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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 69th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, July 18 and 19, 2005, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on July 18 beginning at or about 9:45 a.m. and on July 19 at or about 9:00 a.m. The public session for review of this agenda began at or about 10:15 a.m. on July 19.

Call to Order

The meeting was called to order by Vice-President Richard W. Czop 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

* Present via telephone

Review and Approval of Minutes from the April 2005 Meeting

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

Awards and Presentations

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

Carolyn Erikson of Newtown Square who was named as the grades 4-6 winner for Pennsylvania. She also took 2nd place in the National Best of Show in her age group.

Evan Martin of East Earl who took first place honors for grades 7-9. The victory was his second consecutive, having previously won in 2004. Evan was also National Best in Show for his age group.

Mike Wisniewski of Mountaintop who garnered top state honors in the grades 10-12 category.

The Commission presented all winners with walleye prints.

Election of Commission President and Vice President

Commissioner Sabatose nominated Commissioner Richard W. Czop as President. Commissioner Concilla seconded the nomination. A motion was made by Commissioner Sabatose and seconded by Commissioner Keir to close the nominations. The motion was carried, and nominations were closed. The Commission elected Commissioner Czop to serve as President of the Commission for 2005-2006.

Commissioner Mahon nominated Commissioner Howard E. Pflugfelder, Jr. as Vice-President. Commissioner Concilla seconded the nomination. Commissioner Sabatose nominated Commissioner Donald K. Anderson as Vice-President. Commissioner Keir seconded the nomination. A motion was made by Commissioner Czop and seconded by Commissioner Mahon to close the nominations. The motion was carried, and nominations were closed.

A roll call vote for Commissioner Pflugfelder for Vice-President followed:

Commissioner Anderson – abstained
Commissioner Concilla – yes
Commissioner Czop – yes
Commissioner Huhn – no
Commissioner Keir – no
Commissioner Mahon – yes
Commissioner Pflugfelder – yes
Commissioner Sabatose – no

There were four yes votes, three no votes and one abstention. Commissioner Pflugfelder did not receive a majority of the votes and thus was not elected.

A roll call vote for Commissioner Anderson for Vice-President then followed:

Commissioner Anderson – abstained
Commissioner Concilla – no
Commissioner Czop – no
Commissioner Huhn – yes
Commissioner Keir – yes
Commissioner Mahon – no

Commissioner Pflugfelder – no
Commissioner Sabatose – yes

There were three yes votes, four no votes and one abstention. Commissioner Anderson did not receive a majority of the votes and thus was not elected.

Commissioner Anderson nominated Commissioner William J. Sabatose as Vice-President. Commissioner Czop seconded the nomination. Commissioner Czop nominated Commissioner Howard E. Pflugfelder, Jr. as Vice-President. A motion was made by Commissioner Mahon and seconded by Anderson to close the nominations. The motion was carried, and nominations were closed.

A roll call vote for Commissioner Sabatose for Vice-President followed:

Commissioner Anderson – yes
Commissioner Concilla – no
Commissioner Czop – no
Commissioner Huhn – yes
Commissioner Keir – yes
Commissioner Mahon – no
Commissioner Pflugfelder – no
Commissioner Sabatose – abstained

There were three yes votes, four no votes and one abstention. Commissioner Sabatose did not receive a majority of the votes and thus was not elected.

A roll call vote for Commissioner Pflugfelder for Vice-President then followed:

Commissioner Anderson – yes
Commissioner Concilla – yes
Commissioner Czop – yes
Commissioner Huhn – abstained
Commissioner Keir – no
Commissioner Mahon – yes
Commissioner Pflugfelder – yes
Commissioner Sabatose – yes

There were six yes votes, one no vote and one abstention. Commissioner Pflugfelder received a majority of the votes and thus was elected. Commissioner Pflugfelder will serve as Vice-President of the Commission for 2005-2006.

Dr. Austen extended a thank you to Commissioner Concilla for his last two years of service as President. Commissioner Concilla then thanked the Commissioners and Commission staff for their long, hard work and for allowing the Commission to advance at a much more rapid pace than ever expected. He noted, however, that the work is not done, and there will continue to be challenges into

the future, which will include enhancing the boating program. Commissioner Concilla closed by thanking everyone for their support and by wishing them good luck.

Commissioner Sabatose stated that he wanted it to be known that even though the Commission recently went through two really difficult years, Commissioner Concilla led us all through this rough time. As an expression of gratitude, a round of applause followed.

Commissioner Czop mentioned that he appreciated the Commissioners' enthusiasm, and although some Commissioners' terms would soon be expiring, he has enjoyed working with such a nice group. He also personally thanked Commissioner Concilla for all of his service.

Executive Director's Report

Dr. Austen covered several items in his Executive Director's report. He noted that the fiscal picture of the Commission has changed dramatically over the past 12 months. It is a tremendous pleasure to see what the Commission has accomplished.

Dr. Austen extended thanks to our conservation partners who supported House Bill 2155. A few of those mentioned were Pennsylvania Federation of Sportsmens Clubs; Trout Unlimited; Pennsylvania B.A.S.S. Association; Boating Associations, PFBC Commissioners and PFBC staff. Legislators such as Representative Bruce Smith, Representative Ed Staback, Senator Mary Jo White, Senator David Brightbill, Representative Sam Smith, and Senator Jane Earl also assisted in this effort. In addition, Governor Rendell's staffers, Steve Crawford and Colleen Kopp, were commended for their assistance. PFBC Legislative Liaison, Gary Moore, spent many days at the Capitol talking with staff and coordinating efforts. There was also great support from Tom Ford, Director of Policy and Planning; Brian Barner, Director, Bureau of Administration; and Dan Tredinnick, Press Secretary.

Dr. Austen mentioned that the passage of Growing Greener II has changed the Commission's balance sheet from the planned expenditure of over \$20 million in principle and interest on a loan to the current position of \$27.5 million to invest in the Commonwealth's hatcheries and dams. He noted that this changes the balance sheet by an amount of nearly \$50 million.

Governor Rendell signed the Growing Greener II bill last week. Dr. Austen noted that this again was the culmination of a great team of people putting this together. This is a wonderful example of the work that has resulted in allowing the Commission to move forward with, for the first time in years, a positive fiscal foundation.

Dr. Austen mentioned that the "PFBC Activity Report – Second Quarter 2005" (Exhibit M) has been provided to Commissioners, and it includes an update of major activities and accomplishments over the last quarter. Staff will be providing this report, which describes a variety of activities, at future quarterly Commission meetings. Dr. Austen highlighted five items that are included in the Activity Report. He highlighted the efforts of the Lake Erie Citizens Advisory Committee. He commended Bureau Director John Simmons and Program Facilitator Scott Bollinger for their hard work in putting the Boating Facility Grant Program together. He praised Dick Mulfinger, Director, Bureau of Engineering and Development, and his staff for their efforts and the tremendous work load that they have undertaken to enhance the Commission's access areas. He noted that the Waterways Conservation Officer Cadet graduation ceremony is scheduled for September 7 and that the

Commission has finalized its agreement with the Pennsylvania Department of Environmental Protection regarding the sand and gravel dredging issues on the Allegheny River.

Finally, Dr. Austen asked that everyone keep their thoughts and prayers with Commissioners and their families. Those individuals include Sharon Concilla, Commissioner Huhn, Commissioner Czop's father and others who have had family health issues, deaths or sickness. It is hoped that they all return to good health and can be part of the families that we hope and dream for.

Announcement of Executive Sessions

Commissioner Czop announced that an Executive Session was held on Monday, July 18, at 8:00 a.m. Personnel and litigation issues were discussed. An Executive Session also was held on Monday, July 18, at 5:00 p.m. Litigation issues were again discussed.

Reports of Commissioner Committees

Commission Policy (Dr. Austen) -

The Policy Committee met on Tuesday, July 19, at 9:00 a.m. Dr. Austen provided an update on the Three Rivers Ecological Center and led a discussion on the pending agenda items. Gary Moore, Legislative Liaison, provided an update on legislative matters, which included a review of legislative strategies, One Day Tourist Licenses, Growing Greener II conservation funding, and pending bills.

Education and Publications (Commissioner Keir) –

The Education and Publications Committee met on Monday, July 18, at 11:30 a.m. Ted Walke, Manager, Educational Media Services, provided a presentation on *Angler & Boater* magazine promotional efforts. Dan Martin, Boating Safety Education Manager, gave a boating accident update. He explained that duplicate Boating Safety Certificates can be accessed through the Commission's website. Carl Richardson, Aquatic Resource Education Manager, provided a sports show review report. Commission staff provided sports show coverage for 136 days of shows over a one year time period.

Law Enforcement (Commissioner Anderson) –

The Law Enforcement Committee met at 1:15 p.m. on Monday, July 18. One agenda item was discussed. Tom Kamerzel provided an update on the recruitment efforts of new officers and explained the officer differential pay issues. A new class of officers will start in August 2006. The current class of Waterways Conservation Officers will graduate on September 7, 2005. Thirteen vacancies currently exist in the Bureau of Law Enforcement. A training class for 50 new Deputy Waterways Conservation Officer will occur in January 2006.

The Committee also acted upon proposed revocations and suspensions. The Committee revoked the fishing privileges of six individuals for one year. The Committee revoked the boating privileges of one individual for one year and ordered the individual to take a safe boating course. In addition, the Committee considered the proposed suspension of the boating privileges of Timothy A. Heffner. Following a hearing, the Commission's hearing officer prepared a proposed report, recommending that Mr. Heffner's privileges be suspended for a period of one year for his refusal to submit to chemical testing upon being placed under arrest for boating under the influence. Mr. Heffner's

attorney filed exceptions to the proposed report, and the entire case file was forwarded to the Committee for consideration. The Committee approved the proposed report and suspended Mr. Heffner's privileges for a period of one year, beginning July 22, 2005 and ending July 21, 2006.

