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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 66th Meeting of the Pennsylvania Fish and Boat Commission was held on Tuesday, January 25, 2005, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110. The public session for review of this agenda began at or about 2:00 p.m.

**Call to Order**

The meeting was called to order by Commission President Samuel M. Concilla.

**Roll Call**

**Members Present**

**Samuel M. Concilla, President \***

**Donald K. Anderson \***

**Ross J. Huhn \***

**Ted R. Keir \***

**Paul J. Mahon \***

**Howard E. Pflugfelder, Jr. \***

**Leon H. Reed \***

**William J. Sabatose \***

**Members Not Present**

**Richard W. Czop, Vice-President**

\* Present via telephone

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

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

**Announcement of Notational Votes**

The Commission voted on two items by notational vote since the October 2004 meeting. The Commission adopted an amendment to §51.33 (Effective Dates of Licenses and Trout/Salmon Permits). Specifically, this section was amended to make annual licenses and permits for 2005 valid during the 2005 calendar year and any part of December 2004 commencing on the date of sale. That change went into effect upon publication in the Pennsylvania Bulletin. The Commission also approved an amendment to §65.24 (Miscellaneous Special Regulations): Bear

Gap Reservoir, McWilliams Reservoir, Klines Reservoir, and South Branch of Roaring Creek, Columbia and Northumberland Counties. That regulation, which imposes a catch-and-release, no-harvest fishery for all species, went into effect on January 1, 2005. A copy of both notational votes is attached as Exhibit M.

**Public Comment to Commissioners and Staff**

Bob Pennell, Pennsylvania Trout Unlimited, South Central Region, sought clarification regarding the proposal contained in Fisheries agenda item D, "Amendment to Section 57.2 (Policy for Allocation and Stocking of Trout)." Rick Hoopes provided an explanation of the changes.

Dick Squitieri commented on behalf of Harveys Lake Association on Boating agenda item G, "Amendment to Section 111.40(f) (Luzerne County, Harveys Lake); Special Regulation Petition." The Association would like to see the Commission approve this item.

## **EXECUTIVE OFFICE**

### **A. State Wildlife Grant Program.**

#### Commentary:

At the July 2004 Commission meeting, the Commission approved three State Wildlife Grants, including a grant to the Pennsylvania Cooperative Fish and Wildlife Research Unit in the amount of \$100,000 for an “Assessment of Pennsylvania’s Crayfish Fauna.” Staff have since learned that although the Unit will be partnering on the project, the Philadelphia Academy of Natural Sciences will be the principal investigator. Therefore, any agreement pertaining to the project will be with the Philadelphia Academy of Natural Sciences and not the Pennsylvania Cooperative Fish and Wildlife Research Unit.

#### Briefer:

Thomas P. Ford, Director of Policy and Planning

#### Recommendation:

Staff recommend that the Commission approve a SWG grant to the Philadelphia Academy of Natural Sciences, instead of the Pennsylvania Cooperative Fish and Wildlife Research Unit, for the reasons set forth in the Commentary.

#### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Mahon to approve a SWG grant to the Philadelphia Academy of Natural Sciences, instead of the Pennsylvania Cooperative Fish and Wildlife Research Unit, for the reasons set forth in the Commentary. Motion carried.

## B. Commission Strategic Plan.

### Commentary:

Over the last year, the Commissioners and staff have worked on developing and implementing a new strategic plan. The development process involved an initial facilitated meeting with the Commissioners in the fall of 2003 and a series of facilitated meetings, five in all, with executive staff and an internal planning team throughout 2004. A Commissioner retreat was held on September 1 and September 2, 2004 to review the initial Commission guidance and direction and the strategies developed by staff. Following the retreat, staff finalized a host of planning documents, and lead staff, for many of the Commission initiatives, met with the Executive Director to discuss operational plans. Staff are working on a plan summary for public distribution and hope to make it available in February.

### Briefer:

Thomas P. Ford, Director of Policy and Planning

### Recommendation:

Staff recommend that the Commission adopt the strategic plan as embodied in the draft plan summary distributed to the Commissioners. Upon adoption, staff will move forward with printing and disseminating the strategic plan as appropriate.

### Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to adopt the strategic plan as embodied in the draft plan summary distributed to the Commissioners. Upon adoption, staff will move forward with printing and disseminating the strategic plan as appropriate. Motion carried.

### C. Development of the Three Rivers Ecological Research Center.

#### Commentary:

The ecological resources of the major rivers of the upper Ohio basin (Allegheny, Monongahela, and Ohio) are an incredible resource for the Commonwealth. The river system has transitioned from an historic trade and resource base for native Americans, to an industrial base and commercial corridor during the steel era, to a thriving recreational and quality of life asset today. Throughout this period we have seen the ecological integrity of the river modified from a pristine setting, to a severely degraded effluent recipient, to the present resurging community of fish and other aquatic life. For example, in 1968 only 10 species of fish were recorded in samples of the Monongahela River whereas 2003 samples found 55 species. As a result of this and the changing economy of the Pittsburgh area, we now place a greatly increased value on the river as an ecological and recreational resource for the Three Rivers region.

Throughout this period, the Commonwealth and others, have attempted to monitor the biota and water quality of the river system. Work has been accomplished through individual contracts related to the ecological effects of construction activities, as part of the Ohio River Valley Water Sanitation Commission (ORSANCO), individual research grants to investigate specific components of the river community, and scheduled sampling by PFBC staff. While providing a basis for management, these data are insufficient to provide the resource management agencies with sufficient data to effectively work with current commercial users of the river, the new recreational demands placed on the river, and to ensure that the resource is properly protected. A recent example of such limitations emerged as the Fish and Boat Commission engaged in an appeal of a Pennsylvania Department of Environmental Protection (DEP) permit for sand and gravel dredging in the Allegheny River. In that case, a permitted activity was ongoing in an area where limited additional surveys, conducted as part of the appeal, found state and federal threatened and endangered species that were documented but which should be a fundamental part of our knowledge of the river biota. We need to prevent such occurrences from happening in the future.

To address this situation, we are proposing that the Fish and Boat Commission develop a Three Rivers Ecological Research Center, based in the vicinity of Pittsburgh, with the goal of providing a baseline understanding of the ecology of the river that will allow us to better manage and protect the resources for the future (Exhibit L). This facility will be the basis for a limited number of PFBC staff but will also be designed to house staff from partner agencies, university faculty and staff, and other professionals engaged in work on the river. This will be a focal point for river research and monitoring that will lead to better management of the Three Rivers systems.

#### Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission approve the concept of the Three Rivers Ecological Field Station. The Executive Director should proceed with the development of partnership agreements with potential cooperators, develop a staffing plan, and initiate the process of applying for grants in support of the Field Station and other activities in support of the field station.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Mahon to approve the concept of the Three Rivers Ecological Field Station. The Executive Director should proceed with the development of partnership agreements with potential cooperators, develop a staffing plan, and initiate the process of applying for grants in support of the Field Station and other activities in support of the field station. Motion carried.

## **BOATING FINAL RULEMAKING**

### A. 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).

At its October meeting, the Commission considered the proposed amendment and the public comments received. The comments were generally in favor of the proposed regulation but suggested that a phased approach to implementation would be more appropriate than increasing the minimum age of operation to 16, effective January 1, 2008, as set forth in the original proposal.

The Commission, upon further consideration of the matter, agreed that a phased approach may find the most acceptance among the boating public and approved the republication of a notice of proposed rulemaking seeking public comments on a phased approach. Under the proposal, the minimum age of operation would be age 13, effective immediately upon publication of an order adopting the change. The minimum age of operation would increase to age 14 effective January 1, 2006, age 15 effective January 1, 2007 and age 16 effective January 1, 2008. The proposal also increases the minimum age of any passenger on a PWC operated by a person 15 years of age or younger to 18 years of age. This part of the regulation would become moot on January 1, 2008 if the amendment is adopted as proposed.

A notice of proposed rulemaking was published at 34 Pa. B. 6425 (December 4, 2004) (Exhibit A). Prior to the formal public comment period, the Commission received five comments concerning the proposal. Four support raising the minimum age of operation for PWC to 16, but three of the four do not support a phased approach. They believe that

it is too complicated and that 16 as the minimum age of operation should go into effect immediately. One believes that the minimum age of operation should be 14 with the completion of a safe boating course. The Commission did not receive any public comments during the formal public comment period. The Commission received 16 public comments after the formal public comment period: one commenter believes that the minimum age should be 18, not 16; 13 support the proposed change, but at least one of 13 recommends a “grandfathering” provision; and two commenters oppose the proposal. Copies of all public comments were provided to the Commissioners.

The Boating Advisory Board met on January 10, 2005 to consider the proposed amendments. After considerable discussion about the effect the proposal would have on current 12-year old operators and the lack of accident data to support the restriction, the Board voted (6-2) to recommend that the Commission adopt the proposed amendments as set forth in the notice of proposed rulemaking.

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:

At the meeting, staff changed its recommendation and recommended that the Commission postpone consideration of this item until the April 2005 meeting. A motion was made by Commissioner Pflugfelder and seconded by Commissioner Mahon to postpone consideration of this item until the April 2005 meeting. Motion carried.

