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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 63rd Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, April 19 and 20, 2004, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on Monday, April 19 beginning at 8:00 a.m., and Tuesday, April 20 at 8:30 a.m. The public session for review of this agenda began at or about 1:10 p.m. on April 20.

**Call to Order**

The meeting was called to order by Commission President Samuel M. Concilla and was followed by the Pledge of Allegiance to the Flag.

**Roll Call**

**Members Present**

**Samuel M. Concilla, President**  
**Paul J. Mahon, Vice-President**  
**Donald K. Anderson**  
**Richard W. Czop**  
**Ross J. Huhn**  
**Ted R. Keir**  
**Leon H. Reed**

**Members Not Present**

**Howard E. Pflugfelder, Jr.**  
**William J. Sabatose**

**Review and Approval of Minutes from the January 2004 Meeting**

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to approve the January 2004 minutes as written. Motion carried.

**Executive Director Report**

Although I would love to say that we have moved beyond the money, money, merger issues of the near past, that would not be an accurate accounting of the time that I have been spending over the past several months. House Resolution 15, House Resolution 222, and House Bill 2155 have been taking a great deal of my time and that of our staff. This is not of our own doing. We are asked or required to be present at meetings or to testify before committees, and I believe that we

make very strong cases for the Fish and Boat Commission and the anglers and boaters of Pennsylvania. Here are the key points that I would like to stress:

Pennsylvania has a highly respected and professional staff.

Although questioning the status quo is generally good, as in the case of the Legislative Budget and Finance Committee actions, the questions being asked in the merger resolutions are structural in nature and really miss the key questions that revolve around resource management. Rather than asking about structure, we should be asking how we can better address the resource management challenges facing the Agency. Constantly, as in today's editorial in the Patriot-News, the reference is made to the 27 agencies that have combined Department of Natural Resources. By some simple and naive logic, this is translated to these agencies somehow being more effective in implementing ecosystem management, more efficient in their activities, or more responsive to the public that they serve.

Yet not once have I ever seen any advocates of this merged approach show me that these mega-agencies are, indeed, more effective. Not once have the reports or editorials or letters evaluated the resource challenges facing Pennsylvania and described how this mega-agency will better resolve resource problems. Not once have these people, who so easily chant the "Resource First" mantra, shown me how a large, bureaucratically complex agency will be better connected to the resources and the resource users. Not once have these detractors, of what is an effective system that Pennsylvanian's should be proud of, shown me any metrics or evaluative criteria that they are using to make their assertions.

Yet what Pennsylvania has is an incredible resource base and a highly professional Fish and Boat Commission. Through this system, as archaic as some purport it to be, this state has maintained a leadership role in many conservation programs, such as dam removal, anadromous fish restoration and large programs such as CREP. Through this form of resource management, that some say is a relict of the past, this state has some of the most highly prized fisheries east of the Rockies, one of the top boating programs in the country, and a waterways enforcement bureau whose officers receive a 90% approval rating, even when included among the survey respondents are people who have received citations.

Our strength will reside in our expertise and our ability to contribute to solving resource problems and enhancing the recreational opportunities of the Commonwealth. Neither of those would be helped by either merger proposal. Our strength is in our connection to our vast constituency. I would like to suggest that the Fish and Boat Commission should be held up as an example of government that is connected and responsive to the people. This is an agency that lives and dies by the support of people who purchase fishing licenses and register their boats. This is government at its best and we should, indeed all of Pennsylvania should, be proud of what we have.

I'd like to suggest that now it is time to put these discussions and distractions to rest. It is time to move forward and continue our work with the resources of the state. I would like to ask that the leaders of this state to recognize the good work of the commissions and allow us all, the entire conservation community of this state, to move forward by putting the nails in the coffin of

this merger distraction. Our resource challenges are too great and the delay too costly if we spend any more time on this unproductive debate.

Now I'd like to change topics slightly and talk more about where we are heading. First of all, let me state that the Fish and Boat Commission is a multifaceted organization. We are a major provider of recreational opportunities and we are a significant and important conservation organization in the Commonwealth. There are two complementary roles, not in opposition to each other.

The future of the natural resource management will be in building partnerships that utilize the differing expertise, funding sources, and constituencies to solve challenging problems. Our working relationships with a vast network of other agencies, local governments, commissions, watershed groups, conservancies, and a universe of fishing and boating groups is critical to our success. I'd like to mention just a few examples.

Recently, staff and I have been working with the Game Commission to re-establish regular meetings with them to develop partnering opportunities. This will include discussions on everything from sharing of equipment, knowledge of marketing opportunities, legislative strategies, and resource management approaches. We do have a great deal to learn from each other and I look forward to working with them on a wide variety of issues. We are also working with the Department of Environmental Protection to establish similar coordination meetings, and we have started to develop an agenda that is proposed to cover topics as wide ranging as dam safety to data sharing to water quality permitting. In fact, I am hoping to convince these partners, as well as others, to re-start a working group of the key resource management leadership in state government to have regular meetings to discuss the many issues that we face and that will jointly challenge us as we work to resolve them and move Pennsylvania forward. This will be difficult, but I really believe that we can make this work and it will prove beneficial to all involved.

Obviously the license and boat registration fee increase is our greatest challenge that we currently face. Our operations will be substantially damaged if this is not passed during this session, and we will be asking everyone to help out with this last push to get House Bill 2155 passed. Everyone should recognize that the purchase of a license is one of the greatest bargains in recreation, and it is our contribution to the future of our fishing and boating heritage. Yes, there is some controversy on some aspects of the bill. We will never all agree on every aspect of any measure, but we need to keep in mind that these minor differences should not get in the way of passage of a bill that will benefit all anglers and boaters in the state. It is time to get behind this one hundred percent and move forward with getting this passed, and I am asking everyone to help in this important, critical effort.

Concerning waterways conservation officer classes, interviewing will begin this week for new officers and we will fill critical vacancies. In fact, when I was fishing with my kids at Children's Lake in Boiling Springs, I met Assistant Regional Supervisor Thomas Burrell. He was telling me that earlier in the day he went to patrol one of the counties where the Commission currently has a vacancy. He immediately knew whom to check by their wide-eyed reaction to seeing one of our vehicles down in their area where they hadn't seen anyone in a while.

Concerning the Commission's strategic plan, I want everyone to know that the process is moving forward. Additionally, a trout working group is being formed by Dick Snyder and a follow-up to the Trout Summit of 2002 is being planned. Members will be selected by the end of May and will represent a broad cross section of constituents.