Fisheries (Commissioner Sabatose) –

The Fisheries Committee met at 2:15 p.m. on Monday, July 18. Agenda items were discussed, and the Committee recommended modifications to the item pertaining to simplification of trout regulations. The Committee also recommended approval of the removal of Section 03 of Cross Fork from the list of Class A Wild Trout Waters under the condition that staff will bring future stocking decisions pertaining to this section to the Commission. The Committee took no action with regard to the item pertaining to §63.3 (relating to fishing in approved trout waters). However, as chair of the Fisheries Committee meeting, Commissioner Sabatose recommended support of the amendment.

Boating (Commissioner Anderson) –

The Boating Committee met at 10:15 a.m. on Monday, July 18. John Simmons, Director, Bureau of Boating and Education, led the discussion of agenda items. The Commission received 30 applications for the Boating Facility Grant Program. Eight did not meet the necessary criteria, the Executive Director approved 14 grants that were under \$100,000, and the Committee considered eight grants for projects over \$100,000.

Engineering and Development (Commissioner Czop) –

The Engineering and Development Committee met at 1:30 p.m. on Monday, July 18. Dick Mulfingher, Director, Bureau of Engineering and Development, provided a project and schedule update. The Committee discussed the agenda item regarding the Big Spring Creek property and supports leasing a portion of the property to the Big Spring Watershed Association.

Public Comment to Commissioners and Staff

Bill Anderson, President, Little Juniata River Association, commented on the proposed changes to simplify the trout regulations. He advocated that the Little Juniata River, in addition to some other streams, be added to the Catch and Release All-Tackle program.

Donny Beaver, Spring Ridge Club, commented on the proposal to amend section 63.3 (relating to fishing in approved trout waters).

EXECUTIVE OFFICE

A. 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 draft policies developed thus far relate to personnel management, political activities, the Sunshine Law, meetings and the rulemaking process. Copies of the draft policies have been provided to all Commissioners.

Recommendation:

Staff recommend that the Commission approve the five operational policies in draft form with final approval contingent upon Commissioners and staff developing a policy handbook by the September 2005 Commission meeting.

Briefer:

Dr. Douglas J. Austen, Executive Director

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve the five operational policies in draft form with final approval contingent upon Commissioners and staff developing a policy handbook by the September 2005 Commission meeting. Motion carried.

B. Approval of Fisheries Reorganization.

Commentary:

Recent staffing changes within the Commission in general and the Bureau of Fisheries in particular prompted staff to consider options for reorganization within the Bureau of Fisheries. The major organizational changes include:

(1) Assigning the Division of Environmental Services to the Bureau of Fisheries on a permanent basis. This division was previously assigned to the Deputy Executive Director/Chief Counsel and was assigned to the Bureau of Fisheries on an interim basis in March 2004.

(2) Combining the Divisions of Research, Warmwater/Coolwater Production and Trout Production and creating a new Division of Fish Production. This new division includes the Regional Fish Production Manager for Northern Hatcheries, which has both administrative and operational responsibilities for State Fish Hatcheries north of route 80; the Regional Fish Production Manager for Southern Hatcheries, which has both administrative and operational responsibilities for State Fish Hatcheries south of route 80; and the Fish Production Services Manager (formerly the Research Division), which continues to include hatchery related functions of the former division plus the Cooperative Nursery Unit that was reassigned from the former Division of Trout Production.

There are no changes in the Division of Fisheries Management at this time.

Copies of the organization charts showing the changes in reporting assignments have been provided to the Commissioners. The reorganization results in nominal costs to the agency and will facilitate greater operational efficiency.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission approve the reorganization within the Bureau of Fisheries as described above.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Keir to approve the reorganization within the Bureau of Fisheries as described above. Motion carried.

C. Partners Coalition of the National Fish Habitat Initiative.

Commentary:

The National Fish Habitat Initiative (NFHI) is a response by a wide variety of organizations and a diversity of conservation partners to address the critical problem of habitat degradation and resulting impacts on aquatic life. The NFHI is being led by a broad consortium that includes the U.S. Fish and Wildlife Service and other federal agencies, the International Association of Fish and Wildlife Agencies, the American Fisheries Society, The Nature Conservancy, BASS, the National Fish and Wildlife Foundation and a number of state natural resource agencies. The primary mechanism for supporting the NFHI effort is through the partners council, and states resource agencies are being asked to join this effort. The Pennsylvania BASS Federation already has demonstrated its commitment by signing up as a member of the NFHI Partners Coalition, and it is expected that the PA Habitat Alliance will soon join the effort.

As of the date of agenda preparation, the following was a list of members of the Partners Coalition: Sport Fishing and Boating Partnership Council; Bass Pro Shops; BASS/ESPN Outdoors; U.S. Fish and Wildlife Service; NOAA National Marine Fisheries Service Office of Sustainable Fisheries; Office of Surface Mining Reclamation & Enforcement; Arkansas Game and Fish Commission; Florida Fish and Wildlife Conservation Commission; Indiana Department of Natural Resources; Massachusetts Division of Fisheries and Wildlife; Oklahoma Department of Wildlife Conservation; Southeast Aquatic Resources Partnership; Alabama B.A.S.S. Federation; American Fisheries Society; American Sportfishing Association; Boat U.S.; California BASS Federation; Colorado Rio Grande Restoration Foundation; Fisheries Forever; International Association of Fish and Wildlife Agencies; Kansas Bass Chapter Federation; West Virginia BASS Federation; National Fish and Wildlife Foundation; Pennsylvania Bass Federation; Recreational Boating and Fishing Foundation; South Dakota Bass Federation; Texas BASS Federation; Theodore Roosevelt Conservation Partnership; Trout Unlimited; and Utah BASS Federation. New members are joining everyday.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission become a member of the Partners Coalition of the National Fish Habitat Initiative.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder that the Commission become a member of the Partners Coalition of the National Fish Habitat Initiative. Motion carried.

D. Run-of-the-River Dam.

Commentary:

Act 1998-91 amended the Fish and Boat Code by adding section 3510 (relating to marking of dams). This section applies to owners of existing run-of-the-river dams and permittees for the construction or installation of new run-of-the-river dams. Specifically, it requires the owners of dams identified by the Department of Environmental Protection (DEP) as meeting the statutory definition of a "run-of-the-river" dam to mark the areas above and below the dams and on the banks immediately adjacent to the dams with signs and buoys. The design and content of these signs and buoys was determined by the Commission after consultation with DEP. The signs are intended to warn the swimming, fishing and boating public of the hazards posed by the dam.

Section 3510 of the code provides that any person who fails to comply with the marking requirements shall forfeit and pay a civil penalty of not less than \$500 nor more than \$5,000. This section further provides that any person who fails to comply with the maintenance requirements shall forfeit and pay a civil penalty of not less than \$250 nor more than \$5,000.

On March 31, 1999, DEP sent a letter to Mr. David Smucker identifying him as the owner of Dam No. 36-220, which DEP had identified as a run-of-the-river dam. This dam is located on Groff Run in Lancaster County. Mr. Smucker signed for the letter on April 1, 1999. On February 22, 2005, the Commission sent a certified letter to Mr. Smucker informing him that his dam was not marked in compliance with section 3510 of the code. This letter was received and signed for by Elizabeth K. Smucker on February 25, 2005. The February 22, 2005 compliance letter asked Mr. Smucker to mark his dam and send back an enclosed affidavit with pictures to show the dam had been marked.

Mr. Smucker failed to respond to the February 22, 2005 letter. Accordingly, on March 28, 2005, the Commission issued an Order to Show Cause to Mr. Smucker, which was received and signed for by a member of the Smucker residence on April 1, 2005. Mr. Smucker did not respond to the Order to Show Cause, did not request a hearing, did not enter an appearance and did not answer the Order to Show Cause. More than 30 days have elapsed from the issuance of the Order to Show Cause. In accordance with 58 Pa. Code § 51.104(b), Mr. Smucker has waived his right to a hearing, and the averments of the Order to Show Cause are deemed admitted.

The written file has been forwarded to the Commissioners for review. A summary of the written file reveals the following facts: (a) Mr. Smucker was subject to a prior Order to Show Cause for not marking his dam on October 21, 2003; (b) in response to the prior Order to Show Cause, Mr. Smucker twice requested an extension of time to order signs and mark his dam on November 5, 2003 and January 22, 2004; (c) on June 2, 2004, Commission staff sent a follow-up letter to Mr. Smucker because he did not send an affidavit and photographs demonstrating that he installed the signs, and Mr. Smucker did not respond to that letter; (d) on July 11, 2004, the district waterways conservation officer

inspected the dam and indicated that it was not marked; (e) Mr. Smucker was sent another compliance notice on February 22, 2005 to which he did not respond; and (f) Mr. Smucker was sent a second Order to Show Cause on March 28, 2005 to which he did not respond.

The Commission's regulations at 58 Pa. Code §51.105 provide guidelines for determining the amount of civil penalties. Applying those guidelines to this case, staff have determined that a base fine of \$2,000 is justified. This base fine takes into account that Commission staff offered Mr. Smucker multiple opportunities to correct the violations, and he chose to ignore them, which evidences at the very least reckless misconduct on his part.

