

Table of Contents

Call to Order.....	87
Roll Call.....	87
Review and Approval of Minutes from the July 17, 2007 Meeting and the July 26, 2007 Special Meeting	87
Executive Director’s Report.....	88
Announcement of Executive Session	88
Reports of Commissioner Committees	88
Executive and Planning (Commissioner Sabatose) –	88
Administration and Legislation (Commissioner Worobec) –	88
Boating, Access and Marinas (Commissioner Concilla) –	88
Communications (Commissioner Lichvar) –.....	89
Fisheries (Commissioner Anderson) –	89
Habitat and Environmental (Commissioner Shetterly) –	89
Law Enforcement (Commissioner Czop) -	90
Public Comment to Commissioners and Staff	90
EXECUTIVE & PLANNING.....	91
A. Dates for Fish and Boat Commission Meetings in 2008.....	91
B. Review and Approval of Submission of Fiscal Year 08-09 Budget Request.....	92
BOATING, ACCESS & MARINAS	93
FINAL RULEMAKING.....	93
A. Amendment to Section 111.20 (Crawford County) to Increase Horsepower Limit on Sugar Lake. ..	93
B. Amend Section 111.33 (Jefferson County) to Add Subsection (b) Relating to Cloe Lake.	94
PROPOSED RULEMAKING	95
C. Amendments to Sections 91.6 (Boating Safety Education Certificates) and 91.7 (Criteria for Courses of Instruction in Boating Safety Education).....	95
D. Amendment to Section 111.2(c) (Allegheny County).	98
OTHER MATTERS.....	99
E. Harveys Creek Stream Corridor Lease, Luzerne County.	99
F. Holliday Crooked Creek Farm, Inc., Property Rights Acquisition, Springfield Township, Erie County.	100
G. Klimek Property Rights Acquisition, Girard Township, Erie County.	102
FISHERIES	103
FINAL RULEMAKING.....	103
A. Amendment to Section 51.71 (Scientific Collectors’ Permits) to Include Fee Schedule.	103
B. Addition of Section 69.3 (Transportation of VHS-Susceptible Fish Out of Lake Erie Watershed). .	105

PROPOSED RULEMAKING	109
C. Amendments to Sections 65.4a (All-tackle Trophy Trout), 65.5 (Catch and Release Areas), 65.6 (Delayed Harvest Artificial Lures Only Areas), 65.7 (Trophy Trout Program), 65.10 (Early Season Trout Stocked Waters Program), 65.14 (Catch and Release Fly-fishing Only Areas) and 65.15 (Catch and Release All-tackle Areas).....	109
DESIGNATIONS	110
D. Additions to Class A Wild Trout Waters List.....	110
OTHER MATTERS.....	112
E. Blackleggs Creek Habitat Improvement/Memorial Park Grant.....	112
Time and Place of January 2008 Commission Meeting.....	113
Other New Business.....	113
Adjournment	113

Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 79th Meeting of the Pennsylvania Fish and Boat Commission was held on Sunday and Monday, September 30 and October 1, 2007, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on September 30 beginning at 1:00 p.m. and on October 1 beginning at 10:45 a.m. The public session for review of this agenda began at or about 3:15 p.m. on October 1.

Call to Order

The meeting was called to order by Commission President William J. Sabatose and was followed by the Pledge of Allegiance to the Flag.

Roll Call

Members Present

William J. Sabatose, President
Donald K. Anderson
Samuel M. Concilla
Richard W. Czop
Steven M. Ketterer
Leonard L. Lichvar
Thomas C. Shetterly
William R. Worobec

Members Not Present

Frederick P. Osifat, Vice President
Robert A. Bachman

Review and Approval of Minutes from the July 17, 2007 Meeting and the July 26, 2007 Special Meeting

A motion was made by Commissioner Ketterer and seconded by Commissioner Anderson to approve the July 17 and July 26, 2007 minutes as written. Motion carried.

Executive Director's Report

Dr. Austen's report highlighted the "PFBC Activity Report – Third Quarter 2007" (Exhibit A) that was provided to the Commissioners. The report includes an update of major activities and accomplishments over the last quarter.

Announcement of Executive Session

Commissioner Sabatose announced that an executive session was held on Monday, October 1, at 8:00 a.m. to discuss personnel, real estate and litigation issues.

Reports of Commissioner Committees

Executive and Planning (Commissioner Sabatose) –

The Executive and Planning Committee met on Monday, October 1, at 12:45 p.m. Brian Barner provided a briefing on the fiscal year 2008/09 budget. Agenda items regarding the dates for Commission meetings in 2008 and the submission of the fiscal year 08-09 budget request were discussed.

Administration and Legislation (Commissioner Worobec) –

The Administration and Legislation Committee met in conjunction with the Executive and Planning Committee on Monday, October 1, at 12:45 p.m. Gary Moore provided a legislative update and an overview of the October 2 legislative visits by Commissioners and staff. Discussion was held regarding various legislative initiatives to pursue. Among them is legislation pertaining to vegetated riparian buffers. The Committee also discussed and took action to recommend to the full Commission that it adopt a policy on partnering and outreach. A copy of the policy is attached as Exhibit B. In addition, the Committee received an update on draft legislation for a reduced fee portable pond license for non-profit organizations.

During the committee report, a number of motions were made:

A motion was made by Commissioner Worobec and seconded by Commissioner Anderson to approve the Partnering and Outreach Policy (Exhibit B). Motion carried.

Action was taken with respect to the submission of a budget request to the Governor's Budget Office for Fiscal Year 2008-09. See agenda item B under "Executive and Planning."

A motion was made by Commissioner Worobec and seconded by Commissioner Czop to move forward with the draft legislation for a reduced fee portable pond license for non-profit organizations. Motion carried.

Boating, Access and Marinas (Commissioner Concilla) –

The Boating, Access and Marinas Committee met on Monday, October 1, at 10:45 a.m. Agenda items were discussed. Mark Mitchell, Chief, Property Services, Bureau of Engineering and Development, provided an update on the real estate database. Updates were also provided by staff on the North East Marina and the docks, the Erie Access Improvement Program, and mandatory boating education. A boat accident report was provided by Dan Martin, and Dick Mulfinger provided an update on Frankford Arsenal. The Committee also discussed and took action to recommend to the

full Commission that it authorize the replacement of one section of the docks at the North East Marina during FY 2008/2009 as described in staff's proposal.

