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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 65th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, October 4 and 5, 2004, at the Bel-Aire Hotel, 2800 West 8<sup>th</sup> Street, Erie, PA 16505.

A briefing of the budget was provided to Commissioners on October 4 at 10:00 a.m.

The public session for review of this agenda began at or about 1:31 p.m. on October 4.

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

**Awards and Presentations**

Director Austen noted that this will be Wasyl Polischuk's last Commission meeting as he is leaving the Commission to accept a position with the Pennsylvania Historical and Museum Commission. Dr. Austen thanked him for his ten years of service to the Commission. Dr. Austen also noted that Chris Warehime accepted a position with the Attorney General's office. Both Wasyl and Chris will be personally missed as both colleagues and friends. Dr. Austen wished them good luck in their future endeavors.

Rick Schenker, Erie County Executive, thanked Dr. Austen and the Commissioners for coming to Erie County for their meeting. He also presented Dr. Austen with a citation on behalf of the citizens of Erie County. It read that Erie County supports the missions of the PFBC and hopes it

will continue to promote the steelhead fishing market and support the Fairview State Fish Hatchery. Ed Kissell, S.O.N.S. of Lake Erie, was also present for the presentation.

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

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

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

Good morning.

There exists in some circles, the misperception that spring and summer is the busy time for the Fish and Boat Commission while fall is the domain of our sister agency, the Pennsylvania Game Commission. While certainly a great deal of fishing and boating recreation is concentrated in the warmer weather months, I can assure you that we don't close down shop come autumn. Our meeting today and tomorrow is fittingly being held in the hub of Pennsylvania's premier fall trophy fishing destination, Erie County, and its remarkable steelhead fishery. The fall trout stocking program began last week and will continue through October. Certainly the rains we've had over the last several weeks assure us that there will be plenty of water for those trout. And the fall provides some fantastic – though perhaps underutilized – warm and coolwater fishing opportunities as well.

And by no means are Commission staff members putting their heels up now that it's autumn either. In fact, in many ways this fall is seeing us busier than ever. One of our chief efforts, of course, is the continued effort to secure passage of House Bill 2155. I don't want to dwell too much on that subject right now, as Wasyl will be providing a detailed update on where we stand with the legislation and the planned implementation of the bill. However, it cannot be emphasized enough how critical of a period we are in. So critical, in fact, that I instructed Gary Moore to be down at the Capitol meeting with lawmakers, rather than attending the Commission meeting.

Getting House Bill 2155 steered through the process is not the responsibility of Gary alone, however. All of us – Commissioners and staff – must make a concerted effort now and in the days ahead to ensure successful passage legislation providing much-needed operational funding. Anglers and boaters likewise have an obligation. Ultimately, the fate of House Bill 2155 lies in the hands of sportsmen and women. As well it should. It is the programs and services that they want, expect and deserve that are at stake. Letter, phone calls, and emails are needed to help move this forward.

Similarly, anyone who fishes or boats in the Commonwealth, especially after the floods that we have recently seen, knows that our lakes and streams are the end results of the watersheds above them. The rain, groundwater, acid mine drainage, and effects of development for homes and businesses, all affect the quality and quantity of water that we use for recreation and drinking. You cannot truly be an advocate for fishing and boating if you are not also an advocate for better management of the watersheds. A second major piece of legislation to anglers and boaters is

Growing Greener II, and a substantial component of the funds in Growing Greener II are for restoration and conservation activities that will improve our streams and lakes. Funds in Growing Greener II will also provide the Fish and Boat Commission with much needed funds to improve our fish hatcheries and dams that are in need of critical repair. As with House Bill 2155, personal contact with legislators is very important and much needed.

Many of you had your own experiences with water in the basement, or even worse, as a result of the Hurricane Ivan storms. Tragically, there were lives lost as a result of the storm and my sympathies are with the families of those who have lost someone. There were also many stories of courage and assistance in the face of danger provided by many citizens and emergency personnel. Fish and Boat Commission staff were among those involved in rescues and in tremendous clean up efforts that really showed the spirit and dedication of our staff.

Many of our Waterways Conservation Officers were personally involved in rescues, watching dams that were identified as having potential for being hazards, and in evacuations. You also probably saw on the news many water rescues performed by firemen and emergency personnel but didn't realize that the Fish and Boat Commission staff and volunteer instructors have trained the vast majority of these experts. We have realized that water rescue is dangerous and requires a high degree of technical skill and our staff has responded by developing the nation's best training program. The recent floods highlight the importance of the program and should send notice to our legislature that such a program should be supported and expanded to ensure that we can even further reduce the loss of life in future floods.

On the clean-up side, we did see a flooding of our Benner Spring State Fish Hatchery in Centre County. This facility saw water from Spring Creek enter the facility and get up about seven feet high in the lower levels of two of our buildings. In an amazing response, staff worked tirelessly starting Saturday afternoon and through the weekend to clean out the facilities and rescue hundreds of thousands of fish that were washed out of the raceways. Spring Creek did get an unexpected and substantial stocking as a result of the storm, and anglers might be surprised at what they catch in future years, but the result was that staff got us back in operation quickly and professionally and they deserve a great deal of credit for their efforts.

I also want to call to the Commissioners' attention a document (Exhibit H) providing an update on major activities and accomplishments over the last quarter. As part of my commitment to keep you informed, staff will be putting this report together for each quarterly Commission meeting. They will also be incorporated into the minutes for each meeting and will be part of the record available to the public. Some of these activities will be highlighted in the briefing that follows this report, such as the dam removal work that Scott Carney will be discussing.

I'd be remiss if I didn't take the opportunity before I cede the floor to publicly recognize some staff changes. Lancaster County Waterways Conservation Officer Dawn Sapp is leaving State service after 12 years on the job. Also, as you know, this will be Wasyl Polischuk's last Commission meeting as he is leaving us to accept a position with the Pennsylvania Historical and Museum Commission. Furthermore, Chris Warehime has accepted a position with the Attorney General's office. Their absences will be notable, both for the valuable experience we're losing, but they will be personally missed as colleagues and friends as well. We wish them both good luck.

