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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 77th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, July 16 and 17, 2007, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on July 16 beginning at 8:00 a.m. The public session for review of this agenda began at or about 10:10 a.m. on July 17.

Call to Order

The meeting was called to order by Commission President Donald K. Anderson and was followed by the Pledge of Allegiance to the Flag.

Roll Call

Members Present

Donald K. Anderson, President
William J. Sabatose, Vice-President
Robert A. Bachman
Samuel M. Concilla
Richard W. Czop
Steven M. Ketterer
Leonard L. Lichvar
Frederick P. Osifat
Thomas C. Shetterly
William R. Worobec

Review and Approval of Minutes from the April 2007 Meeting

A motion was made by Commissioner Czop and seconded by Commissioner Worobec to approve the April 2007 minutes as written. Motion carried.

Awards and Presentations

Harry R. Wade, Fish Culturist, Reynoldsdale State Fish Hatchery, was presented with a lifesaving award for his outstanding service and heroic actions on Sayers Dam. On March 11, 2007, Mr. Wade, without consideration for his individual safety, risked his life to rescue an

unknown ice angler who had fallen through the ice while fishing on Sayers Dam. Although falling through the ice himself, Harry successfully brought the man to safety. Harry's selfless lifesaving actions are a credit to himself and the Commission.

Commissioner Donald K. Anderson 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 18, 2006 to July 17, 2007.

Thomas P. Ford, Director, Policy, Planning and Operations, was recognized for his over 12 years of dedicated service to the anglers, boaters and aquatic resources of Pennsylvania. Tom has accepted a position with the Pennsylvania Department of Conservation and Natural Resources and will assume his new responsibilities on July 30, 2007.

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 Concilla nominated Commissioner William J. Sabatose as President. Commissioner Anderson seconded the nomination. A motion was made by Commissioner Worobec 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 President of the Commission for 2007-2008.

Commissioner Czop nominated Commissioner Frederick P. Osifat as Vice-President. Commissioner Anderson seconded the nomination. A motion was made by Commissioner Worobec and seconded by Commissioner Anderson to close the nominations. The motion was carried, and nominations were closed. The Commission elected Commissioner Osifat to serve as Vice-President of the Commission for 2007-2008.

Executive Director's Report

Director Austen's report highlighted the "PFBC Activity Report – Second Quarter 2007" (Exhibit N) that was provided to the Commissioners. The report includes an update of major activities and accomplishments over the last quarter. Staff will continue to provide this report, which describes a variety of activities, at future quarterly Commission meetings.

Announcement of Executive Session

Commissioner Sabatose announced that an executive session was held on Monday, July 16, at 8:00 a.m. to discuss personnel and litigation issues.

Reports of Commissioner Committees

Executive and Planning (Commissioner Anderson) -

The Executive and Planning Committee met on Monday, July 16, at 11:05 a.m. An agenda item regarding the Commission's reorganizational plan was discussed, and Tom Ford provided an update on Blackleggs Creek Memorial Park.

Administration and Legislation (Commissioner Worobec) -

The Administration and Legislation Committee met on Monday, July 16, at 11:55 a.m., and Gary Moore provided a legislative update. The Committee reconvened at 5:30 p.m., and a discussion was held regarding the creation of a short term Class A portable pond license for non-profit organizations and working with the state legislature to amend the Fish and Boat Code to add the new license type. Staff will update the Commission regarding this effort at the October 2007 Commission meeting.

Boating, Education and Publications -

The Boating, Education and Publications Committee did not meet.

Fisheries (Commissioner Sabatose) -

The Fisheries Committee met on Monday, July 16, at 1:00 p.m. Agenda items were discussed. Updates were provided regarding results of the Allegheny River Big Bass regulations and the West Branch Susquehanna angler surveys. Additional briefings included the Pennsylvania Trout Management Plan revision schedule with consideration given to a trout workgroup meeting in the fall and the Pine Creek Delayed Harvest Artificial Lures Only area and recreational fishing and boating conflicts.

Habitat – Environmental (Commissioner Shetterly) -

The Habitat-Environmental Committee met on Monday, July 16, at 4:00 p.m. An agenda item concerning McCoy-Linn Dam was discussed, and an overview was provided regarding its removal and the public access development project. Scott Carney also provided an update on the Big Spring restoration project and the Commission's Abandoned Mine Lands workgroup and its efforts.

Law Enforcement (Commissioner Lichvar) -

The Law Enforcement Committee met on Monday, July 16, at 12:03 p.m. Tom Kamerzel provided an update on the 18th Waterways Conservation Officer class along with transfers and new appointments within the bureau. The 18th class graduation is scheduled for August 10, 2007.

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

Access and Marina Development (Commissioner Concilla) -

The Access and Marina Development Committee met on Monday, July 16, at 3:30 p.m. Agenda items were discussed. Scott Bollinger provided an update on the Boating Facility Grant Program and the Erie Access Improvement Program. Dick Mulfinger provided an update on projects that currently are in progress.

Public Comment to Commissioners and Staff

Mr. Loren Lustig introduced himself as one of the Commission's newly appointed Boating Advisory Board members. As a lifetime angler and boater, Mr. Lustig looks forward to having the ability to provide input into boating issues and fishing topics of interest to the Commission.

There were no additional comments or questions from the public.

