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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 72nd Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, May 1 and 2, 2006, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on May 1 beginning at 10:15 a.m. The public session for review of this agenda began at or about 8:30 a.m. on May 2.

Call to Order

The meeting was called to order by Commission 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
Donald K. Anderson
Samuel M. Concilla
Paul J. Mahon
Frederick P. Osifat
William J. Sabatose

Review and Approval of Minutes from the January 2006 Meeting

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Sabatose to approve the January 2006 minutes as written. Commissioner Osifat abstained from voting since he was not in attendance at the January 23-24, 2006 meeting. Motion carried.

Awards and Presentations

Commissioner Paul Mahon was honored for his tireless work on behalf of the anglers and boaters of the Commonwealth. During his 15 years as a Pennsylvania Fish and Boat Commission Commissioner, his vision for providing access to the water for persons with physical disabilities has been a driving force in developing new facilities and philosophies. He

has led by inspiration and by example. The Commission and the Commonwealth are indebted to Commissioner Mahon and are better as a result of his dedicated service.

A resolution establishing the Commissioner Paul J. Mahon "Access for All" Award was announced by Commissioner Czop on Monday, May 1. A copy of the resolution is set forth at Exhibit F. This award will recognize Pennsylvania citizens who, like Commissioner Mahon, have made outstanding contributions through angling and boating programs or through the development of facilities that improve access to the resource for the disabled.

Executive Director's Report

Dr. Austen highlighted several items in his report to the Commission. The "PFBC Activity Report – First Quarter 2006" (Exhibit G) was provided to Commissioners, and it included 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 described many exciting things that are taking place at the Fish and Boat Commission. The Commission has been successful in reaching its constituents, and Dr. Austen expressed his appreciation to the Commissioners and staff. Highlights of the Commission's Strategic Plan were addressed. The Point of Sale Licensing System, the interest in habitat and maintaining access areas, including those in the Erie area, also were mentioned.

Announcement of Notational Votes

The Commission voted on one item by notational vote since the January 2006 meeting. The Commission authorized staff to proceed with the Corry State Fish Hatchery infrastructure restoration and wastewater improvement project utilizing Growing Greener II bond funds. A copy of the notational vote is set forth at Exhibit H.

Announcement of Executive Session

Commissioner Czop announced that an Executive Session was held on Monday, May 1, from approximately 8:00 a.m. until 10:00 a.m. and again at 12:00 noon. Litigation and personnel matters were discussed.

Reports of Commissioner Committees

Commission Policy (Commissioner Czop) –

The Policy Committee met on Monday, May 1, at 10:15 a.m. Agenda items were discussed, and Dr. Austen provided an update on the Abele Award program. Director Rick Hoopes provided an update on the Bureau of Fisheries reorganization plan and an update on Growing Greener II. Brian Barner, Director of the Bureau of Administration, provided a federal funds overview, and Legislative Liaison Gary Moore gave a legislative update.

Education and Publications (Commissioner Pflugfelder) –

The Education and Publications Committee met on Monday, May 1, at 1:30 p.m. Updates on youth education grants, youth programs and the Commission's website were provided. A recap of the 2006 sports shows also was provided.

Law Enforcement (Commissioner Anderson) –

The Law Enforcement Committee met at 4:00 p.m. on Monday, May 1. Tom Kamerzel provided an update on the 18th Waterways Conservation Class and the 2006 Deputy Waterways Conservation Officer pilot program.

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

Fisheries (Commissioner Sabatose) –

The Fisheries Committee met at 2:50 p.m. on Monday, May 1. Agenda items were discussed along with management issues regarding trout stocked lakes. Commissioner Sabatose thanked Commissioners and staff for their attendance at the April 5 Fisheries Committee meeting and the tour of the Blue Valley facility. Commissioners Czop and Mahon also expressed how they were impressed with the technology at the Blue Valley hatchery.

Boating (Commissioner Anderson) –

The Boating Committee met at 1:00 p.m. on Monday, May 1. An update of the Boating Advisory Board meeting was provided. A review of the status of Boating Facility Grant Program and of the Erie Access Improvement Grant Program's activities was also provided.

Engineering and Development (Commissioner Concilla) -

The Engineering and Development Committee met on Monday, May 1, at 2:30 p.m. Director Dick Mulfinger provided an update of current activities and planned future projects.

Public Comment to Commissioners and Staff

There were no comments or questions from the public.

EXECUTIVE OFFICE

A. Authorization to Proceed With a Bid for Sponsoring the American Fisheries Society Annual Meeting in 2010.

Commentary:

Pennsylvania has hosted six national meetings since the American Fisheries Society (AFS) was founded in 1870. These meetings were held in Philadelphia in 1889, 1894, and 1958; in Allentown in 1921; in Erie in 1907; and in Pittsburgh in 1990. Commission staff worked together with the membership of the Pennsylvania Chapter and the national office staff of AFS in co-sponsoring the 1990 Annual Meeting in Pittsburgh. This meeting attracted approximately 1000 fisheries professionals from around the world to Pennsylvania. The most recent national conference that was held in Anchorage, Alaska, in September 2005 had about 2800 members in attendance. It is expected that at least 1500 fisheries professionals will attend the 2010 meeting. Meetings are rotated around the country, and it will be the Northeast Division's turn to sponsor the meeting four years from now. However, if no one agency/chapter steps up from within the Division, the solicitation for proposals will be opened up nationally.

