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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 70<sup>th</sup> Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, September 26 and 27, 2005, at the Independence Seaport Museum, Philadelphia, Pennsylvania.

Commission committees met on September 26 beginning at 10:15 a.m. The public session for review of this agenda began at or about 8:40 a.m. on September 27.

**Call to Order**

The meeting was called to order by President Richard W. Czop and was followed by the Pledge of Allegiance to the Flag.

**Roll Call**

**Members Present**

**Richard W. Czop, President**  
**Howard E. Pflugfelder, Jr., Vice-President**  
**Samuel M. Concilla**  
**Ted R. Keir**  
**Paul J. Mahon \***  
**William J. Sabatose**

**Members Not Present**

**Donald K. Anderson**

\* Present via telephone

**Review and Approval of Minutes from the July 2005 Meeting**

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

**Awards and Presentations**

Commissioner Ted R. Keir was recognized for his outstanding leadership and dedication to preserving and protecting Pennsylvania's fishing and boating opportunities while serving as Commissioner of the Pennsylvania Fish and Boat Commission since April 15, 1997. After accepting his award, Commissioner Keir expressed his gratitude and thanked both his wife and Commission staff for their support.

Commissioner Samuel M. Concilla was presented with an award for his outstanding leadership and dedication while serving as President of the Commission from July 19, 2003 to July 19, 2005. Commissioner Concilla extended his thanks and said that the Commission has many good years ahead.

### **Announcement of Executive Session**

Commissioner Czop announced that although a quorum of the Commissioners was not present, an "Executive Session" was held on Monday, September 26, at 4:00 p.m. to discuss personnel issues.

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

Dr. Austen highlighted several items in his report to the Commission. The "PFBC Activity Report – Third Quarter 2005" (Exhibit J) 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.

Pennsylvania is recognized for its water trails and, as a result, recently received an award for these efforts. The trails are a unique reflection of the diverse ecology in the state, and this has allowed the Commission to partner with numerous other agencies and organizations. Brochures, which provide detailed information on the 17 trails in the Commonwealth, are available through the Commission.

Fish passage reflects a lot on who and what we are here at the Fish and Boat Commission. There are over 6,000 dams in Pennsylvania, and dam removal efforts continue to occur. Dams can prohibit fish from moving to areas where they normally have spawned in the past. In an effort to establish a more suitable habitat for the various fish species, removal efforts are being pursued. As the Commission continues to work on acquiring additional monies to offset these removal costs, additional programs are underway regarding the restoration of areas such as Pennypack Creek. Pennypack Creek is located in the Philadelphia area, and fish passage enhancements continue to occur at this location.

With the implementation of the statewide Boating Facility Grant Program in January 2005, 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 derived primarily from boat registration fees and state motorboat fuels tax. In certain instances, federal aid is used. In 2005, over 13 projects have been completed statewide to enhance boating opportunities.

Several of these projects will benefit the boaters and anglers in the Philadelphia area. Some examples of work that has already been completed are the Yardley Access Area and Tacony Boat Launch Area. The Frankford Arsenal Access Area has experienced an even more dramatic transformation. Work in Erie County has resulted in the addition of docks at Presque Isle Bay.

For those interested in applying for a grant, the grant cycle is now once again open, and interested parties need to apply by October 1, 2005.

Additionally, the Fish and Boat Commission is working with the Department of Conservation and Natural Resources on partnering yet another program concerning maintaining and establishing new fishing access areas. Lake Erie stamp monies are being considered as a funding source for this program.

Finally, the National Fish Habitat Initiative Action Plan continues to be strong in the Commonwealth. This effort is being developed within the Commission and externally with the International Association of Fish and Wildlife Agencies (IAFWA). The objective is to identify and provide funds for fish habitat nationwide. A meeting was recently held in Nashville, Tennessee, to discuss and plan further for this effort. The basic fundamental philosophy of the plan is that healthy habitat leads to healthy fish, which results in healthy people and a healthy economy. This plan identifies new partnerships nationwide. The National Fish Habitat Initiative website offers a multitude of information on this effort. Pennsylvania has more partners in this effort than any other state. No doubt, the people of Pennsylvania recognize the importance of this project.

#### **Staff Presentation**

Michael L. Kaufmann, Fisheries Biologist, Fisheries Management Area 6, provided a briefing entitled "Delaware River and Estuary Fisheries" that covered the results of a 2002 Delaware River creel survey.

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

Joseph Syrnick, President and CEO, Schuylkill River Development Corporation, provided public comment on the improvement of access areas along the Schuylkill River.

A five minute break followed.

Gregory Kobol, Water Rescue Captain, Yardley-Makefield Fire Company, provided public comment on the Yardley Access.

Attorney John Carroll, representing New Enterprise Stone & Lime Company, Inc., said that he was pleased to hear that the Commission was planning on deferring action on the additions of Plum Creek and Halter Creek to the list of Class A Wild Trout Waters.

Commissioner Czop announced that the Commission would move forward with reviewing the agenda items and that any additional public comment would take place at the conclusion of that review.

## **EXECUTIVE OFFICE**

### **A. Dates for Fish and Boat Commission Meetings in 2006.**

#### Commentary:

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

Staff have reviewed the available dates and possible conflicts for scheduling regular Commission meetings for 2006. This review included a look at holiday, hunting and fishing seasons and other conflicting events. Based upon this review, the following dates are proposed for regular Commission meetings in 2006:

January 23-24, 2006 (Monday and Tuesday)  
May 1-2, 2006 (Monday and Tuesday)  
July 17-18, 2006 (Monday and Tuesday)  
September 25-26, 2006 (Monday and Tuesday)

The January and July 2006 meetings will be held at the Harrisburg headquarters. The May and September 2006 meetings will be held at locations designated by the Commission for the transaction of business.

