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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 68th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, April 25 and 26, 2005, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on April 25 at or about 9:30 a.m. The public session for review of this agenda began at or about 8:00 a.m. on April 26.

Call to Order

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

Roll Call

Members Present

Samuel M. Concilla, President
Richard W. Czop, Vice-President
Donald K. Anderson
Ross J. Huhn
Ted R. Keir
Paul J. Mahon
Howard E. Pflugfelder, Jr.
William J. Sabatose

Review and Approval of Minutes from the March 2005 Meeting

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Czop to approve the March 2005 minutes as written. Motion carried.

Awards and Presentations

The Ralph W. Abele Conservation Heritage Award is the highest recognition the Pennsylvania Fish and Boat Commission (PFBC) provides to persons who distinguish themselves in the cause of conservation. Former PFBC Commissioner Rozell A. Stidd of Tyrone, Pennsylvania was selected as the winner of the 2004 award and was presented with a Trout Stamp print and a United States flag that had been flown over the Capitol in his honor. The flag was from Congressman John P. Murtha, United States House of Representatives, and was in commemoration of Commissioner Stidd's award. Commissioner Stidd expressed his appreciation and extended his thanks for the recognition.

Joe and Lisa Perugino were presented with the Commission's Water Rescue Instructors of the Year Award for 2004. Joe and Lisa began teaching Commission water rescue courses in 2001 and 2002, respectively. Since that time, Joe has taught a total of 592 emergency response team members, and Lisa has taught 438. Dr. Austen noted that their efforts have made Pennsylvania a safer place for its citizens.

Executive Director's Report

Dr. Austen covered three items in his Executive Director's report. He noted that the "Bureau Quarterly Activity Report – April 2005" (Exhibit M) provided to Commissioners provides an update of major activities and accomplishments over the last quarter. Staff will be providing this report at future quarterly Commission meetings.

Dr. Austen also addressed the Growing Greener legislation and spoke of its importance and value to the anglers and boaters of Pennsylvania. A question will appear on the May 17 Pennsylvania primary election ballot that will read, "Do you favor authorizing the Commonwealth to borrow up to \$625 million for the maintenance and protection of the environment, open space and farmland preservation, watershed protection, abandoned mine reclamation, acid mine drainage remediation and other environmental initiatives?" This will be a tremendous opportunity for conservationists to set Pennsylvanians on a positive course for the years to come. Dr. Austen urged everyone to be active in this effort and to ask their legislators for their support.

The conclusion of Dr. Austen's report included a presentation on a national initiative. This initiative is the National Fish Habitat Initiative (NFHI), and Dr. Austen currently serves as the chairman of this effort. His presentation included information on habitat and its challenges, what the NFHI is, and what he proposes Pennsylvania's involvement to be. He noted that he would like other partners and sporting groups to be involved in this effort. Additional information can be obtained on the fishhabitat.org website.

Commission Briefings

Russell T. Greene, Fisheries Biologist, Coldwater Unit, provided a briefing titled "Angler Use and Harvest on Wild Trout Streams in Pennsylvania." Richard Lorson, Fisheries Biologist, Fisheries Management Area 8, provided a briefing entitled "Paddlefish Population Status Abundance and Restoration – The Role of Statewide Funding." These presentations were followed by a presentation by John Arway, Chief, Division of Environmental Services, on "Fish Hatcheries and Clean Streams – Are They Compatible?"

Following the briefings, Commission President Concilla announced that there would be a 15-minute break. The meeting then reconvened at 9:45 a.m.

Announcement of Executive Session

Commissioner Concilla announced that an Executive Session was held on Monday, April 25, at 8:00 a.m. Personnel and litigation issues were discussed.

Reports of Commissioner Committees

Commission Policy (Commissioner Concilla) -

The Policy Committee met on Monday, April 25, at 10:00 a.m. Dr. Austen provided an update on the Three Rivers Ecological Center efforts and on strategic plan initiatives. Gary Moore, Legislative Liaison, provided an update on legislative matters, including the GreenPA/Growing Greener II conservation funding efforts, and reviewed legislative strategies. Laurie Shepler, Chief Counsel, provided an update on the litigation involving the Little Juniata River and the public's right to fish in Pennsylvania waters. The Committee discussed agenda items. The Committee recommended that the Commission grant the Toby Creek Watershed Association \$185,000, instead of \$100,000. The Committee further recommended that the Commission postpone consideration of the operational policies to allow for additional Commissioner input. Last, Dr. Austen provided a report on habitat restoration efforts and explained that the Commission must be engaged in more programs in order to generate necessary funds.

Education and Publications (Commissioner Keir) -

The Education and Publications Committee met on Monday, April 25, at 11:30 a.m. Carl Richardson, Aquatic Resource Education Manager, gave a report on the Youth Bass Anglers Conservation School and on the Conservation District Workshop and Educational Plan. Carl also noted that numerous requests continue to be received for boating safety courses and mentioned that the Commission is currently working on certification under the Homeland Security Program. The State Wildlife Art Contest winners were just announced, and three of the recipients are from Pennsylvania. Carl has been working on a fishing club manual. Training will begin once 4-H approves the manual. Dan Martin provided a presentation on water rescue training courses. The Pennsylvania League of Angling Youth (PLAY) is being recognized for 25 very successful years.

Law Enforcement (Commissioner Huhn) -

The Law Enforcement Committee met at 4:30 p.m. on Monday, April 25. Agenda items were discussed.

The Committee also acted upon proposed revocations and suspensions. The Committee revoked the fishing privileges of six individuals for two years and four individuals for one year. The Committee reconsidered an existing two year revocation for an individual and determined that the period of revocation should remain in effect. The Committee revoked the boating privileges of three individuals for one year and two individuals for two years. The Committee revoked the boating privileges of three individuals for one year with a reduction to six months upon successful completion of a safe boating course. The Committee revoked the boating privileges of three individuals for two years with a reduction to one year upon successful completion of a safe boating course. The Committee took no action to revoke the boating privileges of one individual.

Fisheries (Commissioner Sabatose) -

The Fisheries Committee met at 1:45 p.m. on Monday, April 25. Agenda items were discussed, and an overview was provided on walleye regulations. Rick Hoopes, Director, Bureau of Fisheries, announced that Leroy Young was selected to fill the vacancy in Fisheries Management. Leroy will serve as the chief of that section. A review of the Bureau of Fisheries reorganization followed. It was announced that a special Fisheries Committee meeting has been scheduled for June 21, 2005. The meeting will start at 10:00 a.m., and guests from Michigan and West Virginia will provide presentations on the newest hatchery recirculation technology. All Commissioners are invited to participate.

Boating (Commissioner Anderson) -

The Boating Committee met at 11:45 a.m. on Monday, April 25. At 12:15 p.m., the Committee broke for lunch. They reconvened at 1:15 p.m. The Committee discussed agenda items, and the Committee recommended revisions to the amendment to section 91.4 (relating to age of operator). John Simmons provided a report on the status of the Boating Facilities Grant Program and the signage project.

