

Table of Contents

Call to Order.....	82
Roll Call.....	82
Executive Director’s Report.....	82
Review and Approval of Minutes from the May 2006 Meeting.....	83
Awards and Presentations.....	83
Announcement of Notational Vote.....	84
Announcement of Executive Session.....	84
Reports of Commissioner Committees.....	84
Commission Policy (Commissioner Czop) –.....	84
Boating (Commissioner Mahon) -.....	84
Education and Publications (Commissioner Mahon) -.....	84
Engineering and Development (Commissioner Osifat) -.....	84
Fisheries (Commissioner Sabatose) -.....	84
Law Enforcement (Commissioner Anderson).....	85
Public Comment to Commissioners and Staff.....	85
Election of Commission President and Vice-President.....	85
EXECUTIVE OFFICE.....	87
A. Authorization to Move Forward with Legislation for the Youth Fishing License.....	87
B. Ralph W. Abele Conservation Heritage Award.....	89
C. Approval of Reorganization: Division of Habitat Management.....	91
EDUCATION AND PUBLICATIONS.....	92
A. Subscription Rate Increase of <i>Pennsylvania Angler & Boater Magazine</i>	92
ADMINISTRATION.....	94
FINAL RULEMAKING.....	94
A. Amendment to Section 63.20 (Permits for the Protection and Management of Trout and Salmon).....	94
PROPOSED RULEMAKING.....	95
B. Responsibility of Fishing License Issuing Agents (Amendments to §§51.32 and 51.36 and New §§51.37 and 51.38).....	95
BOATING.....	96
PROPOSED RULEMAKING.....	96
A. Amendment to Section 97.1 (Personal Flotation Devices).....	96
B. Amendment to Section 111.20 (Crawford County).....	98
ENGINEERING AND DEVELOPMENT.....	99
A. Property Rights Acquisition along Unami Creek at Camp Unami, Montgomery County.....	99

FISHERIES	101
FINAL RULEMAKING.....	101
A. Amendments to Section 63.46 (Sale, Purchase or Barter of Injurious, Non-native Species), Section 71.6 (Prohibited Acts) and Section 73.1 (Transportation) – Rusty Crayfish and Ruffe.....	101
B. Amendment to Section 65.24 (Miscellaneous Special Regulations): Cross Creek Lake, Washington County.	102
C. Muskellunge and Muskellunge Hybrid Regulations (Amendment to §61.1 and New §65.16).	103
D. Northern Pike Regulations (Amendment to §61.1).....	106
E. Pickerel Regulations (Amendment to §61.1).	109
F. Regional Opening Day of Trout Season (New §65.12 and Amendment to §§61.1 and 63.3).....	111
G. Permits for Protection and Management of Trout and Salmon (Amendment to §63.20).....	113
H. Clarification of Extended Season in Relation to Approved Trout Waters (Amendments to §§61.1 and 65.26).	114
I. Amendments to Reptile and Amphibian Regulations (New Chapter 79 and Amendments to §§53.7 and 63.7).	115
PROPOSED RULEMAKING	119
J. Proposal to Make Harvest of Grass Carp from Harris Pond Illegal (Amendment to §65.24).....	119
K. New Catch and Release Lakes Program (§65.17) and Elimination of Miscellaneous Special Regulations for Pine Township Park Pond, Allegheny County; Raccoon Creek State Park Upper Pond, Beaver County; Bear Gap Reservoir, McWilliams Reservoir and Klines Reservoir, Columbia and Northumberland Counties; and Lower Burrell Pond Park, Westmoreland County (Amendment to §65.24).	120
L. New Brood Stock Lake Program (§65.18).	122
DESIGNATIONS	124
M. Removal from List of Class A Wild Trout Waters: Beaverdam Run, Somerset County.....	124
N. Amendments to List of Wild Trout Stream Sections.	125
O. New Delayed Harvest Artificial Lures Only Area, Pine Creek, Lycoming County.	126
P. Change in Limits of Delayed Harvest Artificial Lures Only Area; McMichaels Creek, Monroe County.	127
Q. Change in Limits of Catch and Release All-Tackle Area: Clarion River, Elk County.	128
R. Designation of Waters in the Regional Opening Day of Trout Season Program/Removal of Waters from Early Season Trout Stocked Waters Program.	129
S. Removal of Catch and Release Areas: Spring Brook and Panther Creek, Lackawanna County....	131
LAW ENFORCEMENT.....	132
A. Designation of Water Limited to Specific Purpose - Exclusive Use Fishing Area: Wykoff Run, Cameron County.	132

Other New Business	133
Time and Place of September 2006 Commission Meeting.....	133
Adjournment.....	133

Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 73rd Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, July 17 and 18, 2006, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on July 17 beginning at 10:15 a.m. The public session for review of this agenda began at or about 8:40 a.m. on July 18.

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 *
Leonard L. Lichvar
Paul J. Mahon
Frederick P. Osifat
William J. Sabatose
Thomas C. Shetterly
William R. Worobec

* Present via telephone

Executive Director's Report

Dr. Austen extended a welcome to the new Commissioners and said staff are looking forward to working with them to further the efforts of the Fish and Boat Commission. This will be an exciting opportunity to set new directions and new courses of action. Although the sacrifices that outgoing Commissioners Mahon and Pflugfelder have made over the many years have been tremendous, the Commission will need to continue to focus on new ideas and determine where we will need to position ourselves for the future. The Commission will need to know where we

should be heading and what issues we need to address. Some of those items include global warming, pollutants in our waters and changes in our demographics. Programs will need to be developed to address these types of issues. Our goal is to not only gather public input but also provide guidance as leaders on fisheries resources, aquatic and boating issues, and to challenge the public to develop new programs. Strategic vision is something that the Commission is revisiting, and we are looking at the direction in which we need to go. This includes developing new youth programs and many other programs that will no doubt include some risk.

In closing, Dr. Austen lauded staff on the tremendous quality of their work and thanked them for everything they have been doing in working with implementing these new programs and policies. He also mentioned the competency of our staff working with other Commonwealth agencies on the Little Juniata case and also with the recent response to the Sinnemahoning Portage fish kill. Commission officers and staff are working together effectively and efficiently on this pollution case. Dr. Austen closed his report by saying that he has appreciated everyone's efforts in helping to push the Fish and Boat Commission forward in positive ways.

Dr. Austen explained that many of these efforts have been highlighted in the "PFBC Activity Report – Second Quarter 2006" (Exhibit T) that was provided to the Commissioners. 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.

Review and Approval of Minutes from the May 2006 Meeting

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to approve the May 2006 minutes as written. Motion carried.

Awards and Presentations

Commissioner Paul J. Mahon 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 July 11, 1991.

Commissioner Howard E. (Gary) Pflugfelder also 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 November 12, 1990. Commissioner Czop noted Commissioner Pflugfelder's dedication as a boating commissioner serving at-large and as a commissioner for the sixth district. He was very active and always made a point to listen to the boaters' and anglers' concerns.

Commissioner Richard W. Czop was presented with an award that is traditionally presented to the outgoing president. The award acknowledged his outstanding leadership and dedication while serving as President of the Commission from July 19, 2005 to July 18, 2006.

Announcement of Notational Vote

The Commission voted on one item by notational vote since the May 2006 meeting. The Commission authorized the Executive Director to enter into a cooperative agreement with Fairview Township that commits an additional \$20,000 (for a total of \$220,000) towards the acquisition of the Brugger property in Erie County. A copy of the notational vote is attached as Exhibit A.

Announcement of Executive Session

Commissioner Czop announced that an Executive Session was held on Monday, July 17, from approximately 8:00 a.m. until 10:00 a.m. and again late in the afternoon. Litigation, real estate and personnel matters were discussed. Since there was not ample time on Monday to complete the real estate discussion, Commissioner Czop indicated that the Commissioners would reconvene their Executive Session at the conclusion of the Commission meeting.

Reports of Commissioner Committees

Commission Policy (Commissioner Czop) –

The Policy Committee met on Monday, July 17, at 10:15 a.m. Agenda items were discussed and authorization to move forward with the Youth Fishing License was granted. Dan Tredinnick provided an update on the Commission's website, and Gary Moore provided a legislative update.

Boating (Commissioner Mahon) -

The Boating Committee met on Monday, July 17, at 1:00 p.m. in conjunction with the Education and Publications Committee. Agenda items were discussed.

Education and Publications (Commissioner Mahon) -

The Education and Publications Committee met on Monday, July 17, at 1:30 p.m. in conjunction with the Boating Committee. Agenda items were discussed, and Ted Walke provided a review and update of the *Angler and Boater* magazine's activities.

Engineering and Development (Commissioner Osifat) -

The Engineering and Development Committee met on Monday, July 17, at 12:30 p.m. One agenda item was discussed, and Dick Mulfinger provided a bureau activity update.

Fisheries (Commissioner Sabatose) -

The Fisheries Committee met on Monday, July 17, at 2:00 p.m. Agenda items were discussed, and Dave Miko provided an update on the status of Big Spring Creek. John Arway provided an update on the Sinnemahoning Portage fish kill.

During the Fisheries Committee report, Commissioner Lichvar noted that at the September 2005 Commission meeting, the Commission tabled an agenda item pertaining to the designation of Plum and Halter Creeks as Class A wild trout waters. A motion was then made by Commissioner Lichvar and seconded by Commissioner Anderson to take this item from the table. Motion carried. Commissioner Lichvar made a second motion, which also was seconded

by Commissioner Anderson, to designate Plum and Halter Creeks as Class A wild trout waters based upon staff's surveys of Plum and Halter Creeks in 2003, 2004, 2005 and most recently in May 2006 and the fact that the results of those surveys indicate that the biomass of wild brown trout far exceeds the Commission's criterion of 40 kg/ha for management as Class A wild brown trout waters. Motion carried.

Law Enforcement (Commissioner Anderson)

The Law Enforcement Committee met on Monday, July 17, at 4:00 p.m. Tom Kamerzel provided an update on the 18th Waterways Conservation Officer Class, the 2006 Deputy Waterways Conservation Officer graduation, and the Bureau of Law Enforcement's recent involvement in the flooding problems encountered across the Commonwealth. One agenda item was discussed and was approved by the Committee.

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

Public Comment to Commissioners and Staff

Jerry Green, President, Blair County Trout Unlimited, extended a welcome to recently appointed Commissioner Lichvar and extended an invitation for him to attend any of their county Trout Unlimited activities. On behalf of the club, Mr. Green conveyed support of Commissioner Lichvar and the Fish and Boat Commission's efforts.