### **Commission Briefings**

Commission briefings occurred at 1:45 p.m. on October 4. Wasyl Polischuk provided an update on House Bill 2155. A discussion of implementation issues associated with H.B. 2155 followed. Scott Carney provided a briefing on the Commission's Consultation and Grant Program for Fish Passage and Habitat Restoration. John Simmons provided an update on fishing and boating access initiatives along with a water trails update.

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

Zach Liotus, Parliamentarian for the Governor's Youth Council for Hunting, Fishing and Conservation, commended President Concilla, Vice-President Czop and the Commissioners for the work they have done to protect the waterways and aquatic life in Pennsylvania and for all the exciting and informative programs that they have made available to youth. Zach described a rewarding and productive meeting that was recently held by the Youth Council with Laurel Garlicki, PFBC Education Specialist, and Dr. Austen. The meeting was held in Carlisle, PA.

During the meeting, the Council discussed the proposed amendments to 58 Pa. Code §91.4 (relating to age of operator). The Council voted unanimously in favor of the age of operation being 16 years of age or older for any boat propelled by a motor greater than 25 horsepower and all personal watercraft. They were also in favor of phasing in this requirement as was originally proposed by staff to the Boating Advisory Board.

The Governor's Youth Council members also discussed House Bill 2155 and concluded that they strongly agree with the bill. Part of their assignment was to meet with their local legislatures to let them know how important it is that they move the bill forward as soon as they are in session. Zach also reported that last year at this time the Youth Council gave testimony on the fee charged for youth anglers.

Zach concluded his remarks by saying that the Council is hoping to work with the Commission in the future to promote youth programs and to work with Dr. Austen to help write new legislation to address the Youth License.

Carmine Camillo, staff member of Senator Jane Earll's office, commented on House Bill 2155. He also inquired about the status of the Fairview State Fish Hatchery in terms of monies for infrastructure needs.

Ken Undercoffer, Trout Unlimited, commented on the change in special regulation designation and removal from the Class A Wild Trout Streams List of Young Womans Creek. Mr. Undercoffer explained that Trout Unlimited believes that the stream should be made no kill and not be stocked.

## **EXECUTIVE OFFICE**

### **A. Dates for Fish and Boat Commission Meetings in 2005.**

#### Commentary:

At the fall meeting each year, the Commission has established a schedule for regular meetings for the following year. Under the Fish and Boat Code, the Commission is required to have two meetings each year, one in January and the other in July. These meetings must be held in the Harrisburg area. Traditionally, the Commission has held two additional meetings each year in April or May and September or October.

Staff have reviewed the available dates and possible conflicts for scheduling regular Commission meetings for 2005. This review included a look at holiday, hunting and fishing seasons and other conflicting events. Based upon this review, the following dates are proposed for regular Commission meetings in 2005:

January 24-25, 2005 (Monday and Tuesday)

April 25-26, 2005 (Monday and Tuesday)

July 18-19, 2005 (Monday and Tuesday)

September 26-27, 2005 (Monday and Tuesday)

The 2005 Commission meetings will be held in the Harrisburg area. Commissioners should note that staff are proposing the meetings be held on Mondays and Tuesdays.

#### Briefer:

Wasył Polischuk, Director, Bureau of Administration

#### Recommendation:

Staff recommend that the Commission approve the dates for the regular meetings of the Commission for 2005 as set forth in the Commentary.

#### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Czop to approve the dates for the regular meetings of the Commission for 2005 as set forth in the Commentary. Motion carried.

## **BOATING FINAL RULEMAKING**

### A. 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 provision 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. In addition, subsection (b) of this regulation combines PFD requirements in the same subsection as the slow, no wake areas. Separating these subjects into different paragraphs increases the clarity of the regulation.

A notice of proposed rulemaking was published at 34 Pa. B. 4152 (August 7, 2004). (Exhibit B). The Commission did not receive any public comments concerning the proposal.

The Boating Advisory Board met and considered this item at its August 30, 2004 meeting and recommended that the Commission adopt the changes as proposed.

#### Briefer:

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

#### Recommendation:

Staff recommend that the Commission adopt the amendments 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 amendments as set forth in the notice of proposed rulemaking. Motion carried.

B. 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. 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, there has been an increase in the number of marinas and the addition of a popular restaurant. Thus, the Commission proposed establishing a slow, no wake zone on the Ohio River behind Neville Island.

A notice of proposed rulemaking was published at 34 Pa.B. 4152 (August 7, 2004) (Exhibit B). The Commission received 16 public comments concerning the proposal: 9 supported the restrictions; 6 opposed any additional restrictions; and 1 wanted the zone extended below the proposed area to the tip of Neville Island. Copies of all public comments were provided to the Commissioners.

The Boating Advisory Board met and considered this item at its August 30, 2004 meeting and recommended that the Commission adopt the changes as proposed.

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the amendments 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 amendments as set forth in the notice of proposed rulemaking. Motion failed.

### C. 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 defines "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."

The Commission therefore proposed that the term "slow, minimum height swell speed" be replaced with "slow, no wake speed" so the public better understands the term. The Commission also proposed to amend the definition to reflect the accepted standards in other states.

In addition, there are several references to slow, minimum height swell speed throughout the Commission's regulations. The Commission proposed that these references in §§103.3, 103.16, 105.3, 107.5, 111.2, 111.3, 111.4, 111.6, 111.9, 111.13, 111.14, 111.17, 111.20, 111.21, 111.22, 111.23, 111.24, 111.25, 111.27, 111.30, 111.31, 111.36, 111.40, 111.41, 111.42, 111.43, 111.46, 111.49, 111.52, 111.56, 111.58, 111.59, 111.62, 111.64 and 111.66 be amended to reflect the new term.

A notice of proposed rulemaking was published at 34 Pa.B. 4466 (August 14, 2004) (Exhibit C). The Commission did not receive any public comments concerning the proposal.