Engineering and Development (Commissioner Czop) -

The Engineering and Development Committee met at 3:30 p.m. on Monday, April 25. Dick Mulfinger provided a project, schedule and dredging update. A design for a Commissioner memorial was presented. The memorial will be placed at the Harrisburg headquarters. Tom Ford provided a report on potential uses of the Lake Erie Stamp monies. Dick Mulfinger will update the Commissioners in the near future on harvest and timbering plans.

Public Comment to Commissioners and Staff

Donny Beaver, Spring Ridge Club, provided public comments on the proposal to amend section 63.3 (relating to fishing in approved trout waters). He believes that the proposed changes will have a negative effect on tourism and business opportunities.

Jay Drasher, Environmental Consultant, Aqua-Terra Environmental Ltd., indicated his full support of the proposal to update chapter 77 of the Commission's regulations (relating to reptiles and amphibians).

Fred Bruckman, Pennsylvania Herp Law Action Network, also provided public comments on the changes to the reptile and amphibian regulations. Mr. Bruckman is not in favor of the proposed changes. At the conclusion of Mr. Bruckman's comments, Commission President Concilla announced that Dr. Austen should form a committee to assist staff in the drafting of the amendments. Mr. Bruckman agreed to serve on the committee.

EXECUTIVE

A. Toby Creek Watershed and Brandy Camp/Blue Valley Mine Drainage Treatment Facility.

Commentary:

The Toby Creek Watershed Association (TCWA) is currently in the process of building a mine drainage treatment facility at Brandy Camp Creek, Blue Valley, Elk County. This project will treat the discharge from an abandoned mine site and provide approximately 250-300 gallons per minute of treated water. Current funding for the AMD facility construction is about \$1 million from the Department of Environmental Protection. There is no budgetary provision for annual operating expenses, which are estimated to be approximately \$85,000. As originally conceived, the treated discharge water would be used as source water for a recirculation fish hatchery with a production of approximately 400,000 adult trout. The design was later modified on at least one occasion to reduce the production.

The Commission has approved this project on at least two occasions. The Commission, by notational vote announced at the September 2002 meeting, authorized the Executive Director to enter into a cooperative agreement with the TCWA pursuant to which the Commission would provide funding to the Association for the project. A copy of the notational vote is attached hereto as Exhibit A. According to the Commentary of the notational vote, the Commission would support the project by providing \$50,000 in funding to be used for a feasibility review and final design of the fish culture station portion of the project. In consideration of the payment, the Commission would have the rights to use the report and design regardless of whether or not the project is built. The Commission also would support the project by providing funding in the amount of \$1.6 million to be paid upon completion of the project and transfer of the project to the Commission. The Commission subsequently entered into a cooperative agreement with the TCWA to provide funding in the amount of \$50,000 for the feasibility review and final design. The feasibility review and final design have been completed, and the TCWA invoiced the Commission, and the Commission paid the TCWA \$50,000, as required under the cooperative agreement.

At a special meeting on December 12, 2002, the Commission again took action with regard to the Blue Valley project when it approved six capital projects (Act 208 of 2002), including the Blue Valley project at a cost of \$1.6 million. Specifically, the Commission approved staff action to submit work orders to move forward with these projects.

On February 11, 2004, Governor Rendell announced that he had directed the Budget Office to draft an agreement with the Commission to release funding for the six top-priority projects, including the Blue Valley project. Commission staff subsequently drafted an agreement with the Budget Office for the release of the work orders for the pending projects. This agreement was approved in June 2004 and includes a repayment provision that requires the Commission to fully repay the \$1.6 million plus interest for a total cost estimate of about \$2.53 million.

Neither an operational budget nor a staffing plan have been reviewed or approved by the Commission. The TCWA currently estimates annual operating costs of \$191,513 with a staff of two (one manager and one fish culturist). Commission staff evaluated the business plan where these estimates are detailed and, based on their analysis, experience and discussion with managers of similar facilities in other states, have estimated an annual operating cost of \$347,497 and a staff of four. Staff recommend that capital funds would be better allocated to existing facilities and any additional staff should be directed to other, higher agency priorities.

As a result of ongoing discussions, a new option has been developed whereby a grant of \$100,000 would be made to TCWA for the purpose of designing and constructing a coop nursery that can produce up to 10,000 fish per year. This nursery would be owned and managed by the TCWA or suitable partners and would be supported through the Commission's cooperative nursery program in a manner similar to other cooperative nurseries. Further, as part of an overall evaluation of recirculation technology at Commission facilities, the Commission would bring in an expert panel, including Dr. Steve Summerfelt and others, to explore such technology at appropriate Commission facilities.

Recommendation:

Staff recommend that the Commission support, through a one-time grant of \$100,000, the construction of a cooperative nursery by the Toby Creek Watershed Association and other partners at the Brandy Camp/Blue Valley Mine Drainage Treatment Facility. This facility is expected to produce up to 10,000 fish annually and will be considered as part of the Commission's cooperative nursery program.

Staff further recommend that the Commission explore expanded implementation of water recirculation technology at appropriate Commission facilities. Such exploration will include the involvement of technical experts to assist with the analysis.

Briefer:

Dr. Douglas J. Austen, Executive Director

Action:

Commissioner Czop made the following motion:

"I move that the Commission make a one-time grant of up to \$185,000 to the Toby Creek Watershed Association for the development of a Cooperative Fish Nursery to produce up to 10,000 adult trout annually and for the operation of the entire Blue Valley/Toby Creek facility for a minimum of one year. Future Commission support for the Blue Valley/Toby Creek facility will be limited to that from the Commission's Cooperative Nursery Grant Program.

I further move that the Commission explore expanded implementation of water recirculation technology at appropriate Commission facilities. Such exploration will include the involvement of outside technical experts to assist with the analysis.”

Commissioner Anderson seconded the motion. Motion carried.

Commissioner Czop then made a motion that the Commission adopt a resolution:

“Now, Therefore, the Pennsylvania Fish and Boat Commission, meeting in a public session on April 26, 2005, hereby resolves as follows:

The Pennsylvania Fish and Boat Commission would like to commend Commissioner Bill Sabatose for his tireless work in the development of the Blue Valley/Toby Creek AMD facility and Fish Hatchery. Commissioner Sabatose created a facility concept that will treat contaminated mine water and use the outflow to raise trout using water recirculation technology. The treated effluent will also greatly assist in the continuing restoration of the receiving water, Brandy Camp Creek, a designated coldwater fishery. Under the guidance of Commissioner Sabatose, the facility will now produce approximately 10,000 trout per year as a part of the Commission’s Cooperative Nursery Program. These trout will add significantly to the recreational opportunities in the area and will benefit anglers throughout the region.”

Commissioner Anderson seconded the motion. Motion carried.