The Pennsylvania Chapter has requested to work with the Commission staff in the preparation of a proposal for the 2010 Annual Meeting. The meeting would be held sometime during August or September 2010. However, Pennsylvania Chapter members are volunteers, and their level of capacity to host a meeting of this size cannot be accomplished without the Commission serving as the primary coordinator. The Pennsylvania Chapter and Northeast Division officers and members will be able to provide some assistance to Commission agency staff but cannot work full-time on this project.

This meeting would be an excellent opportunity to showcase Pennsylvania and our fisheries program to a national audience. This is an opportunity to increase tourism, and it will definitely have a local financial benefit. We also can expect that many participants will take advantage of the meeting to recreate in Pennsylvania streams and state parks before and after the meeting. Professionally, hosting this conference provides a unique and invaluable opportunity for all Commission staff and fisheries professionals in Pennsylvania to interact and learn from the nation's leading fisheries researchers and practitioners.

A proposal to host the 2010 Annual Meeting somewhere in Pennsylvania would be presented to the Bid Committee at the 2006 Annual Meeting in Lake Placid, NY, in September 2006. Written proposals are due to the AFS national office by August 14, 2006. Therefore, if Pennsylvania wishes to present a bid to host the meeting, the Commission must begin the process soon. This effort would require a bid committee, composed of Pennsylvania fisheries professionals, to work with an AFS meeting planning consultant in the preparation of a bid package. If accepted, an organizing

committee would be formed with appropriate sub-committees to prepare for the conference.

Once the bid is awarded to Pennsylvania, the Pennsylvania Chapter of AFS and the Commission would develop a set of working committees that would address the logistics of hosting the meeting. In general, the duties expected of the host state include, but are not limited to, the following:

1. Provide volunteers to work at the meeting (information, A/V assistance, directions, etc.) and to manage all local logistics.
2. Design gifts, bags or other handouts.
3. Design poster and logo.
4. Partial fundraising (focus on local and state organizations).
5. Develop and coordinate evening receptions and associated events.
6. Provide written materials and photographs for the *Fisheries* magazine.
7. Media relations.
8. Meeting room assignments.
9. Prepare and manage a conference budget (in close cooperation with the AFS Executive Director).

Fiscal impacts:

The National AFS provides seed money for conference development (generally in the neighborhood of \$10,000). A separate account is established for the meeting and will be managed by the Pennsylvania Chapter of AFS. Since this is an AFS meeting, the proceeds are all returned to AFS. The AFS also signs all contacts and is responsible for all financial risks associated with the meeting. The Commission has no obligations for any financial contributions to the meeting.

Briefer:

John Arway, Chief, Environmental Services Division and current President of the Pennsylvania Chapter American Fisheries Society

Recommendation:

Staff recommend that the Commission authorize staff to proceed with preparing a bid package for hosting the Annual Meeting of the American Fisheries Society in 2010. If the bid is awarded to Pennsylvania, the Commission will agree to host the meeting and provide all necessary support.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Mahon to authorize staff to proceed with preparing a bid package for hosting the Annual Meeting of the American Fisheries Society in 2010 and, if the bid is awarded to Pennsylvania, to host the meeting and provide all necessary support. Motion carried.

B. Hatchery Infrastructure Restoration and Improvement: Growing Green II Project Funding Approval.

Commentary:

The Commission previously authorized the use of bond funds for infrastructure restoration and waste treatment improvements at five state fish hatcheries including Tylersville Phase 1, Pleasant Gap Phase 1, Bellefonte, Benner Spring and Huntsdale. These projects are well underway utilizing funds from the Growing Greener II bond initiative that included \$27.5 million for the Commission. By notational vote, the Commission recently approved infrastructure restoration and improvements at the Corry State Fish Hatchery with an estimated cost of \$959,000. The notational vote was used to accommodate an April 12, 2006 purchasing deadline.

The Bureau of Fisheries and Engineering and Development have developed infrastructure restoration and improvement projects for the remainder of the state fish hatcheries not already approved by the Commission for the use of Growing Greener II funds as well as Phase II for both Tylersville and Pleasant Gap. Priorities for these projects were constrained by the highest need to restore hatchery efficiency, effectiveness and security and to meet effluent discharge standards.

Staff's cost estimate for these projects is \$13.14 million.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission approve staff proceeding with the remainder of the state fish hatchery infrastructure restoration and wastewater improvement projects utilizing Growing Greener II bond funds as more fully described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Pflugfelder to approve staff proceeding with the remainder of the state fish hatchery infrastructure restoration and wastewater improvement projects utilizing Growing Greener II bond funds as more fully described in the Commentary. Motion carried.