Communications (Commissioner Lichvar) –

The Communications Committee met on Monday, October 1, at 2:00 p.m. Carl Richardson, Aquatic Resource Education Manager, provided an update on Aquatic Resources Program Specialist (ARPS) vacancies. Adrian Martin, Marketing Development Specialist, provided reports on the 2007 and 2008 show season and a presentation on steelhead fishing promotional efforts. Discussion was held on ideas to increase circulation of the *Pennsylvania Angler & Boater* magazine.

Fisheries (Commissioner Anderson) –

The Fisheries Committee met on Sunday, September 30, at 1:00 p.m. A facilitated session was provided by Jim Drager regarding the new State Trout Plan. Agenda items were discussed, and presentations were provided on the West Branch Susquehanna River Angler Opinion Survey results and the Upper Delaware River Flow Management Plan. The Committee also took action to recommend to the full Commission that the Commission approve the publication of a notice proposed rulemaking containing amendments to the Commission's regulations to prohibit tournaments that allow the harvest of bass in the West Branch, the North Branch and the main stem of the Susquehanna River.

During the Fisheries Committee report, a motion was made by Commissioner Anderson and seconded by Commissioner Worobec that consistent with the committee's recommendation, the Commission approve the publication of a notice proposed rulemaking containing amendments to sections 53.24 and 63.40 of the Commission's regulations to prohibit tournaments that allow the harvest of bass in the West Branch, the North Branch and the main stem of the Susquehanna River. Motion carried.

Habitat and Environmental (Commissioner Shetterly) –

The Habitat and Environmental Committee met on October 1, at 10:45 a.m. Scott Carney updated the Committee on the McCoy Dam and Habitat Restoration Project and gave a briefing on the Allegheny National Forest Acid Precipitation Remediation Project. Following the briefing, the Committee discussed and took action to recommend to the full Commission that it support the Kinzua Acid Rain Remediation Project and that it implement the project utilizing a phased approach with evaluation of each phase prior to implementation of a subsequent phase. The Committee also took action to recommend to the full Commission that it direct staff to begin the design, permitting and securing of funding from outside sources for an acid rain remediation project on the East Branch of the Clarion River. The Committee further considered the agenda item regarding a grant to the Blackleggs Creek Trout Nursery and Watershed Association and recommended approval to the full Commission. Last, John Arway gave the Committee a briefing on wind power development. Following the briefing, the Committee took action to recommend to the full Commission that it direct staff to develop for Commission review and approval a wind power policy statement addressing matters within the Commission's authority under the Fish and Boat Code and that it direct its Executive Director to send a letter in the short term to the Secretary of the Department of Environmental Protection emphasizing complete and thorough review of permit applications for projects located on exceptional value wetlands and watersheds.

During the committee report, a number of motions were made:

A motion was made by Commissioner Shetterly and seconded by Commissioner Lichvar that the Commission support the Kinzua Acid Rain Remediation Project and that it implement the project utilizing a phased approach with evaluation of each phase prior to implementation of a subsequent phase. During the discussion of the motion, Commissioner Worobec clarified that the phased approach would begin with the least costly component being done first, with full evaluation of each component prior to implementing a subsequent component and if evaluation of a component found that it was unsuccessful, subsequent components would not be pursued. Dr. Austen added that the entire costs of the project would not be budgeted in the first year. Motion carried.

A motion was made by Commissioner Shetterly and seconded by Commissioner Worobec to direct staff to begin the design, permitting and securing of funding from outside sources for an acid rain remediation project on the East Branch of the Clarion River. Motion carried.

Action was taken with respect to a grant to the Blackleggs Creek Trout Nursery and Watershed Association. See agenda item E under "Fisheries."

A motion was made by Commissioner Lichvar and seconded by Commissioner Worobec to direct staff to develop for Commission review and approval a wind power policy statement addressing matters within the Commission's authority under the Fish and Boat Code and that it direct its Executive Director to send a letter in the short term to the Secretary of the Department of Environmental Protection emphasizing complete and thorough review of permit applications for projects located on exceptional value wetlands and watersheds. Motion carried.

Law Enforcement (Commissioner Czop) -

The Law Enforcement Committee met on October 1, 2007, at 2:00 p.m. Raymond Bednarchik, Regional Manager, Southeast Region, provided a briefing on the deputy waterways conservation officer class graduation, advanced deputy waterways conservation officer training, boating under the influence enforcement efforts and steelhead detail.

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

Public Comment to Commissioners and Staff

George Acord, Susquehanna Fishing Tackle, provided comment on the smallmouth bass issues on the Susquehanna River.

EXECUTIVE & PLANNING

A. Dates for Fish and Boat Commission Meetings in 2008.

Commentary:

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

Staff have reviewed the available dates and possible conflicts for scheduling regular Commission meetings for 2008. This review included a look at holiday, hunting and fishing seasons and other conflicting events. Based upon this review, the following dates are proposed for regular Commission meetings in 2008:

January 28-29, 2008 (Monday and Tuesday)

April 21-22, 2008 (Monday and Tuesday)

July 14-15, 2008 (Monday and Tuesday)

October 6-7, 2008 (Monday and Tuesday)

The January and July 2008 meetings will be held at the Harrisburg headquarters. The April and October 2008 meetings will be held at locations designated by the Commission for the transaction of business.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission approve the dates for the regular meetings of the Commission for 2008 as set forth in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Worobec to approve the dates for the regular meetings of the Commission for 2008 as set forth in the Commentary. Motion carried.

B. Review and Approval of Submission of Fiscal Year 08-09 Budget Request.

Commentary:

Under Commonwealth government budget procedures and in accordance with sections 522 and 532 of the Fish and Boat Code (30 Pa. C.S. §§522, 532), the Commission annually submits to the Governor's Budget Office the proposed Commission budget for the following fiscal year. The Commission's submission for Fiscal Year 2008-09 is due at the Budget Office in the early part of October.

Staff have prepared preliminary draft budget documents for submission to the Budget Office. According to the Budget Office, these documents are confidential. After the Executive Director submits the budget request, the Governor's Office may make changes to the spending authority requested by the Commission. These changes are generally a result of changes in calculations for personnel and/or other costs. The Governor will announce the details of the FY 08-09 budget in February or March of 2008.