B. Approval of Operational Policies.

Commentary:

Within the next year, the Commission will see the addition of possibly three new Commissioners. This creates a need for the agency to develop a complete set of operational policies that clearly describe the roles and responsibilities of Commissioners and procedures relating to them. To assist with this process, Commission staff have started to develop basic operational policies. The first two policies relate to personnel management and political activities. Copies of the draft policies have been provided to all Commissioners.

Recommendation:

Staff recommend that the Commission approve the operational policies relating to personnel management and political activities.

Briefer:

Dr. Douglas J. Austen, Executive Director

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Sabatose to postpone consideration of this item until the July 2005 meeting so that staff may ensure that the operational policies are consistent with the Governor's Code of Conduct. Motion carried.

ADMINISTRATION PROPOSED RULEMAKING

A. Housekeeping Amendment to Sections 51.32 (Resident and Nonresident Licenses), 51.33 (Effective Dates of Licenses and Trout/Salmon Permits), 51.35 (Operation of the Issuing Agency), 63.20 (Permits for the Protection and Management of Trout and Salmon) and 65.13 (Wild Brook Trout Enhancement).

Commentary:

Upon review of existing regulations relating to the sale and issuance of licenses and permits, staff have identified the need to make a few housekeeping changes to update these regulations and to keep them consistent with Act 159 of 2004. Staff also have identified the need for other housekeeping changes. For example, §51.32(b) refers to the Soldiers' and Sailors' Civil Relief Act of 1940, which was updated and reenacted as the Servicemembers Civil Relief Act in 2003. In addition, §63.20(f) provides that persons fishing in waters under special trout regulations designated under §§65.1—65.3 and 65.5—65.7 are required to have a trout/salmon permit. However, since that provision was first adopted, the Commission has added new special regulation programs for managing trout, including the wild brook trout enhancement program, and has ended others. Staff propose removing the references to specific programs in §63.20(f) and instead including the requirement for a trout/salmon permit in the regulations pertaining to the individual programs.

Accordingly, staff propose that these sections be amended to read as set forth in Exhibit B.

Briefer:

Brian P. Barner, Acting Director, Bureau of Administration

Recommendation:

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

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Mahon to authorize the publication of a notice of proposed rulemaking containing the changes described in the Commentary. 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 C). 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.

Upon further review, staff have determined that the proposed amendment contains an anomaly that the Commission should address on final consideration. By establishing January 1 as the date on which the age of operation increases, the proposed amendment creates a situation where persons who are born in the middle of the boating season may legally operate during the end of one boating season after their birthday but not the first part of the next season until they again reach their birthday. To correct this, staff recommend that subsection (b) be replaced with the following upon final adoption:

(b) During the period, January 1, 2006 through December 31, 2009, a person born on or after January 1, 1994 may not operate a personal watercraft. Effective January 1, 2010, a person 15 years of age or younger may not operate a personal watercraft.

This amendment, if adopted on final rulemaking, will go into effect on January 1, 2006.

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 with the changes described in the Commentary.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Pflugfelder to amend subsection (a) of §91.4 to read “A person 11 years of age or younger may not operate a personal watercraft or a boat propelled by a motor greater than 25 horsepower;” to delete subsection (b) in its entirety and replace it with the current subsection (c) that says “A person 12 through 15 years of age may not operate a personal watercraft if there are any passengers onboard 15 years of age or younger;” and to set aside the matter of increasing the minimum age of operation for personal watercraft for a period of at least 3 years. Motion carried.

PROPOSED RULEMAKING

B. 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.**

(b) * * *

[(c)] (b) * * *

[(d)] (c) * * *

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:

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.

C. 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 D.

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:

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

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

Commentary:

The Commission owns and operates 46 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 E.

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 limited use. State Park and Commission lakes and a few water supply reservoirs are the only lakes managed for electric motors use in the state. 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, they pollute less and create less noise, thus, addressing many of these early concerns. Staff believes that additional recreational opportunities could be created by allowing the use of gasoline engines on boats while being operated at idle speed. Staff proposes to relax the restrictions only on lakes over 100 acres in size. Lakes less than 100 acres can typically be fished and boated adequately with electric motors.

Several Commission owned or controlled lakes that are over 100 acres in size have special circumstances that require that they not be included in this proposed change. Kaerchers Creek in Berks County, Mauch Chunk Lake in Carbon County, Leaser Lake in Lehigh County and Minsi Lake in Northampton County are under agreement with the county governments to operate. The Commission also has several other lakes (primarily water supply reservoirs) under agreement to keep them open to public use. A condition of our agreements with these entities prohibits the use of internal combustion engines. Changes to the regulations on these lakes would first require amendments to those agreements.

Lily Lake in Luzerne County already limits boats to slow, no wake speed, except those operating within the buoyed high speed operating zone between noon and sunset between the Saturday preceding Memorial Day and September 30. On Lily Lake, boats with greater than 60 horsepower engines or greater than 18 feet in length are prohibited.

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 **except as otherwise provided in Chapter 111 (relating to special regulations counties).** * * *

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”: §§111.15(b) (Chester County, Struble Lake), 111.20(e) (Crawford County, Tamarack Lake), 111.33 (Jefferson County, Kyle Lake), 111.35(b) (Lackawanna County, Ford’s Pond), 111.36(b) (Lancaster County, Speedwell Forge Lake), 111.41(b) (Lycoming County, Rose Valley Lake), 111.55 (Snyder County, Walker Lake), 111.57 (Sullivan County, Hunters Lake), 111.61(a) (Venango County, Kahle Lake), and 111.64(i) (Wayne County, White Oak Pond). Staff further propose new regulations at §§111.56(c) (Somerset County, Lake Somerset) and 111.56(d) (Somerset County, High Point Lake) to limit boats to slow, no wake speed.

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 the changes.

Briefer:

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

Recommendation:

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

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Czop to not approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. Motion carried.

FISHERIES

PROPOSED RULEMAKING

A. Update of Chapter 77 (Reptile and Amphibian Regulations).

Commentary:

Commission staff have determined that the Commission's existing reptile and amphibian regulations are in need of revision to provide adequate protection of these resources due to increasing interest in collecting in Pennsylvania. Staff also have determined that revisions are needed to improve the clarity of regulations pertaining to how reptiles and amphibians are taken, caught, killed and sold and their season and possession limits. Staff from the Bureau of Fisheries, Bureau of Law Enforcement and the Executive Office met, discussed and contributed to the drafting of the proposed changes. The proposed changes are supported by the Commission's Amphibian and Reptile Technical/Advisory Committee, a subcommittee of the Pennsylvania Biological Survey.

As a general matter, staff believe that the entire chapter dealing with reptiles and amphibians needs to be reorganized in a more logical and understandable fashion. The draft therefore reflects organizational changes.

Section 77.1: Among the organizational changes in this chapter is the addition of a "definitions" section at §77.1. Staff have included a more explicit definition of "hunt" and have added definitions for the terms, "snake hooks or tongs," "turtle hooks," "subcaudal scale" and "native species." The current definitions at §77.2 for "organized reptile and amphibian hunt" and "sacking contest," for the most part, have been left unchanged and are included in the proposed §77.1.

