

Table of Contents

Call to Order.....	39
Roll Call.....	39
Review and Approval of Minutes from the January 29, 2008 Meeting	39
Awards and Presentations	39
Executive Director's Report.....	40
Announcement of Executive Session	40
Reports of Commissioner Committees	40
Executive and Planning (Commissioner Sabatose) -.....	40
Administration and Legislation (Commissioner Worobec) -	41
Boating, Access and Marinas (Commissioner Concilla) -	41
Communications (Commissioner Lichvar) -	41
Fisheries (Commissioner Anderson) -	42
Habitat and Environmental (Commissioner Shetterly) -	42
Law Enforcement (Commissioner Bachman) -	42
Public Comment to Commissioners and Staff	43
EXECUTIVE AND PLANNING/.....	44
ADMINISTRATION AND LEGISLATION	44
A. Approval of Annual Plan of Work.....	44
B. Adjustments to Guidelines for Ralph W. Abele Conservation Heritage Award.	45
BOATING, ACCESS AND MARINAS	47
A. Boating Infrastructure Grant for the South Shore Riverfront Park in Pittsburgh.....	47
B. Opossum Lake Flowage Easement Acquisition, Cumberland County.....	48
C. Thrasher Property Rights Acquisition, Springfield Township, Erie County.....	50
COMMUNICATIONS.....	51
A. Educational Grant to Pennsylvania Trout, Inc. (PA Council of Trout Unlimited) for Expansion of Trout in the Classroom Program.	51
FISHERIES	53
PROPOSED RULEMAKING	53
A. Amendments to Section 63.8 (Longbows, Crossbows, Spears, and Gigs).....	53
DESIGNATIONS	55
B. Addition to Class A Wild Trout Waters List: Big Rift Creek, Tioga County.....	55
C. Amendments to List of Wild Trout Stream Sections.....	56
OTHER MATTERS.....	58
D. Increase the Grant Amount to the Pennsylvania Cooperative Fish and Wildlife Research Unit.....	58

E. Approval of a Grant for the U. S. Army Corps of Engineers Phase II Lehigh River Recreational
Enhancements Study Affecting F. E. Walter Dam and the Lehigh River..... 60

Other New Business 61

Time and Place of July 2008 Commission Meeting..... 61

Adjournment..... 61

Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 81st Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, April 21 and 22, 2008, at the Clarion Hotel, DuBois, PA, 15801.

Commission committees met on April 21 beginning at 10:00 a.m. and on April 22 beginning at 8:00 a.m. The public session for review of this agenda began at or about 1:00 p.m. on April 22.

Call to Order

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

Roll Call

Members Present

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

Members Not Present

Richard W. Czop

Review and Approval of Minutes from the January 29, 2008 Meeting

A motion was made by Commissioner Anderson and seconded by Commissioner Worobec to approve the January 29, 2008 minutes as written. Motion carried.

Awards and Presentations

The Greiner Award was presented to Laurie Shepler, Chief Counsel; William Crisp, Waterways Conservation Officer; Robert Mader, Waterways Conservation Officer; Mark Hartle, Chief, Aquatic Resources; and John Pavlock, District Attorney, McKean County. This award is a

memorial to Waterways Conservation Officer Gerald L. Greiner who was a credit to the “Thin Green Line.” He dedicated his life to the protection and enhancement of the Southwest Region’s water resources. Jerry worked closely with the Department of Environmental Resources, local conservation districts and sportsmen’s clubs. His tough stance on enforcement of pollution laws brought many violators into compliance. This award is traditionally presented to the waterways conservation officer who best exemplifies the ideals of “Resource First”- the protection, conservation and enhancement of the Commonwealth’s water resources in the performance of one’s daily duties. However, this year, the award was expanded to recognize several individuals who were instrumental in the Norfolk Southern settlement. The Commonwealth of Pennsylvania’s settlement with Norfolk Southern for natural resources damages occurred in November 2007 and resolved the company’s liability for a June 2006 derailment in McKean County. The derailment caused three railcars of a train operated by Norfolk Southern to spill liquid sodium hydroxide into wetlands and to enter Big Fill Run, Sinnemahoning-Portage Creek, and the Driftwood Branch of Sinnemahoning Creek. The release of liquid sodium hydroxide contaminated soils, sediments, surface water, groundwater, and wetlands, and killed or injured fish and other aquatic life and terrestrial plant and animal life. Under the terms of the settlement, Norfolk Southern paid \$7.35 million to resolve its liability. As part of the agreement, Norfolk Southern paid \$3,675,000 each to the Commission and the Pennsylvania Department of Environmental Protection.