#### Briefer:

Dr. Douglas J. Austen, Executive Director

#### Recommendation:

Staff recommend that the Commission approve the dates for the regular meetings of the Commission for 2006 as set forth in the Commentary.

#### Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Sabatose to approve the dates for the regular meetings of the Commission for 2006 as set forth in the Commentary. Motion carried.

B. Review and Approval of Submission of Fiscal Year 06-07 Budget Request.

Commentary:

Under Commonwealth government budget procedures and in accordance with sections 522 and 532 of the Fish and Boat Code (30 Pa. C.S. §§522, 532), the Commission annually submits to the Governor's Budget Office the proposed Commission budget for the following fiscal year. The Commission's submission for Fiscal Year 2006-07 is due at the Budget Office in the early part of October.

Staff have prepared preliminary draft budget documents for submission to the Budget Office, which according to the Budget Office, are confidential. After the Executive Director submits the budget request, the Governor's Office may make changes to the spending authority requested by the Commission. These changes are generally a result of changes in calculations for personnel and/or other costs. The Governor will announce the details of the FY 06-07 budget in February 2006.

Briefers:

Dr. Douglas J. Austen, Executive Director  
Barner P. Barner, Director, Bureau of Administration

Recommendation:

Staff recommend that the Commission authorize the Executive Director to submit a request to the Governor's Budget Office for Fiscal Year 2006-07 spending authority as more fully described in staff's preliminary draft budget documents.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Concilla to authorize the Executive Director to submit a request to the Governor's Budget Office for Fiscal Year 2006-07 spending authority as more fully described in staff's preliminary draft budget documents. Motion carried.

### C. Additional Support of Coldwater Heritage Partnership.

#### Commentary:

The Commission is a partner with the Department of Conservation and Natural Resources and Trout Unlimited in the Coldwater Heritage Partnership. Under this program, which was developed under the guidance of former Commissioner Inky Moore, grants are made for acquisition and habitat projects that benefit coldwater fisheries in Pennsylvania. The program is a good one, and any monies contributed by TU or the Commission are multiplied by funds contributed through programs administered by DCNR.

The purpose of the Coldwater Heritage Partnership is to develop watershed conservation plans for protecting and enhancing the health of coldwater ecosystems. The development and implementation of these plans will be based on voluntary partnerships with municipal officials, local groups, conservation organizations, development interests and governmental agencies. These plans will identify and evaluate conditions in the watershed that have or are likely to have the most significant affects on coldwater ecosystems and propose management actions and project activities for maintaining and improving the health and productivity of these waters. The plans will help direct available federal, state and other financial and technical assistance to projects having the greatest need. Specific stream enhancement and protection projects could be undertaken through programs like the Commission's habitat management programs (e.g. Adopt-A-Stream), Keystone Recreation Grants, Pasture Stream Bank Fencing Grants, Community Forestry Grants, Nonpoint Source Grants and Rivers Conservation Implementation and Development Grants. The Coldwater Heritage Partnership uses state and local funds to match other available grant monies.

The original program included contributions over a period of three years of \$150,000 from programs administered by DCNR and \$20,000 from the Commission, as well as some funds and services from Trout Unlimited. At the fall 2001 meeting, the Commission authorized the expenditure of up to \$5,000 per fiscal year in the form of grants or in-kind services in support of this program.

Staff believe that it is important for the Commission to continue to support the Coldwater Heritage Partnership. Accordingly, staff propose that the Commission authorize the expenditure of up to \$10,000 per fiscal year in the form of grants plus the provision of in-kind services in further support of this program. In addition, it also may be possible to use monies from the Commission's Conservation Acquisition Partnership (CAP) program as the Commission's matching share for appropriate acquisitions of coldwater streams or stream corridors.

#### Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission authorize the expenditure of up to \$10,000 per fiscal year in the form of grants plus the provision of in-kind services in further support of the Coldwater Heritage Partnership.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Concilla to authorize the expenditure of up to \$10,000 per fiscal year in the form of grants plus the provision of in-kind services in further support of the Coldwater Heritage Partnership. Motion carried.

#### D. Approval of State Wildlife Grants.

##### Commentary:

In March 2002, the U.S. Fish and Wildlife Service notified state fish and wildlife conservation agencies across the nation about the Federal State Wildlife Grant (SWG) Program. Congress has provided appropriations under the Department of the Interior and Related Agencies Appropriations Act of 2002, Public Law 107-63, Title I, to this program annually since its inception. This funding is directed towards, and is essential for, conservation efforts of the great majority of species that are not pursued for sport or harvest, typically referred to as “nongame.” Approved activities include those which develop and implement programs for the benefit of wildlife and their habitat, including species that are not pursued for sport.

The Commonwealth, led by Pennsylvania Fish and Boat Commission (PFBC) and Pennsylvania Game Commission (PGC) staff, are nearing completion of the Comprehensive Wildlife Conservation Strategy (CWCS). Each state and U.S. Territory is required to submit a Wildlife Conservation Strategy by September 30, 2005, and have them accepted by the National Advisory Acceptance Team. These plans are required by each state to continue their eligibility to receive State Wildlife Grant funds. Pennsylvania’s CWCS will be a guiding document for future conservation efforts in the Commonwealth.

