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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 64<sup>th</sup> Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, July 26 and 27, 2004, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Executive Sessions were held on July 26 at 12:30 p.m. and on July 27 at 10:30 a.m. Litigation and personnel matters were discussed.

Commission briefings occurred at 2:15 p.m. on July 26. Tom Ford provided an update on the Strategic Plan. Gary Moore provided a briefing on House Bills 2155 and 1634, Growing Greener II and Lobby Day. Additional briefing topics included updates on Internet Outdoor Shop donations, license sales and Point-of-Sale; boating accidents and publications; dam safety and access areas; and current Bureau of Law Enforcement vacancies, boating under the influence and the new Waterways Conservation Officer class. Fisheries items included trout management issues and warmwater initiatives. A briefing was provided concerning Young Womans Creek.

The Law Enforcement Committee met at 4:00 p.m. The Committee acted upon proposed revocations. The Committee revoked the fishing privileges of eight individuals for one year and five individuals for two years. The Committee revoked the boating privileges of one individual for two years, one individual for two years and ordered him to successfully complete a safe boating course, and one individual for one year with a reduction to six months upon successful completion of a safe boating course.

The public session for review of this agenda began at or about 9:00 a.m. on July 27.

**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**  
**Donald K. Anderson**  
**Richard W. Czop**  
**Ross J. Huhn**  
**Ted R. Keir**  
**Howard E. Pflugfelder, Jr.**  
**Leon H. Reed**  
**William J. Sabatose**

**Members Not Present**

**Paul J. Mahon, Vice-President**

### **Review and Approval of Minutes from the April 2004 Meeting**

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

### **Awards and Presentations**

Three artists from the Keystone State were named winners in a national state fish art contest. The trio was picked as state champions in their respective age classes for their depiction of the brook trout, the Pennsylvania official state fish. The Commission was a partner agency in the contest that was conducted by Wildlife Forever. All winning pieces will be featured in a special Wildlife Forever Expo at the Mall of America in Bloomington, Minnesota. Those recognized were:

Evan Martin of East Earl was named as the grades 4-6 winner for Pennsylvania.

Noah Muller of Ulysses took first place honors for grades 7-9.

Joshua Joint of Erie garnered top state honors in the grades 10-12 category. The victory was his fifth consecutive, having previously won in 2000, 2001, 2002 and 2003.

### **Election of Commission President and Vice-President**

Commissioner Sabatose nominated Commissioner Samuel M. Concilla as President. A motion was made by Commissioner Czop and seconded by Commissioner Sabatose to close the nominations. Motion carried. Commissioner Concilla will serve as President of the Commission for 2004-2005.

Commissioner Sabatose nominated Commissioner Richard W. Czop as Vice-President. A motion was made by Commissioner Pflugfelder and seconded by Commissioner Sabatose to close the nominations. Motion carried. Commissioner Czop will serve as Vice-President of the Commission for 2004-2005.

### **Executive Director's Report**

Congratulations to Commissioner Concilla and Commissioner Czop. I look forward to working with you in this upcoming year.

I'd like to highlight briefly some personnel issues that have occurred since the April meeting. The Northern Association of Boating Administrators (NABA) awarded George Geisler, Assistant to the Director, Bureau of Law Enforcement, with the Officer of the Year award, which will make him eligible for consideration of the National Association of State Boating Law Administrators (NASBLA) Officer of the Year award. George has done a wonderful job for us.

Recently we had three key promotions which included one new hire. Bernie Matscavage is our new Human Resource Director; Laurie Shepler is our new Chief Counsel; and Dick Mulfinger will serve as our Director of the Bureau of Engineering and Development. We've also experienced some key retirements. Those include Denny Grove, Chief, Purchasing; Bobbi Toth, Secretary, Purchasing; Gary Deiger, Manager, Northwest Regional Law Enforcement office; Jim Harvey, Chief, Trout Production; and Mary Jane Fortney, Clerical Supervisor, Licensing and Registration.

There are three main topics that I would like to discuss in this report today: House Bill 2155, interagency partnerships, and some of the concepts coming out of the strategic planning process that will establish much of the future direction of the Fish and Boat Commission.

As you all know, House Bill 2155 still resides in the House Game and Fisheries Committee. This bill is based on the work of a consortium of angling and boating groups that were gathered by Representatives Bruce Smith and Ed Staback. This included some groups represented here today: Pennsylvania Federation of Sportsmens Clubs; Pennsylvania Boating Association of Southeast Pennsylvania and Southwest Pennsylvania; Pennsylvania Bass Association; Coalition of Concerned Anglers; Unified Sportsmen of Pennsylvania; and Traditional Anglers of Pennsylvania. Through their deliberations, the wording was crafted that created the essential elements of the legislation, including a license fee and boating registration increase, a youth license and a Lake Erie stamp.

As the old adage goes, there are two things that you don't want to see being made: sausage and legislation. The interesting part of this is that we all like sausage, and although we may not always be happy or completely comfortable with the end product of the legislative process, we do have to accept that, for better or worse, there is a process. Of course, it is the right of the people to affect that process, push it one way or another, advocate for positions, and educate or outright lobby. Through the actions of the consortium for House Bill 2155, the process was initiated and legislation drafted. The legislative process then continued, legislators exercised their prerogative and submitted amendments, and the result was that they eliminated the youth stamp, added one dollar for funding the Point of Sale system, and dedicated the Lake Erie stamp for five years.

As you all know, there is some contention over the five year dedicated Lake Erie stamp. I am thankful that people take the future of the Fish and Boat Commission seriously enough to give this issue hard thought and engage in debate. We greatly appreciate those efforts, their strong devotion to the natural resources, and their support for the work of the Commission. This type of partnership, such as the consortium that developed House Bill 2155, and the work put in by the members of this group is critical to our success. Given that, however, I believe that the concerns expressed about the Lake Erie stamp may be damaging to our joint effort to get the bill passed. This would be a tremendous loss for all of us.

The concerns are based on two arguments. The first is that the legislature should not be dictating to the Fish and Boat Commission how to allocate resources and spend funds. There is a sense that this establishes a bad precedent and will lead to future unwanted involvement by the legislature. The response here is simple. The precedent was already established by the first Erie

stamp, the funds of which were dedicated to buying out the commercial fishing licenses. Further, many of our funds are already dedicated to one program or another. For example, much of the federal money that we receive, such as Sport Fish Restoration or State Wildlife Grant funds, must be spent on a specific set of activities. This is a common and workable situation. Further, the legislatively dedicated funds allows us to access the dollars a little more quickly than the normal process, which requires specific lines in the budget for individual purchases or acquisitions. This will be increasingly important as we move into access programs in the Erie area.

Second, there is an objection to the Fish and Boat Commission allocating money to one particular part of the state. To that I can only respond that it is a fundamental fairness issue. People who fish in the Erie watershed and lake and advocated for this stamp should be guaranteed that the money will be spent in that area. I am comfortable with this, and I hope that others will see this as a legitimate claim. One can argue that every part of the state could then go out and advocate for their own stamp. We could have a Delaware River stamp, a Susquehanna River stamp or an Ohio River stamp. I urge caution in walking down that path. The Lake Erie fishery and its watershed are unique and distinct. Everyone that fishes in that area knows that Twenty Mile Creek is a tributary of Lake Erie. However, situations in other parts of the state aren't so clear. Most people who fish in Lake Wallenpaupack realize that its discharge works its way into the Lackawaxen that flows into the Delaware River. However, if you travel just about 15 miles northwest and fish Merli-Sarnoski Park Lake, surely you would know the lake is part of the Lackawanna drainage that flows into the Susquehanna River at Pittston Junction. Of course, I knew that even before I looked at the detailed map in the Gazetteer.