In addition, Commission staff spent numerous hours inspecting the dam, issuing the compliance letters and Orders to Show Cause and following up with Mr. Smucker. Therefore, the costs to the Commonwealth should be considered in assessing the civil penalty. Staff recommend an additional \$400 be added to base fine to cover the Commonwealth's costs.

Last, the dam owner realized an economic benefit for his noncompliance by failing to purchase signs to mark the dam. The cost of the signs is \$80. Staff propose an additional \$80 be added to the base fine to cover the economic benefit to Mr. Smucker for his non-compliance.

Briefer:

Jason E. Oyler, Assistant Counsel

Recommendation:

Staff recommend that the Commission review the entire written file for this case and order the forfeiture of civil penalties by Mr. Smucker in the amount of \$2,480.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to defer action until the September 2005 Commission meeting to allow staff to revisit the issue with the dam owner and to give him an opportunity to mark his dam and avoid the forfeiture of civil penalties. Motion carried.

E. Hatchery Funding.

Commentary:

At the December 12, 2002 meeting, the Commission gave staff approval to advance the paperwork for certain hatchery projects during the first quarter of 2003. These projects included Benner Springs - \$2.3 M; Bellefonte - \$2.1 M; Pleasant Gap - \$2.3M; Tylersville - \$1.9 M; Huntsdale - \$3.3 M and others.

Currently, Commission staff are working with the Department of Environmental Protection (DEP) on an Interagency Agreement (pertaining to the five hatcheries and Union City) and NPDES permits for hatcheries (Huntsdale and Bellefonte). The Tylersville project is ready to be bid for construction. The design for Pleasant Gap is complete and is ready to bid soon. With regard to Bellefonte, Benner Springs and Huntsdale, the architect-engineer has been selected and is ready to move forward upon DEP and Commission approval.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission authorize the Executive Director to proceed with all necessary actions to implement hatchery upgrades at the Bellefonte, Benner Springs, Pleasant Gap, Tylersville and Huntsdale State Fish Hatcheries. Recently approved Growing Greener funds or the equivalent will be used, and a full report will be given at a future Commission meeting.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to authorize the Executive Director to proceed with all necessary actions to implement hatchery upgrades at Bellefonte, Benner Springs, Pleasant Gap, Tylersville and Huntsdale State Fish Hatcheries. Recently approved Growing Greener funds or the equivalent will be used, and a full report will be given at a future Commission meeting. Motion carried.

BOATING FINAL RULEMAKING

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

Commentary:

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

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

A notice of proposed rulemaking containing these proposed amendments was published at 35 Pa. B. 2394 (April 23, 2005) (Exhibit A). The Commission did not receive any public comments regarding the proposals.

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. If adopted, these changes will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to adopt the amendments as set forth in the notice of proposed rulemaking. These changes will go into effect on January 1, 2006. Motion carried.

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

Commentary:

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

At the October 2004 Commission meeting, the Commission granted staff an additional period of 90 days to gather information regarding the use of radar to enforce speed limits on Commonwealth waters. Staff therefore polled other states and found that relatively few states use radar extensively. The states that do, Maryland, Florida and Missouri, primarily use radar on waters with narrow channels or rivers where the boat traffic is relatively constrained. All have indicated that there are limitations on the use of radar on open waters with heavy boat traffic.

A notice of proposed rulemaking containing the proposed amendment was published at 35 Pa. B. 2394 (April 23, 2005) (Exhibit A). The Commission received two public comments, both supporting the proposal. After the public comment period, the Commission received two public comments, one supporting the proposal and the other opposing it. Copies of all public comments have been provided to the Commissioners.

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, this change will go into effect on January 1, 2006.

Action:

A motion was made by Commission Mahon and seconded by Commissioner Pflugfelder to adopt the amendment as set forth in the notice of proposed rulemaking. This change will go into effect on January 1, 2006. Motion carried.

OTHER MATTERS

C. Statewide Boating Facility Grant Program.

Introduction:

At its January 2005 meeting, the Commission approved the creation of a grant program providing funds to local governments for the purpose of constructing and improving access for boats. Funds for this program are to be derived primarily from boat registration fees and state motorboat fuels tax. In certain instances, federal aid will also be used if appropriate. During its initial year, \$2,000,000 was allocated for the program. The Commission authorized the Executive Director to approve grants of up to \$100,000 and reserved the approval authority for grants over \$100,000 to itself.

Staff solicited applications for these grants and received 30 applications by the April 30, 2005 deadline. Since April, staff have been meeting with applicants to refine and further understand their proposals. Two projects were rejected as not meeting the minimum criteria of the program, and two project sponsors were not eligible for program grants. Meetings also were held to rank the applications using an established point value system. On May 20, 2005, Executive Director Austen granted approval to proceed with 14 grants for \$100,000 or less. Grants were not awarded for four projects because staff deemed one project as not being needed and determined that three projects could not be completed by the June 30, 2006 deadline because of their preliminary nature.

Staff presented the following eight projects for Commission consideration:

1. Allegheny River - Borough of Sharpsburg, Allegheny County.

Commentary:

Grant Request: \$150,000 Applicant Cash: \$10,000

The Borough of Sharpsburg lies within the Pittsburgh Pool (Emsworth Pool) on the Allegheny River. The grant will fund the construction of a two-lane boat launch and an asphalt parking lot. The access road also will be reconstructed and paved. A wall along the river front will be constructed to stabilize the shoreline and allow for handicapped fishing. This facility is very important as it will be only the second access in the Emsworth Pool.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$150,000 to the Borough of Sharpsburg, Allegheny County, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Pflugfelder to approve a grant in the amount of \$150,000 to the Borough of Sharpsburg, Allegheny County, as more fully described in the Commentary. Motion carried.

2. Shades Beach Boat Launch, Lake Erie – Township of Harborcreek, Erie County.

Commentary:

Grant Request: \$300,000 Applicant Cash: \$200,000 Other: \$1.7 million

The Township proposes an extensive project to provide access and safe harbor on Lake Erie. The Harborcreek Boat Launch will provide the only safe harbor of refuge between North East Marina and Presque Isle Bay. The Township proposes to construct a rubble break wall, a 4-lane launch ramp and a pedestrian walkway to a currently existing parking lot. This is a very large project with an estimated price tag of \$2.2 million.

For this project to succeed, funding will have to be secured from a number of sources, including C2P2, National Scenic Byways and State Capital Budget. This project hinges on the Governor's releasing \$1 million from the State Capital Budget. Without this funding, the project cannot happen. Any agreement between the Commission and the Township to facilitate our funding will state that the Commission's grant is contingent upon the Governor's releasing funds from the State Capital Budget.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$300,000 to the Township of Harborcreek, Erie County, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Keir to approve a grant not to exceed \$300,000 to the Township of Harborcreek, Erie County, as more fully described in the Commentary. Motion carried.

3. Susquehanna River Boat Launch and Park – Steelton Borough, Dauphin County.

Commentary:

Grant Request: \$150,000 Applicant Cash: \$50,000 Other: \$250,000

Steelton Borough has aggressively pursued the development of quality of life projects within borough boundaries. The Department of Conservation and Natural Resources has awarded two grants for the development of park facilities, including two grants totaling \$250,000 for the completion of the Susquehanna River Boat Launch and Park. With these initial grants, the Borough was able to acquire additional land through purchase and long term leases. They completed a conceptual master plan and began preliminary site preparation, including the construction of a new boat launch. Phase 2 of the project will be the construction of additional facilities. The Commission is being asked to participate in those portions of the project that directly relate to the boat launch (i.e., entrance road improvements, utility extensions, paving of boat parking and staging areas, provision for handicapped accessible rails and ramps at the boat launch and the provision of restroom facilities).

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$150,000 to Steelton Borough, Dauphin County, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve a grant in the amount of \$150,000 to Steelton Borough, Dauphin County, as more fully described in the Commentary. Motion carried.

4. Lock 57 Community Park, Little Beaver Creek – Ohioville Borough, Beaver County.

Commentary:

Grant Request: \$187,000 Applicant Cash: \$58,000 Other: \$74,000

The Borough of Ohioville currently has a lease from the Corps of Engineers on property along the Little Beaver Creek at the mouth of the Ohio River. The Borough is currently negotiating a renewal of this lease that will qualify the property for development under the Facilities Grant Program. The PFBC also had negotiated an agreement with the Borough for the development of this site, but that agreement was never executed. The Borough now envisions the development of this property into a community park that will include an access road, boat launch, parking area and vault restrooms. Future development will include a handicapped accessible fishing pier and a picnic pavilion. This project has received a great deal of local community support and will provide needed access to the Ohio River.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$190,000 to the Borough of Ohioville, Beaver County, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve a grant in the amount of \$190,000 to the Borough of Ohioville, Beaver County, as more fully described in the Commentary. Motion carried.

5. Delaware River – Pleasant Hill Park, City of Philadelphia, Philadelphia County.

Commentary:

Grant Request: \$517,584 Applicant Cash: \$200,000 Other: \$100,000

The Philadelphia Recreation Department is currently completing a master plan for the revitalization of the Pleasant Hill Park in NE Philadelphia. One of the major recommendations of the draft master plan is the redesign of the parking lot to eliminate some impervious surface and to reclaim riverfront access for pedestrian use. The plan proposes the demolition of the current parking lot, moving it landward and reducing the number of total parking spaces. The number of parking spaces for boat trailers will remain essentially the same after the work is completed. One benefit to boaters will be that non-boating parking will be eliminated and “partying” will be discouraged. The City is asking for funds to demolish the current facilities, reconstruct a new parking lot 150 feet inland, pave the parking lot and replace the boat ramp, and reclaim the river bank with native vegetation. Vehicles with boat trailers will have a separate entrance to their parking lot.

