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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 80th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, January 28 and 29, 2008, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on January 28 beginning at 11:45 a.m. and on January 29 beginning at 9:00 a.m. The public session for review of this agenda began at or about 1:15 p.m. on January 29.

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. A moment of silence was held in memory of Commissioner Frederick P. Osifat.

Roll Call

Members Present

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

Review and Approval of Minutes from the October 1, 2007 Meeting

A motion was made by Commissioner Czop and seconded by Commissioner Worobec to approve the October 1, 2007 minutes as written. Motion carried.

Election of Commission Vice-President

Commission President Sabatose called for nominations for the office of Vice-President, and Commissioner Anderson nominated Commissioner Leonard L. Lichvar as Vice-President.

Commissioner Czop seconded the nomination. A motion was made by Commissioner Bachman and seconded by Commissioner Shetterly to close the nominations. The motion was carried, and nominations were closed. The Commission elected Commissioner Lichvar to serve as Vice-President of the Commission until the July 2008 Commission meeting.

Executive Director's Report

Dr. Austen provided the following report:

My practice for the past year or so has been to dispense with an Executive Director's report and allow this formal part of the Commission meeting to move along to a quick and, some might suggest, merciful completion. Primarily, this has been due to what I believed to be a lack of need for such a report to what is usually a very limited audience. I would be speaking, for the most part, to people who are fully aware of everything that I would be saying. In its place we have been compiling very complete quarterly reports that are distributed much more broadly and that contain far more information than what I would cover in 15 minutes or so of a spoken report.

Today, however, is different. At this juncture, having had the privilege of serving in this position for the past four years, I have been asked to provide some thoughts and ideas for the future. To help describe the work of the staff of the Fish and Boat Commission, I want to draw upon the descriptive term used repeatedly by Jim Martin, the former Fisheries Director of Oregon and current Conservation Director for Pure Fishing. I worked with Jim on the National Fish Habitat Initiative and during many work sessions and presentations to groups promoting the Initiative, he used to talk over and over again about "moving the needle," as on some gauge that is measuring progress. For the National Fish Habitat Initiative, we had no interest in creating a bureaucracy; we simply wanted to get more of the right projects completed in the right places in order to help out the fish. Today, I would like to talk about how, in the Fish and Boat Commission, we are making great strides in "moving the needle" for the resources and recreation of the Commonwealth.

To understand how far we've moved the needle and where we need to go in the future, it is important to review a little about the past. What I would like to do is to first describe how far we, as an agency, have come over the past four years. If I can make one point, I would like to state clearly is that this work is attributable to the direction and vision of the Board of Commissioners and the 432 people comprising the Commission staff who work to implement that vision. We must fully recognize that any changes, any successes, any evolution of the agency is the full result of dedicated staff who share the agency vision of resource protection and recreation, and a board of Commissioners who are both able to set a course and also support the agency in its efforts to move forward. The reason that I am using four years as the time of reference should be obvious in that such an amount of time is only as far back as my personal memory of the agency extends. So, I ask your indulgence while I briefly recount some of the major recent events.

In 2004, when I arrived, we were challenged at the Capitol by two significant efforts to thrust an outside influence upon the agency. The first was a legislative study, House Resolution 222, that recommended a consolidation under the State Police, of the law enforcement functions and staff of Fish and Boat, the Game Commission (PGC), and the Department of Conservation and

Natural Resources (DCNR). The second was a merger proposal that comes around regularly in often slightly different forms. Both were debated in the legislature and eventually faded into the background, undoubtedly to resurface again in the future. More significantly, 2004 was the year of the license increase legislation, an effort that was started before I came here, but that we successfully brought to fruition. We found out that the Erie steelhead fishery generated \$9.5 million in economic activity, 200,000 angling trips, and supported over 200 jobs. Twelve dams were removed and two fish passage-ways constructed. Hurricane Ivan flooded out Benner Springs and damaged the spillway at Dutch Fork Lake. The agency was heavily involved in a substantial educational program to spread knowledge about our infrastructure needs through a variety of mechanisms including the Growing Greener bus tours. We also completed a new strategic plan and the Commissioners approved the development of our innovative and successful Boating Facilities Grant Program.

The next year, 2005, was no less eventful. Bassmasters hit Pittsburgh with one of the most exciting tournaments in many years, and we started the process of trout program simplification and the larger but fewer trout in the hatchery system. To develop sound regulations for charter boat operators and fishing guides, we developed a work group that helped us draft well-constructed and appropriate regulations. We also strongly pursued a complete rewrite of the reptile and amphibian regulations. Of course, 2005 was the year of the historic Growing Greener II vote and the allocation of \$27.5 million to the Commission for the upgrade of hatcheries and to seed the start of rehabilitating some of our dams. This was the first time that the Commission had ever received such a significant infusion of funds for repair and upgrade of Commonwealth-owned, but Fish and Boat Commission managed, infrastructure. This year also marked the start of significant work on the National Fish Habitat Initiative of which I was a part and, in the next year, led to national acceptance of fish habitat through the signing in Washington, D.C., of the National Fish Habitat Action Plan, as a critical area of concern for the private sector, NGO's, and agencies at all levels of government.

The year 2006 marked the first year in which the Commission brought onboard a dedicated marketing staff and was able to generate new and innovative messaging on fishing and boating opportunities. Partially as a result, fishing license sales ran counter to the national trend and increased 1.5%. The second round of boating facilities grants resulted in a total of 28 projects for \$4.25 million. In the Lake Erie tributaries, we spent \$600,000 and leveraged over \$1,000,000 on easement purchases to permanently provide access to over 2.1 miles of steelhead streams. The Commissioners approved the ground-breaking dual opening seasons for trout. We completely reviewed and revised the musky program, including stocking and regulations. In response to information needs for the great rivers of western Pennsylvania, the Commission established the Three Rivers Ecological Research Center in Pittsburgh and its first staff was hired. We held our first Susquehanna River workshop to address the ecological and management challenges of the river. Our dam removal/ fish passage program completed 19 projects, reopening and restoring over 185 miles of stream and brought in over \$700,000 in outside funds. The Commission approved the creation of a new Division of Habitat Management. We also restructured the Bureau of Fisheries to better align hatchery operations. Important projects using State Wildlife Grant Funds were developed to better manage and protect such important species as the American eel, red-bellied turtle, the bog turtle and others. A creative funding solution was put in place to fix Leaser Lake which included the Fish and Boat Commission providing \$1.75

million and other partners contributing \$3.5 million. This funding model will open doors in the future to similar repairs of our quickly deteriorating infrastructure. Finally, we won a national competition to host the world's largest conference of fisheries professionals, the American Fisheries Society meeting, which is being brought back to Pittsburgh in 2010. We also were awarded the Northeast Association of Fish and Wildlife Agencies meeting in 2009. The quickening pace of this work is an indication of the increasingly complex nature of work being done by the Commission in relation to our diverse mission.

Last year, 2007, saw no decrease in the level of activity. Rather, the intensity, if anything, was ratcheted up a notch as shown by the intensive work of our legal counsel. The Little Juniata decision was handed down in January and was upheld by the judge later in the year. The Norfolk-Southern settlement resulted in a record payment of \$3,675,000 to the agency for work to be directed in the four counties immediately in the area of the derailment. Without a doubt, one of our most significant administrative changes and an immense accomplishment was the phased implementation of the Pennsylvania Automated License Service (PALS) throughout the year, with the completion of on-line capabilities as of December 1. Legislative activity included the introduction of three major bills that covered gift vouchers, cost recovery for PALS, and the expanded youth program. All state government, including the Commission, felt the effects of the mass retirement of state workers. These retirements, along with a few other departures, left Fish and Boat with the challenge of dealing with over 40 open positions. Although the loss of such institutional knowledge is difficult to replace, the agency looked to this as an opportunity and conducted a partial reorganization that created a much better alignment of communications and grouped together other programs in a manner that will enhance management. We also completely reviewed staffing in many areas of the agency and used vacancies to fill habitat management positions, create three new river biologist positions, and lay the foundation for strengthening our education section. Recognizing that long-term health of the Commission is dependent upon its staff, we have also initiated a leadership development program. We need to ensure that staff, at all levels of the agency, but especially now at various management levels are provided the opportunity to develop their leadership skills.