The Boating Advisory Board met and considered this item at its August 30, 2004 meeting and recommended that the Commission adopt the changes as proposed.

#### Briefer:

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

#### Recommendation:

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

#### Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Czop to adopt the amendments as set forth in the notice of proposed rulemaking. Motion carried.

## PROPOSED RULEMAKING

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

#### Commentary:

The Commission previously 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. A recent amendment to section 5103 of the Fish and Boat Code that provides for mandatory boating education increased the minimum horsepower to 25. Specifically, this section provides that any person born on or after January 1, 1982, shall not operate a motorboat greater than 25 horsepower without first obtaining a certificate. To be consistent with the law and to eliminate some complexity in the regulations, the Commission proposed to amend §91.4.

Specifically, the Commission proposed to simplify the existing regulations and make them consistent with provisions of the mandatory education law. The Commission also proposed to eliminate the distinction between PWC and other motorboat operation by applying the same standards to both. The Commission further proposed to increase the minimum age of operation of a personal watercraft to 16, effective January 1, 2008. A notice of proposed rulemaking was published at 34 Pa.B. 4151 (August 7, 2004) (Exhibit A).

At the time the Commission approved the publication of the notice of proposed rulemaking, it also directed staff to solicit the input of the Governor's Youth Council for Hunting, Fishing and Conservation. The Council was surveyed informally, and copies of their comments, which generally support the proposed changes, have been provided to the Commissioners. The Boating Advisory Board met and considered this item at its August 30, 2004 meeting and recommended that the Commission adopt the changes as proposed.

On September 10 – 12, 2004, the Council held its quarterly meeting and discussed the proposal. The Council voted unanimously in favor of the age of operation being 16 years of age or older for any boat propelled by greater than 25 horsepower and all personal watercraft. The Council also voted unanimously in favor of "phasing in" this requirement over a number of years. The Council indicated that it feels strongly that these change must be simply worded and well publicized.

In addition, the Commission received one public comment from the Personal Watercraft Industry Association (PWIA) that supports increasing the age of operation of personal watercraft to 16 years of age. However, the PWIA indicated that based on its experience, it believes that a phase-in of the minimum age increase for personal watercraft operators is the best approach for implementation by authorities and compliance by the boating public. For that reason, the PWIA encourages the Commission to opt for a regulation that allows those individuals of legal operating age under the age of 16 to be grandfathered by the new law. Copies of this comment have been provided to the Commissioners.

Upon further consideration of this matter, staff believe that a phased approach will find the most acceptance among the boating public. Staff therefore recommend that the Commission approve

the republication of a notice of proposed rulemaking seeking public comments on a phased approach as more fully described below. Under this proposal, the minimum age of operation would be age 13, effective immediately upon publication of an order adopting the change, and would increase to age 14 effective January 1, 2006, age 15 effective January 1, 2007 and age 16 effective January 1, 2008. Staff also recommend that the Commission hold at least one public meeting.

In advance of the Commission meeting, staff informally polled the Boating Advisory Board, and the Board is generally in agreement with the phased approach and believes that it is appropriate to solicit additional public comments.

§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.]**

**A person 12 years of age or younger may not operate a personal watercraft. Effective January 1, 2006, a person 13 years of age or younger may not operate a personal watercraft. Effective January 1, 2007, a person 14 years of age or younger may not operate a personal watercraft. Effective January 1, 2008, a person 15 years of age or younger may not operate a personal watercraft.**

**(d) A person 15 years of age or younger may not operate a personal watercraft if there are any passengers onboard 17 years of age or younger.**

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the republication of a notice of proposed rulemaking seeking additional public comments on the proposed amendment described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Mahon that the Commission approve the republication of a notice of proposed rulemaking seeking additional public comments on the proposed amendment described in the Commentary. Motion carried.

E. Amendments to Sections 111.42 (McKean County) and 111.62(a) (Warren County, Allegheny Reservoir).

Commentary:

In 1980, the Commission adopted regulations to control the speed of boats on the various bays of Kinzua Reservoir. All of the larger bays were restricted to 8 mph while the smaller ones were made slow, no wake. These regulations were subsequently modified in 1989 and 1994. Boat speed was restricted to slow, no wake in most the coves, but in Willow and Sugar Bay, an 8 mph speed limit was retained. This speed was selected because the size of the bays was too large for slow, no wake but not large enough for unrestricted operation.

Staff have reviewed these restrictions and have determined that the regulations could be further improved and provide additional boating opportunities by converting the 8 mph zones on the McKean County portion of Willow and Sugar Bays to slow, no wake and by removing the 8 mph restriction on the Warren County portion of these bays.

Staff propose the following amendments:

§111.42. McKean County.

*Allegheny River Reservoir (Kinzua Dam).*

(1) **[Boats are limited to a maximum of 8 miles per hour, and waterskiing is prohibited in the following areas:**

- (i) **Willow Bay.**
- (ii) **Sugar Bay.**

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

- (i) Chappel Bay.
- (ii) **[The bay formed by Morris Run] Morrison Run Bay.**
- (iii) From the sewer plant at Kiasutha to the headwaters above Red Bridge.
- (iv) Willow Bay.**
- (v) Sugar Bay.**

[(3)] **(2)** \* \* \*

§111.62. Warren County.

(a) *Allegheny River Reservoir (Kinzua Dam).*

(1) **[Boats are limited to a maximum of 8 miles per hour and waterskiing is prohibited in the following areas:**

- (i) **Willow Bay.**
- (ii) **Sugar Bay.**

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

- (i) In the vicinity of camping areas and boat launches.
- (ii) Dew Drop Bay.
- (iii) Wolf Run Bay.
- (iv) Hodge Bay, North and South Branch.

- (v) Cornplanter Bay.
  - (vi) Billies Bay.
  - (vii) Willow Bay beginning at the boat launch ramp**
- [3] (2) \* \* \***

The Boating Advisory Board considered this item at its August 30, 2004 meeting and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendments.

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 Pflugfelder and seconded by Commissioner Anderson to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. Motion carried.