Improvements to this facility are much needed. However, the majority of the costs are tied up in the removal of existing parking. When completed, 42 spaces will be available for boat trailers, the same as is currently available. The new parking configuration will allow for slightly better traffic patterns. Staff have inspected the facility and met with the applicant and its consultants. Staff have determined that the ramp is in good condition and only needs repairs to extend its life.

Staff therefore recommend that funds be allocated to make the needed repairs to the ramp and courtesy dock. Additional funds may be requested in future grant rounds to complete the work on this project.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$125,000 to the City of Philadelphia, Philadelphia County, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve a grant in the amount of \$125,000 to the City of Philadelphia, Philadelphia County, as more fully described in the Commentary. Motion carried.

6. Penn Hills Riverfront Boat Access, Allegheny River – Penn Hills Township, Allegheny County.

Commentary:

Grant Request: \$479,000 Applicant Cash: \$16,000 Other: \$50,000

The Municipality of Penn Hills proposes to acquire approximately 5 acres of land along the Allegheny River for the development of a boat launch and fishing access and supporting facilities that include parking lots, picnic shelters, landscaping and signage.

Several issues exist relative to this project. The Municipality does not yet own the property. Along with the purchase, Penn Hills will also have to acquire a public railroad crossing. Both of these issues could take time to resolve and would probably mean that development of the boat launch facilities could not occur in the 2005-06 fiscal year.

Consequently, the project approval should be divided into manageable parts. First, Penn Hills should acquire the property and then apply for development funds in subsequent grant rounds. This approach will not tie up funds unnecessarily in the current round of grants for activities that have a high likelihood of not being completed. However, approval of the purchase of the land and the railroad crossing automatically places the project high on the list for funding in subsequent grant rounds. For this reason, the grant is being presented for Commission action even though the current grant will be less than the established \$100,000 threshold for required Commission action.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$90,000 to Penn Hills Township to be used for property acquisition at 50% of the appraised value and 100% of the costs associated with the engineering and permitting of the railroad crossing.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve a grant not to exceed \$90,000 to Penn Hills Township to be used for property acquisition at 50% of the appraised value and 100% of the costs associated with the engineering and permitting of the railroad crossing. Motion carried.

7. Shady Nook Access, Susquehanna River – Monroe Township, Snyder County.

Commentary:

Grant Request: \$142,298 Applicant Cash: \$46,795 Other: \$1,100

Monroe Township is in the process of obtaining title to a boat launch originally constructed by PPL on lands within the Township. PPL has sold the power plant and is divesting itself of unneeded property. The launch is in excellent condition. The current access road, however, is in less than idea condition and enters the property across other PPL lands. The Township proposes to construct a more direct road to the launch and expand existing parking. This work will improve access to the launch and eliminate a potential problem when PPL disposes of the other property over which the current access road traverses. The Township proposes to acquire additional property and right-of-way for the road using Township funds and will use grant funds to construct the road surface and the parking.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$145,000 to Monroe Township, Snyder County, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve a grant in the amount of \$145,000 to Monroe Township, Snyder County, as more fully described in the Commentary. Motion carried.

8. Chestnut St. Boat Launch Improvement, Presque Isle – Erie-Western Pennsylvania Port Authority, Erie County.

Commentary:

Grant Request: \$200,000 Applicant Cash: \$100,000 Other: \$50,000

The Erie-Western Pennsylvania Port Authority currently operates a popular boat launch that they acquired from the City of Erie at the foot of Chestnut Street. The facility originally consisted of a protected harbor inside a breakwall and a two-lane boat launch ramp outside the breakwall. The Authority constructed a new two-lane ramp inside the breakwall and closed the existing launch ramp because of its unsafe condition. The Authority proposes to move the existing breakwall approximately 65 feet to the west to provide for an expanded protected harbor and to improve ingress and egress into the harbor. When constructed, the breakwall will be capped with a 12 foot wide concrete walkway to allow for ADA compliant angler access. An historic fishing shed/boat house is being rehabilitated using a CZM Grant for use as a concession area for rental boats that will operate out of this new embayment.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$200,000 to the Erie-Western Pennsylvania Port Authority, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Pflugfelder to approve a grant in the amount of \$200,000 to the Erie-Western Pennsylvania Port Authority, as more fully described in the Commentary. Motion carried.

Commission President Czop then requested Executive Director Austen and Bureau Director Simmons to consider how the input of the Boating Advisory Board will be obtained prior to the next grant round. Msrs. Austen and Simmons agreed to do so.

ENGINEERING & DEVELOPMENT

A. Property Lease to Big Spring Watershed Association, Inc. at the Commission's Big Spring Creek Property in Cumberland County.

Commentary:

The Commission owns ±247 acres along and near Big Spring Creek in North Newton and West Pennsboro Townships, Cumberland County, that includes a stream corridor, hatchery complex and tracts containing large springs. Included in this area is a ±0.89 acre tract that was acquired from a former long time Commission employee, Henry R. Stackhouse, in 1966. This property was acquired using Project 70 funds. This 0.89-acre tract, which does not have any stream frontage and is not used for hatchery purposes, contains an old two-story stone structure that was a former barrel factory. The Commission has not recently used the stone structure, and it has fallen into a state of disrepair.

Big Spring Watershed Association, Inc., a local nonprofit group, wishes to lease the 0.89-acre tract and the stone structure located thereon to promote public fishing, conservation and environmental education. The Watershed Association is willing to make repairs and perform the necessary maintenance on the subject parcel so it may meet all local and state occupational codes. The Watershed Association also shall assume all operational costs of the site. The Watershed Association desires a lease in a form that is acceptable to the Pennsylvania Department of Conservation and Natural Resources so it may pursue Growing Greener Grants or similar grants for its use of the subject site.

The purposes for which the Watershed Association wishes to use the 0.89-acre tract are consistent with the intent of Project 70 legislation. Therefore, legislation to lease the property to the Watershed Association will not be required.

The applicable lease agreement will contain provisions that will protect the aquatic resources and the public's ability to fish in Big Spring Creek. It also will require the Watershed Association to secure Commission approval prior to undertaking any development at the site. Consideration for the lease will be nominal. Staff will conduct the usual legal, engineering, environmental and other necessary reviews prior to entering into a lease agreement with the Watershed Association.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize leasing of a portion of the Big Spring Creek Property to Big Spring Watershed Association, Inc., as more fully described in the Commentary.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Czop to authorize leasing of a portion of the Big Spring Creek Property to Big Spring Watershed Association, Inc., as more fully described in the Commentary. Motion carried.

FISHERIES
FINAL RULEMAKING

A. 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. Therefore, the Commission has proposed eliminating 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.

A notice of proposed rulemaking was published at 35 Pa. B. 3419 (June 18, 2005) (Exhibit B). The Commission did not receive any public comments concerning this proposal.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking. If adopted on final rulemaking, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to adopt the amendments as set forth in the notice of proposed rulemaking. These amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

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

Commentary:

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

Fisheries staff are committed to re-engineering the agency’s trout management approach. Allocation of legal-size stocked trout is a major part of the agency’s trout management plans. Adjusting this policy will allow staff initiative without the burden of the eight resource categories identified in the original policy and will increase flexibility for consideration of public interests in the stocking of individual waters. The Commission will allocate trout, except fingerlings, to individual waters with the rate and frequency to be determined by the assignment of each water to a resource category. Under the revised statement of policy, the Commission will assign waters areas to resource categories based on appropriately weighted biological and social factors.

A notice containing the proposed revisions to the policy was published at 35 Pa. B. 2417 (April 23, 2005) (Exhibit C). The Commission received two public comments opposing the policy. Copies of all public comments have been provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the proposed revisions to the statement of policy as set forth in the notice published in the *Pennsylvania Bulletin*. If adopted, the revised statement of policy will go into effect upon publication of another notice in the *Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to adopt the proposed revisions to the statement of policy as set forth in the notice published in the *Pennsylvania Bulletin*. The revised statement of policy will go into effect upon publication of another notice in the *Bulletin*. Motion carried.

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

Commentary:

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

Northern Pike

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

Trout

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

Black Bass (largemouth and smallmouth)

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

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

Striped Bass

The upstream point of tidal influence at Trenton Falls is used as the boundary for separating freshwater and marine regulations. Use of a more readily identifiable descriptor would be easier for both anglers and law enforcement personnel. Thus, the Commission has proposed the Calhoun Street Bridge as a more recognizable limit. The extension is approximately 0.5 miles upstream.

A notice of proposed rulemaking containing these proposed amendments was published at 35 Pa. B. 2395 (April 23, 2005) (Exhibit D). The Commission did not receive any public comments regarding the proposals.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice proposed rulemaking. If adopted on final rulemaking, the amendments will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to adopt the amendments as set forth in the notice proposed rulemaking. The amendments will go into effect on January 1, 2006. Motion carried.

D. Amendment to Section 61.4 (Conowingo Reservoir).

Commentary:

By virtue of an agreement years ago between the State of Maryland and the Commonwealth of Pennsylvania, the Commonwealth will establish regulations for the Youghiogheny River Lake, and Maryland will do the same for the Conowingo Reservoir, being that waters from both occur in both jurisdictions. Maryland's fisheries staff recently notified Commission staff that the Pennsylvania regulations for Conowingo Reservoir are not current with ones promulgated by Maryland in the last few years. Thus, the Commission has proposed amendments to its regulations pertaining to northern pike, striped bass and striped bass/white bass hybrids, sunfish, crappie fish, carp fish, channel catfish, suckers, eels, yellow perch and madtom so that they are consistent with Maryland's regulations.