Pennsylvania currently receives between \$1.5 to 2 million annually for this program, which is jointly administered by the PFBC and the PGC. A portion of the SWG funds has been made available for competitively selected projects developed by our conservation partners that address one or both of the Commissions’ conservation priorities. Other projects have been developed by staff to meet high priority conservation needs. Future projects will be targeted in part on the needs and priorities identified in the Comprehensive Wildlife Plan described above.

Many SWG projects involve grants to third parties. Historically, each of these grants has been approved individually as separate Commission actions. Staff are requesting that the Commission authorize the Executive Director to approve individual grants utilizing up to \$100,000 of SWG pass-through monies and up to \$20,000 of Fish Fund monies per grantee per year for projects meeting SWG Program objectives. For grants exceeding those amounts, staff will seek separate Commission approval.

##### Briefer:

Thomas P. Ford, Director, Policy, Planning and Operations

##### Recommendation:

Staff recommend that the Commission authorize the Executive Director to approve individual grants utilizing up to \$100,000 of SWG pass-through monies and up to \$20,000 of Fish Fund monies per grantee per year for projects meeting SWG Program objectives. For grants exceeding those amounts, staff will seek separate Commission approval after appropriate staff review.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Concilla to authorize the Executive Director to approve individual grants utilizing up to \$100,000 of SWG pass-through monies and up to \$20,000 of Fish Fund monies per grantee per year for projects meeting SWG Program objectives. For grants exceeding those amounts, staff will seek separate Commission approval after appropriate staff review. Motion carried. Commission President Czop indicated that he would like the record to reflect that he opposed the motion.

## E. 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.

At the July 2005 meeting, the Commission voted to defer action until the September 2005 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. Staff followed up by meeting with the dam owner's wife on August 11, 2005. As of the date of agenda preparation, the dam was not marked.

Briefer:

Laurie E. Shepler, Chief 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:

Staff withdrew this item prior to the Commission meeting.

## **ADMINISTRATION FINAL RULEMAKING**

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

### Commentary:

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

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

### Briefer:

Brian P. Barner, Director, Bureau of Administration

### Recommendation:

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

### Action:

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

## **BOATING FINAL RULEMAKING**

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

Commentary:

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

The rule was created to help establish an orderly flow of traffic on smaller Pennsylvania lakes. It was intended to be an advisory regulation not to be strictly enforced but to be used if circumstances dictated. As boating use has grown, however, its applicability has become increasingly clouded and its usefulness questionable. With more and more boaters plying the waters and growing shoreline development, operation in a strict counterclockwise direction is not always feasible or desirable. The Inland Navigation Rules were established to regulate the operation of boats in the vicinity of others. They were born from experience and have historically been adequate to control the operation of boats. Accordingly, the Commission proposed deleting section 103.3(a).

A notice of proposed rulemaking was published at 35 Pa. B. 3423 (June 18, 2005) (Exhibit B). The Commission received 14 comments concerning this proposal. Of those 14 comments, 12 comments (5 received prior to the official public comment period and 7 received during it) opposed the elimination of the counterclockwise requirement. Those comments related to lakes in the northeastern part of the state. The Commission also received two public comments after the close of the official public comment period. Those comments supported the proposal and centered on Glendale Lake. Copies of all public comments have been provided to the Commissioners.

The Boating Advisory Board met on August 22, 2005 and recommended that the Commission delete this regulation. In making its recommendation, the Board recognized that enforcing the regulation on larger lakes is difficult and not necessarily desirable. The Board also discussed retaining the regulation on smaller lakes. In the end, the Board determined that the best course of action would be to eliminate the general regulation and to consider the applicability of counterclockwise operation on a case by case basis in Chapter 111 regulations.

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Recommendation:

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

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Concilla 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.

B. Amendment to Chapter 111 (Special Regulations Counties).

Commentary:

The Boating Advisory Board requested that staff review existing water skiing regulations that limit the number of water skiers or water skiing devices that may be towed behind a boat to identify those special regulations targeting single skier restrictions and recommend changes to these regulations to improve recreational opportunities. The original intention of most of these special regulations was to limit the number of water ski ropes rather than the number of persons on the skis. (In some cases such as at Blue Marsh Lake, there was also an intention to limit the number of persons). Staff review revealed a great deal of inconsistency in language across the regulations that needs to be corrected.

A notice of proposed rulemaking containing amendments to Chapter 111 was published at 35 Pa. B. 3423 (June 18, 2005) (Exhibit B). The Commission received one comment supporting the proposal. Copies of all public comments have been provided to the Commissioners. Also during the comment period, staff continued its dialog with the managers of the lakes operated by the Corps of Engineers and the Bureau of State Parks to assure their agreement with any changes.

The Boating Advisory Board met on August 22, 2005 and recommended that the Commission adopt the proposed amendments to the water ski regulations as published in the notice of proposed rulemaking with the following modifications as recommended and supported by the Corps managers:

§111.3. Armstrong County.

(a) *Crooked Creek Lake.*

(1) **[A boat may not tow more than one water skier.]** A boat may not tow more than one ~~water ski device~~ WATER SKIER on weekends and holidays from the Saturday preceding Memorial Day through Labor Day. \* \* \*

§111.6. Berks County.