C. Approval of Reorganization: Division of Habitat Management.

Commentary:

This reorganization proposes to elevate to the Division level and change the title of the Fish Passage and Habitat Management Section within the Bureau of Fisheries. The reorganization will increase the visibility of the work unit to the public and more clearly communicates the Commission's dedication and increased emphasis to protect, restore, and enhance critical habitat for its trust species. The personnel cost of the reorganization is minimal, and there are no other costs associated with this request.

This increased "agency wide" focus is being initiated in response to the recognized need and increased public demand to conserve and improve aquatic habitat throughout Pennsylvania. It is also intended to fulfill objectives outlined in the National Fish Habitat Initiative (NFHI) – specifically, to "protect, restore, and enhance the Nation's fish and aquatic communities through partnerships that foster fish habitat conservation and improve the quality of life for the American people."

The mission of the Division of Habitat Management is to provide leadership, coordination, technical guidance and resources to advance habitat conservation, restoration and enhancement activities that benefit the Commission's trust species and their habitats and to develop partnerships to protect and provide public access to the Commonwealth's aquatic resources.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the reorganization resulting in the Division of Habitat Management as described in the Commentary.

Action:

At the Fisheries Committee meeting, the full Commission voted to postpone consideration of this item until a later date to allow staff to provide funding and staffing information to the Commissioners.

FISHERIES
PROPOSED RULEMAKING

A. Regional Opening Day of Trout Season (New §65.12 and Amendment to §§61.1 and 63.3).

Commentary:

Under the current regulations for Commonwealth inland waters, the opening day of the regular trout season occurs on the first Saturday after April 11. Considering the fact that differences exist in climate across Pennsylvania, the time frame for providing optimum conditions for trout angling during the spring is earlier in portions of southern Pennsylvania, particularly in southeastern Pennsylvania. For example, in southeastern Pennsylvania, air temperatures tend to be warmer earlier in the spring as compared with other regions of the Commonwealth. These warmer temperatures also provide conditions better suited for trout angling at an earlier time in the spring in this region of the state. However, these same warming conditions also can limit trout angling opportunities by mid-spring on many southeastern Pennsylvania waters. The combination of a mid-April opening day and the potential for these waters to become too warm for trout angling by mid-May constricts the amount of time that trout angling can be provided. Staff therefore propose the establishment of an earlier opening day in this region of Pennsylvania to address this problem.

Another issue that an earlier opening day in southeastern Pennsylvania will address is the growing concerns with the movement of stocked trout prior to opening day, as well as the fact that some fish die between the time of stocking and opening day. A southeast regional opening day will provide the opportunity to stock trout in southeastern Pennsylvania earlier for the earlier opening day and shift the stocking to the other regions for the later opening day. This will effectively help to shorten the times between stocking and opening day throughout the state.

Staff have reviewed four alternative boundaries for the southeast regional opening day. Conflicts with pre-season stocked waters traversing the boundary are minimized for waters south and east of Blue Mountain. (See table below).

Option	Number of Stream Sections	Miles	Number of Crossover Stream Sections	Number of Lakes
18 county	248	1136	7	25
10 county	143	548	5	9
Blue Mountain	183	729	2	19
US 22/I78/I81	153	619	5	15

The specific streams and lakes that would be included under this option are shown in Exhibits A and B, respectively.

To provide for an earlier opening day in southeastern Pennsylvania, staff propose a new special regulations program entitled “Regional Opening Day of Trout Season Program” (§65.12). This program will allow the Executive Director, with the approval of the Commission, to designate waters in certain regions as waters subject to the Regional Opening

Day of Trout Season regulations. The opening day of trout season for these waters will be the first Saturday after March 28, two weeks earlier than the current opening day. Trout stocked lakes in the designated region that are currently in the Early Season Trout Stocked Waters Program will be managed under the new regional opening day regulation. Staff propose that the new §65.12 read as set forth in Exhibit C.

The waters that staff initially have selected for inclusion in this program are located in southeastern Pennsylvania. They are all waters south and east of the Blue Mountain Range in addition to West Branch Conococheague Creek and Indiantown Run. This program, however, may be extended in the future to waters in other parts of the Commonwealth where conditions support their inclusion in the program.

With the creation of a regional opening day, §61.1 (relating to Commonwealth inland waters) and §63.3 (relating to fishing in approved trout waters) must be amended to reflect that it is unlawful to fish in approved trout waters regulated under the Regional Opening Day of Trout Season Program from 12:01 a.m. on March 1 to 8 a.m. on the first Saturday after March 28. This proposed prohibition is in addition to the current prohibition against fishing in approved trout waters regulated under §61.1 from 12:01 a.m. on March 1 to 8 a.m. on the first Saturday after April 11. Staff propose that §§61.1 and 63.3 be amended to read as set forth in Exhibit C.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the new regulation for the Regional Opening Day of Trout Season Program and the amendments to §§61.1 and 63.3 as described in the Commentary. If adopted on final rulemaking, the new regulation and the amendments will go into effect on January 1, 2007.