B. 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 make recommendations.

Staff accordingly prepared a report and made recommendations relative to the regulation of this area. Staff recommended that the pool behind the dam be regulated at slow, no wake speed rather than electric motors only. This recommendation was premised on the narrow, shallow nature of the impoundment. The recommendation further recognized that electric motors are not a suitable power source for the moving water of the Schuylkill River. The staff recommendation was acceptable to the petitioner as a substitute for the petitioner's original request.

A notice of proposed rulemaking, establishing a slow, no wake speed in the Kernsville Pool, was published at 34 Pa. B. 6546 (December 11, 2004) (Exhibit B). Prior to the formal public comment period, the Commission received two public comments, one supporting the proposal and the other opposing it. Copies of all public comments were provided to the Commissioners. During the formal public comment period, the Commission did not receive any public comments.

The Boating Advisory Board met on January 10, 2005 and recommended that the Commission finally adopt the proposed amendment as set forth in the notice of proposed rulemaking.

Briefer:

John F. Simmons, Director Bureau of Boating and Education

Recommendation:

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

Action:

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

C. 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 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 of 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 were 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 removing restrictions on the Warren County portion of Willow and Sugar Bays and converting the 8 mph zones on the McKean County portion of these bays to slow, no wake.

A notice of proposed rulemaking was published at 34 Pa. B. 6546 (December 11, 2004) (Exhibit B). Prior to the formal public comment period, the Commission received 17 public comments, 11 supporting the proposal and 6 opposing it. The Commission received 2 comments concerning the proposal during the formal public comment period. Both comments support the change. After the formal public comment period, the Commission received one comment favoring the proposal. Copies of all public comments were provided to the Commissioners.

The Boating Advisory Board met on January 10, 2005 and recommended that the Commission finally adopt the proposed amendments as set forth in the notice of proposed rulemaking.

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 Sabatose and seconded by Commissioner Anderson to adopt the amendments as set forth in the notice of proposed rulemaking. Motion carried.

## PROPOSED RULEMAKING

### D. Amendment to Section 103.3 (a) to Modify the General Prohibition of Operation in Other Than a Counterclockwise Manner on all Waters of the Commonwealth.

#### Commentary:

Section 103.3 of the Commission's regulations, which requires motorboats to operate in a counterclockwise fashion insofar as reasonable possible, has been in place for many years and was promulgated in an attempt to regulate boating traffic patterns on our inland waters. While the regulation has been successful in establishing an operational pattern, its language is ambiguous in that it allows for operation "insofar as reasonably possible." This caveat was included to allow deviation from the rule in some (or most) circumstances. It establishes an operational pattern but makes strict enforcement problematic.

The rule was created to direct boat traffic in a somewhat orderly manner and to address safety concerns and help to avoid near misses caused by crossing and head-on passing situations. Some questions come to mind when reading this regulation. For example, if someone wants to go directly across a lake, rather than follow the shoreline in a counterclockwise direction, is that legal? On some lakes, counterclockwise operation is impossible because of obstructions. On large lakes, strict compliance with the regulation forces boaters to travel miles out of their way. If every boat were to operate under this counterclockwise operation rule, other rules concerning crossing situations and head-on passing would be unnecessary since no one would ever cross or meet another boat head on. The Navigation Rules are in place for a reason, and that is that on open waters, boats are not expected to operate in a line going counterclockwise.

A survey of other states' boating regulatory agencies reveals that they do not believe this type of regulation should be universally applied as it is here in Pennsylvania. If they have a similar regulation at all, it is only for specific waterways or for water skiing in specific areas.

The Navigation Rules in the Inland Steering and Sailing Rules, Rule 9, Narrow Channels state (in part):

(a)(i) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.

The rules are silent concerning the operation of boats in other than narrow channels. The Rules assume that the rules with regard to crossing, overtaking and passing are sufficient to control operation on these waters.

Accordingly, staff propose that Section 103.3(a) be deleted as follows:

§103.3. Restriction for Special Areas.

(a) **[To provide for an orderly flow of boat traffic, motorboats shall operate in a counterclockwise fashion insofar as reasonably possible on all waters of this Commonwealth.] Reserved.**

\* \* \*

The Boating Advisory Board met on January 10, 2005 and recommended that the Commission approved the publication of a notice of proposed rulemaking containing this 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:

At the meeting, staff changed its recommendation and recommended that the Commission postpone consideration of this item until the April 2005 meeting. A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to postpone consideration of this item until the April 2005 meeting. Motion carried.

E. Amendment to Chapter 111 (Special Regulations Counties) to Limit Number of Water Ski Devices.

Commentary:

The Boating Advisory Board requested that staff review existing water skiing regulations that limit the number of water skiers or water skiing devices that may be towed behind a boat to identify those special regulations targeting single skier restrictions and recommend changes to these regulations to improve recreational opportunities. The original intention of most of these special regulations was to limit the number of water ski ropes rather than the number of persons on the skis. (In some cases such as at Blue Marsh Lake, there was an intention to limit the number of persons) Staff's review revealed a great deal of inconsistency in language across the regulations that should be corrected. Additionally, since towed inflatables are regulated the same as water skis, the number of persons that can be towed on an inflatable is also limited to one. This creates problems for people whose device is manufactured to carry multiple persons and who wish to ride on the inflatable with younger children.

Staff find little justification in not allowing more than one skier if the number of water ski devices is limited. Also, since these regulations were put in place for safety on crowded lakes, the current restrictions do not seem appropriate for non-weekend and non-holidays or during the early or late season for most waterways. Staff recommend that where the number of skiers needs to be restricted because of safety concerns, the number of tow lines should be restricted rather than the number of persons on the ski device. Staff also recommend that the restriction be placed only on weekends and holidays during the primary boating season.

Staff propose to amend various sections within Chapter 111 as set forth in Exhibit C.

The Boating Advisory Board met on January 10, 2005 and recommended that the Commission approve the publication of a notice of proposed rulemaking containing these 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:

At the meeting, staff changed its recommendation and recommended that the Commission postpone consideration of this item until the April 2005 meeting. A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to postpone consideration of this item until the April 2005 meeting. Motion carried.

F. Amendment to Section 111.4 (Beaver County) to Correct the Beaver River Regulations and to Eliminate Special Boating Restriction on Connequenessing Creek.

Commentary:

A staff review of the Commission's regulations uncovered a minor discrepancy in the description of the special regulation for the Beaver River. The regulation establishes a slow no wake zone for a length of 2 miles, but the regulation also references River Mile 0.0 and River Mile 2.3, a distance of 2.3 miles. Staff propose to correct this discrepancy.

The Connequenessing Creek Dam was a wicket dam near Ellwood City. The dam was originally built by the Country Club Colony in 1942 to provide water for its golf course. It was made of sheet steel that could be raised to make a small pool about three feet deep. At some point, the permit for the dam was assumed by the Connequenessing Creek Dam Association. In its early life, the pool was used by locals for waterskiing under very strict regulations. These regulations were removed in the mid-1980s, and a 10 horsepower restriction was applied to allow limited use. It is worthy to note that the DEP permit for this dam specifically prohibited the operation of motorboats on the impoundment. Thus, Commission regulations allowing waterskiing and motorboat operation were in conflict with this permit. Fortunately, the dam no longer exists as an operational structure. If this regulation is removed, the creek will revert to general unlimited horsepower, but since the unimpounded depth of the river is insufficient to support power boats, the change will have no impact on current or potential motor boating activities. Without the dam creating an impoundment, there is no reason to retain the current 10 horsepower restriction.

Staff recommend that section 111.4 be amended as follows:

§111.4. Beaver County.

(a) *Beaver River*. Boats are limited to slow, no wake speed from the mouth **[of the Beaver River (Mile 0.0) to a point 2 miles upstream (Mile 2.3)] upstream to Mile 2.3.**

(b) [*Connequenessing Creek Dam*].

**(1) The use of motors in excess of 10 horsepower is prohibited.**

**(2) The speed of boats is restricted to slow, no wake speed upstream from a marked point 8/10 of a mile above the Route 65 bridge.] Reserved.**

\* \* \*

The Boating Advisory Board met on January 10, 2005 and recommended that the Commission approve the publication of a notice of proposed rulemaking containing these 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 contained in the Commentary.

Action:

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

G. Amendment to Section 111.40(f) (Luzerne County, Harveys Lake); Special Regulation Petition.

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 the appropriate report and recommendations for further Commission consideration.

At the October 2004 Commission meeting, the Commission granted staff an additional period of 90 days to gather information regarding the use of radar to enforce speed limits on Commonwealth waters. Staff have found relatively few states that use radar extensively. Those that do, Maryland, Florida and Missouri, primarily use radar on waters with narrow channels or rivers where the boat traffic is relatively constrained. All admit to the limitations for use of radar on open waters with heavy boat traffic. Accordingly, staff have determined that a speed limit on Harveys Lake would be difficult to enforce using radar.

