forms for adding, removing, and changing the status of a currently listed species, as presented and Mr. Robinett seconded the motion. Ms. Beyer-Clow asked for an amendment to allow Ms. Mankowski to add text about accommodating non-email process communication and to make subsequent non-substantive edits necessary to finalize the documents before posting them to the Board's website. Messrs. Schietzelt and Robinett accepted the amendment and the motion, as amended was **approved** unanimously. Ms. Mankowski noted that she would make respective updates to the Board's website.

165-10 Discussion of Anticipated Process and Schedule for the next Illinois List Review and Revision

Ms. Mankowski reviewed the anticipated process and schedule for the next Illinois List review and revision, noting that both will be subject to changes based upon Board staffing and workload. She noted that she would make respective updates to the Board's website.

The Board recessed from 11:25 A.M. – 11:40 A.M.

165-11 Proposed Approval of Process, Elements, and Format for Requests to the ESPB for Approval of a Recovery Planning Document for a Species on the Illinois List

Ms. Mankowski reviewed that she had not been able to complete the subject item in time for the meeting and would plan to address the Board with the item at the next meeting.

165-12 Next Regular Meeting Information

The next regular meeting of the Board will be at 9:00 A.M., May 15, 2015 at Lowell Park Nature Center, 2114 Lowell Park Road; Dixon, IL 61021.

165-13 Public Comment Period (3 minutes per person)

There were no public comments.

165-14 Other Business

There was no other business.

165-15 Adjournment

Vice-chair Hofmann asked if there was any more business and noting there was none adjourned the meeting at 12:24 P.M.

**Illinois Endangered Species Protection Board staff report  
for the 165<sup>th</sup> Meeting, February 20, 2015**  
Submitted by Anne Mankowski, Director

The Board has one full-time staff person, its Director; all activities were conducted by the ESPB Director unless otherwise noted. Ms. Mankowski has not been able to complete all required work in the course of a 37.5-hour work week. Since the last staff report, Ms Mankowski has worked the following overtime hours toward ESPB and IDNR duties: November: claimed = 44.0, donated = 2.0; December: claimed = 19.0, donated = 1.0; January: claimed = 58.25, donated = 0.0.

### **1. Illinois List of Endangered and Threatened Species Review and Revision**

#### Illinois List Review ending in 2014 and Revision

Ms. Mankowski prepared documents necessary for routing the proposed administrative rule amendments at IDNR and to JCAR and submitted those to IDNR Legal Counsel on September 15, 2014. IDNR Legal Counsel forwarded them to then IDNR Director Miller for approval to process. IDNR Director Wayne Rosenthal approved advancing the proposed amendments through the process. The proposed amendments go to first notice at JCAR on February 20, 2015; IDNR leads the administration of the rule process and coordination with JCAR. Ms. Mankowski also responded to several inquiries from the public about the status of the proposed Ad Rule amendments.

#### Illinois List Review and Revision Process

Ms. Mankowski worked on a petition process and format for anyone to make recommendations to the Board to add a species to, remove a species from, or change the listed status of a species currently on, the Illinois List. The process and format is proposed for Board approval at the current meeting (see Agenda Item 165-9, *Proposed Approval of Process, Elements, and Format for Petitions to the ESPB for Changes to the Illinois List of Endangered and Threatened Species – Adding a Species, Delisting a Species, or Changing the Status of a Species already on the Illinois List*).

### **2. Legislation and Regulations Related to Illinois Endangered and Threatened Species**

#### SB 3049 amendments to 520 ILCS 5/ Wildlife Code for take of black bear, cougar, and grey wolf

Ms. Mankowski made request in mid-December to then IDNR Director Miller for explanation of if and/or how the IDNR plans to reconcile or otherwise address SB 3049 amendments to 520 ILCS 5/ *Wildlife Code* for take of the grey wolf and conflicts with protections under the Illinois Endangered Species Protection Act and the US Endangered Species Act. The amendments were incorporated into law in 2014. The Board was not engaged by IDNR as this legislation was developed and reviewed and has not received response to this or previous requests to IDNR for explanation.

#### SB0048 proposed amendments to 520 ILCS 10/ Illinois Endangered Species Protection Act and HB0109 proposed amendments to 520 ILCS 5/ Wildlife Code, both referred to as “Good Samaritan” laws.

Ms. Mankowski was advised by constituents of the two legislative pieces, which propose amendments to allow exemptions from take prohibitions and permit requirements for removing certain animals (including endangered animals) from the wild in certain circumstances. She made request on 01/20/2015 to IDNR’s Legislation Office to please keep her informed about the subject items and any legislation relating to endangered and threatened species and the Department’s position. Ms. Mankowski was subsequently contacted by IDNR Legal Counsel seeking input regarding potential conflicts from the proposed legislation with federal and state laws and regulations. She reviewed with IDNR Legal Counsel apparent conflicts with several federal laws and protection and enforcement provisions of the ESPA, issues associated with non-professionals intervening with wildlife/population management and welfare, and that the Board would probably view such allowance as diminished protection and a new threat to affected endangered species. IDNR Legal Counsel submitted to the IDNR Legislation Office a review of apparent conflicts with federal laws and provided Ms. Mankowski copy. She will monitor the General Assembly legislative schedules and prepare to testify on behalf of the Board, as necessary.