Briefers:

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

Recommendation:

Staff recommend that the Commission authorize the Executive Director to submit a request to the Governor's Budget Office for Fiscal Year 2008-09 spending authority as more fully described in staff's preliminary draft budget documents.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Anderson to authorize the Executive Director to submit a request to the Governor's Budget Office for Fiscal Year 2008-09 spending authority as more fully described in staff's preliminary draft budget documents. Motion carried.

BOATING, ACCESS & MARINAS FINAL RULEMAKING

A. Amendment to Section 111.20 (Crawford County) to Increase Horsepower Limit on Sugar Lake.

Commentary:

The Commission received a petition to amend the regulations to increase the horsepower limit on Sugar Lake from the current 6 horsepower to 10 horsepower. Approximately 70 persons signed the petition, of which 35 are property owners around the lake. Thereafter, the Commission directed staff to prepare a report with recommendations concerning the merits of the petition. In accordance with the regulations, the staff report was considered and reviewed by the Boating Advisory Board at its October 2006 meeting. The Board recommended that the horsepower be increased as proposed by the petitioner, and the Commission approved the publication of a notice of proposed rulemaking containing the amendment at its January 2007 meeting.

A notice of proposed rulemaking proposing to increase the horsepower limit from 6 to 10 was published at 37 Pa. B. 1218 (March 17, 2007) (Exhibit C). Following the Commission meeting but prior to the formal public comment period, the Commission received two public comments opposing the proposal. The Commission also received two public comments opposing the proposal during the official comment period. All four comments expressed concern regarding the potential impact of the proposed change on the aquatic resources of Sugar Lake and connected downstream systems.

At its meeting on August 13, 2007, the Boating Advisory Board considered this item and recommended that the Commission adopt the amendment on final rulemaking.

Briefer:

Daniel G. Martin, Acting Director, Bureau of Boating and Education

Recommendation:

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

Action:

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

B. Amend Section 111.33 (Jefferson County) to Add Subsection (b) Relating to Cloe Lake.

Commentary:

Cloe Lake in Jefferson County is a Commission owned lake. Pursuant to the Commission's regulations in section 53.8(a), the operation of internal combustion engines is prohibited on Commission lakes. Therefore, Cloe Lake is an electric motors only lake. A recent staff review of the Commission's regulations in Chapter 111, however, revealed that they do not include Cloe Lake as being electric motors only. Accordingly, the Commission proposed that section 111.33 be amended to add this restriction.

A notice of proposed rulemaking containing the proposed amendment was published at 37 Pa. B. 1218 (March 17, 2007) (Exhibit C). The Commission did not receive any public comments regarding this proposal.

At its meeting on August 13, 2007, the Boating Advisory Board considered this item and recommended that the Commission adopt the amendment on final rulemaking.

Briefer:

Daniel G. Martin, Acting Director, Bureau of Boating and Education

Recommendation:

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

Action:

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

PROPOSED RULEMAKING

C. Amendments to Sections 91.6 (Boating Safety Education Certificates) and 91.7 (Criteria for Courses of Instruction in Boating Safety Education).

Commentary:

Act 199-2002 amended 30 Pa. C.S. §5103 to provide for mandatory boater education. The Act established a requirement for persons born after January 1, 1982 and operating a boat powered by a motor in excess of 25 horsepower to obtain and carry a certificate of boating safety education. The Act required the Commission to promulgate regulations that establish criteria for a course of instruction in boating safety education. The Commission subsequently amended its regulation at §91.6 (relating to Boating Safety Education Certificates) to describe more fully what constitutes a Boating Safety Education Certificate and distinguished between residents and non-residents. The Commission also adopted a new regulation at §91.7 (relating to criteria for courses of instruction in boating safety education) that authorized the Executive Director to designate, by notice, organizations that offer safety education courses that are acceptable for residents, non-residents or both. The section further provided that to be approved by the Commission, a course of instruction in boating safety education has to meet the National Boating Safety Education Standards of the National Association of State Boating Law Administrators (NASBLA) and receive the approval of NASBLA.

After a review of the Commission's regulations, staff recommend that the Commission update them by adopting the following changes. The proposed changes to §91.6 will simplify the definition of a boating safety education certificate. Staff believe that this change more accurately reflects the intent of the Act and will eliminate confusion among boaters who move their boats between states. The proposed amendments to §91.7 will authorize the Executive Director to publish criteria upon which boating courses may be approved for the purposes of the Act. Draft criteria for Internet, video and classroom courses are attached as Exhibits D, E and F, respectively. By publishing the Commission's course criteria in a separate, easily revised document, the Commission will have greater flexibility in monitoring and regulating what courses are acceptable under Pennsylvania law.

Staff propose that the regulations be amended as follows:

§91.6. Boating Safety Education Certificates.

(a) *Definition.*

[(1) For residents of this Commonwealth, a Boating Safety Education Certificate is one issued to an individual by the Commission. Upon proper application and payment of the appropriate fee, the Commission will issue a Boating Safety Education Certificate to a resident of this Commonwealth who successfully completes a course offered by the Commission, another state, Canada or an organization designated by the Executive Director.

(2) For nonresidents, a Boating Safety Education Certificate is one issued to an individual who successfully completes a course offered by the Commission, another state, Canada or an organization designated by the Executive Director.]

(1) For residents of this Commonwealth, a boating safety education certificate is a document issued by the commission certifying that the person named on the certificate has established proof of competency through the successful completion of a course approved in accordance with §91.7 (relating to criteria for courses in boating safety education).

(2) For nonresidents, a boating safety education certificate is a certificate, card or other official document that indicates on the certificate, card or other document successful completion of a course approved by the National Association of State Boating Law Administrators.

(b) *Certificate Issuance.* -- The Commission will issue a Pennsylvania Boating Safety Education Certificate to persons who present proof of successful completion of a boating safety education course approved in accordance with §91.7 and the payment of fees under section 5104 of the code (relating to fees).