The Boating Advisory Board met on January 10, 2005 and recommended that the Commission approve the publication of a notice of proposed rulemaking to solicit public comment on the proposal. The Board's advice was given after considerable discussion regarding the enforceability of speed limits using radar and the limitations of the current technology and enforcement standards. Of primary concern was having a regulation on the books that was not or could not be effectively enforced. After much discussion, the Board determined to recommend proceeding with a notice of proposed rulemaking, containing the following change, based on the social and psychological deterrent a speed limit would have.

§111.40. Luzerne County.

\* \* \*

(f) *Harveys Lake.*

**(1) The speed of boats is limited to 45 miles per hour from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day.**

**(2) The speed of boats is limited to slow, no wake speed between sunset and sunrise**

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

## H. Amendments to Section 53.8 (Boats) and Chapter 111 (Special Regulations Counties) to Permit the Use of Gasoline Engines on Commission Lakes over 100 Acres in Size.

### Commentary:

The Commission owns and operates 48 lakes on which boating is permitted. Under the current regulations, only unpowered boats and those operated by electric motors are permitted. These lakes are listed in Exhibit D.

The restriction to electric motors limits the use of these lakes to small boats. Boat owners who own boats for use in multiple locations tend to purchase equipment for the largest water they intend to use. Often this equipment is too large to operate efficiently with an electric motor for any length of time. Even boaters with smaller gasoline engines for use at state park and other restricted waters must also purchase an additional electric motor if they want to use a Commission lake. Some Commission lakes, such as High Point Lake, are very difficult to use safely with an electric motor because of the wind and, as a result, get very little use. State Park and Commission lakes and a few water supply reservoirs are the only lakes managed for electric motors use. Many other similar size lakes are managed for the use of gasoline motors or have no restrictions at all. Lake LeBoeuf in Erie County has long been successfully managed with no engine restrictions but with slow no wake operation.

The establishment of an electric motor restriction may have several historical foundations. Included are noise pollution, the infusion of gasoline and gasoline by-products into the water column, and speed control. Today's new motors are cleaner than ever, and they pollute less and create less noise, addressing many of these early concerns. Staff believe that additional recreational opportunities could be created by allowing the use of gasoline engines on boats while being operated at idle speed. This relaxation of the restrictions would apply only on lakes over 100 acres in size. Lakes less than 100 acres can typically be fished and boated adequately with electric motors.

To accomplish this change, staff propose the following amendment:

#### §53.8. Boats.

(a) An internal combustion engine may not be used to propel a boat or to provide energy to the electric motor on Commission lakes **less than 100 acres in size.** \* \* \*

Staff also propose that the following sections in Chapter 111 be amended to replace "The operation of boats powered by internal combustion motors is prohibited" with "Boats are limited to slow, no wake speed": §§111.4(c) (Beaver County, Hereford Lake), 111.13(b) (Carbon County, Mauch Chunk Lake), 111.15(b) (Chester County, Struble Lake), 111.2(e) (Crawford County, Tarmarack Lake), 111.29(a) (Fulton County, Meadow Grounds Lake), 111.33 (Jefferson County, Kyle Lake), 111.36(b) (Lancaster County, Speedwell Forge Lake), 111.39(a) (Lehigh County, Leaser Lake), 111.41(b) (Lycoming County, Rose Valley Lake), 111.45(c) (Monroe County, Brady's Lake), 111.48(b) (Northampton County, Minsi Lake), 111.55 (Snyder County, Walker Lake), 111.56(c) (Somerset County, Lake Somerset), 111.56(d) (Somerset County, High Point Lake),

111.56(e) (Somerset County, Cranberry Glade Lake), 111.57 (Sullivan County, Hunters Lake), 111.61(a) (Venango County, Kahle Lake), 111.64(a) (Wayne County, Belmont Lake) and 111.64(i) (Wayne County, White Oak Pond).

The Boating Advisory Board met on January 10, 2005 to consider the proposed amendments. The Board believes that the proposal will provide additional fishing and boating opportunities and recommended that the Commission approve the publication of a notice of proposed rulemaking containing these changes.

Briefer:

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

Recommendation:

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

Action:

At the meeting, staff changed its recommendation and recommended that the Commission postpone consideration of this item until the April 2005 meeting. A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to postpone consideration of this item until the April 2005 meeting. Motion carried.

## OTHER MATTERS

### I. Establishing a Statewide Boating Facility Grant Program.

#### Commentary:

The purpose of the Commission's Boating Facility Grant Program is to provide grants to county and municipal governments for the planning, acquisition, development, expansion, and rehabilitation of public boating facilities located on the waters of the Commonwealth. Successful applicants must be willing to enter into a 25-year agreement to keep the facility open to free public use. Facility grants usually require at least a 25% applicant match, usually a combination of hard (cash) and soft (in-kind) funds. In most cases, these funds will need to be derived from non-federal sources.

The Boating Facility Grant Program funds are derived from boat registration fees, state fuel taxes collected on fuel used in motorboats, and taxes on fishing equipment and motorboat fuel from the Federal Aid in Sport Fish Restoration Program.

This project is an expansion of the Technical Guidance program conducted by the Commission for a number of years. Under this program, the Commission has provided engineering and some financial assistance for the construction of small access facilities. On average, the program has managed about 40 projects and has completed about 10 per year with an annual budget of \$50,000. Additionally, the Commission has entered into occasional agreements with municipal governments for the grant of funds to construct facilities. The Commission has approved these agreements as separate grant actions. The agreement with the City of Pittsburgh in 2004 for the construction of facilities at the Southside Park Access on the Monongahela River is a recent example of this type of grant.

#### Briefer:

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

#### Recommendation:

Staff recommend that the Commission approve the Boating Facility Grant Program and authorize the Executive Director to approve individual grants of up to \$100,000 each to counties, municipalities and other interests for the planning, acquisition, development, expansion and rehabilitation of public boating access facilities including launch ramps, docks and ancillary services and facilities. For grants exceeding \$100,000, staff will seek separate Commission approval after appropriate staff review.

#### Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to approve the Boating Facility Grant Program and authorize the Executive Director to approve individual grants of up to \$100,000 each to counties, municipalities and other interests for the planning, acquisition, development, expansion and rehabilitation of public boating access facilities including launch ramps, docks and ancillary services and facilities. For grants exceeding \$100,000, staff will seek separate Commission approval after appropriate staff review. Motion carried.

## ENGINEERING & DEVELOPMENT

### A. Lease of Office Space from PPL at Lake Wallenpaupack, Pike and Wayne Counties.

#### Commentary:

Lake Wallenpaupack is owned by PPL and is the largest lake in eastern Pennsylvania having  $\pm 50$  miles of shoreline. The lake is stocked by the Commission and receives significant pressure by boaters and anglers. There are several public access areas on the lake, including one that is operated by the Commission.

PPL is offering to lease to the Commission a portion of the old lake superintendent's office at Lake Wallenpaupack near Hawley, Pennsylvania, for use pursuant to the Commission's mission, duties and responsibilities. The office consists of three rooms having a total of  $\pm 600$  square feet of office space along with non-exclusive use of restroom facilities. The initial term of the lease will be for one year and will run month to month thereafter but may be terminated by either party at anytime upon giving a 60-day prior written notice. PPL will furnish heat, water, and electricity for normal office use. The care of the office will be the responsibility of the Commission. The rental fee will be \$1.00 annually.

The Commission's Bureau of Law Enforcement has expressed an interest in using the office for its northeast regional staff if it becomes available. Any applicable document for the lease of the office facility will be reviewed by Commission staff for compliance with the Commission's practices for leasing office facilities and to protect the Commission's best interests.

#### Briefer:

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

#### Recommendation:

Staff recommend that the Commission authorize the lease of the subject office facilities as described in the Commentary.

#### Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to authorize the lease of the subject office facilities as described in the Commentary.  
Motion carried.

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

### A. 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.

A notice of proposed statement of policy pertaining to publicizing the stocking of fish was published at 34 Pa. B. 6655 (December 18, 2004) (Exhibit E). The Commission received two public comments opposing the announcement of in-season stockings. Copies of all public comments were provided to the Commissioners.

#### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission adopt the statement of policy set forth in the notice of proposed rulemaking. If adopted, the statement of policy will go into effect immediately upon publication of an order adopting it in the Pennsylvania Bulletin.

#### Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Mahon to adopt the statement of policy set forth in the notice of proposed rulemaking. The statement of policy will go into effect immediately upon publication of an order adopting it in the Pennsylvania Bulletin. Motion carried.

## B. 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, the Commission redesignated the remaining four waters in the program to other special regulations programs. Thus, there is no need to retain the regulations for the Selective Harvest Program.

A notice of proposed rulemaking, deleting §65.1 (relating to Selective Harvest Program), was published at 34 Pa. B. 5162 (September 18, 2004) (Exhibit F). 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. If adopted, this change will go into effect immediately upon publication of an order adopting the amendment in the Pennsylvania Bulletin.

### Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Sabatose to adopt the amendment as set forth in the notice of proposed rulemaking. This change will go into effect immediately upon publication of an order adopting the amendment in the Pennsylvania Bulletin. Motion carried.

### C. 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, the Commission redesignated the remaining four waters in the program to other special regulations programs. Thus, there is no need to retain the regulations for the All Tackle Selective Harvest Program.