Action:

At the Fisheries Committee meeting, the Committee recommended that the Commission approve the publication of a notice of proposed rulemaking containing the new regulation for the Regional Opening Day of Trout Season Program and the amendments to §§61.1 and 63.3 as described in the Commentary with one exception. The Committee recommended that the Commission utilize the alternative that covers the following 18 counties: Adams, Berks, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill and York.

At the full Commission meeting, a motion was made by Commissioner Mahon and seconded by Commissioner Anderson to approve the publication of a notice of proposed rulemaking containing the new regulation for the Regional Opening Day of Trout Season Program and the amendments to §§61.1 and 63.3 as described in the Commentary with one exception, *i.e.*, that the Commission utilize the 18 county option instead of the Blue Mountain option. If adopted on final rulemaking, the new regulation and the amendments will go into effect on January 1, 2007. Motion carried.

B. Permits for Protection and Management of Trout and Salmon (Amendment to §63.20).

Commentary:

Under §63.20(e), a trout/salmon permit is required when a person fishes in streams or rivers that are approved trout waters or their tributaries during the 2-week period that begins on the opening day of the regular trout season. However, this 2-week period does not cover the period when the Commission is actively stocking trout. Therefore, staff propose that §63.20 be amended to provide that a trout/salmon permit is required when a person fishes in streams and rivers that are approved trout waters or their tributaries from March 1 through May 31. This period more accurately reflects the period during which the majority of the Commission's stocking occurs. In addition, the requirement is consistent with staff's thinking that trout are the primary species being targeted by anglers during that time period. Staff accordingly propose that §63.20 be amended to read as set forth in Exhibit C.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, 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 amendment will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Sabatose to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect on January 1, 2007. Motion carried.

C. Clarification of Extended Season in Relation to Approved Trout Waters (Amendments to §§61.1 and 65.26).

Commentary:

Recently, a question arose as to which waters the extended season applies. §61.1 (relating to Commonwealth inland waters) states that the extended season applies to “streams listed as approved trout waters and all waters downstream of streams listed as approved trout waters, plus lakes and ponds.” §65.26, on the other hand, states that the extended season is in effect on “approved trout waters and downstream areas, plus lakes and ponds.” The wording of these sections does not reflect that lakes and ponds themselves can be approved trout waters or that lakes and ponds can be waters downstream of approved trout waters. Therefore, staff propose that these sections be amended to provide that the extended season applies to approved trout waters and all waters downstream of approved trout waters. Staff propose that the sections be amended to read as set forth in Exhibit C.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Osifat to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2007. Motion carried.

D. Simplification of Trout Regulations: Elimination of All-Tackle Trophy Trout Program under §65.4a.

Commentary:

At the January 1997 meeting, the Commission adopted regulations for the All-Tackle Trophy Trout Program. These regulations went into effect in January 1997. The program was designed to enhance trout populations while providing limited harvest of some larger trout. Under these regulations, angling is permitted on a year-round basis with a 14-inch minimum length limit and two trout per day creel limit during the harvest season. Harvest is permitted from the opening day of regular trout season through Labor Day, and no harvest is permitted for the remainder of the season. This program differs from the Trophy Trout Program in that bait angling is permitted because many landowners along the waters included in the program prefer a regulation that allows the use of bait.

With the creation of the new Catch and Release All-Tackle Program, two waters from the All-Tackle Trophy Trout Program were moved to the Catch and Release All-Tackle Program for the 2006 season. This leaves only two waters remaining in the All-Tackle Trophy Trout Program. In the interest of consolidating and simplifying regulations used in managing trout populations, the waters remaining in this program (Penns Creek and Youghiogheny River) are being proposed for redesignation under the Catch and Release All-Tackle Program for the 2007 season under a separate agenda item. Thus, there is no need to retain the regulations for the All-Tackle Trophy Trout Program. Staff propose that §65.4a be deleted as set forth in Exhibit C.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, 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 approved on final rulemaking, the amendment will go into effect on January 1, 2007.

Action:

At the Fisheries Committee meeting, the Committee recommended that the full Commission not move forward with this item.

At the Commission meeting, the item was withdrawn based on the Committee's recommendation.

E. Simplification of Trout Regulations: Amendment to Trophy Trout Program (§65.7).

Commentary:

The Trophy Trout Program was established in 1983. The program was designed to enhance wild trout populations while providing for limited harvest of some larger trout. Two waters were placed in the program when it was initiated in 1983. Currently, eight waters are managed under the Trophy Trout Program. Under these regulations, angling is permitted on a year-round basis with a 14-inch minimum length limit and two trout per day creel limit during the harvest season. Harvest is permitted from the opening day of regular trout season through Labor Day, and no harvest is permitted for the remainder of the season. Fishing is permitted on a 24-hour basis and gear is restricted to the use of artificial lures only.

