

ILLINOIS ENDANGERED SPECIES PROTECTION BOARD

MINUTES OF THE 166th MEETING

LOWELL PARK NATURE CENTER, DIXON PARK DISTRICT, DIXON, IL

15 MAY, 2015

(Approved at the 167th Meeting, August 14, 2015)

BOARD MEMBERS PRESENT: Chair Dan Gooch, Vice-chair Joyce Hofmann, Secretary Jeff Walk, Ms. Lenore Beyer-Clow, Dr. Janice Coons, Mr. Vernon LaVia, Mr. Jim Robinett, and Mr. Randy Schietzelt

BOARD MEMBERS ABSENT: Dr. Jeremie Fant and Mr. Wayne Rosenthal

BOARD MEMBER VACANCIES: none

BOARD STAFF PRESENT: Ms. Anne Mankowski

OTHERS PRESENT: Mr. Eric Janssen

166-1 Call to Order ,Welcome, Roll Call of Board Members and Staff, and Introduction of Audience Members

Chair Gooch called the meeting to order at 9:00 A.M., in lieu of roll call he asked Board members and staff to introduce themselves, and noted that there was a quorum. He then asked audience members to introduce themselves.

166-2 Adoption of Agenda

Chair Gooch asked for a motion to approve the agenda. Secretary Walk **moved** to adopt the agenda, Mr. Robinett seconded the motion, and it was **approved** unanimously.

166-3 Approval of Minutes from the 165th Meeting (02/20/15)

Chair Gooch asked if there were any corrections to the minutes from the 165th meeting. Ms. Mankowski noted a couple typographic errors that were not substantive and she would correct in the final version. Vice-chair Hofmann **moved** to approve the minutes from the 165th meeting with the noted corrections, Ms. Beyer-Clow seconded the motion, and it was **approved** unanimously.

166-4 ESPB Staff Report

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

166-5 Proposed Approval of Process and Form for Requests to the ESPB for Approval of an Illinois Endangered or Threatened Species Recovery Plan

Ms. Mankowski reviewed the proposed process and form. There was discussion about clarifying some language in one part of the form involving references and she indicated she would incorporate the changes into the final version. Following discussion, Mr. LaVia **moved** to approve the process and form, Dr. Coons seconded the motion, and it was **approved** unanimously.

166-6 Next Regular Meeting Information

The next regular meeting of the Board will be at Dickson Mounds Museum, 10956 N. Dickson Mounds Rd.; Lewistown, IL 61542; August 14, 2015; 9:00 A.M.

166-7 Public Comment Period (3 minutes per person)

There were no public comments.

The Board recessed for a break from 10:25 A.M. until 10:55 P.M.

166-8 Closed Session (personnel matters - Open Meetings Act exception 2(c)(1))

Chair Gooch explained that the Board should move to closed session to discuss personnel matters under Open Meetings Act exception 2(c)(1) and asked for a motion to do so. Secretary Walk so **moved** and Vice-chair Hofmann seconded the motion. Chair Gooch took a vote of individual members and each member, Beyer-Clow, Coons, Gooch, Hofmann, LaVia, Robinett, Schietzelt, and Walk, **approved** the motion to go to closed session. The closed session was held from 10:55 A.M until 11:54 A.M.

166-9 Any Actions Resulting from the Closed Session

The Board returned to open session at 11:55 A.M. and took action on items resulting from closed session. Secretary Walk **moved** that: 1) Staff, working with a volunteer attorney (as available) develop request for opinion from the Illinois Attorney General's Office clarifying respective agency authorities under the Illinois Endangered Species Protection Act; 2) if necessary, a separate request specifically addressing the authority to determine compensation for Board staff should be developed and sent immediately; 3) the AG request(s) for opinion should be staff's highest priority and a target deadline of no later than July 1, 2015 was set for the request(s) to be sent; and, 3) due to understaffing, the next Illinois List review and revision anticipated schedule will be deferred by at least one quarter and staff should update the Board's website to reflect the change and indicate that interested parties should visit the website for information about the Illinois List review and meeting agendas for when specific taxonomic groups will be discussed. Mr. Robinett seconded the motion and it was **approved** unanimously.