F. Amendment to Chapter 111.6 (Berks County), Schuylkill River – Kernsville Dam.

Commentary:

The Commission received a petition from Blue Mountain Wildlife, Inc. to amend the regulations to prohibit the operation of internal combustion motors on boats using the Schuylkill River behind the Kernsville Dam to encourage the preservation of the peacefulness and beauty of the impoundment. The Kernsville Dam is located in Berks County near Hamburg, Pennsylvania. The dam is owned by the Commonwealth and is managed by the Department of Environmental Protection. Blue Mountain Wildlife, Inc. holds a lease to manage and develop the area around the impoundment for passive recreational use. DEP maintains an access area at the impoundment that has been closed because it falls within a 200-foot restricted area near this dam. Only hand-carry access is currently available.

Staff reviewed Blue Mountain Wildlife, Inc.'s petition to ensure that it met the requirements of 58 Pa. Code §51.6 and determined that it was appropriate for further consideration. In accordance with the Commission's regulations, the petitioner was afforded an opportunity to make a presentation at the January 2004 Commission meeting. The Commission accepted the petition for further review and directed staff to prepare a report and recommendations.

The completed staff report is attached. (Exhibit D). In accordance with the findings of the report, staff propose the following amendment:

§111.6. Berks County.

\* \* \*

**(e) Schuylkill River, Kernsville Pool. Boats are limited to slow, no wake speed.**

The Boating Advisory Board considered this item at its August 30, 2004 meeting and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

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 Mahon 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. Amendment to Section 111.41 (Luzerne County), Harveys Lake.

Commentary:

The Commission received a petition from the Harveys Lake Protective Association to amend the regulations to establish a 45-mile per hour speed limit from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day. Staff reviewed the petition to ensure that it met the requirements of 58 Pa. Code §51.6 and determined that it was appropriate for further consideration. In accordance with the Commission's regulations, the petitioner was afforded an opportunity to make a presentation at the April 2004 Commission meeting. The Commission accepted the petition for further review and directed staff to prepare a report and recommendations for further Commission consideration.

Staff completed its initial report and presented it to the Boating Advisory Board at its August 30, 2004 meeting. At that meeting, the Board recommended that staff study the use of radar to enforce speed limits on Commonwealth's waters, including the available technology, the costs of equipment and training and the authority of waterways conservation officers to use radar under current laws and regulations.

The Commission's regulations provide that if the Commission accepts a petition, staff have 180 days to prepare a report evaluating the petition and containing the staff's recommendations for disposition. The regulations further provide that staff may request additional time to evaluate a petition. Given the Board's recommendation that staff study the use of radar to enforce speed limits on Commonwealth waters, staff will require additional time in which to prepare a complete report. Accordingly, staff request additional time to evaluate the petition.

Briefer:

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

Recommendation:

Staff recommend that the Commission grant them an additional 90 days in which to prepare a complete report regarding the petition, including the use of radar to enforce speed limits on Commonwealth waters.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Anderson to grant them an additional 90 days in which to prepare a complete report regarding the petition, including the use of radar to enforce speed limits on Commonwealth waters. Motion carried.

Following consideration of the Boating agenda items on October 4, a motion was made by Commissioner Czop and seconded by Commissioner Sabatose to adjourn except for purposes of the Law Enforcement Committee. Motion carried. The meeting adjourned at or about 4:15 p.m.

The Law Enforcement Committee subsequently met. (The report of this committee follows the Law Enforcement agenda items).

On October 5, at or about 8:47 a.m., the Commission meeting resumed. Prior to the review of the Fisheries agenda items, Andy Shiels provided a briefing on the damage sustained at the Benner Spring State Fish Hatchery as a result of Hurricane Ivan.

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

A. 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.

The Commission proposed 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."

A notice of proposed rulemaking was published at 34 Pa. B. 3603 (July 10, 2004) (Exhibit E). The Commission did not receive any public comments concerning the proposal.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

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

## B. 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. The Commission accordingly proposed establishing a one fish creel limit for American shad in the Schuylkill River basin upstream of the bridge on I-95 at Philadelphia.

A notice of proposed rulemaking was published at 34 Pa. B. 3603 (July 10, 2004) (Exhibit E). The Commission did not receive any public 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 Czop and seconded by Commissioner Anderson to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried.

C. 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, the Commission proposed that the name of section 65.10 be changed from "Select Trout Stocked Lake Program" to "Early Season Trout Stocked Waters."

A notice of proposed rulemaking was published at 34 Pa. B. 3603 (July 10, 2004) (Exhibit E). The Commission received one public comment 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 Mahon and seconded by Commissioner Anderson to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried.

D. 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.

A notice of proposed rulemaking was published at 34 Pa. B. 3603 (July 10, 2004) (Exhibit E). The Commission received one public comment supporting the proposal. Copies of all public comments have been provided to the Commissioners.

As proposed, the regulation allows burbot to be taken by hook and line year 'round, whereas they may be taken by scuba divers by use of nonmechanical spears or gigs only during the season, June 1 to September 30. There is no sound fisheries management reason for this distinction. Therefore, staff recommend that on final rulemaking, the Commission allow the taking of burbot by nonmechanical spears or gigs year 'round.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Reed to adopt the amendments as set forth in the notice of proposed rulemaking with the change described in the Commentary. Motion carried.

E. 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.

A notice of proposed rulemaking was published at 34 Pa. B. 3603 (July 10, 2004) (Exhibit E). The Commission received one public comment 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 amendments as set forth in the notice of proposed rulemaking.

Action:

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

## PROPOSED RULEMAKING AND DESIGNATIONS

### F. Amendment to Section 57.2 (Policy for Allocation and Stocking of Trout).

#### Commentary:

At the November 8, 1985 meeting, the Commission formally adopted a statement of policy for the allocation and stocking of adult trout. The policy provides that trout are allocated to individual waters on a classification basis without regard to county lines and that the assignment of waters to stocking categories is based on biological and social factors. Eight stocking categories were identified, including “wild trout: no stocking,” high yield, basic yield I, basic yield II, basic yield III, low yield, rivers and lakes. Although the statement of policy utilized the general term “wild trout,” the term in practice included only Class A and wilderness trout streams. The names of the other categories were changed over the years.