EXECUTIVE

A. Approval of Commission Reorganization.

Commentary:

Past discussions with Commissioners and staff reveal several areas where we have opportunities to improve communications, reduce conflicting priorities and strengthen common goals through organizational efficiencies. The reorganization, as reflected in Exhibit A, proposes to engineer greater efficiency and effectiveness within the Commission by organizationally realigning operational elements to enhance lines of communication, increase cooperation among units under the direction of a common manager below the Executive Director level and to create new organizational units to provide an identity and cohesiveness to the functions. The reorganization request proposes to:

- (1) Expand the role of the Policy and Planning and Operations Section to include the newly proposed Communications Division and reorganize the section into the Bureau of Policy, Planning and Communications.
- (2) Create the Communications Division to provide direction, leadership and a common voice among the Commission's existing communications functions and educational elements. This division will be comprised of the Press Office, Media Productions Section, Promotions and Special Events (Marketing) and Aquatic Resource Programs and Education Section.
- (3) Create the Deputate of Administration and Service Support, which will consist of the Bureau of Engineering, Bureau of Administration and the newly created Office of Boating and Access. This Deputate is being proposed to facilitate communications and administrative support and to align similar functions within the Commission. Within this work unit, support functions from both existing bureaus are realigned and collocated - functionally within one deputate. Included in this realignment, the Human Resource Office is to be relocated from the Executive Office into the Bureau of Administration. This placement mirrors the Commonwealth's traditional alignment for this function. Also within the Bureau of Administration, the establishment of the Financial Management Section will consolidate grants management, budget and procurement under a single fiscal officer.
- (4) Create the Office of Boating and Access. With the retirement of the Director of the Bureau of Boating and Education, an opportunity presents itself to separate functions that previously had been cobbled together and forced to fit. By realigning these other elements with similar functions within the Commission, the boating function is further unveiled and can be elevated to the stature of Office. Within this organizational entity, in addition to the traditional boating roles, the Office of Boating and Access will spearhead one of the single most important issues for sportsmen - access. The newly created

Fishing and Boating Access Program seeks to expand and create opportunities for boaters and fishermen through long-term public access.

(5) Formally establish the Three Rivers Ecological Research Center.

Briefer:

Bernard M. Matscavage, Director, Human Resource Office.

Recommendation:

Staff recommend that the Commission approve the reorganization of the Commission as described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Shetterly to postpone consideration of this item to allow the Executive Director to inform the majority and minority chairs of the House and Senate Game and Fisheries Committees of the details of the reorganization proposal and to convene within two weeks a special Commission meeting via conference call for final action on the item. Motion carried.

ENGINEERING & DEVELOPMENT

A. Additional Office Lease for the Three Rivers Ecological Research Center, Allegheny County.

Commentary:

At its January 2007 meeting, the Commission approved the leasing of office space located between Third Street, Fourth Street, Carson Streets and the Monongahela River in Pittsburgh identified as 16 Terminal Way from Pittsburgh Terminal Properties, a Pennsylvania Business Trust. The subject site is for use by the Commission's Three Rivers Ecological Research Center Program Director as office and storage space.

Pittsburgh Terminal Properties is now offering to lease to the Commission an additional portion of its office facility located at 16 Terminal Way. The new office space will be for use by the Commission's regional education staff in conjunction with the Commission's Three Rivers Ecological Research Center Director as office, meeting and storage space. Staff wish to consolidate Commission office facilities in the Pittsburgh area so as to improve efficiency, better serve the public and minimize costs.

The new office space, which was formerly used by a staff person of the Rainforest Alliance who vacated the site in April of 2007, is immediately adjacent to the office space approved for lease at the January meeting. The new office space consists of exclusive use of a 10' by 13' office along with the right to use a large conference room (furnished with conference table and seven chairs) and storage room with built-in shelves along with other common areas such as restrooms, kitchen and general parking areas. This lease will allow the Commission, in addition to securing an additional office, to have use of the conference room and storage room when combined with its rights under the existing lease. A floor plan of the area is shown on Exhibit B.

If approved by the Commission, the Commission's current lease with Pittsburgh Terminal Properties will be amended to include the additional space. The amendment will have an effective date of August 1, 2007. As with the Commission's current lease, the Lessor will furnish the utilities such as heat, water, and electricity for normal office use and normal maintenance associated with the general parking. The care of the office space will be the responsibility of the Commission. The rental fees will be \$200.00 per month for the additional office space, and there may be a slight increase in the fee after the initial term. An additional parking fee of \$100.00 per month per vehicle may also be charged if the Commission opts to have parking associated with the amended lease. The parking fee also will be subject to a slight increase after the initial term.

Any amendment to the lease agreement will be reviewed and approved by the Commission's counsel for compliance with the Commission's practices for leasing office facilities and to protect the Commission's best interest.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the leasing of the subject office facilities as described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Shetterly to approve the leasing of the subject office facilities as described in the Commentary. Motion carried.

B. Property Disposition to the Pennsylvania Department of Transportation at the Reynoldsdale State Fish Hatchery, Bedford County.

Commentary:

The Pennsylvania Department of Transportation (PennDOT) needs to reconfigure and widen the intersection of SR 4032 and Fish Hatchery Road (T-578) in East St. Clair Township, Bedford County, adjacent to the Commission's Reynoldsdale Hatchery. The highway project will require PennDOT to acquire fee title to ± 0.5 acre area and acquire a smaller temporary area for a construction easement from the Commission. PennDOT needs to acquire the aforesaid area to realign and widen the intersection of SR 4032 and T-578, which will move the intersection closer to the hatchery. The primary need for the temporary area is to provide additional space for construction. The temporary area of the construction easement will revert to the Commission at the conclusion of the project. A map depicting the subject area is attached as Exhibit C.