Chair Gooch then appointed a special committee to review the Board's Executive Director position description against personnel code like-titles and bring back to the Board any recommendations for necessary corrections to like-title assignment. He appointed Secretary Walk, Mr. LaVia, and Mr. Robinett to the special committee and asked that they meet as necessary in order to address the Board with their recommendation at the 167th meeting to be held August 14, 2015.

166-10 Approval of minutes from the Closed Session of the 163rd Meeting (08/15/2014)

Ms. Beyer-Clow **moved** to approve the minutes from the Closed Session of the 163rd meeting, Mr. Schietzelt seconded the motion, and it was **approved** unanimously.

166-11 Approval of minutes from the 03/18/15 Executive Committee Closed Session Special Meeting

Vice-chair Hofmann **moved** to approve the minutes from the 03/18/15 Executive Committee Closed Session Special Meeting, Secretary Walk seconded the motion, and it was **approved** unanimously by the Executive Committee.

166-12 Approval of minutes from the 04/29/15 Executive Committee Closed Session Special Meeting

Secretary Walk **moved** to approve the minutes from the 03/18/15 Executive Committee Closed Session

Special Meeting, Vice-chair Hofmann seconded the motion, and it was **approved** unanimously by the Executive Committee.

165-13 Other Business

There was no other business.

165-14 Adjournment

Mr. LaVia **moved** to adjourn, Mr. Robinett seconded the motion, and it was **approved** unanimously. The meeting was adjourned at 1:17 P.M.

**Illinois Endangered Species Protection Board staff report
for the 166th Meeting, May 15, 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: February: claimed = 51.5, donated = 1.5; March: claimed = 36.0, donated = 1.5; April: claimed = 45.5, donated = 0.0.

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

Illinois List Review ending in 2014 and Revision

The proposed amendments to 1010 and 1050 went to first notice at JCAR on February 20, 2015. Ms. Mankowski provided response to editorial questions and comments from JCAR on both 1010 and 1050. One set of public comments on 1010 were received and responded to by Ms. Mankowski in consultation with IDNR Legal Counsel. The proposed rules were then submitted for second notice without changes. The rules are on the 05/12/15 JCAR meeting agenda for review, with second notice expiring 06/10/2015. Ms. Mankowski will attend the JCAR meeting to be available for any questions.

Illinois List Review and Revision Process

Finalized the ESPB petition process and forms 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 that was approved at the 165th meeting, posted necessary updates to the ESPB website, and sent email notice of the updates to ESPB email distribution 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 Mark 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.

Having not received response to previous requests, Ms. Mankowski made request to IDNR Legal Counsel (LC) asking for any information about if/how the IDNR is planning to deal with the conflicts. She received 04/10/15 explanation that IDNR LC had made recommendations to IDNR Office of Resource Conservation (ORC) for implementing the new law with respect to some conflicts with the endangered species (ES) acts as ORC is developing a response plan and proposed regulation for implementation that may include E&T permits. IDNR LC reviewed that the Wildlife Code amendment allows take for the wolf, which is IL T and Fed E. The ESPA prohibits take for Illinois E&T species and the ESA prohibits take for federal E species (although allows some provisions for take of an E species in defense of human life or safety, but not in defense of property). It was noted that the provisions of the new Wildlife Code language are not consistent with the provisions of either ES act, although, that when there is a contradiction of laws, there is a tenet of statutory construction that allows an argument that the most recent and most specific should govern, in which case the wolf would lose respective protections under the ESPA; however, it remains unclear that is what the General Assembly intended when it passed a bill promoted as a measure to protect the three species. IDNR LC recommendations to ORC included amending the Wildlife Code to eliminate conflict with the ES acts, handling the wolf differently than the other two species when developing permit regulations to avoid conflict with the ES acts, and additional alternatives for amending and clarifying parts of the forthcoming permit regulations and response plan to avoid conflict with the ES acts. The Board has not been engaged by IDNR ORC about the response plan or respective permit regulation promulgations, but may be with respect to the IDNR's requirements to seek the advice of the Board as it plans and implements its E&T conservation program and gain the Board's written approval when promulgating E&T permit regulations.