(c) *Certificate possession.* -- When the operator of a boat is required by law or regulation to possess a Boating Safety Education Certificate, it is unlawful to operate the boat on the waters of this Commonwealth without carrying onboard the Boating Safety Education Certificate issued to the operator. A Boating Safety Education Certificate shall be carried so that it can be presented to an officer authorized to enforce this subpart. [In addition to the requirements of this subsection, nonresidents shall carry proof of nonresidency.]

[(c)] (d) *Temporary certificate.* The Executive Director or a designee may authorize the issuance of temporary Boating Safety Education Certificates to persons who successfully complete boating safety education courses approved by the Commission. Temporary Boating Safety Education Certificates expire when the permanent certification is issued or 60 days after issuance, whichever occurs first.

[(d)] (e) *Boating without a certificate onboard.*

(1) When an operator is found operating a boat without **possessing** a Boating Safety Education Certificate **[onboard]**, the operator will cease operation of the boat and follow the instructions of the apprehending officer. The operator may not resume operation of the boat until he demonstrates to the Commission's satisfaction that he possesses a certificate.

(2) When an operator is found operating a boat without a Boating Safety Education Certificate onboard and claims that the certificate is available, the apprehending officer shall give the operator 7 days to produce the original certificate. If it is inconvenient for the operator to produce the certificate in person, the officer may permit the operator to mail the original certificate to the officer for verification. The operator shall provide a stamped self-addressed envelope for the return of the certificate. If the operator fails to send the original certificate within the 7-day period, the officer shall institute summary proceedings against the operator in the manner prescribed by law.

[(e)] (f) A person may not alter, borrow, lend or transfer a Boating Safety Education Certificate or give false or misleading information to the Commission, its officers or agents when applying for a **temporary or a permanent** Boating Safety Education Certificate.

§91.7. Criteria for courses of instruction in boating safety education.

[The Executive Director may designate, by notice, organizations that offer boating safety education courses that are acceptable for residents, nonresidents, or both. A course of instruction in boating safety education shall meet the National Boating Safety Education Standards of the National Association of State Boating Law Administrators (NASBLA) and shall have received the approval of the NASBLA. These standards and procedures for approval may be obtained from the NASBLA at 1500 Leestown Road, Suite 330, Lexington, Kentucky 40511 or http://www.nasbla.org/education_standards.htm.]

(a) The Executive Director shall establish criteria for courses of instruction in boating safety education, and the Executive Director shall publish the criteria in the *Pennsylvania Bulletin*.

(b) The Executive Director may approve, by notice, boating safety education courses that meet the course criteria established under this section and shall publish a list of approved boating safety education courses in the *Pennsylvania Bulletin* on an annual basis or more frequently as required.

At its meeting on August 13, 2007, the Boating Advisory Board considered this item and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendments.

Briefer:

Daniel G. Martin, Acting Director, Bureau of Boating and Education

Recommendation:

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

Action:

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

D. Amendment to Section 111.2(c) (Allegheny County).

Commentary:

On May 1, 2003, the Commission amended §111.2(c) to extend the slow, no-wake zone (SNW) on the Allegheny River from the Fort Duquesne Bridge upriver to the Fort Wayne (Norfolk Southern) Bridge. Commission WCOs have been unable to enforce this extension of the SNW zone because it has not been properly marked.

Commission staff made numerous attempts to receive permission from Norfolk Southern, the bridge owner, to place SNW signs on the bridge. A suitable agreement could not be reached with Norfolk Southern. Staff subsequently received permission from Penn DOT to place SNW signs on the 9th Street Bridge, which is downriver approximately 1,000 feet from the Fort Wayne (Norfolk Southern) Bridge. The signs were installed on the 9th Street Bridge on May 9, 2007.

Staff propose to amend §111.2(c) to designate the 9th Street Bridge as the upriver SNW limit on the Allegheny River. Staff report that the proposed waterside development of the David E. Lawrence Convention Center just downriver of the Fort Wayne (Norfolk Southern) Bridge never materialized. Also, Commission staff have not received any complaints in 2007 concerning the already marked SNW zone at the 9th Street Bridge on the Allegheny River. Staff propose that §111.2 (c) be amended as follows:

§111.2. Allegheny County.

* * *

(c) *Allegheny, Monongahela and Ohio Rivers (City of Pittsburgh)*. Boats are limited to slow, no-wake speed from the Fort Pitt Bridge over the Monongahela River and the **[Fort Wayne (Norfolk Southern)] 9th Street** Bridge over the Allegheny River to the West End Bridge over the Ohio River. This zone shall be in effect on weekends from May 1 to October 1 from 3 p.m. Friday until midnight Sunday and from 3 p.m. on the day preceding Memorial Day, July 4 and Labor Day until midnight of the holiday.

At its meeting on August 13, 2007, the Boating Advisory Board considered this item and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

Briefer:

Daniel G. Martin, Acting 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 adopted on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

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

OTHER MATTERS

E. Harveys Creek Stream Corridor Lease, Luzerne County.

Commentary:

The Commission learned in early 2000 that Theta Corporation had acquired significant blocks of land ($\pm 40,000$ acres) in Northeastern Pennsylvania. These areas were watershed protection areas that were owned by the former Pennsylvania Gas & Water Company around their reservoirs. The Commission negotiated with Theta to allow for public access on a portion of the waters on the properties acquired by Theta. Late in 2001, the Commission entered into a lease agreement with Theta to lease certain stream/river corridors in Northeastern Pennsylvania for public fishing and fisheries management. A copy of the location map is attached as Exhibit G. Theta has been selling off portions of the leased premises, which has resulted in the elimination of these areas from the lease and the elimination of public access thereon.

There has been an attempt by the local governments and the Pennsylvania Department of Conservation and Natural Resources (DCNR) to acquire portions of Theta's property that is environmentally sensitive and significant. Therefore, Theta has conveyed a significant portion of the Harveys Creek stream corridor in Luzerne County to DCNR and the County of Luzerne. Both DCNR and the County of Luzerne wish to continue to cooperate with the Commission to allow access on the portions of Harvey's Creek that they have acquired. DCNR and the County of Luzerne wish to enter into a lease agreement with the Commission similar to one with Theta. The new lease will protect the interests of the Commission and the anglers and will be for nominal consideration.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the leasing of property rights along Harveys Creek in Luzerne County from the Department of Conservation and Natural Resources and the County of Luzerne as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Shetterly to authorize the leasing of property rights along Harveys Creek in Luzerne County from the Department of Conservation and Natural Resources and the County of Luzerne as more particularly described in the Commentary. Motion carried.