Fisheries staff are committed to re-engineering the agency’s trout management approach. Allocation of legal-size stocked trout is a major part of the agency’s trout management plans. Adjusting this policy will allow staff initiative without the burden of the eight resource categories identified in the original policy and will increase flexibility for consideration of public interests in the stocking of individual waters.

Staff propose that the statement of policy for the allocation and stocking of legal-size trout be modified as follows:

§57.2. Allocation and stocking of **legal-size** trout.

**(a) The Commission will allocate trout, except those to be used for put, grow and take, to individual waters with the rate and frequency to be determined by the assignment of each water to a resource category.**

**(b) The Commission will assign water areas to resource categories based on appropriately weighted biological and social factors, including the status of wild trout populations, stream width or lake area and recreational use potential as indicated by public access, parking spaces, ownership, proximity to roads, proximity to urban areas and activities of resource adoption organizations.**

**(c) The Division of Fisheries Management will maintain a current list of resource categories, trout allocation processes and trout allocations.**

#### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed statement of policy containing the policy for allocation and stocking of legal-size trout set forth in the Commentary.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Huhn to approve the publication of a notice of proposed statement of policy containing the policy for allocation and stocking of legal-size trout set forth in the Commentary. Motion failed. A second motion was made by Commissioner Mahon and seconded by Commissioner Anderson to table this item. Motion carried.

## G. Amendment to Section 57.9a (Policy for Publicizing Stocking of Legal-Size Trout).

### Commentary:

At the April 18, 1997 meeting, the Commission formally adopted modifications to the policy for publicizing the stocking of legal-size trout. The policy provides that:

- All stockings are publicly announced.
- Announcements of preseason and winter stockings may include the date, time and a description of the waters to be stocked.
- Announcements of in-season stockings will include the week of stocking and the name of the waters to be stocked. The Executive Director may announce the date and time of certain in-season stocking on Saturdays on publicly owned or controlled lakes, with the owners' consent, when the announcement will enhance fishing opportunities and will not cause undue congestion and crowd control and traffic problems.
- The Executive Director may announce the day of in-season stocking on publicly owned or controlled waters on a phased basis by establishing pilot sites and test announcements.

There is increased interest among staff and the public to announce stocking to the fullest extent practicable. Field reviews by Law Enforcement and Fisheries staff, as well as responses from landowners, will be used to identify waters where the announcement of stocking is advisable.

Staff propose that the statement of policy for publicizing the stocking of fish be modified as follows:

### **§57.9a. Publicizing stocking of fish.**

#### **(a) All stockings are publicly announced.**

#### **(b) The Executive Director, in his discretion, may announce the date, time, location, number and/or weight of all fish stockings and may withhold announcements based on certain factors, including but not limited to safety.**

### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

### Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed statement of policy containing the policy for publicizing the stocking of fish set forth 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 statement of policy containing the policy for publicizing the stocking of fish set forth in the Commentary. Motion carried.

#### H. Delayed Harvest Artificial Lures Only Program: McMichaels Creek, Monroe County.

##### Commentary:

Staff have pursued establishing a Delayed Harvest Artificial Lures Only project on McMichaels Creek, Monroe County, to provide diverse angling opportunity in the area. Interest on this water was prompted by efforts by Stroud Township to purchase acreage for a township park. Recent acquisitions totaling 107 acres include approximately 1.74 miles of McMichaels Creek that had been closed to public access. The township owns the entire southern bank and 88 percent of the northern bank with three private landowners controlling the remaining 12 percent of frontage. One of the three has already given the Commission consent to having the property in a special regulations area. Another is expected to follow suit. The third owner is not expected to participate, but this property involves only about 100 yards of stream. Staff understand that Stroud Township will provide parking areas for anglers along the 1.74 mile reach of McMichaels Creek in an early phase of the township park plan.

A notice of proposed designation was published at 34 Pa. B. 4796 (August 28, 2004) (Exhibit F). The Commission received three public comments supporting the designation.

##### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

##### Recommendation:

Staff recommend that the Commission designate a 1.74 mile section of McMichaels Creek, Monroe County, extending from 130 yards downstream of the bridge on Turkey Hill Road (T-416) downstream to the upstream boundary of the Glen Brook Golf Course, 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 Mahon and seconded by Commissioner Anderson to designate a 1.74 mile section of McMichaels Creek, Monroe County, extending from 130 yards downstream of the bridge on Turkey Hill Road (T-416) downstream to the upstream boundary of the Glen Brook Golf Course, 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.

## I. Extension of Delayed Harvest Artificial Lures Only Section on Meadow Run, Fayette County.

### Commentary:

A 1.7 mile section of Meadow Run was approved for management in the Delayed Harvest program starting in January 1999. This section is entirely within Ohiopyle State Park and stretches from the State Route 381 Bridge upstream to Laurel Run. The 2.5 mile section immediately upstream of the Delayed Harvest section is stocked with catchable trout and managed with Statewide Regulations. This section is predominantly (92%) in Ohiopyle State Park.

The current Delayed Harvest boundaries have created considerable confusion to anglers as pointed out by the District Waterways Conservation Officer and Ohiopyle State Park Rangers. Additionally, State Park officials do not want this scenic area inundated with Commission signs. Essentially, this combination of factors results in many anglers violating the law without even knowing it. The current downstream boundary at the State Route 381 Bridge leaves about 100 yards of Meadow Run as an Approved Trout Water placing it with different regulations from the Youghiogheny River on one side and the Delayed Harvest section on the other. By extending the Delayed Harvest section another 100 yards downstream to the mouth of Meadow Run, instead of ending it at the State Route 381 Bridge, part of the problem can be eliminated. The current upstream boundary at Laurel Run presents two problems. First, many anglers think that the bridge beside the park office is the State Route 381 Bridge. The mistaken State Route 381 Bridge is actually 1/2 mile above the Delayed Harvest area. The second problem is that the upstream Delayed Harvest limit of Laurel Run looks much like any other tributary that you see in the woods, and there are two other ones entering Meadow Run from the same side of the stream. The upstream Delayed Harvest section limit should be changed to the State Route 2011 Bridge on Dinner Bell Road adjacent to the Ohiopyle State Park office to eliminate this confusion.