A notice of proposed rulemaking, deleting §65.4b (relating to All-Tackle Selective Harvest Program), was published at 34 Pa. B. 5162 (September 18, 2004) (Exhibit F). 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. If adopted, this change will go into effect immediately upon publication of an order adopting the amendment in the Pennsylvania Bulletin.

#### Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Mahon to adopt the amendment as set forth in the notice of proposed rulemaking. This change will go into effect immediately upon publication of an order adopting the amendment in the Pennsylvania Bulletin. Motion carried.

## PROPOSED RULEMAKING

### D. 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 fingerlings, 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.**

At the October 2004 meeting, the Commission tabled this item.

#### 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 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 Anderson to take this item from the table. Motion carried. A motion was then made by Commissioner Mahon and seconded by Commission Anderson 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 carried.

E. Amendments to Sections 61.2 (Delaware River and River Estuary) and 65.24 (Miscellaneous Special Regulations, West Branch Delaware River) to Change Seasons, Sizes and Creel Limits for Northern Pike, Trout Black Bass and Striped Bass.

Commentary:

Three jurisdictions, New York, New Jersey, and Pennsylvania, work in a cooperative fashion in setting regulations for the Delaware River and the West Branch because both are border waters. Differences in the rulemaking processes, license years and fisheries within different reaches may result in regulations being out of synchrony for a year or so. However, the jurisdictions attempt to provide consistency for the anglers. In the past few months, Commission staff have worked with fisheries personnel from both New York and New Jersey regarding changes for 2006.

Northern Pike

In the past few years, Commission staff have become aware of occasional catches of northern pike from the Delaware River. These fish most likely originate from a few naturalized populations occurring in the drainage. Currently, regulations on northern pike do not exist. While it is not staff's intent to foster increases in this esocid in the river, as its focus is on muskellunge and chain pickerel, it is likely that a low density northern pike population will persist. Commission staff concur with the New Jersey effort to have a 24 inch minimum length limit, a 2 fish daily creel limit and a year 'round season. For simplification, staff suggest a river wide approach even though pike have not been reported in the West Branch and the upper main stem to any great extent.

Trout

New York state fisheries workers are seeking a 15 day extension to the trout season as part of refining trout regulations statewide. Currently, the season on the main stem and the West Branch closes at midnight September 30 when a catch-and-release artificial-lures-only begins on the West Branch. Staff are proposing that the regular season be extended 15 days on both waterways. This will provide additional angling opportunity with harvest of 1 trout per day upstream of I-84, 5 per day downstream of I-84, and 2 per day on the West Branch.

Black Bass (largemouth and smallmouth)

Currently a year 'round season with a 12 inch minimum length limit and 5 bass per day applies to the Delaware River and Estuary. Regulation changes recently adopted and effective January 2005 by New Jersey for the Delaware River are similar to Pennsylvania inland regulations and are more conservative with respect to harvest during the black bass spawning period. Commission staff concur with the approach and recommend that the New Jersey/Pennsylvania portion of the river (downstream of I-84) be regulated (1) to impose a catch-and-immediate release season that begins on the first Saturday after April 11 and extends through 12:01 a.m. the first Saturday after June 11; and (2) to provide an opportunity for competitive anglers to have "paper" or catch-measure- immediate release tournaments during the catch-and-release season.

It is staff's understanding that New York may be considering a similar approach for the rest of the river, but implementation may not occur until after 2006.

Striped Bass

The upstream point of tidal influence at Trenton Falls is used as the boundary for separating freshwater and marine regulations. Staff from both New Jersey and Pennsylvania believe that another descriptor would be easier for anglers and law enforcement personnel. Thus, staff suggest the Trenton Avenue (Morrisville, PA) Calhoun Street (Trenton, NJ) bridge as a more recognizable limit. The extension is approximately 0.5 miles upstream.

Staff propose the amendments set forth in Exhibit G.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve the publication of a notice proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2006. Motion carried.

F. Amendment to Section 61.4 (Conowingo Reservoir).

Commentary:

By virtue of an agreement years ago between the State of Maryland and the Commonwealth of Pennsylvania, the Commonwealth will establish regulations for the Youghiogheny River Lake and Maryland will do the same for the Conowingo Reservoir, being that waters from both occur in both jurisdictions. Maryland's fisheries staff recently notified Commission staff that the Pennsylvania regulations for Conowingo Reservoir are not current with ones promulgated by Maryland in the last few years. Thus, the Commission needs to amend its regulations so that they are consistent with those of Maryland.

<u>Species</u>	<u>Current Regulation</u>	<u>Proposed Regulation</u>
Northern Pike	24 inch minimum length and 2 fish daily limit	30 inch minimum length and a 2 fish daily limit
Striped Bass and Striped Bass/White Bass Hybrids	20 inch minimum length and a 2 fish daily limit	18 inch minimum length and a 2 fish daily limit with only one over 30 inches
Sunfish (bluegill fish and rock bass)	Considered with other panfish with no minimum length limit and no daily creel limit	No minimum length limit but a 15 daily limit
Crappie fish	“	No minimum length limit but a 15 daily limit
Carp fish	“	No minimum length limit but a 15 daily limit
Channel catfish	“	No minimum length limit but a 5 fish daily limit
Suckers	“	No minimum length limit but a 30 fish daily limit
Eels	“	A 6 inch minimum length limit and a 25 fish daily limit
Yellow Perch	“	No minimum length limit nor a daily limit
Madtoms	Considered with other Baitfish/fishbait with no daily limit	Limit of 35

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Keir to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2006. Motion carried.

G. Amendment to Section 65.24 (Miscellaneous Special Regulations) – Cast Nets, Lake Arthur, Butler County.

Commentary:

Several years ago, the Commission promulgated a regulation permitting the issuance of net permits for the use of cast nets for taking live gizzard shad and alewife at Raystown Lake, Huntingdon County. Live gizzard shad and alewife have proved to be a popular bait for striped bass but are difficult to capture via conventional seines and nets less than or equal to 4 feet in diameter. Recently, the Commission amended its regulation at Raystown Lake to increase the maximum size from 12 to 20 feet in diameter.

Recently, an application was filed for use of larger cast nets at Lake Arthur to capture alewife for striped bass angling. The application was denied as the cast net permit applies only to Raystown Lake. The use of such a net at Lake Arthur warrants consideration given the presence of surface schooling alewife for much of the year and the desire to enhance striped bass angling there. Staff polled Area Fisheries Managers and waterways conservation officers as to the potential to permit cast nets larger than the legal 4 foot maximum at other reservoirs, and they believe that only Lake Arthur merits further consideration at this time.

Staff see no problem with the use of larger casts nets at Lake Arthur. Therefore, staff propose that §65.24 be amended as follows:

§64.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
***	***	***
<b><u>Butler</u></b>	<b><u>Lake Arthur</u></b>	<b><u>The Executive Director or a designee may issue permits for use of cast nets or throw nets for taking only gizzard shad and alewife. In addition to other permit conditions that the Executive Director may require, the permits shall be limited to cast nets or throw nets of no greater than 10 feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inches.</u></b>
***	***	***

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, this change will go into effect upon publication in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Pflugfelder to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, this change will go into effect upon publication in the Pennsylvania Bulletin. Motion carried.

## H. Amendment to Section 75.1 (Endangered Species) to Add Eastern Spadefoot Toad, Rough Green Snake and Eastern Pearlshell.

### Commentary:

(1) Eastern Spadefoot Toad (*Scaphiopus holbrookii holbrookii*): The eastern spadefoot toad is an inhabitant of sandy soils along the floodplains of streams and rivers and in temporary depressions in agricultural fields. The spadefoot toad spends much of its time underground, with surface activity being dependent on periods of heavy rainfall, particularly in the spring and mid-summer. Reproduction occurs within one or two nights during and after heavy rain events, concentrated in vernal pools, rain-filled depressions in farm fields, and along streams.

Two extant breeding populations of eastern spadefoot toads are currently reported in Pennsylvania in Northumberland and Bucks Counties. Several years of herpetological inventory in the state have failed to turn up additional records of the toads. Reports of occasional encounters in Franklin County remain unconfirmed. According to Hulse (2003), there were historical unvouchered reports of spadefoot toads in the Delaware Valley from Philadelphia to Monroe County, but these areas have since been heavily developed and industrialized.

The species ranges from southern New England to the Florida Keys and west to eastern Louisiana, but Pennsylvania forms a break between the New England populations and Maryland. The status of the spadefoot toad in the states surrounding Pennsylvania is as follows: it is listed as endangered in Ohio, considered a species of concern in New York, “declining” in New Jersey, rare in West Virginia, threatened in Massachusetts, and endangered in Connecticut.

Given that spadefoot toads occur in floodplains and valleys, they are threatened by habitat destruction from residential and industrial development, as well as habitat alteration and changes in water chemistry from agricultural practices. The water in which they breed can be temporary pools, which are not necessarily delineated wetlands. Thus, wetland regulations cannot be relied upon to provide sufficient protection for this species.