A notice of proposed rulemaking containing the proposed amendments was published at 35 Pa. B. 2395 (April 23, 2005) (Exhibit D). The Commission did not receive any public comments regarding the proposals.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice proposed rulemaking. If adopted on final rulemaking, the amendments will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Pflugfelder to adopt the amendments as set forth in the notice proposed rulemaking. The amendments will go into effect on January 1, 2006. Motion carried.

E. 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. The Commission, therefore, has proposed an amendment to make the definition of approved trout waters consistent with the approach that the Commission historically has taken.

A notice of proposed rulemaking was published at 35 Pa. B. 3421 (June 18, 2005) (Exhibit E). Prior to the formal public comment period, the Commission received one written comment concerning the proposed amendment. The Commission received one written public comment during the formal public comment period. Both expressed concerns regarding the impact that the proposed amendment would have on private property rights and the related economic effects. The Commission also entertained oral comments at several public meetings. Copies of all written public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking. If adopted on final rulemaking, this amendment will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to adopt the amendment as set forth in the notice of proposed rulemaking. This amendment will go into effect on January 1, 2006. Motion carried.

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

Commentary:

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

A recent application was filed for use of larger cast nets at Lake Arthur in Moraine State Park to capture alewife for striped bass angling. The application was denied as the cast net permit applies only to Raystown Lake. The use of such a net at Lake Arthur warrants consideration given the presence of surface schooling alewife for much of the year and the desire to enhance striped bass angling there. The Commission has determined that using larger cast nets on Lake Arthur is feasible and can be done without adverse impacts. The proposed regulation will enhance striped bass fishing in the region and is supported by the State Park.

A notice of proposed rulemaking was published at 35 Pa. B. 2633 (April 30, 2005) (Exhibit F). The Commission received seven public comments concerning the proposal. All seven support it. 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 publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, this change will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

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

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

Commentary:

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

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

A notice of proposed rulemaking containing the proposed amendments was published at 35 Pa. B. 2395 (April 23, 2005) (Exhibit D). Prior to the formal public comment period, the Commission received one public comment opposing the changes. The Commission received one comment opposing the changes following the formal public comment period. Copies of all public comments have been provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice proposed rulemaking. If adopted on final rulemaking, the amendments will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to adopt the amendments as set forth in the notice proposed rulemaking. The amendments will go into effect on January 1, 2006. Motion carried.

H. 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 the Commonwealth. 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. The Commission's 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. The Commission 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.

A notice of proposed rulemaking was published at 35 Pa. B. 3421 (June 18, 2005) (Exhibit E). The Commission received two public comments – one supports the proposal; the other opposes it. Both were received prior to the formal public comment period. Copies of all public comments have been provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking. If adopted on final rulemaking, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to adopt the amendments as set forth in the notice of proposed rulemaking. These amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

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

Commentary:

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

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

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

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

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

(2) Rough Green Snake (*Opheodrys aestivus*): The rough green snake is an arboreal species most often associated with wetland and riparian areas. They have been shown to have very limited home range size. The rough green snake is common in southern states from Texas to Florida, with Pennsylvania being the northern limit of its range. It has been known from only two isolated locations in Pennsylvania: in Greene and Chester Counties. Thus, the Commission listed the rough green snake as a threatened species in 1979.

Several historic specimens or reports of this species are known from other counties. However, the only known locality of this species that has been confirmed as a reproducing

population since 1939 is one in Chester County. The Greene County occurrence has not been seen since 1924 and is presumed extirpated. One additional sighting has been recorded from Lancaster County near the Maryland line, but the identification was not confirmed and no evidence of a population was documented. A statewide Herpetological Atlas project failed to find any additional populations.

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

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

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

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

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

The eastern pearlshell is listed as a species of concern in New York, Rhode Island and Connecticut, while it is threatened in Vermont. Additionally, the International Union for Conservation of Nature and Natural Resources has given it endangered status primarily due to threats to the European populations. Primary threats to the persistence of the eastern pearlshell are degradation of water quality, alteration of pH, eutrophication, and temperature increases in the streams.

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

A notice of proposed rulemaking containing the proposed amendments was published at 35 Pa. B. 2389 (April 23, 2005) (Exhibit G). Before the formal public comment period, the Commission received five public comments regarding the proposals. Two of the five generally support the proposed listings; two specifically support the listings of the eastern spadefoot toad and the rough green snake; and one specifically supports the listing of the eastern pearlshell mussel. During the formal public comment period, the Commission received six public comments. One supports the listing of the eastern pearlshell mussel; two support the listings of the eastern spadefoot toad and the rough green snake; one supports the listing of the eastern spadefoot toad; and two raise concerns over the listing of the eastern spadefoot toad. After the formal public comment period, the Commission received a letter from the Pennsylvania Department of Transportation requesting additional information from the Commission. Copies of all public comments have been provided to the Commissioners.

After the conclusion of the public comment period, it was brought to staff's attention that there was an error in the preamble of the notice of proposed rulemaking. The notice of proposed rulemaking erroneously states that two extant breeding populations of eastern spadefoot toads are currently reported in the Commonwealth in Northumberland and Bucks Counties. The correct counties are Northumberland and Berks Counties. In light of this error, a corrective notice was published at 35 Pa. B. 3425 (June 18, 2005) (Exhibit H), seeking public comments for an additional 30-day period. The Commission received 21 additional public comments supporting the addition of the spadefoot toad to the endangered species list. Copies of those public comments were provided to the Commissioners as well.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking. If adopted on final rulemaking, these changes will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to adopt the amendments as set forth in the notice of proposed rulemaking. These changes will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

J. Amendment to Sections 75.1 (Endangered Species) and 75.3 (Candidate Species) to Update Scientific Names of Bog Turtle, Coastal Plain Leopard Frog and Blandings Turtle.

Commentary:

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

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

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

A notice of proposed rulemaking containing the proposed amendments was published at 35 Pa. B. 2398 (April 23, 2005) (Exhibit G). The Commission did not receive any public comments regarding the proposals.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking. If adopted on final rulemaking, these changes will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Sabatose to adopt the amendments as set forth in the notice of proposed rulemaking. These changes will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

K. Simplifying Trout Regulations.

Commentary:

In the recent past, there were at least 12 different special regulations programs used in trout stream management. They included Selective Harvest, All-Tackle Selective Harvest, Delayed Harvest Fly-Fishing-Only, Heritage Trout Angling, Trophy Trout, All-Tackle Trophy Trout, Catch and Release, Delayed Harvest Artificial Lures Only, Wild Brook Trout Enhancement and at least three different miscellaneous special regulations. In January 2005, the Commission eliminated the Selective Harvest and All-Tackle Selective Harvest Programs. The Commission has not contemplated any changes to the recently created Wild Brook Trout Enhancement Program, and only minor changes to the Delayed Harvest Artificial Lure Only Program have been considered to make it consistent with other special trout regulation programs.

As part of the simplification process and to promote consistency within the special trout regulations programs, the Commission approved the publication of a notice of proposed rulemaking seeking public comments on two options: one focusing on catch and release and the other focusing on trophy trout. The proposal for which the Commission primarily sought public comment contained the trophy trout focus. However, the Commission also sought public comment on an alternative proposal that focused on catch and release and would not allow the harvesting of any fish in certain special regulation waters.

A notice of proposed rulemaking containing the proposed amendments was published at 35 Pa. B. 2634 (April 30, 2005) (Exhibit K). The Commission solicited public comments for an extended period of 45 days. Prior to the formal public comment period, the Commission received 116 comments. The Commission received 42 public comments during the formal public comment period. After the close of the formal public comment period and as of July 8, 2005, the Commission received 67 public comments. The Commission received approximately 225 public comments as of July 8th.

Regarding overall simplification, the Commission received 62 comments. Of those, 87% were in favor of simplification, and 13% were opposed.

Regarding the proposal with a trophy trout focus, 113 comments were received. Of those, 24% were in favor, and 76% were opposed. In comparison, the Commission received 114 comments regarding the alternative focusing on catch and release. Of those, 97% were in favor, and 3% were opposed.

The Commission received comments on particular aspects of the trophy trout focus, including a 24 inch minimum size limit, a reduction in the creel limit from 2 fish per day to 1 fish per day and a proposed year-round trophy trout harvest season. The comments may be summarized as follows: (1) 24 inch minimum: 40 comments were received; 70% in favor, 30% opposed. (2) Creel limit of one fish per day: 26 comments were received; 85% in favor, 15% opposed. (3) Year-round harvest of trophy trout: 31 comments were received; 16% in favor, 84 % opposed.

The Commission received comments regarding its proposal to simplify the restrictions across all special trout regulations, including provisions that barbed hooks, wading and 24-hour fishing be allowed on all special regulation waters. These comments may be summarized as follows: (1) Barbed hooks allowed: 76 comments were received; 7% in favor, 93% opposed. (2) Wading allowed: 53 comments were received; 11% in favor, 89% opposed. (3) 24-hour fishing allowed:

46 comments were received; 20% in favor, 80% opposed. Copies of all public comments have been provided to the Commissioners.

The Commission's primary proposal had the following components:

(1) The Commission proposed establishing a new program called Catch and Release Fly-Fishing Only. Under the proposal, the Heritage Trout Angling Program and the Delayed Harvest Fly-Fishing Only Program would be eliminated, and all waters currently in them (7 waters in the Heritage Program and 26 waters in the Delayed Harvest Fly-Fishing Only Program) would be designated into the new Catch and Release Fly-Fishing Only Program. This program, as proposed, would provide no closed season with no harvest, no hourly restrictions, no restriction on wading and no requirement for barbless hooks. During the substantial public commentary regarding the proposal to permit all-tackle on delayed harvest waters during the harvest season, a large segment of the fly fishing community indicated a preference for no-harvest in the current Delayed Harvest Fly-Fishing Only Program. The main change for current delayed harvest fly-fishing-only waters was the removal of the former summer harvest season.