Throughout the year, agency staff and I worked on the challenge of re-engaging Pennsylvanians to the outdoors. Initiated with a trend-setting statewide conference and quickly followed by six regional workshops, several staff and I, along with conservation partners, became actively involved in the development of a task force report that is being crafted for the Governor, the legislature and a broader audience of Pennsylvanians. We obtained United States Fish and Wildlife Service (USFWS) approval of our State Wildlife Action Plan and petitioned the USFWS to add native eastern brook trout to the list of species of greatest conservation need. Of course, this was the historic year of two trout openers, the stocking of larger hatchery trout, and the immense Susquehanna creel survey. The year 2007 was also the year that the Commissioners first established a new set of policies to guide the work of the board and the Commission staff and significantly revised the agency mission statement to reflect a renewed and enhanced focus on the resource.

Reflecting back on these four years of activity I think that it's fair to state that we have gone through an intense period of growth within the agency. We have expanded critical programs, advanced our administration, and continued excellent work that will provide, in many cases,

permanent benefits for our jurisdictional species and our public. We are well along in the process of building an agency that will be effective long into the future.

So, where do we go from here?

What I'd like to do is organize our future opportunities into a three general categories. First, I will address the resource, then the state of our jurisdictional species and related biota, and finally, the human component. Finally, I'll conclude with a couple of very general comments about the Commission.

So let's start by talking about the resource.

The Fish and Boat Commission has been viewed by people in a variety of ways. We continue to strive to ensure the full breadth of Commission work is understood and recognized by legislators, other agencies, NGO's and the angling and boating public. This is a constant challenge as these groups are ever-changing in members. However, our task is made easier as the Commission has a long-standing and significant role in fisheries and habitat protection and restoration. Early stream and lake habitat improvement techniques were frequently developed in Pennsylvania and exported elsewhere. Our Division of Environmental Services (DES) staff review over 3,000 permits a year, and the Commission's dam removal and fish passage program is nationally recognized for its stream restoration work.

When approaching the challenge of habitat it is clear, though, that the successes of the future will depend upon an increasingly close set of interdependencies among agencies, NGO's, and the public. This is where our challenge lies. We often speak of the Fish and Boat Commission as an independent agency, and rightly so. But when we look at the assets that we can provide, it is clear that we are strong in some areas, but nearly inconsequential in others. Our strength is our expertise, our technical ability to identify problems, present solutions, and then work with other groups to implement actions. Despite our own lack of funding we are advancing our work through a myriad of partnerships.

As an example, consider that each dam removal or fish passage completion is a result of many entities working toward a similar goal. The recent removal of McCoy Dam on Spring Creek was partnered with the Clearwater Conservancy, American Rivers, Spring Creek Chapter of TU, Centre County Historical Society, Centre County Planning Commission, National Wildlife Federation, DEP, DCNR, EPA, USDA, USFWS, and PSU. New partnerships efforts by the Commission to address habitat include working with the DEP north-central office in an innovative stream restoration program that could be a model for all other DEP regions. Last year we also implemented a new partnership with DCNR to do intensive habitat improvement in selected state park lakes. In both cases, the partner agency had the funds to pay for the expertise of the Commission staff. In another example, the Eastern Brook Trout Joint Venture is a collaborative effort of more than 20 agencies, federal, state and local, and NGO's. We need to continue to position Commission as the ultimate source of expertise on habitat related to our jurisdictional species and resources while also building a community of competency and expertise upon which to partner and rely. We need to continue to find opportunities to partner with funding organizations that have the interest but not the internal staff capacity to implement.

The ability to increasingly utilize the multitude of people who are willing to volunteer to assist in these efforts will be a key to our success.

Where will this lead us in 2008 and the years beyond? A couple of key areas will be developed. First, through new staff we will enhance the focus on the large river systems through the three new river biologists. This will help us immensely in our work on the challenge of dredging and other impacts upon the great rivers of Pennsylvania. It will help us in responding to, and getting ahead of, the issue of bass die-offs on the Susquehanna River. It will also position us to be increasingly effective in management of the upper Delaware River. New fish habitat partnerships will be created out of the National Fish Habitat Initiative. We already have the Eastern Brook Trout Joint Venture and are close to the acceptance of an upper Ohio, Great Lakes, and Atlantic Coast Habitat Partnerships. All of these will open doors to new funds and all are based on strong interagency, public-private partnerships. The immense amount of new funding that will be directed to Pennsylvania for addressing abandoned mines will provide the fuel to make changes that will be the legacy of a generation. We will continue our work to be engaged in that effort and help to guide the work to locations that will provide the greatest possible benefit.

Access to this habitat, to these streams and lakes, is another critical component of this challenge. Certainly, we embrace habitat protection and restoration regardless of where it is at, but we also need to recognize that the support for such work declines precipitously if we are not allowed to experience that resource, to float that creek, fish that stream, or put our boat in that lake or river. Certainly, we can unambiguously state that there are benefits to the entire watershed if streams are managed in an ecologically appropriate way. Good land stewardship does provide water quality and wildlife benefits that extend beyond the property lines. If we are to spend public funds on restoration or protection, it becomes increasingly difficult to justify spending those funds if there is not a broader public benefit associated with the ability to access, responsibly recreate, and enjoy that resource. It is in this light that our efforts to protect and enhance the resources throughout the state will be amplified and in parallel with an aggressive access program that provides opportunities for people to enjoy these resources in a way that is respectful of private property and, where possible, creates public rights to access. In order to take a more pro-active role in the access arena, though, we are going to need financial support. Currently, the Commission has funds through the Erie stamp and that program is starting to mature. In the next two years we need to extend the use of those funds in Erie but also develop statewide funds dedicated to access. Through my visits with angler and boater clubs throughout the Commonwealth, such as this past Saturday with the Southeast Pennsylvania Anglers of Angler Clubs (SEPAC), I have been challenging them to develop funding models that we can explore legislatively and I am sure that we can develop a creative a workable solution.

Next I'd like to take a couple minutes to discuss the topics of fisheries and the biota.

There is no doubt that habitat and the biota are interdependent, so we have partially addressed the topic of species already. However, fish, amphibians, reptiles and other aquatic biota are the core responsibility of the Commission and the topic is broad and important. Clearly, this is an area where the Commission needs to maintain excellence and be a leader within the Commonwealth and, I would hope, regionally and nationally. But what does that mean? First,

we need to continually strive to improve our knowledge of the resource. This means greater discipline in our biotic sampling through development of a more structured sampling process, stream classification, information management, and as I've previously mentioned for other activities, enhance our coordination with the data collection efforts of other agencies. For example, where one agency such as the Susquehanna River Basin Commission (SRBC) is collecting water quality and invertebrate data, our ability to better understand the dynamics of the river and its fisheries would be enhanced if we also collected a full spectrum of fish at those sites. A similar scenario can be played out with DEP and others who collect data on the Commonwealth's waterways. But this is not as simple as it sounds. Agencies have invested a great deal of time and funds in creating a sampling scheme that works, at least in part, for their purposes. Databases have been developed, historic time trends have been established, and those provide a value that argues for keeping those continual records alive. But the benefits of collaborative data collection, I would strongly argue, far eclipse the value of past time series. We will strive to enhance our data collection in the future through these more rigorous and coordinated efforts.