I'd like to suggest that we have arrived at a position with this bill that is reasonable and should be supported by all parties. Everyone has a place where they need to draw a line in the sand and say that they will not budge. There is a point where we all say that something is not negotiable. My response is that the part that is not negotiable is the resource management work of the Fish and Boat Commission. An Erie stamp dedicated fund does not erode that capacity; it enhances it. The stamp provides us, the anglers and boaters of Pennsylvania, with new resources that are badly needed. Let's get this passed and move on. There is plenty more work to be accomplished!

While keeping this work in mind, we will also be starting this fall to formulate a legislative strategy for the next two years. We need to be down to the Hill regularly and with a proactive presence with good ideas being translated into effective legislation. We need to be pushing a legislative agenda that expands our support, strengthens the protection, conservation and enhancement of our aquatic resources, improves recreational opportunities, and provides us new tools to accomplish the mission of our organization.

Now let me talk briefly about our work with our partner agencies. One of my main themes in resource management is that we need to be maintaining, strengthening, and building stronger and more positive partnerships with organizations that share our same values and mission. We have many such organizations in the state, and they have resources, technical skills, and access that we can benefit from and who can, likewise, benefit from our agency. I fully recognize that there are many partnerships that we have already developed. Many staff

throughout our agency have highly productive and effective relationships with a variety of other agencies and groups. Building upon these, I have been working diligently with the heads of the Department of Environmental Protection (DEP), Katie McGinty; the Department of Conservation and Natural Resources (DCNR), Mike DiBerardinis; and the Pennsylvania Game Commission, Vern Ross, to build new collaborative efforts and to resolve old disputes. So far we have had two joint meetings with staff of the Game Commission and are developing a strong working relationship with them on a variety of issues. The joint development of the Point of Sale License System is a good example of where that will lead us. Likewise with Secretaries McGinty and DiBerardinis, we have worked to get together regularly and that has led to larger joint staff meetings revolving around key issues that we select for action. No doubt, there will be some tough discussions, and we may not always be comfortable with the direction, but we need to have those discussions. Two examples are the review and revision of the Interagency Settlement Agreements with DEP on specific hatcheries effluent permits and the development of a multiagency approach to restoration of the West Branch of the Susquehanna River with DEP, DCNR, Trout Unlimited and potentially many other groups. Both of these efforts will position us to better utilize our limited resources.

Now let me finish this by talking about strategy. Let me be honest here – strategic planning has a bad rap. Many agencies and corporations have shelves lined with plans built on good intentions but long since relegated to irrelevance. These are also the mediocre organizations, and I have often said that government sometimes seems to be designed to promote mediocrity. However, the agencies and businesses that are making a mark, the ones that we want to emulate, know where they are going and have a plan for getting there. Likewise, we need to look at our core areas, identify emerging markets and position ourselves to address them as best as we can. Questions we will need to address will be: Where we will find the public moving with their limited recreational time? What will be the greatest challenges to resources management? Where do we need to position our staff and services to meet these challenges?

Our strategic planning process is helping us better identify these areas and organizes them into five categories: Outreach/Marketing/Promotion; Access; Resource Management; Funding; and Organizational Efficiency and Effectiveness. Let me say a brief word about each of these areas.

When a family vacationing in Pennsylvania plans what they will be doing on any given day of their trip, they look at all of the options: shopping, golfing, amusement parks, biking, hiking, and maybe fishing or boating. We need to help them make that decision. When an angler in Ohio or New York or even as unlikely a place as Illinois dreams about where that weekend fishing trip will take them, we need to have Pennsylvania waters at the top of that list. The process of helping them to make that decision needs to be supported by an expanded effort to pitch our resources and opportunities. This process has already been started by recent meetings with the Tourism staff at the Department of Community and Economic Development, and the plan will identify new areas where we will expand staff and efforts to move the program forward.

Next, if we are to bring in more tourists and get more people to fish and boat in the Commonwealth, we need to make sure that they have places to fish and boat. We need to have

access areas in the right places, well maintained and well designed. Access is the second of the strategic areas, and Tom Ford, John Simmons and Dick Mulfinger will be working to expand this important area and develop a much stronger program of making grants to local partners, building areas on our own and maintaining those areas so that they are attractive, safe and useful.

The third area is a fairly broad grouping of resource management goals. This includes activities such as simplification of our regulations, the recently inaugurated trout working group, and an enhanced effort to expand our management and recognition of the incredible warmwater and coolwater fisheries of the state.

Fourth, as you can imagine, funding has to be on this list of major topics, and it will be an area of concerted effort. Once the legislature passes House Bill 2155, we will be ready to have a party and celebrate the work of the many partners who put the package together. But as soon as we recover from that, we will need to be working on new funding strategies, what I call new pillars to build our programs upon. The people of Pennsylvania want to have great fishing and enjoyable boating opportunities and they tell me that they are willing to help make that happen. We need to find those mechanisms to fund those programs, and we will be looking to each of you to provide ideas and help in this continual effort.

Finally, we need to look internally and improve our own processes to make sure that we are as efficient and effective as possible. The Fish and Boat Commission has excellent staff. These are people who want to work here because their personal philosophies align with that of the agency. Motivation is generally not the problem. But, like any organization, we do have challenges in communication, linking priorities to funding and staff allocation, and critically evaluating program effectiveness. This will all be done under the auspices of Commissioner Concilla, Commissioner Czap and the others. These will be part of the efforts over the next several years and will result in a more effective organization that will better be able to serve our customers and protect, conserve, and enhance the resources of the Commonwealth.

### **Public Comment to Commissioners and Staff**

Mike Burton, Pennsylvania Bass Federation, spoke of the first week-long Youth Bass Anglers Conservation School that was held recently. He praised and thanked the Pennsylvania Fish and Boat Commission for participating as a partner. Other partners included the US Army Corps of Engineers, DCNR, The Pennsylvania State University, and the Pennsylvania Bass Federation. Hopefully, this positive relationship will continue into the future.

On a national level, a Bass Masters Classic is scheduled for the spring of 2005 in Pittsburgh, Pennsylvania. This will be yet another opportunity for the Fish and Boat Commission to become involved.

Fred Johnson provided comments about factors influencing Pennsylvania's coldwater resources, including acid precipitation, and trout populations.

## EXECUTIVE OFFICE

### A. State Wildlife Grant Program.

#### Commentary:

In March 2002, the U.S. Fish and Wildlife Service notified conservation agencies across the nation about the State Wildlife Grant (SWG) Program for state nongame conservation programs and efforts. Congress has provided appropriations to this program annually since its inception. This funding is intended to target conservation efforts for the great majority of species that are not pursued for sport or harvest. These species are referred to as nongame species. The first year of funding provided about \$2.5 million for Pennsylvania's conservation efforts. In 2003, about \$1.9 million was provided, and in 2004, approximately \$2 million is available.

Similar to past years, approximately one-third of the total 2004 SWG funds will be made available for grants for competitively selected projects. The remainder of the funding is allocated equally between the Game Commission and the PFBC to fund priority nongame programmatic efforts that the agencies identify and prioritize internally.