A notice of proposed designation was published at 34 Pa. B. 4796 (August 28, 2004) (Exhibit F). The Commission received six public comments supporting the extension and one public comment opposing it.

### Briefer:

Rickalton L. Hoopes, Director, Bureau of Fisheries

### Recommendation:

Staff recommend that the Commission extend the section of Meadow Run that is currently managed as a Delayed Harvest Artificial Lures Only Area under §65.6 from 1.7 miles to 2.2 miles, with the new limits being from the mouth of Meadow Run at the Youghiogheny River upstream to the State Route 2011 Bridge on Dinner Bell Road adjacent to the Ohiopyle State Park office. If approved, the designation will go into effect January 1, 2005.

### Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Huhn to extend the section of Meadow Run that is currently managed as a Delayed Harvest Artificial Lures Only Area under §65.6 from 1.7 miles to 2.2 miles, with the new limits being from the mouth of Meadow Run at the Youghiogheny River upstream to the State Route 2011 Bridge on Dinner Bell Road adjacent to the Ohiopyle State Park office. The designation will go into effect January 1, 2005. Motion carried.

J. Select Trout Stocked Lakes Program (to become Early Season Trout Stocked Waters Program): East and West Basin Ponds (Waterworks Ponds, Presque Isle State Park), Erie County.

Commentary:

The two ponds (formerly the Waterworks Ponds) in Presque Isle State Park were added to the trout stocking program in time for the 2000 season. Although the total acreage of 6.4 is not much in comparison to the typical trout stocked reservoir, proximity to Erie makes them a valuable recreation site. Trout stocking has worked out quite well, and the Bureau of State Parks has requested that the Commission add these waters to the Select Trout Stocked Lake Program. In addition, the S.O.N.S. of Lake Erie and the Presque Isle State Park Advisor Committee support the concept.

Membership in the Select Trout Stocked Lake Program under §65.10 does not mean that a water body receives additional trout. Rather, a portion of what would be the regular preseason allotment is stocked earlier in the late winter to provide opportunity for recreational angling (with a 3 trout daily creel limit) during the month of March when most trout-stocked waters are closed to fishing. From April 1 to the opening day of the regular trout season, the water is closed to angling so the rest of the preseason trout may be stocked.

A notice of proposed designation was published at 34 Pa. B. 4796 (August 28, 2004) (Exhibit F). The Commission did not receive any public comments concerning the designation.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the addition of the East and West Basin Ponds, Erie County, to the list of waters regulated and managed under the Select Trout Stocked Lake Program (to become the Early Season Trout Stocked Waters Program) under §65.10. If approved, the designations will go into effect January 1, 2005.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to approve the addition of the East and West Basin Ponds, Erie County, to the list of waters regulated and managed under the Select Trout Stocked Lake Program (to become the Early Season Trout Stocked Waters Program) under §65.10. The designations will go into effect January 1, 2005. Motion carried.

## OTHER MATTERS

### K. Establishing a Statewide Grant Program for Fish Passage and Habitat Restoration.

#### Commentary:

The purpose of this grant program is to provide a mechanism for the Commission to pass federal and private funding, as it becomes available, to dam owners throughout Pennsylvania who agree to provide fish passage and habitat restoration at their dams.

The Pennsylvania Department of Environmental Protection estimates there are nearly 4,000 dams in existence on Pennsylvania waterways. Many of these dams provide a valuable service to the public for recreation, sources of public and commercial water and habitat for wildlife. However, a large number currently do not serve the functional purpose for which they were constructed, are in a state of disrepair and provide little habitat and recreational value.

Dams impact stream ecosystems by blocking the migratory movements of fish and other aquatic organisms, impairing water quality and fragmenting and negatively impacting stream habitat through sediment deposition. In addition, dams can be an attractive nuisance. At times, they create a hazard to public safety, reduce floodwater storage capacity of stream channels and represent a long-term liability to their owners.

The proposed program is an expansion of the existing grant program for the Susquehanna River Basin approved by the Commission at its May 30, 1995 meeting. Since 1995, the Commission has provided technical and financial assistance to dam owners in the Susquehanna River Basin towards addressing obligations for fish passage and/or removing unwanted dams. To date, more than 65 dams have been removed and seven fishways have been constructed, resulting in the opening and restoration of approximately 500 miles of stream habitat to support migratory and resident fishes. The program works with cooperative and willing dam owners on projects that have viable habitat restoration and public safety benefits and provides a conduit for funding and technical and regulatory assistance. All projects are closely coordinated with and subject to approval by the Pennsylvania Department of Environmental Protection as well as other federal, state and county regulatory agencies.

Funding to support projects has come from a variety of federal, state and private sources. To date, approximately \$4 million has been obtained for design and implementation of projects. No fishing license revenues have been utilized.

Response to the program has been overwhelming. Dam owners throughout the Commonwealth have expressed increased demand for assistance under the program. The program has received national as well as international acclaim and recognition. Past projects have helped to build numerous partnerships that support Commission management interests and objectives.

Expansion of the grant program will allow the Commission to meet increased public demands for assistance, as well as migratory fish and habitat restoration projects in the Delaware, Ohio, Genesee, Lake Erie, and Potomac Basins. In fact, the Commission has

already received over 40 requests for assistance from dam owners outside the Susquehanna River Basin.