F. Holliday Crooked Creek Farm, Inc., Property Rights Acquisition, Springfield 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 fee title to a ± 2.2 acre parcel of land having frontage on Crooked Creek and an easement on over $\pm 1,330$ linear feet of Crooked Creek as it flows across property owned by Holliday Crooked Creek Farm, Inc., in Springfield Township, Erie County, for \$51,400. The easement will be for public fishing, boating, and riparian and fishery management and will include the stream corridor and extend at least 29 feet back from the top of bank to the extent of the ownership of Holliday Crooked Creek Farm, Inc. A map depicting the subject parcels is attached as Exhibit H. The Commission will have the option to pursue one parcel in the event investigation identifies any property line, land use or environmental contamination problems with either of the sites.

The fee title parcel is located about a $\frac{1}{2}$ mile north of Route 5 on grade with the township road that will allow for easy access and establishing a public parking area. The fee title parcel will provide a core area from which the Commission may pursue additional fishing easements. There is a small portion of this property (± 0.043 acre $\sim 1,800$ square feet.) that extends north and is an in-holding on residue lands of the seller. The exact location of this area will be determined in the field by a survey, but it is estimated to be at least 100 feet from any structure. A parent of an officer of the seller lives in the adjoining property and has been using the small in-holding area as part of her yard. The seller is concerned that the disposition of the in-holding area will impact the parent and the future value of the adjoining property and desires to keep his options open. The seller has made the subject sale conditional on the seller’s right to retain an interest in the small in-holding area and the right to acquire it back for \$1.00 within a period of time not to exceed 25 years. The in-holding area has no value or importance to the Commission, and the seller’s retention of its use will not impact the Commission’s use of the subject ± 2.2 acre parcel for its intended purpose. In addition, the pursuit of subdivision of the parcel at this time will delay the conveyance of the property and add costs for the Commission. Staff, therefore, believe that it would be prudent to allow the seller to retain a right to continue to use the in-holding area for a period not to exceed 25 years and to allow the seller to acquire the area for \$1.00 during that period so long as the seller is responsible for all costs. The Commission will allow a reservation to Holliday Farms to operate and maintain a water line on the fee title parcel that currently exists.

The easement area is located about a ½ mile south of Route 5 and is currently land locked; however, the two adjoining landowners along the creek between this parcel and Route 5 are very interested in selling an easement to the Commission. One of the landowners is a principal with Crooked Creek Farm, Inc. and has entered into an option agreement with the Commission on his property located along Route 5.

While Crooked Creek does provide a trout and steelhead fishery, the subject parcels are not currently open to public fishing and their acquisition will enhance public fishing opportunities in Erie County. Crooked Creek, upstream from the subject areas, received several trout stockings in 2007. The Commission's regional law enforcement and fisheries staff have recommended that the site be pursued and acquired if possible.

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. In addition, the seller has agreed to be responsible for all current applicable real estate and transfer taxes that are normally shared between the buyer and seller.

Briefer:

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

Recommendation:

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

G. Klimek 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 2,300 linear feet along one side of Elk Creek as it flows across a parcel of property in Girard Township, Erie County for \$24,000. The easement will be for public fishing, boating, and riparian and fishery management and will include the stream corridor and extend 25 feet 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 I.

The easement area is located immediately south of Interstate 90 and extends south along the creek. The subject parcel is adjacent to a parcel that a private fishing club has under agreement.

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 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. In addition, the seller has agreed to be responsible for all current applicable real estate and transfer taxes that are normally shared between the buyer and seller.

Briefer:

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

Recommendation:

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

At this point in the meeting, a motion was made by Commissioner Concilla and seconded by Commissioner Czop to authorize the replacement of one section of the docks at the North East Marina during FY 2008/2009 as described in staff’s proposal. Motion carried.

FISHERIES **FINAL RULEMAKING**

A. Amendment to Section 51.71 (Scientific Collectors' Permits) to Include Fee Schedule.

Commentary:

Under section 2905 of the Fish and Boat Code, 30 Pa. C.S. §2905, the Executive Director with the Commission's approval may issue permits to catch fish in any of the waters within or bordering on this Commonwealth at any season of the year and with any kind of nets or other devices without regard to size or possession limits to a person who possesses a valid Pennsylvania fishing license and is engaged in scientific or educational research or other collecting activities approved by the Commission. This section also authorizes the Commission to promulgate regulations and to establish fees.

The Commission adopted regulations at 58 Pa. Code §51.71 pertaining to scientific collectors' permits. Section 51.71 of the Commission's regulations requires a valid and current scientific collector's permit issued by the Commission to collect, take or maintain for scientific or educational purposes any species of Pennsylvania fishes, amphibians, reptiles or aquatic organisms during seasons not permitted by regulations governing holders of a valid Pennsylvania fishing license or other license or permit issued by the Commission (*e.g.*, venomous snake permit, organized reptile and amphibian hunt permit). Although this regulation was not promulgated until 1985, the program was initiated by the Commission in January 1966 and was revised several times over the years. In July 1978, the Commission established various fees for different permit types within the Scientific Collector's Permit Program (SCP Program) through the adoption of a statement of policy. Three types of permits with associated fees were established, and those fees are the same today: Type 1 permit (Research) = \$10.00, assistants and permit amendments have no fee; Type 2 (Government) = free permit, assistants and permit amendments free; Type 3 permit (Consulting) = \$50.00, \$10.00 each assistant, permit amendments = \$10.00.

The Natural Diversity Section within the Commission's Bureau of Fisheries, Division of Environmental Services, administers the SCP Program. This program has significant staff demands. Administering the program requires staff to review permit applications and process end-of-year permit reports. Reviewing the applications requires a technical review and substantial staff interaction with potential collectors, often resulting in changes to proposed collections. Permit collection reports are filed by staff – relevant collection information (*i.e.*, rare, threatened and endangered species data) is extracted from the reports and submitted to Pennsylvania Natural Heritage Program to be included in statewide database for rare species (Pennsylvania Natural Diversity Inventory).