PFBC staff wish to enter into cooperative agreements with partners to fund competitively selected projects and projects that PFBC staff have identified as being priorities. Among the projects competitively selected or identified as priorities for 2004 SWG funding are:

- 1) Paddlefish Population Status, Abundance, and Restoration – PFBC staff propose a grant in the amount of \$42,000 to California University of Pennsylvania. The total project costs are estimated to be \$222,000.
- 2) Evaluation of Dam Removal on Lotic Habitats and Organisms – PFBC staff propose a grant in the amount of \$50,000 to American Rivers, Inc. The total project costs are estimated to be \$100,000.
- 3) Assessment of Pennsylvania's Crayfish Fauna – PFBC staff propose a grant in the amount of \$100,000 to the Pennsylvania Cooperative Fish and Wildlife Research Unit. The total project costs are estimated to be \$133,000.

Staff request that the Commission authorize the Executive Director to approve these and future grants under the State Wildlife Grant Program.

#### Briefer:

Thomas P. Ford, Aquatic Resource Planner

#### Recommendation:

Staff recommend that the Commission approve the State Wildlife Grant Program as described in the Commentary.

#### Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Keir to approve the State Wildlife Grant Program as described in the Commentary. A motion was made by Commissioner Czop and seconded by Commissioner Pflugfelder to amend the prior motion to approve the 2004 State Wildlife grants but to require that all future grants under the State Wildlife Grant Program be brought before the Commission for approval. The amendment was passed by unanimous vote. The main motion as amended was passed by unanimous vote.

## ADMINISTRATION PROPOSED RULEMAKING

### A. Amendment to §51.33 (Effective Dates of Licenses and Trout/Salmon Permits).

#### Commentary:

It is possible that the General Assembly will enact legislation affecting the price and mix of fishing licenses, stamps and permits late in the 2004 calendar year. These changes, if enacted, will be in effect for the 2005 year. In order to facilitate the orderly distribution and proper accounting for new license types and license prices, it will be necessary for Commission staff to delay the distribution of license materials until after enactment of legislation.

The current regulation specifies that annual licenses are effective for the year printed on the license certificate and the month of December of the preceding year. The following amendment will make 2005 licenses effective on January 1, 2005 or the date of sale in December 2004, whichever is earlier. Limited duration licenses, such as the one-day, three-day and seven-day licenses, will remain valid only for the dates specified on the license certificates.

§51.33. Effective dates of licenses and trout/salmon permits.

**(a)** Fishing licenses and permits, such as trout/salmon permits, are valid for the year printed on the license certificate or permit, and the month of December of the preceding year, except for tourist licenses that are valid for the dates specified on the license certificate.

**(b) Annual licenses and permits for 2005 are valid for the 2005 year and any part of December 2004 commencing on the date of sale.**

#### Briefer:

Wasył Polischuk, Director, Bureau of Administration

#### Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary to facilitate the distribution and accounting of new license types and prices.

#### Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Huhn to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary to facilitate the distribution and accounting of new license types and prices. Motion carried.

## EDUCATION

### A. Authorization for Executive Director to Establish Charges for Products and Publications.

#### Commentary:

Section 323 of the Fish and Boat Code provides that the Commission shall “from time to time establish the subscription rates for the Pennsylvania Angler and charges for its other publications.” In April of 1983, the Commission delegated to the Executive Director the authority to establish charges for all publications except the *Angler* magazine.

Staff believe that it is appropriate for the Commission to reissue this authorization and expand its scope to cover the Angler and Boater magazine and products in addition to publications. Limitations on the establishment of charges and the distribution of products and publications are described in the “Policy for Retail Pricing of Publications and Products.” (Exhibit A).

#### Briefer:

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

#### Recommendation:

Staff recommend that the Commission authorize the Executive Director to establish charges for Commission publications and products as described in the Commentary.

#### Action:

A motion was made by Commissioner Keir and seconded by Commissioner Anderson to authorize the Executive Director to establish charges for Commission publications and products as described in the Commentary. A second motion was made by Commissioner Czop and seconded by Commissioner Pflugfelder to authorize the Executive Director to establish charges for Commission publications and products as described in the Commentary with the exception of the Angler and Boater magazine. The amendment was passed by unanimous vote. The main motion as amended was passed by unanimous vote.

## ENGINEERING AND DEVELOPMENT

### A. Property Disposition to North Newton Township and West Pennsboro Townships at Big Spring Creek in Cumberland County for Bridge Replacement Project.

#### Commentary:

The Townships of North Newton and West Pennsboro in Cumberland County are replacing the Neely Road Bridge across Big Spring Creek that forms the boundary between the two townships. The Commission owns the property on both sides of Big Spring Creek in the area of the bridge replacement.

The existing bridge consists of two 7 foot culvert pipes located +/- 12 feet apart covered by an embankment containing a single lane cartway. The existing bridge has historically been an impediment to the flow of the creek and the fish population therein. The nature of the existing bridge creates a ponding effect on the creek and significantly reduces the velocity of the creek flow that results in the deposition of sediment in the vicinity of the bridge and the warming of the water.

The proposed new bridge is a two-lane 20 feet rectangular single span bridge having a natural creek channel floor and a higher opening. The new bridge design will allow for a more natural flow for the creek, which will benefit the aquatic resources of the creek.

Due to the new bridge being higher and wider than the existing structure, the townships will need to acquire +/-0.3 acres of additional property from the Commission. The townships will also utilize a +/-0.6 acre area as a temporary construction area during the construction of the new bridge in order to facilitate the construction of the bridge and the restoration of the area at the conclusion of the project.

The disposition of the +/-0.3 acre area and the temporary use of the +/-0.6 acre area will not have a significant impact on the public's use of Big Spring Creek and the aquatic resources of the area. Sufficient safeguards and reasonable compensation for the required area will be included in the necessary agreement between the Commission and the townships to protect the Commission's interests and to require the restoration of the area. The project is expected to take less than one year to complete.

The Commission acquired its Big Spring property using Project 70 funds and thus is required to secure legislative approval to dispose of the property. The Commission will pursue the necessary legislation. In the interim, Commission staff will pursue an agreement with the townships to allow for the bridge replacement project to proceed in a timely manner and to address the use of the required areas until the necessary legislation is approved and the subject property can be legally transferred from the Commission to the townships.

#### Briefer:

Richard M. Mulfinger, Director, Bureau of Engineering and Development.

Recommendation:

Staff recommend that the Commission authorize the disposition of the property rights necessary for the Neely Road Bridge replacement and the pursuit of the necessary legislation as described in the Commentary.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to authorize the disposition of the property rights necessary for the Neely Road Bridge replacement and the pursuit of the necessary legislation as described in the Commentary. Motion carried.

B. Property Lease to Overfield Township at Lake Winola in Wyoming County for the Development of a Public Park.

Commentary:

The Commission owns a  $\pm$  32 acre area in Overfield Township, Wyoming County, that includes an improved access area to Lake Winola, which is an approved trout water. The majority of the property was acquired in 1969, and an additional 0.3 acres were acquired in 1981. The Commission currently only uses a  $\pm$ 8 acre portion of the area for its fishing and boating access to Lake Winola. The remaining  $\pm$ 24 acre portion of the property is not actively used by the public for fishing and boating. This  $\pm$ 24 acre area contains the outflow of the lake, the remnants of an old mill pond that has been partially breached by the Commission due to liability concerns and a small grove of old growth white pines and hemlocks.