Grants would be limited to a maximum of \$100,000. Individual projects requiring financial assistance in excess of that amount would require separate Commission approval.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission authorize the Executive Director to approve individual pass-through grants of up to and including \$100,000 each to dam owners and their designees for dam removal, fish passage and habitat restoration projects statewide. For grants in excess of \$100,000, staff will seek separate Commission approval.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Pflugfelder to authorize the Executive Director to approve individual pass-through grants of up to and including \$100,000 each to dam owners and their designees for dam removal, fish passage and habitat restoration projects statewide, subject to the Executive Director's establishment of a protocol that details biological and engineering considerations for individual grants and institutes a procedure for keeping the appropriate Commissioners informed. For grants in excess of \$100,000, staff will seek separate Commission approval.

A motion to amend was made by Commissioner Mahon and seconded by Commissioner Czop to provide that if Fish Fund dollars are to be used to fund grants, staff will seek separate Commission approval regardless of the amount.

A motion to amend the amendment was made by Commissioner Reed and seconded by Commissioner Pflugfelder to provide that staff will seek separate Commission approval of grants using Fish Fund dollars only when the amount of Fish Fund dollars exceeds \$20,000.

The main motion as amended read as follows: The Commission authorizes the Executive Director to approve individual pass-through grants of up to and including \$100,000 each to dam owners and their designees for dam removal, fish passage and habitat restoration projects statewide, provided that the Executive Director establishes a protocol that details biological and engineering considerations for individual grants and institutes a procedure for keeping the appropriate Commissioners informed. For individual pass-through grants in excess of \$100,000, staff will seek separate Commission approval. The Commission further authorizes the Executive Director to approve individual grants utilizing Fish Fund monies of up to and including \$20,000 each for the purposes described above. For grants utilizing Fish Fund monies in excess of \$20,000, staff will seek separate Commission approval.  
Motion carried.

L. Research Grant for Raceway Fish Waste Management with Flow and Fish Density.

Commentary:

The Commission's fish production facilities are facing increasing challenges in the management of hatchery wastewater effluents. As discharge permits become more restrictive, new technologies and hatchery operational changes are needed to improve effluent water quality and remain in compliance. Fish waste and uneaten feed are the main contributors to hatchery effluent challenges. Commission staff are reviewing the feeds we use and how we deliver them to the fish in search of opportunities to improve upon current practices.

A research project to evaluate the effect of flow manipulation on feed usage and waste management has been proposed by Dr. Richard Soderberg of Mansfield University. This study is entitled "*Reduction of Pollution from Trout Aquaculture*" and will be conducted at the United States Geological Survey Northern Appalachian Research Laboratory in Wellsboro, Pennsylvania. Although juvenile fish are already on site in preparation for the study, the actual testing phase is proposed to begin in March 2005. This study will manipulate water flows and fish densities within raceways to determine which combinations of fish concentrations and flow rates create the best conditions for effective waste removal and handling. Waste amounts will be measured and water chemistry testing performed under the various test scenarios. It is anticipated that a certain combination of adjustments will result in a preferred raceway setup, which can then be implemented at Commission facilities. An additional, secondary benefit of this study is that upon completion in early November 2005, we anticipate approximately 50,000 stockable size (10 inches) rainbow trout being made available to the Commission for use in the catchable trout stocking program.

Dr. Soderberg has requested a grant in the amount of \$15,000 from the Commission to perform this study. Support for this concept was provided by the Commission more than a year ago, and Dr. Soderberg has tailored the study to address flow, fish density, and feeding strategies used in Commission hatcheries. He has already received \$66,000 of logistical and in-kind support from the USGS facility at Wellsboro, \$12,000 of in-kind support from Mansfield University, \$15,000 in feed donations from Zeigler Brothers and a Growing Greener Grant from the Department of Environmental Protection in the amount of \$75,000.

Briefer:

Rick Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$15,000 to Mansfield University to conduct the raceway flow and fish density study described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Huhn to approve a grant in the amount of \$15,000 to Mansfield University to conduct the raceway flow and fish density study described in the Commentary. Motion carried.

## TABLED ITEM

M. Change in Special Regulation Designation and Removal from the Class A Wild Trout Streams List: Young Womans Creek (Right Branch), Clinton County.

### Commentary:

Beginning with the 1995 season, the Commission has managed a 5.5 mile section of Young Womans Creek (formerly referred to as Young Womans Creek, Right Branch) extending from Beechwood Trail downstream to the Sproul State Forest property line, 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.

The Commission designated a slightly longer, 5.7 mile section of Young Womans Creek, extending from Beechwood Trail downstream to 1.2 km upstream of the confluence with the Left Branch of Young Womans Creek, as Class A wild brown trout water. According to the Commission's statement of policy at 58 Pa. Code §57.8a (relating to Class A wild trout streams), a stream must meet the following criteria to be classified as a Class A wild brown trout water: (1) total brown trout biomass must be at least 40 kg/ha (35.6 lbs/acre); (b) total biomass of brown trout must be less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre); and (3) brown trout biomass must comprise at least 75% of the total trout biomass.

Time series monitoring of the trout populations in Young Womans Creek has recorded considerable fluctuations in both the brook and brown trout populations on this water over time. Overall, the wild brook and brown trout populations have not responded as intended to regulations under the Selective Harvest Program. Commission staff have documented the total brown trout biomass to be below the criterion of at least 40 kg/hg for two consecutive stream examinations. Commission staff surveyed the stream in September 2000 and July 2003. In September 2000, the total brown trout biomass was 24.6 kg/ha. The total brown trout biomass in July 2003 was 26.84 kg/ha.

A proposal to designate the 5.7 mile section of Young Womans Creek as a Delayed Harvest Artificial Lures Only area was brought before the Commission in July 2003. The Commission tabled the item at that time to garner additional public comment. A complicating factor in the DHALO proposal is that Young Womans Creek is classified as a Class A wild trout stream that, pursuant to Commission policy, cannot be stocked.

Following the July 2003 meeting, the Commission received in excess of 300 postcards from interested anglers supporting the proposed redesignation. The Commission 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. 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. Copies of all comments were provided to the Commissioners.

At the January 2004 meeting, staff brought the matter before the Commission. The Commission expressed its wishes that the item remain tabled.