The Pennsylvania Biological Survey (PABS) Amphibian and Reptile Technical Committee recommended the eastern spadefoot toad be listed as a state endangered species in 2002. Because there are only two known occurrences of this species in Pennsylvania and current survey efforts have failed to find additional occurrences, staff propose that the eastern spadefoot toad be added to the Pennsylvania list of endangered species.

(2) Rough Green Snake (*Opheodrys aestivus*): The rough green snake is an arboreal species most often associated with wetland and riparian areas. They have been shown to have very limited home range size. The rough green snake is common in southern states from Texas to Florida, with Pennsylvania being the northern limit of its range. It has been known from only two isolated locations in Pennsylvania: in Greene and Chester

Counties. Thus, the Commission listed the rough green snake as a threatened species in 1979.

Several historic specimens or reports of this species are known from other counties. However, the only known locality of this species that has been confirmed as a reproducing population since 1939 is one in Chester County. The Greene County occurrence has not been seen since 1924 and is presumed extirpated. One additional sighting has been recorded from Lancaster County near the Maryland line, but the identification was not confirmed and no evidence of a population was documented. A statewide Herpetological Atlas project failed to find any additional populations.

The rough green snake is a species of concern in Ohio and is rare in Delaware and West Virginia. This snake species is threatened primarily by habitat alteration from residential and industrial development.

The PABS Amphibian and Reptile Technical Committee recommended the rough green snake be listed as a state endangered species in 2002. Because there is only one known occurrence of this species in Pennsylvania and current survey efforts have failed to find additional occurrences, staff propose that the rough green snake be moved from the list of Pennsylvania threatened species to the Pennsylvania list of endangered species.

(3) Eastern Pearlshell (*Margaritifera margaritifera*): The eastern pearlshell is a freshwater mussel found in cold water trout streams and small rivers in softwater (acidic) conditions that have low levels of calcium. Its host fishes in Pennsylvania are brook, brown and rainbow trout. This is the only species of Pennsylvania mussel that is distributed beyond the North American continent. It occurs in the Northeast from Pennsylvania north to Canada, as well as northern Europe.

Historically in the early 1900s, the eastern pearlshell occurred in several tributaries of the Little Schuylkill River, including Locust Creek, Panther Creek, Indian Run, and Cold Run. However, impacts to water quality from coal mining in the Little Schuylkill drainage have eradicated the eastern pearlshell from all but Locust Creek, based on statewide surveys from 1991 to 1995. While the population in Locust Creek is locally abundant, based on a 2003 survey, two dams on the creek restrict the pearlshell to seven miles of stream with little likelihood of dispersal.

Two large eastern pearlshell mussels were collected in the Delaware River in recent years as part of extensive mussel surveys in the Upper Delaware. This species is documented to live over a hundred years, and these specimens were determined to be extremely old. Based on the failure to find additional specimens during the ongoing collection efforts in the Upper Delaware or its tributaries, it is likely that these specimens represent a remnant population that is no longer reproducing.

The eastern pearlshell is listed as a species of concern in New York, Rhode Island and Connecticut, while it is threatened in Vermont. Additionally, the International Union for Conservation of Nature and Natural Resources has given it endangered status primarily

due to threats to the European populations. Primary threats to the persistence of the eastern pearlshell are degradation of water quality, alteration of pH, eutrophication, and temperature increases in the streams.

The PABS Bivalve Subcommittee of the Invertebrate Technical Committee recommended the eastern pearlshell be listed as a state endangered species in 2003. The restriction of a reproducing population of the eastern pearlshell mussel to only one small stream in Pennsylvania makes it very vulnerable to extirpation from activities that could adversely impact Locust Creek. Therefore, staff propose that the eastern pearlshell be added to the Pennsylvania list of endangered species.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve adding the eastern spadefoot toad and eastern pearlshell to the list of endangered species and moving the rough green snake from the list of threatened species to the list of endangered species for the reasons set forth in the Commentary. If adopted on final rulemaking, these changes will go into effect upon publication in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to add the eastern spadefoot toad and eastern pearlshell to the list of endangered species and to move the rough green snake from the list of threatened species to the list of endangered species for the reasons set forth in the Commentary. If adopted on final rulemaking, these changes will go into effect upon publication in the Pennsylvania Bulletin. Motion carried.

I. Amendment to Sections 75.1 (Endangered Species) and 75.3 (Candidate Species) to Update Scientific Names of Bog Turtle, Coastal Plain Leopard Frog and Blanding's Turtle.

Commentary:

Staff propose that section 75.1 be amended to change the name of *Clemmys muhlenbergii* (bog turtle) to *Glyptemys muhlenbergii* (formerly *Clemmys muhlenbergii*). Recent molecular data and genetic studies have resulted in a split in the genus *Clemmys*. Based on morphological data, Holman and Fritz (2001) split *Clemmys* as follows: *Clemmys guttata* was retained as the only member of the genus; *Clemmys insculpta* and *C. muhlenbergii* were placed in the genus *Glyptemys*. An independent analysis by Feldman and Parham (2002) supported this conclusion. Therefore, the species formerly named *Clemmys muhlenbergii* is now assigned to *Glyptemys muhlenbergii*. The name change has been adopted by NatureServe, an international biological conservation group that tracks rare and endangered species, as well as the Center for North American Herpetology (CNAH), the national herpetological group that tracks name changes.

Staff also propose that section 75.3 be amended to change the name of *Emydoidea blandingii* (Blandings Turtle) to *Emys blandingii*. Recent molecular and genetic studies (Feldman and Parham 2002) have resulted in a rearrangement of several turtle groups, including the grouping of *Emydoidea blandingii* with *Emys orbicularis* in the genus *Emys*. The name change has been adopted by NatureServe as well as the CNAH.

Staff further propose that section 75.1 be amended to change the name of *Rana utricularia* (Coastal Plain Leopard Frog) to *Rana sphenoccephala*. Literature referring to this species from 1974 to 1992 used the old name *Rana utricularia* based on a morphological study by Pace (1974). However, in 1992 the International Commission on Zoological Nomenclature ruled that the name of this frog would return to *Rana sphenoccephala*, which it had been given in more recent references.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the changes described in the Commentary. If adopted on final rulemaking, these changes will go into effect upon publication in the Pennsylvania Bulletin.

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 changes described in the Commentary. If adopted on final rulemaking, these changes will go into effect upon publication in the Pennsylvania Bulletin. Motion carried.

## J. Simplifying Trout Regulations.

### Commentary:

Staff are committed to simplifying regulations used in trout management. Although a 1997 study of ex-license buyers indicated that the complexity of regulations was not a primary reason for not purchasing a fishing license, attendees at the Trout Summit 2002 and members of the Trout Management Discussion Group have encouraged simplification of regulations. Results of studies on waters managed with special regulations have shown that benefits are difficult to discern among and between the different programs. Staff are confident that consolidation and simplification is possible and that they will be able to continue to conserve fish while reducing impediments to fishing. Consolidation also will reduce the number of different signs/posters that are necessary to adequately inform anglers while increasing understanding and compliance with fewer programs to remember.

Currently, there are at least 12 different special regulations programs used in trout stream management. They include Selective Harvest, All-Tackle Selective Harvest, Delayed Harvest Fly-Fishing-Only, Heritage Trout Angling, Trophy Trout, All-Tackle Trophy Trout, Catch-and-Release, Delayed Harvest Artificial Lures Only, Wild Brook Trout Enhancement and at least three different miscellaneous special regulations. Staff do not envision any changes to the recently created Wild Brook Trout Enhancement Program or the Delayed Harvest Artificial Lure Only Program. The Commission already has proposed elimination of the Selective Harvest and All-Tackle Selective Harvest Programs, and the Commission will take final action to eliminate them under a separate agenda item. Staff now propose that additional changes in special trout regulations be considered for consolidation.

As part of the simplification process within the special regulations programs, staff suggest eliminating the barbless hook requirements, establishing uniform 24 hours of legal angling, and eliminating restrictions on wading. Given problems in “pinching” barbs on tiny flies, difficulty in determining whether or not “pinched” barbs are legal or not, lack of substantial scientific literature supporting barbless hooks as a means to reduce mortality of released fish, and limited availability of manufactured barbless hooks, staff recommend discontinuing the barbless hook requirement. In addition, staff believe that fishing should be permitted on a 24 hour basis rather than the “one hour before sunrise to one hour after sunset” requirement currently on some, but not all, special regulations waters. Staff further believe that wading should be permitted in all waters.

Staff are suggesting amendments to trout management regulations that will result in fewer programs and simplified regulations within programs. Two options, one focusing on catch and release and the other focusing on trophy trout, were presented to the Trout Working Group on January 8, 2005. A new program, “Catch and Release Fly Fishing Only Program,” was the same in both options. The primary difference between the two alternatives is that the option focusing on trophy trout contains a provision for taking one large trout and the option focusing on catch and release does not.