(a) *Blue Marsh Lake.* **[The following special regulations apply to Blue Marsh Lake]:**

\* \* \*

(3) **[No more than one water skier may be towed behind a boat.]** A boat may not tow more than one ~~water ski device~~ WATER SKIER. \* \* \*

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Recommendation:

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

Action:

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

**FISHERIES**  
**PROPOSED RULEMAKING**

A. Amendment to Section 63.8 (Longbows, Crossbows, Spears and Gigs).

Commentary:

Currently, section 63.8(a) allows carp, gar, suckers, and eels to be taken with long bows, crossbows, spears or gigs. However, spotted gar is listed as an endangered species and longnose gar is listed as a candidate species in Pennsylvania. In addition, the American eel is currently under review by the United States Fish and Wildlife Service for possible listing as a federally endangered or threatened species. Staff therefore believe that to allow continued harvest of “gar” and “eels” by these gears is inconsistent with the protection of species of special concern, and the species should be eliminated from section 63.8(a). Staff recommend that this section be amended as follows:

§63.8. Long bows, crossbows, spears and gigs.

(a) *General.* Except as otherwise provided in this part, carp[, **gar,**] **and** suckers[, **and eels**] may be taken with long bows and arrow, including compound bows, crossbows, spears or gigs, at any hour of the day or night aided by a light at night if so desired, in Commonwealth waters and waters bounding and adjacent thereto.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that 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 Sabatose and seconded by Commissioner Concilla 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.

## DESIGNATIONS

### B. Addition of an Unnamed Tributary to Ontelaunee Creek to the Class A Wild Trout Waters List.

#### Commentary:

Pursuant to 58 Pa. Code §57.8a (relating to Class A wild trout streams), it is the Commission's policy to recognize self-sustaining Class A wild trout populations as a renewable natural resource meriting special consideration in development of fisheries management plans and water quality/habitat protection. Class A wild trout populations represent the best of Pennsylvania's naturally reproducing trout populations. Criteria developed for Class A Wild Trout populations are species specific. Wild Trout Abundance Class Criteria include provisions for wild brook trout, wild brown trout, mixed wild brook and brown trout, and wild rainbow trout populations. All must have at least 0.1 kg/ha (0.089 lbs/acre) of trout of the particular species less than 15 cm (5.9 inches) in total length. Biomass minimums for wild brown trout, wild brook trout and mixed wild brook/brown trout populations where neither species comprises 75 percent or more of the biomass are 40 kg/ha (35.6 lbs/acre), 30 kg/ha (26.8 lbs/acre), and 40 kg/ha (35.6 lbs/acre), respectively.

Commission staff conducted electrofishing surveys of the trout population of an Unnamed Tributary (first tributary west of S.R. 309) to Ontelaunee Creek in both 2004 and 2005. This stream, which is located in Lehigh County, is 0.85-mile in length. It is located north of Mosserville and flows in a southerly direction along S.R. 309. It is the first tributary to Ontelaunee Creek to cross under Lentz Road west of S.R. 309. Commission staff sampled this stream on August 16, 2004, and again on July 28, 2005, at a location beginning 0.15 mile upstream from the mouth. A Jolly population estimate was conducted in 2004. This method produced a brook trout biomass estimate of 71.63 kg/ha at the 200 m site that was sampled. The biomass of trout less than 150 mm was 47.29 kg/ha. In 2005 a Petersen estimate was conducted. The 2005 sample began at approximately the same location as the site sampled in 2004 but extended for another 100 m upstream for a total site length of 300 m. The estimated biomass of brook trout in that sample was 63.34 kg/ha with a biomass of trout less than 150 mm of 53.15 kg/ha. These biomass estimates exceed the Class A criteria.

A notice of proposed designation adding this stream to the Class A list was published at 35 Pa. B. 4794 (August 20, 2005) (Exhibit C). The Commission received one public comment from Pennsylvania Trout supporting the proposed addition. 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 addition of the unnamed tributary to Ontelaunee Creek to the list of Class A Wild Trout Streams as set forth in the notice of proposed designation.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to approve the addition of the unnamed tributary to Ontelaunee Creek to the list of Class A Wild Trout Streams as set forth in the notice of proposed designation.  
Motion carried.

C. Addition of Plum Creek and Halter Creek to the Class A Wild Trout Waters List.

Commentary:

Pursuant to 58 Pa. Code §57.8a (relating to Class A wild trout streams), the Commission may designate Class A wild trout populations as a renewable natural resource meriting special consideration in development of fisheries management plans and water quality/habitat protection.

A notice of proposed designation adding 23 streams or portions thereof to the Commission's list of Class A Wild Trout Waters was published at 34 Pa. B. 6730 (December 18, 2004) (Exhibit D). Among these streams were Halter Creek, Blair County, from the confluence with Plum Creek downstream to the mouth (2.2 miles), and Plum Creek, Blair County, from the SR 0164 bridge downstream to the mouth (3.4 miles). The Commission received 12 public comments concerning the proposed designations. Three generally supported all of the proposed additions, five specifically supported the proposed additions of Halter Creek and Plum Creeks and four requested that the Commission postpone consideration of the additions of Halter and Plum Creeks and seek additional public comment. Copies of these public comments were previously provided to the Commissioners.

In response to requests to extend the public comment period, the Commission published a second notice of proposed designation at 35 Pa. B. 1486 (February 26, 2005) (Exhibit E). The Commission received seven comments in response to this notice. Of these, two generally supported all of the proposed 23 additions, one specifically supported the proposed additions of Halter and Plum Creeks, and three expressed concerns regarding the proposed additions of Halter and Plum Creeks. Copies of these public comments were previously provided to the Commissioners as well.