Over time, some anglers have suggested that they would like to see the minimum length limit increased on Trophy Trout waters, as they believe that the 14-inch minimum length limit is not reflective of a trophy size trout. In addition, during January 2006, Commission staff polled the landowners along sections of the current Trophy Trout waters regarding their preference for regulations on these sections of stream. Out of a total of 59 landowner responses, the majority of the landowners favored having these waters managed under the Trophy Trout Program with a revised 18-inch minimum length limit and one trout per day creel limit during the harvest period.

Therefore, staff propose that §65.7 be amended to increase the minimum length limit to 18 inches and to reduce the daily creel limit to one trout per day during the harvest period. Staff propose that this section be amended to read as set forth in Exhibit C.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2007.

Action:

At the Fisheries Committee meeting, the Committee recommended that the full Commission not move forward with this item.

At the Commission meeting, the item was withdrawn based on the Committee's recommendation.

F. Increase Lake Erie Seine Licenses (Amendment to §69.21).

Commentary:

The Commission has received a request to increase the authorized number of seine licenses issued under §69.21 (relating to limitations on numbers and types of licenses) from individuals interested in obtaining a license but finding that none are available due to past licensees holding them. Staff from the Bureaus of Fisheries and Law Enforcement reviewed the request and agree that an increase in seine licenses to a total of 15 will support the fishery interests on Lake Erie. They also agree that a maximum of two licenses per individual is appropriate.

Accordingly, staff propose that §69.21 be amended to read as follows:

§69.21. Limitations on numbers and types of licenses.

(a) The number and types of commercial fishing licenses for fishing in Lake Erie shall be limited as follows:

* * *

(3) Seines: **[ten] 15 licenses; no more than two licenses per individual.**

* * *

Briefer:

Leroy Young, Chief, Division of Fisheries Management, 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, the amendment will go into effect upon publication in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Concilla and seconded by Commissioner Sabatose to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary with the condition that that individual who currently possesses three seine licenses be “grandfathered” in the future. If adopted on final rulemaking, the amendment will go into effect upon publication in the Pennsylvania Bulletin. Motion carried.

G. Reptiles and Amphibians – Artificial Propagation and Dealers of Live Aquatic Animals, Introduction and Color Morphs.

Commentary:

At the January 2006 meeting, the Commission approved the republication of a notice of proposed rulemaking containing extensive changes to its regulations pertaining to reptiles and amphibians. Commission staff, upon closer review of those proposed regulations, have determined that several issues require additional clarification. They are artificial propagation and dealers of live aquatic animals, introduction and color morphs.

Although the notice of proposed rulemaking approved at the January meeting broadly addresses artificial propagation of reptiles and amphibians, it does not address the more specific issue of closed system propagation. Closed systems are designed to prevent release or escape of animals from the system. Closed system propagation, primarily in the context of fin fish, is already addressed in Chapter 71 of the Commission's regulations, and the proposed closed system provisions pertaining to reptiles and amphibians in §79.8 resemble the provisions in Chapter 71. Under the proposed regulation, the Commission will maintain two lists of species of reptiles and amphibians that are approved for artificial propagation – one containing species approved for open systems and another containing species approved for closed systems. Currently, bullfrogs and green frogs are on the list of species approved for open system propagation under Chapter 71 and will be approved for open system propagation under the proposed Chapter 79. Commission staff do not intend to recommend other native species of reptiles and amphibians for open system propagation. A list of species approved for closed system propagation will include all non-native species except those specifically prohibited by the Commission and color morphs of certain native species. The list of color morphs will be developed with input from commercial propagators and hobby breeders.

Although the introduction of nonnative species is addressed in the notice of proposed rulemaking approved at the January meeting, the introduction of native species is not. Like propagation, introduction of native species is already addressed in the broad context of Chapter 71. However, for purposes of completeness, provisions dealing with the introduction of native species of reptiles and amphibians should be included in the proposed Chapter 79. The proposed §79.11 provides that as a general rule, native species of reptiles and amphibians may be introduced onto lands and into waters of this Commonwealth only where the Commission has approved the native species for introduction. Similar to propagation, the Commission will maintain a list of native species that it has approved for introduction. There is an exception to the general rule that allows a person who lawfully catches and possesses a reptile or amphibian in Pennsylvania to reintroduce that animal into the wild if certain conditions are met.

In addition, the provisions of the notice of proposed rulemaking in §79.12 (relating to color morphs) should be modified to clarify that color morphs of native species designated by the Commission may be artificially propagated provided they are not taken

from the wild and they are propagated in a closed system meeting the requirements of §79.8 (relating to artificial propagation and dealers of live aquatic animals).

The provisions relating to artificial propagation and dealers of live aquatic animals, introduction and color morphs are proposed to read as set forth in Exhibit D.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Pflugfelder to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2007. Motion carried.