In the past, the Commission issued, on average, approximately 120 scientific collectors' permits annually. However, in the past five years, the number of permits reviewed, amended and issued by Commission staff has increased substantially. In 2005, 397 permits were issued; in 2006, 520 permits and amendments were issued. To address

increasing program demands, the Natural Diversity Section and Information Technology staff have worked together to streamline the permit application process and improve and standardize permit reporting by developing an interactive, web-based computer application that will be accessible to the public. This web-based application is the first of its kind for the Commission; therefore, it is a pilot for other Commission permit programs.

Although the fee structure is included within the statement of policy that the Commission adopted years ago, it currently is not set forth in §51.71. The Commission, therefore, proposes to include the fee structure in §51.71. In addition, the fee structure has not changed in 29 years. Therefore, the Commission also proposes to increase the permit fees to help offset inflation and increasing program costs (staff time, new web-based, interactive application). The Commission further proposes to formalize the long-standing statement of policy that defines and describes the three different permit types that this program offers by including its terms in this proposed rulemaking. The Commission also proposes housekeeping changes to reflect the current names of some of the permits referenced in the regulation.

A notice of proposed rulemaking containing the proposed changes was published at 37 Pa.B. 4431 (August 11, 2007) (Exhibit J). The Commission received two public comments. One questions the need to raise permit fees; the other supports the increase in permit fees and suggests that the Commission adjust its permit system to make it easier for larger companies to comply with the regulations. Specifically, the comment requests that the Commission consider requiring each office location to hold one permit but with a greater number of assistants listed on the permit. Because this is an issue that can be addressed by staff when issuing permits, it does not have to be addressed as part of the rulemaking process. Copies of all public comments have been provided to the Commissioners.

Briefer:

Leroy M. Young, Jr., 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 on January 1, 2008.

Action:

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

B. Addition of Section 69.3 (Transportation of VHS-Susceptible Fish Out of Lake Erie Watershed).

Commentary:

An infectious fish disease, caused by a variant of Viral Hemorrhagic Septicemia Virus (VHSV), has caused mortalities in the Great Lakes. Fish mortalities, where VHS has been isolated, have been confirmed since as early as 2003. Mortalities of muskies, yellow perch and gizzard shad were reported from Lake St. Clair, the St. Clair River in Michigan and western Lake Erie near Detroit in the spring of 2006. As spring progressed, freshwater drum, white bass and yellow perch mortalities were reported from western and central Lake Erie, including areas near the Pennsylvania/Ohio border. The disease was also reported from Lake Ontario. In 2007, VHS was confirmed in Lake Michigan, several inland lakes in Wisconsin and the New York Finger Lakes. Other variants of VHS known from Europe and the western United States have caused significant mortality in hatchery fish.

On October 24, 2006, the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) issued an emergency order prohibiting the importation of certain live fish species from the Canadian provinces of Ontario and Quebec into the United States. In addition, export of live fish of 37 VHS-susceptible species was prohibited from the eight Great Lake boundary states: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. On November 14, 2006, APHIS issued an amended order that allowed restricted movement under requirements for testing and certification that fish are VHS-free. On May 4, 2007, APHIS further amended the order to allow for catch and release fishing activities.

In an effort to contain this disease, the Commission proposed to make it unlawful to transport live fish out of the Pennsylvania portion of the Lake Erie watershed. A notice of proposed rulemaking was published at 37 Pa. B. 1218 (March 17, 2007) (Exhibit K), and the Commission did not receive any public comments regarding the proposal. By separate notice published in the *Pennsylvania Bulletin*, the Executive Director, acting under the authority of §65.25 (relating to temporary changes to fishing regulations), took immediate action to make it unlawful to transport or cause the transportation of live fish out of the Pennsylvania portion of the Lake Erie watershed. The temporary modification went into effect immediately and will remain in effect until January 1, 2008.

It should be noted that the notice of proposed rulemaking was broadly crafted to address not only VHS, but other diseases and invasive species as well. However, it has become increasingly apparent to staff that VHS is an issue that must be addressed separately and that the broader issue of invasive species and diseases other than VHS will have to be addressed as part of a separate rulemaking package at a later date.

Subsequent to the Commission's publication of a notice of proposed rulemaking and the Executive Director's action to temporarily modify the regulations, other Great Lakes

states have been developing and promulgating regulations. In those states, certification of fish and fish production facilities, as having tested and found negative for VHS, is a frequent basis for permitting the transport and introduction of susceptible fish species. Therefore, staff recommend that on final rulemaking, the Commission modify the proposed regulation to allow the transportation of VHS-susceptible fish out of the Lake Erie watershed when one of the following conditions is met:

- (1) the fish are being transported to a disease testing facility;
- (2) the fish are from a group of fish certified as having been tested and test results were negative for VHS based on approved testing protocols;
- (3) the fish are from a fish production facility certified as having been tested and test results were negative for VHS based on approved testing protocols;
- (4) the fish are being transported to a slaughter facility, processing plant or restaurant; or
- (5) the fish are dead, recreationally caught fish that are being transported solely for human consumption.

Species of fish that are susceptible to VHS will be defined by the Commission by notice published in the *Pennsylvania Bulletin*. Initially, the list will contain the following fish species: black crappie (*Pomoxis nigromaculatus*), bluegill (*Lepomis macrochirus*), bluntnose minnow (*Pimephales notatus*), brown bullhead (*Ictalurus nebulosus*), brown trout (*Salmo trutta*), burbot (*Lota lota*), channel catfish (*Ictalurus punctatus*), chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*Oncorhynchus kisutch*), emerald shiner (*Notropis atherinoides*), freshwater drum (*Aplodinotus grunniens*), gizzard shad (*Dorosoma cepedianum*), herring (*Clupea spp*), largemouth bass (*Micropterus salmoides*), muskellunge (*Esox masquinongy*), northern pike (*Esox lucius*), pink salmon (*Oncorhynchus gorbuscha*), pumpkinseed (*Lepomis gibbosus*), rainbow trout (*Oncorhynchus mykiss*), redhorse sucker (*Moxostoma spp*), rock bass (*Ambloplites rupestris*), smallmouth bass (*Micropterus dolomieu*), walleye (*Sander vitreus*), white bass (*Morone chrysops*), white perch (*Morone Americana*), whitefish (*Coregonus spp*) and yellow perch (*Perca flavescens*).