Finally, I would like to describe to all of you the exceptional experiences that I have had with all of the angling and boating groups that I have had the pleasure to meet with during this initial time in Pennsylvania. This state is blessed with incredibly active and passionate groups in every nook and cranny of the Commonwealth. The number of people who treasure their waters for boating and fishing is phenomenal, and they follow that interest with days in the field and action on the ground such as running cooperative nurseries, uncountable habitat improvement days, childrens' fishing festivals, stream cleanups, and much more. This is a strength that Pennsylvania has that we should all treasure and support in all ways possible. People want to be involved, they want to be a part of something larger than themselves, they want to contribute. The aquatic resources of this state are worth contributing to, and we will be working continuously to help with these efforts and to protect, conserve, and enhance these tremendous resources.

### **Reports of Commissioner Committees & Marina Workgroup**

#### **Executive Session and Announcements (Commissioner Concilla) –**

An Executive Session was held on Monday, April 19, at 8:00 a.m. Several matters were discussed.

#### **Executive, Planning, and Human Resources (Commissioner Concilla) –**

The Executive, Planning, and Human Resources Committee met on Monday, April 19, at 10:30 a.m. Acting Chief Counsel Laurie Shepler provided a briefing on the Little Juniata River lawsuit, the sand and gravel dredging appeals, and the status of run of river dams. Tom Ford provided an update on the Commission's strategic plan.

#### **Administration (Commissioner Concilla) –**

The Administration Committee met on Monday, April 19, at 11:30 a.m. Wasyl Polischuk provided both a fishing license sales report and a boat registration report.

#### **Education and Publications (Commissioner Keir) –**

The Education and Publications Committee did not meet and, therefore, did not have anything to report.

#### **Law Enforcement (Commissioner Huhn) –**

The Law Enforcement Committee met at 2:00 p.m. on Monday, April 19. Tom Kamerzel briefed the Committee on the selection process for the 17<sup>th</sup> Waterways Conservation Officer training class.

The Committee acted upon proposed revocations. The Committee revoked the fishing privileges of five (5) individuals for (1) year and fifteen (15) individuals for two (2) years. The fishing privileges of three (3) individuals were not revoked. The Committee revoked the boating privileges of two (2) individuals for two (2) years, three (3) individuals for two (2) years with a

reduction to one (1) year upon successful completion of a safe boating course, nine (9) individuals for one (1) year with a reduction to six (6) months upon successful completion of a safe boating course and one (1) individual for six (6) months. The Committee also revoked the boating privileges of four (4) individuals for two (2) years and ordered them to successfully complete a safe boating course, and the Committee revoked the boating privileges of one (1) individual for two (2) years or until such time as he successfully completes a safe boating course. The Committee upheld a one year revocation of an individual's boating privileges as recommended by the Commission's hearing officer.

**Fisheries (Commissioner Reed) –**

The Fisheries Committee met on Monday, April 19, at 1:30 p.m. Agenda items were discussed and approved. Staff withdrew the agenda item pertaining to the classification of wild trout stream sections to allow staff an opportunity to review comments that were received just prior to the Commission meeting. John Arway provided a presentation on glow fish. An update was provided regarding the Commission's proposal to allow all tackle in Delayed Harvest Artificial Lures Only areas during the harvest season.

**Boating (Commissioner Anderson) –**

The Boating Committee met on Tuesday, April 20, at 8:30 a.m. The Committee reviewed two agenda items for final rulemaking and four agenda items for proposed rulemaking. The Committee recommended approval of these items to the Commission. The Committee also reviewed a petition to limit the boat speed on Harveys Lake in Luzerne County. The Committee recommended that the Commission consider this petition for further review.

**Legislation (Commissioner Czop) –**

The Legislation Committee met on Monday, April 19, in conjunction with the Executive, Planning, and Human Resources Committee. Gary Moore provided information pertaining to several pending legislative items.

**Engineering and Development (Commissioner Czop) –**

The Engineering and Development Committee met on Tuesday, April 20, at approximately 9:40 a.m. Agenda items were discussed, and a project update and a schedule update were provided.

**Marina Workgroup (Commissioner Czop) –**

The Marina Workgroup has not met recently, but tentative plans have been made to meet in Erie on Monday, May 10.

**Public Comment to Commissioners and Staff**

There were no comments or questions from the public.

## **BOATING FINAL RULEMAKING**

### A. Amendment to Section 105.3 (Unacceptable Boating Practices).

#### Commentary:

Carbon Monoxide is a colorless, odorless, tasteless and highly toxic gas. It is produced when a carbon-based fuel, such as gasoline, propane, charcoal or oil, burns. CO is often emitted through a boat's engine or generator exhaust outlets. As a result, CO can accumulate almost anywhere in or around a boat. It can collect under swim platforms, around the stern, and inside canvas enclosures. The results can be dangerous, even fatal.

A fad called "teak surfing" or "drag surfing" is one of the riskiest activities for CO poisoning. Teak surfing involves an individual holding onto the swim platform of a boat as it accelerates and then letting go to "surf" the wake. Teak surfers cannot avoid the risk of inhaling dangerous levels of CO because the propulsion engines produce a very high volume of exhaust gases, usually directed straight into the area behind the boat where the teak surfers are located. There is also an inherent danger of the individual losing his or her grasp of the swim platform and being hit by a moving propeller. Accordingly, the Commission has proposed amending §105.3 to make it unlawful to operate a motorboat at any speed with a person or persons sitting, riding or hanging on a swim platform or swim ladder attached to the motorboat.

A notice of proposed rulemaking was published at 33 Pa. B. 4077 (August 16, 2003) (Exhibit A). The Commission did not receive any comments concerning this proposal during the formal public comment period. After the public comment period, the Commission received one public comment opposing the creation of a minimum length for the tow rope. Copies of all public comments have been provided to the Commissioners.

At its September 2003 meeting, the Boating Advisory Board recommended that the Commission table this item until additional information could be obtained from NASBLA to incorporate into the proposed regulation. The Commission, at its September 2003 meeting, deferred action on the agenda item so that staff could seek input from NASBLA and other states. At its September 2003 meeting, NASBLA adopted a model act for "Safe Towing Practices." The Model Act provides that no person shall operate a motorboat with a person sitting, riding or hanging onto a swim platform or swim ladder attached to the motorboat. It further provides that no person shall operate a motorboat, using a tow rope of 20 feet or less, when towing a person on waterskis or other devices.

At its March 29, 2004 meeting, the Boating Advisory Board recommended that the proposed amendment be revised to clarify that occupying the swim platform during certain maneuvering activities is permitted and to make it unlawful to operate a motorboat that is towing a water skier on a rope less than 20 feet in length. Staff agree and recommend that the Commission, on final rulemaking, adopt the amendments as follows:

§105.3. Unacceptable boating practices.