Staff have had ongoing concerns about the project due to its proximity to the primary water source (spring) for the hatchery. Staff from the Bureau of Fisheries and the Bureau of Engineering and Development met with PennDOT staff, including its geologist, several times in 2006 and were told that the project will not have an adverse impact on the Commission's operations at the hatchery. When this matter was brought before the Commission at the January 2007 meeting, the Commissioners directed staff to investigate project alternatives, including intersection relocation, that may provide additional water source protection for the hatchery. Commission staff along with three Commissioners (Anderson, Lichvar and Shetterly) met with representatives of PennDOT in spring 2007 and discussed project alternatives. It was determined that PennDOT is not able to relocate its project and that the Commission's interests will be protected.

PennDOT has agreed, however, to include language in the interagency agreement to protect the quality and quantity of the Commission's water source. Specifically, PennDOT will restore and/or replace in kind, as to quantity and quality, any portion or operational element of the hatchery property or any facet of its operation impacted directly or indirectly by PennDOT's actions related to the highway improvement project. This provision will include but not be limited to the water supply for the hatchery property and will survive the completion of highway project construction for two years. The two-year limit will not apply to the restoration or replacement activities related to problem issues brought to PennDOT's attention prior to the end of the two-year period. Water tests to check quantity and quality have been performed on the hatchery spring and will continue periodically during the course of the project.

PennDOT will provide the Commission with benefits similar to those offered other claimants impacted by highway improvement projects, such as being paid fair market value for any property acquired and restoration of the impacted and adjoining areas. PennDOT has offered \$1,700 for the acquisition of the aforesaid Commission property rights.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the disposition of the property rights necessary for the PennDOT highway project described in the Commentary, subject to there being no adverse impacts to the Commission's operations at the hatchery, receiving fair market value for the property and the damages incurred, and the area being restored at the conclusion of the intersection improvement project.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Shetterly to authorize the disposition of the property rights necessary for the PennDOT highway project described in the Commentary, subject to there being no adverse impacts to the Commission's operations at the hatchery, receiving fair market value for the property and the damages incurred, and the area being restored at the conclusion of the intersection improvement project. Motion carried.

C. Gas and Oil Property Rights Exchange at the Oswayo Fish Hatchery, Potter County.

Commentary:

The Commission owns ±1,239 acres in Oswayo Township, Potter County, that contains the Oswayo State Fish Hatchery that was acquired in 1968 using Project 70 funding. The large amount of acreage was acquired to protect the immediate watershed of the springs that provides the water supply for the hatchery. While the Commission acquired fee title to the acreage, it was only able to control gas and oil rights on approximately half of the area. There were several small gas wells in production at the time of the Commission's acquisition, and most of these have generally remained in production. The Commission has received a small (less than \$500) annual royalty payment from the existing wells. The existing wells are a reasonable distance from the Commission's water supply springs and are generally lower in the drainage basin than the springs.

Victory Energy Corporation acquired an interest in the outstanding gas and oil lease rights on a 64.7-acre tract of the Oswayo property and notified the Commission in the fall of 2006 of its intention to drill new gas wells thereon. Staff met with Victory Energy to express significant concerns over the proximity of the new gas wells to the location of the Oswayo Hatchery's springs. Staff have worked with geologists from the Game Commission and the Department of Environmental Protection to assess the impact of new gas wells both on the area that Victory Energy controls and on the area that the Commission controls.

Victory Energy has expressed a desire to trade the oil and gas interest they own to the Commission in return for a leasehold or ownership interest in the oil and gas rights owned by the Commission on a similar area north of their existing leasehold rights. This action would move the well drilling locations further away from the Commission's spring and reduce the spring's vulnerability to the new gas wells. In addition to reducing the spring's vulnerability, the trade would result in less surface damage to Commission property such as cutting in roads and drainage swales, removing trees and vegetation, and reduced maintenance.

Attached is Exhibit D that depicts Tract 7 on which Victory Energy has gas and oil rights and had proposed to drill new wells. Also depicted are areas on which the Commission owns oil and gas rights including Tract 1, which is the primary area being considered for a trade with Victory Energy. An effort will be made to trade for any additional outstanding oil and gas rights that may jeopardize the water sources for the Oswayo Hatchery such as the area north of State Route 244 and east of Brizzee Hollow Road and the area on which the actual hatchery complex is located south of State route 244. The oil and gas rights that the Commission would convey would be in exchange for oil and gas rights of equal or greater value.

Staff support the exchange of oil and gas rights as described and believe that it is in the Commission's best interest to pursue it. The Commission's interest will be protected in collateral issues such as co-use and maintenance of access roads and compensation for

any trees removed that have a market, aesthetic or environmental value. Any transaction hereunder shall be reviewed and approved by the Commission's counsel for compliance with the Commission's practices for conveying and receiving property rights.

Staff are pursuing approval of this property rights exchange at this time so they may negotiate in good faith while there is a favorable climate for such and try to bring this matter to closure in a timely manner so as to minimize the staff time of sister agencies that are assisting the Commission in this matter.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the property rights exchange as described in the Commentary.

Action:

A motion was made by Commissioner Osifat and seconded by Commissioner Worobec to approve the property rights exchange as described in the Commentary. Motion carried.