At its April 2005 meeting, the Commission approved the additions to the list of Class A Wild Trout Waters as set forth in the notices of proposed designation with the exception of Plum and Halter Creeks. The Commission deferred consideration of Plum and Halter Creeks pending additional sampling by staff to confirm the previous findings on these streams. This sampling was conducted on July 6-8, 2005. An average brown trout biomass of 162.36 kg/ha was documented from two sites in the proposed Class A section on Halter Creek, and an average brown trout biomass of 141.26 kg/ha was documented from three sites on the proposed Class A section of Plum Creek. These levels far exceed the Class A criteria of 40 kg/ha.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the addition of both Halter Creek and Plum Creek to the list of Class A Wild Trout waters as set forth in the notices of proposed designation.

Action:

At the Fisheries Committee meeting, the Committee recommended that the Commission postpone consideration of this item until the January 2006 meeting.

At the full Commission meeting, a motion was made by Commissioner Sabatose and seconded by Commissioner Concilla to table the item. Motion carried.

D. Removal from the Delayed Harvest Artificial Lures Only Program: Schrader Creek, Bradford County.

Commentary:

Currently, a 1.2-mile section of Schrader Creek, Bradford County, from the State Game Lands #36 boundary downstream to 100 yards downstream of the confluence of Bull Run, is regulated under the Delayed Harvest Artificial Lures Only Program. There have been repeated angler complaints that trout do not remain in this project area. An electrofishing evaluation of the project area in June 2004 failed to capture any trout. In addition, a 150 m sample site located just upstream from the project area yielded just one blacknose dace. These findings are apparently the result of poor water quality episodes (low pH) on this stream.

A notice of proposed redesignation was published at 35 Pa.B. 4795 (August 20, 2005) (Exhibit F) seeking comments on a proposal to remove the 1.2 mile-section of Schrader Creek, Bradford County (from the State Game Lands #36 boundary downstream to 100 yards downstream of the confluence of Bull Run) from the list of waters regulated under the Delayed Harvest Artificial Lures Only Program pursuant to §65.6 and to place this section of stream under conventional regulations for Commonwealth inland waters under §61.1. The Commission received one public comment from Pennsylvania Trout expressing concern over the proposal. Copies of all public comments have been provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the redesignation of Schrader Creek as described in the Commentary. If approved, this redesignation will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Sabatose to approve the redesignation of Schrader Creek as described in the Commentary. This redesignation will go into effect on January 1, 2006. Motion carried.

E. Removal from the Delayed Harvest Artificial Lures Only Program: Bermudian Creek, Adams County.

Commentary:

Currently, a 1.0-mile section of Bermudian Creek, Adams County, from the S.R. 1009 (Wierman Mill) Bridge downstream to T-619 is regulated under the Delayed Harvest-Artificial Lures Only Program. Recently, the Commission was notified that a landowner who owns approximately 23% of the riparian land on this section of stream plans to post his property against trespassing beginning in January 2006. Among the reasons given were littering and other poor angler behavior. Because the posting will significantly reduce the portion of this section that is available for public access, staff recommend that it be removed from the Delayed Harvest Program.

A notice of proposed redesignation was published at 35 Pa.B. 4795 (August 20, 2005) (Exhibit F) seeking comments on a proposal to remove the 1.0 mile-section of Bermudian Creek, Adams County (from the S.R. 1009 (Wierman Mill) Bridge downstream to T-619) from the list of waters regulated under the Delayed Harvest Artificial Lures Only Program pursuant to §65.6 and to place this section of stream under conventional regulations for Commonwealth inland waters under §61.1. The Commission received two public comments – one from Pennsylvania Trout expressing concern over the proposal and another from an individual who is disappointed in the condition of Bermudian Creek. Copies of all public comments have been provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the redesignation of Bermudian Creek as described in the Commentary. If approved, this redesignation will go into effect on January 1, 2006.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Concilla to approve the redesignation of Bermudian Creek as described in the Commentary. This redesignation will go into effect on January 1, 2006. Motion carried.

F. Change in Designation from the All-Tackle Trophy Trout Program to the Catch and Release All-Tackle Program: Little Juniata River, Blair/Huntingdon Counties.

Commentary:

Currently, a 13.5-mile section of the Little Juniata River, Blair and Huntingdon Counties, is regulated under the All-Tackle Trophy Trout Program. This section extends from the railroad bridge at the east (downstream) border of Ironville downstream to the mouth. Under the current regulations, fishing is open year-round, the minimum size limit is 14 inches, and the daily creel limit is two trout from the opening day of trout season in April until midnight Labor Day. Otherwise, no trout may be harvested. At its July 2005 meeting, the Commission approved the adoption of a new special regulation program called the Catch and Release All-Tackle Program. Under the new program, waters will be open year-round, but no harvest will be permitted at any time. Staff recommend that the section of the Little Juniata River currently regulated under the All-Tackle Trophy Trout Program be added to the new program.

A notice of proposed redesignation was published at 35 Pa.B. 4683 (August 13, 2005) (Exhibit G) seeking comments on the proposal to remove the 13.5 mile-section of the Little Juniata River, Blair/Huntingdon Counties (from the railroad bridge at the east (downstream) border of Ironville downstream to the mouth) from the list of waters managed under the All-Tackle Trophy Trout Program pursuant to §65.4a and to re-designate this section of stream under the new Catch and Release All-Tackle Program pursuant to §65.15. Prior to the formal public comment period, the Commission received a total of 87 comments in favor of the proposed redesignation – 66 express support for the Little Juniata River only, and 21 express support for the redesignation of the Little Juniata River and the Clarion River. The Commission also received two comments opposing the redesignation of the Little J. The Commission received nine individual written comments and two petitions during the formal public comment period. Six of the written comments express support for the redesignation of the Little Juniata River only, and three express support for the redesignation of the Little Juniata River and the Clarion River. The petitions, one of which was signed by 244 individuals and the other which was signed by 56 individuals, supports the redesignation of the Little Juniata River. 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 redesignation of the Little Juniata River as described in the Commentary. 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 approve the redesignation of the Little Juniata River as described in the Commentary. This redesignation will go into effect on January 1, 2006. Motion carried.