Boating-at-large Commissioner Steven Ketterer of Harrisburg received recognition from the National Water Safety Congress for his involvement in saving a person who fell through the ice on the Susquehanna River in March 2007. Commissioner Ketterer was recognized for this heroic action at the International Boating and Water Safety Summit held in San Diego, California, on April 18, 2008.

Executive Director’s Report

In the interest of time, an Executive Director’s report was not given.

Announcement of Executive Session

Executive sessions were held on February 1, 2008 at 3:30 p.m. and February 27 at 12:30 p.m. to discuss personnel matters. An executive session was also held on April 21, at 8:00 a.m. to discuss real estate, litigation and personnel matters.

Reports of Commissioner Committees

Executive and Planning (Commissioner Sabatose) -

The Executive and Planning Committee met on Monday, April 21, at 10:00 a.m. in conjunction with the Administration and Legislation Committee. Dr. Austen led a discussion regarding the 2008 Annual Plan of Work, and the Committee took action to recommend its approval.

Administration and Legislation (Commissioner Worobec) -

The Administration and Legislation Committee met in conjunction with the Executive and Planning Committee on Monday, April 21.

J. Gary Moore provided a legislative update on House Bill 587, the Ingham Spring land transfer, Senate Bill 880 pertaining to license vouchers, the Interstate Wildlife Violator Compact, other legislative news and actions and an overview of the Ralph Abele Conservation Heritage Award Program. Commissioner Worobec led a discussion regarding Commissioner and Boating Advisory Board member term limits and establishing a timeline for considering fishing and boating regulations. Chief Counsel Laurie Shepler assisted in this effort. An update on Pleasant Gap office complex options was also provided. Dr. Austen provided a review of the Legislative Budget and Finance Committee audit report and an update on Commission signage and letterhead reflecting the new mission statement. Dick Mulfinger provided a status report on the real estate database and the Big Spring SFH decommissioning project.

During the Administration and Legislation Committee report, a motion was made by Commissioner Worobec and seconded by Commissioner Lichvar that the Commission oppose House Bill 587 that amends section 301 of the Fish and Boat Code to remove law enforcement powers from Commissioners and that Commission staff prepare a letter for President Sabatose's signature to that effect. Motion carried.

During the Committee report, a second motion was made by Commissioner Worobec and seconded by Commissioner Anderson that the Commission support House Bill 2364 which adopts the Interstate Wildlife Violator Compact Act. Motion carried.

During the Committee report, a third motion was made by Commissioner Worobec and seconded by Commissioner Bachman that the Commission seek an amendment to section 301 of the Fish and Boat Code to allow Commissioners to serve until their successors are appointed and qualified and that Commission staff draft a letter for President Sabatose's signature to that effect. Motion carried.

Boating, Access and Marinas (Commissioner Concilla) -

The Boating, Access and Marinas Committee met on Tuesday, April 22, at 9:15 a.m. Agenda items were discussed, and a presentation on the South Riverfront Park project was provided by the Urban Redevelopment Authority of Pittsburgh. Dan Martin led a discussion regarding mandatory boating education options. An update on the Erie Access program was also provided. Dick Mulfinger provided an update on the Bureau of Engineering and Property Services projects.

Communications (Commissioner Lichvar) -

The Communications Committee met on Tuesday, April 22, at 8:00 a.m. An agenda item concerning an educational grant to Pennsylvania Trout, Inc. was discussed. An update on division personnel and on the State Record Fish program and Angler Award program were provided. A presentation was provided on carp and catfish opportunities and angler awareness. During the Communications Committee report, action was taken with respect to a grant to Pennsylvania Trout, Inc. See agenda item A under "Communications."

Fisheries (Commissioner Anderson) -

The Fisheries Committee met on Monday, April 21, at 1:30 p.m. Dr. Philip Sibrell, U.S. Geological Survey, provided a presentation on treating hatchery effluent to remove phosphorous. Agenda items were discussed. Regarding an increase in the grant amount to the Pennsylvania Cooperative Fish and Wildlife Research Unit, the Committee took action to recommend that the Commission approve increasing the amount to \$50,000 per year for 2008/09 fiscal year and to \$75,000 for the 2009/10 fiscal year.