DESIGNATIONS

H. Change in Designation: Penns Creek, Centre County.

Commentary:

Since the beginning of the 1997 season, a 7.0-mile section of Penns Creek extending from the confluence with Elk Creek downstream to the Catch and Release Area has been managed for wild trout under the All-Tackle Trophy Trout Program.

All-Tackle Trophy Trout regulations provide for angling on a year-round basis with a 14-inch minimum length limit and two trout per day creel limit during the harvest season. The harvest season extends from the opening day of regular trout season through Labor Day, and no harvest is permitted for the remainder of the season. The use of bait is permitted within waters designated under this program.

As of the 2006 season, only two waters (Penns Creek and the Youghiogheny River) remain in the All-Tackle Trophy Trout Program. In the interest of consolidating and simplifying regulations, staff are proposing that the All-Tackle Trophy Trout Program be terminated (under a separate agenda item) and that the waters in this program be moved to a similar existing special regulations program. In January 2006, the landowners along this section of Penns Creek were polled as to their preference for regulations on this section of water. Out of a total of 13 landowner responses, the most favored response was to have this water managed under the new Catch and Release All-Tackle Program. In comparison to existing regulations, the only change under the Catch and Release All-Tackle Program would be that the harvest of trout would no longer be permitted within this section of stream.

A notice of proposed redesignation was published at 36 Pa. B. 1554 (April 1, 2006) (Exhibit E). The Commission received ten public comments. Three are in favor of the proposed redesignation. Three would like the Commission to redesignate the stream as catch and release artificial lures only instead of the proposed catch and release all-tackle. Four are opposed to the proposed redesignation. Copies of all public comments were provided to the Commissioners.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the 7.0-mile section of Penns Creek (from the confluence with Elk Creek downstream to the catch and release area) from the list of waters regulated and managed under the All-Tackle Trophy Trout Program under §65.4a. and designate the 7.0-mile section of Penns Creek as a Catch-and-Release All-Tackle Area under §65.15. If approved, this redesignation will go into effect on January 1, 2007.

Action:

At the Fisheries Committee meeting, the Committee recommended that the full Commission not move forward with this item.

At the Commission meeting, the item was withdrawn based on the Committee's recommendation.

I. Change in Designation: Youghiogheny River, Fayette and Somerset Counties.

Commentary:

Since the beginning of the 1999 season, a section of the Youghiogheny River has been managed under the All-Tackle Trophy Trout Program. Initially, a 3.5-mile section of stream extending from the confluence with Ramcat Run downstream to the pipeline crossing at the confluence with Lick Run was included in the program. Beginning with the 2001 season, this area was revised to encompass a 9.0-mile section of stream extending from the confluence with Ramcat Run downstream to the SR 0381 Bridge in Ohio pyle.

All-Tackle Trophy Trout regulations provide for angling on a year-round basis with a 14-inch minimum length limit and two trout per day creel limit during the harvest season. The harvest season extends from the opening day of regular trout season through Labor Day, and no harvest is permitted for the remainder of the season. The use of bait is permitted within waters designated under this program.

As of the 2006 season, only two waters (Penns Creek and the Youghiogheny River) remain in the All-Tackle Trophy Trout Program. In the interest of consolidating and simplifying regulations, staff are proposing that the All-Tackle Trophy Trout Program be terminated (under a separate agenda item) and that the waters in this program be moved to a similar existing special regulations program. Therefore, staff propose that management on the 9.0-mile section of the Youghiogheny River be changed from the All-Tackle Trophy Trout Program to the Catch and Release All-Tackle Program. In comparison to existing regulations, the only change under the Catch and Release All-Tackle Program would be that the harvest of trout would no longer be permitted within this section of stream.

A notice of proposed redesignation was published at 36 Pa. B. 1554 (April 1, 2006) (Exhibit E). The Commission received two public comments – one in favor of the proposed redesignation and one opposed. Copies of all public comments were provided to the Commissioners.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the 9.0-mile section of the Youghiogheny River (from the confluence with Ramcat Run downstream to the SR 0381 Bridge in Ohio pyle) from the list of waters regulated and managed under the All-Tackle Trophy Trout Program under §65.4a. and designate the 9.0-mile section of the Youghiogheny River as a Catch and Release All-Tackle Area under §65.15. If approved, this redesignation will go into effect on January 1, 2007.

Action:

At the Fisheries Committee meeting, the Committee recommended that the full Commission not move forward with this item.

At the Commission meeting, the item was withdrawn based on the Committee's recommendation.