### **3. ESPB Staff Hiring**

#### Executive Assistant

Until a time when the Board has headcount to hire staff directly, Ms. Mankowski continues attempting to work with IDNR Human Resources for new contractual hiring of an Executive Assistant.

#### Listing and Recovery Coordinators

Until a time when the Board has headcount to hire staff directly, Ms. Mankowski continues attempting to work with the IDNR Human Resources staff on scoping for hiring two full-time, contractual ESPB Listing and Recovery Coordinators.

#### Data Specialist

Until a time when the Board has headcount to hire staff directly, Ms. Mankowski continues attempting to work with the IDNR Human Resources staff on scoping for hiring a full-time, contractual ESPB Data Specialist.

### **4. ESPB Operations Confirmation - gaining clarification regarding: Openness and real or perceived conflicts of interest in conducting Board business; roles and responsibilities of and relationship between the Board and IDNR; securing independent legal counsel; and, review of the Endangered Species Protection Act**

The Board has identified the need for clarification regarding these several areas of Board operations. Ms. Mankowski identified several items for referral to the Public Access Counselor of the Office of the Illinois Attorney General and she continues work on request for opinion from the IAG Opinions Division regarding roles and responsibilities of and relationship between the Board and the Department and the Board securing independent legal counsel. She also continues work begun in 2011 on initial proposed draft amendments to the Illinois Endangered Species Protection Act and related to the clarification of roles, responsibilities, and relationship exercise. This work will also inform the Board's strategic planning exercise that was scheduled for February 2014, but has been postponed.

### **5. ESPB Member appointments**

Ms. Mankowski also conducted administration for on-boarding and held orientation meetings with three newly Governor-appointed members; Dr. Janice Coons, Dr. Jeremie Fant, and Randy Schietzelt. Ms. Mankowski provided an ESPB Transition Document and member on-boarding materials to IDNR Director Wayne Rosenthal as a new statutory, non-voting member. She continues outreach and interview and vetting of potential nominees and coordinates with Board Executive Officers regarding Board recommendation to the Governor's Office for member appointments.

### **6. ESPB Budget**

Ms. Mankowski continues working with IDNR on budget tracking and assignments related to the FY2015 and FY2016 budgets. She prepared and provided to IDNR Fiscal, Board FY2016 Legislative Budget Submittal documents.

### **7. ESPB Website**

Spent time working with IDNR web support staff to make ongoing updates to the ESPB website.

### **8. ESPB Research/Strategic Projects Program**

There was no ESPB research project administration during the last quarter. The Board agreed in 2012 that the research program would be put on hiatus while Ms. Mankowski worked on the List review and revision and Ms. Mankowski is still engaged in that process. At the 163<sup>rd</sup> Board meeting in August 2014, the Board agreed that all funding available to the Board would be directed toward staffing and staff would then address some of the Board's research priorities identified in 2012.

### **9. Meetings, Presentations, and Publications**

- Attended the November 18 and December 16, 2014 meetings of the IDNR Natural Areas Evaluation Committee. The January and February 2015 meetings were cancelled. The Board is voting member of the committee.

- Attended the January 28, 2015 meeting of the Chicago Wilderness Executive Council in Chicago, IL. The Board is voting member of the council.
- Due to competing priorities, was unable to attend the November 2014 meeting of the Illinois Wildlife Action Team. The Board is a voting member of the team.

#### **10. Coordination with IDNR and INPC:**

Ms. Mankowski coordinated with the Endangered Species Program ORC, Division of Wildlife ORC, Impact Assessment Section OREP, Office of Land Management, Office of Law Enforcement, Office of Legal Counsel, Office of Strategic Services, Media Relations, and Illinois Nature Preserves Commission, on multiple matters listed below, by topic:

##### E&T vouchering and translocation

- No follow-up to report about vouchering and translocation issues discussed at the ESPB 157<sup>th</sup> meeting, held February 8, 2013.

##### E&T consultation

- No activity.

##### E&T incidental take authorization

- The Board decided in October 2013, that it did not have staff necessary to continue providing review and comments on draft incidental take authorizations due to competing priorities and directed staff to cease doing so until after a time when the Board gained adequate staffing. There has been no change to this assignment.

##### E&T translocation

- There was again no activity on the planned INPC, IDNR, ESPB joint animal translocation policy, an effort initiated in June 2013. The Board should expect a joint policy to be consistent with the Board's current E&T animal translocation policy and a draft joint policy will need to be approved by all three agencies before becoming official.

##### E&T recovery planning and implementation

- In the past, the Board adopted use of the IDNR ORC E&T Recovery Planning Process that was established by IDNR in 2008 without input from the Board. Since that time, the Board's Director and IDNR ORC's Director agreed about some revisions to the process and requirements for documents, but the agreed upon revisions were never memorialized and have not always been followed. Documents coming to the Board with request for approval continue to vary in content, detail, and format from what is articulated in the ORC process and from the agreed upon revisions. Additionally, the Board's Director has received criticism from individuals at IDNR ORC that she has not followed the process on several occasions, when in fact, she has, her comments on IDNR ORC draft documents have at times been disregarded and it appears documents and presentations brought to the Board include information the Board has been unable to verify.