The Commission allows Overfield Township to operate and maintain a dry hydrant and a youth baseball field on a portion of its Lake Winola property under separate license agreements. The Township wishes to lease a large portion of the Commission's Lake Winola property that is not actively used for fishing and boating in order to enlarge and enhance the recreational facilities on the property in conjunction with the baseball field. It is the Township's intention to apply for grant money through the Department of Conservation and Natural Resources to enlarge and enhance the existing recreational facilities.

The exact area to be leased will be determined in the field, but it will exceed 12 acres. The necessary agreement will contain provisions that will require the Township to assist the Commission with the operation of the property and will limit the Township from developing sensitive portions of the leased area. The public's ability to fish and boat in Lake Winola will be protected.

The portion of the Lake Winola property that the Township wishes to lease was acquired using Project 70 funds. However because the Township's use of the area will be consistent with the purposes for which the property was acquired, staff do not believe that legislative approval is required to lease the area to the Township.

Briefer:

Richard M. Mulfinger, Director, Bureau of Engineering and Development

Recommendation:

Staff recommend that the Commission authorize leasing a portion of the Lake Winola property to Overfield Township as described in the Commentary.

Action:

A motion was made by Commissioner Reed and seconded by Commissioner Czop to authorize leasing a portion of the Lake Winola property to Overfield Township as described in the Commentary. Motion carried.

C. Lease of Property along the Monongahela River in Monongahela Township, Greene County.

Commentary:

A private property owner has offered to lease to the Commission a  $\pm 1.7$  acre parcel along the Monongahela River near the Borough of Greensboro in Monongahela Township, Greene County. The property is located on the Grays Landing Pool at river mile 83.5 of the Monongahela River. The property is located  $\pm 12$  mile north of the West Virginia border and  $\pm 6$  miles north and on the opposite side of the river of the Commission's Point Marion Access Area. The property is located on a big boat portion of the river.

The owner is offering to lease the site to the Commission for up to 25 years for an annual fee of \$1.00 so long as the Commission develops the site as a public fishing and boating access within a reasonable period of time. Staff have reviewed the site and have determined that it could be easily developed as a public access to the Monongahela River. The County Commissioners of Greene County have expressed their support for the development of a public access area.

It should be noted that an easement restricting the development of structures on the site does exist, and the owner of the property owns and operates a nearby restaurant and bar. The easement, however, should not affect the Commission's development of the property as a fishing and boating access. The owner has indicated that he would consider being responsible for the routine maintenance of the site when and if it is developed.

Briefer:

Richard M. Mulfinger, Director, Bureau of Engineering and Development

Recommendation:

Staff recommend that the Commission authorize the Executive Director to enter into a lease for property on the Monongahela River at river mile 83.5 as described in the Commentary.

Action:

A motion was made by Commissioner Huhn and seconded by Commissioner Anderson to authorize the Executive Director to enter into a lease for property on the Monongahela River at river mile 83.5 as described in the Commentary. Motion carried.

## **FISHERIES** **FINAL RULEMAKING**

### A. Amendment to Section 65.6 (Delayed Harvest Artificial Lures Only Areas).

#### Commentary:

The Commission was approached by members of the Traditional Anglers of Pennsylvania requesting that regulations pertaining to the Delayed Harvest programs be modified to permit all tackle during the mid-June through Labor Day harvest period. Currently, the same tackle restrictions apply to the harvest period as the remainder of the year; that is, either fly fishing only or artificial lures only depending on which program regulations apply to individual waters. The harvest period is to allow anglers to take trout that otherwise face less desirable habitat with the onset of warmer water and low flows typical of most seasonal trout stocked streams during the summer. Fundamental to the interests of the Traditional Anglers is the assertion that the stocked trout paid for by general license and trout stamp dollars and thus all anglers should have equal access to harvest trout.

In addition to the equity issue, the all tackle provisions during the harvest period might be beneficial in encouraging traditional anglers to the delayed harvest concept. Moreover, by mid-June, all tackle activity on these areas should not be profound because many anglers are less inclined to go trout angling.

During the Fisheries Committee meeting in September 2003, staff gave a presentation reviewing delayed harvest and similar regulations on seasonal trout stocked waters in neighboring jurisdictions as well as the results from studies on delayed harvest waters in Pennsylvania. During the summer "harvest" season, Virginia, West Virginia and Maryland have no tackle restrictions and in some cases no minimum length limits on waters that for most of the rest of the year have more restrictive regulations, including no-kill and artificial lures only. The presentation also acknowledged negative aspects of a proposed change, including the potential for increased littering, more complicated regulations and the potential for broadening the no-tackle liberalization into the no-kill period. The Fisheries Committee indicated that the concept of a no-tackle restriction during the harvest period for Delayed Harvest Artificial Lures Only areas was worthy of being brought before the general public. As such, the Committee instructed staff to prepare an agenda item for the January 2004 Commission meeting.

At the January 2004 meeting, the Commission approved the publication of a notice of proposed rulemaking containing the proposal and directed staff to solicit public comments for an extended period of 90 days and to hold at least two public meetings. A notice of proposed rulemaking was published at 34 Pa. B. 1460 (March 13, 2004) (Exhibit B).

As of the January 2004 meeting, the Commission already had received many public comments even though there had not been an official public comment period. In total, the Commission has received 1,169 public comments concerning the proposal. 32 of

those comments support it. Several of the public comments reflect an erroneous belief that the proposal is to eliminate all special regulation waters in Pennsylvania. Copies of all public comments have been provided to the Commissioners.

The Commission also held two public meetings. On May 12, 2004, a meeting was held in Monroeville. Approximately 25 individuals attended, of which 14 provided comments. Of the 14 comments, 12 opposed the proposal, and 2 supported it. A second public meeting was held on May 13, 2004 in Leesport. Approximately 30 people attended that meeting, and 17 individuals commented. All of those commenting opposed the proposed change.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission not adopt the amendments as set forth in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Reed and seconded by Commissioner Anderson to not adopt the amendments as set forth in the notice of proposed rulemaking. Motion carried.

## PROPOSED RULEMAKING

B. Amendment to Section 65.24 (Miscellaneous Special Regulations): Bear Gap Reservoir, McWilliams Reservoir, Klines Reservoir, and South Branch of Roaring Creek, Columbia and Northumberland Counties.

### Commentary:

Early in 2004, the Bureau of Forestry requested the Commission to implement no-kill regulations on waters within a recently acquired 9,000-acre tract being incorporated into the Wyoming State Forest. The rationale for the request was to give Commission staff an opportunity to survey various fish populations and to prepare and implement fisheries management plans. Also, as these waters had not been open for public use since the 1880's, it seemed prudent to afford some degree of protection to fish populations until Commission staff could develop an appropriate course of action. Thus, by notice published in the Pennsylvania Bulletin on January 17, 2004, former Deputy Executive Director Guise, acting under the authority of 58 Pa. Code §65.25 (relating to temporary changes to fishing regulations), took immediate action to temporarily modify fishing regulations to permit catch and release only of all species on waters located in the Wyoming State Forest. The temporary modifications went into effect immediately and will remain in effect until further notice but in no event will they remain in place after January 1, 2005.