Obviously, fishing regulations and stocking are a major component of our species management in terms of funds, staff and mental energy. Further, the public's interests have shifted over time as catch-and-release has come to dominate the philosophy of many anglers, particularly bass, musky, and trout anglers. As we see harvest become less of a structuring force with many of these fisheries, the regulatory schemes that we typically employ need to be re-evaluated. Regulation becomes as much an issue of recreation management as it is an issue of preserving the resource. We will need to better understand these shifts and demands and work with an increasingly diverse and segmented public to address what, in many cases, will become contentious debates over use and allocation of the resource.

The creation and maintenance of fisheries through stocking will continue to be refined by the agency. There is no doubt that a substantial amount of funds are spent on operating a hatchery system that produces over three million catchable trout and over 100,000,000 fry, fingerling and adults of nearly 20 other species as well as all of the associated work that goes into a stocking. There is also no doubt that the value of the fisheries produced by these stockings is immense. The Erie steelhead fishery, which is supported in Pennsylvania solely by stocking, is worth around \$10 million each year. So, in this gross economic analysis, the stocking program results in a positive return-on-investment to the Commonwealth. But that, in no way, lets us off the hook. Serious and challenging questions need to be asked. Are our fish being used in the most effective way, by which I mean are they stocked in the most useful locations and in the optimal numbers? Are stockings done in such a way as to have the least impact upon naturally reproducing populations? Do we regularly evaluate our stockings to determine if the species mix and sizes are the most effective? Are there instances where other uses of funds expended upon stocking for some species or waters might result in a greater return on investment? With rising costs for fuel, fish feed, and electricity, all of which are a major component of running a fish hatchery, how can we optimize the use of our limited resources to maximize recreational opportunities for the angling public? These are all questions that should guide our efforts in the future. In fact, many of them will be addressed in the current work to develop a new trout plan. Others will be identified and a process established to start resolving them.

I'd like to conclude this overview with a discussion of people.

Our assets in people are within: (1) our customers who are directly those people who purchase licenses or own a boat that is registered, or for which they purchase a launch permit, (2) the larger citizenry who may support our activities but don't directly contribute financially to the efforts, (3) our staff, (4) our Commissioners, and (5) a broad array of conservation partners. Undoubtedly, all of these groups need to have a common alignment if we are to be successful. Pennsylvania is blessed with a conservation community that may be without peer. We have sportsman's clubs in every small town, hundreds of watershed associations, and well-staffed, highly professional partner organizations such as the Western Pennsylvania Conservancy, Pennsylvania Environmental Council, The Nature Conservancy, and many others. For the most part, all of these groups share the same goal of enhancing the natural qualities of the Commonwealth. But we also see declining membership in an aging sportsman population, clubs that are often struggling for membership, and a mostly contrived chasm between the traditional sportsman's groups and the more recent environmental organizations. If we are to make any significant in-roads into larger Commonwealth challenges of funding or expanded regulatory protection of the resource we will need to speak in a more unified voice. Growing Greener II passed because it was a coalition, albeit somewhat ephemeral, that gathered around a cause for which everyone found some benefit. But what do we do next? What will bring these groups together, and how can we continue to keep them engaged? Finding a solution is vital to maintaining the momentum gained thus far and will be part of the challenge.

Certainly within this brief overview I cannot fully describe the diverse accomplishments and activities of the entire agency. Often in perhaps, non-glamorous but vital roles, our staff are processing boat registrations and selling fishing licenses. By evaluating thousands of environmental permit applications, our DES staff protect our habitats and our most vulnerable trust species. Our Division of Habitat Management biologists are actively supporting numerous new habitat projects and Area Fisheries Managers and biologists collect fish and creel information that is vital to help us understand the resources. Each year thousands of Pennsylvanian's learn about aquatic resources from our Aquatic Resource Program Specialists. Our Boating Education staff provide nationally acclaimed water rescue training, a proactive and effective boating access grant program, and Waterways Conservation Officers help ensure boat safety and angling regulations are enforced. Our Engineering staff are instrumental in providing safe and convenient access to streams and lakes. Overall, I believe it is evident our agency is actively involved in the protection and management of the Commonwealth's resources and recreational opportunities.

Obviously, the staff of the Commission is our greatest asset. Their effectiveness, their ability to create solutions, their ability to develop innovative coalitions and implement actions is the key to success. We need to do everything possible to enhance that probability of success. With our organizational structure now confirmed, we can move more actively into filling vacancies. We can also continue and expand efforts to provide training and professional experiences to help increase the capabilities of Commission employees. Examples of this will be an increased effort to take the good work of staff and put that out in the form of publications in professional journals. Certainly, this has occurred in the past but increased emphasis on this extra step will

force us to continually strive to create the best possible studies and submit this work for scientific and public review.

We will continue to work on creating a culture of leadership within the agency with the intent of further reinforcing with our partners and the public that the Fish and Boat Commission will be positioned and viewed as a leader in resource management and the provision of recreational opportunities. This will also allow us to increasingly engage the public and enlist their support for focused and effective conservation initiatives.

I'll just finish with one or two observations.

We've known for a long time that the economic value of fishing and boating is substantial. Previously, I mentioned the Erie steelhead fishery and the nearly \$10 million value placed on it. Commonwealth-wide these numbers are astounding. Not only does fishing result in an estimated \$1.7 billion in economic activity, but we have learned that fishing alone brings in nearly \$120 million in local and state tax dollars. Add boating to the mix and we have a substantial impact upon our economies. Increasingly, we will be asking the Commonwealth to share some of that revenue with the agency so that we can properly maintain infrastructure and fund important programs, particularly those that don't directly benefit fishing or boating such as water rescue and work on threatened and endangered species.

So, in the words of Jim Martin, we are "moving the needle" and making a difference for the resources and the people who use and treasure them. We are building an agency that has the best people, doing the most important work, with an engaged and supportive public. We are in the process of building a stronger Pennsylvania that will increasingly provide the natural resources so eloquently protected in the 27th amendment to the state's constitution. So, when I envision the future of the Fish and Boat Commission, our collective future, I see an agency that is increasingly effective and is increasingly looked at by our partners and the public as an agency that gets work done. The work of the past four years is a testament to that trajectory. I envision an agency that finds ways to solve problems despite being, like all agencies, constrained by bureaucracy or other obstacles and barriers to getting the work done. I envision an agency that is creative in building partnerships and using its influence to accomplish goals that are of mutual benefit and of shared importance to many groups. We have a strong board of Commissioners who, I am confident, will guide the agency in the right directions in the future, develop a vision, and chart a course for success. My job and that of our excellent staff will be to make that collective vision come alive.

Of one thing I am certain, this agency has been "moving the needle" and will advance that ability in the future. I am proud to be a part of that effort and look forward to working with each of you as we continue to make it happen.

Announcement of Executive Session

Commissioner Sabatose announced that an executive session was held on Monday, January 28, at 8:00 a.m. to discuss personnel, litigation and real estate issues and at 6:00 p.m. to discuss personnel issues.

Reports of Commissioner Committees

Executive and Planning (Commissioner Sabatose) -

The Executive and Planning Committee met on Tuesday, January 29, at 11:25 a.m. in conjunction with the Administration and Legislation Committee.

Administration and Legislation (Commissioner Worobec) -

The Administration and Legislation Committee met in conjunction with the Executive and Planning Committee on Tuesday, January 29. Gary Moore provided a legislative update and an overview of the Ralph Abele Conservation Heritage Award Program. Jack Rokavec provided an overview of construction options for the Pleasant Gap office complex.

Boating, Access and Marinas (Commissioner Concilla) -

The Boating, Access and Marinas Committee held two sessions and met on Tuesday, January 29, at 9:00 a.m. and then again at 11:15 a.m. Agenda items were discussed. Scott Bollinger provided an update on the Erie Access Improvement Program and the Boating Facility Grant Program. Dan Martin provided a report on 2007 boating accidents. Dick Mulfinger provided an engineering update at the 11:15 a.m. session.