The Board was advised in 2012 that IDNR ORC was working on updating/revising its ORC E&T Recovery Planning Process, but ORC has not indicated whether the revised process is intended to be a joint IDNR/ESPB process or solely an IDNR process. The Board agreed at its November 2014 meeting with Ms. Mankowski's recommendation that she develop a Board process and format for E&T recovery planning documents that are brought to the Board with request for approval. She began and continues work on a proposed Board process and format and plans to bring it to the Board by the 166<sup>th</sup> meeting, scheduled for May 15, 2015. Also, until a time when the Board has an approved process and format, she plans to no longer engage in IDNR ORC "internal reviews" as prescribed in their process, but will provide the Board with her review, comments, and recommendations as part of the materials and discussion for respective meeting agenda items when documents come to the Board with request for approval.

- Met with IDNR Natural Heritage staff about grant proposal administration of a recent State Wildlife Grant award for implementation of parts of the *Recovery Outline with Status Review Triggers for the Illinois Endangered Eryngium Stem Borer (Papaipema eryngii)*.

##### ESPB advising the IDNR on E&T conservation - ESPB/IDNR review and approval coordination

- For many meetings leading up to the 158<sup>th</sup> meeting in May 2013, Ms. Mankowski reported ongoing issues regarding IDNR ORC seeking the advice of the Board as it plans and implements its E&T Conservation

Program, per statutory requirement. In May 2013, she reported that she was continuing to remind IDNR ORC of several standing agreements for coordination of reviews and approvals between the two agencies of E&T recovery planning, E&T animal translocation proposals, E&T possession permits, and E&T ITA and that the agreements for coordination of reviews and approvals were not being practiced. She subsequently recommended that IDNR ORC address with the Board directly whether it would prefer to vacate the standing agreements. She never received response from IDNR ORC and the Board was never addressed directly by IDNR ORC. Since then, there has been no additional communication from IDNR ORC on this topic.

#### E&T monitoring/surveillance and reporting

- Met with IDNR Natural Heritage (Biotics) Database staff to discuss data requests used by the Board in the Illinois List review and listing status decisions.
- Met with IDNR Natural Heritage (Biotics) Database staff to discuss data requests used by other parties bringing Illinois List revision or recovery planning proposals to the Board.
- No additional work has been done on draft revised endangered and threatened species element occurrence reporting forms for use by the IDNR Natural Heritage (Biotics) Database since sending copies to Natural Heritage Chief Ann Holtrop for review and comment in September 2014. The proposed revisions address some information gaps and terminology discrepancies and are intended to improve the robustness of data reported to the Database. Ms. Mankowski will work with Database staff to finalize the forms, which will replace those currently available via the Board's website.

#### Other

- Responded to questions from IDNR Legal Counsel regarding potential conflicts with federal and state laws from "Good Samaritan" proposed legislation to allow exemptions from take prohibitions and permit requirements for removing certain animals (including endangered animals) from the wild in certain circumstances in SB0048 proposed amendments to *520 ILCS 10/ Illinois Endangered Species Protection Act* and HB0109 proposed amendments to *520 ILCS 5/ Wildlife Code*.
- Responded to requests from the IDNR Ethics Officer regarding Board membership and annual economic interest and revolving door prohibition reporting.
- Handled over 75 phone and email requests for ESPB and E&T information from the public and other state and federal agencies including referring those related to IDNR E&T consultation, incidental take, data, and permit programs, etc. Due to competing priorities, was unable to respond to approximately 25 requests.

### **11. Coordination with other Agencies**

- Ms. Mankowski responded to a request from the USFWS to assist with information requests for some species involved in current listing petitions.
- Ms. Mankowski assisted with development of, and distribution to respective agencies, a list of state agency E&T contacts for the eight states in USFWS Region 3.
- Ms. Mankowski responded to a request from Illinois Natural History staff for a list of Board contracted research projects involving aquatic endangered and threatened species since 2005.
- Ms. Mankowski responded to inquiries from Illinois Audubon and the Sierra Club regarding the status of Board member appointments.
- Ms. Mankowski responded to an inquiry from staff at The Nature Conservancy about Board publications.
- Ms. Mankowski sent a "Season's Greetings" email to the Board's email distribution list. The email included highlight activities from 2014 and some anticipated for 2015 as well as posting notice of the Board's 2015 quarterly meeting schedule.

### **12. Field Work**

- None.

### **13. Other General Administration and Clerical Work**

- Completed required Open Meetings Act training for designees of State Boards and Commissions.
- Conducted follow-up with Board members about correct and timely submittals of travel and time forms. Prepared and routed Board member and staff travel vouchers and timesheets.
- Conducted updates to ESPB budget tracking on ORC sharepoint.
- Regularly distributed information to individual Board members with whom staff are working on specific items.

- All aspects of follow-up from the November 14, 2014 ESPB meeting.
- All aspects of preparation for the February 20, 2015 ESPB meeting.