Staff provided presentations on the 2007 Trout Residency Study and consideration of an early regional opening day in southwestern Pennsylvania. Dr. Sue Thompson, Director, Three Rivers Ecological Research Center, provided a presentation on the Three Year Work Plan for the Center. Leroy Young provided an update on special regulation signage for the West Branch of the Susquehanna River and Pine Creek. The public provided comment on Little Juniata River catch and release all tackle issues. Commissioner Worobec led a discussion on defining "Resource First."

During the Fisheries Committee report, a motion was made by Commissioner Anderson and seconded by Commissioner Lichvar that the Commission adopt the "Resource First" Policy (Exhibit A). Motion carried.

Habitat and Environmental (Commissioner Shetterly) -

The Habitat and Environmental Committee met on Tuesday, April 22, at 9:15 a.m. Scott Carney provided updates on the Sinnemahoning Creek Watershed Restoration Grant program and the North Central Pennsylvania Stream Improvement program. Steve Kepler provided an update on the Commission's mining program, and Dave Spotts provided a presentation on culvert design for fish passage in Pennsylvania. Deb Nardone, Pennsylvania Trout Unlimited, provided a presentation on the Buffers 100 Initiative.

During the Habitat and Environmental Committee report, a motion was made by Commissioner Shetterly and seconded by Commissioner Worobec to direct Executive Director Austen to send a letter to the Pennsylvania Department of Conservation and Natural Resources (DCNR) recommending that DCNR not allow the removal of material from state property to build roads, that DCNR require silt fencing and that DCNR not allow oil and gas drilling to occur within a certain distance of streams. Motion carried.

Law Enforcement (Commissioner Bachman) -

The Law Enforcement Committee met on Tuesday, April 22, at 8:00 a.m. Tom Kamerzel provided a report on his findings regarding all terrain vehicles, a workforce status report and guidance for Commissioners regarding law enforcement activities.

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

individual for two years with a reduction to one year upon successful completion of a safe boating course.

Public Comment to Commissioners and Staff

Ken Undercoffer, Pennsylvania Council of Trout Unlimited, expressed thanks for the increase in the grant for the Trout in the Classroom program. He also provided comment and support of the Commission's adoption of the Resource First Policy.

Bill Simbeck, Bowfish Association of America, provided comment regarding the Commission's consideration of amendments to 58 Pa. Code §63.8 (relating to longbows, crossbows, spears, and gigs) to take carp, suckers and catfish in Commonwealth waters.

**EXECUTIVE AND PLANNING/
ADMINISTRATION AND LEGISLATION**

A. Approval of Annual Plan of Work.

Commentary:

According to the Commission's Policy Statement defining the Board's relationship with its Executive Director, the Executive Director will present an annual plan of work each year to the Board. The policy statement provides that this plan will be delivered in written form by whatever means is most convenient by December 15 of each year. The plan will include the following: (1) a listing and description of proposed activities for the upcoming year; (2) the expected results to be achieved during the upcoming year; (3) anticipated longer-term results; (4) the expected timing of the results; and (5) fiscal and personnel implications of each activity. The Commission will typically vote on the Annual Plan of Work at its January meeting. The Annual Plan of Work for 2008 is attached as Exhibit B.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission approve the Annual Plan of Work for 2008 set forth at Exhibit B.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Worobec to approve the Annual Plan of Work for 2008 set forth at Exhibit B. Motion carried.

B. Adjustments to Guidelines for Ralph W. Abele Conservation Heritage Award.

Commentary:

At the July 2006 meeting, the Commission updated its guidelines for the Ralph W. Abele Conservation Heritage Award. This award was established by the Commission in 1990 as the highest recognition that the Commission provides to persons who distinguished themselves in the cause of conservation. The Commission established the award to recognize citizens of Pennsylvania who have made outstanding contributions to the protection, conservation and enhancement of aquatic resources of the Commonwealth. The award further serves as a memorial to Ralph Abele for his steadfast and courageous work in protecting and conserving our natural resources.