Communications (Commissioner Lichvar) -

The Communications Committee met on Monday, January 28, at 11:45 a.m. Dave Rothrock, Vice President, Pennsylvania Council of Trout Unlimited, provided a presentation on the Trout in the Classroom Program. Art Michaels and Adrian Martin provided an update on the *Angler and Boater* magazine promotion efforts. Rose Mape, Special Assistant to Mickey Rowley, the Deputy Secretary for Tourism, Film and Economic Development, Pennsylvania Department of Community and Economic Development, provided a presentation on tourism partnerships.

Fisheries (Commissioner Anderson) -

The Fisheries Committee met on Monday, January 28, at 1:30 p.m. Agenda items were discussed. Staff provided updates and presentations on several topics, which included the new State Trout Plan, the Three Rivers Ecological Research Center, fish culture training plans, expansion of the regional opening day program, the steelhead program, the Susquehanna River Water Quality Study, a historic overview of biological sampling on the mainstem of the Susquehanna River, and the Commission's decommissioning plans for the Big Spring State Fish Hatchery. A joint presentation on the Stony Creek reassessment efforts was provided by Gary Smith, a Commission fisheries biologist, and Amanda Deal of the Somerset Conservation District and project manager of the Stonycreek Reassessment Improvement Project.

Commissioner Anderson announced that a Fisheries Committee meeting has been scheduled for February 27, 2008, for the purpose of staff providing additional information regarding the expansion of the regional opening day program.

During the Fisheries Committee report, action was taken with respect to a grant to the U.S. Geological Survey to conduct the Susquehanna River Water Quality Study. See agenda item N under "Fisheries."

During the Fisheries Committee report, a motion was made by Commissioner Anderson and seconded by Commissioner Worobec that the Commission authorize the Executive Director to spend up to \$100,000 for the decommissioning of the Big Spring State Fish Hatchery. Motion carried.

Habitat and Environmental (Commissioner Shetterly) -

The Habitat and Environmental Committee met on Tuesday, January 29, at 9:45 a.m. Agenda items were discussed. Scott Carney provided a summary on soft revenues obtained in 2007 for habitat management efforts.

Law Enforcement (Commissioner Bachman) -

The Law Enforcement Committee met on Monday, January 28, at 11:45 a.m. Tom Kamerzel highlighted 2007 law enforcement efforts and provided information regarding 2008 deputy waterways conservation officer meetings.

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

Public Comment to Commissioners and Staff

Dick Martin, Pennsylvania Forest Coalition, commented on all terrain vehicle (ATV) trespassing issues. Commissioner Sabatose asked Tom Kamerzel, Director, Bureau of Law Enforcement, to explore these issues with the Pennsylvania Game Commission and report back to the Commissioners with his findings.

Art Friedman, Pennsylvania Boating Association, commented on mandatory boating education.

Melody Zullinger, Executive Director, Pennsylvania Federation of Sportsmen's Clubs (PFSC), commented on PFSC's support of no kill tournaments, mandatory boating safety education, and opposition to a merger. She also announced the PFSC's Spring Convention that is scheduled for March 28-30, 2008 at the Hilton Scranton and Conference Center.

BOATING, ACCESS & MARINAS FINAL RULEMAKING

A. 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, the Commission proposed to update them by adopting the following changes. The proposed changes to §91.6 will simplify the definition of a boating safety education certificate. 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 A, B and C, 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.

A notice of proposed rulemaking was published at 37 Pa. B. 6415 (December 8, 2007) (Exhibit D). During the public comment period, the Commission did not receive any public comments regarding the proposal.

On January 8, 2008, the Boating Advisory Board considered this item and recommended that the Commission adopt the proposed amendments as set forth in the notice of proposed rulemaking.

Briefer:

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

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 upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Concilla 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 upon publication in the *Pennsylvania Bulletin*. Motion carried.

B. 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.

The Commission, therefore, proposed to amend §111.2(c) to designate the 9th Street Bridge as the upriver SNW limit on the Allegheny River. A notice of proposed rulemaking was published at 37 Pa. B. 6416 (December 8, 2007) (Exhibit E). The Commission did not receive any public comments regarding this proposal.

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.

On January 8, 2008, the Boating Advisory Board considered this item and recommended that the Commission adopt the proposed amendment as set forth in the notice of proposed rulemaking.

Briefer:

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

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 Concilla and seconded by Commissioner Czop 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.

OTHER MATTERS

C. Approval of Tulpehocken and Quittapahilla Creek Watershed Enhancement Grant to Pennsy Supply, Inc. for Construction of an ADA Fishing Pad, Quittapahilla Creek.

Commentary:

In the spring of 1998, AES Ironwood, L.L.C. (AES) began developing an electric generating facility in South Lebanon Township, Lebanon County, Pennsylvania, and received approval from the Delaware River Basin Commission (DRBC) and the Susquehanna River Basin Commission (SRBC) for the use of water from the Tulpehocken and Quittapahilla Creek watersheds.

On June 25, 1998, the Commission entered into an agreement with AES pursuant to which AES agreed to provide an annual financial contribution of \$24,000 in 1998 dollars to be applied to projects to improve the aquatic habitat, water quality and recreational use in the Tulpehocken and Quittapahilla Creek watersheds. The agreement also provides that the annual contribution will be applied to projects such as fishery habitat restoration or enhancement, fish stocking, fishing access, maintenance or creation of facilities to encourage, improve or expand recreational use of the fishery or studies related to these issues.

Annual AES contributions are placed in a restricted revenue account and are disbursed to deserving projects in a grant program administered by the Commission. On October 17, 1998, the Commission granted the Executive Director the authority to solicit applications and approve grants of up to \$10,000 per grantee each fiscal year for projects that will improve aquatic habitat, water quality and recreational access in the Tulpehocken and Quittapahilla Creek watersheds. Proposed grants in excess of \$10,000 per grantee are to be submitted to the Commission for prior approval by majority vote.

Commission staff solicited applications in 2007 for the Tulpehocken and Quittapahilla Creek Watershed Enhancement Grant Program. A Commission staff committee received applications, reviewed them and is now seeking approval of the following grant in excess of \$10,000. Pennsy Supply, Inc. has proposed a recreational access enhancement on property the company owns in North Annville Township, Lebanon County. The project includes design and construction of an Americans with Disabilities Act accessible fishing pad with a partially paved parking lot and concrete path. The total project cost was listed as \$120,421.01, and a Commission grant of \$60,210.50 was sought. Commission staff considered a comparable project funded by another Commission grant on Valley Creek, Chester County, which cost \$9,600.00. Staff believe that this project can be built at a reduced cost and considered the Commission's share of the primary project benefit, the ADA fishing pad, which was determined to be a reasonable grant contribution at \$16,500. Staff also propose that the grant to Pennsy Supply, Inc. be contingent upon the company's construction of other facilities to facilitate handicapped access to the fishing pad. These facilities will include an ADA-accessible parking lot and trail to the pad.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$16,500.00 to Pennsy Supply, Inc. for construction of an ADA fishing pad as more fully described in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Czop to approve a grant in the amount of \$16,500.00 to Pennsy Supply, Inc. for construction of an ADA fishing pad as more fully described in the Commentary. Motion carried.

D. Anderson 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 900 linear feet of Elk Creek as it flows across a parcel of property in Girard Township, Erie County for \$15,000. The easement will be for public fishing, boating and riparian and fishery management and will include the stream corridor and extend at least 25 feet back from the top of bank. A map depicting the subject parcel is attached as Exhibit F.

The easement area is located between Route 5 and Route 20 near Elk Park Road. The easement area is approximately ¼ of a mile southeast of Elk Park Road and is adjacent to and upstream of the Mercyhurst College property.

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 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:

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

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 Ketterer 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. Acquisition of Property Rights along Tea Creek in Brown Township, Mifflin County.

Commentary:

The Commission has been offered an access easement on Tea Creek that +/- 785 feet includes both sides of the creek and +/-250 feet on one side of the creek, a parking easement and a limited access easement for staff. The easement is being offered to the Commission for \$16,900. The property contains an old mill building on its southern side that will sever the southern most portion of the easement. There will be no easement immediately adjacent to the Mill Building.