D. Mercyhurst College Property Rights Acquisition, Girard Township, Erie County.

Commentary:

Section 2907.2 of the Fish and Boat Code, 30 Pa. C.S. §2907.2, provides that the proceeds from the sale of the special Lake Erie fishing permits and \$6 of the fees for the combination trout/ salmon/Lake Erie permits are to be deposited into a restricted account within the Fish Fund for five years and that this restricted account “shall be used to provide public fishing access on or at Lake Erie and the watersheds of Lake Erie.” The funds that are deposited into the Lake Erie restricted account are restricted now and into the future for their legislatively intended purposes.

The Commission has been offered an easement on over 1,400 linear feet of Elk Creek as it flows across a property in Girard Township, Erie County. The easement will be for public fishing, boating, and riparian buffer and fishery management and will include the stream corridor and extend at least 25 feet laterally back from the top of the bank to the extent of the ownership of the seller. A map depicting the subject parcel is attached as Exhibit E. Mercyhurst College has agreed to donate the public fishing easement on this property to the Commission, and the Commission will cover closing, administrative and due diligence costs associated with this transaction using funds from the Lake Erie restricted account.

Elk Creek provides significant steelhead fishing opportunities in the area. In addition, Elk Creek received several trout stockings in 2007 in this area, and the acquisition of the subject rights will provide additional trout fishing opportunities. The area is also popular because the Mercyhurst College property is adjacent to the Miller property, which was recently acquired by Girard Township using funds from the Department of Conservation and Natural Resources and the Commission’s Lake Erie restricted account. Girard Township plans to provide a parking area that will provide access to this parcel.

The easement parcel is located between Route 5 and Route 20 along Elk Park Road.

The conveyance will be free and clear of all liens, judgments, and encumbrances with a good and marketable title. The conveyance also will be in accord with the Commission’s standard practices for acquiring property.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the acquisition of the property rights along Elk Creek in Girard Township, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account.

Action:

A motion was made by Commissioner Concilla and seconded by Commissioner Anderson to authorize the acquisition of the property rights along Elk Creek in Girard Township, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried.

E. Asbury Woods Property Rights Acquisition, Millcreek Township, Erie County.

Commentary:

Section 2907.2 of the Fish and Boat Code, 30 Pa. C.S. §2907.2, provides that the proceeds from the sale of the special Lake Erie fishing permits and \$6 of the fees for the combination trout/ salmon/Lake Erie permits are to be deposited into a restricted account within the Fish Fund for five years and that this restricted account “shall be used to provide public fishing access on or at Lake Erie and the watersheds of Lake Erie.” The funds that are deposited into the Lake Erie restricted account are restricted now and into the future for their legislatively intended purposes.

The Commission has been offered an easement on over 1,885 linear feet of Walnut Creek as it flows across two contiguous parcels in Millcreek Township, Erie County, for \$27,000. The easements will be for public fishing, boating and riparian buffer and fishery management and will include the stream corridor and extend at least 25 feet laterally back from the top of the bank to the extent of the ownership of the seller. In addition to the fishing easement, an additional easement for parking on the existing ± 1 acre parking area along State Route 832 and an access trail from the parking area to the creek over an existing trail has been offered along with an easement to allow reasonable access between the two creek front easement areas. A map depicting the subject parcels is attached as Exhibit M.

The easement parcels are located between 38th Street and State Highway 832 (Sterrettania Road) to the south. The first parcel will provide access to $\pm 1,000$ linear feet of Walnut Creek on both sides. The second parcel will provide access to ± 885 linear feet on the south side of Walnut Creek. Walnut Creek provides significant steelhead fishing opportunities in this area.

The seller and the Commission have signed an option agreement that will allow staff to perform its due diligence. The Commission’s exercise of the option will be subject to meeting the due diligence and funding requirements.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the acquisition of the property rights in Millcreek Township, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account.

Action:

A motion was made by Commissioner Concilla and seconded by Commissioner Czop to authorize the acquisition of the property rights in Millcreek Township, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried.

FISHERIES **FINAL RULEMAKING**

A. Amendments to Section 61.2 (Delaware River and River Estuary) to Change Seasons, Sizes and Creel Limits for Black Bass, Muskellunge, Muskellunge Hybrids and Other Species.

Commentary:

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

Black Bass (largemouth and smallmouth):

Black bass regulations were adopted in 2006 on the Delaware River downstream of I-84 in New Jersey and Pennsylvania that include a 12-inch minimum length limit, 5 bass per day creel limit and a no-harvest, catch-and-immediate-release season that begins on the first Saturday after April 11 and extends through 12:01 a.m. on the first Saturday after June 11. These regulations provide an opportunity for competitive anglers to conduct “paper” or catch-measure-immediate release tournaments during the catch-and-release season. In 2006, New York adopted similar regulations on the section of the Delaware River upstream of I-84. Pennsylvania currently manages its section of the Delaware as a year-round season. Thus, New York and Pennsylvania have different black bass regulations in the upper part of the Delaware. If Pennsylvania adopts the more conservative regulations (catch-and-immediate-release season that begins on the first Saturday after April 11 and extends through 12:01 a.m. on the first Saturday after June 11) upstream of I-84, consistent harvest rules for black bass will apply throughout the entire Delaware River and West Branch Delaware River in Pennsylvania and all border jurisdictions (New York and New Jersey).