Election of Commission President and Vice-President

Executive Director Austen presided over the elections. Dr. Austen called for nominations for the office of President, and Commissioner Sabatose nominated Commissioner Donald K. Anderson as President. Commissioner Mahon nominated Commissioner Richard W. Czop as President. A motion was made by Commissioner Mahon and seconded by Commissioner Worobec to close the nominations. The motion was carried, and nominations were closed. By a majority vote, the Commission elected Commissioner Anderson to serve as President of the Commission for 2006-2007.

Commissioner Osifat nominated Commissioner William J. Sabatose as Vice-President. A motion was made by Commissioner Anderson and seconded by Commissioner Czop to close the nominations. The motion was carried, and nominations were closed. The Commission elected Commissioner Sabatose to serve as Vice-President of the Commission for 2006-2007.

At this point, the meeting was turned over to Commissioner Anderson who thanked his fellow Commissioners for their support. Commissioner Anderson said that he looks forward to the coming year and the many challenges that the Commission will face. Furthermore, he acknowledged that the Commission will be losing Commissioners Mahon and Pflugfelder as their terms are soon to expire. He stated that they brought a lot of spirit and enthusiasm to the Commission, and they will be missed. Their many years of service have been appreciated.

Commissioner Anderson also indicated that in order to show his support of the proposed Division of Habitat Management, he will establish a new Commissioner committee on habitat. The Habitat Committee will allow new Commission members who have extensive expertise and experience in this area to become involved in this effort.

Commissioner Concilla congratulated Commissioner Anderson on his successful efforts to become President and requested that if possible he would like to stay on the Engineering and Development Committee for the upcoming year.

EXECUTIVE OFFICE

A. Authorization to Move Forward with Legislation for the Youth Fishing License.

Commentary:

At the January 2006 meeting, the Commission voted to actively support and endorse staff's development of a youth license program based upon the general criteria outlined by the Governor's Youth Council. This action enabled staff to work with a wide variety of partners and the legislature to develop proposed program content (including policies and procedures) as well as draft language for legislation.

Since that date, staff have:

- Produced a fact sheet and Power Point presentation explaining the youth license and key concepts.
- Provided more than 300 presentations to more than 3500 individuals on the key concepts of the youth license.
- Developed a law enforcement policy regarding officer contact with unlicensed youth.
- Developed an informational card explaining the license and how it can be obtained. This card will be used in these contacts.
- Determined the means and process for the bulk purchase of licenses by third parties.
- Drafted language amending key provisions of the Fish and Boat Code, including section 2709 that would exempt participants in certain angler education programs from the license requirement.
- Awarded 14 grants to grass roots organizations as part of the pilot Education Grant Program approved by the Commission at the January 2006 meeting. This pilot is an example of the type of programming that could be further supported and expanded with funding derived from a youth license.
- Conducted a telephone survey of angling youth and parents to determine their preferences, needs and attitudes toward existing and new angler education programming.
- With representatives from the Governor's Youth Council, met with Representative Bruce Smith to discuss his sponsorship of a youth license bill as well as the timetable for the bill. Representative Smith has agreed to sponsor the bill and will work with staff and Youth Council members to draft language based upon the key principles outlined by the Commission at the January 2006 meeting.

Through work with the Governor's Youth Council and many conservation organizations, the following general principles have emerged as important to the success of this proposal. These principles will be drafted into the proposed legislation and should guide efforts to gain passage.

- Funds from the license, including federal funds, should be either legislatively or administratively dedicated to enhance youth fishing programs and opportunities within the Commonwealth. It is acceptable that a minor portion of the funds be used to support administrative activities associated with these efforts but such support should be limited to no more than 10% of the total amount.

- The cost of the license should be moderate with \$5.00 being the recommended fee. The license will include all fishing privileges and no additional stamps will be required. The license will apply to resident and non-resident age 12-15 youth.
- The Commission will create and expand effective youth education and fishing programs based upon best practices and research. The Commission also will rigorously evaluate the effectiveness of the efforts developed through this program.
- The Commission will fully develop law enforcement policies and procedures to address interactions with youth as an opportunity to inform them as well as an enforcement activity. Initial interactions will educate youth on the license and their responsibility as resource stewards. Further interactions with youth who disregard license requirements will result in discussions with parents. Repeat offenses will result in a citation.
- The Commission will explore license exemption options for educational programs. The Commission also will create a program for allowing clubs, businesses, individuals and others to purchase bulk licenses that could be distributed to youth as well as for families of limited economic means.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission fully endorse the expansion of youth programs and the development and passage of legislation establishing a Youth Fishing License.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Mahon to fully endorse the expansion of youth programs and the development and passage of legislation establishing a Youth Fishing License. Motion carried.

B. Ralph W. Abele Conservation Heritage Award.

Commentary:

At the July 1990 meeting, the Commission established the Ralph W. Abele Conservation Heritage Award as the highest recognition that the Commission provides to persons who distinguished themselves in the cause of conservation. The Commission established the award to recognize citizens of Pennsylvania who have made outstanding contributions to the protection, conservation and enhancement of the aquatic resources of the Commonwealth. The award serves as a memorial to Ralph Abele for his steadfast and courageous work in protecting and conserving our natural resources.

At the January 1991 meeting, the Commission established that the Abele Award is to be presented to a Pennsylvanian who has dedicated his or her time and energy to the conservation of the state's natural resources, specifically the aquatic resources, through one or more of the following accomplishments:

- Personally invested heavily in the long-term education of Pennsylvania's youth on conservation issues vital to an improved aquatic environment.
- Put at risk their person and livelihood to undertake public activities and positions on behalf of improving and protecting the aquatic resources of Pennsylvania.
- Led a regional or statewide environmental effort that has been recognized for its duration and success in protecting and enhancing the aquatic resources of Pennsylvania.
- Played a leading role in reclaiming and enhancing a major significant natural water resource within the Commonwealth.
- Led an effort to pass major environmental legislation for the protection, conservation and enhancement of the natural environment of Pennsylvania.
- Brought national recognition to Pennsylvania through personal activities, actions and contributions to the aquatic resources.

Although the Commission historically has presented this award on an annual basis, there has been no established time frame for putting out a call for nominations, accepting nominations, selecting the recipient and presenting the award each year. There also have been no established guidelines for participation on the selection committee. In years past, Commissioners, members of the Abele family, staff and the public have served on the selection committee.

In order to raise the profile of this award, increase participation on the selection committee and establish a regular schedule for nominations, selection and presentation of the award each year, staff propose that formal guidelines be established. Staff propose that the selection committee consist of the following persons:

Commission President and Vice President
Executive Director
Director of Bureau of Fisheries or designee
Director of Bureau of Boating and Education or designee
Director of Bureau of Law Enforcement or designee
1 representative each from the Game Commission, Department of Environmental Protection and Department of Conservation and Natural Resources (to be selected by the Commission President)
3 members of the Board of the Ralph W. Abele Conservation Scholarship Fund, Inc.

Staff also propose the following schedule:

Call for nominations – September 1
Close of nominations – October 15
Selection by committee – November 30
Award presentation – January Commission meeting

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission approve the guidelines for the Abele Award described in the Commentary.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Mahon to approve the guidelines for the Abele Award described in the Commentary with one exception – that the Committee consist of nine members only and not include representatives from the three agencies identified in the Commentary. Motion carried.

C. Approval of Reorganization: Division of Habitat Management.

Commentary:

This item was previously included in the agenda of the May 2006 Commission meeting. At the Fisheries Committee meeting held during that meeting, the full Commission voted to postpone consideration of the item until a later date to allow staff to provide funding and staffing information to the Commissioners. Staff have provided the additional information to the Commission.

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, the agency complement will not change and there are no other costs associated with this request. All positions within the proposed Division of Habitat Management are currently funded at the 75% level with outside funds (primarily federal), and this funding support will continue with the reclassified new habitat biologist positions.

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 will be 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:

Dr. Douglas J. Austen, Executive Director

Recommendation:

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

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Osifat to approve the reorganization resulting in the Division of Habitat Management as described in the Commentary. Motion carried.

EDUCATION AND PUBLICATIONS

A. Subscription Rate Increase of *Pennsylvania Angler & Boater* Magazine.

Commentary:

Section 323 of the Fish and Boat Code provides that the Commission shall “from time to time establish the subscription rate for the *Pennsylvania Angler* and charges for its other publications.” At the July 2004 meeting, the Commission authorized the Executive Director to establish charges for most Commission publications and products. However, the Commission chose to retain control over the subscription rate of the magazine.

The *Pennsylvania Angler & Boater* magazine is published by the Commission and has stood for the past 75 years as the “Keystone State’s Official Fishing and Boating Magazine.” Subscriptions are currently offered at \$9 for one year (6 issues) and \$25 for three years (18 issues). The last increase went into effect 17 years ago with the July 1989 issue. The previous rates were \$6 for one year and \$16 for three years. Although the magazine was monthly, it contained only 32 pages per issue. The current bi-monthly frequency continues to provide the same amount of content with 64 pages per issue.

For purposes of comparison, the subscription rates of other states’ outdoor agency periodicals with similar page size and format are provided below:

State	1-year price	3-year price	Issues per year	Avg. page count per issue
Louisiana	\$12	n/a	4	36
California	\$15	n/a	6	40
Tennessee	\$15	\$30	6	44
New York	\$12	\$30	6	34
New Hampshire	\$12	n/a	6	24
Iowa	\$12	\$24	6	64
Colorado	\$10.50	n/a	6	36
Illinois	\$15	\$41	12	28
Kansas	\$10	\$27	6	46

The following increase for the *Pennsylvania Angler & Boater* magazine is proposed:

State	1-year price	3-year price	Issues per year	Avg. page count per issue
Pennsylvania	\$12	\$30	6	64

To both offset ever-increasing production costs and to remain consistent with other states’ outdoor periodical pricing, staff recommend increasing the *Pennsylvania Angler & Boater* subscription rate to \$12 for one year (6 issues) and \$30 for three years (18 issues). Single issue retail pricing will remain at \$3.00 per issue. The new subscription rate, if

approved, will go into effect on January 1, 2007 with the January/February 2007 issue. All subscriptions purchased at the current price through December 31, 2006 will be honored at that rate for the term of the subscription.

Recommendation:

Staff recommend that the Commission approve the subscription rate increases effective January 1, 2007, beginning with the January/February 2007 issue.

Briefer:

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

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Worobec to approve the subscription rate increases effective January 1, 2007, beginning with the January/February 2007 issue. Motion carried.