The site is located +/-0.5 mile from Tea Creek's confluence with Kishacoquillas Creek, an approved trout water, in central Mifflin County. The majority of Tea Creek between the subject site and Kishacoquillas Creek is adjacent to a local park and a fire company owned property that allows public access. The site is immediately north of Reedsville Borough and 1/5 mile east of the Reedsville Exit on State Route 322. There are two pull-offs located at the northern and southern ends of the site adjacent public road that provide parking. The Commission will acquire parking easements on these pull-offs. Also, there is a private drive on the creek's east side that provides the only viable access to this area, and the Commission will acquire a limited access easement for staff and agents for habitat, fishery and erosion control work.

Tea Creek in this area is a Class A Wild Trout Water and is well known to anglers and significantly utilized. The Commission was involved with the removal of a dam and habitat work on this property in the last +/- four years. To date, the Commission and its partners have invested over \$100,000 in habitat restoration activities on the property. The site has been re-evaluated by staff since the dam removal and habitat work, and the wild trout population has been found to have increased dramatically. Regional staff and local Trout Unlimited members have recommended that the site be pursued and acquired if possible. The property has been publicly advertised for sale, and there has been some interest. If the site is sold to another party, it could be posted, which would be a significant loss to the anglers of Pennsylvania.

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 requirements and securing funding. In addition, the seller has agreed to be responsible for a portion of the closing costs that are normally the obligation of the Buyer.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the acquisition of property rights along Tea Creek in Brown Township, Mifflin County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Concilla to authorize the acquisition of property rights along Tea Creek in Brown Township, Mifflin County, as more particularly described in the Commentary. Motion carried.

FISHERIES
FINAL RULEMAKING

A. Amendments to Sections 53.24 (Tournament and Fishing Derby Permits) and 63.40 (Fishing Tournaments and Fishing Derbies).

Commentary:

At the fall 2007 Commission meeting, the Commission approved the publication of a notice of proposed rulemaking to seek public input on a proposed prohibition of bass fishing tournaments on the West Branch, North Branch and main stem of the Susquehanna River that permit the killing of black bass (*Micropterus spp*). The proposal was generated in response to angler concerns about organized events that focus on taking black bass, especially at a time when agency biologists and bass fishermen have concerns about the relatively weak reproduction of young smallmouth bass in parts of the river system in recent years. This rule will not apply to tournament harvest of species other than black bass.

A notice of proposed rulemaking was published at 37 Pa. B. 6417 (December 8, 2007) (Exhibit G). Prior to the formal public comment period, the Commission received a total of 33 comments. Thirty-two of the comments support the proposal. One supports catch and release fishing and personally practices it but believes that if individuals wish to keep some of their catch, they should be allowed to do so. During the formal public comment period, the Commission received a total of 73 comments (of which 11 were from prior commenters). Of the 73 comments, 72 support the proposal and one opposes it. The Commission received six public comments after the public comment period that support the proposed amendment. Copies of all public comments were 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 upon publication in the *Pennsylvania Bulletin*.

Action:

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

B. 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, the Commission proposed to amend §§65.5, 65.6, 65.7 and 65.14 to allow, notwithstanding the requirements of those sections, an angler in a boat to 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. For §§65.4a, 65.10 and 65.15, the reference to bait will be eliminated.

A notice of proposed rulemaking was published at 37 Pa. B. 6418 (December 8, 2007) (Exhibit H). Prior to the formal public comment period, the Commission received one comment opposing the amendments. During the formal public comment period, the Commission received two comments opposing the amendments. Copies of all public comments were 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 upon publication in the *Pennsylvania Bulletin*.

Action:

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

PROPOSED RULEMAKING

C. Amendments to Section 63.8 (Longbows, Crossbows, Spears, and Gigs).

Commentary:

Currently, §63.8(a) allows the use of long bows and arrows, including compound bows, crossbows, spears and gigs to take carp and suckers in Commonwealth waters and waters bounding and adjacent thereto. Under §63.8(b), catfish may also be harvested by these gear in the Delaware River. Recently, a number of anglers have expressed to staff the desire to be permitted to harvest catfish with these gear in all Commonwealth waters. Because staff see no reason to not allow the use of long bows and arrows, including compound bows, crossbows and gigs to harvest catfish from Commonwealth waters other than the Delaware River, staff recommend that §63.8 be amended as follows:

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

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

(b) *Delaware River.* The following provisions apply to use of long bows and arrow, including compound bows, crossbows, spears and gigs on the Delaware River:

(1) In addition to the species in subsection (a), herring, except shad, **[and catfish]** may be taken.

* * *

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 proposed 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 Anderson and seconded by Commissioner Bachman to defer consideration of this item until the April Commission meeting. Motion carried.

D. Addition of Section 65.19 (Approved Trout Waters Open to Year-Round Fishing).

Commentary:

Currently, there are a number of waters listed in the *Pennsylvania Fishing Summary* as approved trout waters open to year-round fishing. These waters are regulated the same as approved trout waters except that they are open to fishing from March 1 through the opening day of trout season. Fishing for trout is permitted during this period, but no trout may be taken or possessed. In a recent review of the Commission’s regulations, staff discovered that this special regulation program was never formally adopted by the Commission. To correct this oversight, staff recommend that a new section in Chapter 65 be adopted, thereby formally establishing this regulatory program. Staff recommend that the new section read as follows:

§65.19. Approved Trout Waters Open to Year-Round Fishing.

(a) The Executive Director, with the approval of the Commission, may designate waters as Approved Trout Waters Open to Year-Round Fishing. The designation of waters as Approved Trout Waters Open to Year-Round Fishing shall be effective upon publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as Approved Trout Waters Open to Year-Round Fishing except in compliance with the following seasons and size and creel limits. It is not a violation of this section if a trout is immediately returned unharmed to the waters from which it is taken.

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
<u>ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)</u>	<u>Regular Season: 8 a.m. first Saturday after April 11 (or the first Saturday after March 28 for waters in the Regional Opening Day of Trout Season Program) to midnight Labor Day</u>	<u>7 inches</u>	<u>5 (combined species)</u>
	<u>Extended Season: 12:01 a.m. day after Labor Day to midnight last day of February of the following year.</u>	<u>7 inches</u>	<u>3 (combined species)</u>
	<u>12:01 first day of March to first Saturday after April 11 (or the first Saturday after March 28 for waters in the Regional Opening Day of Trout Season Program)</u>		<u>NO HARVEST – Catch and immediate release only</u>

(c) It is unlawful to fish in waters designated as Approved Trout Waters Open to Year-Round Fishing without a current trout/salmon permit.

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 proposed regulation described in the Commentary. If adopted on final rulemaking, the new regulation will go into effect on January 1, 2009.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Czop to approve the publication of a notice of proposed rulemaking containing the proposed regulation described in the Commentary. If adopted on final rulemaking, the new regulation will go into effect on January 1, 2009. Motion carried.

E. Amendment to Section 69.12a (Special Regulations Applicable to Lake Erie Tributary Streams).

Commentary:

Currently from the day after Labor Day until the opening day of trout season in April, all Lake Erie tributary streams are closed to fishing from 10 p.m. to 5 a.m. except for Walnut Creek and Elk Creek north of Route 5. The portion of Walnut Creek from Route 5 north to Manchester Road flows through a residential area. The backyards of property owners border the stream. All of the property owners historically have allowed public fishing in Walnut Creek in this area and tolerated the problems associated with night time fishing.

During this year's steelhead season, however, several of the property owners expressed concerns to our Northwest regional law enforcement staff regarding the problems they are facing associated with night time fishing. Anglers fishing in this area at night are causing the property owners' dogs to become alarmed and start barking. Property owners also indicate that they can hear anglers' loud voices and radios being played during the night time hours. Unfortunately, continued night time fishing in this section of Walnut Creek jeopardizes the privacy of the property owners and creates unnecessary disturbances to the entire neighborhood. The Commission also received two letters from property owners expressing similar concerns.