On final rulemaking, staff recommend that the Commission adopt the changes as proposed with the exception of the removal of the hourly restrictions. The new regulations for Catch and Release Fly-Fishing Only, if adopted, will read as set forth in Exhibit L. Based upon recent discussions among the Trout Management Workgroup, staff believe that barbless hooks should not be required. However, staff believe that it is appropriate to include language in future summary books, beginning with the 2006 edition, that encourages anglers to use barbless hooks to facilitate catch and release angling. Staff further believe that it is appropriate to undertake efforts to further educate anglers on the benefits of barbless hooks.

Under a separate agenda item, staff will recommend that the seven waters that are currently in the Heritage Trout Angling Program and the 26 waters in the Delayed Harvest Fly-Fishing Only Program be designated into the new Catch and Release Fly-Fishing Only Program.

(2) The Commission proposed to rename the All-Tackle Trophy Trout to Trophy Trout All-Tackle. Under the proposal, the program would offer a year-round harvest season (increased from mid-April to Labor Day) with a 24 inch minimum length limit (increased from 14 inches), a one trout daily creel limit and no wading restrictions. A section of the Allegheny River, Warren County, would be moved from miscellaneous special regulation under §65.24 to the renamed Trophy Trout All-Tackle program.

Based upon recent discussions among the Trout Management Workgroup, staff recommend that the Commission defer consideration of the proposed changes and that the Commission leave the existing regulations for the All-Tackle Trophy Trout Program unchanged with the exception of stylistic changes and the clarification that a trout/salmon permit is required. Staff further recommend that the Commission defer consideration of the proposal to delete the miscellaneous special regulation for the Allegheny River, Warren County, and leave the regulation unchanged.

(3) The Commission proposed renaming the existing Trophy Trout Program to the Trophy Trout Artificial Lures Only Program and eliminating the existing Catch and Release Program. Under the proposal, all waters in the existing Trophy Trout Program would remain in the renamed program and all waters in the existing Catch and Release Program would be designated to the Trophy Trout Artificial Lures Only Program. Tackle for this program would remain artificial

lures only as currently specified in both existing programs, except barbed hooks would be allowed. Fishing would be permitted year-round with no hourly restriction and no taking of bait fish or fish bait. A 24 inch minimum length limit and a one trout per day creel limit would apply.

Based upon the recent discussions among the Trout Management Workgroup, staff recommend that the Commission defer consideration of the proposed changes and that the Commission leave the existing regulations for the Trophy Trout Program and Catch and Release Program unchanged with the exception of stylistic changes and the clarification that a trout/salmon permit is required. Staff also recommend that on final rulemaking, the Commission remove the requirement for barbless hooks in the current Catch and Release Program to achieve consistency among programs.

(4) The Commission proposed creating a new program called Catch and Release All-Tackle Areas. Under the proposal, one miscellaneous special regulation water, Spring Creek, Centre County, and one water designated under §65.23 (relating to special restrictions on polluted zones), Valley Creek, Chester County, would be designated into the new program.

Based upon recent discussions among the Trout Management Workgroup, staff recommend that the Commission, on final rulemaking, adopt the new regulations for Catch and Release All-Tackle Areas, eliminate the miscellaneous special regulation for Spring Creek, Centre County, and remove the special restrictions on Valley Creek, Chester County. The new regulations for Catch and Release All-Tackle Areas, if adopted, will read as set forth in Exhibit L. Under a separate agenda item, staff will recommend that the Commission designate Spring Creek and Valley Creek as waters to be regulated and managed under the new Catch and Release All-Tackle regulations.

(5) The Commission proposed amending the Delayed Harvest Artificial Lures Only Program to remove the daily fishing time restriction and to clarify that a current trout/salmon permit is required. Based upon recent discussions among the Trout Management Workgroup, staff recommend that the Commission, on final rulemaking, adopt the changes as set forth in the notice of proposed rulemaking with the exception of removing the time restriction.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking with the exceptions described in the Commentary. If adopted on final rulemaking, these changes will go into effect January 1, 2006.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to adopt the amendments as set forth in the notice of proposed rulemaking with the exceptions described in the Commentary. These changes will go into effect January 1, 2006.

A motion was made by Commissioner Sabatose and seconded by Commissioner Czop to seek public comments on redesignating the sections of the Little Juniata River and the Clarion River that are currently regulated and managed under the All-Tackle Trophy Trout program and placing them in the newly created Catch and Release All-Tackle program. Motion carried.

PROPOSED RULEMAKING

L. Cast Net and Throw Net Permits.

Commentary:

Currently, there is a miscellaneous special regulation that permits the issuance of net permits for the use of cast nets or throw nets for taking live gizzard shad and alewife at Raystown Lake, Huntingdon County. The regulation limits the size of cast nets and throw nets to ten feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inch. The Commission issues between approximately 700 and 800 permits each year.

In a separate agenda item, the Commission will consider final adoption of a regulation that will extend the use of cast nets or throw nets to Lake Arthur in Moraine State Park. Staff estimate that the Commission will issue less than 100 permits each year on Lake Arthur.

The Commission's regulations pertaining to inland waters, such as Raystown Lake and Lake Arthur, permit an angler to take, catch, kill or possess 50 gizzard shad or alewife on a daily basis. The Commission recently was contacted by a fishing guide on Raystown Lake who has requested that he and other guides be allowed to possess a daily creel of 100 fish instead of 50. Commission staff have reviewed this matter and have determined that it is appropriate to allow all holders of cast net permits on Raytown Lake and Lake Arthur to take, catch, kill or possess 100 gizzard shad and alewife (combined species) on a daily basis. According to staff, this allowance will not adversely impact the resource.

Instead of amending the miscellaneous special regulations for Raystown Lake and Lake Arthur to include this allowance, staff propose a new regulation pertaining to cast nets and throw nets. Staff accordingly propose the following new regulation:

§63.48. Permit for the use of cast nets or throw nets.

(a) The Executive Director or a designee may issue permits for the use of cast nets or throw nets for the taking of gizzard shad 8 inches or less in length and alewife only in waters to be determined by the Executive Director.

(b) In addition to other permit conditions that the Executive Director may require, the cast nets or throw nets shall be no greater than 10 feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inch.

(c) Notwithstanding the provisions of §61.1 (relating to Commonwealth inland waters), holders of permits for the use of cast nets or throw nets may take, catch, kill or possess a daily creel limit of 100 gizzard shad and alewife (combined species).

(d) A person may apply for a permit for the use of cast nets or throw nets by completing the form prescribed by the Commission. The applicant shall submit the

completed form to the Commission along with the fee specified in section 2902 of the code (relating to net permits).

(e) It is unlawful to use cast nets or throw nets for the taking of gizzard shad and alewife or to take, catch, kill or possess more than the daily creel limit of gizzard shad and alewife without the required permit. A permit for the use of cast nets or throw nets shall be carried so that it can be presented to an officer authorized to enforce the code.

The addition of this regulation will eliminate the need for the miscellaneous special regulations on Raystown Lake and Lake Arthur. As such, staff further propose that those regulations be eliminated.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

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

M. Amendment to Section 63.11 (Eel Chutes).

Commentary:

Under section 2901 of the Fish and Boat Code, 30 Pa. C.S. §2901, a person may apply to the Commission for a special license to catch eels by the use and operation of eel chutes and the payment of a \$25 fee. The special eel chute license gives the license holder the right to use and operate an eel chute (1) in the Susquehanna River below the boundary line of the city of Pittston and Duryea Borough line on the north branch and below the bridge at the Northumberland-Lycoming County line on the west branch; (2) below Mount Union in the Juniata River; and (3) in the Delaware River. Section 63.11 of the Commission's regulations contains provisions regarding the operation of eel chutes.

According to the Commission's records, the Commission has not issued an eel chute license in the last 13 years. Staff therefore recommend that §63.11 be eliminated.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

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

DESIGNATIONS

N. Removal from the List of Class A Wild Trout Waters: Cross Fork, Section 03, Potter County.

Commentary:

Cross Fork, Section 03, extends for a distance of 5.0 miles from the confluence with Rhulo Hollow downstream to 440 meters downstream of the T-416 Bridge. This section of stream was designated as a Class A Wild Brown Trout Water by staff based on a single trout population survey in 1981. Stocking was discontinued in 1983 when resource based stream section management was implemented. Commission action in September 1999 formally designated the existing list of staff designated Class A Wild Trout Waters including, Cross Fork, Section 03. According to the Commission's statement of policy at 58 Pa. Code 57.8a (relating to Class A Wild Trout Waters), a stream must meet the following criteria to be classified as a Class A Wild Brown Trout Water: (1) total brown trout biomass must be at least 40 kg/ha (35.6 lbs/acre); (2) total biomass of brown trout less than 15 cm (5.9 inches) in total length must be at least 0.1 kg/ha (0.089 lbs/acre); and (3) brown trout biomass must comprise at least 75% of the total trout biomass.

From 1995 through the 2003 season, Section 03 was managed under Heritage Trout Angling regulations. Under these regulations, angling was permitted on a year round basis with the use of barbless flies only, and no harvest was permitted. Beginning with the 2004 season, the regulations were changed to the Catch-and-Release Program. Under these regulations, angling is permitted on a year round basis with the use of barbless artificial lures and flies and no harvest is permitted.