It is unlawful to:

\* \* \*

**(10) Operate a motorboat at any speed with a person or persons sitting, riding or hanging on a swim platform or swim ladder attached to the motorboat, EXCEPT WHEN LAUNCHING, RETRIEVING, DOCKING OR ANCHORING THE MOTORBOAT.**

**(11) OPERATE A MOTORBOAT AT ANY SPEED WHEN TOWING A PERSON ON WATERSKIS OR OTHER DEVICES USING A TOW ROPE OF 20 FEET OR LESS.**

Briefer:

John F. Simmons, Director, Bureau of Boating and Education

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking with the changes described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Czop to adopt the amendment as set forth in the notice of proposed rulemaking with the changes described in the Commentary. Motion carried.

B. Amendment to Section 111.48 (Northampton County).

Commentary:

The new Route 33 Access launch area in Northampton County on the Lehigh River is now open. The District Waterways Conservation Officer reports that wakes from boat traffic have caused difficulties for boaters using the ramp. There are currently three slow-no-wake buoys at the access ramp placed approximately 100 feet from the shoreline. According to the district officer, this provides only limited protection to the ramp, boaters launching and retrieving watercraft, and shoreline anglers. He reports that boaters passing through this area outside of the buoys still create large enough wakes to impact the shoreline with sufficient force to do damage. He has suggested that an expanded "slow-no-wake" zone be established on the river immediately in front of the Commission ramp.

Staff are suggesting that the slow-no-wake zone extend across the main channel of the river to the shoreline of Turkey Island directly opposite the ramp. The zone is proposed to extend 150 feet upstream and 150 feet downstream from the boat ramp. Such a zone would have little impact on the unlimited horsepower boating in the area and should do much to protect boaters and anglers at the access area.

The Boating Advisory Board considered this item at its September 2003 meeting and recommended that the Commission approve the publication of a notice of proposed rulemaking. The Commission considered this proposal at its September 2003 meeting and approved the publication of a notice of proposed rulemaking seeking public comments for an extended public comment period of 60 days with final consideration not to occur prior to the April 2004 meeting. A notice of proposed rulemaking was published at 33 Pa. B. 5929 (December 6, 2003) (Exhibit B). The Commission did not receive any public comments concerning this proposal.

At its meeting on March 29, 2004, the Boating Advisory Board again considered this item and recommended that the Commission not adopt the amendment until staff seek additional input from the Bethlehem Boat Club concerning the impact of the regulation on its waterskiing operations. Commission staff subsequently contacted the club, and the Commission did not receive any comments. According to the local waterways conservation officer, waterskiing by the club's members is limited primarily to the area upstream of the access area.

Briefer:

John F. Simmons, Director, Bureau of Boating and Education

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried.

## PROPOSED RULEMAKING AND OTHER MATTERS

### C. Amendment to Section 91.4 (Age of Operator).

#### Commentary:

The Commission adopted limitations on the age of operation to address concerns for the safety of young operators of larger boats and personal watercraft and those that boat around them. At the time the regulations were adopted, 10 horsepower was considered to be a satisfactory horsepower limitation. Youthful operators could operate larger boats after obtaining a Boating Safety Education Certificate or if they had an older operator onboard. The recent law providing for mandatory education increased the minimum horsepower that comes into play to 25 horsepower. To be consistent with this new law and to eliminate some complexity in the regulations, staff were asked to review the regulations pertaining to age of operator and personal watercraft operation and to propose amendments.

Staff propose to simplify the existing regulations and make them consistent with provisions of the mandatory education law. Staff also are proposing to eliminate the distinction between PWC and other motorboat operation by applying the same provision to each. A description of the substantial changes follows:

Subsection (a) –The current regulation prohibits operation by children 11 years of age or younger of boats powered by motors greater than 10 horsepower. The law requires a Boating Safety Education Certificate for operators of boats powered by motors in excess of 25 horsepower. Under the proposed changes, operators 11 years of age or younger would not be permitted to operate personal watercraft and other boats with motors greater than 25 horsepower.

Subsection (b) – Delete in its entirety. The current regulation provides that a person 12 through 15 years of age may not operate a boat propelled by a motor greater than 10 horsepower unless the person has obtained and possesses a Boating Safety Education Certificate or at least one person 16 years of age or older is onboard. Because all operators in this age group (12 through 15) are required by the law to possess a Boating Safety Education Certificate, the first part of this provision is no longer necessary and may be removed. The second part of the provision also should be removed because it is no longer consistent with the law to allow operation by someone less than 16 years of age who does not have a certificate as long as another person 16 years of age or older is onboard.

Old Subsection (c)/New Subsection (b) – No change at this time. However, staff are proposing that after January 1, 2008, a person 15 years of age or younger may not operate PWC. Therefore, if the Commission adopts the change on final rulemaking, this subsection will have to be removed at a later date.

Subsection (c) – This proposal prohibits the operation of PWC by anyone 15 years of age or younger effective January 1, 2008.

Staff propose that §91.4 be amended as follows:

§91.4. Age of operator.

(a) A person 11 years of age or younger may not operate a personal watercraft or a boat propelled by a motor greater than [10] 25 horsepower.

(b) **[A person 12 through 15 years of age may not operate a boat propelled by a motor greater than 10 horsepower unless the person has obtained and has in his possession a Boating Safety Education Certificate or at least one person 16 years of age or older is present onboard.**

(c) ] A person 12 through 15 years of age may not operate a personal watercraft if there are any passengers onboard 15 years of age or younger.

**(c) Effective January 1, 2008, a person 15 years of age or younger may not operate a personal watercraft.**

The Boating Advisory Board considered this item at its March 29, 2004 meeting and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the proposed changes. The Board further recommended that the Commission seek the input of the Governor's Youth Council for Hunting, Fishing and Conservation.

Briefer:

John F. Simmons, Director, Bureau of Boating and Education

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. Motion carried.

D. Amendment to Section 103.2 (Definition of Slow, Minimum Height Swell Speed).

Commentary:

Historically, the Commission's regulations have used the term "slow, minimum height swell speed," as opposed to the more common term, "slow, no wake speed." Section 103.2 of the Commission's regulations define "slow, minimum height swell speed" as the "lowest engagement speed for the engine and that the wake or wash creates a minimum disturbance." The section also provides that "Buoys and signs marked 'slow, no wake' shall mean operation at slow, minimum height swell speed."

The current definition does not adequately describe what the Commission means by "slow, no wake speed." There have been misunderstandings by the boating public and problems when citations by Commission officers for wake violations have been challenged in court. Staff have reviewed the definitions for "slow, no wake speed" in other states and by the National Park Service. Other states and the federal government do not use the term "slow, minimum height swell speed."