G. Change in Designation from the All-Tackle Trophy Trout Program to the Catch and Release All-Tackle Program: Clarion River, Elk County.

Commentary:

Currently, an 8.5-mile section of the Clarion River, Elk County, is regulated under the All-Tackle Trophy Trout Program. This section extends from the confluence of the East and West Branches downstream to the confluence with Elk Creek. Under the current regulations, fishing is open year-round, the minimum size limit is 14 inches, and the daily creel limit is two trout from the opening day of trout season in April until midnight Labor Day. Otherwise, no trout may be harvested. At its July 2005 meeting, the Commission approved the adoption of a new special regulation program called the Catch and Release All-Tackle Program. Under the new Catch and Release All-Tackle Program, waters will be open year-round, but no harvest will be permitted.

A notice of proposed redesignation was published at 35 Pa.B. 4683 (August 13, 2005) (Exhibit G) seeking comments on the proposal to remove the 8.5 mile-section of the Clarion River, Elk County (from the confluence of the East and West branches downstream to the confluence with Elk Creek) from the list of waters managed under the All-Tackle Trophy Trout pursuant to §65.4a and to re-designate this section of stream under the new Catch and Release All-Tackle Program pursuant to §65.15. Prior to the formal public comment period, the Commission received a total of 24 comments in favor of the proposed redesignation – three express support for the Clarion River only, and 21 express support for the redesignation of the Clarion River and the Little Juniata River. The Commission received three public comments supporting the redesignation of the Clarion River during the formal public comment period. These three comments support the redesignation of both the Clarion River and the Little Juniata River. 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 redesignation of the Clarion River as described in the Commentary. 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 approve the redesignation of the Clarion River as described in the Commentary. This redesignation will go into effect on January 1, 2006. Motion carried.

## OTHER MATTERS

### H. State Wildlife Grant Program.

#### Commentary:

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

A portion of the 2005 SWG funds will be made available for grants for competitively selected projects. The remainder of the funding is allocated equally between the Game Commission and the PFBC to fund priority nongame programmatic efforts that the agencies identify and prioritize internally.

PFBC staff wish to enter into cooperative agreements with partners to fund competitively selected projects and projects that PFBC staff have identified as being priorities. PFBC staff recommend that the PFBC award grants to the following competitively selected projects:

(1) Developing a Conservation and Management Plan for the State Endangered Eastern Massasauga – Western Pennsylvania Conservancy

Over the last century, the Eastern Massasauga (*Sistrurus catenatus catenatus*, PA Endangered, Federal Candidate to be listed as Threatened or Endangered) has suffered a substantial range reduction in Pennsylvania (19 historic populations within six counties to four populations within two counties) necessitating a comprehensive conservation and management plan to ensure the future viability of the species. The Western Pennsylvania Conservancy proposes to conduct a pilot study utilizing regionally specific natural history data collected in an Eastern Massasauga telemetry project to determine the best techniques for altering, restoring and maintaining Eastern Massasauga habitat. This study will be used to develop a conservation and management plan for the Eastern Massasauga in Pennsylvania. The Western Pennsylvania Conservancy has requested \$174,659 in SWG money to be used across two years of study and analysis.

(2) Distribution and Status of the Eastern Hellbender in the Tributaries of the Susquehanna River West Branch – Lycoming College

The Eastern Hellbender (*Cryptobranchus alleganiensis alleghaniensis*) is considered a species of concern in Pennsylvania and is listed as endangered in five other eastern states. Field surveys are needed to determine the distribution and status of the Eastern Hellbender in the tributaries of the Susquehanna River West Branch in Pennsylvania. Both shallow water and deep water populations will be identified and characterized for population size, density, age structure, sex ratio and reproductive health. Habitat features and water quality parameters will be measured and correlated with the population parameters. Captured

individuals will be marked with passive integrated transponder (PIT) tags and released. Selected adults will be tracked using radio-telemetry equipment in order to monitor movements and locate nests during the fall and breeding period. Project results will be used to provide recommendations for species management and conservation of the Eastern Hellbender in Pennsylvania. Lycoming College has requested \$49,000 in SWG funds to conduct the study.

(3) Assessing the Population Viability and Genetic Variability for Species in Greatest Conservation Need – Carnegie Museum of Natural History

Molecular tools will be applied to determine population viability and genetic variation in selected species identified in Pennsylvania's Comprehensive Wildlife Conservation Strategy (CWCS). One or more of the following benefits will be achieved with this work and include helping to: 1) address informational needs identified in the CWCS; 2) allow evaluation of the viability of isolated or peripheral populations, 3) provide assessment of the systematic relationships (e.g., genetic diversity, hybridization, speciation) of species and 4) facilitate identification features for distinguishing populations for possible use in law enforcement efforts. To develop management and protection measures, it is essential to understand the genetic status of these rare or isolated species.