Northwest regional law enforcement staff met with several of the property owners in an attempt to address their concerns. One potential solution that was discussed was to prohibit angling during the night time hours in this area. The property owners agreed to continue to allow public fishing between 5 a.m. and 10 p.m. Accordingly, staff propose that §69.12a be amended to prohibit fishing in Walnut Creek from Route 5 north to Manchester Road Bridge between the hours of 10 p.m. and 5 a.m. as follows:

§69.12a. Special regulations applicable to Lake Erie tributary streams.

* * *

(c) From 12:01 a.m. on the day after Labor Day, until the first Saturday after April 11 of the following year, all Lake Erie tributary streams are closed to fishing from 10:00 p.m. until 5 a.m. on the following day except for Walnut Creek **north of Manchester Road Bridge** and Elk Creek north of Route 5.

* * *

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

Action:

A motion was made by Commissioner Concilla and seconded by Commissioner Anderson to approve the publication of a notice of proposed rulemaking containing the proposed amendment described in the Commentary and to direct the Executive Director to make a temporary change to the regulation, as provided in 58 Pa. Code §65.25, so that the amendment will go into effect immediately upon posting. If adopted on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

OTHER MATTERS

F. Wind Power Policy.

Commentary:

The development of clean, renewable energy sources is a goal supported by the Commission because it will reduce our society's dependence on the burning of fossil fuels that has been linked to local, regional and global environmental change. Recent incentives to pursue clean energy goals have caused an increase in proposed wind power projects across the Commonwealth. However, wind energy project development potentially poses significant impacts to several species under the Commission's jurisdiction and their habitats. These impacts can be either direct (*e.g.*, those landscape activities associated with project construction such as the footprint of the windmill and all support facilities) or indirect (*e.g.*, individual species or community behavioral responses to the development). The impacts may be short-term, only occurring during construction activities, or long-term, persisting for the life of the project.

Commission staff within the Bureau of Fisheries, Division of Environmental Services, presently review various permits and plans that are required by other local, state and federal regulatory authorities for wind power project development. These permits include the Pennsylvania Department of Environmental Protection (PA DEP) Chapter 105 and the U.S. Army Corps of Engineers Section 404 permits for stream or wetland encroachments; PA DEP NPDES permits for stormwater releases; and County Conservation District Erosion and Sedimentation (E&S) Control permits or plans. Staff provide comments to the appropriate regulatory agency about potential risks to jurisdictional species and their habitats and recommend ways to avoid, minimize or mitigate potential harm. This staff function is consistent with the Commission's "Resource First" mission. Of particular concern are developments in high-risk watersheds that include Exceptional Value and High Quality Designated Watersheds (25 Pa. Code Chapter 93) and Class A Wild Trout (58 Pa Code §57.8a) and Wilderness Trout Stream (58 Pa. Code §57.4) watersheds. Staff recommendations on wind power projects conform to the Pennsylvania Municipalities Planning Code and the Pennsylvania Model Ordinance for Wind Energy Facilities in Pennsylvania. Specific comments about rare species are consistent with the PA DEP's *Policy for Pennsylvania Natural Diversity Inventory (PNDI) Coordination During Permit Review and Evaluation* (Document 400-0200-001). Staff also participate on the Governor's Pennsylvania Wind and Wildlife Collaborative.

To address wind energy project development and its potential to significantly impact species under the Commission's jurisdiction and their habitats, staff propose the following statement of policy. Staff further propose that prior to adopting the policy, the Commission seek public comment. Although the Commission is not required to publish a notice of a proposed statement of policy prior to adopting one, staff believe that the Commission should publish a notice and seek public comments because of the heightened public interest in this issue.

§57.12. Policy on wind power projects.

It is the policy of the Commission to have its staff fully coordinate agency concerns in the review of wind power development projects with all involved local, state and federal regulatory agencies to avoid, minimize and mitigate harmful impacts to fish, other aquatic life, reptiles, amphibians and their habitats. Commission staff will seek the collection of adequate data for risk analysis when necessary in the environmental review process, the avoidance of threatened and endangered species and their habitats, the avoidance of ecologically sensitive areas when siting projects, the reduction of habitat fragmentation, and the development of mitigation strategies for unavoidable impacts.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed statement of policy containing the policy described in the Commentary.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Lichvar to approve the publication of a notice of proposed statement of policy containing the policy described in the Commentary. Motion carried.

G. Endangered Species Grant Program.

Commentary:

The U.S. Fish and Wildlife Service (USFWS) has been funding small-scale projects that concern federally protected species to agencies with jurisdictional responsibility for state nongame conservation programs and efforts. This funding (traditional Section 6 Grants – Species Recovery) is intended to target conservation efforts mainly for federally listed threatened and endangered species but also may be used for the conservation of other state rare nongame (at-risk) species that are not pursued for sport or harvest. This funding is competitive between other state agencies, including the Pennsylvania Game Commission. In the past, approximately \$5,000 per year of funding was provided for the Commission's conservation efforts for federally listed species.

Commission staff wish to enter into cooperative agreements with partners to fund projects that Commission staff have identified as being high priorities with the Commission and the USFWS. Commission staff have selected the following project:

Monitoring of Bog Turtle (*Glyptemys muhlenbergii*) Colonies at Sites in Immediate Proximity to Development in Southeastern Pennsylvania - The Pennsylvania State University.

For almost a decade, Commission staff have been consulting on development projects where residential and commercial developments are encroaching on surrounding wetlands where state endangered and federally threatened bog turtles occur. These development projects can have far reaching effects economically and environmentally. Due to the lack of scientific information, impact avoidance measures, when developments encroach into bog turtle habitat, have been based primarily on best professional judgment. There have been virtually no studies conducted to determine the efficacy of the impact avoidance recommendations routinely made by state and federal agencies during bog turtle environmental review consultations. Furthermore, besides the initial documentation of bog turtle presence at these sites during a pre-construction survey, little or no baseline information pertaining to parameters affecting bog turtle population viability has been collected at sites in close proximity to residential or commercial development sites. This study will gather baseline information on local population or colony size, immediate and long-term threats, and other physical, chemical, and biotic habitat characteristics of bog turtle sites located on properties where encroachment activities have been permitted by state and federal agencies. This baseline data will be used to establish a long-term monitoring program for bog turtle sites potentially impacted by development.

It is envisioned that sites identified in this study will be monitored for several years. Data generated by this first year project will serve as a baseline for comparison to future data for evaluating bog turtle viability at potentially development impacted sites (PDIS). This data will be important in developing as well as updating bog turtle site-specific management plans and recommendation guidelines during bog turtle environmental review consultations.

Researchers at The Pennsylvania State University, with the assistance of the Commission's Natural Diversity Section staff, propose to establish monitoring sites for bog turtles and this monitoring is estimated to cost \$152,201 over 5 years (approximately \$30,000 per year). The Commission and The Pennsylvania State University will cover the 10% required match for this grant through indirect costs.

While most of the Section 6 Grant funds have been used internally in the past, some of the projects involve grants to third parties. Staff therefore request that the Commission authorize the Executive Director to approve individual grants, utilizing up to \$100,000 of Section 6 pass-through monies per grantee per year, for projects meeting the Section 6 Grant Program objectives. For grants exceeding those amounts, staff will seek separate Commission approval.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the bog turtle monitoring project and further authorize the Executive Director to approve individual grants utilizing up to \$100,000 of Section 6 pass-through monies per grantee per year for projects that Commission staff select and the USFWS approves, as more fully described in the Commentary. For grants exceeding that amount, staff will seek separate Commission approval following appropriate staff review.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Anderson to approve the bog turtle monitoring project and further authorize the Executive Director to approve individual grants utilizing up to \$100,000 of Section 6 pass-through monies per grantee per year for projects that Commission staff select and the USFWS approves, as more fully described in the Commentary. For grants exceeding that amount, staff will seek separate Commission approval following appropriate staff review. Motion carried.