Staff therefore recommend that the term "slow, minimum height swell speed" be replaced with "slow, no wake speed" so the public better understands the term. In addition, staff recommend that the body of the definition be changed to better reflect the accepted standards in other states. Staff propose that §103.2 be amended as follows:

§103.2. Definitions.

[(a) **Definitions.**] The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Motorboat—A boat being operated by motor, including a sailboat with sails if the motor is running.

Sailboat—A boat being propelled with only sails; if a motor is attached it is not engaged.

**[Slow, minimum height swell speed – The lowest engagement speed for the engine and that the wake or wash creates a minimum disturbance.**

**(b) Buoys and signs marked "slow, no wake" shall mean operation at slow, minimum height swell speed.]**

**Slow, no wake speed – The slowest possible speed of a motorboat required to maintain maneuverability so that the wake or wash created by the motorboat on the surface of the water is minimal.**

There are several references to slow, minimum height swell speed throughout the Commission's regulations. Staff also propose that these references be amended to reflect the new term.

The Boating Advisory Board considered this item at its March 29, 2004 meeting and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the proposed changes.

Briefer:

John F. Simmons, Director, Bureau of Boating and Education

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Czop to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. Motion carried.

E. Amendment to Section 111.56(b) (Somerset County, Youghiogheny River Lake).

Commentary:

The U.S. Army Corps of Engineers, Pittsburgh District, has requested that a portion of section 111.56(b)(1) be removed from the regulations. Corps staff at Youghiogheny Lake state that the regulation is not necessary because the usage in the Horseshoe Curve part of the lake, even during peak usage periods, does not warrant the retention of a slow-no-wake zone. A chart showing this area is attached (Exhibit C).

In addition, subsection (b) of this regulation combines PFD requirements in the same subsection as the slow, minimum height swell speed areas. Separating these subjects into different paragraphs increases the clarity of the regulation.

Staff propose that §111.56(b) be amended as follows:

§111.56. Somerset County.

\* \* \*

(b) *Youghiogheny River Lake*. [Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe or kayak. Boats are limited to slow, minimum height swell speed within the following areas:

(1) **Wilkins Hollow Cove/Horseshoe Curve.** Starting at a point at the west bank approaching Wilkins Hollow Cove, within a line which follows the curve about 600-800 feet off the shore to a point about 1,000 feet east of the point where the shoreline turns abruptly northward.]

**(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe or kayak.**

**(2) Boats are limited to slow, no wake speed within the following areas:**

**(i) Wilkins Hollow Cove.**

[2] **(ii) Tub Run Cove.** From a line extending in a southwesterly direction between the outermost points of land on each side of the cove as marked.

[3] **(iii) Somerfield Recreation Area.** As marked in the vicinity of the boat launch ramp and marina.

[4] **(iv) Fall Run Cove.**

[5] **(v) Hall Run Cove.**

[6] **(vi) Braddocks Run Cove.**

[7] **(vii) Reason Run Cove.**

[8] **(viii) Off Somerfield Hill.**

\* \* \*

The Boating Advisory Board considered this item at its March 29, 2004 meeting and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the proposed changes.

Briefer:

John F. Simmons, Director, Bureau of Boating and Education

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Huhn to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. Motion carried.

F. Amendment to Section 111.2 (Allegheny County).

Commentary:

In September of 2003, staff received a letter and petition to designate a slow, no wake zone, approximately 9/10 of a mile in length, in the back channel of the Ohio River at Neville Island on the Ohio River at Coraopolis.

There are four marinas and a restaurant in the section being requested as slow, no wake. Two of the marinas are fairly new and have approximately eighty boats moored. The back channel is rather narrow with several shoals. (Exhibit D). The area dead-ends at the Emsworth Dam. The letter states that wakes from careless boaters caused more than \$1,000 damage to one docked vessel during the 2003 boating season. Other undocumented reports also have been received. Regional law enforcement personnel report an increase in boat traffic in this area resulting in increased complaints, and they recommend that the area be restricted. Commission staff last reviewed this matter in 1992. At that time, sufficient justification did not exist to restrict this area. However, as previously stated, there has been an increase in the number of marinas and the addition of a popular restaurant.

Staff recommend that §111.2 be amended as follows:

§111.2. Allegheny County.

\* \* \*

**(e) Ohio River. Boats are limited to slow, no wake speed in the back channel of Neville Island from the Coraopolis Bridge upstream to the Interstate 79 bridge from May 1 through October 1.**

The Boating Advisory Board considered this item at its March 29, 2004 meeting and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the proposed change.

Briefer:

John F. Simmons, Director, Bureau of Boating and Education

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary.

Action:

A motion was made by Commissioner Huhn and seconded by Commissioner Czop to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. Motion carried.

G. Petition to Limit Boat Speed on Harveys Lake, Luzerne County.

Commentary:

The Commission received a petition from the Harveys Lake Protective Association to amend the regulations to establish a 45 miles per hour speed limit from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day on Harveys Lake. The petition is attached (Exhibit K).

Pursuant to the Commission's regulations at 58 Pa. Code §51.6, a person may submit a petition or request for regulations addressed to the Commission in the format set forth in the General Rules of Administrative Practice and Procedure (1 Pa. Code §35.18). 58 Pa. Code §51.6 further provides that Commission staff will review every petition for regulations to ensure that the petition: 1) is completed as required by 1 Pa. Code §35.18; 2) requests an action within the Commission's authority or jurisdiction; and 3) does not conflict with applicable Commonwealth or federal law. If staff determine that a petition is appropriate for further consideration, the petitioner will be given the opportunity to make a five-minute oral presentation on the petition to the Commissioners. An oral presentation will give the group submitting the petition an opportunity to acquaint the Commissioners and staff with their request in a brief overview.

Staff have reviewed the Harveys Lake Protective Association's petition and have determined that it is appropriate for further consideration. In accordance with the regulations, the petitioner was invited to attend the meeting to present its petition. Mr. L. Richard Squitieri spoke on behalf of the Association.

Briefer:

John Simmons, Director, Bureau of Boating and Education

Recommendation:

Staff recommend that the Commission consider the petition for further review.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Mahon to consider the petition for further review. Motion carried.

## **ENGINEERING & DEVELOPMENT**

### **A. Stone House/Fisheries Office Lease Extension, Pleasant Gap Fish Culture Station.**

#### Commentary:

On December 1, 1998, the Commission leased a building that adjoins the Commission's Pleasant Gap Fish Culture Station and Office Facility from the Chante Hill Partnership. The Bureau of Fisheries currently uses this building as an office for eight full time employees (Division of Trout Production and Division of Warmwater/Coolwater Production). The only access for this property is through the Commission's Pleasant Gap Facility, and the Commission has a permanent easement to the spring in the basement of the structure that is currently utilized by Fisheries as a water supply for the hatch house at Pleasant Gap.