Commission surveys of these waters were completed during the spring of 2004. Results of the lake surveys found that the fish communities consisted of a very low density of gamefish and panfish that exhibited characteristics of unexploited (unfished) populations. Although lake water quality work has not yet been completed, it is apparent from voltages required during the electrofishing phase of the surveys as well as the abundance of bladderwort (an acid loving aquatic plant) that these are not very productive systems. The stream evaluation found very few trout (brook trout) between the reservoirs and no trout upstream from the reservoirs. As was the case in the lakes, the infertile waters are likely the cause of the very sparse trout population. The portions of the stream downstream from the reservoirs would also be negatively impacted during the summer months by the warm (surface) discharges. It is evident that lake fish populations could easily be overexploited under the most conservation of harvest-orientated regulations. Staff therefore recommend that all of the waters within the South Branch Roaring Creek tract of the Wyoming State Forest remain under catch and release regulations.

The 6 to 7-mile valley under the direct responsibility of DCNR will offer a variety of activities for outdoor enthusiasts. For the most part, access will be walk-in or by bicycle. Boating may be restricted to the upper two reservoirs and even then without gasoline motors. Thus, no-kill regulations seem quite appropriate in this rather unique setting.

The DCNR District Forester and just about every angler encountered during the lengthy survey period in the valley support the staff recommendation for catch and release angling on these newly acquired public waters.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendations:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking amending §65.24 (miscellaneous special regulations) to impose catch-and-release only regulations for all species on the following waters: Bear Gap Reservoir, McWilliams Reservoir, Klines Reservoir and the South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42 (Columbia and Northumberland Counties). 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.” If adopted on final rulemaking, these amendments will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Czop to approve the publication of a notice of proposed rulemaking amending §65.24 (miscellaneous special regulations) to impose catch-and-release only regulations for all species on the following waters: Bear Gap Reservoir, McWilliams Reservoir, Klines Reservoir and the South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42 (Columbia and Northumberland Counties). 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.” If adopted on final rulemaking, these amendments will go into effect on January 1, 2005. Motion carried.

C. Termination of Selective Harvest Program under Section 65.1.

Commentary:

At the July 1994 meeting, the Commission adopted regulations for the Selective Harvest Program. These regulations went into effect beginning with the 1995 season. The program was designed to enhance wild trout populations while providing an opportunity for limited harvest of some larger trout. Selective Harvest regulations provided an alternative to Trophy Trout management on wild trout waters where habitat limitations may preclude the stockpiling of older and larger trout as intended under the 14-inch minimum length limit that is applied to Trophy Trout waters. Selective Harvest regulations also were designed to reflect differences in longevity and growth rates, particularly between brown and brook trout. Under these regulations, species specific minimum length limits apply with a twelve-inch minimum length limit for brown trout and a nine-inch minimum for other trout species. Angling is permitted on a year-round basis with a two trout per day creel limit (combined species) during the harvest season. On the waters managed under this program, gear is restricted to the use of artificial lures, flies and streamers.

Based on data collected from follow up examinations, the trout populations did not always respond as intended on some of the waters managed under the Selective Harvest Program. Therefore, to consolidate the number of special regulations used in managing trout populations, staff have recommended (in separate agenda items) that the remaining four waters in the program be redesignated to other special regulations programs. Thus, there is no need to retain the regulations for the Selective Harvest Program.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking deleting §65.1 (relating to Selective Harvest Program) as described in the Commentary. If adopted on final rulemaking, this change will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to approve the publication of a notice of proposed rulemaking deleting §65.1 (relating to Selective Harvest Program) as described in the Commentary. If adopted on final rulemaking, this change will go into effect on January 1, 2005. Motion carried.

D. Termination of All-Tackle Selective Harvest Program under Section 65.4b.

Commentary:

At the January 1998 meeting, the Commission adopted regulations for the All-Tackle Selective Harvest Program. These regulations went into effect beginning with the 1999 season. All-Tackle Selective Harvest regulations were designed to enhance wild trout populations and provide the opportunity for limited harvest of some larger trout. As with the Selective Harvest Program, species specific minimum length limits apply with a 12-inch minimum for brown trout and a nine-inch minimum for all other trout species. Angling is permitted on a year-round basis with a two trout per day creel limit (combined species) during the harvest season. However, in contrast to the Selective Harvest Program where angling is restricted to the use of artificial lures, flies and streamers, the All-Tackle Selective Harvest Program was designed to appeal to a broader angling base by allowing the use of natural bait, baitfish and fishbait in addition to artificial lures, flies and streamers.

Based on information from follow up inventories, the trout populations did not always respond as intended on the waters managed under the All-Tackle Selective Harvest Program. Therefore, to consolidate the number of special regulations programs used in managing trout populations, staff have recommended (in separate agenda items) that the remaining four waters in the program be redesignated to other special regulations programs. Thus, there is no need to retain the regulations for the All Tackle Selective Harvest Program.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking deleting §65.4b (relating to All-Tackle Selective Harvest Program) as described in the Commentary. If adopted on final rulemaking, this change 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 deleting §65.4b (relating to All-Tackle Selective Harvest Program) as described in the Commentary. If adopted on final rulemaking, this change will go into effect on January 1, 2005. Motion carried.

## DESIGNATIONS

### E. Delayed Harvest Artificial Lures Only Program: Honey Creek, Mifflin County.

#### Commentary:

Currently, an 11 mile section of Honey Creek is managed to provide trout angling opportunities through the stocking of adult trout. To diversify trout angling opportunities on the stream, private landowners have expressed an interest in having a portion of this section managed under Delayed Harvest regulations. If approved, a 1.75 mile section of stream extending from the upper Bald Eagle State Forest boundary downstream for a distance of 1.75 miles would be managed under the Delayed Harvest Artificial Lures Only Program. There is good road access and adequate parking for anglers along this portion of the stream. Approximately 40% of this reach is publicly owned (Bald Eagle State Forest) while the remainder is under private ownership. The District Forester has expressed support for the project, and staff are currently in the process of obtaining input from the private landowners along this section of stream.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004) (Exhibit C). The Commission did not receive any comments regarding the proposed designation.

#### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission designate a 1.75 mile section of Honey Creek, Mifflin County, extending from the upper Bald Eagle State Forest boundary downstream for a distance of 1.75 miles as a Delayed Harvest Artificial Lures Only area to be regulated and managed under §65.6. If approved, the designation will go into effect on January 1, 2005.

#### Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Czop to designate a 1.75 mile section of Honey Creek, Mifflin County, extending from the upper Bald Eagle State Forest boundary downstream for a distance of 1.75 miles as a Delayed Harvest Artificial Lures Only area to be regulated and managed under §65.6. The designation will go into effect on January 1, 2005. Motion carried.

F. Delayed Harvest Artificial Lures Only Program: Powell Creek, Dauphin County.

Commentary:

Currently, a 16.5 mile section of Powell Creek is managed to provide trout angling opportunities through the stocking of adult trout. To provide some variety in the trout angling experience, private landowners have expressed an interest in having a portion of this long section of stream managed under Delayed Harvest regulations. A 2.5 mile section extending from the upper bridge crossing on T-551 downstream to the confluence of an unnamed tributary along T-358 offers good access and adequate parking for establishing a Delayed Harvest Area. This reach of stream is entirely under private ownership. Staff are currently in the process of obtaining input from private landowners regarding the potential change in management along this section of stream.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004) (Exhibit C). The Commission received two public comments supporting the proposed designation. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendations:

Staff recommend that the Commission designate a 2.5 mile section of Powell Creek, Dauphin County, extending from the upper bridge crossing on T-551 downstream to the confluence of the unnamed tributary along T-358, as a Delayed Harvest Artificial Lures Only area to be regulated and managed under §65.6. If approved, the designation will go into effect January 1, 2005.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to designate a 2.5 mile section of Powell Creek, Dauphin County, extending from the upper bridge crossing on T-551 downstream to the confluence of the unnamed tributary along T-358, as a Delayed Harvest Artificial Lures Only area to be regulated and managed under §65.6. The designation will go into effect January 1, 2005. Motion carried.