H. Approval of Tulpehocken and Quittapahilla Creek Watershed Enhancement Grant to the Tulpehocken Chapter of Trout Unlimited for Habitat Improvement in Tulpehocken Creek.

Commentary:

In the spring of 1998, AES Ironwood, L.L.C. (AES) began developing an electric generating facility in South Lebanon Township, Lebanon County, Pennsylvania, and received approval from the Delaware River Basin Commission (DRBC) and the Susquehanna River Basin Commission (SRBC) for the use of water from the Tulpehocken and Quittapahilla Creek watersheds.

On June 25, 1998, the Commission entered into an agreement with AES pursuant to which AES agreed to provide an annual financial contribution of \$24,000 in 1998 dollars to be applied to projects to improve the aquatic habitat, water quality and recreational use in the Tulpehocken and Quittapahilla Creek watersheds. The agreement also provides that the annual contribution will be applied to projects such as fishery habitat restoration or enhancement, fish stocking, fishing access, maintenance or creation of facilities to encourage, improve or expand recreational use of the fishery or studies related to these issues.

Annual AES contributions are placed in a restricted revenue account and are disbursed to deserving projects in a grant program administered by the Commission. On October 17, 1998, the Commission granted the Executive Director the authority to solicit applications and approve grants of up to \$10,000 per grantee each fiscal year for projects that will improve aquatic habitat, water quality and recreational access in the Tulpehocken and Quittapahilla Creek watersheds. Proposed grants in excess of \$10,000 per grantee are to be submitted to the Commission for prior approval by majority vote.

Commission staff solicited applications in 2007 for the Tulpehocken and Quittapahilla Creek Watershed Enhancement Grant Program. A Commission staff committee received applications, reviewed them and is now seeking approval of the following grant in excess of \$10,000. The Tulpehocken Chapter of Trout Unlimited has proposed a habitat improvement project on 1,250 feet of Tulpehocken Creek in Marion and Heidelberg Townships, Berks County. The project includes excavation and shaping of stream banks, hauling spoil and rocks, placement of rocks and fence installation. The total project cost of \$20,780.80 includes a \$7,728.00 match and proposed Commission grant award of \$13,052.80. The project is expected to benefit water quality, bank stability and aquatic habitat.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$13,052.80 to the Tulpehocken Chapter of Trout Unlimited for habitat improvement on Tulpehocken Creek as more fully described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Lichvar to approve a grant in the amount of \$13,052.80 to the Tulpehocken Chapter of Trout Unlimited for habitat improvement on Tulpehocken Creek as more fully described in the Commentary. Motion carried.

I. Financial Support for the National Fish Habitat Initiative.

Commentary:

The National Fish Habitat Initiative (NFHI) (<http://www.fishhabitat.org/about/index.htm>) is an unprecedented attempt to address an unseen crisis for fish loss and degradation of habitat nationwide. Development of the National Fish Habitat Action plan was initiated in 2001 when an *ad hoc* group, supported by the Sport Fishing and Boating Partnership Council, explored the notion of developing a partnership effort for fish. The need for a nationally focused fisheries conservation effort was validated by fisheries experts attending a series of regional meetings held by the Council. They were nearly unanimous in their support for the plan. In 2004, the Association of Fish and Wildlife Agencies, which represents all state wildlife agencies, voted to lead the plan. The U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration are the principal Federal partners.

The Eastern Brook Trout Joint Venture (EBTJV), which has recently been officially approved by the NFHI's Board of Directors (Exhibit I), directs locally driven efforts that build private and public partnerships to improve fish habitat. The long-term goals of the EBTJV are to develop a comprehensive restoration and education strategy to improve aquatic habitat, to raise education awareness, and to raise federal, state and local funds for brook trout conservation. The Commission is currently a partner in three projects funded through the EBTJV (Exhibit J). These projects include Williams Run, funded in 2007; Cross Fork Creek, funded in 2006; and upper Kettle Creek, funded in 2007. The South Sandy Creek Watershed Association was the recipient of the Williams Run Grant, Trout Unlimited was the recipient for the Cross Fork Grant, and the Commission was recipient of a \$45,000 grant for the upper Kettle Creek project. In addition, the Commission prepared a NFHI – *More Fish* proposal on behalf of the Big Spring Watershed Association in 2007 that was approved for \$98,000 for habitat restoration on Big Spring Creek, Cumberland County. The Commission has also applied for EBTJV funding in 2008.

Other joint ventures under the NFHI, which have only recently been initiated, encompass the Lower Great Lakes, the Ohio River Basin, the Atlantic Coast and impoundments. In the future, we anticipate these joint ventures to serve as additional financial sources for supporting the Commission's mission.

To maintain this focus on fish and fish habitat, the NFHI has requested operational assistance from its partners to support its mission. The NFHI has requested support from the Commission in the amount of \$12,000 per year for three years.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve funding to support the National Fish Habitat Initiative in the amount of \$12,000 per year for three years.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Bachman to approve funding to support the National Fish Habitat Initiative in the amount of \$12,000 per year for three years. Motion carried.

J. Fish Passage and Habitat Restoration Grant to First Quality Tissue, LLC for Construction of Denil Fishway on Bald Eagle Creek.

Commentary:

At the October 2004 meeting, the Commission established the Statewide Grant Program for Fish Passage and Habitat Restoration. The purpose of this grant program is to provide a mechanism for the Commission to pass federal and other funding, as it becomes available, to dam owners throughout Pennsylvania who agree to provide fish passage and habitat restoration at their dams. The Commission authorized the Executive Director to approve individual pass-through grants of up to and including \$100,000 each to dam owners and their designees for dam removal, fish passage and habitat restoration projects statewide. For individual pass-through grants in excess of \$100,000, staff will seek separate Commission approval.

The United States Fish and Wildlife Service (USFWS) recently provided the Commission with \$969,180 to develop fish passage at three dams in the West Branch of the Susquehanna River watershed. First Quality Tissue owns one of these dams located at the confluence of Bald Eagle Creek near Lock Haven, Pennsylvania. Engineering design for the Denil fishway at the dam has been completed and approved by the USFWS. Federal and state permits are pending. The USFWS and the Commission agreed to provide First Quality Tissue with a \$450,000 grant to construct the fishway. The Commission's Division of Habitat Management will administer the contract on behalf of the Commission.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant of up to \$450,000 to First Quality Tissue for fishway construction as more fully described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Concilla to approve a grant of up to \$450,000 to First Quality Tissue for fishway construction as more fully described in the Commentary. Motion carried.

K. Fish Passage and Habitat Restoration Grant to Garrett Borough for Removal of Bigby Dam and Unnamed Dam on Bigby Run and Habitat Restoration on Miller Run, Somerset County.

Commentary:

At the October 2004 meeting, the Commission established the Statewide Grant Program for Fish Passage and Habitat Restoration. The purpose of this grant program is to provide a mechanism for the Commission to pass federal and other funding, as it becomes available, to dam owners throughout Pennsylvania who agree to provide fish passage and habitat restoration at their dams. The Commission authorized the Executive Director to approve individual pass-through grants of up to and including \$100,000 each to dam owners and their designees for dam removal, fish passage and habitat restoration projects statewide. For individual pass-through grants in excess of \$100,000, staff will seek separate Commission approval.