Following the meeting of the Trout Working Group, staff reconciled the two options as shown in the following table:

2005 Program	Staff Recommendation Trophy Trout Focus	Alternative C&R Focus
Wild Brook Trout	Wild Brook Trout	Wild Brook Trout
Delayed Harvest ALO	Delayed Harvest ALO	Delayed Harvest ALO
Heritage Trout Angling Delayed Harvest FFO	Catch-and-Release FFO	Catch-and-Release FFO
Catch-and-release Trophy Trout (14")	Trophy Trout ALO (16")	Catch-and-Release ALO
All-Tackle Trophy Trout (14") Allegheny River (14")	Trophy Trout AT (16")	Catch-and-Release AT
Spring Creek Valley Creek	Catch-and-Release AT	

Staff's recommended approach focuses on trophy trout. It retains the Wild Brook Trout Enhancement Program and Delayed Harvest Artificial Lures Only (with time of day fishing restriction removed) and consolidates the remaining eight special regulations into four programs, including the new Catch and Release Fly Fishing Only, the renamed Trophy Trout All Tackle and the renamed Trophy Trout Artificial Lures Only. This option has the following components:

(1) Establishes a new program called Catch and Release Fly Fishing Only. The Heritage Trout Angling Program and the Delayed Harvest Fly-Fishing Only Program will be eliminated, and all waters currently in them (7 waters in the Heritage Trout Angling Program and 26 waters in the Delayed Harvest Fly-Fishing Only Program) will be designated into the new Catch-and-Release Fly-Fishing-Only Program. This program will provide year 'round angling with no harvest, no hourly restrictions, no restriction on wading and no requirement for barbless hooks. During the substantial public commentary regarding the proposal to permit all-tackle on delayed harvest waters during the harvest season, a large segment of the fly fishing community indicated a preference for no-harvest in the current Delayed Harvest Fly Fishing Only Program. The main change for current delayed harvest fly-fishing-only waters is the removal of the former summer harvest season. The effect of these changes is shown below.

Action	Program	Number Waters	Harvest Season	Size Limit	Creel Limit	Tackle
New Name	Catch and Release Fly Fishing Only	33	None	--	None	Fly Fishing Only
Designate §65.2	Delayed Harvest Fly Fishing Only	26	June 15 through Labor Day	9"	3	Fly Fishing Only
Designate §65.3	Heritage	7	None	--	None	Fly Fishing Only

(2) Renames All Tackle Trophy Trout to Trophy Trout All Tackle. This program will offer year 'round angling with a 16 inch minimum length limit, a one trout daily creel limit and no wading restriction. The area of the Allegheny River, Warren County, will be moved from miscellaneous special regulations to the Trophy Trout All Tackle program. The effect of the changes is shown in the table below.

Action	Program	Number Waters	Harvest Season	Size Limit	Creel Limit	Tackle
New Name	Trophy Trout All-Tackle	5	Year 'round	16"	1	All-tackle
Rename §65.4	All-Tackle Trophy Trout	4	mid-April through Labor Day	14"	2	All-tackle
Designate §65.24	Allegheny River	1	mid-April through Labor Day	14"	2	All-tackle

(3) Renames the existing Trophy Trout Program to Trophy Trout Artificial Lures Only Program. All existing waters in the program will remain, and all waters in the existing Catch and Release Program will be designated to Trophy Trout Artificial Lures Only Program. Tackle for this program will remain artificial lures only as currently specified for both programs, except barbed hooks will be allowed. Fishing will be permitted year-round with no hourly restriction and no taking of bait fish or fish bait. A 16 inch minimum length limit and a one trout per day creel limit also will apply. The effect of these changes is shown in the table below.

Action	Program	Number Waters	Harvest Season	Size Limit	Creel Limit	Tackle
New Name	Proposed Trophy Trout Artificial Lures Only	26	Year 'round	16"	1	Artificial Lures Only
Rename §65.7	Trophy Trout	8	mid-April through Labor Day	14"	2	Artificial Lures Only
Designate §65.5	Old Catch-and-Release	18	None	--	--	Artificial Lures Only

(4) Creates a new program called Catch and Release All Tackle. Two miscellaneous special regulation waters, Spring Creek, Centre County, and Valley Creek, Chester County, will be designated into this program. The effect of the changes is shown below.

Action	Program	Number Waters	Harvest Season	Size Limit	Creel Limit	Tackle
New Program	Catch and Release All Tackle	2	None	--	None	All-tackle
Designate §65.24	Valley Creek	1	None	--	None	All-tackle
Designate §65.24	Spring Creek	1	None	--	None	All-tackle

(5) Amends the Delayed Harvest Artificial Lures Only Program to remove the daily fishing time restriction.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission authorize the publication of a notice of proposed rulemaking containing the changes described in the Commentary. If adopted on final rulemaking, these changes will go into effect January 1, 2006.

Action:

At the meeting, staff changed its recommendation and recommended that the Commission postpone consideration of this item and address it in a separate Commission action prior to the April 2005 meeting. A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to postpone consideration of this item and address it in a separate Commission action prior to the April 2005 meeting. Motion carried.

K. Amendment to Sections 69.12 (Seasons, Sizes and Creel Limits – Lake Erie and Lake Erie Tributaries) and 69.33 (Use of Trap Nets) – Walleye.

Commentary:

Currently, an 18 inch minimum length and four per day creel limit are in effect for walleye taken from the Pennsylvania waters of Lake Erie, Presque Isle Bay and peninsular waters. This regulation went into effect on January 1, 2004 and was designed to rebuild Lake Erie walleye populations, which had dipped to the lowest levels since the late 1970's. A relatively strong year class in 2001 was followed by a very poor year class in 2002, and protection was needed to ensure that walleye numbers did not reach dangerously low levels.

In 2003, the largest year class of walleyes in two decades was produced and those fish will be 3 years old and reaching average lengths of between 15 and 18 inches in 2006. This will result in a large number of walleyes that would not be harvestable under current regulations and would be subject to increased mortality due to culling. The purpose of the current (2004) increased size and lowered creel limit was to promote the rehabilitation of the walleye fishery. Based on the strength of the 2001 and 2003 year classes, and the sacrifices made by anglers in 2004 and 2005, that objective will have been met. Lowering the minimum length to 15 inches, and restoring the creel limit to six per day, will allow Pennsylvania Lake Erie anglers to participate fully in the improving walleye fishery.

Accordingly, staff propose the following amendments:

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

\* \* \*

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

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * *	* * *	* * *	* * *
WALLEYE	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31	<b>[18 inches]</b> <b><u>15 inches</u></b>	<b>[4]</b> <b><u>6</u></b>
* * *	* * *	* * *	* * *

§69.33. Use of trap nets.

\* \* \*

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
* * *	* * *	* * *
Walleye ( <i>Stizostedion vitreum</i> )	<b>[18 inches]</b> <b><u>15 inches</u></b>	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31. This season will close when the total allowable catch for walleye is taken.
* * *	* * *	* * *

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, these changes will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Sabatose to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, these changes will go into effect on January 1, 2006. Motion carried.

## DESIGNATIONS

### L. Early Season Trout Stocked Waters: Deep Creek Dam, Montgomery County.

#### Commentary:

The reservoir created by Deep Creek Dam is a 25 acre water body in Green Lane Park, Montgomery County, and is presently stocked preseason and once during the inseason program before May 1. The May 1 limitation is in response to waning angler use due to the progression of spring, warm water temperatures and considerable aquatic plant growth that from a practical standpoint makes for frustrating shoreline fishing for many anglers come early May. An early stocking (late winter) will allow for better usage of this lake for trout fishing. The Green Lane Park Manger, Frank Ball, has expressed a desire to see this waterway included in the early season trout stocked waters program, particularly if stocking occurs after ice out as the Montgomery County Parks Department does not permit ice fishing.

If the water is approved for the early season trout stocked waters program, the Area Fisheries Manager and district waterways conservation office will work together to qualitatively or quantitatively evaluate use once the program has been in place for a couple of years.

A notice of proposed designation was published at 34 Pa. B. 6730 (December 18, 2004) (Exhibit H). The Commission did not receive any public comments concerning the proposed designation.

#### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission approve the addition of Deep Creek Dam, Montgomery County, to the list of waters regulated and managed under the Early Season Trout Stocked Waters program pursuant to §65.10. If approved, the designation will go into effect on January 1, 2006.

#### Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve the addition of Deep Creek Dam, Montgomery County, to the list of waters regulated and managed under the Early Season Trout Stocked Waters program pursuant to §65.10. The designation will go into effect on January 1, 2006. Motion carried.

#### M. Addition of Twenty-Three Waters to the List of Class A Wild Trout Streams.

##### Commentary:

Pursuant to 58 Pa. Code §57.8a (relating to Class A wild trout streams), it is the Commission's policy to recognize self-sustaining Class A wild trout populations as a renewable natural resource meriting special consideration in development of fisheries management plans and water quality/habitat protection. Often Class A wild trout populations represent the best of Pennsylvania's naturally reproducing trout populations.

Criteria developed for Class A Wild Trout populations are species specific. Wild Trout Abundance Class Criteria include provisions for wild brook trout, wild brown trout, mixed wild brook and brown trout, and wild rainbow trout populations. All must have at least 0.1 kg/ha (0.089 lbs/acre) of trout of the particular species less than 15 cm (5.9 inches) in total length. Biomass minimums for wild brown trout, wild brook trout and mixed wild brook-brown trout populations where neither species comprises 75 percent or more of the biomass are 40 kg/ha (35.6 lbs/acre), 30 kg/ha (26.8 lbs/acre), and 40 kg/ha (35.6 lbs/acre), respectively.