Section 77.2: In the proposed §77.2, staff have combined various provisions pertaining to the taking of reptiles and amphibians that are found throughout the chapter and have placed them under one section. This proposed section describes the means and the devices by which reptiles and amphibians may be lawfully taken and enumerates unlawful practices. It also makes it unlawful to take, catch or kill a reptile or amphibian through use of a firearm. For consistency, staff further recommend that §53.7 be amended to remove the provision allowing the use of .22 caliber rimfire weapons with shotshell to take frogs during the open season unless otherwise posted on Commission owned or controlled property.

Section 77.3: The proposed §77.3 relates to season and daily possession limits currently addressed in §77.6. Under the current regulations, a sponsor of an organized reptile/amphibian hunt may possess more than the daily limit of timber rattlesnakes if the total number of timber rattlesnakes held in possession during each hunt and for not more than 48 hours thereafter does not exceed the daily limit for timber rattlesnakes times twice the number of persons engaged in the hunt. The proposal reduces the number from two times the number of persons engaged in the hunt to one.

Other proposed changes to this section include reducing the daily and possession limits for both bullfrogs and green frogs from 15 and 30 to 10 and 20, respectively. The proposal also includes a prohibition against the taking of 23 species of reptiles and amphibians that are considered to be rare, declining or “at risk” by the Commission’s Amphibian and Reptile Technical/Advisory Committee. These species have limited ranges in the Commonwealth, are threatened by development and collection pressure and are currently being studied by the Commission. Until these species are considered for formal listing as threatened or endangered species, staff propose “no collection” (*i.e.*, no open season and daily and possession limits of 0) as a means of protecting them. Status assessment studies are underway for these species, which could lead to future management decisions.

In addition, staff propose additional restrictions with regard to timber rattlesnakes. Currently, the regulations permit a person to take, catch or kill one timber rattlesnake per calendar year and to possess one timber rattlesnake at a time. Under the proposal, it is unlawful for a person to take, catch, kill or possess a timber rattlesnake that is less than 42 inches in length, measured lengthwise along the dorsal surface from the snout to the tail, excluding the rattle, and that possesses less than 21 subcaudal scales. The proposal further prohibits a person to hunt timber rattlesnakes from the South Mountain population (west of Route 15 and south of Interstate 81 to the Maryland line) where there is no open season.

The timber rattlesnake is currently listed as a candidate species in Pennsylvania, and is listed as a protected species (threatened or endangered) or species of concern in our neighboring states. Unlike most amphibian and reptiles in the Commonwealth, the timber rattlesnake is sought out by hunters as a game species. Reptile collectors collect them for their variable coloration, large size and unique nature; and people have been known to wantonly kill timber rattlesnakes due to their perceived threat to humankind. Despite former tightening of the regulations on the collection of this animal (reduced to 1 possession limit in 1993, and 1 annual limit in 1996), preliminary results of the Commission’s timber rattlesnake population study (2003-present) suggest that the timber rattlesnake is declining in the peripheral parts of its range in Pennsylvania due to development pressure, wanton killing and collecting. Adult female timber rattlesnakes need 8-10 years to reach reproductive maturity. Therefore, taking females out of the population is a threat to local populations, and the larger statewide population. A minimum length limit and minimum number of subcaudal scales are proposed to limit timber rattlesnake hunters interested in take/collection to favor collection of mature adult male snakes. This regulation will protect adult and gravid (pregnant) females and enable their progeny to reach reproductive maturity. In addition, staff recommend that the South Mountain population (portions of Adams, Cumberland, Franklin and York Counties) of timber rattlesnake be off-limits to hunting due to the documented decline in numbers in this specific area from hunting and human encroachment pressure and apparent isolation with the North Mountain and Maryland timber rattlesnake populations.

The proposal further places a season and catch and possession limits on the northern copperhead. These proposed changes are needed because the status of the northern copperhead is uncertain. Although no comprehensive population studies have been conducted on this species, there is a consensus among herpetologists that the northern copperhead is declining across its range and in Pennsylvania. Staff also recommend that a permit like the current timber rattlesnake permit be required for northern copperheads. The specifics of this permit requirement is discussed in more detail below. However, the permit requirement will enable the Commission to collect locational and harvest information to be used to assess the possible decline of northern copperheads in Pennsylvania. Ultimately, this information will be used for future management of the northern copperhead.

Finally, the proposal reduces the daily and possession limits for native species not listed in the regulation from two to one.

Section 77.4: In the proposed §77.4, staff propose a new permit requirement for the taking of common snapping turtles by persons who intend to sell, barter or trade them. In many states across its range, the common snapping turtle is declining. The new permit is proposed to facilitate a better understanding of the numbers of turtles that are being taken for commercial use, where the hunting pressure exists, and who is engaged in the activity. Information gleaned from the permit system will enable the Commission to make well-informed decisions about the future management of the snapping turtle.

Section 77.5: The proposed §77.5 addresses permit requirements for both the timber rattlesnake and the northern copperhead, making it unlawful to hunt, take, catch, kill or possess them without first procuring the necessary permit. The current cost of the timber rattlesnake permit has remained at \$5.00 for the past 14 years. Staff propose increasing the permit fee to \$50.00 for residents and \$100 for non-residents to offset costs due to inflation and the costs of permit issuance, processing and data compilation. Fees collected from this permit can also be used as matching funds to obtain other grants to perform additional management activities.

In this section, staff also propose new tagging requirements for persons who hunt, take, catch, kill or possess timber rattlesnakes. Currently, the Commission issues well over 1,000 individual timber rattlesnake permits per year (1,181 permits issued in 2004), and permit requests have increased approximately 200-300 each year since 1998. Approximately 15% of the hunters are reporting “take” (for harvest or as pets) of snakes. There is evidence to suggest that even more snakes are being taken than are being reported. Staff propose a tagging system to provide better accountability of hunters that decide to take timber rattlesnakes alive or dead. The information collected in this program will assist the Commission in the development of management units and associated bag limits for timber rattlesnakes.

Section 77.6: The proposed §77.6 relates to organized reptile and amphibian hunt permits currently addressed in §77.2. Among the changes is an increase in the fee from

the current \$25 to \$100. This increase has been proposed to offset the changes in inflation, including the permit review and processing costs, and monitoring/permit compliance of hunts. Also proposed are reporting requirements.

Section 77.7: The proposed §77.7 addresses the sale of reptiles and amphibians currently contained in §77.3. This section has been clarified to reflect the intent of the Commission to protect the native herptiles of the Commonwealth and their progeny. The demand for both wild caught and captive bred reptiles and amphibians, including several native to Pennsylvania, has increased considerably over the past several years. While our waterways conservation officers go through intense training on the identification of Pennsylvania native species, it can be almost impossible to tell whether an individual animal is captive bred or wild caught. This is especially true for hatchling or juvenile animals, the preferred product for reptile and amphibian dealers. This section helps to eliminate the profit motive for both collection and sale of Pennsylvania native species and the collection of animals in Pennsylvania for breeding stock for commercial propagation programs.