ADMINISTRATION FINAL RULEMAKING

A. Amendment to Section 63.20 (Permits for the Protection and Management of Trout and Salmon).

Commentary:

The requirements for when and where an angler needs a trout/salmon permit are, and historically have been, contained in section 63.20 of the Commission's regulations. However, with the recent simplification of the specially regulated trout programs in Chapter 65, the special trout regulations were amended to expressly provide, among other things, that a trout/salmon permit is required in those waters, and the requirement in section 63.20 was dropped.

After a closer review of the amendments, staff have determined that as a result of the change to section 63.20, our law enforcement officers may no longer cite someone under section 2908 of the Fish and Boat Code (relating to penalties) for fishing in a specially regulated trout water without the required trout/salmon permit. They may only issue a citation under section 2102 (relating to rules and regulations). This distinction is important because the penalties are higher if one is cited under section 2908.

In order to allow the Bureau of Law Enforcement to initiate an enforcement action under section 2908 for failing to possess a trout/salmon permit while fishing in a specially regulated trout water, an amendment restoring this provision to §63.20 is required. Therefore, the Commission proposed to amend this section accordingly.

A notice of proposed rulemaking was published at 36 Pa. B. 1655 (April 8, 2006) (Exhibit B). The Commission did not receive any public comments concerning this proposal.

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Recommendation:

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

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Worobec to adopt the proposed amendment as set forth in the notice of proposed rulemaking. The amendment will go into effect upon publication in the Pennsylvania Bulletin. Motion carried.

PROPOSED RULEMAKING

B. Responsibility of Fishing License Issuing Agents (Amendments to §§51.32 and 51.36 and New §§51.37 and 51.38).

Commentary:

The Commission currently relies on approximately 1,200 issuing agents throughout the Commonwealth to sell and issue approximately 850,000 fishing licenses and 600,000 stamps/permits through a paper-based system. In the near future, the Commission will automate the distribution and sale of its licenses and stamps through the use of point-of-sale (POS) methodologies. To date, over 30 states have automated, or are in the process of automating, their licensing systems. The primary goals are to make delivery of fishing and hunting license services more convenient for the license buyers and to provide improved control over the flow of revenues from the issuing agents and more effective communications among the license buyer, issuing agent and the Commission.

Upon review of current regulations relating to the establishment and operations of fishing license issuing agents, staff have identified the need to make a series of changes and additions that will allow for a more effective and efficient means of establishing issuing agent policies and guidelines for the automated distribution of licenses and permits. To that end, staff are proposing the new regulations and amendments set forth at Exhibit C.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the proposed regulations and amendments described in the Commentary. If adopted, the proposed regulations and amendments will go into effect upon publication in the Pennsylvania Bulletin or December 1, 2006, whichever occurs later.

Action:

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

BOATING PROPOSED RULEMAKING

A. Amendment to Section 97.1 (Personal Flotation Devices).

Commentary:

From 1996 through 2005, 114 people lost their lives in recreational boating accidents in Pennsylvania. A disproportionate number of these boaters (48 or 42%) died during the cold water/weather months from October 1 through May 31. This is especially disturbing because during those months, participation in recreational boating is greatly reduced. Forty-five of the fatalities that occurred during this time period over the last ten years were boating in unpowered boats and motorboats less than 16 feet in length. It is no surprise that this represents 94% of all fatalities occurring during those cold water/weather months and 40% of the fatalities overall. Unpowered boats and small motorboats are very unstable, and most accidents that occur in these boats are the result of capsizes or falls overboard. During the colder months, such a mishap often results in a tragedy. Sudden immersion into cold water, hypothermia or the stronger currents common in colder months can create a situation from which the boater cannot escape. This is especially true if the boater is not wearing a personal flotation device (PFD or life jacket). Statistics have shown that wearing a personal flotation device will save lives. The intent of the proposed amendment is to save boaters' lives during the "off season," cold water months.

At its meeting on March 28, 2006, the Boating Advisory Board considered this item and recommended that the Commission approve the publication of a notice of proposed rulemaking requiring the wearing of personal flotation devices during cold weather months. The Commission has considered similar proposals in 1995, 1999 and 2003.

Staff propose that §97.1 be amended to add a new subsection as follows:

§97.1. Personal flotation devices.

* * *

(i) Between October 1 and May 31, all persons shall wear a Coast Guard approved Type I, II, III or V PFD when on board boats less than 16 feet in length or any canoe or kayak.

Briefer:

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

Recommendation:

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

Action:

At the Boating Committee meeting, the Committee recommended that the Commission solicit public comments on two proposals – one requiring the wearing of personal flotation devices during the cold weather months of October through May and another requiring the wearing of personal flotation devices year-round.

At the full Commission meeting, a motion was made by Commissioner Mahon and seconded by Commissioner Czop that the Commission approve the publication of a notice of proposed rulemaking seeking public comments on the two proposals identified by the Boating Committee. Motion carried. Commissioner Sabatose then requested that at a future Commission meeting, staff present the different types of personal flotation devices that are currently available and an analysis and report of the boating accidents in 2006.

B. Amendment to Section 111.20 (Crawford County).

Commentary:

The Commission received a petition to amend the regulations to increase the horsepower limits on Sugar Lake from the current 6 horsepower to 10 horsepower. The petition is attached at Exhibit D.

Pursuant to the Commission's regulations at 58 Pa. Code §51.6, a person may submit a petition or request for regulations addressed to the Commission in the format set forth in the General Rules of Administrative Practice and Procedure (1 Pa. Code §35.18). 58 Pa. Code §51.6 further provides that Commission staff will review every petition for regulations to ensure that the petition: 1) is completed as required by 1 Pa. Code §35.18; 2) requests an action within the Commission's authority or jurisdiction; and 3) does not conflict with applicable Commonwealth or federal law. If staff determine that a petition is appropriate for further consideration, the petitioner will be given the opportunity to make a five-minute oral presentation on the petition to the Commissioners. An oral presentation will give the group submitting the petition an opportunity to acquaint the Commissioners and staff with their request in a brief overview.

With regard to this petition, staff have determined that it meets the requirements for a petition for regulatory change and is appropriate for further consideration. Staff invited the petitioners to attend the July 2006 Commission meeting to present their petition. However, they have indicated that they are not available. In lieu of appearing in person, the petitioners have provided the letter that is also attached at Exhibit D.

Recommendation:

Staff recommend that the Commission consider the petition for further review.

Briefer:

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

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Czop to consider the petition for further review. Motion carried.

ENGINEERING AND DEVELOPMENT

A. Property Rights Acquisition along Unami Creek at Camp Unami, Montgomery County.

Commentary:

The Commission received a request from the Natural Lands Trust, Inc. (Land Trust) to contribute towards the acquisition of property along Unami Creek in Marlborough Township, Montgomery County, in conjunction with local and regional partners. This request included a request for \$43,000 in funds and for the Commission to hold title to the property being acquired. The subject parcel, shown as the Southeast Tract on Exhibits E and F, consists of 82 acres (61 acre open space area and 21 acre quit claim area) and about 2,600 feet of stream frontage. The Land Trust has alerted the Commission that even though it has an agreement on the subject property, the Land Trust is still working with the current seller and lessee of the site to resolve questions with regard to structures and improvements on the Northwest Tract, as shown on Exhibits E and F. The Land Trust, in conjunction with Montgomery County, holds an easement on an additional 1,100 acres adjoining and surrounding the subject parcel, including fishing rights on 1.1 miles of Unami Creek downstream from the subject property.

Staff have had the opportunity to field review the subject tract and meet with the Land Trust. The subject tract and the proposed transaction were discussed in detail, and it was determined that protecting and conserving the Unami Creek corridor and securing permanent public fishing rights therein would be a significant benefit to the Commission and the public. However, there is no apparent need for the Commission to hold fee title to any large tracts of land. All of the Commission's needs may be met by acquiring an easement on a portion of the subject property, and fee title may be held by one of the Land Trust's project partners. For the sake of consistency in law enforcement and resource management activities, the Commission should consider acquiring all or a portion of the fishing rights held by the Land Trust and Montgomery County downstream from the subject property.

The Land Trust did not object to working with the Commission to meet any conveyance needs it may have, such as providing good and clean title, an environmental assessment and incorporating title insurance and/or a title certificate in any transaction, but the Land Trust indicated that it will want to get the approval of its acquisition partners of the Commission's specific involvement. The Land Trust hopes to close on the 82-acre area and the adjoining 47-acre Northwest Tract in the next year as soon as a party is found to hold title to the property and all contingencies of its current agreement are met. The Land Trust will then work with the Commission.

The immediate primary needs of the stream corridor are the stabilization and enhancement of the existing parking resources. This work will not require significant resources, but some work needs to be done to minimize erosion and improve the current parking situation. The current parking situation consists primarily of single car dirt spaces located off the shoulder of Swamp Creek Road.

Staff recommend that the Commission approve its involvement in the Lands Trust's acquisition of the 82-acre area described above, which will include entering into an agreement with the Land Trust or any of its local or regional partners. This involvement also will consist of providing approximately \$44,000 toward the acquisition of the subject parcel in return for an unrestricted easement for fishing, boating, fishery and riparian buffer management and protection on the creek corridor and the area between the creek and nearby Swamp Creek Road along with up to one acre southeast of Swamp Creek Road for use as parking. In addition, this approval will allow the acquisition of as much of the fishing rights held by the Land Trust and Montgomery County on the 1.1-mile section of stream frontage immediately downstream from the subject 82-acre area as may be feasible.

Staff have determined that due to the nature of real estate values in Montgomery County, \$44,000 is a reasonable amount to pay for the easements. The \$44,000 is derived from the original amount requested (\$43,000) plus approximately \$1,000 to compensate for providing title insurance and other obligations normally the responsibility of the buyer such as transfer taxes, real estate taxes and recording of the necessary deeds.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the contribution of \$44,000 to the Natural Lands Trust, Inc. towards the purchase of the 82-acre tract described in the Commentary in exchange for the Commission's acquisition of the easements also described in the Commentary. If approved, the contribution will be funded utilizing monies in the Commission's restricted accounts for the Conserve 2000 and Conservation Acquisition Partnership (CAP) Programs. If approved, the transaction will be subject to the usual legal reviews.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Mahon to approve the contribution of \$44,000 to the Natural Lands Trust, Inc. towards the purchase of the 82-acre tract described in the Commentary in exchange for the Commission's acquisition of the easements also described in the Commentary. The contribution will be funded utilizing monies in the Commission's restricted accounts for the Conserve 2000 and Conservation Acquisition Partnership (CAP) Programs, and the transaction will be subject to the usual legal reviews. Motion carried. Following the vote, Commissioner Mahon praised the Engineering and Development construction crew for their hard work and dedication over the many years that he has served as a Commissioner.