The 1998 lease for the subject structure will expire on November 30, 2004. The Commission is currently paying rent of \$600 per month. Commission staff approached the Chante Hill Partnership in the summer of 2003 to discuss the possibility of a lease extension, but Chante Hill was reluctant to discuss an extension at that time. However, a Chante Hill representative approached the Commission in the winter of 2004 and indicated they would consider a +/- 19 month lease extension with a reasonable increase in rent and a softening of the current lease's language. The key provisions of any lease extension agreement would be a reasonable increase in rent, a continuation of a right of first refusal provision, and a provision that would allow the lease to continue on a month-to-month basis upon mutual agreement after any negotiated lease extension.

An extension of the lease would relieve the Commission of the need to move an office facility during poor weather and a holiday season (Thanksgiving and Deer Season) and allow the Commission additional time to evaluate and address its office needs at Pleasant Gap.

#### Briefer:

John F. Simmons, Acting Director, Bureau of Engineering and Development

#### Recommendation:

Staff recommend that the Commission approve the extension of the lease for the stone house structure at Pleasant Gap as described in the Commentary. Staff are requesting this approval so that they may negotiate in good faith and are able to expedite the necessary paperwork when specific terms have been agreed upon.

#### Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Huhn to approve the extension of the lease for the stone house structure at Pleasant Gap as described in the Commentary. Motion carried.

## B. Julius Lauff Estate Property Acquisition at Yardley Access, Makefield Township, Bucks County.

### Commentary:

The Estate of Julius Lauff has offered the Commission a +/- 0.39 acre parcel of land in Makefield Township, Bucks County. The parcel is located along the Delaware River adjacent to and immediately down river from the Commission's Yardley Access property. The Yardley Access is used for fishing and boating with the customary boat use being shallow draft, lightweight fishing boats, canoes and inflatables. The Yardley Access has an improved parking area, and a new concrete boat ramp recently was constructed. The property being offered is undeveloped and averages 76 feet in width and 220 feet in length. The site is located in an affluent area of Bucks County. The property would provide an additional buffer area for the Commission's access area and allow for the possibility of future expansion of the Yardley Access.

The estate is offering the subject parcel through a local realtor for \$30,000. Commission staff have contacted the PennDOT appraisal staff that covers Bucks County to provide an opinion as to the value of the property. The PennDOT staff are familiar with the area and reviewed the property listing information and provided a written opinion stating that the listing price was in the reasonable range. In the event the Commission approves this action, staff will negotiate and secure a legal commitment from the estate for the property under the best available terms.

Staff would require that any agreement include provisions requiring that the seller pay all real estate taxes and transfer taxes that are normally split between the seller and buyer. Staff also would require the seller to provide the Commission with a certificate of title from an attorney in order to lower the Commission's costs and expedite the closing process. In addition, the sale would be contingent on the Commission's receiving good marketable title free and clear of any liens, judgments and encumbrances and on an environmental assessment finding the property free of any significant environmental problems such as hazardous and toxic waste contamination.

This acquisition is subject to finding the available funds to complete the acquisition. Staff will attempt to find acquisition partners in the conservancy and conservation community to assist with this acquisition. This assistance may include providing monetary assistance or acting as a straw party in the transaction.

### Briefer:

John F. Simmons, Acting Director, Bureau of Engineering and Development

### Recommendation:

Staff recommend that the Commission approve the acquisition of the 0.39 acre Lauff parcel at the Yardley Access as described in the Commentary. Staff are requesting this approval so that they may negotiate in good faith and are able to expedite the necessary paperwork and the acquisition process.

### Action:

A motion was made by Commissioner Czop and seconded by Commissioner Anderson to approve the acquisition of the 0.39 acre Lauff parcel at the Yardley Access as described in the Commentary. Motion carried.

C. Southside Access Grant – City of Pittsburgh, Allegheny County.

Commentary:

The Pennsylvania Fish and Boat Commission and the City of Pittsburgh entered into a 25-year agreement on June 16, 1981, for the development, operation and maintenance of a public fishing and boating access on the Monongahela River in Allegheny County. In the mid-1990s, the City expanded the parking lot using local funds. The Commission and the City are in the process of renewing the Agreement. This is a well-used boat launch area but needs improvements to allow multiple vehicle boat launches, temporary docking, and handicapped fishing opportunities. As part of the renewal negotiations, the Commission has been asked to contribute up to \$100,000 for the design, permits and construction of a three-lane concrete boat ramp, dock bulkhead with floating docks, and a rock jetty with a handicapped fishing pier. This development qualifies for Sport Fish Restoration funding. The City has agreed to keep the area open to the public for a period of 25 years and provide necessary routine maintenance.

Briefer:

John F. Simmons, Acting Director, Bureau of Engineering and Development

Recommendation:

Staff recommend that the Commission authorize a grant of up to \$100,000 to the City of Pittsburgh for the replacement of the existing Southside Access boat ramp as described in the Commentary.

Action:

A motion was made by Commissioner Huhn and seconded by Commissioner Anderson to authorize a grant of up to \$100,000 to the City of Pittsburgh for the replacement of the existing Southside Access boat ramp as described in the Commentary. Motion carried.

**FISHERIES**  
**FINAL RULEMAKING**

A. Amendment to Section 65.24 (Miscellaneous Special Regulations) – Cast Nets, Raystown Lake, Huntingdon County.

Commentary:

Several years ago, the Commission adopted a regulation that enabled the Executive Director or a designee to issue permits for use of cast or throw nets at Lake Raystown, Huntingdon County. This special gear makes it possible for anglers to capture live gizzard shad and alewife, preferred striped bass bait. The permits limit cast or throw nets to no more than 6 feet in radius (12 feet in diameter) with a mesh size of at least 3/8 inch. Recently, staff have been approached by Lake Raystown anglers seeking use of a larger cast net. It appears that gizzard shad and alewife can more easily evade capture with the smaller nets given the time that it takes for weights to sink the net and the relatively small surface area involved, even when the net fully opens with the perfect cast. Anglers are requesting cast nets with a larger radius.

The Commission sees no problem with the use of a larger net. Any catch other than gizzard shad and alewife already has to be immediately returned to the water. Thus, the Commission has proposed that §65.24 be amended to increase cast or throw net size to 10 feet in radius (20 feet in diameter).

A notice of proposed rulemaking was published at 34 Pa. B. 1461 (March 13, 2004) (Exhibit E). The Commission received three public comments supporting the proposal. Copies of all public comments have been provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Huhn to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried.