Section 77.8. This proposed section makes it illegal to transport or import into or within this Commonwealth a native species, as defined in this chapter, from another jurisdiction. It also makes it unlawful to receive a native species that was transported or imported into or within this Commonwealth from another jurisdiction.

Section 77.9: This proposed section restates the current provisions of §77.7.

Section 77.10: This proposed section restates the current provisions of §77.1.

Staff propose that the Commission amend Chapter 77 to read as set forth in Exhibit F.

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 to Chapter 77 (relating to reptiles and amphibians) as described in the Commentary.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Czop to approve the publication of a notice of proposed rulemaking containing the amendments to Chapter 77 (relating to reptiles and amphibians) as described in the Commentary. A motion was made by Commissioner Pflugfelder and seconded by Commissioner Sabatose to amend the motion to allow for a public comment period of at least 90 days. Motion to amend was carried. Main motion as amended was carried.

B. Amendment to Section 63.3 (Fishing in Approved Trout Waters).

Commentary:

Section 63.3 provides that the term “approved trout waters” means “designated waters open to public fishing that are stocked with trout.” Prior to late 2002, the Commission’s regulations defined the list of approved trout waters as the list contained in the “Summary Book.” That definition did not allow the Commission much flexibility in adding and removing waters from the list. Accordingly, the current definition was added.

It recently has come to staff’s attention that this definition is not entirely consistent with the way that the Commission historically has designated waters as approved trout waters. Specifically, the Commission historically has designated entire waters or sections of waters as being approved trout waters even though they may contain parts that are closed to public fishing and therefore are not stocked with trout. These waters or sections, however, are primarily open to the public. To remove the portions that are closed to the public from the list of approved trout waters would create a complicated patchwork of waters that are approved trout waters and those that are not. It would create an enforcement nightmare and would cause confusion among anglers.

To make the definition of approved trout waters consistent with the approach that the Commission historically has taken, staff propose the following amendment:

§63.3. Fishing in approved trout waters.

It is unlawful to fish in approved trout waters from 12:01 a.m. March 1 to 8 a.m. on the opening day of trout season in April. As used in this subpart, the term “approved trout waters” means designated waters **that contain significant portions that are** open to public fishing [**that**] **and** are stocked with trout. A listing of approved trout waters is published in the Commission’s “Summary of Fishing Regulations and Laws,” which is available from the Commission at Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. The Executive Director or a designee may, from time to time, supplement or modify the list of approved trout waters, and additions or deletions will be published in the Pennsylvania Bulletin.

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.

Action:

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

C. Amendment to Sections 69.12 (Seasons, Sizes and Creel Limits - Lake Erie and Lake Erie Tributaries) and 69.33 (Use of Trap Nets) – Yellow Perch.

Commentary:

Dramatic declines in Lake Erie yellow perch in Pennsylvania waters during the 1990's required conservative harvest regulations for the fisheries. In 1996, the daily creel limit was reduced to 20 perch and an 8 inch minimum size limit was implemented to reduce exploitation and enhance spawning stock size. In 2002, the Commission amended its regulations to reduce the minimum size limit from 8 inches to 7 inches during the period, December 1 through March 31, while maintaining the 8 inch minimum size limit during the period, April 1 through November 30. An 8.5 inch minimum size limit is in effect for commercially caught yellow perch in Pennsylvania.

Other jurisdictions have implemented yellow perch conservation measures, but none continue to be as conservative as Pennsylvania. None of the jurisdictions have a recreational minimum size limit. Ohio has a creel limit of 30. Other jurisdictions have creel limits of 50.

By 2004, the Lake Erie perch had recovered to levels of abundance seen in the late 1980's with a 350% increase since the early 1990's. Even more dramatic, the 2004 population will more than double in 2005 due to the very large 2003 year-class. The 2004 boat angler survey estimated Commonwealth anglers harvested over 500,000 perch of the 750,000 perch that were caught. Thus, about 198,000 yellow perch were released because they were undersize. Catch and release mortality can be high because of hydraulic decompressing when there are large numbers of undersize yellow perch. With the very strong 2003 year class growing into the population as three year olds in 2006, losses could far exceed those seen in previous years.

The opportunity exists to reduce these losses and allow the Commonwealth's yellow perch anglers to benefit from the large yellow perch populations with an increase in harvest with large yellow perch populations. Appropriate regulatory changes include eliminating the minimum size limit for recreationally caught yellow perch during the period, April 1 through November 30, and for commercially caught yellow perch and increasing the recreational creel limit to 30. These actions will reduce the release rate and any associated mortality. The commercial catch will continue to be controlled with a quota set at 30,000 pounds for Pennsylvania for 2005.

The yellow perch population is strong in Lake Erie and Pennsylvania's portion of Lake Erie. Staff evaluations suggest that the exceptional fishing should be sustained for several years. Beyond that, fishing quality would depend on yellow perch reproductive success in the coming years. Staff will continue to be diligent in its assessment of Lake Erie fish stocks and increase the agency's agility in responding to changes in population status.

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>
* * *	* * *	* * *	* * *
YELLOW PERCH	From December 1 through March 31 From April 1 through November 30	7 inches [8 inches] <u>None</u>	[20] <u>30</u> [20] <u>30</u>
* * *	* * *	* * *	* * *

§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>
Yellow perch (<i>Perca flavescens</i>)	[8 ½ inches] <u>None</u>	No closed season until the total allowable catch 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 changes described in the Commentary. If adopted on final rulemaking, these amendments will go into effect on January 1, 2006.

Action:

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

D. Amendments to Sections 53.24 (Tournament and Fishing Derby Permits – Commission Property) and 63.40 (Fishing Tournaments and Fishing Derbies – Non-Commission Property).

Commentary:

As an outgrowth of recent discussions with tournament anglers and sponsors, there is interest in amending the Commission's current regulations dealing with culling. It is proposed that the Commission eliminate the requirement that tournament rules establish a daily limit of at least one fish less than the statewide creel limit. This change will not have a negative fisheries impact, and the Bureau of Law Enforcement does not anticipate any problems.

Accordingly, staff propose the following amendments:

§53.24. Tournament and fishing derby permits.

* * *

(c) *Special activity permit for fishing tournaments.*

* * *

(5) *Permit conditions.* The Bureau of Law Enforcement may impose conditions in connection with the issuance of a permit under this section. The conditions may include:

* * *

(ix) Upon request of an applicant for a tournament permit, the Commission may include a condition providing that one or more uninjured largemouth bass, smallmouth bass or spotted bass that an angler is landing, measuring or in the process of releasing from a recirculated or aerated livewell will not be considered as part of the daily creel limit if the fish is caught during a tournament that as part of its rules penalizes the return of any dead or distressed bass to the water, **[establishes a daily limit of at least one fish less than the Statewide creel limit,]** requires use of recirculating or aerated temperature-controlled livewells, distributes to the contestants instructions on the proper maintenance and use of livewells and limits the fishing hours to no more than 9 hours per day. This permit condition will be included only in circumstances when the Commission finds that permitting culling will have no substantial adverse impacts on the protection and management of fish.