FISHERIES

FINAL RULEMAKING

A. Amendments to Section 63.46 (Sale, Purchase or Barter of Injurious, Non-native Species), Section 71.6 (Prohibited Acts) and Section 73.1 (Transportation) – Rusty Crayfish and Ruffe.

Commentary:

From time to time, the Commission has found it desirable to specifically prohibit the sale, purchase or barter, possession, introduction, importation and transportation of certain injurious, non-native species. There are currently nine species listed. They are snakehead (all species), black carp (*Mylopharyngodon piceus*), bighead carp (*Hypophthalmichthys nobilis*), silver carp (*Hypophthalmichthys molitrix*), zebra mussel (*Dreissena polymorpha*), quagga mussel (*Dreissena bugensis*), round goby (*Neogobius melanostomus*), tubenose goby (*Proterothinus marmoratus*) and European rudd (*Scardinius erythrophthalmus*).

Staff believe that rusty crayfish (*Orconectes rusticus*) and ruffe (*Gymnocephalus cernuus*) should be added to these lists. Rusty crayfish has been introduced into Pennsylvania and has been expanding its range primarily in the Susquehanna River basin. It is an aggressive riverine species, and the Commission should provide regulatory disincentives to persons who might be inclined to relocate rusty crayfish from one water body to another. Ruffe is an invasive species in the Great Lakes. However, it has not yet been captured in the Pennsylvania waters of Lake Erie. This species has the potential to compete with yellow perch. Accordingly, the Commission proposed amending §63.46 (relating to sale, purchase or barter of injurious, non-native species), §71.6 (relating to prohibited acts) and §73.1 (relating to transportation) to include the rusty crayfish and ruffe.

A notice of proposed rulemaking was published at 36 Pa. B. 1655 (April 8, 2006) (Exhibit B). The Commission did not receive any public comments concerning this proposal.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

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

B. Amendment to Section 65.24 (Miscellaneous Special Regulations): Cross Creek Lake, Washington County.

Commentary:

Since 1999, Cross Creek Lake has been regulated and managed under the Big Bass Special Regulations pursuant to §65.9. The lake also is regulated and managed under the Panfish Enhancement Special Regulation pursuant to §65.11. When Cross Creek Lake was added to these special regulations programs, staff intended that it be removed from regulation under §65.24. However, due to an oversight, the change did not occur. Staff recently discovered this oversight, and the Commission proposed that the miscellaneous special regulations pertaining to Cross Creek Lake be eliminated.

A notice of proposed rulemaking was published at 36 Pa. B. 1655 (April 8, 2006) (Exhibit B). The Commission did not receive any public comments concerning this proposal.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Czop to adopt the proposed amendment as set forth in the notice of proposed rulemaking. The amendment will go into effect upon publication in the Pennsylvania Bulletin. Motion carried.

At this point in the meeting, Commissioner Concilla extended an apology for his inability to attend the Commission meeting in person and stated that he looks forward to meeting the new Commissioners at the September meeting. Commissioner Concilla then excused himself from the conference call.

C. Muskellunge and Muskellunge Hybrid Regulations (Amendment to §61.1 and New §65.16).

Commentary:

The Commission recently solicited information from muskellunge and tiger muskellunge anglers to guide enhancement of fishing opportunities for these species in Pennsylvania. As part of its efforts, the Commission convened a musky workgroup that included representatives from the musky fishing community as well as the broader angling community, including black bass anglers. The Commission also solicited water specific fishing quality information from musky anglers through a volunteer survey and examined and summarized available biological information describing muskellunge and tiger muskellunge in this Commonwealth.

Following the formal opinion gathering process, the workgroup's participants identified two regulatory management options that were nearly equal in preference. The first option called for an increase in the minimum size limit from 30 inches to 36 inches, a reduction in the daily limit from two (combined species) to one and a year-round open season. The first option also called for an enhanced management program. Under the program, the minimum size limit is 45 inches. The second option called for an increase in the minimum size limit to 40 inches, a reduction in the daily limit to one and a year-round season. The second option did not include the enhanced management program.

A notice of proposed rulemaking was published at 36 Pa. B. 1656 (April 8, 2006) (Exhibit G), soliciting public comments on both options. The Commission received a total of 116 comments – 74 prior to the official comment period, 40 during and two after. With respect to the specifics of the proposal, the comments were as follows:

- 16 commentators support the year-round open season, while 7 oppose it.
- 23 commentators support the 36-inch minimum size limit, while 9 oppose it.
- 48 commentators support the reduction in the creel limit to one per day, while 6 oppose it.
- 59 commentators support the enhanced management program, while 2 oppose it.
- 71 commentators support the 40-inch minimum size limit, while 2 oppose it.

Several commentators support a minimum size limit greater than 40-inches: 4 support a 45-inch minimum, 4 support a 50-inch minimum and 1 supports a larger than 50-inch minimum.

Eight commentators support a year round catch and release regulation for muskies. Four commentators support a catch and release regulation during the spawning season, while one opposes this approach.

Fifteen commentators support a minimum size limit on the enhanced management waters greater than the proposed 45 inches. Of those commentators, 2 support a 48-inch minimum and 13 support a 50-inch minimum. Copies of all public comments were provided to the Commissioners.

Following additional review, staff have determined that (1) a no harvest, catch and release period in April and May is necessary; (2) a statewide minimum size limit of 40 inches for Commonwealth inland waters is appropriate; and (3) a minimum size limit of 45 inches in the enhanced management program is appropriate. Staff's rationale for these determinations is explained in greater detail below.

Staff recommend a catch and release season over a year-round open season because it will prevent angler harvest and fish consumption during the FDA mandated withdrawal period that is associated with use of fish anesthetics during hybrid esocid culture operations. In inland waters, brood fish are temporarily removed from some public fishing waters, in addition to nursery waters, for use in fish culture operations. Use of broodfish from these public waters make this staff recommendation necessary. In terms of season timing, a catch and release period beginning on April 1 and ending on May 31 will insure that collection, use and return of broodfish, including necessary withdrawal time (21 days), will accommodate safe use by the public of any angler harvested esocids from any public water open to muskellunge harvest. This period encompasses esocid spawning in Pennsylvania.

A statewide 40-inch minimum size limit for muskellunge for Commonwealth inland waters will have greatest potential to enhance the contribution of naturally produced muskellunge to musky waters throughout Pennsylvania. Fish culture records show that only the largest of females are mature for use in spawning operations in spring, and Fisheries Management staff, after more thorough review, believe that the contribution of naturally produced muskellunge to populations in northwestern Pennsylvania and across the state may be greater than previously thought. Naturally produced muskellunge were previously believed to account for less than 5% of musky angler trips.

Muskellunge and tiger muskellunge fisheries occur in approximately 150 waters or river sections across the Commonwealth. The enhanced management program will serve to provide enhanced fishing opportunities for selected waters with a focus on maximizing densities of muskellunge and tiger muskellunge and, in the case of muskellunge waters, provide for maximum contribution of naturally produced muskellunge. It is anticipated that initially, the enhanced management program will apply to no more than six waters statewide. Examples of waters to which the program may be applied include Lake Arthur (Butler County), Rose Valley Lake (Lycoming County), Cowanesque Reservoir (Tioga County), Marsh Creek Lake (Chester County), Susquehanna River (Fabridam 1.3 miles downstream), and Loyalhanna Lake (Westmoreland County).

Accordingly, staff recommend that on final rulemaking, the Commission amend §61.1 to provide for a no harvest, catch and release period from April 1 through May 31, increase the minimum size limit to 40 inches and reduce the daily limit to one. Staff further recommend that on final rulemaking, the Commission adopt the new §65.16 pertaining to the Musky Enhancement Program that will provide for a no harvest, catch and release period from April 1 through May 31 and include a minimum size limit of 45 inches and a daily limit of one. Staff recommend that the Commission adopt the amendments and new regulation to read as set forth in Exhibit H.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendment and new regulation as set forth in Exhibit H. If adopted, the amendments and the new regulation will go into effect on January 1, 2007.

Action:

At the Fisheries Committee meeting, the Committee recommended that the Commission adopt the amendment and new regulation as set forth in Exhibit H with the exception of the no harvest, catch and release period in April and May. Specifically, the Committee recommended that §61.1 (relating to Commonwealth inland waters) be amended to provide for a year-round open season, a minimum size limit of 40 inches and a daily limit of 1. The Committee also recommended the adoption of §65.16 (relating to Musky Enhancement Program) that includes a year-round open season, a minimum size limit of 45 inches and a daily creel limit of 1 (as set forth in the notice of proposed rulemaking).

At the full Commission meeting, a motion was made by Commissioner Sabatose and seconded by Commissioner Worobec to adopt the amendment and new regulation as recommended by the Fisheries Committee. The amendments and the new regulation will go into effect on January 1, 2007. Motion carried.

D. Northern Pike Regulations (Amendment to §61.1).

Commentary:

Northern pike fisheries occur in 59 waterways open to public fishing across the state. Most fisheries are sustained through natural reproduction and occur in the upper Allegheny drainage (northwest Pennsylvania). Angler catch rates are frequently high in the spring, often encompassing a portion of that period corresponding to the closed season. To provide Pennsylvania anglers with expanded opportunities to catch and, if desired, harvest northern pike, the Commission proposed a year-round season, a reduced minimum size limit of 18 inches (from the current 24 inches) and an increased creel limit of four (from the current 2). In addition, because Amur pike and Amur pike hybrids have not been sustained through a stocking program in Pennsylvania since the early 1970s and no longer occur in the Commonwealth, the Commission also proposed that they be removed from the species list in §61.1 (relating to Commonwealth inland waters).

A notice of proposed rulemaking was published at 36 Pa. B. 1656 (April 8, 2006) (Exhibit G). The Commission received a total of 12 comments – 10 before the start of the official comment period and two after the close of the official comment period. The Commission did not receive any comments during the official comment period. Five commentators oppose the open season, while four support it. Those commentators opposed to the year round open season want protection for spawning periods. Seven commentators oppose the 18 inch minimum size limit, while two support it, and one commentator wants to lower the size limit even further. Five commentators want the Commission to increase the minimum size limit from its current 24 inches. Three of those commentators propose 30 inches, one proposes 36 inches and one proposes 40 inches. Four commentators oppose increasing the creel limit to four, while one supports it. Copies of all public comments were provided to the Commissioners.

Following additional review, staff have determined that (1) a no harvest, catch and release period in April and May is necessary and (2) although an expanded creel limit and reduced minimum size limit, as proposed, would be consistent with chain pickerel regulations, these changes would diminish the size structure of desirable northern pike populations. Staff's rationale for these determinations is explained in greater detail below.