Muskellunge and Muskellunge Hybrids:

In 2006, the Commission adopted new statewide regulations for muskellunge and tiger muskellunge. These regulations, which went into effect on January 1, 2007, provide for a year-round season, a 40-inch minimum size limit, and a one-fish creel limit. Currently, the regulations on the Delaware River consist of a year-round season, a 30-inch minimum size limit and a two-fish creel limit. On December 28, 2006, the Commission’s Division of Fisheries Management staff discussed these changes with staff from the New Jersey Division of Fish, Game and Wildlife and the New York Department of Environmental Conservation. Staff from both agencies stated their support for the changes in muskellunge and muskellunge hybrid regulations for the Delaware River. In New Jersey, the earliest the regulation changes would take effect is January 2008; in New York, the

earliest the regulation changes would take effect is October 2008. Those agencies will initiate the process to make their regulations consistent upon action by the Commission.

Species not identified in §61.2:

Currently, there are a number of species that are not identified in §61.2. For example, no panfish are listed in this section. The regulations in New Jersey and New York are inconsistent with each other and also are inconsistent with the Commonwealth's inland regulations. Staff do not believe that it would be feasible to attempt to reconcile New York and New Jersey regulations with ours in the near future for those species not already listed under this section. Therefore, the Commission proposes that §61.2 be clarified to state that for all species not listed, the Commonwealth's inland regulations apply.

Finally, the Commission proposes that the introductory paragraph to §61.2(d) be amended to make it clear that the regulations apply to the West Branch Delaware River as well as the main stem and other tributaries from the mouths of the tributaries upstream to the limit of tidal influence.

A notice of proposed rulemaking containing the proposed amendments was published at 37 Pa. B. 2692 (June 16, 2007) (Exhibit F). The Commission received a total of 21 public comments supporting the proposed amendments. Six of the comments supported a greater size limit on muskellunge with two specifically recommending a 50-inch minimum size limit. One comment supported the establishment of a no-kill fishery for muskellunge on the Delaware River. One comment supported more restrictive rules for trout and smallmouth bass on the Delaware River. Copies of all public comments were provided to the Commissioners.

Briefer:

Leroy M. Young, Jr., Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission adopt the proposed amendments as set forth in the notice of proposed rulemaking. If adopted, these amendments will go into effect on January 1, 2008.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Worobec to adopt the proposed amendments as set forth in the notice of proposed rulemaking. These amendments will go into effect on January 1, 2008. Motion carried.

B. Amendments to Section 61.4 (Conowingo Reservoir) to Change Seasons, Sizes and Creel Limits for Various Fish Species and Mussels.

Commentary:

The Commission currently manages two reservoirs that it shares as boundary waters with the state of Maryland: Youghiogheny Reservoir and Conowingo Reservoir. By agreement with the State of Maryland, Pennsylvania regulations are applied to both Pennsylvania's and Maryland's portions of the Youghiogheny Reservoir, and Maryland's regulations are applied to both states' portions of Conowingo Reservoir. Recently, Commission staff became aware that portions of the regulations currently in place for certain species on Conowingo Reservoir under §61.4 (d) are not consistent with the current regulations for this water in Maryland. Specifically, the harvest limit for trout is two per day in Maryland, not five per day as currently listed in §61.4. There is a baitfish daily limit of 35 in Maryland, although §61.4 says that there is no limit. The harvest of mussels and clams is prohibited in Maryland; however, mussels are not mentioned in §61.4. In Maryland, river herring (alewife and blueback herring) have an open season and no size or daily creel limits while §61.4 disallows fishing for these species. Last, Maryland's regulations provide that there are no seasons, size or creel limits for those species not specifically listed in the regulations for Conowingo Reservoir. The Commission's regulations do not currently address this matter.

To make Pennsylvania's regulations consistent with Maryland's for the Conowingo Reservoir, the Commission proposes several changes. A notice of proposed rulemaking containing the proposed amendments was published at 37 Pa. B. 2692 (June 16, 2007) (Exhibit F). The Commission received one public comment generally supporting the proposed amendments. Copies of all public comments were provided to the Commissioners.

Briefer:

Leroy M. Young, Jr., Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission adopt the proposed amendments as set forth in the notice of proposed rulemaking. If adopted, these amendments will go into effect on January 1, 2008.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Anderson to adopt the proposed amendments as set forth in the notice of proposed rulemaking. These amendments will go into effect on January 1, 2008. Motion carried.

C. Addition of Section 63.49 (Reporting by Dealers of American Eels).

Commentary:

At its February, 2006 meeting in Arlington, Virginia, the American Eel Management Board of the Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum I to the Interstate Fishery Management Plan for American Eel with the states implementing either Option 1A or Option 2 of the addendum. The goal of Addendum I is to require states to provide accurate catch and effort data for use in future stock assessments. Option 1A of the Addendum requires implementation of a license and reporting program for commercial fisheries for American eel. Option 2 requires implementation of a dealer permit with a mandatory purchase reporting requirement. This will provide an important validation of the catch and effort data being reported by harvesters. Because there is no commercial eel fishery in Pennsylvania, Option 1A does not apply. However, there are approximately 40 American eel dealers who are registered as dealers of live aquatic animals with the Pennsylvania Department of Agriculture (Department). Therefore, Pennsylvania proposes to implement Option 2 to address dealer reporting.

The Department regulates aquaculture in Pennsylvania. Pursuant to section 4222 of the Aquaculture Development Law (Act 1998-94) (Act), 3 Pa. C.S. §4222 (relating to registration of dealers of live aquatic animals), the Department requires the registration of dealers of live aquatic animals. The Act further provides that distribution by registered dealers is limited to those species of fish approved by the Department. The Department defers to a list of species of fish that the Commission has approved for propagation in open systems. The Commission maintains this list and updates it annually prior to January 31. The American eel is on this Commission list.