J. Establishment of New Delayed Harvest Artificial Lures Only Area: Sandy Lick Creek, Clearfield County.

Commentary:

The Allegheny Mountain Chapter of Trout Unlimited has requested that the Commission consider a section of Sandy Lick Creek as a new Delayed Harvest Artificial Lures Only Area. This section of Sandy Lick Creek, which is located near DuBois in Clearfield County, is currently not stocked with trout. The proposed section is 1.37 miles in length and runs from the mouth of Laborde Branch downstream to 100 meters downstream of Reisinger Run. The Division of Fisheries Management staff conducted a survey of this section in August 2005 and found water quality, water temperature and stream width suitable for management as an Approved Trout Water. Presence of a varied and abundant fish community indicates water quality is stable in spite of some negative effects, such as streambed armoring by ferrous hydroxide from mine drainage. The section is located close to downtown Dubois and the Dubois Mall area and has excellent parking and proximity to roads for access. A hiking trail parallels most of the section also facilitating access. Most of the land is owned by the City of Dubois because it is within their flood control project area, and all landowners are in favor of management of the section as a Delayed Harvest Artificial Lures Only Area. Given all these favorable factors, staff recommend that this section of Sandy Lick Creek be managed as a Delayed Harvest Artificial Lures Only Area.

A notice of proposed designation was published at 36 Pa. B. 1554 (April 1, 2006) (Exhibit E). The Commission did not receive any public comments regarding the proposed designation.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, Bureau of Fisheries

Recommendation:

Staff recommend the designation of a new Delayed Harvest Artificial Lures Only Area regulated under §65.6 on Sandy Lick Creek, Clearfield County, from the mouth of Laborde Branch downstream to 100 meters downstream of Reisinger Run, a distance of 1.37 miles. If approved, this designation will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to approve the designation of a new Delayed Harvest Artificial Lures Only Area regulated under §65.6 on Sandy Lick Creek, Clearfield County, from the mouth of Laborde Branch downstream to 100 meters downstream of Reisinger Run, a distance of 1.37 miles. This designation will go into effect on January 1, 2007. Motion carried.

K. Establishment of new Delayed Harvest Artificial Lures Only Area: Pine Creek, Tioga County.

Commentary:

Over the years, staff have pursued establishing a Delayed Harvest Artificial Lures Only (DHALO) project on upper Pine Creek, Tioga County, to provide diverse angling opportunity in the area. Pine Creek is stocked with trout throughout this area on a seasonal basis, and Pine Creek is also a major tourist area. Staff efforts to establish a Delayed Harvest Area here in the past were hindered by the lack of organized angler support and objections from private landowners. The situation has now changed in that the current proposal is for a stream section that is located entirely on public land (Tioga State Forest) and the local Trout Unlimited Chapter actively worked on the initiative.

The proposed Delayed Harvest Area would extend for a distance of 1.0 mile from Darling Run downstream to a point 150 meters downstream of the confluence of Owassie Slide Hollow. This section of stream is located at the start of the Pennsylvania Grand Canyon and the Pine Creek Gorge, just off Route 6 outside of Wellsboro, Pennsylvania. There is good access to the stream in this reach. The Owassie Road, a gravel forest road, runs beside the proposed DHALO Area on the west bank, a Pennsylvania Department of Conservation and Natural Resources (DCNR) access area is located upstream of Darling Run, and the Pine Creek Rail-Trail parallels the stream along the east bank.

Staff have received letters of support for the DHALO Area designation from the Tiadaghton Chapter Trout Unlimited, DCNR Tioga State Forest, Tioga County Planning Commission, Tioga County Visitors Bureau and the Pennsylvania Council of Trout Unlimited.

A notice of proposed designation was published at 36 Pa. B. 1554 (April 1, 2006) (Exhibit E). The Commission did not receive any public comments regarding the proposed designation.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, Bureau of Fisheries

Recommendation:

Staff recommend the designation of a new Delayed Harvest Artificial Lures Only Area, regulated under §65.6 on Pine Creek, Tioga County, from Darling Run downstream to a point 150 meters downstream of the confluence of Owassie Slide Hollow, a distance of 1.0 mile. If approved, this designation will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Anderson to approve the designation of a new Delayed Harvest Artificial Lures Only Area, regulated under §65.6 on Pine Creek, Tioga County, from Darling Run downstream to a point 150 meters downstream of the confluence of Owassie Slide Hollow, a distance of 1.0 mile. This designation will go into effect on January 1, 2007. Motion carried.

L. Addition to the Big Bass Program: Tamarack Lake, Crawford County.

Commentary:

Tamarack Lake is a Commission owned 562-acre lake located in Crawford County near Meadville. After being drained in 1999 to correct the outlet structures in the lake's two dams, the lake was refilled and restocked with various fish species in an effort to restore the fishery. During this effort, some key early stockings of largemouth bass fingerlings were not made due to insufficient numbers of bass available. In spite of successful stockings in later years, largemouth bass abundance and size structure have not progressed in a satisfactory way since refilling. Results from a May 2005 night electrofishing survey of much of the lake shoreline indicated a total catch per unit effort of only 15 largemouth bass/hour. This is far below the historical levels recorded for the lake prior to draining.