Staff recommend a catch and release season over a year round open season because it will prevent angler harvest and fish consumption during the FDA mandated withdrawal period that is associated with use of fish anesthetics during hybrid esocid culture operations. In inland waters, brood fish are temporarily removed from some public fishing waters, in addition to nursery waters, for use in fish culture operations. Use of broodfish from these public waters make this staff recommendation necessary. In terms of season timing, a catch and release period beginning on April 1 and ending on May 31 will insure that collection, use and return of broodfish, including necessary withdrawal time (21 days), will accommodate safe use by the public of any angler harvested esocids from any public water open to northern pike harvest. This period encompasses esocid spawning in Pennsylvania.

Although some northern pike populations in Pennsylvania are characterized as containing many sub-legal northern pike, review of population data collected by Fisheries Management staff shows that often those populations contain many, although significantly fewer, legal size northern pike. Most all fish populations with a quality size structure are characterized by good abundance of young (Figure 1). In addition, a review of northern pike minimum size limits across the United States, where size limits are utilized in northern pike harvest management, 24 inches was the

most frequently applied minimum size limit. Also, growth potential of northern pike is not fully exploited with an 18 inch size limit, given that northern pike have potential to reach sizes much larger than chain pickerel (Figure 2). A minimum size limit of 24 inches will provide necessary protections in the spring and at other times of the year to sustain populations through natural reproduction. Finally, a review of completed trip creel frequencies across the Commonwealth where northern pike were caught (372 interviews) reveals that in no instance was more than one northern pike harvested and only 3% of northern pike caught were harvested.

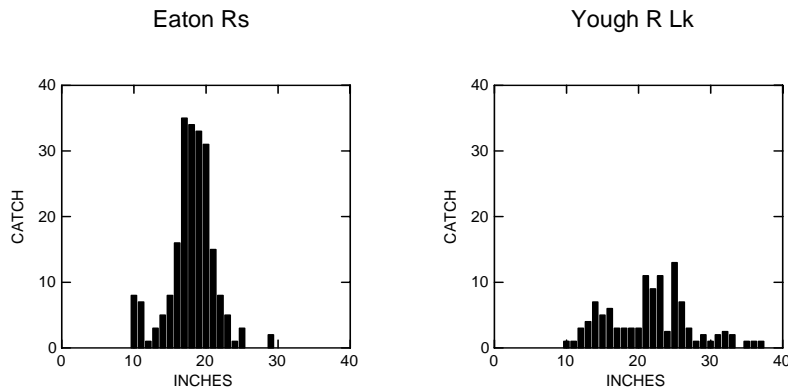


Figure 1. Example northern pike size distributions from small and large reservoirs in Pennsylvania (Eaton Reservoir, Erie County and Youghiogheny River Lake, Fayette County).

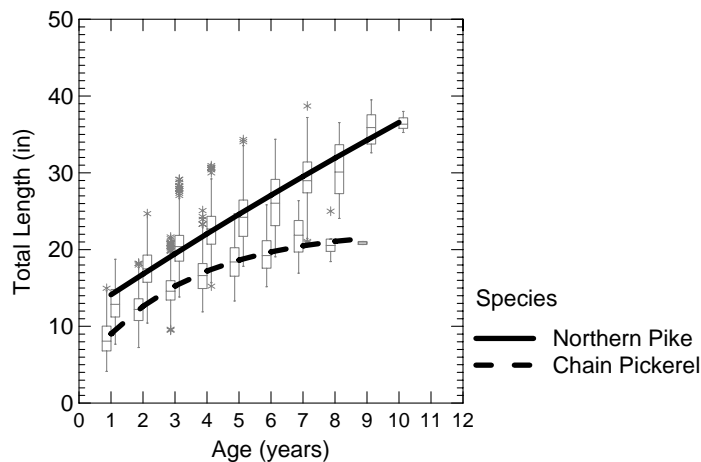


Figure 2. Average length of northern pike and chain pickerel collected by Fisheries biologists in assessment gear in Pennsylvania (March-June).

Accordingly, staff recommend that on final rulemaking, the Commission amend §61.1 to provide for a no harvest, catch and release period from April 1 through May 31. Staff further recommend that on final rulemaking, the Commission NOT adopt the proposed amendments to the minimum

size and daily creel limits and retain the current minimum size limit of 24 inches and the current daily limit of 2. Staff recommend that the Commission adopt the amendments to read as set forth in Exhibit H.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in Exhibit H. If adopted, these amendments will go into effect on January 1, 2007.

Action:

At the Fisheries Committee meeting, the Committee recommended that the Commission adopt the amendments as set forth in Exhibit H with the exception of the no harvest, catch and release period in April and May. Specifically, the Committee recommended that §61.1 (relating to Commonwealth inland waters) be amended to provide for a year-round open season while retaining the current minimum size limit of 24 inches and the current daily limit of 2.

At the full Commission meeting, a motion was made by Commissioner Czop and seconded by Commissioner Sabatose to adopt the amendments as recommended by the Fisheries Committee. These amendments will go into effect on January 1, 2007. Motion carried.

E. Pickerel Regulations (Amendment to §61.1).

Commentary:

Pickerel fisheries occur in 73 waterways open to public fishing across the state. These populations are largely confined to the central and eastern end of the state with the highest number of waters (27) in northeastern Pennsylvania. Virtually all populations are sustained through natural reproduction. Angler catch rates are frequently high in the spring, often encompassing a portion of the closed season.

To provide Pennsylvania anglers with expanded opportunities to catch and, if desired, harvest chain pickerel in the spring, the Commission proposed a statewide year-round open season. The Commission also proposed that the minimum size limit be increased from 15 inches to 18 inches. The Commission further proposed that the daily limit be reduced from six to four.

Analytical predictions indicate that populations with average growth rates will increase in density in conjunction with the change. Additionally, the minimum size limit of 18 inches provides necessary protections in the spring and other times of the year to sustain populations through natural reproduction. A review of completed trip creel frequencies across the Commonwealth where chain pickerel were caught (679 interviews) reveals that in no instance were more than two chain pickerel harvested and only 3% of chain pickerel caught by anglers were ultimately harvested.

A notice of proposed rulemaking was published at 36 Pa. B. 1656 (April 8, 2006) (Exhibit G). The Commission received a total of six comments concerning the proposal – five before the start of the official comment period and one after. The Commission did not receive any comments during the official comment period. One commentator supports decreasing the creel limit to four, while one supports decreasing it to five. Two commentators oppose the open season for pickerel, while three support it. Four commentators support the 18 inch minimum size limit, while one opposes it.

Following additional review, staff have determined that a no harvest, catch and release period in April and May is necessary. A catch and release season is necessary because it will prevent angler harvest and fish consumption during the FDA mandated withdrawal period that is associated with use of fish anesthetics during esocid culture operations. In inland waters, brood fish are temporarily removed from some public fishing waters, in addition to nursery waters, for use in fish culture operations. Use of broodfish from these public waters make this staff recommendation necessary. In terms of season timing, a catch and release period beginning April 1 and ending May 31 will insure that collection, use and return of broodfish, including necessary withdrawal time (21 days), will accommodate safe use by the public of any angler harvested esocid from any public water.

Accordingly, staff recommend that on final rulemaking, the Commission amend §61.1 to provide for a no harvest, catch and release period from April 1 through May 31. Staff also recommend that on final rulemaking, the Commission adopt the proposed increase in

the minimum size limit from 15 to 18 inches. Staff further recommend that the Commission adopt the proposed decrease in the daily limit from 6 to 4 in light of angler harvest observations. Staff recommend that the Commission adopt the amendments to read as set forth in Exhibit H.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in Exhibit H. If adopted, these amendments will go into effect on January 1, 2007.

Action:

At the Fisheries Committee meeting, the Committee recommended that the Commission adopt the amendment as set forth in Exhibit H with the exception of the no harvest, catch and release period in April and May. Specifically, the Committee recommended that §61.1 (relating to Commonwealth inland waters) be amended to provide for a year-round open season, a minimum size limit of 18 inches and a daily limit of 4 (as set forth in the notice of proposed rulemaking).

At the full Commission meeting, a motion was made by Commissioner Mahon and seconded by Commissioner Czop to adopt the amendments as recommended by the Fisheries Committee. These amendments will go into effect on January 1, 2007. Motion carried.

F. 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. The Commission therefore proposed 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.

To provide for an earlier opening day in southeastern Pennsylvania, the Commission proposed 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.

The waters that the Commission initially proposed for inclusion in this program are located in southeastern Pennsylvania. They are the waters in the following 18 counties: Adams, Berks, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill and York. This program, however, may be extended in the future to waters in other parts of the state where conditions support their inclusion in the program. The designation of waters into the new Regional Opening Day of Trout Season Program is addressed under a separate agenda item.

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. Therefore, the Commission proposed that these sections be amended accordingly. 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. The creation of a regional opening day also requires minor amendments to §§61.1, 61.2, 65.4a, 65.7, 65.9, 65.24, 69.12 and 69.12a to clarify that the opening day that is referred to in those sections is the opening day of the regular trout season, i.e., the first Saturday after April 11.

A notice of proposed rulemaking was published at 36 Pa. B. 2708 (June 3, 2006) (Exhibit D). The Commission received a total of ten public comments concerning the proposal – eight prior to the official comment period, one during and one after. Four of the comments support the proposal, and six oppose it. Copies of all public comments were provided to the Commissioners.

When anglers were recently interviewed as part of the Lehigh River survey, they were advised that the Commission is considering a change that would create two different opening days of trout season in regions of the state and that under this option, the current opening day would continue to apply over much of the state but for waters in southeastern Pennsylvania, the season would open approximately two weeks earlier than the present opening day. 454 anglers were surveyed. 346 or 76% responded that they “agreed.”

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the new regulation for the Regional Opening Day of Trout Season Program, the amendments to §§61.1 and 63.3 and the housekeeping changes as set forth in the notice of proposed rulemaking. If adopted, the new regulation and the amendments will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Osifat to adopt the new regulation for the Regional Opening Day of Trout Season Program, the amendments to §§61.1 and 63.3 and the housekeeping changes as set forth in the notice of proposed rulemaking. The new regulation and the amendments will go into effect on January 1, 2007. Motion carried.

G. 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, the Commission proposed 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 the Commission's thinking that trout are the primary species being targeted by anglers during that time period.

A notice of proposed rulemaking was published at 36 Pa. B. 2708 (June 3, 2006) (Exhibit I). The Commission did not receive any public comments concerning the proposal.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, this amendment will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Czop to adopt the amendment as set forth in the notice of proposed rulemaking. This amendment will go into effect on January 1, 2007. Motion carried.