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 LC seeking input regarding potential conflicts from the proposed legislation with federal and state laws and regulations. She reviewed with IDNR LC 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 LC submitted to the IDNR Legislation Office a review of apparent conflicts with federal laws and provided Ms. Mankowski copy. Subsequent to the February Board meeting, she received explanation from IDNR Legislative Liaison that the bills’ sponsors were not pursuing them and the IDNR had made recommendations to the sponsors that a system is already in place for IDNR Law Enforcement response to reported injured wildlife, that system should be used, and the IDNR would work to enhance communication about the system to partners and constituents.

IDNR Proposed Title 17 Part 885 Herptile Code

Ms. Mankowski is included on the IDNR LC distribution list for internal review of proposed new or amended IDNR administrative rules. Upon receipt of the subject rule as part of IDNR internal review, Ms. Mankowski notified IDNR LC of the requirement under the ESPA (520 ILCS 10/4) that IDNR consult with and gain written approval from the Board prior to promulgating rules on E&T permits and asked when that would take place. She received follow-up from IDNR LC that such coordination and approval should have taken place before it came to IDNR LC and that IDNR LC notified IDNR ORC of the requirement and provided advice that IDNR ORC either consult with and gain written approval from the Board of the proposed rule or remove E&T references from the proposed rule. She was then informed by IDNR LC that IDNR ORC was amending the proposed rule by removing references to E&T.

3. Illinois Auditor General Compliance Audit

Ms. Mankowski was contacted by the Illinois Auditor General’s office regarding a standard compliance audit of multiple state boards and commissions. She prepared and submitted in March a response regarding the ESPB’s anticipated compliance with statutory mandates relative to Board decisions to curtail staff overtime and performance of some duties in light of ongoing understaffing. To date, there has been no additional communication from the Auditor General’s office.

4. ESPB Staff Hiring

Ms. Mankowski continues attempting to work with IDNR Human Resources (HR) for hiring to fill staff vacancies - an Executive Assistant, Listing and Recovery Coordinator for Animals, Listing and Recovery Coordinator for Plants, Data Specialist, and General Counsel.

5. 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 (IAG) and she continues work on requests 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. Due to competing priorities, she did not complete this effort during the current quarter. 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.

6. ESPB Member appointments

Ms. Mankowski conducted administration for 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.

7. ESPB Budget

Ms. Mankowski continues working with IDNR on budget tracking and assignments related to the FY2015 and FY2016 budgets.

8. ESPB Website

Made multiple updates to the ESPB website including several to the Illinois List Review and Revision pages.

9. 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 163rd 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.

10. Meetings, Presentations, and Publications

- There were no meetings of the IDNR Natural Areas Evaluation Committee; March and April meetings were cancelled. There have been no meetings since December 2014. The Board is voting member of the committee.
- Due to competing priorities, was unable to attend the February or April meetings of the Illinois Wildlife Action Team. The Board is a voting member of the team.
- Due to competing priorities, was unable to attend the April 15, 2015 Chicago Wilderness Executive Council meeting in DuPage County. The Board is voting member of the council.
- Due to competing priorities, was unable to attend the January or May 2015 meetings of the Illinois Nature Preserves Commission and present a report of ESPB activities.

11. 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 157th 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.
- Provided comments to INPC regarding proposed translocations of Bunchflower (*Melanthium virginicum*) plants. The plants had been propagated as part of a research project which called for genetic analysis of

individual populations to determine viability and suitability for crossing between populations. Ms. Mankowski recommended following prescriptions in the draft *Recovery Outline with Status Review Triggers for the Illinois Threatened Bunchflower (Melanthium virginicum)* for returning plants to place of origin until a time when suitability of crossing plants from individual populations is known.