**B. Termination of Warmwater/Coolwater Species Special Conservation Waters Program under Section 65.8.**

Commentary:

At its April 1986 meeting, the Commission adopted regulations for its new Warmwater/Coolwater Species Special Conservation Waters Program. This program began a major Commission initiative to provide enhanced management for warmwater/coolwater fisheries. Rationale for the more restrictive length and creel limits included the need for additional protection of new or reclaimed lake fisheries, rehabilitating fisheries significantly impacted by angling pressure and restructuring of fish populations where the sport fish communities are not of the composition desired to provide recreational angling closer to the capability of the individual water. Since implementation of the program, use has been expanded to major riverine habitat and to select reservoirs during major drawdowns.

Considerable evaluation work, both biologically and angler demand wise, occurred on a number of waters involved in the program during the years following implementation. At the same time, development of other special regulation programs for managing warmwater/coolwater fisheries gave fisheries managers alternatives to the more inclusive and sometimes unnecessary regulations in the conservation waters program. Results of biological and angler sampling provided the means for the Commission to shift waters in this program to other programs, including Big Bass and more recently the Panfish Enhancement program.

To consolidate the number of special regulations used in managing warmwater/coolwater fisheries, the Commission already has redesignated the three remaining conservation lakes to other programs, effective January 1, 2005. Thus, there is no need to retain the regulations for warmwater/coolwater species special conservation waters. The Commission accordingly has proposed removing this section.

A notice of proposed rulemaking was published at 34 Pa. B. 1458 (March 13, 2004) (Exhibit F). The Commission did not receive any public comments concerning this proposal.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Huhn to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried.

### C. Creation of Miscellaneous Special Regulations—Sugar Lake, Crawford County.

#### Commentary:

Sugar Lake, a 90 acre productive natural lake in Crawford County, was added to the Warmwater/Coolwater Species Special Conservation Waters program in 1987. The new set of regulations involved increased minimum length limits and reduced possession limits as part of a major initiative for enhanced management of warmwater/coolwater species. Since program inception, management of warmwater/coolwater species has evolved considerably with the establishment of Big Bass special regulations, Panfish Enhancement regulations and considerable study on response of fish populations to more restrictive regulations. Thus, the Commission has moved several Conservation Lake waters to other programs.

Sugar Lake contains an abundant bass population, a rather dense panfish population characterized by slow growing individuals (bluegill, black crappie and yellow perch) and a robust muskellunge population for the size of the lake. Sugar Lake serves as a brood lake in muskellunge propagation activities. To maintain and enhance fishing opportunities there, the Commission already has added Sugar Lake to the Big Bass Program, effective January 1, 2005. The Commission also has proposed that a miscellaneous special regulation for muskellunge be adopted that imposes a 36-inch minimum size limit and a one fish daily creel limit. Although Commission staff have not sampled intensively the muskellunge in Sugar Lake, the higher minimum size limit has led to improvements in size structure. For all other species, Commonwealth inland regulations will apply.

A notice of proposed rulemaking was published at 34 Pa. B. 1458 (March 13, 2004) (Exhibit F). The Commission did not receive any comments concerning the proposal.

#### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking.

#### Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Huhn to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried.

#### D. Commercial Landing of Finfish and Shellfish.

##### Commentary:

Commercial harvest quotas and caps are powerful regulatory tools in managing marine shellfish and finfish stocks. Quotas and caps are used to prevent over-harvest, to control the take of limited resources and to provide a means of distributing harvest among jurisdictions and individual users. Normally, the jurisdiction where the fishery is located or where the commercial boat is headquartered governs the harvest take. As such, when a boat lands, the harvest is reported (credited) to that jurisdiction. When used in this context, a landing occurs when a boat comes to shore (dock, ramp, etc.) and off loads cargo, in this case, finfish, shellfish, crustaceans or other marine seafood. These landings are then reported to various state and federal agencies and form the basis for adjusting harvest limits for the rest of the season and for planning limits for the next season. Landings of finfish, shellfish, crustaceans and other marine seafood are not the same as seafood trucked or flown into the Commonwealth for sale at retail and wholesale markets because generally that seafood is landed elsewhere and should be counted in the appropriate jurisdiction.

The issue of marine finfish and shellfish being landed or sold in this Commonwealth is not new. The Commission previously promulgated regulations specific to hard clams, weakfish and horseshoe crabs. Recently, however, commercial harvesters landed several thousand pounds of finfish and shellfish in the Philadelphia area because the quotas for these species had been filled in the home jurisdiction. There is concern that there may be a loophole in Pennsylvania law that enables harvesters to circumvent harvest quotas or caps in home jurisdictions. Because the Commonwealth has not been allocated a quota for harvest of any Atlantic Coastal fish or crustacean stock, the landing of Atlantic caught fish and crustaceans should not be permitted.

The Commission has proposed a new regulation that places restrictions on the landing of finfish, shellfish, crustaceans and other marine seafood in the Commonwealth. Specifically, the Commission has proposed making it unlawful to land finfish, shellfish, crustaceans and other marine when harvest quota allocations to the Commonwealth have been met or otherwise capped by action of the Executive Director pursuant to the fishery management plans and harvest allocations of the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. In the event quotas have been met or otherwise capped in the Commonwealth, the landing of finfish, shellfish, crustaceans and other marine seafood is permitted only if the species have been properly reported as part of an unmet quota of another jurisdiction. The provisions of the proposed section will not apply to the landing of fish at Lake Erie, which is already governed by Chapter 69 (relating to fishing in Lake Erie and boundary lakes).

A notice of proposed rulemaking was published at 34 Pa. B. 1457 (March 13, 2004) (Exhibit G). The Commission did not receive any comments concerning the proposal.

##### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the new regulation as set forth in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to adopt the new regulation as set forth in the notice of proposed rulemaking. Motion carried.

## PROPOSED RULEMAKING

E. Amendment to Section 65.24 (Miscellaneous Special Regulations) - Lower Burrell Park Pond, Westmoreland County.

### Commentary:

Lower Burrell Park Pond (also locally known as Holtzhauer Lake) is a 4 acre impoundment located in northwestern Westmoreland County and owned by the City of Lower Burrell. The impoundment was built on an unnamed tributary to Little Pucketa Creek and is very assessable to a public road (68% within 110 yards). The entire shoreline is open to public angling, but ice fishing and boating are not permitted on the impoundment. The impoundment is located in a city park that has a walking trail around the lake, a handicap access fishing pier, several parking areas, picnic pavilions and recreational facilities. A May 2002 fish population sampling by Area Fisheries Manager Rick Lorson found largemouth bass being the dominant warmwater game fish and bluegill the dominant panfish. The bass and bluegill fish population size structure and density are of relatively high quality.