G. Change in Designation: Codorus Creek, York County.

Commentary:

Beginning with the 1995 season, Codorus Creek was added to the Selective Harvest Program. Subsequent changes in the length of the area included in the program were made in 1997 and 2001 to accommodate landowners along the stream and to take advantage of the coldwater release from Lake Marburg via the West Branch of Codorus Creek. Follow up examinations of the stream have consistently documented a solid Class A wild brown trout population.

Considering the fact that this water primarily supports a wild brown trout population, the species specific management offered by the Selective Harvest Program is not required for the management of this water. Therefore, staff are in agreement that the wild brown trout population in this water could be better managed under the Trophy Trout Program. The only difference that would occur from a change in management from Selective Harvest to Trophy Trout would be the elevation of the minimum length limit from 12 inches for brown trout and nine inches for other trout species to 14 inches for all trout species. Since both programs permit angling with the use of artificial lures, flies and streamers and provide for year-round angling with a two trout per day creel limit from the opening day of regular trout season through Labor Day, the seasons, creel limits and gear restrictions would remain the same.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004) (Exhibit C). The Commission received one public comment supporting the proposed redesignation. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalton L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the 3.1 mile section of Codorus Creek (from the confluence with the West Branch of Codorus Creek downstream to the cable 0.5 miles downstream of T-374, Hayrick Road) from the list of waters regulated and managed under the Selective Harvest Program pursuant to § 65.1 and add a smaller 2.0 mile section of Codorus Creek, from the confluence with the West Branch of Codorus Creek downstream to a point that is 0.4 miles downstream from SR 3082 (Porters Road), to the list of waters regulated and managed under the Trophy Trout Program pursuant to §65.7. If approved, this redesignation will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Czop to remove the 3.1 mile section of Codorus Creek (from the confluence with the West Branch of Codorus Creek downstream to the cable 0.5 miles downstream of T-374, Hayrick Road) from the list of waters regulated and managed under the Selective Harvest Program pursuant to § 65.1 and add a smaller 2.0 mile section of Codorus Creek, from the confluence with the West Branch of Codorus Creek downstream to a point that is 0.4 miles downstream from SR 3082 (Porters Road), to the list of waters regulated and managed under the Trophy Trout Program pursuant to §65.7. This redesignation will go into effect on January 1, 2005. Motion carried.

#### H. Change in Designation: Saucon Creek, Northampton County.

##### Commentary:

Since the beginning of the 1997 season, a 2.1 mile section of Saucon Creek extending from the upstream boundary of the City of Bethlehem property downstream to the SR 0412 Bridge has been managed under the Selective Harvest Program. A follow up examination of the stream has recorded the presence of a solid Class A wild brown trout population.

Considering the fact that this water primarily supports a wild brown trout population, the species specific management offered by the Selective Harvest Program is not required for the management of this stream section. Therefore, staff are in agreement that the wild brown trout population in this water could be better managed under the Trophy Trout Program. The only difference that would occur from a change in management from Selective Harvest to Trophy Trout would be the elevation of the minimum length limit from 12 inches for brown trout and 9 inches for all other trout species to 14 inches for all trout species. Since both programs permit angling with the use of artificial lures, flies and streamers and provide for year-round angling with a two trout per day creel limit from the opening day of regular trout season through Labor Day, the seasons, creel limits and gear restrictions would remain the same.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004) (Exhibit C). The Commission received one public comment supporting the proposed redesignation. Copies of all public comments were provided to the Commissioners.

##### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

##### Recommendation:

Staff recommend that the Commission remove the 2.1 mile section of Saucon Creek (from the upstream boundary of the City of Bethlehem property downstream to the SR 0412 Bridge) from the list of waters regulated and managed under the Selective Harvest Program pursuant to § 65.1 and designate the 2.1 mile section of Saucon Creek to the list of waters regulated and managed under the Trophy Trout Program pursuant to § 65.7. If approved, this redesignation will go into effect on January 1, 2005.

##### Action:

A motion was made by Commissioner Czop and seconded by Commissioner Reed to remove the 2.1 mile section of Saucon Creek (from the upstream boundary of the City of Bethlehem property downstream to the SR 0412 Bridge) from the list of waters regulated and managed under the Selective Harvest Program pursuant to § 65.1 and designate the 2.1 mile section of Saucon Creek to the list of waters regulated and managed under the Trophy Trout Program pursuant to § 65.7. This redesignation will go into effect on January 1, 2005. Motion carried.

I. Change in Designation: Grays Run, Lycoming County.

Commentary:

Since the beginning of the 1995 season, a 2.2 mile section of Grays Run extending from the Grays Run Hunting Club property line downstream to the concrete bridge on Grays Run Road (T-842) at the old CCC Camp has been managed under the Selective Harvest Program. Follow up examinations have recorded variations in both the brook and brown trout populations in this stream over time.

Considering the fact that the wild brook and brown trout populations have not responded as intended to regulations under the Selective Harvest Program, staff believe that the brook and brown trout populations in this section of stream should be managed under catch-and-release regulations. The differences that would occur from a change in management from Selective Harvest to catch-and-release regulations would be the elimination of any harvest and the requirement for anglers to use barbless artificial lures, flies and/or streamers when fishing this section of stream. Angling would continue to be permitted on a year-round basis.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004) (Exhibit C). The Commission received one public comment supporting the proposed redesignation. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the 2.2 mile section of Grays Run (from the Grays Run Hunting Club property line downstream to the concrete bridge on Grays Run Road (T-842) at the old CCC Camp) from the list of waters regulated and managed under the Selective Harvest Program pursuant to § 65.1 and designate the 2.2 mile section of Grays Run as a catch-and-release area to be regulated and managed pursuant to §65.5. If approved, this redesignation will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Huhn and seconded by Commissioner Anderson to remove the 2.2 mile section of Grays Run (from the Grays Run Hunting Club property line downstream to the concrete bridge on Grays Run Road (T-842) at the old CCC Camp) from the list of waters regulated and managed under the Selective Harvest Program pursuant to § 65.1 and designate the 2.2 mile section of Grays Run as a catch-and-release area to be regulated and managed pursuant to §65.5. This redesignation will go into effect on January 1, 2005 Motion carried.

J. Change in Designation: Cherry Run, Union County.

Commentary:

Since the beginning of the 1999 season, a 2.7 mile section of Cherry Run extending from the mouth upstream for a distance of 2.7 miles has been managed under the All-Tackle Selective Harvest Program. Follow up examinations have recorded a considerable fluctuation in the brown trout population on this water over time.