H. 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, the Commission proposed that these sections be amended to provide that the extended season applies to approved trout waters and all waters downstream of approved trout waters.

A notice of proposed rulemaking was published at 36 Pa. B. 2708 (June 3, 2006) (Exhibit I). The Commission did not receive any public comments concerning the proposal.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking. If adopted, the amendments will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Osifat and seconded by Commissioner Czop to adopt the amendments as set forth in the notice of proposed rulemaking. The amendments will go into effect on January 1, 2007. Motion carried.

I. Amendments to Reptile and Amphibian Regulations (New Chapter 79 and Amendments to §§53.7 and 63.7).

Commentary:

The Commission has determined that its existing reptile and amphibian regulations set forth at 58 Pa. Code Chapter 75 are in need of revision to provide adequate protection of these resources due to increasing interest in collecting in the Commonwealth. The Commission also has determined that revisions are needed to improve the overall clarity and organization of the regulations.

At the April 2005 meeting, the Commission approved the publication of the first notice of proposed rulemaking containing extensive proposed changes to the Commission's reptile and amphibian regulations. The Commission also directed staff to solicit public comments for a period of at least 90 days and to assemble a workgroup of interested parties and stakeholders. The first notice of proposed rulemaking was published at 35 Pa. B. 5683 (October 15, 2005) (Exhibit J). During the official public comment period from October 15, 2005 until January 15, 2006, the Commission received a total of nearly 1200 public comments. A summary of those comments is attached at Exhibit K. Copies of all of these comments were provided to the Commissioners.

As directed by the Commission, staff assembled a diverse workgroup comprised of captive breeders, hobbyists, snake hunters, snake hunt sponsors, conservationists and academics. The workgroup met on three occasions – in August 2005, November 2005 and May 2006 – and provided tremendous input on a variety of issues. As a result of the August and November 2005 meetings of the workgroup, Commission staff made numerous revisions and additions to the original proposed rulemaking published at 35 Pa. B. 5683. The Commission, at its January 2006 meeting, approved the publication of a second notice of proposed rulemaking containing those changes and directed staff to solicit public comments for a period of 60 days. The second notice of proposed rulemaking was published at 36 Pa. B. 1220 (March 18, 2006) (Exhibit L). Prior to the publication of the second notice of proposed rulemaking (during the period, January 16, 2006 through March 17, 2006), the Commission received a total of 120 comments. During the second official public comment period from March 18, 2006 until May 18, 2006, the Commission received a total of 23 public comments. These comments also are summarized at Exhibit K. Copies of all of these comments were provided to the Commissioners.

Upon closer review of the proposed regulations, Commission staff determined that several issues required additional clarification. Those issues were artificial propagation and dealers of live aquatic animals, introduction of native species and color morphs. At its April 2006 meeting, the Commission approved the publication of a third notice of proposed rulemaking that contained provisions pertaining to those issues. The third notice of proposed rulemaking was published at 36 Pa. B. 2724 (June 3, 2006) (Exhibit M). Prior to the publication of the third notice of proposed rulemaking (during the period, May 18, 2006 through June 2, 2006), the Commission received a total of 18 public comments. During the third official public comment period, the Commission received a total of 10 public comments. These comments also are summarized in Exhibit K. Copies of all of these comments were provided to the Commissioners as well.

As a result of public comments received to date and input from the workgroup, staff recommend that on final rulemaking, the Commission delete the current Chapter 75 and adopt revised reptile and amphibian regulations set forth in a new Chapter 79. Staff recommend that the Commission adopt the new regulations as follows:

Section 79.1 (relating to definitions): Staff recommend that the Commission adopt this section as set forth in the second notice of proposed rulemaking with a minor modification to the definition of “organized reptile and amphibian hunt” so that it says, “When one or more of the following factors are present, an event will be considered an organized reptile and amphibian hunt as the term is used in this chapter” instead of “may be considered.”

Section 79.2 (relating to taking reptiles or amphibians): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the second notice of proposed rulemaking with an additional provision making it unlawful, while hunting reptiles and amphibians, to possess chemicals, explosives, winches, jacks or other devices or materials that may disrupt, damage or destroy dens and their immediate surroundings. Staff propose that this provision read as set forth in Exhibit N.

Section 79.3 (relating to season and daily possession limits): Staff recommend that on final rulemaking the Commission adopt this section as set forth in the second notice of proposed rulemaking with the following changes. Staff recommend that a new subsection (e) be added to clarify that the possession limits do not apply to animals that are artificially propagated in accordance with the Commission’s regulations and are in the possession of registered artificial propagators and dealers. Staff also recommend that instead of the proposed minimum size limit of 38 inches for timber rattlesnakes, the Commission adopt a minimum size limit of 42 inches. A 42-inch minimum size limit, when coupled with a minimum number of subcaudal scales, will favor collection of mature adult male snakes and will protect adult and gravid (pregnant) females and enable their progeny to reach reproductive maturity. The workgroup strongly supports a minimum size limit of 42 inches for timber rattlesnakes. Staff further recommend a change to clarify that the daily and possession limits of one snake do not apply to holders of provisional permits issued under §79.7(f). Staff propose that these provisions read as set forth in Exhibit N. Staff also recommend minor housekeeping revisions to change the words “amphibians and reptiles” to “reptiles and amphibians” so that the language is consistent throughout the section.

Section 79.4 (relating to possession permits for native species): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the second notice of proposed rulemaking with a change to subsection (e) so that a possession permit is not required for animals covered by permissions and other permits issued under Subpart B (fishing). The proposal was limited to permissions and other permits issued under Chapter 79, which would not have included, for example, scientific collector’s permits and special permits for the collection of threatened and endangered species. Staff propose that this provision read as set forth in Exhibit N.

Section 79.5 (relating to snapping turtle permits): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the second notice of proposed rulemaking.

Section 79.6 (relating to venomous snake permits): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the second notice of proposed rulemaking with a clarification that the prohibition against hunting timber rattlesnakes after the possession tag has been detached from this permit does not apply to holders of provisional snake permits issued under §79.7(f). Staff propose that this provision read as set forth in Exhibit N.

Section 79.7 (relating to organized reptile and amphibian hunt permits): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the second notice of proposed rulemaking with the exception of subsection (f) that deals with provisional hunt permits and allows permit holders to take, catch or possess one timber rattlesnake without tagging the snake during an organized snake hunt so long as the snake is returned unharmed to the point of capture following the event. The proposed subsection places the onus for returning the snake to the point of capture on the hunt sponsor. Staff recommend that on final rulemaking, the Commission modify this subsection to place the burden on the individual hunter. The workgroup strongly endorsed this change. Staff also recommend that this section be revised on final rulemaking to clarify that a snake entered into a hunt is the responsibility of the hunt sponsor until such time as the snake is returned to the individual hunter, to clarify that a snake must be returned by the provisional permit holder to the point of capture by no later than sunset of the last day of the hunt, and to clarify that a provisional permit holder who wishes to retain possession of a snake caught under a provisional permit must tag the snake. Staff propose that these provisions read as set forth in Exhibit N.

Section 79.8 (relating to artificial propagation and dealers of live reptiles and amphibians): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the third notice of proposed rulemaking with changes to the subsection dealing with closed systems. Staff recommend that this section be modified on final rulemaking to address the concerns of the workgroup that the definition of a closed system is inappropriate for certain reptiles and that the restrictions on waters discharged from closed systems are not reasonable for “non-fish.” The workgroup commented that the provisions as proposed appeared to be written for fish and could conflict with accepted husbandry practices for reptiles and amphibians. Staff propose that these provisions read as set forth in Exhibit N. Staff believe that the revisions will address the workgroup’s concerns.

Section 79.9 (relating to sale of native species): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the second notice of proposed rulemaking.

Section 79.10 (relating to transportation and importation of native species): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the second notice of proposed rulemaking.

Section 79.11 (relating to introduction): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in Exhibit N. This section has been revised to simplify the provisions dealing with the introduction of nonnative species and to clarify the provisions dealing with the introduction of native species. As a result of the workgroup’s recommendations, the subsection pertaining to native species has been modified to extend the time period for acceptable release from May 1 to Labor Day to May 1 to September 30 and to prohibit the release of reptiles and amphibians that have been in physical contact with other

reptiles or amphibians while in captivity. In addition, the provisions allowing Commission-recognized rehabilitators to release animals to a location other than the point of capture or to release them more than 30 days after capture have been removed. Both of these changes are the result of the workgroup's recommendations.

§79.12 (relating to color morphs of native species): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the third notice of proposed rulemaking with the following change. Staff recommend that this section be modified on final rulemaking to recognize that the captive breeding of color morphs approved for propagation may result in animals that have a normal color appearance (typical phenotype). The revised language allows for the sale of typical phenotype progeny of color morphs to be sold when certain conditions are met. These provisions have been added largely to address the concerns of captive breeders. Staff propose that the provisions read as set forth in Exhibit N.

§79.13 (relating to Natural Areas): Staff recommend that on final rulemaking, the Commission adopt this section as set forth in the second notice of proposed rulemaking.

Staff also recommend that the Commission amend §§53.7 and 63.7 (relating to use of firearms; and exceptions to limitations on devices) as set forth in the second notice of proposed rulemaking. If the Commission adopts the amendments and the new Chapter 79 as recommended by staff, the amendments and new Chapter 79 will read as set forth in Exhibit O.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the new reptile and amphibian regulations and amendments as described in the Commentary. If adopted, the new regulations and amendments will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Mahon to adopt the new reptile and amphibian regulations and amendments as described in the Commentary. The new regulations and amendments will go into effect on January 1, 2007. Motion carried.

PROPOSED RULEMAKING

J. Proposal to Make Harvest of Grass Carp from Harris Pond Illegal (Amendment to §65.24).

Commentary:

Harris Pond, Luzerne County, becomes congested with several species of aquatic plants each year beginning in late spring. Such congestion affects the boat launch and interferes with shore fishing from most access points on the lake. Current fisheries management efforts to control the vegetation at Harris Pond include the periodic stocking of sterile triploid grass carp. Grass carp stocking began in 1997 and continued in 2004. The Commission is aware of harvest of grass carp from Harris Pond, which runs counter to agency efforts to control vegetation. Therefore, staff recommend that action be taken to make the harvest of grass carp from Harris Pond illegal.