Time series monitoring of the trout population within Cross Fork, Section 03, was conducted on an annual basis from 1996-2003. Overall, the trout population did not respond as staff had hoped as the population failed to meet the minimum biomass criteria for Class A Wild Trout Waters during each of these surveys. Considering that several severe climatic events occurred during this time period, including a winter flood in January of 1996 and consecutive years of extreme low flows in the summer, this response may not have been unusual for a freestone stream in northcentral Pennsylvania.

Although this section was identified in the past as a Class A Wild Trout Water, eight consecutive surveys have confirmed that the section now supports a Class B wild trout biomass. Staff recommend that this section of stream should continue to be managed under Catch-and-Release regulations; however, Section 03 should be removed from the Class A Wild Trout Waters list. Such a change would allow for stocking to occur at a low rate and encourage more angling activity on the stream. The majority of this section (55%) is publicly owned, and access to the stream is good with 100 % of the stream section located within 330 yards of a road. The Department of Environmental Protection lists the entire Cross Fork watershed as Exceptional Value in its Chapter 93 water quality standards. The Chapter 93 designation will not change as a result of removal of this section of stream from the Class A list.

A notice of proposed change to the list of Class A wild trout waters was published at 35 Pa. B. 3477 (June 18, 2005) (Exhibit I). The Commission received 20 public comments, all of which oppose the stocking of this stream. 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 remove the 5.0-mile Section 03 of Cross Fork from the list of Class A Wild Trout Waters as set forth in the notice. If approved, this removal will go into effect upon publication of another notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to remove the 5.0-mile Section 03 of Cross Fork from the list of Class A Wild Trout Waters as set forth in the notice under the condition that staff will bring future stocking decisions pertaining to this section before the Commission. The removal will go into effect upon publication of another notice in the *Pennsylvania Bulletin*. Motion carried.

O. Removal from Catch and Release Area Program: Sinnemahoning Creek, East Fork, Potter County.

Commentary:

From 1999 to 2005, a 2.9-mile section of Sinnemahoning Creek, East Fork, extending from the confluence with Wild Boy Run downstream to the confluence with Camp Run was managed under the All-Tackle Selective Harvest Program. Follow-up examinations documented a considerable fluctuation in the brook and brown trout populations in this stream over time. Overall, the wild brook and brown trout populations did not respond as intended to regulations under the All-Tackle Selective Harvest Program. Therefore, staff believed that the brook and brown trout populations in this section of stream should be managed under Catch-and-Release regulations. This change was made as a result of Commission action in January 2005. The changes in regulations that occurred with the change in designation from All-Tackle Selective Harvest to Catch-and-Release regulations were elimination of harvest, the prohibition of bait angling, and the requirement for anglers to use barbless artificial lures, flies and/or streamers when fishing this section of stream. Angling continued to be permitted on a year-round basis.

When the proposed designation change was published at 34 Pa. B. 3334 (June 26, 2004), one comment supporting and one comment opposing the proposed redesignation was received. However, in the short time since the change has been made, staff have received a significant number of complaints, primarily by telephone, from private landowners who are opposed to Catch and Release regulations on this section and especially the restriction on bait angling. Approximately 71% of this section of stream is privately owned. As a result of the concerns of private landowners on this section of stream, staff now believe that the conventional statewide regulations should now be applied instead of Catch and Release. This change will allow the use of all bait types, allow a harvest of five fish from the first Saturday after April 15 through Labor Day, and three fish from Labor Day until February 28, with a minimum size limit of seven inches. The season will be closed from March 1 through the opening day of trout season. These regulations are consistent with those currently in place for the adjoining stream sections, both upstream and downstream of this section.

A notice of proposed designation was published at 35 Pa. B. 3477 (June 18, 2005) (Exhibit J). The Commission received 11 public comments. Five oppose the removal of this stream from the list of waters managed and regulated as a Catch-and-Release Area, four support it and two suggest that a new catch-and-release area be created in the state forest section immediately above the current section. 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 remove the 2.9-mile section of Sinnemahoning Creek, East Fork, (from the confluence with Wild Boy Run downstream to the confluence with Camp Run) from the list of waters managed and regulated as a Catch-and-Release Area pursuant to §65.5. If approved, this redesignation will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to remove the 2.9-mile section of Sinnemahoning Creek, East Fork, (from the confluence with Wild Boy Run downstream to the confluence with Camp Run) from the list of waters managed and regulated as a Catch-and-Release Area pursuant to §65.5. This redesignation will go into effect on January 1, 2006. Motion carried.

P. Establishment of a New Delayed Harvest Artificial Lures Only Section: Wiconisco Creek, Dauphin County.

Commentary:

Currently, a 15.6-mile section of Wiconisco Creek, Dauphin County, from the PA 225 Bridge to the mouth is managed to provide trout angling opportunities through the stocking of adult trout. In December 2004, the Ned Smith Center for Nature and Art requested consideration for the establishment of a Delayed Harvest Artificial Lures Only area on the stretch of Wiconisco Creek owned by the Center. Staff surveyed the stream in both 2004 and 2005 and recommend that the proposed regulations be adopted. If approved, a 0.74 section of stream from the western edge of the Ned Smith Center for Nature and Art (RM 2.43) downstream to the power line crossing 1.7 miles upstream from the mouth (RM 1.69) will be designated as a Delayed Harvest Artificial Lures Only Area to be regulated and managed under §65.6. This designation will restrict tackle to artificial lures, limit fishing hours to one hour before sunrise to one hour after sunset during the extended trout season, establish a minimum size limit of nine inches, and establish a daily creel limit of three combined trout species except during the period after Labor Day and before June 15 when the creel limit is zero.

A notice of proposed designation was published at 35 Pa. B. 3477 (June 18, 2005) (Exhibit J). The Commission received two public comments supporting the proposed designation.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission designate a 0.74-mile section of Wiconisco Creek, Dauphin County, extending from the western edge of the Ned Smith Center for Nature and Art (RM 2.43) downstream to the power line crossing 1.7 miles upstream from the mouth (RM 1.69) as a Delayed Harvest Artificial Lures Only area. If approved, the designation will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to designate a 0.74-mile section of Wiconisco Creek, Dauphin County, extending from the western edge of the Ned Smith Center for Nature and Art (RM 2.43) downstream to the power line crossing 1.7 miles upstream from the mouth (RM 1.69) as a Delayed Harvest Artificial Lures Only area. The designation will go into effect on January 1, 2006. Motion carried.

Q. Expansion of Heritage Trout Special Regulation Area: Falling Spring Branch, Section 02, Franklin County.

Commentary:

Currently, Section 02 of Falling Spring Branch, Franklin County, extends for a distance of 2.4 miles, from the Briar Lane bridge downstream to a wire fence crossing the Thomas L. Geisel property. Section 02 is presently managed as part of the Heritage Trout Angling Program under §65.3. A 672 foot section upstream of the current section limits recently came under new ownership. The new owner was approached by Falling Spring Chapter of Trout Unlimited to discuss the possible inclusion of this portion of the stream in the Heritage Program. In addition, the Commission's Habitat Management Section is currently planning habitat improvement work on this section at the request of Trout Unlimited and in cooperation with the landowner. A PFBC Form 60 has been signed by the landowner, which assures public access for an initial 10 year period to this section of stream. Commission staff have reviewed the request and recommend that the section managed under the Heritage Trout Angling Program be extended.

A notice of proposed designation was published at 35 Pa. B. 3477 (June 18, 2005) (Exhibit J). As of the date of agenda preparation, the Commission had not received any comments regarding the proposed re-designation.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the section of Falling Spring Branch, Franklin County, that is currently regulated and managed as part of Heritage Trout Angling Program under §65.3 be extended 672 feet upstream of its current upstream limits so that the new section limits read as follows: From the first private lane 672 feet upstream of the Briar Lane bridge downstream to a wire fence crossing the Thomas L. Geisel property, a distance of 2.5 miles. If adopted, this redesignation will go into effect on January 1, 2006.

Action:

At the meeting, staff withdrew this item from the agenda.

R. Catch and Release Fly-Fishing Only Areas – Designation of Waters.

Commentary:

Under a separate agenda item, staff will recommend that the Commission take final action to eliminate the Delayed Harvest Fly-Fishing Only and Heritage Trout Angling Programs. Staff also will recommend that the Commission adopt regulations for the new Catch and Release Fly-Fishing Only Program at 58 Pa. Code §65.14. These actions are part of the Commission’s ongoing efforts to simplify and consolidate special regulations used in trout management.