Staff further recommend that restrictions be placed on the use of VHS-susceptible fish, parts thereof or their eggs as fishbait in Commonwealth waters outside the Lake Erie watershed.

Staff have met on several occasions with staff from the Pennsylvania Department of Agriculture in an effort to develop a coordinated approach for dealing with VHS. There is a significant amount of overlap in the jurisdictional responsibilities of the agencies. The Commission has broad jurisdiction under the Fish and Boat Code, and the Department has broad jurisdiction under the Domestic Animal Law and more limited jurisdiction under the Aquacultural Development Law. Commission staff expect that the Department will issue a quarantine order in the near future that addresses intrastate and interstate movement of VHS-susceptible species of fish by propagators and dealers registered with the Department under the aquaculture law. It is the intent of the Commission's staff to continue to work with the Department so that the agencies have a consistent approach for addressing this issue.

Staff propose that the following modifications be made on final rulemaking. (Note: language to be added on final rulemaking is in capital letters; language to be deleted contains “strikethroughs.”)

§69.3. Transportation of live VHS-SUSCEPTIBLE fish out of the Lake Erie watershed.

(A) FOR PURPOSES OF THIS SECTION, SPECIES OF FISH THAT ARE SUSCEPTIBLE TO VIRAL HEMORRHAGIC SEPTICEMIA (VHS) ARE THOSE SPECIES THAT THE COMMISSION HAS DEFINED AS SUCH BY NOTICE PUBLISHED IN THE PENNSYLVANIA BULLETIN.

(B) It is unlawful to transport or cause the ~~transport~~ TRANSPORTATION of live VHS-SUSCEPTIBLE SPECIES OF fish out of the portion of the Lake Erie watershed in this Commonwealth INTO OTHER WATERSHEDS OF THIS COMMONWEALTH EXCEPT WHEN ONE OF THE FOLLOWING CONDITIONS IS MET:

(1) THE FISH ARE BEING TRANSPORTED TO A DISEASE TESTING FACILITY AND THE PERSONS TRANSPORTING THE FISH HAVE TAKEN ADEQUATE MEASURES TO PREVENT ESCAPE AND TO DISINFECT DISCHARGED WATER AND EQUIPMENT USED IN THE TRANSPORTATION OF THE FISH AND THE FISH ARE ACCOMPANIED IN TRANSIT BY DOCUMENTATION STATING THE POINT OF ORIGIN OF THE FISH AND THE DESTINATION TO WHICH THEY ARE TO BE DELIVERED FOR TESTING.

(2) THE FISH ARE FROM A GROUP OF FISH CERTIFIED AS HAVING TESTED NEGATIVE FOR VHS IN ACCORDANCE WITH THE TESTING PROTOCOLS ADOPTED BY THE PENNSYLVANIA DEPARTMENT OF AGRICULTURE (DEPARTMENT) AND APPROVED BY THE COMMISSION. PERSONS SELLING SUCH FISH SHALL HAVE IN THEIR POSSESSION, AND PRESENT UPON THE REQUEST OF AN OFFICER AUTHORIZED TO ENFORCE THE CODE, A COPY OF THE FISH HEALTH CERTIFICATION REPORTS FOR ALL VHS-SUSCEPTIBLE FISH OWNED OR KEPT AT THE PLACE OF SALE.

(3) THE FISH ARE FROM AN ARTIFICIAL PROPAGATION FACILITY CERTIFIED AS HAVING TESTED NEGATIVE FOR VHS IN ACCORDANCE WITH THE TESTING PROTOCOLS ADOPTED BY THE DEPARTMENT AND APPROVED BY THE COMMISSION. ARTIFICIAL PROPAGATION FACILITIES SHALL HAVE IN THEIR POSSESSION, AND PRESENT UPON THE REQUEST OF AN OFFICER AUTHORIZED TO ENFORCE THE CODE, A COPY OF THE FISH HEALTH CERTIFICATION REPORT FOR THE FACILITY.

(4) THE FISH ARE BEING TRANSPORTED TO A SLAUGHTER FACILITY, PROCESSING PLANT OR RESTAURANT AND THE FISH ARE ACCOMPANIED IN TRANSIT BY DOCUMENTATION STATING THE POINT OF ORIGIN OF THE FISH AND THE DESTINATION TO

**WHICH THEY ARE TO BE DELIVERED FOR SLAUGHTER,
PROCESSING OR CONSUMPTION.**

**(5) THE FISH ARE DEAD, RECREATIONALLY CAUGHT FISH THAT
ARE BEING TRANSPORTED SOLELY FOR THE PURPOSE OF
HUMAN CONSUMPTION.**

**(C) IT IS UNLAWFUL TO USE VHS-SUSCEPTIBLE SPECIES OF FISH,
PARTS THEREOF OR THEIR EGGS TAKEN FROM THE LAKE ERIE
WATERSHED AS FISHBAIT IN COMMONWEALTH WATERS OUTSIDE THE
LAKE ERIE WATERSHED EXCEPT WHEN THE FISH ARE FROM A GROUP
OF FISH CERTIFIED AS HAVING TESTED NEGATIVE FOR VHS OR ARE
FROM AN ARTIFICIAL PROPAGATION FACILITY CERTIFIED AS HAVING
TESTED NEGATIVE FOR VHS.**

Briefer:

Leroy M. Young, Jr., Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission adopt the proposed regulation as set forth in the Commentary. If adopted, the new regulation will go into effect on January 1, 2008 and not upon publication in the *Pennsylvania Bulletin* as stated in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Concilla and seconded by Commissioner Worobec to adopt the proposed regulation as set forth in the Commentary. The new regulation will go into effect on January 1, 2008 and not upon publication in the *Pennsylvania Bulletin* as stated in the notice of proposed rulemaking. Motion carried.

PROPOSED RULEMAKING

C. Amendments to Sections 65.4a (All-tackle Trophy Trout), 65.5 (Catch and Release Areas), 65.6 (Delayed Harvest Artificial Lures Only Areas), 65.7 (Trophy Trout Program), 65.10 (Early Season Trout Stocked Waters Program), 65.14 (Catch and Release Fly-fishing Only Areas) and 65.15 (Catch and Release All-tackle Areas).