Under the Act, registered dealers are subject to certain reporting and record keeping requirements. However, the Act's reporting and record keeping requirements do not extend to the type of reports that the ASMFC is seeking. In addition, the Act's provisions do not apply to dealers that are not required to be registered. Therefore, Commission staff propose that the Commission, by regulation, require dealers of American eels to report the amounts of American eels that they buy and sell.

Reporting will be done on forms developed by the Commission and provided to the dealers by the Commission. Required information will include the following: Date of purchase or sale, harvester, pounds purchased and/or sold by life stage, purpose of purchase or sale (bait, food, etc), amount exported and such other information as the Commission deems necessary. This information will be required on the basis of individual purchases from harvesters or individual sales. Reports will be provided on a quarterly basis and be provided to the Commission by the 10th of the month in the next quarter. Reports will document purchases or sales for the preceding quarter on a monthly basis. The Commission will in turn maintain a database in a format acceptable to the ASMFC and provide the information to the ASMFC on a schedule established by the ASMFC.

A notice of proposed rulemaking containing the new regulation was published at 37 Pa. B. 2196 (May 12, 2007) (Exhibit G). The Commission did not receive any public comments regarding the proposal. In addition to publishing the notice in the *Pennsylvania Bulletin*, the Commission also sent a letter to dealers of live aquatic animals that are currently registered with the Department to make them aware of the proposal.

Briefer:

Leroy M. Young, Jr., Chief, Division of Fisheries Management

Recommendation:

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

Action:

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

D. Addition of Section 63.50 (Importation of Tautog).

Commentary:

It has been brought to the attention of the Bureau of Fisheries and Law Enforcement that tautog (*Tautoga onitis*), a marine fish common on hard bottom from Cape Cod to Delaware, are being harvested illegally on the Atlantic coast and being sold in the live fish markets in Philadelphia. A similar situation was encountered in 1993 regarding the sale of sub-legal size weakfish in Pennsylvania fish markets, that was subsequently addressed with a minimum size limit on weakfish being imported into Pennsylvania.

The New Jersey's Division of Fish and Wildlife Marine Conservation Officers has asked the Commission to implement a 14-inch minimum size limit on tautog that are imported into Pennsylvania. This will minimize the Pennsylvania black market for sub-legal size tautog. Accordingly, the Commission proposes to add a new regulation in this regard.

A notice of proposed rulemaking containing the proposed regulation was published at 37 Pa. B. 2694 (June 16, 2007) (Exhibit H). The Commission received one public comment from the Atlantic States Marine Fisheries Commission's Tautog Management Board supporting the proposal. Copies of all public comments have been provided to the Commissioners.

Briefer:

Leroy M. Young, Jr., Chief, Division of Fisheries Management

Recommendation:

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

Action:

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

E. Amendment to Section 65.24 (Miscellaneous Special Regulations) to Remove Sugar Lake, Crawford County.

Commentary:

Sugar Lake is a small (90 acre) natural lake located in southeastern Crawford County. Conservation Special Regulations were removed from this lake by the Commission in April 2004 due to the termination of this program statewide. In order to continue the 36-inch minimum size limit and 1 per day creel limit on muskellunge that had been in place for many years under Conservation Regulations, it was necessary to enact a miscellaneous special regulation for Sugar Lake under §65.24.

Now that the new 40-inch minimum size and 1 per day creel limit for muskellunge has been adopted statewide, Commission staff recommend that Sugar Lake be removed from management under the miscellaneous special regulations and be managed under the new statewide regulation for muskellunge. Staff propose that the miscellaneous special regulation pertaining to Sugar Lake be eliminated.

A notice of proposed rulemaking containing the deletion was published at 37 Pa. B. 1220 (March 17, 2007) (Exhibit I). The Commission did not receive any public comments regarding this proposal.

Briefer:

Leroy M. Young, Jr., Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission adopt the proposed amendment as set forth in the notice of proposed rulemaking. If approved, the amendment will go into effect on January 1, 2008.

Action:

A motion was made by Commissioner Shetterly and seconded by Commissioner Bachman to adopt the proposed amendment as set forth in the notice of proposed rulemaking. The amendment will go into effect on January 1, 2008. Motion carried.

DESIGNATIONS

F. Change in Special Regulation Area Section Limits: Sandy Lick Creek, Clearfield County.

Commentary:

At its May 2, 2006 meeting, the Commission approved the addition of a 1.37 mile section of Sandy Lick Creek, Clearfield County to the Delayed Harvest Artificial Lures Only (DHALO) program. The change became effective on January 1, 2007. This section currently runs from the mouth of Laborde Branch downstream to 100 meters downstream of Reisinger Run.

Recently, the Allegheny Mountain Chapter of Trout Unlimited and the City of DuBois, the riparian landowner, have asked staff to extend the downstream limit of the DHALO section from the current location of 100 m downstream of Reisinger Run to the State Route 219 bridge. This would extend the DHALO section downstream about 0.34 miles or 0.55 km. The primary reason for the change is to more precisely define the downstream limit with a clear physical landmark. This will eliminate some current confusion as to where the downstream limit of the area ends.

Staff agree with this proposal and recommend that the DHALO section be extended downstream 0.34 miles to the SR 219 bridge. If approved, the revised limits of this area will extend from the confluence with Laborde Branch downstream to the SR 219 bridge, a distance of 1.71 miles.