The Commission has obtained \$300,000 from the Pennsylvania Department of Transportation to mitigate impacts associated with the construction of Route 219. The funding is earmarked to address the removal of Bigby Dam and an unnamed dam on Bigby Run as well as stream restoration activities on Miller Run, Somerset County. Garrett Borough is the owner of the Bigby Run property. Meyersdale Borough is the owner of the Miller Run property. Staff propose to provide \$270,000 and \$30,000 in the form of grants to Garrett Borough and Meyersdale Borough, respectively, to finance the projects. The Commission's Division of Habitat Management will provide the necessary technical assistance and oversight as well as administer the contract on behalf of the Commission.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant of up to \$270,000 to Garrett Borough and up to \$30,000 to Meyersdale Borough for the dam removal and stream restoration projects as more fully described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Bachman to approve a grant of up to \$270,000 to Garrett Borough and up to \$30,000 to Meyersdale Borough for the dam removal and stream restoration projects as more fully described in the Commentary. Motion carried.

L. Fish Passage and Habitat Restoration Grant to American Rivers, Inc. for Removal of Trafford Dam on Turtle Creek, Westmoreland County.

Commentary:

At the October 2004 meeting, the Commission established the Statewide Grant Program for Fish Passage and Habitat Restoration. The purpose of this grant program is to provide a mechanism for the Commission to pass federal and other funding, as it becomes available, to dam owners throughout Pennsylvania who agree to provide fish passage and habitat restoration at their dams. The Commission authorized the Executive Director to approve individual pass-through grants of up to and including \$100,000 each to dam owners and their designees for dam removal, fish passage and habitat restoration projects statewide. For individual pass-through grants in excess of \$100,000, staff will seek separate Commission approval.

The Commission has obtained \$200,000 from the Pennsylvania Department of Transportation to mitigate impacts associated with the construction of Route 22. The funding is earmarked to address the removal of Trafford Dam that is owned by the CBS Corporation and located on Turtle Creek, Westmoreland County. Staff propose to provide \$200,000 in the form of a grant to American Rivers, Inc. to finance the project. American Rivers will manage the project on behalf of the dam owner. The Commission's Division of Habitat Management will provide the needed technical assistance and administer the contract on behalf of the Commission.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant of up to \$200,000 to American Rivers, Inc. for the removal of Trafford Dam.

Action:

A motion was made by Commissioner Concilla and seconded by Commissioner Czop to approve a grant of up to \$200,000 to American Rivers, Inc. for the removal of Trafford Dam. Motion carried.

M. Grant to the Delaware Department of Natural Resources & Environmental Control, Division of Fish & Wildlife, to Monitor Adult Shad Populations by Haul Seining in the Delaware River.

Commentary:

Managing the Delaware River American shad stock involves four jurisdictions, New York, New Jersey, Delaware and Pennsylvania, in accordance with the American Shad and River Herring Fisheries Management Plan developed by the Atlantic States Marine Fisheries Commission with participation by all East Coast states. One of the requirements of this management plan is that the states annually monitor the shad populations in a number of East Coast rivers. Beginning in 2000, the four states agreed on pooling sampling efforts on this major fishery to reduce duplication of effort, to provide for equitable cost distribution and to provide consistency in data collections.

The Delaware River recreational American shad fishery is concentrated in New Jersey and Pennsylvania, and the bulk of the shad-specific research and monitoring studies are carried out by Pennsylvania and New Jersey fisheries personnel. The largest effort has been a hydro-acoustic study to estimate the number of adult American shad in the migration run. In 2000 and again in 2005, agreements were reached to apportion the costs of this program among the four states at an agreed upon percentage (New Jersey and Pennsylvania at 40% each, and New York and Delaware at 10% each). Pursuant to the agreement, the effort was administered by the New Jersey Division of Fish, Game and Wildlife, and each jurisdiction funded its respective obligations to New Jersey minus any agreed upon costs for work done directly by the individual states. The Commission budgeted \$30,000 for this work from 2000-01 through the 2004-05 fiscal years and \$32,000 in the 2006-07 and 2007-08 fiscal years.

In recent years, the accuracy of the hydro-acoustic population estimates has come into question because of a number of untested assumptions in the methodology. Efforts were planned to evaluate the assumptions using underwater videography, but those efforts failed due to unfavorable climatic conditions and lack of funding. For example, the contractor has experienced substantial equipment damage and lost hydro-acoustic transducers due to flooding, and any future hydro-acoustic studies would require new, expensive equipment and possibly the selection of a new, less exposed, monitoring site. Faced with these concerns, the agencies have determined that the best way to continue monitoring adult American shad abundance in the non-tidal river is by contracting haul seining at the Lewis commercial fishing operation in Lambertville, NJ. The Lewis fishery is located directly across the Delaware River from New Hope, approximately 16 river miles upstream from the head-of-tide. This commercial fishery has been in place since at least 1890, providing a substantial historical catch record. Contracting the work will assure continued operation in a manner prescribed by the state fisheries agencies that is suitable for development of an adult shad abundance index. The Delaware Division of Fish and Wildlife will administer the contract, and Delaware and Pennsylvania will share the costs. Unfortunately, both New Jersey and New York have indicated that due to financial difficulties they will not be contributing to this work in 2008. Commission staff estimate that the Commission's share of the costs in 2008 will be only \$3,000.

Staff recommend that the Commission approve a grant to the Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, for five years with an evaluation of each year's study results prior to providing funding for the following year. The amount of the grant will be a maximum of \$10,000 per year for the haul seine monitoring effort and any related feasibility/verification work.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant to the Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, of up to \$10,000 annually for five years for the purposes described in the Commentary.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Czop to approve a grant to the Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, of up to \$10,000 annually for five years for the purposes described in the Commentary. Motion carried. (Commissioner Concilla asked that the minutes reflect that he did not vote in favor of this motion.)

N. Authorization for Funding the Susquehanna River Water Quality Study.

Commentary:

Juvenile bass mortality events in 2005 and 2007 have caused angler concerns about the fate of the Susquehanna River smallmouth bass fishery. The Commission previously tasked staff to evaluate existing datasets for the water quality of the Susquehanna River in order to determine potential risks to juvenile smallmouth bass. Staff convened an interagency workgroup comprised of members from the Pennsylvania Department of Environmental Protection (Southcentral, Northeast and Northcentral Regions and Central Office), the U.S. Geological Survey, the Susquehanna River Basin Commission and the U.S. Fish and Wildlife Service. The workgroup met several times over the past six months and compiled available data on water quality conditions of the mainstem, North and West Branches of the Susquehanna River as well as the Juniata River. Analysis of the data and peer discussion led to the development of a proposal titled "*Temperature, Nutrient, & Dissolved Oxygen Monitoring in the Susquehanna River.*" The proposal contains the following major objectives:

- To characterize long-term temperature and dissolved oxygen regimes in critical reaches of the Susquehanna River system.
- To evaluate juvenile bass microhabitats and determine whether stressful conditions exist in these areas that are different from river main stem conditions.
- To compare temperature and dissolved oxygen of the Susquehanna to the Delaware and Allegheny Rivers.
- To identify patterns of nutrient concentrations in the Susquehanna River system.

An itemized budget for the entire project totals \$376,000 and is included in the project proposal.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the Executive Director to grant up to \$200,000 from the Fish Fund and additional funding to be solicited from the Pennsylvania Department of Environmental Protection, Susquehanna River Basin Commission and other funding partners to the U.S. Geological Survey to conduct the study described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Worobec to authorize the Executive Director to grant up to \$200,000 from the Fish Fund and additional funding to be solicited from the Pennsylvania Department of Environmental Protection, Susquehanna River Basin Commission and other funding partners to the U.S. Geological Survey to conduct the study described in the Commentary. Motion carried.

Other New Business

None

Executive Session

At approximately 2:15 p.m., Commission President Sabatose called an Executive Session. The Commission held an Executive Session until approximately 3:05 p.m., at which time the public meeting resumed.

Time and Place of April 2008 Commission Meeting

The next meeting is scheduled for April 21-22, 2008 and will be held at the Commission's headquarters in Harrisburg.

Adjournment

A motion was made by Commissioner Ketterer and seconded by Commissioner Shetterly to adjourn the meeting at approximately 3:07 p.m. Motion carried.