Informal catch and release regulations have been imposed by the City of Lower Burrell at the impoundment since September 2000. The City would like to continue with the catch and release regulations and to have them enforced by the Commission. Staff concur with the City's request and have not heard of any complaints about the current but "informal" regulations. Because the pond is a publicly owned, highly accessible impoundment in an urban population area, it has great appeal for the trout stocking program. Staff are continuing to work with the City of Lower Burrell on this aspect of a management plan.

Staff are proposing that §65.24 (miscellaneous special regulations) be amended to impose catch-and-release only regulations for all species at Lower Burrell Park Pond to optimize use of this waterway. The wording will be "This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught must be immediately returned unharmed."

### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

### Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If approved on final rulemaking, the amendment will go into effect on January 1, 2005.

### Action:

A motion was made by Commissioner Huhn and seconded by Commissioner Anderson to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If approved on final rulemaking, the amendment will go into effect on January 1, 2005. Motion carried.

## F. Change in Daily Creel Limit for American Shad—Schuylkill River.

### Commentary:

Major efforts to open or remove blockages to anadromous fish migration are underway on the Schuylkill River and give staff reason to rethink fishing regulations. Three dams are now or will be breached/removed: Plymouth Dam (River Mile (RM) 18), Vincent Dam (RM 42) and Felix Dam (RM 79). The Fairmount Dam (RM 9) has a vertical slot fishway that is supposed to be rebuilt in 2005. On March 10, 2004, ground breaking occurred for a fishway at Flat Rock Dam (RM 15). Norristown Dam (RM 21) will have fish passage in place by 2006, and Black Rock Dam (RM 37) will have fish passage by 2007.

The Commission has been stocking fry shad in the Schuylkill River for several years, and sampling as recent as 2003 indicates that these fish are returning as adults. With the likelihood of more and more of the river being open to passage, there is a need to implement restrictive regulations to enhance restoration efforts while providing anglers with an opportunity to fish for and harvest this exciting sport fish. Staff believe that a one shad creel limit, which currently is in place on the Lehigh River where similar restoration work is underway, is appropriate to maintain a fishery yet not degrade restoration efforts. As anglers are able to go out and catch American shad and possibly harvest one on occasion, they should be more inclined to actively support restoration activities.

Unlike the regulations on the Lehigh River where the Easton Dam (right at the confluence with the Delaware River) is the downstream limit of waters having the one fish creel limit, staff prefer not to use the Fairmount Dam as the downstream limit on the Schuylkill River. Although the several mile reach of the river from the Fairmount Dam downstream to the confluence with the Delaware River/Estuary is tidal, American shad tend to concentrate at the base of the Fairmount Dam. Thus, using the I-95 Bridge as a downstream limit for the one fish limit will provide additional protection to adult American shad having a definite interest in ascending the Schuylkill River. Staff accordingly propose establishing a one fish creel limit for American shad in the Schuylkill River basin upstream of the bridge on I-95 at Philadelphia.

Staff recommend the following amendment:

§61.8. Lehigh River, **Schuylkill River** and tributaries.

\* \* \*

(d) The following seasons, sizes and creel limits apply to the Lehigh River and its tributaries **and the Schuylkill River upstream of the I-95 Bridge and its tributaries:**

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
AMERICAN SHAD	Open year-round	No Minimum	1
OTHER SPECIES	Inland seasons, size and creel limits apply except for waters under special regulations. See §61.1 (relating to Commonwealth inland waters).		

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If approved on final rulemaking, the amendment will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Reed to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If approved on final rulemaking, the amendment will go into effect on January 1, 2005. Motion carried.

G. Name Change: Section 65.10 (Select Trout Stocked Lake Program).

Commentary:

At the July 1994 meeting, the Commission approved the creation of what later became known as the Select Trout Stocked Lake Program. Through the stocking of a portion of the preseason trout allocation during the January through early March period in select lakes, reservoirs, and stream sections, the Commission provides opportunity for trout angling (and harvest of three trout per day) in waters that normally would be closed to fishing during March as part of the traditional preseason stocking period. As stream sections are included in the program, a name change is warranted, particularly for use in publications, web site coverage and correspondence to the angling public. Thus, without changing the intent of the program, staff are suggesting that the name of section 65.10 be changed from "Select Trout Stocked Lake Program" to "Early Season Trout Stocked Waters."

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If approved on final rulemaking, the amendment will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Huhn and seconded by Commissioner Reed to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If approved on final rulemaking, the amendment will go into effect on January 1, 2005. Motion carried.

H. Amendment to Section 69.12 (Seasons, Sizes and Creel Limits – Lake Erie and Lake Erie Tributaries) – Burbot and Smelt.

Commentary:

Anglers occasionally catch burbot by hook and line in Lake Erie and Presque Isle Bay. However, burbot may only be legally taken by SCUBA divers by use of nonmechanical spears or gigs at a depth of at least 60 feet during the period, June 1 to September 30, with a daily limit of five. Although inland populations of burbot are endangered and therefore harvest is not allowed, burbot in Lake Erie are abundant enough to support commercial and sport harvest. Bureau of Law Enforcement personnel indicate that anglers who catch burbot during the winter months rarely catch more than a couple a day. Staff from the Bureaus of Law Enforcement and Fisheries support an amendment that would allow burbot to be taken by hook and line with a limit of five per day and no closed season. Fisheries staff anticipate no adverse impacts to burbot populations as a result of this proposed change.

As with burbot, anglers occasionally catch smelt through the ice in Presque Isle Bay. Under the Commission’s current regulations, smelt are not specifically listed and have been considered baitfish. Baitfish may be taken year around with no minimum size requirement and a daily limit of 50 (combined species). To clarify the existing regulations, staff recommend that smelt be listed separately with no closed season, no minimum length and no creel limit. Bureau of Fisheries staff do not anticipate any adverse impacts to the smelt population as a result of this proposed change, and Bureau of Law Enforcement staff support it.

§69.12. Seasons, sizes and creel limits – Lake Erie and Lake Erie tributaries.

\* \* \*

(d) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsular waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * *	* * *	* * *	* * *
<b><u>BURBOT (when taken by hook and line)</u></b>	<b><u>Open year-round</u></b>	<b><u>None</u></b>	<b><u>5</u></b>
BURBOT (when taken by scuba divers by use of nonmechanical spears or gigs at a depth of at least 60 feet)	June 1 to September 30	None	5
<b><u>Smelt (when taken by hook and line)</u></b>	<b><u>Open year-round</u></b>	<b><u>None</u></b>	<b><u>None</u></b>
* * *	* * *	* * *	* * *

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If approved on final rulemaking, the amendment will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Czop to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If approved on final rulemaking, the amendment will go into effect on January 1, 2005. Motion carried.