A notice of proposed designation adding 23 streams or portions thereof to the Commission's list of Class A Wild Trout Waters was published at 34 Pa. B. 6730 (December 18, 2004) (Exhibit I). The Commission received 12 public comments – three generally support all of the proposed additions, five specifically support the proposed additions of Halter Creek and Plum Creeks and four request that the Commission postpone consideration of the additions of Halter and Plum Creeks. Copies of all public comments were provided to the Commissioners.

##### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

##### Recommendation:

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

##### Action:

At the meeting, staff changed its recommendation and recommended that the Commission postpone consideration of this item until the April 2005 meeting to allow for additional public input. A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to postpone consideration of this item until the April 2005 meeting to allow for additional public input. Motion carried.

## N. Classification of Wild Trout Stream Sections.

### Commentary:

The Department of Environmental Protection's regulations at 25 Pa. Code §105.1 define the term "wild trout stream" as "a stream classified as supporting naturally reproducing trout populations by the Fish Commission." The definition goes on to provide that the list of "wild trout streams" is available from the Commission's Fisheries Management Division. This term has regulatory significance because wetlands that are located in or along the floodplain of the reach of a wild trout stream and the floodplain of streams tributary thereto are considered "exceptional value" and thus are entitled to certain protections.

The Commission adopted a statement of policy at 58 Pa. Code §57.11 (relating to listing of wild trout streams) that sets forth the basis for classification of streams supporting natural reproduction of trout. Under 58 Pa. Code §57.11, it is the policy of the Commission to accurately identify and classify stream sections supporting naturally reproducing populations of trout as wild trout stream sections. The list of a stream section as a wild trout stream section is a biological designation that does not determine how it is managed. The Commission uses many factors in determining the appropriate management of streams. The wild trout list is not the same as the listing of Class A Wild Trout Waters or Wilderness Trout Streams. The statement of policy provides that the Commission's Fisheries Management Division will maintain the list of wild trout streams and that the Executive Director, with the approval of the Commission, will from time-to-time publish the list of wild trout streams in the Pennsylvania Bulletin and solicit public comments.

The current version of the wild trout stream list was last revised in February 2002. This list identifies about 1,765 streams and stream sections that support naturally reproducing trout populations. In December of 2003, the Commission published an updated list at 33 Pa. B. 6292 (December 20, 2003). That list identifies 3,312 streams and stream sections that support naturally reproducing trout populations. In updating the list, Commission staff primarily added upstream areas of waters already listed and, where the data supported it, added streams in watersheds not previously listed and downstream areas of waters already listed. Copies of the notice and the updated list were provided to the Commissioners at the January 2004 meeting. The notice also is available on the Pennsylvania Bulletin's Web page at [www.pabulletin.com](http://www.pabulletin.com), the Commission's Web page at [www.fish.state.pa.us](http://www.fish.state.pa.us) or upon request.

The agenda item regarding the updated wild trout stream list as published in the Pennsylvania Bulletin was originally slated for action at the January 2004 Commission meeting. Prior to that meeting, the Commission received two public comments supporting the designation of certain stream sections as wild trout streams. The Commission also received four public comments from the regulated community requesting that the Commission extend the public comment period and defer action until a later meeting. Copies of these public comments were provided to the Commissioners at the January 2004 meeting.

As a result of these comments, the Commission extended the public comment period until April 2004 and deferred action until the April 2004 meeting. A notice extending the public comment period until April 9<sup>th</sup> was published at 34 Pa. B. 926 (February 14, 2004). On March 2, 2004, Commission staff met with several members of the regulated community to discuss issues pertaining to the Commission's identification of stream sections as wild trout streams.

During the extended public comment period, the Commission received seven additional public comments concerning the Commission's identification of wild trout streams. Two of the comments generally support the Commission's identification of wild trout streams. One comment suggests that the Commission redesignate the "wild trout streams list" as the "list of streams supporting natural reproduction of trout" to avoid the automatic determination by reference that the management of all stream segments on the list is "no stocking."

A comment submitted on behalf of the Schrader Creek Watershed Association states that based on the current chemistry in the tributaries and mainstem Schrader Creek, it is impossible for those waters to meet the requirements to be considered wild trout streams. The association accordingly requests the Commission to remove the streams from the updated list. Staff responded that it is inappropriate to use water quality information and observations to reflect what trout population may or may not be present and provided the association with the results of sampling that form the basis for the listing. Staff recommend that these streams not be removed from the list.

The Commission also received three comments from the regulated community, including the Pennsylvania Chamber of Business and Industry; the Pennsylvania Mining Professionals and The EADS Group, Inc.; and the Pennsylvania Coal Association. These comments generally express concerns regarding the Commission's expansion of the list to include sections designated as "headwaters downstream to mouth" as opposed to the discrete segments that were used in the 2002 list. They also express concerns that the list was expanded to include additional stream sections without field investigations or verifications of habitat and biological criteria to support them. Copies of all public comments were provided to the Commissioners at the April 2004 meeting. However, because staff did not have time to adequately address issues raised in the public comments, staff withdrew the agenda item from Commission consideration at the April meeting.

Based upon the comments received, Commission staff revisited the updated list and, as a result, recommend the removal of 25 streams or portions of streams. Those streams or portions of streams are identified in Exhibit J. Commission staff also recommend revising the limits of 60 streams on the list. Those changes are described in Exhibit K. Principally, these changes involved adjusting the downstream limits to reflect the sections in which samples documenting wild trout were collected.

On July 12, 2004, Commission and DEP staff met with members of the regulated community to further explain the Commission's development of the updated list and its impact on DEP's regulatory programs. Staff believe that it is appropriate to move forward with the list at this time.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the list as published in the Pennsylvania Bulletin with the changes described in the Commentary.

Action:

At the meeting, staff changed its recommendation and recommended that the Commission postpone consideration of this item until the April 2005 meeting. A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to postpone consideration of this item until the April 2005 meeting. Motion carried.

## OTHER MATTERS

### O. Property Acquisition – Tylersville State Fish Hatchery.

#### Commentary:

The property known as the Tylersville State Fish Hatchery (SFH), located in Logan Township, Clinton County, Pennsylvania, lying adjacent to State Route #2002, consisting of 40 acres (more or less), is currently under the control of the Secretary of the Interior. The Commission has leased the property from the United State Fish and Wildlife Service (USFWS) at no cost since 1984. Current trout production at the Tylersville SFH is conducted with a peak biomass in the hatchery of 262,000 pounds.

Since 1995, the Commission has invested about \$2,000,000 in the Tylersville SFH for infrastructure improvements, including brood trout and fingerling rearing units, clarifier and polishing pond, electrical service, hatch house drum filter, oxygen injection and sludge storage. The Commission intends to make significant additional infrastructure improvements. The initial phase of those improvements may cost in excess of \$500,000.

The USFWS has indicated a strong interest in conveying the Tylersville SFH to the Commonwealth of Pennsylvania to be used and operated by the Commission, or its successor in function, for the purposes of fishery resources management and fisheries-related activities. On October, 7, 2004, the Director of the Bureau of Fisheries, along with Bill Archambault and Mike Millard from USFWS, met with U.S. Congressmen John Peterson to discuss conveyance of the property to the Commission and the language to be included in a bill to authorize the transfer. Representative Peterson indicated that he supports the transfer and will introduce legislation when appropriate.

The proposed legislation provides that within 120 days of enactment, the Secretary of the Department of the Interior will convey to the Commonwealth of Pennsylvania, without reimbursement, all right, title, and interest of the United States in and to the Tylersville SFH for sole use by the Commission, or its successor in function, as part of Pennsylvania's fish culture program. The legislation also provides that if the property is used for any other purposes or by any other party, the property will revert to the United States. The Commonwealth will ensure that the property reverting to the United States is in substantially the same or better condition as at the time of transfer. The transfer will be subject to all of the usual legal, environmental, fiscal, title and suitability reviews.

#### Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission approve the acquisition described in the Commentary.

#### Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve the acquisition described in the Commentary. Motion carried.

P. Grant to the Great Lakes Fishery Commission to Provide for Lake Erie Interagency Hydro-Acoustic Surveys and Analyses.

Commentary:

The Commission is a member of the Lake Erie Committee of the Great Lakes Fishery Commission (GLFC). Research and management activities are shared by the four states and the Province of Ontario that share ownership of Lake Erie. An annual responsibility of the Lake Erie Committee's Forage Task Group, of which the Commission is a collaborating member, includes a quantitative estimate of the rainbow smelt population of central and eastern Lake Erie. Smelt remain the primary forage species that supports lake trout, walleye and steelhead. Since 1994, annual smelt assessments have been conducted using a SIMRAD® acoustic system, EY500, which is no longer manufactured, cannot be repaired and processes data only on outdated computers. Thus, the system needs to be replaced.