Staff recommend that the following waters that are currently regulated and managed under the Heritage Trout Angling Program be designated as Catch and Release Fly-Fishing Only Areas:

County	Water on which Located	Description
Centre	Spring Creek (Fisherman’s Paradise)	1.0 mile From a point adjacent to Stackhouse School Pistol Range downstream to lower Boundary of Bellefonte State Fish Hatchery
Cumberland	Big Spring Creek	1.1 miles From 100 feet downstream of source (Big Spring) downstream to the Nealy Road Bridge
Cumberland	Letort Spring Run	1.5 miles From 300 yards upstream of the bridge on T-481 downstream to the Reading Railroad bridge at the southern edge of Letort Spring Park.
Franklin	Falling Spring Branch	2.5 miles From 1 st private lane 672 ft upstream of Briar Lane bridge downstream to a wire fence crossing Thomas L. Geisel property
Lehigh	Little Lehigh Creek	1.0 mile From upstream face of Fish Hatchery Road bridge downstream to near the 24 th Street bridge
Lycoming/Tioga	Slate Run	7.0 miles From the confluence of the Cushman and Francis Branches downstream to the mouth
Tioga	Francis Branch, Tributary to Slate Run	1.7 miles From Kramer Hollow downstream to mouth

Staff recommend that the following waters that are currently regulated and managed as Delayed Harvest Fly-Fishing Only Areas be designated as Catch and Release Fly-Fishing Only Areas:

County	Water on which Located	Description
Adams	Conewago Creek	1.1 miles From 0.1 mile downstream of T-340 downstream to S.R. 34

County	Water on which Located	Description
Bedford	Yellow Creek	0.9 mile From cable near Red Bank Inn downstream to mouth of Maple Run (Jacks Run)
Cameron	Driftwood Branch, Sinnemahoning Creek	1.4 miles From Shippen Township Building downstream to near S.R. 120 west of Emporium
Chester	French Creek	0.9 mile From dam at Camp Sleepy Hollow downstream to Hollow Road
Cumberland	Green Spring Creek	1.0 mile From near confluence with Bulls Head Branch downstream to mouth
Dauphin	Clark Creek	1.9 miles From PA Game Commission rifle range parking area on S.R. 325 downstream to PGC access road at the Iron Furnace
Delaware	Ridley Creek	0.6 mile From falls in Ridley Creek State Park downstream to mouth of Dismal Run
Elk	Clarion River, West Branch	0.5 mile From wire across stream downstream to intersection of S.R 219 and S.R. 4003
Fayette	Dunbar Creek	4.1 miles From confluence of Glade Run downstream to stone quarry along S.R. 1055
Franklin	Antietam Creek, East Branch	1.0 mile From S.R. 16 downstream to T-365
Indiana	Little Mahoning Creek	4.1 miles From Cesna Run downstream to S.R 1034 at Rochester Mills
Jefferson	North Fork Redbank Creek	1.9 miles From 1.9 mile section upstream of S.R. 322 in Brookville except 110-yard section from Water Authority Dam downstream to wire across stream
Lancaster	Donegal Creek	2.4 miles From 275 yards downstream of S.R. 772 downstream to T-334
Lancaster	Octoraro Creek, West Branch	2.1 miles From 30 yards downstream of S.R. 0472 Bridge downstream to near confluence with second unnamed tributary downstream of S.R. 2010
Lawrence	Slippery Rock Creek	0.5 mile From Heinz Camp property downstream to 0.25 mile downstream of S.R 2022 bridge

County	Water on which Located	Description
Lehigh	Little Lehigh Creek	1.8 miles From downstream face of bridge on T-508 (Wild Cherry Lane) downstream to upstream face of bridge on T-510 (Millrace Road)
McKean	Marvin Creek	1.1 miles From vicinity of high voltage line (3 miles south of Smethport) downstream
Monroe	Bushkill Creek	6.1 miles Resica Falls Scout Reservation property except 200 yards on each side of the falls
Potter	Kettle Creek	1.7 miles From the sign located 500 feet downstream of S.R. 144 bridge upstream to sign located 1.7 miles upstream
Somerset	Clear Shade Creek	1.0 mile From cable 1 mile upstream of Windber Water Dam downstream to dam
Union	White Deer Creek	3.1 miles From Centre/Union County line downstream to Cooper Mill Road
Venango	Little Sandy Creek	1.3 miles From old bridge at Polk Center pump house downstream to S.R. 3024 bridge at Polk
Warren	Caldwell Creek	1.4 miles From Selkirk highway bridge downstream to approximately 0.5 miles upstream of Dotyville Bridge
Wayne	Dyberry Creek	0.8 mile From Widmer property line about 1 mile downstream of Tanner's Falls downstream to Mary Wilcox Bridge on S.R. 4009
Wyoming	Bowman Creek	1.0 mile From vicinity of S.R. 292 downstream to near the confluence with Marsh Creek
York	Muddy Creek	1.6 miles From 300 yards downstream of Bruce Road Bridge (T-628) in Bruce downstream to 360 yards upstream of Bridgeton Rd (S.R. 2032) bridge in Bridgeton

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission approve the redesignation of the waters identified above as waters to be regulated and managed as catch and release fly-fishing only areas under §65.14. If approved, these designations will go into effect January 1, 2006.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Sabatose to approve the redesignation of the waters identified above as waters to be regulated and managed as catch and release fly-fishing only areas under §65.14. These designations will go into effect January 1, 2006. Motion carried.

S. Catch and Release All-Tackle Areas – Designation of Spring Creek, Centre County, and Valley Creek, Chester/Montgomery Counties.

Commentary:

Under a separate agenda item, staff will recommend that the Commission take final action to adopt regulations for the new Catch and Release All-Tackle Program at 58 Pa. Code §65.15. Staff also will recommend that the Commission eliminate the miscellaneous special regulation for Spring Creek, Centre County in §65.24 and remove the special restrictions on Valley Creek, Chester County under §65.23. These actions are part of the Commission’s ongoing efforts to simplify and consolidate special regulations used in trout management.

Staff recommend that Spring Creek and Valley Creek be designated as new Catch and Release All-Tackle Areas as follows:

County	Water on which Located	Description
Centre	Spring Creek	16.5 miles; from the S.R. 3010 (Boalsburg Road) bridge at Oak Hall upstream of Hanson Quarry (formerly HRI/Neidig Bros Quarry) to the mouth with the exception of the specially regulated area at Fisherman’s Paradise and the Exhibition Area in Bellefonte
Chester/Montgomery	Valley Creek and tributaries	Valley Creek at Valley Forge and tributaries including Little Valley Creek. Special bait restrictions exist within Valley Forge National Historical Park

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission approve the redesignation of Spring Creek, Centre County, and Valley Creek, Chester/Montgomery Counties, as waters to be regulated and managed as catch and release all-tackle areas under §65.15. If approved, these designations will go into effect January 1, 2006.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to approve the redesignation of Spring Creek, Centre County, and Valley Creek, Chester/Montgomery Counties, as waters to be regulated and managed as catch and release all-tackle areas under §65.15. These designations will go into effect January 1, 2006. Motion carried.

OTHER MATTERS

T. State Wildlife Grant to Sample the Distribution of Glass Eels and Yellow Eels in Pennsylvania's Delaware Estuary Tributaries.

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 wishes to enter into a cooperative agreement with the Philadelphia Academy of Natural Sciences to study the distribution and abundance of glass eels and juvenile yellow eels in Pennsylvania's Delaware Estuary tributaries. American eels may become a candidate for federal threatened or endangered status in the near future. However, there has historically been little abundance data collected on eels in Pennsylvania, and little is known about the timing, distribution and timing of migration in Pennsylvania's tributaries.

Eels spawn in the ocean and then move inshore where they transform to a translucent stage (glass eels). In the estuaries, the glass eels become pigmented, transforming into elvers, and the juveniles grow until they are later called yellow eels. It was originally thought that because Pennsylvania was so far upstream from the salt line, there would be few glass eels in Pennsylvania's tributaries to the estuary. However, glass eels have been documented in Long Creek (in March 2000), Scotts Creek (2005) and Pennypack Creek (single individual collected by the Philadelphia Water Department). The proposed study will determine efficient methods for documenting the presence and abundance of glass eels in the tidal tributaries of Pennsylvania, sample tidal tributaries for glass eels from March through mid-April in 2006 and 2007, and sample tidal tributaries for yellow eels in the summer of 2006. The cost of the project is estimated at \$43,000. Staff have selected this grant proposal for allocation of an SWG grant.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve a State Wildlife Grant to the Philadelphia Academy of Natural Sciences in the amount of \$43,000 for the study of glass and yellow eels in the tributaries of Pennsylvania Delaware Estuary, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to approve a State Wildlife Grant to the Philadelphia Academy of Natural Sciences in the amount of \$43,000 for the study of glass and yellow eels in the tributaries of Pennsylvania Delaware Estuary, as more fully described in the Commentary. Motion carried.

LAW ENFORCEMENT

A. Refund of Erroneously Collected Fine.

Commentary:

On April 16, 2005, Daniel A. Winter of York, Pennsylvania, used a fishing-type float tube on State Park waters without wearing a USCG-approved personal flotation device. Although this is a violation of the property regulations of Department of Conservation and Natural Resources, Bureau of State Parks, a Deputy Waterways Conservation Officer incorrectly cited the individual for violating a Commission property regulation. Deputy Waterways Conservation Officers do not have the authority to issue citations for state park violations. The defendant pleaded guilty and paid the fine and costs.

Under the circumstances, the Bureau of Law Enforcement believes that a refund of the \$50.00 fine paid by Mr. Winter 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. Daniel A. Winter, York, Pennsylvania as a refund for the fine imposed erroneously.

Action:

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

Other New Business

Commissioner Sabatose requested that Rick Hoopes, Director, Bureau of Fisheries, schedule a special Fisheries Committee meeting to revisit opening-day issues.

Dan Tredinnick, Press Secretary, introduced Adrian Martin as the Commission's new Marketing Development Specialist and explained her role.

Commissioner Czop requested staff to schedule an information gathering/retreat for Commissioners to be briefed on the Commission's operational policies prior to the September Commission meeting.

Time and Place of September Commission Meeting

The next meeting is scheduled for September 26-27, 2005. Commissioner Czop proposed that the meeting be held in the Philadelphia area. Teresa Erdman will investigate facility availability and options.

Adjournment

A motion was made by Commissioner Concilla and seconded by Commissioner Anderson to adjourn the meeting at 11:50 a.m. Motion carried.