A second problem arising from the lack of largemouth bass is that the panfish populations have been slow growing and erratic in their abundance. Because of a lack of predation by largemouth bass, panfish are in danger of overpopulating and stunting. A dense population of muskellunge currently inhabit Tamarack Lake, but these fish are not as effective a predator on panfish, and an abundant population of largemouth bass is needed to structure the panfish populations through predation and improve growth rates and stabilize reproduction.

Shoreline seining in September 2005 showed a good year class for largemouth bass coming from both fingerling stockings and natural reproduction. By placing Big Bass regulations on Tamarack Lake the Commission will protect the limited number of bass now present out to 15 inches. This should enhance angling for bass in future years and also provide for increased predation of panfish by more and larger bass. Staff recommend Tamarack Lake be placed in the Big Bass regulation program for 2007.

A notice of proposed designation was published at 36 Pa. B. 1554 (April 1, 2006) (Exhibit E). The Commission did not receive any public comments regarding the proposed designation.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, Bureau of Fisheries

Recommendation:

Staff recommend the designation of Tamarack Lake, Crawford County, as a water to be regulated and managed under Big Bass Regulations pursuant to §65.9. If approved, this designation will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Osifat to approve the designation of Tamarack Lake, Crawford County, as a water to be regulated and managed under Big Bass Regulations pursuant to §65.9. This designation will go into effect on January 1, 2007. Motion carried.

OTHER MATTERS

M. Renewal of Grant for Conowingo Dam West Lift Operation, Support of Anadromous Fish Spawning and Monitoring of Fish Passageways.

Commentary:

This item is to renew a grant agreement with the United States Fish and Wildlife Service (USFWS) that was approved five years ago by the Commission.

Susquehanna Electric Company (SECO), a wholly owned subsidiary of Exelon Corporation, operates Conowingo Dam. SECO has been very cooperative in continuing each year to provide an operator for the West Lift in cooperation with the Susquehanna River Technical Committee (SRTC). In addition, SECO covers the cost of equipment repairs and maintenance.

The SRTC, composed of representatives from SECO, Maryland DNR, United States Fish and Wildlife Service, Susquehanna River Basin Commission and the Pennsylvania Fish and Boat Commission, advises SECO on matters relating to fish passage at Conowingo Dam. At the winter 2005 meeting, SRTC indicated a desire to continue operation of the West Lift for at least five years and continue efforts to obtain American shad eggs from sources at or below Conowingo Dam. The members of SRTC agreed to provide funding in fiscal year 2006 (*i.e.*, calendar year 2007) to support operation of the West Lift in 2007 and subsequent years.

There are three major missions of this project:

(1) To provide adult American and hickory shad for tank spawning and thus a source of Susquehanna River eggs for hatchery production. This will reduce dependence on Hudson, Delaware, and Potomac River egg sources, while developing a naturally occurring Susquehanna River strain.

(2) To support research and management actions. The shad and herring captured will provide an index of strength of the run. Shad otolith analysis will be continued to evaluate the contribution of wild and hatchery produced shad in the returning adults. The West Lift sampling is an ideal site to recapture previously tagged shad for population estimates. Shad captured in the West Lift can be used for radiotelemetry, genetic, and tag studies.

(3) To enhance monitoring of migratory fish in tributaries and at upstream fish passage facilities.

The annual cost to SRTC for operation of the Conowingo West Lift continues to be estimated at about \$150,000. Other SRTC partners, specifically MDNR, are expected to provide funding. During the last five years of the grant, the Commission was successful in utilizing Atlantic Coastal Cooperative Fisheries Management Act funds to defray a portion

of our contribution to the project. The Commission expects to continue to use federal funds for part of this obligation and that minimal fishing license dollars will be required.

SRTC has agreed on a funding approach whereby the USFWS's Susquehanna River Coordinator (who is also chairperson of the Susquehanna River Anadromous Fish Restoration Cooperative (SRAFRFC) and SRTC) will manage a restricted USFWS account for funding supplied by fishery agencies, SRAFRFC utility settlement balance funds and federal aid support. USFWS (SRAFRFC coordinator) will provide a grant to or manage a contract with SECO to provide for Conowingo West Lift operations and the other projects.

Briefer:

Leroy Young, Chief, Division of Fisheries Management, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission authorize a grant of up to \$75,000 each year for five years to the United States Fish and Wildlife Service (Susquehanna River Anadromous Fish Restoration Cooperative) for the purposes described in the Commentary.

Action:

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Mahon to authorize a grant of up to \$75,000 each year for five years to the United States Fish and Wildlife Service (Susquehanna River Anadromous Fish Restoration Cooperative) for the purposes described in the Commentary. Motion carried.

Other New Business

None.

Time and Place of July 2006 Commission Meeting

The next meeting is scheduled for July 17-18, 2006 and will be held at the Commission's headquarters in Harrisburg.

Adjournment

A motion was made by Commissioner Pflugfelder and seconded by Commissioner Anderson to adjourn the meeting at approximately 9:10 a.m. Motion carried.