Research vessels from four agency field stations (Ohio, Pennsylvania, New York and Ontario) use the hydroacoustic system to survey the eastern and central basins of Lake Erie. Therefore, it was deemed prudent that the four jurisdictions share the cost of the purchase of a modern hydro-acoustics system. To assist with the purchasing problems that are inherent when governmental agencies are involved, the GLFC will purchase the system on the agencies' behalf and also contribute the equivalent of one share to its cost. Total cost for the new system will be approximately \$36,000. Each agency and the GLFC will need to pay an equal share of \$7,200. Upon receiving the contributions from the agencies, the GLFC will purchase the hydro-acoustics system and turn it over to the jurisdictions for their shared use.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$7,200 to the Great Lakes Fishery Commission for Pennsylvania's portion of the joint purchase of hydro-acoustic survey equipment as more fully described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Mahon to approve a grant in the amount of \$7,200 to the Great Lakes Fishery Commission for Pennsylvania's portion of the joint purchase of hydro-acoustic survey equipment as more fully described in the Commentary. Motion carried.

Q. Grant to the New Jersey Department of Fish, Game and Wildlife to Provide for Delaware River Hydro-Acoustic Surveying and Analysis.

Commentary:

Managing the Delaware River American shad stock involves four jurisdictions, New York, New Jersey, Delaware, and Pennsylvania in accord with the American Shad and River Herring Fisheries Management Plan developed by the Atlantic States Marine Fisheries Commission with participation by all East Coast states. As the fishery is concentrated in New Jersey and Pennsylvania, the bulk of research and monitoring studies are carried out by Pennsylvania and New Jersey fisheries personnel with the largest effort being a hydro-acoustic study estimating the number of adult American shad in the migration run. The effort is administered by the New Jersey Division of Fish, Game and Wildlife.

Five years ago, the four states agreed on pooling sampling efforts on this major fishery to reduce duplication of effort, to better distribute costs and to provide consistency in data collections. An agreement was reached to apportion the costs of these studies (hydro-acoustic population estimate, the New Jersey juvenile outmigration study and the Pennsylvania in-river adult biological data collecting) among the four states at an agreed upon percentage (New Jersey and Pennsylvania each at 40% and New York and Delaware each at 10%). Pursuant to the agreement, each jurisdiction funded its respective obligations to New Jersey minus any agreed upon costs for work done directly by the individual jurisdiction. The total cost in 2004 was \$85,570. Pennsylvania's share, less the cost of the Smithfield Beach biological sampling, was \$23,658.

Early in 2004, fisheries staff from the four jurisdictions met and agreed on the need for continuing the annual hydro-acoustic population estimate. In addition, staff deemed it necessary to have a feasibility study conducted to assess the use of an underwater video camera to verify key assumptions on which the hydro-acoustic-based population estimate is founded. Primarily the underwater camera would be used to verify species composition of fish schools identified and categorized as American shad. Members of the Delaware River Basin Fish & Wildlife Cooperative Policy Board (including Pennsylvania) agreed to support the verification study and to use the 40-40-10-10 cost apportionment. The 2005 feasibility study cost will be \$19,700, and Pennsylvania's share will be \$7,880.

As annual monitoring work is expected to continue on the Delaware River American shad stock, staff recommend that the Commission approve a grant to New Jersey for a three year period to coincide with the renewal of the New Jersey hydro-acoustic study, which is also on a three year basis. The amount of the grant would be a maximum of \$32,000 per year for the hydro-acoustic study and related feasibility/verification work.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve a grant to the New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife, of up to \$32,000 annually for three years for the purposes described in the Commentary.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve a grant to the New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife, of up to \$32,000 annually for three years for the purposes described in the Commentary. Motion carried.

R. Stocking Bigger Trout.

Commentary:

Trout angling participants in the Fish and Boat Commission’s 2002 Trout Summit achieved a consensus in a preference to catch larger trout. Staff have reviewed the growth potential of trout in the state trout hatchery system and determined that trout averaging 11 inches could be produced in a normal production cycle with some modifications to the production schedule and production targets.

The trout production goal of an average 11” trout would result in an average trout weighing 30% more than trout that the Commission has stocked with an average size of 10”. This 30% increase in the average weight of trout stock is conditioned on the need to maintain the maximum total annual pounds of trout produced at 1.9 million pounds; thus, to have larger, heavier trout the number of trout produced would need to be decreased by 20% to 3.2 million adult trout.

Some modification of the mix of trout species produced would need to occur; specifically, production would increase the proportion of rainbow trout from just over 40% to just fewer than 60%. Reducing the production of brown trout to about 20% from just fewer than 40% would offset this change and brook trout production would continue at about 20%. In addition, the state trout hatchery system would continue or increase the use of early spawning trout and use high-energy diets for fingerling trout. Another change that would need to occur is early distribution of fingerling trout to make room for more rapidly growing trout in the hatchery. Implementation of these production goals would reduce somewhat the requirement for brood trout that take up valuable production space.

The proposal was presented to the Trout Management Working Group on January 8, 2005. There was a strong consensus that larger trout for stocking was desirable, although there was minor concern about the necessary reduction in numbers to be stocked. The table below shows the state trout hatchery production goals that would be implemented beginning 2006 with Commission approval of these targets.

**2006 Trout Production Goals**

<b>Trout</b>	<b>Number</b>	<b>Size</b>	<b>Weight (lb)</b>	<b>Pounds</b>
Production Trout	3,200,000	11”	0.58	1,856,000
Troph “Brood” Trout	15,000	16”	2.0	30,000
Golden Rainbow Trout	9,000	14”	1.5	14,000
<b>Totals</b>	<b>3,224,000</b>			<b>1,900,000</b>

The trout production goals do not include the adult trout that the Fish and Boat Commission receives from Allegheny National Fish Hatchery (100,000 /year), those from the Tellico Adult Trout Contract (130,000/year), or those from the Cooperative Nursery Program (1,000,000/year).

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the adult trout production goal set forth in the Commentary.

Action:

At the meeting, staff changed its recommendation and recommended that the Commission postpone consideration of this item until the April 2005 meeting with the understanding that the trout production goals will be for 2007 instead of 2006. A motion was made by Commissioner Pflugfelder and seconded by Commissioner Mahon to postpone consideration of this item until the April 2005 meeting with the understanding that the trout production goals will be for 2007 instead of 2006. Motion carried.

## LAW ENFORCEMENT

### A. Refund of Erroneously Collected Fine.

#### Commentary:

On December 2, 2004, Citation FB-259223 was issued to Mr. John W. Bleck for fishing without a non-resident fishing license. Mr. Bleck indicated that he had attempted to purchase a non-resident license in December but that the issuing agent could not sell him one. Mr. Bleck paid the fine in full.

As a result of the passage of House Bill 2155, and the January 1, 2005 effective date of the license increase, the Bureau of Law Enforcement provided an "Enforcement Guidance" memo, dated December 1, 2004, to all Waterways Conservation Officers. The "Enforcement Guidance" indicates that individuals who do not have a fishing license and attempt to purchase one from an issuing agent in December 2004 will not be issued a citation for a license violation. The officer who issued the citation to Mr. Bleck received his memo on December 6, 2004 after citing Mr. Bleck.

Under the circumstances, the Bureau of Law Enforcement believes that a refund of the \$118.50 fine paid by Mr. Bleck is appropriate.

#### Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

#### Recommendation:

Staff recommend that the Commission authorize the payment of \$118.50 from the Fish Fund to Mr. John W. Bleck, Beach Park, IL, as a refund for the fine erroneously imposed.

#### Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to authorize the payment of \$118.50 from the Fish Fund to Mr. John W. Bleck, Beach Park, IL, as a refund for the fine erroneously imposed. Motion carried.

### **Other New Business**

Commissioner Anderson inquired as to when the 2004 Ralph W. Abele Conservation Heritage Award will be presented. It was determined that the presentation will take place at either the April 2005 Commission meeting or the Pennsylvania Federation of Sportsmen's Clubs Spring Convention. The recipient will be contacted to determine his preference.

Commissioner Sabatose asked about the possibility of holding a Fisheries Committee meeting in the near future and expressed his interest in setting aside time for discussion of recirculation technology. He also commended Dick Snyder on his 35 plus years of service to the Fish and Boat Commission. Dick will retire in February 2005.

Dr. Austen remarked that a productive meeting of the Charter Boat/Fishing Guide Workgroup was recently held and that notes from the meeting were previously provided to the Commissioners. Commissioner Concilla expressed concerns over the filleting of fish at the dock instead of on open waters. Dr. Austen indicated that draft regulations will be addressed at the April 2005 Commission meeting.

Commissioner Anderson asked when the Commission's Law Enforcement Committee will act on proposed revocations of fishing and boating privileges. It was determined that this business will be conducted at the April 2005 meeting.

Dr. Austen shared one final announcement. He explained that the Commission had an opportunity to testify before the Green Ribbon Commission this week regarding the Commission's capital needs, including dams, hatcheries and access areas. Dr. Austen emphasized the value of this effort not only for the fishermen and boaters but for the Commonwealth as a whole. A tremendous amount of economic activity could be generated by this initiative.

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

The next meeting is scheduled for April 25-26, 2005 and will be held at the Commission's headquarters in Harrisburg.

### **Adjournment**

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to adjourn the meeting at 3:20 p.m. Motion carried.