A notice of proposed designation was published at 37 Pa. B. 2667 (June 9, 2007) (Exhibit J). The Commission did not receive any public comments concerning the proposed re-designation.

Briefer:

Leroy M. Young, Jr., Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission extend the downstream limit of the DHALO area on Sandy Lick Creek, Clearfield County, from its current location of 100 meters downstream of Reisinger Run to the State Route 219 bridge. If approved, the revised limits of this area will extend from the confluence with Laborde Branch downstream to the SR 219 bridge, a distance of 1.71 miles. If approved, the re-designation will go into effect on January 1, 2008.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Lichvar to extend the downstream limit of the DHALO area on Sandy Lick Creek, Clearfield County, from its current location of 100 meters downstream of Reisinger Run to the State Route 219 bridge. The revised limits of this area will extend from the confluence with Laborde Branch downstream to the SR 219 bridge, a distance of 1.71 miles. The re-designation will go into effect on January 1, 2008. Motion carried.

G. Change in Designation: Allegheny River (Section 20), Allegheny and Westmoreland Counties.

Commentary:

The Fisheries Management Division Area 8 Office recently completed its evaluation and analysis of the Big Bass regulation implemented in 1995 on Section 20 (Pool 3) of the Allegheny River. This 9.65 mile section extends from Allegheny Lock and Dam 3 at Acmetonia upstream to Allegheny Lock and Dam 4 at Natrona. The evaluation spanned 10 total years of sampling between 1990 and 2006. Staff completed bass population sampling two years in the pre-regulation period and eight years in the post-regulation period. Angler use, harvest and opinion surveys were completed in 1994 pre-regulation and 2000 post-regulation. A synopsis of post-regulation objective results include: 1) the regulation did result in a doubling of smallmouth bass numbers over 12 inches in the Big Bass section, and numbers of smallmouth bass greater than 12 inches in an adjacent control section of the river that was not under Big Bass regulations also increased but only by 21% ; 2) the abundance of smallmouth bass over 15 inches did not increase in the Big Bass section but increased in the control section by 167%; 3) smallmouth bass angler catch rates in the Big Bass section were comparable to a control section; 4) smallmouth bass harvest was reduced by 83% in the Big Bass section, but this did not result in higher numbers of bass over 15 inches; and 5) angler use directed at smallmouth bass declined slightly in both the Big Bass section and the control section, but the reduction was greater in the Big Bass section.

Staff have concluded that the overall quality of the bass population and angling in the Big Bass section did not improve. Therefore, staff recommend that Allegheny River Section 20 be removed from the Big Bass Program and again be managed with statewide regulations under §61.1. Staff have received several pieces of correspondence encouraging and supporting this change from anglers.

A notice of proposed designation was published at 37 Pa. B. 2667 (June 9, 2007) (Exhibit J). The Commission did not receive any public comments concerning the proposed re-designation.

Briefer:

Leroy M. Young, Jr., Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission remove the Allegheny River Section 20 (Pool 3), Allegheny and Westmoreland Counties, from its list of "Big Bass Regulation" waters under §65.9. If approved, the re-designation will go into effect on January 1, 2008.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Shetterly to remove the Allegheny River Section 20 (Pool 3), Allegheny and Westmoreland Counties, from its list of "Big Bass Regulation" waters under §65.9. The re-designation will go into effect on January 1, 2008.

H. Addition to Class A Wild Trout Waters List: Middle Spring Creek (Section 01), Cumberland 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 support at least 0.1 kg/ha (0.089 lbs/acre) of trout of the designated species less than 15 cm (5.9 inches) in total length. Minimum biomass standards for wild brown trout, wild brook trout, and mixed wild brook and brown trout populations, where neither species composes 75 percent or more of the biomass, are 40 kg/ha (35.6 lbs/acre), 30 kg/ha (26.7 lbs/acre), and 40 kg/ha (35.6 lbs/acre), respectively.

Section 01 of Middle Spring Creek extends from its source downstream 1.48 miles to Avon Road (T-303). On August 10 and 18, 2006, a Petersen mark-recapture population estimate was conducted at two stations within this section in order to quantify the wild brown trout population. The stations encompassed 27% of the total length of Section 01. During the survey, a total of 462 wild brown trout, which ranged in total length from 75 mm to 475 mm, were collected. The Section 01 wild brown trout biomass estimate was 76.60 kg/ha. Fish less than 150 mm in total length had a biomass of 17.00 kg/ha. The wild brown trout population documented in Section 01 of Middle Spring Creek exceeds the minimum Class A criteria of a total population biomass estimate of 40 kg/ha with the biomass of trout less than 150 mm comprising at least 0.1 kg/ha. Therefore, staff propose that the Commission designate Section 01 of Middle Spring Creek as a Class A wild trout water.

A notice of proposed designation was published at 37 Pa. B. 2666 (June 9, 2007) (Exhibit K). The Commission did not receive any public comments concerning the proposed designation.