Staff propose the following amendment:

§65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
* * *	* * *	* * *
Luzerne	<u>Harris Pond</u>	<u>It is unlawful to take, kill or possess grass carp caught from this water. It is not a violation of this section if the grass carp is immediately returned unharmed.</u>
* * *	* * *	* * *

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

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

K. New Catch and Release Lakes Program (§65.17) and Elimination of Miscellaneous Special Regulations for Pine Township Park Pond, Allegheny County; Raccoon Creek State Park Upper Pond, Beaver County; Bear Gap Reservoir, McWilliams Reservoir and Klines Reservoir, Columbia and Northumberland Counties; and Lower Burrell Pond Park, Westmoreland County (Amendment to §65.24).

Commentary:

Over the years, the Commission has regulated a number of ponds and lakes with no-kill regulations for all species under §65.24. These lakes and ponds include Pine Township Park Pond, Allegheny County; Raccoon Creek State Park Upper Pond, Beaver County; Bear Gap Reservoir, McWilliams Reservoir and Klines Reservoir; Columbia and Northumberland Counties; and Lower Burrell Pond Park, Westmoreland County.

In an effort to simplify and consolidate the Commission's regulations, staff recommend that the Commission establish a new special regulations program called the "Catch and Release Lakes Program" into which the above named six lakes and ponds and other impoundments may be designated. Waters in this program will be regulated as catch and release for all species on a year-round basis. Staff propose that this new section read as follows:

§65.17. Catch and Release Lakes Program.

(a) The Executive Director, with the approval of the Commission, may designate lakes as part of the Catch and Release Lakes Program. The designation of lakes as part of the Catch and Release Lakes Program shall be effective upon publication of a notice of designation in the Pennsylvania Bulletin.

(b) It is unlawful to fish in the lakes designated as part of the Catch and Release Lakes Program except in compliance with the following requirements:

(1) Fishing for all species is permitted on a catch and release/no harvest basis only.

(2) It is unlawful to take, kill or possess any fish taken from lakes designated under this program.

(3) All fish caught shall be immediately returned unharmed to the lake from which taken.

If the new program is adopted, staff will recommend that the six waters named above as well as Owl Creek Reservoir, Schuylkill County, be considered for inclusion in the program. If designated into the new program, the miscellaneous regulations for the six lakes set forth in §65.24 will no longer be required. Therefore, staff further propose that the miscellaneous special regulations for these six lakes be eliminated as follows:

§65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
[Allegheny]	[Pine Township Park Pond]	[Fishing permitted on a catch-and-release basis. It is unlawful for a person to take or kill fish caught from these waters.]
* * *	* * *	* * *
[Beaver]	[Raccoon Creek State Park Upper Pond]	[This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught must be immediately returned unharmed.]
* * *	* * *	* * *
Columbia and Northumberland	[Bear Gap Reservoir, McWilliams Reservoir, Klines Reservoir and the South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42]	This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught must be immediately returned unharmed.
* * *	* * *	* * *
[Westmoreland]	[Lower Burrell Pond Park]	[This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught must be immediately returned unharmed.]
* * *	* * *	* * *

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 new regulation and the amendments described in the Commentary. If approved on final rulemaking, the new regulation and the amendments will go into effect upon publication in the Pennsylvania Bulletin or January 1, 2007, whichever occurs later.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Czop to approve the publication of a notice of proposed rulemaking containing the new regulation and the amendments described in the Commentary. If approved on final rulemaking, the new regulation and the amendments will go into effect upon publication in the Pennsylvania Bulletin or January 1, 2007, whichever occurs later. Motion carried.

L. New Brood Stock Lake Program (§65.18).

Commentary:

At the Fisheries Committee meeting on July 17, 2006, the Committee recommended that on final rulemaking, the Commission adopt the proposed amendments to the regulations for muskellunge and muskellunge hybrids, northern pike and pickerel to provide for a year-round open season. It was noted, however, that in the brood stock lakes, harvest and fish consumption should be restricted during the FDA mandated withdrawal period (21 days) that is associated with use of fish anesthetics during esocid culture operations. In order to accommodate the withdrawal period, staff recommend that the Commission restrict harvest of muskellunge and muskellunge hybrids, northern pike and pickerel from April 1 through May 31. Staff accordingly propose the creation of a new program called the "Brood Stock Lakes Program" into which the brood stock lakes may be designated. If the new program is adopted, staff will recommend that the following lakes be designated into the new program: Canadhota Lake, Edinboro Lake, Sugar Lake, Conneaut Lake, Union City Reservoir, Woodcock Lake, Tamarack Lake, Lake Wallenpaupack, Lower Woods Pond, Belmont Lake, Prompton Dam, Duck Harbor Pond, Miller Pond and Howard Eaton Reservoir.

Staff propose that the new section read as follows:

§65.18. Brood Stock Lakes Program.

(a) The Executive Director, with the approval of the Commission, may designate lakes as part of the Brood Stock Lakes Program. The designation of lakes as part of the Brood Stock Lakes Program shall be effective upon publication of a notice of designation in the Pennsylvania Bulletin.

(b) It is unlawful to fish in the lakes designated as part of the Brood Stock Lakes Program except in compliance with the following requirements:

(1) From 12:01 a.m. April 1 to midnight May 31, fishing for muskellunge and muskellunge hybrids, northern pike and pickerel is permitted on a catch and release/no harvest basis only.

(2) From 12:01 a.m. April 1 to midnight May 31, it is unlawful to take, kill or possess any muskellunge and muskellunge hybrids, northern pike and pickerel taken from lakes designated under this program.

(3) From 12:01 a.m. April 1 to midnight May 31, all muskellunge and muskellunge hybrids, northern pike and pickerel caught shall be immediately returned unharmed to the lake from which taken.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

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

Action:

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

DESIGNATIONS

M. Removal from List of Class A Wild Trout Waters: Beaverdam Run, Somerset County.

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 to conserve that resource and the angling it provides. 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. In order to remove the Class A wild trout streams designation from a stream, a total trout biomass below the criteria must be documented in two consecutive stream examinations.

Section 01 of Beaverdam Run, tributary to Laurel Run, Somerset County, is currently designated as a Class A wild trout stream. This section extends from a pond outflow at SR 1035 in Daly downstream to a point 1.1 km downstream of the SR 1018 bridge, a distance of 3.85 miles. In five consecutive stream surveys conducted in 1998, 2000, 2002, 2003, and 2004, the stream failed to meet Class A criteria. Therefore, staff recommend that the Commission remove the Section 01 of Beaverdam Run from the list of Class A wild trout waters.

A notice of proposed change to the list of Class A wild trout waters was published at 36 Pa. B. 2876 (June 10, 2006) (Exhibit P). The Commission received two comments regarding the proposed removal. One commentator expressed that although he never likes to see Class A wild trout streams removed from the list, he recognizes that there may be circumstances that warrant it. He suggested that more information be provided to justify the removal. The other commentator suggested that instead of removing streams from the list, the Commission do something to improve and protect the resource so the water can continue as a Class A wild trout stream. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove Beaverdam Run, Somerset County, from the list of Class A Wild Trout Waters as set forth in the notice. If approved, the removal will go into effect upon publication of a second notice in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Lichvar to remove Beaverdam Run, Somerset County, from the list of Class A Wild Trout Waters as set forth in the notice. The removal will go into effect upon publication of a second notice in the Pennsylvania Bulletin. Motion carried.

N. Amendments to List of Wild Trout Stream Sections.

Commentary:

Under 58 Pa. Code § 57.11 (relating to listing of wild trout streams), it is the policy of the Commission to accurately identify and classify stream sections supporting naturally reproducing populations of trout as wild trout streams. The Commission's Fisheries Management Division maintains the list of wild trout streams. The Executive Director, with the approval of the Commission, from time to time publishes the list of wild trout streams in the Pennsylvania Bulletin and solicits public comment. The listing of a stream section as a wild trout stream is a biological designation that does not determine how it is managed. The Commission relies upon many factors in determining the appropriate management of streams.

The current wild trout streams list was last revised in April 2005. Based upon additional information, including the results of new surveys, staff recommend the addition of 78 new waters to the list, the removal of one water on the list and adjustments to 13 waters on the list. A notice describing the proposed changes to the list of wild trout streams was published at 36 Pa. B. 2878 (June 10, 2006) (Exhibit Q). The Commission received two comments regarding the proposed changes to the list. One supports the addition of Laurel Lake Creek in Susquehanna County, and the other suggests that Drakes Creek in Carbon County be added. Staff will review these suggestions. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the changes to the list of wild trout stream sections as set forth in the notice. If approved, these changes will go into effect immediately upon publication of a second notice in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Worobec to approve the changes to the list of wild trout stream sections as set forth in the notice. These changes will go into effect immediately upon publication of a second notice in the Pennsylvania Bulletin. Motion carried.

O. New Delayed Harvest Artificial Lures Only Area, Pine Creek, Lycoming County.

Commentary:

Staff are proposing the establishment of a Delayed Harvest Artificial Lures Only (DHALO) project in the lower Pine Creek Valley, Lycoming County, to increase and diversify angling opportunities in the area. Pine Creek is stocked with trout throughout this area on a seasonal basis and is also a major angling destination for Williamsport/Jersey Shore anglers as well as tourists.

The proposed DHALO Area is located at the village of Slate Run, Lycoming County. There is excellent access to the stream in this reach. Route 414 and the Pine Creek Rail-Trail parallel the stream reach on the east bank, and the Department of Conservation and Natural Resources (DCNR) Naval Run Road runs along the west bank. A DCNR access area is presently located at the bridge at Slate Run, and another may be planned downstream.

Commission staff have received letters of support for the DHALO designation from the local Trout Unlimited Chapters, PA Council Trout Unlimited and DCNR Tiadaghton State Forest. Besides DCNR that controls about 65% of the total shore, staff also contacted by letter 16 private riparian landowners for their support of the proposed DHALO designation. Of the 14 landowner responses received, 12 individuals covering 34% of the total shoreline supported the proposal. The two individuals that opposed the project own a total of about 150 feet of frontage, about 1% of the total riparian access.

A notice of proposed designation was published at 36 Pa. B. 2877 (June 10, 2006) (Exhibit R). Although the notice describes the proposed DHALO area as being from the mouth of Slate Run downstream to the vicinity of the confluence of Naval Run, a distance of 1.3 mile), staff are recommending a slightly shorter (1.2 mile) section of Pine Creek from the confluence with Slate Run downstream to a point about 150 meters upstream of the confluence with Naval Run. The Commission received one comment supporting the proposed designation. Copies of all public comments were provided to the Commissioners.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission designate a 1.2-mile section of Pine Creek, Lycoming County, from the confluence with Slate Run downstream to a point about 150 meters upstream of the confluence with Naval Run as a Delayed Harvest Artificial Lures Only Area to be regulated and managed under §65.6 as set forth in the notice of proposed designation. If approved, the designation will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Worobec to designate a 1.2-mile section of Pine Creek, Lycoming County, from the confluence with Slate Run downstream to a point about 150 meters upstream of the confluence with Naval Run as a Delayed Harvest Artificial Lures Only Area to be regulated and managed under §65.6 as set forth in the notice of proposed designation. The designation will go into effect on January 1, 2007. Motion carried.