Considering the fact that the wild brown trout population has not responded as intended to the regulations under the All-Tackle Selective Harvest Program, staff believe that the brook and brown trout populations in this section of stream should be managed under catch-and-release regulations. Catch-and-release regulations currently apply to the section of Penns Creek where Cherry Run enters this stream, so a change to catch-and-release regulations would allow for the same regulations to be in effect on both waters. The differences that would occur from a change in management from All-Tackle Selective Harvest to catch-and-release regulations on Cherry Run would include the elimination of harvest, the prohibition of bait angling and the requirement for anglers to use barbless artificial lures, flies and/or streamers when fishing this section of stream. Angling would continue to be permitted on a year-round basis.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004) (Exhibit C). The Commission received one comment supporting and one comment opposing the proposed redesignation. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the 2.7 mile section of Cherry Run (from the mouth upstream for a distance of 2.7 miles) from the list of waters regulated and managed under the All-Tackle Selective Harvest Program under §65.4b and designate the 2.7 mile section of Cherry Run as a catch-and-release area to be regulated and managed under §65.5. If approved, this redesignation will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Huhn and seconded by Commissioner Anderson to remove the 2.7 mile section of Cherry Run (from the mouth upstream for a distance of 2.7 miles) from the list of waters regulated and managed under the All-Tackle Selective Harvest Program under §65.4b and designate the 2.7 mile section of Cherry Run as a catch-and-release area to be regulated and managed under §65.5. This redesignation will go into effect on January 1, 2005. Motion carried.

K. Change in Designation: Hunts Run, Cameron County.

Commentary:

Since the beginning of the 1999 season, a 4.7 mile section of Hunts Run extending from the confluence with McNuff Branch downstream to the mouth has been managed under the All Tackle Selective Harvest Program. A follow up examination of the stream has documented a considerable fluctuation in the brown trout population on this water over time.

Considering the fact that the wild brook and brown trout populations have not responded as intended to the regulations under the All-Tackle Selective Harvest Program, staff believe that the brook and brown trout populations in this section of stream should be managed under catch-and-release regulations. The differences that would occur from a change in management from All-Tackle Selective Harvest to catch-and-release regulations would include the elimination of harvest, the prohibition of bait angling and the requirement for anglers to use barbless artificial lures, flies and/or streamers when fishing this section of stream. Angling would continue to be permitted on a year-round basis.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004) (Exhibit C). The Commission received one comment supporting and one comment opposing the proposed redesignation. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the 4.7 mile section of Hunts Run (from the confluence with McNuff Branch downstream to the mouth) from the list of waters regulated and managed under the All-Tackle Selective Harvest Program pursuant to §65.4b and designate the 4.7 mile section of Hunts Run as a catch-and-release area to be regulated and managed pursuant to §65.5. If approved, this redesignation will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Czop to remove the 4.7 mile section of Hunts Run (from the confluence with McNuff Branch downstream to the mouth) from the list of waters regulated and managed under the All-Tackle Selective Harvest Program pursuant to §65.4b and designate the 4.7 mile section of Hunts Run as a catch-and-release area to be regulated and managed pursuant to §65.5. This redesignation will go into effect on January 1, 2005. Motion carried.

L. Change in Designation: Rauchtown Creek, Clinton County.

Commentary:

Since the beginning of the 2000 season, a 1.2 mile section of Rauchtown Creek extending from the confluence of Rockey Run and Krape Run downstream to the SR 0880 crossing upstream of the Ravensburg State Park Picnic Area has been managed under the All-Tackle Selective Harvest Program. Time series monitoring of the trout population has recorded fluctuations in the brown trout population while the brook trout population has increased over time.

Considering the fact that the wild brook trout population has appeared to respond to management under special regulations, staff believe that the brook and brown trout populations in this section of stream should be managed under catch-and-release regulations. The differences that would occur from a change in management from All-Tackle Selective Harvest to catch-and-release regulations would include the elimination of harvest, the prohibition of bait angling and the requirement for anglers to use barbless artificial lures, flies and streamers when fishing this section of stream. Angling would continue to be permitted on a year-round basis.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004) (Exhibit C). The Commission received one comment opposing the proposed redesignation. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the 1.2 mile section of Rauchtown Creek (from the confluence of Rockey Run and Krape Run downstream to the SR 0880 crossing upstream of the Ravensburg State Park Picnic Area) from the list of waters regulated and managed under the All-Tackle Selective Harvest Program pursuant to §65.4b and designate the 1.2 mile section of Rauchtown Creek as a catch-and-release area to be regulated and managed pursuant to §65.5. If approved, this redesignation will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Reed to remove the 1.2 mile section of Rauchtown Creek (from the confluence of Rockey Run and Krape Run downstream to the SR 0880 crossing upstream of the Ravensburg State Park Picnic Area) from the list of waters regulated and managed under the All-Tackle Selective Harvest Program pursuant to §65.4b and designate the 1.2 mile section of Rauchtown Creek as a catch-and-release area to be regulated and managed pursuant to §65.5. This redesignation will go into effect on January 1, 2005. Motion carried.

M. Change in Designation: Sinnemahoning Creek, East Fork, Potter County.

Commentary:

Beginning with the 1999 season a 2.9 mile section of Sinnemahoning Creek, East Fork, extending from the confluence with Wild Boy Run downstream to the confluence with Camp Run has been managed under the All-Tackle Selective Harvest Program. Follow up examinations have documented a considerable fluctuation in the brook and brown trout populations in this stream over time.

Overall, the wild brook and brown trout populations have not responded as intended to regulations under the All-Tackle Selective Harvest Program. Therefore, staff believe that the brook and brown trout populations in this section of stream should be managed under catch-and-release regulations. The differences that would occur from a change in management from All-Tackle Selective Harvest to catch-and-release regulations would include the elimination of harvest, the prohibition of bait angling and the requirement for anglers to use barbless artificial lures, flies and/or streamers when fishing this section of stream. Angling would continue to be permitted on a year-round basis.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004) (Exhibit C). The Commission received one comment supporting and one comment opposing the proposed redesignation. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the 2.9 mile section of Sinnemahoning Creek, East Fork, (from the confluence with Wild Boy Run downstream to the confluence with Camp Run) from the list of waters regulated and managed under the All-Tackle Selective Harvest Program pursuant to §65.4b and designate the 2.9 mile section of Sinnemahoning Creek, East Fork, as a catch-and-release area to be regulated and managed pursuant to § 65.5. If approved, this redesignation will go into effect on January 1, 2005.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to remove the 2.9 mile section of Sinnemahoning Creek, East Fork, (from the confluence with Wild Boy Run downstream to the confluence with Camp Run) from the list of waters regulated and managed under the All-Tackle Selective Harvest Program pursuant to §65.4b and designate the 2.9 mile section of Sinnemahoning Creek, East Fork, as a catch-and-release area to be regulated and managed pursuant to § 65.5. This redesignation will go into effect on January 1, 2005. Motion carried.

## OTHER MATTERS

### N. Grant to Delco Anglers and Conservationists for Removal of Irving Mill Dam and Habitat Restoration on Ridley Creek.

#### Commentary:

Michael J. Kelly is the owner of Irving Mill Dam on Ridley Creek in Delaware County. This dam is an impediment to fish migration. Mr. Kelly has granted Delco Anglers and Conservationists permission to enter upon his property for purposes of removing the dam and conducting associated habitat restoration activities. Delco also has agreed to act as a grant recipient and project manager on Mr. Kelly's behalf.

Delco Anglers and Conservationists have approached the PFBC to make known their desire to provide fish passage on Ridley Creek and to request technical and financial assistance. Delco has been successful in garnering funding from a variety of sources, including Growing Greener, the William Penn Foundation, Fish America and the Fish and Wildlife Foundation.