* * *

§63.40. Fishing tournaments and fishing derbies.

* * *

(b) *Permits.* It is unlawful to conduct a fishing tournament on Commonwealth waters without obtaining a special activity permit under this section.

* * *

(4) *Permit conditions.* The Bureau of Law Enforcement may impose conditions in connection with the issuance of a permit under this section. The conditions may include:

* * *

(vi) Upon request of an applicant for a tournament permit, the Commission may include a condition providing that one or more uninjured largemouth bass, smallmouth bass or spotted bass that an angler is landing, measuring or in the process of releasing from a recirculated or aerated livewell will not be considered as part of the daily creel limit if the fish is caught during a tournament that as part of its rules penalizes the return of any dead or distressed bass to the water, **[establishes a daily limit of at least one fish less than the Statewide creel limit,]** requires use of recirculating or aerated temperature-controlled livewells, distributes to the contestants instructions on the proper maintenance and use of livewells and limits the fishing hours to no more than 9 hours per day. This permit condition will be included only in circumstances when the Commission finds that permitting culling will have no substantial adverse impacts on the protection and management of fish.

* * *

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.

Action:

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

DESIGNATIONS

E. Early Season Trout Stocked Waters Program: Quaker Lake, Susquehanna County.

Commentary:

Quaker Lake is a 127 acre impoundment located in northern Susquehanna County near the New York state border. The lake is primarily privately owned and closed to shoreline angling. However, the Commission owns and maintains an access area to provide angler parking, boat launch facilities and a small amount of shoreline access for angling. Historically, this water has been managed with the planting of Commission adult trout.

The Early Season Trout Stocked Waters Program provides for an extension of angling opportunity throughout the month of March when most other trout stocked waters are closed to angling. Waters included in the program receive a portion of their allocation early in the year (generally in February). The early season stocking provides additional trout angling opportunities under a reduced daily creel limit (3 per day) until April 1 when these waters are closed to angling for restocking prior to the traditional opening day of regular trout season. In addition to trout angling, Quaker Lake would also remain open to angling in March for other species of fish in accordance with regulations for Commonwealth inland waters.

A notice of proposed designation was published at 35 Pa. B. 1940 (March 26, 2005) (Exhibit G). The Commission did not receive any public comments concerning this proposed designation.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission add Quaker Lake, Susquehanna County, to the list of waters regulated and managed under the Early Season Trout Stocked Waters Program pursuant to §65.10. If approved, this change will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to add Quaker Lake, Susquehanna County, to the list of waters regulated and managed under the Early Season Trout Stocked Waters Program pursuant to §65.10. This change will go into effect on January 1, 2006. Motion carried.

F. Change in Limits of Delayed Harvest Artificial Lures Only Area: McMichaels Creek, Monroe County.

Commentary:

At the October 2004 Commission meeting, the Commission approved a 1.74 mile section of McMichaels Creek from 130 yards downstream of the bridge on Turkey Hill Road (T-416) downstream to the upstream boundary of the Glen Brook Golf Course as a Delayed Harvest Artificial Lures Only Area. The addition of this area to the Delayed Harvest Program was prompted by efforts by Stroud Township to secure this area of stream for a township park. Since that time, information has come to the attention of staff that confirms the upper 0.62 miles of this area remains in private ownership. Follow up correspondence with the private landowner has been most cordial. However, the landowner is simply reluctant to open this area to public angling and Delayed Harvest regulations at this time. Therefore, staff recommend that the limits of the Delayed Harvest Area on McMichaels Creek be revised to conform to the property holdings under the control of Stroud Township.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission revise the limits of the segment of McMichaels Creek, Monroe County, that is currently regulated and managed under the Delayed Harvest Artificial Lures Only Program (58 Pa. Code §65.6) as follows: "From a point 0.71 miles downstream of the bridge on Turkey Hill Road (T-416) downstream to the upstream boundary of the Glen Brook Golf Course," for a distance of 1.1 miles. If approved, this change will go into effect upon publication in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to revise the limits of the segment of McMichaels Creek, Monroe County, that is currently regulated and managed under the Delayed Harvest Artificial Lures Only Program (58 Pa. Code §65.6) as follows: "From a point 0.71 miles downstream of the bridge on Turkey Hill Road (T-416) downstream to the upstream boundary of the Glen Brook Golf Course," for a distance of 1.1 miles. This change will go into effect upon publication in the Pennsylvania Bulletin. Motion carried.

G. 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). The Commission received 12 public comments – three generally supported all of the proposed additions, five specifically supported the proposed additions of Halter Creek and Plum Creeks and four requested that the Commission postpone consideration of the additions of Halter and Plum Creeks and seek additional public comment.

In response to requests to extend the public comment period, the Commission published a second notice of proposed designation at 35 Pa. B. 1486 (February 26, 2005) (Exhibit H). As of the date of agenda preparation, the Commission received seven comments – two generally support all of the proposed additions, one specifically supports the proposed additions of Halter and Plum Creeks, three express concerns regarding the proposed additions of Halter and Plum Creeks and one expresses concerns regarding the proposed addition of Ontelaunee Creek. Copies of all public comments have been provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the additions to the list of Class A Wild Trout Waters as set forth in the notice of proposed designation with the exception of Plum and Halter Creeks, which staff will further survey in June or July 2005.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Czop to approve the additions to the list of Class A Wild Trout Waters as set forth in the notice of proposed designation with the exception of Plum and Halter Creeks. The Commission will defer consideration of Plum and Halter Creeks pending confirmation studies by staff. Motion carried.

H. 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, the Commission's Web page at 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 9th 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 I. Commission staff also recommend revising the limits of 60 streams on the list. Those changes are described in Exhibit J. 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 and legislative staff to further explain the Commission's development of the updated list and its impact on DEP's regulatory programs. There was discussion regarding the original intent of DEP's Chapter 105 regulations relative to the use of the Commission's list of wild trout streams for identifying exceptional value wetlands. There also was interest expressed in how DEP makes an independent determination of wild trout streams.

DEP staff later reviewed the available records, draft regulations and public comments and responses associated with the Chapter 105 rulemaking. DEP staff determined that there was nothing in that information to suggest that a more narrow interpretation of wild trout streams was proposed or intended. As a result of the meeting, DEP staff also undertook the development of written guidance explaining how DEP uses the Commission's list in making independent determinations of wild trout waters for permitting purposes. Although this work is ongoing, it has not been completed, and DEP intends to seek full public review and comment in accordance with its standard procedures. That process could take many months or perhaps a year.