Commentary:

In recent months the public as well as staff from the Bureaus of Fisheries and Law Enforcement have raised concerns regarding a number of existing special regulation programs for trout on waters that may be large enough to permit boating. When regulation changes occur along a stream and a person angling from a boat that traverses from a section of stream that is under one set of regulations into another section under different regulations, that person could be in violation of the law for the section they just entered. For example, if one section of stream is managed under §61.1 (relating to Commonwealth inland waters) for trout, a creel limit of five fish is in effect from the first Saturday after April 11 until Labor Day and bait is permitted. However, if the next downstream section is regulated under §65.6 (relating to Delayed Harvest Artificial Lures Only Areas), harvest is only permitted from June 15 until Labor Day, the creel limit during this period is three, and bait is not permitted. Anglers boating from the upstream section to the downstream section any time before June 15 in this example would be in violation of the delayed harvest regulations if they had either trout or bait on board, even though these fish had been taken lawfully and gear used lawfully in the upstream section.

To address this matter, staff propose that §§65.5, 65.6, 65.7 and 65.14 be amended to include the following language. For §§65.4a, 65.10 and 65.15, the reference to bait will be eliminated.

Notwithstanding the requirements of this section, an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the waters from which taken, provided that the boat angler floats through the {specially regulated area} without stopping or engaging in the act of fishing or the boat angler takes out his boat at an access point within the {specially regulated area}.

Briefer:

Leroy M. Young, Jr., Director, Bureau of Fisheries

Recommendation:

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

Action:

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

DESIGNATIONS

D. Additions to Class A Wild Trout Waters List.

Commentary:

Pursuant to 58 Pa. Code 57.8a (relating to Class A Wild Trout Streams), it is the Commission's policy to recognize self-sustaining Class A Wild Trout populations as a renewable natural resource meriting special consideration in development of fisheries management plans and water quality/habitat protection. Class A Wild Trout populations represent the best of Pennsylvania's naturally reproducing trout populations. Criteria developed for Class A Wild Trout populations are species specific. Wild Trout Abundance Class Criteria include provisions for wild brook trout, wild brown trout, mixed wild brook and brown trout, and wild rainbow trout populations. All must support at least 0.1 kg/ha (0.089 lbs/acre) of trout of the specified species less than 15 cm (5.9 inches) in total length. Minimum biomass for wild brown trout, wild brook trout, and mixed wild brook and 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 (26.7 lbs/acre), and 40 kg/ha (35.6 lbs/acre), respectively.

During recent surveys, Commission staff have documented the following stream sections to have Class A Wild Trout populations (ST= Brook Trout, BT=Brown Trout):

County	Stream	Limits	ST (kg/ha)	BT (kg/ha)	Length (miles)
Luzerne	Wapwallopen Creek	Headwaters downstream to confluence with Big Wapwallopen Creek		49.10	3.61
Luzerne	Wapwallopen Creek	Confluence with Big Wapwallopen Creek downstream to 380 meters downstream of SR 3012		41.28	1.78
Luzerne	Big Wapwallopen Creek	Headwaters downstream to powerline crossing upstream of Nuangola Road SR 2042	46.07	51.84	4.68
Luzerne	Balliet Run	Headwaters downstream to the mouth		59.73	3.71
Luzerne	Bow Creek	Headwaters downstream to the mouth	15.90	41.15	4.52

A notice of proposed designation was published at 37 Pa. B. 4723 (August 25, 2007) (Exhibit L). The Commission received one public comment supporting the designations. Copies of all public comments have been provided to the Commissioners.

Briefer:

Leroy M. Young, Jr., Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the addition of sections of Wapwallopen Creek, Big Wapwallopen Creek, Balliet Run and Bow Creek to the list of Class A Wild Trout Streams as set forth in the notice of proposed designation. If approved, the designations will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Anderson to approve the addition of sections of Wapwallopen Creek, Big Wapwallopen Creek, Balliet Run and Bow Creek to the list of Class A Wild Trout Streams as set forth in the notice of proposed designation. The designations will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

OTHER MATTERS

E. Blackleggs Creek Habitat Improvement/Memorial Park Grant.

Commentary:

The Blackleggs Creek Trout Nursery and Watershed Association proposes improvements to a property that it owns in Young Township, Indiana County, Pennsylvania. The improvements that it proposes include a comfort station, overnight camping/tent pads, parking area improvements, a 24'x36' pavilion, and 1,000 feet of stream habitat improvement. The late Commissioner Huhn was an active member of the Blackleggs Creek Watershed Association, and he worked diligently with the organization and its members over the years to improve the fishing opportunities in western Pennsylvania. The work proposed by Blackleggs is designed in part as a memorial to the Commissioner and as a tangible remembrance to the hard work and dedication that he exhibited. This spot is a popular area for local anglers and one that Commissioner Huhn personally enjoyed. The area will be greatly enhanced with the proposed improvements.

The Watershed Association has applied for and has been approved for a \$51,000 grant from the Department of Conservation and Natural Resources for this project. The Watershed Association has asked the Commission to contribute \$30,000 toward the project. Although the stream improvement work is defined at a conceptual level at this time, the Commission's habitat improvement division will work with the local partners to develop a final plan and implement it. The Commission's contribution will be limited to stream improvement work and amenities that directly benefit anglers and boaters, such as the comfort station and the improvements to the parking area.

Briefer:

Leroy M. Young, Jr., Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve a grant of up to \$30,000 to the Blackleggs Creek Trout Nursery and Watershed Association for the project described in the Commentary.

Action:

A motion was made by Commissioner Shetterly and seconded by Commissioner Czop to approve a grant of up to \$30,000 to the Blackleggs Creek Trout Nursery and Watershed Association for the project described in the Commentary. Motion carried.

Time and Place of January 2008 Commission Meeting

The next meeting is scheduled for January 28-29, 2008 and will be held at the Commission's headquarters in Harrisburg.

Other New Business

Commissioner Czop indicated that he would like staff to continue to pursue efforts regarding the fishing pier project at Frankford Arsenal.

Adjournment

A motion was made by Commissioner Czop and seconded by Commissioner Anderson to adjourn the meeting at approximately 4:15 p.m. Motion carried.