Standard protocols will be established for gathering, analysis and interpretation of molecular (DNA) data so that fisheries managers can employ best management practices using such information. Examples of species that could be used for such analysis include the state endangered longnose sucker (*Catostomus catostomus*) and cheat minnow (*Pararhinichthys bowersi*), both of which have highly isolated and peripheral populations in Pennsylvania. The longnose sucker was recently petitioned for federal listing. The Ohio-Youghiogeny population qualifies as a "distinct population segment" under the Endangered Species Act. This species is extirpated in Maryland and West Virginia and remains only in Pennsylvania. The cheat minnow is a globally rare species. Pennsylvania has high responsibility for this species, which is confined to a few streams in Pennsylvania, Maryland and West Virginia. For this project, the Carnegie Museum of Natural History is requesting up to \$70,000 in SWG funds to conduct the genetics study.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Pflugfelder to approve the three State Wildlife Grants described in the Commentary. Motion carried.

## **LAW ENFORCEMENT FINAL RULEMAKING**

### **A. Charter Boat/Fishing Guide Regulations.**

#### Commentary:

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

The Executive Director established a workgroup consisting of Commission staff and charter boat/fishing guides from across the Commonwealth and assigned them the task of developing the regulations. The group formally met in January and March 2005 to discuss issues pertaining to this new program. With tremendous input from the charter boat/fishing guides, proposed regulations were developed.

A notice of proposed rulemaking containing the proposed regulations was published at 35 Pa. B. 3416 (June 18, 2005) (Exhibit H). The Commission received a total of 14 public comments primarily from charter boat captains. One comment was received prior to the formal public comment period, ten during and three after. The majority of the public comments raised two issues – namely, increasing the number of rods that may be lawfully used by charter boat customers from two to three and allowing charter boat captains to remove the skin from the fillets of fish caught by their customers. The Commission also received several comments regarding permit fees, which are established by statute, not by the regulations. Copies of all public comments have been provided to the Commissioners.

#### Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

#### Recommendation:

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

#### Action:

Per the recommendation of the Law Enforcement Committee, a motion was made by Commissioner Mahon and seconded by Commissioner Pflugfelder to adopt the proposed regulations as set forth in the notice of proposed rulemaking with the addition of a requirement that all permit applicants must be at least 16 years of age. These regulations will go into effect on January 1, 2006. Motion carried.

## PROPOSED RULEMAKING

### B. Field Dressing and Disposal of Fish.

#### Commentary:

During the early part of 2005, the Commission, with the assistance of a workgroup comprised of charter boat captains and fishing guides, developed regulations pertaining to charter boat/fishing guide operations. A concern was raised at one of the workgroup meetings regarding the current field dressing of fish regulations contained in section 63.15. The workgroup, especially the charter captains, requested a change in the regulations to allow them to fully process fish caught by their customers.

Commission staff also are aware of the development of several noncommercial official fish cleaning stations on the Lake Erie shoreline and at other locations throughout the Commonwealth. These facilities are generally open to the public for their use at no cost to process their catch. The current regulations prohibit anglers using these facilities to fully process their catch.

Accordingly, staff propose that the Commission amend its regulations to address the concerns raised by the charter captains and to provide anglers with the ability to fully process their catch at an officially recognized noncommercial fish cleaning station. Staff also propose amendments to address the disposal of fish carcasses and parts thereof in Commonwealth waters and adjacent lands. These proposed changes provide for a greater degree of uniformity in the processing of fish and carcass disposal with the current regulations in New York and Ohio.

In addition, staff propose a new §63.15a (relating to officially-recognized fish cleaning stations). This new section allows for two types of officially recognized fishing cleaning stations – commercial and non-commercial. Operators of commercial stations are required to give the person who receives a filleted fish a signed, dated receipt indicating the species and the number of fish dressed. Operators of non-commercial stations are not. Staff also propose to clarify that the operator of an officially-recognized fish cleaning station will allow officers authorized to enforce the Fish and Boat Code access to the station to inspect angler catches to determine compliance with seasons, sizes and creel limits.

A copy of the proposed amendments is set forth in Exhibit I.

#### Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

#### Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments set forth in Exhibit I. If adopted on final

rulemaking, the amendments will go into effect upon publication in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Pflugfelder to approve the publication of a notice of proposed rulemaking containing the amendments set forth in Exhibit I. The amendments will go into effect upon publication in the Pennsylvania Bulletin. Motion carried.

## DESIGNATIONS

### C. Designation of Exclusive Use Fishing Areas.

#### Commentary:

Throughout the years, the Commission has designated sections of waters as exclusive use fishing areas for children, special populations, or both. The designations are effective throughout the year.

Under section 65.21 of the Commission's regulations (relating to waters limited to specific purposes – exclusive use areas), requirements have been placed on sponsors seeking designation. Among them is a requirement that a sponsor of a children's area establish that the area will be used year-round by showing that fishing tournaments/derbies, stocking or other special events are planned throughout the year. A sponsor of a special populations' area must describe how the proposed area is accessible and what accommodations have been made for use by special populations. The sponsor must further certify that the requirements of the Americans with Disabilities Act and the regulations promulgated thereunder are currently met and will be met in the future.

Three sponsors have requested designation of exclusive use areas on the waters listed below. The sponsors have met the regulatory requirements for designation of these areas. The exact areas will be marked with posters at the sites.

Sponsor	County	Water Area	Length	Type
Schuylkill County Trout Unlimited	Schuylkill	Deep Creek	450 feet	Children Only
Valley View Gun Club	Schuylkill	Pine Creek	½ mile	Children Only
Lakeshore Towing Service	Erie	West Canal Basin Erie Harbor	170 feet	Special Populations Only

#### Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

#### Recommendation:

Staff recommend that the Commission designate the water areas identified in the Commentary as exclusive use fishing areas for children or special populations, as indicated. If approved, these designations will go into effect upon publication of a notice in the Pennsylvania Bulletin.