Although it has been suggested that the Commission postpone approval of the wild trout streams list pending DEP's completion of the guidance document, Commission staff believe that it is appropriate to move forward with the approval of the list at this time. The Commission's determination of wild trout streams is based on stream biology and is independent of DEP's efforts to define how to independently verify that assessment. After approval of the wild trout streams list by the Commission, staff will continue their efforts to identify and classify wild trout streams. From time to time, changes to the list will be publicized as directed by Commission policy. Commission staff will continue to cooperate with DEP in its role of making independent determinations of wild trout streams and the application of appropriate regulatory controls to assure that necessary environmental quality is sustained to support naturally reproducing trout.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Czop to approve the list of wild trout streams as published in the Pennsylvania Bulletin with the changes described in the Commentary. Motion carried.

I. Designation of Exclusive Use Fishing Areas.

Commentary:

Throughout the years, the Commission has designated sections of waters as exclusive use fishing areas for children, special populations, or both. Some of the designations date back to the late 1960s. The designations are effective throughout the year. However, many of these areas receive only seasonal use, normally during the early trout season.

In 2000, the Commission amended §65.21 (relating to waters limited to specific purposes – exclusive use areas). The amendments placed additional requirements on sponsors seeking designation. Among them was a requirement that a sponsor of a children's area establish that the area will be used year-round by showing that fishing tournaments/derbies, stocking or other special events are planned throughout the year. The amendments also provided that a sponsor seeking temporary designation of an area shall apply for a special activities permit. In addition, the amendments required current sponsors of year-round exclusive use areas to reapply for such designation.

In November of 2004, an application package for re-designation of the existing exclusive use areas was provided to the last known sponsors, and sponsors were instructed to respond by April 1, 2005. Set forth in Exhibit K are lists of waters that have met the requirements for re-designation as year-round exclusive use areas, waters that will receive annual temporary designations through special activity permits, and waters that will be eliminated as exclusive use areas.

Waters that the Commission designated as exclusive use areas after the changes to §65.21 went into effect were not asked to reapply, and those designations will be unaffected by the actions requested in this agenda item.

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Recommendation:

Staff recommend that the Commission designate the water areas identified in the first list on Exhibit K as exclusive use fishing areas for children, special populations, or both, as more fully described therein. If approved, these designations will go into effect upon publication of a notice in the Pennsylvania Bulletin. Staff further recommend that the Commission remove the designation as exclusive use fishing areas on the water areas identified in the third list on Exhibit K. If approved, these removals will go into effect upon publication in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Sabatose to designate the water areas identified in the first list on Exhibit K as exclusive use fishing areas for children, special populations, or both, as more fully described therein.

These designations will go into effect upon publication of a notice in the Pennsylvania Bulletin. Motion carried.

A second motion was made by Commissioner Sabatose and seconded by Commissioner Czop to remove the designation as exclusive use fishing areas on the water areas identified in the third list on Exhibit K. These removals will go into effect upon publication in the Pennsylvania Bulletin. Motion carried.

OTHER MATTERS

J. State Wildlife Grant Program.

Commentary:

In March 2002, the U.S. Fish and Wildlife Service notified conservation agencies across the nation about the State Wildlife Grant (SWG) Program for state nongame conservation programs and efforts. Congress has provided appropriations to this program annually since its inception. This funding is intended to target conservation efforts for the great majority of species that are not pursued for sport or harvest. Pennsylvania receives about \$1.5 to 2 million annually for this program which is jointly administered by the PFBC and the Pennsylvania Game Commission. A portion of the SWG funds are made available for competitively selected projects, and other projects are developed and funded through separate allocations made to the Commissions for their internal use.

PFBC staff wish to enter into cooperative agreements with partners to fund a number of projects using 2004 and 2005 SWG funding. The following projects have been identified as priorities:

(1) At-risk Herptile Species Surveys and Status Assessments – Shippensburg University

Several amphibian and reptile species are considered to be rare in the Commonwealth. Some of these species are currently listed, and others appear to be declining in the state or are known to be declining across their range. These species lack thorough inventory information and are in dire need of targeted surveys to complete status assessments for potential listing or de-listing in Pennsylvania. Little data exist, and enhanced information is needed for the following herptile species: hellbender, smooth earth and mountain earth snakes, shorthead garter snake, spotted turtle, marbled salamander and Kirtland's snake. Researchers at Shippensburg University competitively proposed to conduct status assessments on these rare herptile species for the amount of \$94,000. The 25% required match for this grant has been obtained through a separate Wild Resources Conservation Fund grant.

(2) Freshwater Mussel Spatial Distributions and Habitat Use in the Navigational Pools of the Allegheny River – The Western Pennsylvania Conservancy (WPC)

Mussel surveys prior to construction of the navigational dams in the lower Allegheny River documented the presence of several rare mussel species and a total of nearly 30 species of freshwater mussels. However, very little freshwater mussel research on the status or distribution within the lower Allegheny has occurred since.

A comprehensive mussel survey is needed to determine the status of these species in the navigational pools of the lower Allegheny River. Information collected by these surveys will aid state and federal agencies with monitoring and restoration strategies for these

unique organisms. In addition, WPC will provide opinions on the adequacy of the sampling methods.

WPC has requested \$211,800 in SWG money to be used across two years of sampling and analysis. WPC will contribute 17% of the non-federal match. The PFBC will contribute the remaining 8% match with staff assistance and equipment.

(3) Eastern Pennsylvania - Conservation Planning and Assistance to Natural Diversity Section, PA Fish and Boat Commission – Western Pennsylvania Conservancy (WPC)

The PFBC's Natural Diversity Section works with conservation entities across the Commonwealth to manage and protect Pennsylvania's herptiles, non-game fishes, and aquatic invertebrates. Conservation and management plans for species of special concern and other resources need to be drafted to fulfill the PFBC's mandate for these resources. The work of the Natural Diversity Section and partners must be responsive to the dynamics of information that is generated on an ongoing basis.

The proposed WPC Associate position will assist the PFBC's Natural Diversity staff in three special project areas to meet the objectives concerning species conservation: Pennsylvania Natural Diversity Inventory (PNDI) reviews and impact evaluations, timber rattlesnake management, and the research and development of conservation/management plans. The Associate will be an employee of WPC hired in close coordination with the PFBC. The Associate will also function as a PFBC/Pennsylvania Natural Heritage Program (PNHP) liaison supporting the role that the WPC plays in the PNHP. The activities to be supported by this proposed Associate build upon work previously funded by a variety of other programs.

To summarize, this project is designed to assist the Natural Diversity Section staff with priority planning and other activities directly related to the jurisdictional responsibilities of the PFBC. Activities include developing species conservation and management plans, general program support, basic research, environmental review of permits potentially damaging to aquatic life and herptiles, and outreach to the public. PFBC staff recommend a grant of \$60,000 to WPC to implement this project for an initial term of one-year. WPC will contribute the 25% non-federal match.