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

Commentary:

In January 1999, the Commission established a Delayed Harvest Artificial Lures Only (DHALO) Area on McMichaels Creek, Monroe County. The current limits for this section are from 0.71 miles downstream of the Turkey Hill Road (T-416) Bridge to the upstream boundary of Glen Brook Golf Club, which is 0.54 mile upstream of the Glenbrook Road Bridge. The total distance of this section is 1.12 miles. The original section limits were 0.62 miles longer (1.74 miles), but the upstream most section was removed from the DHALO area due to the concerns of a private landowner who owns that section. Stroud Township recently purchased the Glenn Brook Golf Course, which includes the 0.54 mile section between the current downstream section limits and the Glenbrook Road Bridge. On May 23, 2006, the Stroud Township Supervisors approved the possible extension of the current DHALO limits to the new property limits at the Glenbrook Road Bridge. Therefore, staff recommend that the Commission extend the limits of the DHALO Area 0.54 miles further downstream to the Glenbrook Road (SR 2004) Bridge. If approved, the new limits will be from 0.71 mile downstream of the Turkey Hill Road (T-416) Bridge to the Glenbrook Road (SR 2004) Bridge, which is a distance of 1.66 miles.

A notice of proposed designation was published at 36 Pa. B. 2877 (June 10, 2006) (Exhibit R). The Commission did not receive any comments regarding the proposed designation.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the extension of the limits of the segment of McMichaels Creek, Monroe County, that is regulated as a Delayed Harvest Artificial Lures Only Area under §65.6 as set forth in the notice of proposed designation. If approved, the new section limits will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Osifat and seconded by Commissioner Mahon to approve the extension of the limits of the segment of McMichaels Creek, Monroe County, that is regulated as a Delayed Harvest Artificial Lures Only Area under §65.6 as set forth in the notice of proposed designation. The new section limits will go into effect on January 1, 2007. Motion carried.

Q. Change in Limits of Catch and Release All-Tackle Area: Clarion River, Elk County.

Commentary:

In January 2006, the Commission established a Catch and Release All-Tackle Area on the Clarion River, Elk County. The current limits for this 8.5 mile section are from the confluence of the East and West branches downstream to the confluence with Elk Creek. The Commission has been asked to consider an extension of the Catch and Release All Tackle Area approximately 100 meters downstream of its current limit at the confluence of Elk Creek to the Main Street Bridge in Ridgway. The reasons cited are that there is a large pool in this location that is easily accessed, heavily fished and holds a large number of trophy-sized brown trout.

The current riparian landowners are in favor of the extension and support Catch and Release All-Tackle management of this stretch. Since the Main Street Bridge in Ridgway is an easily recognizable landmark, there should be no confusion in allowing this short extension of the Catch and Release All-Tackle Area. Therefore, staff support the proposed extension. If approved, the revised limits will read "From the confluence of the East and West Branches downstream to the Main Street (S.R. 948) Bridge in Ridgway, a distance of 8.6 miles."

A notice of proposed designation was published at 36 Pa. B. 2877 (June 10, 2006) (Exhibit R). The Commission did not receive any comments regarding the proposed designation.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the extension of the limits of the section of the Clarion River that is currently regulated as a Catch and Release All-Tackle Area under §65.15 as set forth in the notice of proposed designation. If approved, the new section limits will go into effect upon publication of a second notice in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Shetterly to approve the extension of the limits of the section of the Clarion River that is currently regulated as a Catch and Release All-Tackle Area under §65.15 as set forth in the notice of proposed designation. The new section limits will go into effect upon publication of a second notice in the Pennsylvania Bulletin. Motion carried.

R. Designation of Waters in the Regional Opening Day of Trout Season Program/Removal of Waters from Early Season Trout Stocked Waters Program.

Commentary:

The Commission in May 2006 approved the publication of a notice of proposed rulemaking containing a proposed Regional Opening Day of Trout Season Program. If adopted by the Commission (under a separate agenda item), the new 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.

The waters that the Commission initially proposed for inclusion in this program are located in southeastern Pennsylvania. They are all waters in 18 counties that include Adams, Berks, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Juniata, Lancaster, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Schuylkill and York. Some of the waters (but not all) were identified in the notice of proposed rulemaking published at 36 Pa. B. 2708 (June 3, 2006) (Exhibit I), which solicited public comments regarding the proposed program and the designation of waters into it. It should be noted that the list that was published in the Bulletin was a subset of approved trout waters and did not include all waters in the 18 identified counties. It was always staff's intention that the new program include all waters, stocked and not stocked, within those 18 counties. Their omission from the published list was an oversight.

The Commission received a total of ten comments regarding the Regional Opening Day of Trout Season Program. Although most of the comments do not address the specific waters to be included in the proposed program, three do. One expresses support for the "Blue Mountain" option; one questions why Fayette and Greene Counties are not included in the proposal and one opposes the inclusion of Juniata County in the program. Copies of all public comments were provided to the Commissioners.

There are a number of trout stocked lakes that are proposed for inclusion in the new program that are currently regulated and managed as part of the Early Season Trout Stocked Waters Program under §65.10. These waters were so noted in the notice of proposed rulemaking and should be removed from the Early Season Trout Stocked Waters Program if designated into the Regional Opening Day of Trout Season Program.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission designate all waters in the 18 counties described in the Commentary as waters to be regulated and managed as part of the Regional Opening Day of Trout Season Program under §65.12. Staff further recommend that the waters currently regulated and managed as part of the Early Season Trout Stocked Waters Program be removed from that program upon designation into the Regional Opening Day

of Trout Season Program. If approved, the new designations will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Osifat to designate all waters in the 18 counties described in the Commentary as waters to be regulated and managed as part of the Regional Opening Day of Trout Season Program under §65.12 and to remove the waters currently regulated and managed as part of the Early Season Trout Stocked Waters Program from that program upon designation into the Regional Opening Day of Trout Season Program. The new designations will go into effect on January 1, 2007. Motion carried.

S. Removal of Catch and Release Areas: Spring Brook and Panther Creek, Lackawanna County.

Commentary:

Since the beginning of the 1995 season, a 2.4-mile section of Spring Brook, Lackawanna County, extending from the outflow of Watres Reservoir downstream to Nesbitt Reservoir, and a 2.5-mile section of Panther Creek, Lackawanna County, from the headwaters downstream to the mouth, have been managed as Catch and Release Areas. Since 1995, there have been changes in land ownership along these streams from the Pennsylvania Gas and Water Company to the Theta Land Corporation to the current private ownership.

Recently, the Commission was notified that the private landowner has decided to close the land along these sections of stream to public access. The reason provided for closing this land was due to problems associated with littering and dumping on the property.

Briefer:

Rickalon L. Hoopes, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the 2.4 mile section of Spring Brook from the outflow of Watres Reservoir downstream to Nesbitt Reservoir and the 2.5 mile section of Panther Creek from the headwaters downstream to the mouth from the Catch and Release Program regulated and managed under §65.5. If approved, these redesignations will go into effect upon publication of a notice in the Pennsylvania Bulletin.

Action:

A motion was made by Commissioner Mahon and seconded by Commissioner Worobec to remove the 2.4 mile section of Spring Brook from the outflow of Watres Reservoir downstream to Nesbitt Reservoir and the 2.5 mile section of Panther Creek from the headwaters downstream to the mouth from the Catch and Release Program regulated and managed under §65.5. These redesignations will go into effect upon publication of a notice in the Pennsylvania Bulletin. Motion carried.

LAW ENFORCEMENT

A. Designation of Water Limited to Specific Purpose - Exclusive Use Fishing Area: Wykoff Run, Cameron County.

Commentary:

Pursuant to 58 Pa. Code §65.21(a), the Executive Director, with the approval of the Commission, may designate waters as being for the exclusive use of children or special populations, or both, for fishing. The designation is effective when the waters are so posted after publication of a notice of designation in the Pennsylvania Bulletin.

58 Pa. Code §65.21(d)(1) provides that the Commission will not designate waters under this section as being for the exclusive use of children unless the sponsor of the proposed exclusive use area agrees to be responsible for the administration and control of the area, posting signs and assisting in enforcement; the owner of the water agrees to the designation in writing; and the political subdivision where the area is to be located approves the designation in writing. The sponsor also must establish that the proposed exclusive area will be used year-round by showing that fishing tournaments/derbies, stocking or special events are planned throughout the year.

The Commission has received a request to designate the section of Wykoff Run, 250 yards in length from the mouth of Wykoff Run at the Sinnemahoning Creek upstream to the railroad bridge adjacent to the Wykoff Run Cooperative Trout Nursery, as an exclusive use area for children. The landowner, Mr. Francis Hardinger, has approved the proposed designation. The primary sponsor is the Wykoff Run Fish Nursery Inc., which has agreed to be responsible for administration and control of the area, posting signs and assisting in enforcement. The sponsors have explained how the area will be used throughout the year. Copies of the supporting documentation are attached at Exhibit S. The Northcentral Regional Law Enforcement Office recommends approval of this designation.

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Recommendation:

Staff recommend that the Commission approve the designation of Wykoff Run, Cameron County, as an exclusive use fishing area for children as more particularly described in the Commentary. If approved, this designation will go into effect on January 1, 2007.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Czop to approve the designation of Wykoff Run, Cameron County, as an exclusive use fishing area for children as more particularly described in the Commentary. This designation will go into effect on January 1, 2007. Motion carried.

Other New Business

Commissioner Mahon thanked staff for the tremendous cooperation that he has received over the years that he has served as a Commissioner. He said he is proud of the work that has been done and of his fellow Commissioners and the Commission staff.

Commissioner Lichvar expressed enthusiasm over his opportunity to serve as a Commissioner. Commissioner Lichvar, who was appointed to the Commission in the spring, dedicated his term of service to three individuals who are now deceased but who strongly supported him over the years. Those individuals were Nate Rascona of Somerset, Dick Rice of Bedford, and Norm Shires of Carlisle.

Time and Place of September 2006 Commission Meeting

The next meeting is scheduled for September 25-26, 2006. The location of the meeting has not yet been determined.

Adjournment

A motion was made by Commissioner Czop and seconded by Commissioner Sabatose to adjourn the meeting at approximately 9:45 a.m.. Motion carried.

Commission President Anderson announced that an Executive Session would follow and that real estate issues would be discussed.