Briefer:

Leroy M. Young, Jr., Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission approve the addition of Middle Spring Creek (Section 01), Cumberland County, to its list of Class A Wild Trout Waters as set forth in the notice. If approved, the designation will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Shetterly and seconded by Commissioner Anderson to approve the addition of Middle Spring Creek (Section 01), Cumberland County, to its list of Class A Wild Trout Waters as set forth in the notice. The designation will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

OTHER MATTERS

I. Funding Support for the McCoy-Linn Dam Removal and Access Development, Spring Creek, Centre County.

Commentary:

The McCoy-Linn Dam is an approximately 20-foot high, 150-foot long structure that creates a 16-acre impoundment on Spring Creek in Centre County. The dam, which was constructed in the 1930s to generate hydroelectricity, is located between the towns of Bellefonte and Milesburg, approximately 0.9 miles upstream from the confluence of Spring Creek and Bald Eagle Creek. The Commission owns the dam and the surrounding 25-acre project site. The dam serves no functional purpose, is a liability and negatively impacts a world-class coldwater fishery. The dam also blocks unpowered boaters from going downstream to the confluence with Bald Eagle Creek. Paddling is a popular activity upstream from this dam and would be greatly enhanced by the dam's removal. It has been the Commission's desire to remove the dam for nearly two decades, but until now the resources and partnerships were not available.

Commission staff and project partners have obtained approximately \$300,000 of grant funding to support removal of the dam and site development. Engineering designs have been completed, and a site restoration plan was developed with removal targeted in August/September of this year. The ClearWater Conservancy of Central Pennsylvania is acting on the Commission's behalf to manage the project. Final products include restoration of 3/4 of a mile of high quality stream and riparian habitat, installation of fish habitat enhancement structures in the newly established stream channel, and development of public access to 1.3 miles of contiguous Commission-owned section of Spring Creek. These products will culminate in the creation of a designation fishery similar to the world renowned Fishermen's Paradise. Additional grant funding has been applied for to support access development and educational signage. Project partners include ClearWater Conservancy, American Rivers, Spring Creek Chapter of Trout Unlimited, Centre County Historical Society, Centre County Office of Planning and Community Development, National Fish and Wildlife Foundation, PA Department of Environmental Protection, PA Department of Conservation and Natural Resources, U.S. EPA Chesapeake Bay Program, U.S. Department of Agriculture, U.S. Fish and Wildlife Service and The Pennsylvania State University.

Contractual costs for removing the dam are \$250,000. At present, \$150,000 is available from previously acquired grants. The \$100,000 shortage is attributed to the unanticipated requirement to remove and dispose of all the accumulated sediment from behind the dam. The budget for the dam removal is attached as Exhibit L.

The Commission already has entered into a cooperative agreement with the ClearWater Conservancy that allows the Commission to reimburse the Conservancy for eligible expenses up to a maximum total sum of \$65,000. Eligible expenses under the agreement include the Conservancy's costs associated with the breach, demolition and removal of

the dam, related stream bank and habitat restoration, construction oversight, assistance in the development of public access and educational/informational signage at the site. The source of funding for this agreement is the EPA Chesapeake Bay Program. To date, however, the Commission has not contributed any Fish or Boat Fund monies to the project despite being the owner of the property. Therefore, staff are requesting that the Commission provide up to \$100,000 from the Fish and Boat Funds to make up the balance of funding required to remove the dam. The funds will be made available to the ClearWater Conservancy through an amendment to the cooperative agreement that already is in place.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission approve an additional grant in the amount of up to \$100,000 to the ClearWater Conservancy utilizing monies from the Fish and Boat Funds to complete the funding package for the removal of the McCoy-Linn Dam.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Worobec to approve an additional grant in the amount of up to \$100,000 to the ClearWater Conservancy utilizing monies from the Fish and Boat Funds to complete the funding package for the removal of the McCoy-Linn Dam. Motion carried.

Other New Business

A motion was made by Commissioner Anderson and seconded by Commissioner Shetterly that staff pursue the creation of a short term Class A portable pond license with the state legislature. The new Class A portable pond license would be available to volunteer fire companies, cooperative nurseries, sportsmen's clubs and other non-profit organizations for three-day events at a fee of \$25.00. Staff will work towards pursuing an amendment to section 3102 of the Fish and Boat Code that will add the new license type. Commissioner Concilla indicated that he will abstain from all discussion and voting with regard to this matter to avoid a possible conflict of interest. Motion carried.

A motion was made by Commissioner Worobec and seconded by Commissioner Bachman to adopt the "Policy Manual for the Pennsylvania Fish and Boat Commission" that includes a restatement of the Commission's mission statement. Further, in the event that there is a conflict between any of the policies and the Fish and Boat Code, the Fish and Boat Code will prevail. Motion carried. A copy of the policy manual, as adopted by the Commissioners is attached as Exhibit O.

A motion was made by Commissioner Ketterer and seconded by Commissioner Czop that staff prepare a briefing regarding mandatory boating education at the January 2008 meeting. Motion carried.

A motion was made by Commissioner Czop and seconded by Commissioner Concilla that the Director of the Bureau of Engineering and Development prepare a time schedule for the completion of the design and construction of a fishing pier at Frankford Arsenal within 30 days. Motion carried.

Time and Place of October 2007 Commission Meeting

A special Commission meeting to consider the proposed reorganization of the Commission will be held on Thursday, July 26, and will be held at the Commission's headquarters in Harrisburg. Commissioners will be offered the flexibility of participating in the meeting via conference call.

The next regular meeting is scheduled for October 1-2, 2007 and will be held at the Commission's headquarters in Harrisburg. Dr. Austen mentioned that a portion of that meeting will be devoted to legislative visits organized by Gary Moore.

Adjournment

A motion was made by Commissioner Anderson and seconded by Commissioner Ketterer to adjourn the meeting at approximately 11:00 a.m. Motion carried.