(4) Western Pennsylvania - Conservation Planning and Assistance to Natural Diversity Section, PA Fish and Boat Commission – the Western Pennsylvania Conservancy (WPC)

This position is analogous to the position described in (3) but covers the western portion of Pennsylvania for a two-year period. The Associate selected to fill this position will have expertise in malacology (mussel biology). Given the issues with sand and gravel dredging in recent years and ongoing mussel survey work being conducted in the Ohio River Basin, there is a need for the PFBC to have access to expertise on freshwater mussels. PFBC staff recommend a grant of \$124,000 to WPC to implement this project for an initial term of two-years. WPC will contribute the 25% non-federal match.

(5) Mussel Survey and Translocation at Carter's Dam, Conewango Creek, Warren, Pennsylvania – the Western Pennsylvania Conservancy (WPC)

The need for this project has arisen due to the Pennsylvania Department of Environmental Protection's (DEP) proposed removal of Carter's Dam on Conewango Creek in Warren, Pennsylvania. The Commonwealth of Pennsylvania has identified this low-head, run-of-river dam as an "abandoned" structure that is creating a hazard to public safety. The hazard can be eliminated by removal of the dam. Removal of the dam has been requested by DEP, PFBC and the U.S. Fish and Wildlife Service as mitigation for impacts on aquatic organisms and habitat associated with the Pennsylvania Department of Transportation's (DOT) nearby Hickory Street Bridge replacement project. DOT has agreed to provide manpower and equipment to remove the dam as part of the permit conditions to replace the bridge. In the short-term, the removal of dam may have potential detrimental effects on local mussel fauna. However, it is anticipated that long-term benefits of the project will improve habitat for mussels and other riverine species and allow unrestricted upstream movement of host fish species critical for mussel reproduction and distribution.

The northern riffleshell mussel, a state and federally endangered species, was historically found in Conewango Creek and could be present below the dam. During a summer 2001 mussel survey, the northern riffleshell was found approximately 900 feet downstream of the confluence of Conewango Creek with the Allegheny River. In addition to the northern riffleshell, up to 18 other mussel species, including several rare species, may inhabit the area.

This project will identify mussel species and abundance allowing evaluation of potential direct and indirect impacts to mussels in areas around the dam prior to its removal. It will also evaluate the practicality of implementing specific avoidance measures (translocation) to protect rare mussels during the dam's removal. Work will be performed by the WPC. Funding will be provided from several sources. DEP will transfer \$8,500 to the PFBC, and the PFBC will combine the DEP funding with \$16,500 of SWG funds for a total grant of \$25,000 to WPC. In addition, American Rivers will contribute \$8,000 directly to WPC, bringing the total funds for the project to \$33,000.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to approve a State Wildlife Grant to Shippensburg University for "At-risk

Herptile Species Surveys and Status Assessments” as more fully described in the Commentary. Motion carried.

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to approve a State Wildlife Grant to the Western Pennsylvania Conservancy for “Freshwater Mussel Spatial Distributions and Habitat Use in the Navigational Pools of the Allegheny River” as more fully described in the Commentary. Motion carried.

A motion was made by Commissioner Mahon and seconded by Commissioner Sabatose to approve a State Wildlife Grant to the Western Pennsylvania Conservancy for “Eastern Pennsylvania - Conservation Planning and Assistance to Natural Diversity Section, PA Fish and Boat Commission” as more fully described in the Commentary. Motion carried.

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to approve a State Wildlife Grant to the Western Pennsylvania Conservancy for “Western Pennsylvania - Conservation Planning and Assistance to Natural Diversity Section, PA Fish and Boat Commission” as more fully described in the Commentary. Motion carried.

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to approve a State Wildlife Grant to the Western Pennsylvania Conservancy for “Mussel Survey and Translocation at Carter’s Dam, Conewango Creek, Warren, Pennsylvania” as more fully described in the Commentary. Motion carried.

LAW ENFORCEMENT PROPOSED RULEMAKING

A. Charter Boat/Fishing Guide Regulations.

Commentary:

Pursuant to Act 159 of 2004, persons operating charter boat or fishing guide operations on the waters of this Commonwealth are now required to obtain a charter boat/fishing guide permit from the Commission. The new law went into effect on January 1, 2005. However, the Commission has decided to defer implementation of the permit requirement pending the promulgation of rules and regulations for the new program.

The Executive Director established a workgroup consisting of Commission staff and 21 charter boat/fishing guides from across the Commonwealth and assigned them the task of developing the regulations. The group formally met in January and March 2005 to discuss issues pertaining to this new program. With tremendous input from the charter boat/fishing guides, staff drafted the regulations set forth in Exhibit L. The draft regulations address the majority, if not all, of the concerns raised by the workgroup.

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Recommendation:

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

Action:

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

OTHER MATTERS

B. Refund of Erroneously Collected Fine.

Commentary:

On February 6, 2005, Nicholas A. Basko was issued citation #263284 for possessing two hybrid striped bass on Conneaut Lake in violation of the minimum size limit of 20 inches for inland waters. The two fish, which were confiscated, measured 15" and 15 ¼" and displayed broken dark lines down the sides and tooth patches on the tongues consistent with those of hybrid striped bass. The officer who filed the citation routinely identifies hybrid striped bass and white bass on nearby Shenango Reservoir in his home district, but due to a vacancy, he is currently providing law enforcement coverage on Conneaut Lake).

After filing the citation, the officer learned that Conneaut Lake does not contain striped hybrid bass but rather contains a population of extremely large white bass. (The last three state record White Bass are from Conneaut Lake). The fish in question were taken to the Linesville State Hatchery for identification, and it was confirmed that the fish are white bass for which there is no minimum size limit. Some abnormal side markings on both fish and one abnormal tooth patch on one of the fish were noted.

Realizing the error, the officer contacted the district court where the citation had been filed in an attempt to withdraw the charge. Unfortunately, Mr. Basko had already pleaded guilty and paid the fine, and the district court was unable to refund Mr. Basko's payment.

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

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Recommendation:

Staff recommend that the Commission authorize the payment of \$50.00 from the Fish Fund to Mr. Nicholas A. Basko, Meadville, PA, as a refund for a fine erroneously imposed.

Action:

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

Other New Business

Commissioner Pflugfelder sought clarification regarding the action taken on the reptile and amphibian regulation changes. He stated that he wanted a public comment period of 90 days to occur and that final rulemaking action should not occur until the September 2005 Commission meeting. Dr. Austen assured Commissioner Pflugfelder that final rulemaking action would not occur before the September 2005 Commission meeting.

Commissioner Sabatose announced that a Fisheries Committee meeting will be held on June 21, 2005, at 10:00 a.m. in Harrisburg. Hatchery recirculation technology will be among the topics of discussion.

Time and Place of July Commission Meeting

The next meeting is scheduled for July 18-19, 2005 and will be held at the Commission's headquarters in Harrisburg.

Adjournment

A motion was made by Commissioner Mahon and seconded by Commissioner Czop to adjourn the meeting at 10:45 a.m. Motion carried.