PFBC staff applied for and received a Coastal Zone Management (CZM) Grant from the Pennsylvania Department of Environmental Protection (DEP) in the amount of \$50,000 to remove the Irving Mill Dam and perform associated habitat restoration activities. The source of the CZM funding is the United States Department of Commerce, National Oceanic and Atmospheric Administration. Staff would like to subgrant the CZM grant to Delco for purposes of removing the dam and conducting associated habitat restoration.

#### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$50,000 to Delco Anglers and Conservationists for the purposes described in the Commentary.

#### Action:

A motion was made by Commissioner Czop and seconded by Commissioner Pflugfelder to approve a grant in the amount of \$50,000 to Delco Anglers and Conservationists for the purposes described in the Commentary. Motion carried.

TABLED ITEM

O. Change in Designation: Young Womans Creek (Right Branch) Clinton County.

Commentary:

This agenda item was tabled at the July 2003 Commission meeting. At the January 2004 meeting, the matter was again brought before the Commission, and the Commission expressed its wishes that the item remain tabled.

Young Womans Creek Section 2 was designated as Class A by staff based on a single trout population survey in 1979. Stocking was discontinued in 1983 when stream section based management was implemented. Commission action in September 1999 formally designated the existing list of staff designated Class A wild trout waters (including Young Womans Creek, Section 2). The Department of Environmental Protection lists all of Young Womans Creek watershed as High Quality Cold Water in its water quality protection designation.

Beginning with the 1995 season, a 5.5 mile section of Young Womans Creek (formerly Young Womans Creek, Right Branch), extending from Beechwood Trail downstream to a point 0.7 miles upstream of the confluence with Young Womans Creek, Left Branch, has been managed under the Selective Harvest Program. Under these regulations, angling is permitted on a year 'round basis with the use of artificial lures only. Harvest of two trout (combined species) daily is permitted during the regular trout season (opening day through Labor Day) with a 12 inch length limit for brown trout and a 9 inch limit for all other trout species. During the remainder of the year, catch-and-release only is permitted.

Staff have monitored the trout population within the special regulations area since 1995. Overall, the trout population has not responded as staff had hoped as the population fluctuated considerably over time. Considering that several severe climatic events occurred during this time period, including a winter flood in January of 1996 and consecutive years of extreme low flows in the summer, this response may not have been that unusual for a freestone stream in northcentral Pennsylvania. Although this section was identified in the past as a Class A wild trout water, consecutive surveys have shown that the section supports a Class B wild trout biomass. Therefore, to increase trout angling opportunity in the area, staff suggest changing the regulations to manage this section of stream under Delayed Harvest Artificial Lures Only special regulations. Such a change would allow for stocking at a low rate. Similar to existing regulations, angling would be permitted year 'round with the use of artificial lures only. A three trout per day creel limit and nine inch minimum length limit would apply to all trout species during the harvest season (June 15 through Labor Day) and catch-and-release angling would be permitted during the remainder of the season. The majority of this section (78%) is publicly owned, and access to the stream is very good in that 76% of the stream section lies within 110 yards of a road.

This proposal initially was tabled at the July 2003 Commission meeting to enable staff to gather additional public input. Since that time, the Commission has received in excess of 300 postcards from interested anglers supporting the proposed redesignation. The Commission also published a notice of proposed designation at 33 Pa. B. 6374 (December 20, 2003). The Commission received 118 public comments concerning the proposed redesignation. Of those comments, 97 opposed it, and 21 supported it. Copies of all public comments were provided to the Commissioners at past meetings.

In addition, the Western Clinton Sportsmen's Association hosted a meeting on January 10, 2004. Approximately 50 people attended. Of those who commented, there was overwhelming support for the change.

A notice of proposed designation was published at 34 Pa. B. 3334 (June 26, 2004), seeking comments on a proposal to designate Young Womans Creek as a catch-and-release area. (Exhibit C). The Commission received 13 public comments concerning the proposed redesignation. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission take this item from the table. Accordingly, this agenda item is included for the Commissioners' information and convenience. If the item is untabled, staff recommend that the Commission take such action as the Commission deems appropriate. If approved, the redesignation will go into effect on January 1, 2005.

Action:

This item remained tabled.

## LAW ENFORCEMENT

### A. Refund of Erroneously Collected Fine.

#### Commentary:

On August 16, 2003, Waterways Conservation Officer Joseph Morris II issued Citation FB-253459 to Mr. David L. Ball, Jr. for possessing alcohol on Commission property. However, the possession of alcohol is not prohibited at this access area under §53.4(c). The Assistant Regional Supervisor discovered this error when reviewing the citation. Waterways Conservation Officer Morris was made aware of the error, and he attempted to remedy the situation at the District Justice level. However, the District Justice was unwilling to do anything as the defendant had already pleaded guilty and paid the fine.

Under the circumstances, the Bureau of Law Enforcement believes that a refund of the \$50.00 fine paid by Mr. Ball is appropriate.

#### Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

#### Recommendation:

Staff recommend that the Commission authorize the payment of \$50.00 from the Fish Fund to Mr. David L. Ball, Jr., New Castle, PA as a refund for the fine imposed erroneously.

#### Action:

A motion was made by Commissioner Czop and seconded by Commissioner Pflugfelder to authorize the payment of \$50.00 from the Fish Fund to Mr. David L. Ball, Jr., New Castle, PA as a refund for the fine imposed erroneously. Motion carried.

B. Refund of Erroneously Collected Fine.

Commentary:

On June 7, 2004, Waterways Conservation Officer Chad Woleslagle issued Citation FB-258177 to Mr. Albert Motz for the taking of amphibians and reptiles in violation of §77.3(a). Mr. Motz was cited by the Pennsylvania Game Commission for attempting to capture hawks and other predators near the grounds of Carbon Beagle Club. During this endeavor, an eastern milk snake was killed in his trap. The Regional Supervisor believes that because the Pennsylvania Game Commission has cited Mr. Motz for violating the game laws, the issuance of a citation by the Fish and Boat Commission is not warranted under the circumstances. The facts as described by Officer Woleslagle do not readily fit into any clear-cut violation of the Fish and Boat Commission's laws or regulations.

Under the circumstances, the Bureau of Law Enforcement believes that a refund of the \$50.00 fine paid by Mr. Motz is appropriate.

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Recommendation:

Staff recommend that the Commission authorize the payment of \$50.00 from the Fish Fund to Mr. Albert Motz, Tamaqua, PA, as a refund for the fine imposed erroneously.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Pflugfelder to authorize the payment of \$50.00 from the Fish Fund to Mr. Albert Motz, Tamaqua, PA, as a refund for the fine imposed erroneously. Motion carried.

**Other New Business**

Commissioner Anderson stated that he would like the Commission's personnel directory updated and a copy provided to Commissioners. Executive Director Austen reported that staff are currently working on this endeavor.

Commissioner Concilla commented on the new scheduling format and explained that it was on a trial basis. Comments on the new format were encouraged.

Commissioner Keir commended John Simmons, Director, Bureau of Boating and Education, and his staff on their fine work in providing handouts for the meeting.

**Time and Place of October Commission Meeting**

The next meeting is scheduled for October 4-5, 2004 and will be held at the Commission's headquarters in Harrisburg.

**Adjournment**

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Keir to adjourn the meeting at 10:30 a.m. Motion carried.