#### Action:

A motion was made by Commissioner Concilla and seconded by Commissioner Pflugfelder to designate the water areas identified in the Commentary as exclusive use fishing areas for children or special populations, as indicated. These designations will go into effect upon publication of a notice in the Pennsylvania Bulletin. Motion carried.

## OTHER MATTERS

### D. Refund of Overpayment of Fine.

#### Commentary:

On June 13, 2005, Tan T. Lik of Philadelphia was fishing in the Delaware River in Tinicum Township, Delaware County. Mr. Lik was fishing with six rods. Currently, a person fishing in waters of this Commonwealth is permitted to fish with a maximum of two lines, either by rod or by hand, except when ice fishing. This is a violation of 30 Pa. C.S. §2102 (b), 58 Pa Code §63.6(a). The fine for this offense is \$50.00.

The WCO who cited Mr. Lik mistakenly believed that an additional fine of \$20.00 per illegally taken fish that may be imposed under 30 Pa. C.S. §923(b) also applies to rods or other devices used in violation of the Fish and Boat Code. Since Mr. Lik was using six rods, which is four more than is permitted, the WCO added an \$80.00 additional fine to the \$50.00 fine for this violation. However, section 923(b) addresses only fish illegally taken but does not indicate in any way that the additional fine may be imposed per device illegally used when fishing. The defendant pleaded guilty and paid the fine of \$130.00 and costs. Since section 923(b) mentions only fish but not rods or devices, the additional fine of \$80.00 should not have been imposed.

The Bureau of Law Enforcement believes that a refund in the amount of \$80.00 to Mr. Lik is appropriate.

#### Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

#### Recommendation:

Staff recommend that the Commission authorize the payment of \$80.00 from the Fish Fund to Tan T. Lik, Philadelphia, as a refund for the overpayment of the fine imposed.

#### Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Sabatose to authorize the payment of \$80.00 from the Fish Fund to Tan T. Lik, Philadelphia, as a refund for the overpayment of the fine imposed. Motion carried.

#### E. Refund of Overpayment of Fine.

##### Commentary:

On July 16, 2005, Harold Miller, Jr. of Coraopolis was issued a citation for fishing without the required license. Mr. Miller was fined \$92.00. However, Mr. Miller's date of birth is September 20, 1937, and thus, he was 67 years of age at the time he was cited. Mr. Miller should have been fined \$70.00 for fishing without a senior resident fishing license.

Under the circumstances, the Bureau of Law Enforcement believes that a refund in the amount of \$22.00 to Mr. Miller is appropriate.

##### Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

##### Recommendation:

Staff recommend that the Commission authorize the payment of \$22.00 from the Fish Fund to Harold Miller, Jr. as a refund for the overpayment of the fine imposed.

##### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to authorize the payment of \$22.00 from the Fish Fund to Harold Miller, Jr. as a refund for the overpayment of the fine imposed. Motion carried.

### **Other New Business**

None.

### **Reports of Commissioner Committees**

#### **Law Enforcement (Commissioner Pflugfelder) –**

The Law Enforcement Committee met at 3:15 p.m. on Monday, September 26. Agenda items were discussed. Tom Kamerzel provided an update on the 17<sup>th</sup> Waterways Conservation Officer (WCO) class assignments; the 18<sup>th</sup> WCO class recruitment efforts; the fall steelhead enforcement detail; Northwest Assistant Supervisor promotions and the seasonal Deputy WCO pilot project.

The Committee also acted upon proposed revocations and suspensions. The Committee revoked the fishing privileges of one individual for eighteen months and one individual for one year. The Committee revoked the boating privileges of two individuals for two years with a reduction to one year upon successful completion of a safe boating course. The Committee revoked the boating privileges of three individuals for one year with a reduction to six months upon successful completion of a safe boating course.

#### **Commission Policy (Commissioner Czop) –**

The Policy Committee met on Monday, September 26, at 10:15 a.m. Dr. Austen provided an update on Commissioner Policy Statements and led discussion on the pending agenda items. Gary Moore, Legislative Liaison, provided an update on legislative matters.

#### **Education and Publications and Boating (Commissioner Pflugfelder) -**

The Education and Publications Committee and the Boating Committee met jointly on Monday, September 26, at 11:15 a.m. Agenda items were discussed. Dan Tredinnick provided an update on marketing efforts in regard to the Summary Book.

#### **Fisheries (Commissioner Sabatose) -**

The Fisheries Committee met at 2:15 p.m. on Monday, September 26. Agenda items were discussed, and Rickalon Hoopes, Director, Bureau of Fisheries provided a grant review. A Fisheries Committee meeting has been scheduled for October 12-13, 2005 in Erie. All Commissioners are encouraged to attend.

#### **Engineering and Development (Commissioner Concilla) –**

The Engineering and Development Committee met at 1:45 p.m. on Monday, September 26. Richard Mulfinger, Director, Bureau of Engineering and Development, provided an update on the Southside Access Area in Pittsburgh and other Bureau projects. Tom Ford provided a report on Growing Greener.

**Time and Place of January 2006 Commission Meeting**

The next meeting is scheduled for January 23-24, 2006 and will be held at the Commission's headquarters in Harrisburg.

**Additional Public Comment to Commissioners and Staff**

Tom Speers and Dan Small, Indian Head Dam Watershed Association, provided public comment and a presentation on the impact of removing Indian Head Dam on Perkiomen Creek.

**Adjournment**

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Sabatose to adjourn the meeting at 11:10 a.m. Motion carried.