I. Artificial Lures Redefined – Section 65.1 (Selective Harvest Program), Section 65.2 (Delayed Harvest Fly-Fishing Only Areas), Section 65.3 (Heritage Trout Angling Program), Section 65.5 (Catch and Release Areas), Section 65.6 (Delayed Harvest Artificial Lures Only Areas), Section 65.7 (Trophy Trout Program) and Section 65.24 (Miscellaneous Special Regulations - Wayne County, West Branch Delaware River).

Commentary:

Where terminal tackle is restricted to artificial lures, the Commission's regulations provide that fishing may be done with artificial lures only constructed of metal, plastic, rubber, or wood or with flies and streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Anything other than these items is prohibited. Specifically prohibited are the use of molded facsimiles or replicas of insects, earthworms, fish eggs, fish or any invertebrate or vertebrate either singly or in combination with the other materials.

Generally, in these areas, the use or possession of fishbait, natural bait or baitfish and the use of a device, natural or synthetic, capable of catching fish other than artificial lures is prohibited. However, the wording varies slightly from regulation to regulation.

The phrase "molded facsimiles or replicas of insects," as used in the regulations, is difficult to apply when dealing with the vast array of processes used to create artificial fishing lures. In addition, the life forms that molded facsimiles or replicas are intended to represent further confound the interpretation of the regulations.

The Bureaus of Fisheries and Law Enforcement have discussed this matter and propose simplifying the artificial lures regulations by eliminating the specific prohibition against the use of molded facsimiles or replicas of insects, earthworms, fish eggs, fish or any invertebrate or vertebrate either singly or in combination with the other materials. Staff also propose that the regulations be modified to state uniformly that the use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substances, and the use of any other lure, other than artificial lures, flies or streamers, is prohibited in these areas. In §65.5, the prohibition against barbed hooks and the requirement that barbless hooks are used will remain.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If approved on final rulemaking, these amendments will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Huhn to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If approved on final rulemaking, these amendments will go into effect on January 1, 2005. Motion carried.

## DESIGNATIONS

### J. Select Trout Stocked Lake Special Regulations: Lily Lake, Luzerne County.

#### Commentary:

Lily Lake is a 160.5 acre impoundment located in close proximity to the city of Wilkes-Barre. The primary owner of the lake is the Commonwealth of Pennsylvania, and the lake is maintained by the Commission. The lake has been managed with the planting of adult trout since the 1991 season and has become a popular location for trout anglers. Initially, this lake was included in the Select Trout Stocked Lake program as implemented at the beginning of the 1995 season. At the July 2001 Commission meeting, Lily Lake was removed from this program. The rationale for removing the lake from the program was to streamline trout management for the 2002 season and minimize impacts on the distribution system with so many waters in the program.

The Select Trout Stocked Lake program provides for angling opportunities to occur throughout the month of March when most other trout stocked waters are closed to angling. Waters included in the program receive a portion of their preseason allocation early in the calendar year (generally in February). The early season stocking provides additional trout angling opportunities under a reduced daily creel limit (3 per day) until April 1 when these waters are closed to angling for restocking prior to the traditional opening day of regular trout season.

Considering the interest expressed by anglers in favor of the program and the location of the lake in proximity to the greater Wilkes-Barre – Scranton area, staff would like to have Lily Lake reinstated in the Select Trout Stocked Lake program. Reinstating Lily Lake to the program will not change the trout allocation. Allocations are determined on an annual basis so the spring program for this water will be adjusted to provide trout for stocking earlier in the year.

A notice of proposed designation was published at 34 Pa. B. 1641 (March 20, 2004) (Exhibit H). The Commission did not receive any public comments concerning the proposed designation.

#### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission add Lily Lake, Luzerne County, to the list of waters regulated and managed under the Select Trout Stocked Lake program under 58 Pa. Code §65.10, effective January 1, 2005.

#### Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Czop to add Lily Lake, Luzerne County, to the list of waters regulated and managed under the Select Trout Stocked Lake program under 58 Pa. Code §65.10, effective January 1, 2005. Motion carried.

K. Class A Wild Trout List—Addition of Waltz Creek, Northampton County.

Commentary:

Pursuant to 58 Pa. Code §57.8a (relating to Class A wild trout streams), it is the Commission's policy to manage self-sustaining Class A wild trout populations as a renewable natural resource to conserve that resource and the angling it provides. Class A wild trout populations represent the best of Pennsylvania's naturally reproducing trout fisheries. The Commission manages these stream sections solely for the perpetuation of the wild trout fishery with no stocking.

Criteria developed for Class A Wild Trout populations are species specific. Wild Trout Abundance Class Criteria include provisions for wild brown trout fisheries. They are total brown trout biomass of at least 40 kg/ha (35.6 lbs/acre); total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre); and brown trout biomass must comprise at least 75% of the total trout biomass.

A notice containing the proposed addition of Waltz Creek, Section 02, Northampton County, to the Commission's list of Class A Wild Trout Waters was published at 34 Pa. B. 1642 (March 20, 2004 (Exhibit I)). The limits are from the confluence with Greenwalk Creek downstream to the mouth, a distance of 2.36 miles. The Commission received one public comment supporting the proposed addition.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the addition to the list of Class A Wild Trout Waters as set forth in the notice of proposed designation.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Reed to approve the addition to the list of Class A Wild Trout Waters as set forth in the notice of proposed designation. Motion carried.

## OTHER MATTERS

### L. Cooperative Nurseries Statement of Policy.

#### Commentary:

The Cooperative Nursery Program represents a long-term partnership between the Commission and sporting groups and conservation organizations. However, policy guidance for the program had not been substantively revised since the inception of the program in 1976. Therefore, staff recently revised the statement of policy to update program expectations and to address issues that have arisen with the evolution of the program during the intervening decades.

Approval of the statement of policy for cooperative nurseries originally appeared on the agenda for the January 2004 Commission meeting. However, the Commission deferred action on the statement of policy to allow review by sponsors. Sponsors have had an opportunity to review the statement of policy and to provide comments. As of the date of agenda preparation, staff were in the process of reviewing those comments and incorporating them, when appropriate, into the policy document. Commissioners were provided with a copy of the statement of policy that has been revised to reflect sponsors' comments prior to the meeting.

#### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission approve the statement of policy regarding cooperative nurseries.

#### Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Mahon to approve the statement of policy regarding cooperative nurseries. Motion carried.

**Other New Business**

None.

**Time and Place of July Commission Meeting**

The next meeting is scheduled for July 26-27, 2004 and will be held at the Commission's headquarters in Harrisburg.

**Adjournment**

A motion was made by Commissioner Reed and seconded by Commissioner Anderson to adjourn the meeting at 1:46 p.m. Motion carried.