A second 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. The Commission received 13 comments, which were provided to the Commissioners in advance of the July 2004 meeting. At that meeting, staff again brought the matter before the Commission, and the Commission again expressed its wishes that the item remain tabled. However, the Commission instructed staff to seek public comment regarding the proposed removal of Young Woman Creek from the list of Class A wild trout waters and regarding various management options.

Accordingly, two separate notices were published in the Pennsylvania Bulletin. A notice regarding the Class A designation was published at 34 Pa. B. 4655 (August 21, 2004) (Exhibit G). By removing this water from the Class A wild trout streams list, the Commission will increase its flexibility in how it manages the stream without jeopardizing water quality protection. Commission staff confirmed with the Department of Environmental Protection that the removal of this stream from the Class A list will not affect its water quality protection under 25 Pa. Code Chapter 93. A notice of proposed designation including various management options, such as DHALO, catch-and-release and statewide trout regulations, was published at 34 Pa. B. 4796 (August 28, 2004) (Exhibit F).

The Commission received public comments from 45 individuals that can be summarized as follows: five support continued management under the Selective Harvest program; three support management as a DHALO area and 16 oppose it; 31 support management as a catch-and-release area; one supports application of statewide trout regulations; two favor stocking and 32 oppose it; and one supports removal from the list of Class A wild trout waters and 13 oppose it. Copies of all public comments were provided to the Commissioners.

In addition, a public meeting was held on August 26, 2004 in the Fire Hall at North Bend. Excluding Commissioners and staff, approximately 28 individuals were in attendance. 12 individuals provided comments. A summary of those public comments has been provided to the Commissioners.

Based upon the divergent public comments received to date, staff are of the opinion that the designation of Young Womans Creek into any existing program is unlikely to please everyone. However, there appeared to be some convergence of opinions at the latest public meeting. A new miscellaneous special regulation perhaps would provide the best fit for the sentiment expressed at the public meeting, but recommending one would make the regulations more complex and would be contrary to staff's commitment to simplifying them. Therefore, staff believe that this section of stream should be managed

under catch-and-release regulations and that the stream should be stocked. The differences that would occur from a change in management from Selective Harvest to catch-and-release regulations would include the elimination of harvest and the requirement that anglers 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. With the change in the biomass classification, trout stocking would be permitted.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission take this item from the table. If the item is untabled, staff recommend that the Commission remove the 5.5-mile stretch of Young Womans Creek, Right Branch, from management and regulation under the Selective Harvest Program pursuant to 58 Pa. Code §65.1 and designate a 5.7-mile stretch of Young Womans Creek (from the Beechwood Trail downstream to a point 0.7 mile upstream of the confluence of Young Womans Creek, Left Branch) as a Catch-and-Release Area to be regulated and managed under 58 Pa. Code §65.5. This re-designation, if approved, will go into effect on January 1, 2005.

Staff further recommend that the Commission remove the 5.7-mile section of Young Womans Creek from the list of Class A wild trout waters. If approved, this removal will go into effect upon publication of a notice in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Anderson to take this item from the table. Motion carried.

A motion was made by Commissioner Czop and seconded by Commissioner Anderson to remove the 5.7-mile section of Young Womans Creek from the list of Class A wild trout waters. This removal will go into effect upon publication of a notice in the Pennsylvania Bulletin. Motion carried.

A motion was made by Commissioner Reed and seconded by Commissioner Anderson to remove the 5.5-mile stretch of Young Womans Creek, Right Branch, from management and regulation under the Selective Harvest Program pursuant to 58 Pa. Code §65.1 and designate a 5.7-mile stretch of Young Womans Creek (from the Beechwood Trail downstream to a point 0.7 mile upstream of the confluence of Young Womans Creek, Left Branch) as a Catch-and-Release Area to be regulated and managed under 58 Pa. Code §65.5. This re-designation will go into effect on January 1, 2005. Motion carried.

## LAW ENFORCEMENT

### A. Refund of Erroneously Collected Fine.

#### Commentary:

On June 20, 2004, Citation FB-225700 was issued to Mr. Louis P. Nagle for operating a motorboat without possessing a fire extinguisher. Mr. Nagle paid the fine in full.

On July 7, 2004, Mr. Nagle called the Southwest Region office informing Region Manager Svetahor that according to his 2004 Boating Regulation Recap, he was not required to possess a fire extinguisher on his boat. On July 22, 2004, Assistant Regional Supervisor Qualters physically inspected Mr. Nagle's boat, a 1992 14' aluminum runabout (modified V John boat). Assistant Regional Supervisor Qualters reported that Mr. Nagle had installed wood flooring on the bottom of his boat with approximately 1" gaps between the flooring and sides of the boat. Assistant Regional Supervisor Qualters reported that Mr. Nagle's boat was not required to possess a fire extinguisher for his boat.

Under the circumstances, the Bureau of Law Enforcement believes that a refund of the \$50.00 fine paid by Mr. Nagle 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 Boat Fund to Mr. Louis P. Nagle, Altoona, PA, as a refund for the fine imposed erroneously.

#### Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to authorize the payment of \$50.00 from the Boat Fund to Mr. Louis P. Nagle, Altoona, PA, as a refund for the fine imposed erroneously. Motion carried.

### **Law Enforcement Committee Report**

Commissioner Huhn announced that the Law Enforcement Committee met on October 4 at 4:30 p.m. The Committee acted upon proposed revocations. The Committee revoked the fishing privileges of nine individuals for one year and one individual for two years. The Committee revoked the boating privileges of one individual for one year.

### **Other New Business**

A Fisheries Committee meeting is scheduled for October 25-26, 2004 at the H.R. Stackhouse School of Fishery Conservation & Watercraft Safety, 1150 Spring Creek Road, Bellefonte, PA.

### **Time and Place of January 2005 Commission Meeting**

The next meeting is scheduled for January 24-25, 2005 and will be held at the Commission's headquarters in Harrisburg.

### **Adjournment**

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

An Executive Session followed the adjournment. Litigation and personnel matters were discussed.