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 166th 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.

- Continued working with IDNR Natural Heritage staff on 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)*.
- In coordination with IDNR Natural Heritage staff, prepared a Year One Accomplishments report for implementation of the *Recovery Outline with Status Review Triggers for the Illinois Endangered Eryngium Stem Borer (Papaipema eryngii)*.
- In coordination with INPC staff, prepared Year One Accomplishments reports for implementation of the:
 - Recovery Outline with Status Review Triggers for the Illinois Endangered Carex alata (Broad-winged Sedge)*;
 - Recovery Outline with Status Review Triggers for the Illinois Endangered Clematis viorna (Leatherflower)*;
 - Recovery Outline with Status Review Triggers for the Illinois Endangered Heteranthera reniformis (Mud-plantain)*;
 - Recovery Outline with Status Review Triggers for the Illinois Endangered Hypericum adpressum (Creeping St. Johnwort)*;
 - Recovery Outline with Status Review Triggers for the Illinois Endangered Iresine rhizomatosa (Bloodleaf)*;
 - Recovery Outline with Status Review Triggers for the Illinois Endangered Penstemon tubaeiflorus (Beardtongue)*;
 - Recovery Outline with Status Review Triggers for the Illinois Endangered Polygonum arifolium (Halbred Leaf Tearthumb)*;
 - Recovery Outline with Status Review Triggers for the Illinois Endangered Silene regia (Royal Catchfly)*;and,
 - Recovery Outline with Status Review Triggers for the Illinois Threatened Styrax americana (American Snowbell)*.

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

- For many meetings leading up to the 158th 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, except for limited communication from Natural Heritage in April 2015.

There remains no protocol or standard for ORC or other parts of IDNR to seek the advice of the ESPB about E&T conservation planning and implementation; the current ESPB IDNR MOU only addresses certain items and only with ORC, but as has been previously noted, some provisions of the MOU are not accurately or appropriately worded with respect to the ESPA and regulations. Since E&T programs, projects, and activities are conducted by multiple divisions of ORC and other offices at IDNR formalizing such communication is necessary. Additionally, in light of the Board's ongoing understaffing, it is not tenable that one staff person could or should track down information from each individual unit.

E&T monitoring/surveillance and reporting

- Met with IDNR Natural Heritage (Biotics) Database staff to discuss data requests for the Board's petition process and used by the Board in the Illinois List review and listing status decisions.
- 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 Holthrop 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.

Other

- Handled over 50 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 understaffing and competing priorities, was unable to handle or respond to approximately 50 inquiries and requests.

12. Coordination with other Agencies

- Ms. Mankowski, in coordination with staff from IDNR Natural Heritage and The Nature Conservancy in Illinois, communicated with USFWS staff in Missouri about coordination and communication involving field research for Eryngium Stem Borer (*Papaipema eryngii*) that will take place over the next several years.
- Due to understaffing and competing priorities, was unable to attend the 2015 USFWS *Platanthera leucophaea* annual researchers meeting, held at the Morton Arboretum.
- Ms. Mankowski responded to questions from Illinois Natural History staff regarding the ESPB Illinois List review and revision petition process and forms.

12. Field Work

- None.

13. Other General Administration and Clerical Work

- Coordinated ESPB member and staff responses to the Office of Executive Ethics Supplemental Interest form and the Secretary of State's Annual Economic Interest Statement form.
- 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 follow-up from the February 20, 2014 ESPB meeting.
- All preparation and follow-up for the March 18, 2015 ESPB Executive Session Closed Special Meeting.

- All preparation and follow-up for the April 29, 2015 ESPB Executive Session Closed Special Meeting.
- All preparation for the May 15, 2015 ESPB meeting.