As a result of the most recent Commission action in 2006, timeframes were established for putting out calls for nominations, accepting nominations, selecting recipients and presenting the award each year. The established timeframes were as follows:

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

In addition, the Commission established guidelines for participation on the selection committee. The selection committee of nine consists of the Commission President and Vice President, the Executive Director, the Director of the Bureau of Fisheries or designee, the Director of the Bureau of Boating and Education or designee, the Director of the Bureau of Law Enforcement or designee and 3 members of the Board of the Ralph W. Abele Conservation Scholarship Fund, Inc.

In 2006, the Commission's selection committee followed the established time frames for putting out a call for nominations, closing nominations and selecting recipients and presented one of the recipients with her award at the January 2007 meeting. The weather in January, however, is often unpredictable, and a snow event threatened the award presentation. Therefore, to avoid the possibility of poor weather and to maximize participation by the award recipients and their guests, Commission staff determined that adjustments to the established timeframes are required. Staff propose the following new schedule:

Call for nominations – October 1
Close of nominations – December 31
Selection by committee – January Commission meeting
Award presentation – Spring Commission meeting

Staff also propose that because there is no longer a Bureau of Boating and Education that the Director for the Bureau of Policy, Planning and Communications serve on the selection committee.

Briefer:

J. Gary Moore, Legislative Liaison

Recommendation:

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

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Bachman to approve the adjustments to the guidelines for the Abele Award described in the Commentary. Motion carried.

Following the Commission's action, J. Gary Moore announced that the Ralph W. Abele Conservation Heritage Award Selection Committee met on April 16, 2008, and Barbara Yeaman of Milanville, Wayne County, was named the recipient of the award for 2007. This honor is the highest recognition that the Commission confers on persons who distinguish themselves in the cause of conservation.

Yeaman earned recognition as the 2007 Abele Award winner through her work on the upper Delaware River. She believes in the preservation of such special lands, wildlife habitats and prime scenic properties. Her major accomplishments include founding the Delaware Highlands Conservancy, conserving thousands of acres of Pennsylvania land through conservation easements and securing millions of dollars in funds to protect property for species of special concern and their habitats.

BOATING, ACCESS AND MARINAS

A. Boating Infrastructure Grant for the South Shore Riverfront Park in Pittsburgh.

Commentary:

The Boating Infrastructure Grant Program (BIG) is administered by the U.S. Fish and Wildlife Service (USFWS) and provides grant funds to construct, renovate and maintain tie-up facilities with features for transient boaters in vessels 26 feet or more in length. The Commission has been designated as the state representative for the BIG program in Pennsylvania, and in 2001, the Commission authorized staff to award grants under this program. The BIG Program includes two funding tiers, Tier One (non-competitive) and Tier Two (nationally competitive). Under Tier One, each state may receive funding for eligible projects up to \$100,000 annually. The Commission annually participates in the Tier One program. Tier Two proposals are reviewed, evaluated and ranked by a national panel with the final decision for funding made by the Director of the USFWS.

The Commission recently was approved for \$1.35 million in federal funding through the BIG Tier Two program. The Commission worked with the Urban Redevelopment Authority of Pittsburgh (URA) to develop and submit the application for federal funding. The URA will be responsible for the construction of the project and for providing the funds necessary to match the federal grant. These BIG funds are earmarked for the construction of a 525-foot tie-up facility for transient boaters and day dockage users for up to seventeen 26-foot or larger non-trailerable boats. The main purpose of the park is to provide transient recreational boaters with access to the South Shore Riverfront Park and the SouthSide Works, a major mixed-use development, along with multiple sites of scenic, cultural and historic significance in Pittsburgh. The project is part of a larger \$413 million redevelopment effort by the URA and is located on a 2.89-mile stretch of the Monongahela River at the South Shore Park in Pittsburgh.

This is the first time that the Commission successfully applied for, and received, federal funding under the Tier Two program. The Commission's role is to be the "pass through" agency for the USFWS grant. After we receive the grant funding from the USFWS, we will provide the funding in the form of a grant to URA.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$1.35 million to the Urban Redevelopment Authority of Pittsburgh for the construction of the facility 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 \$1.35 million to the Urban Redevelopment Authority of Pittsburgh for the construction of the facility described in the Commentary. Motion carried.

B. Opossum Lake Flowage Easement Acquisition, Cumberland County.

Commentary:

The Commission owns a 275-acre tract of land in Lower Frankford Township, Cumberland County, that contains Opossum Lake. This acreage includes \pm 3 acres of flowage easements. A flowage easement is generally the right to flow water on, flood and inundate an area with water without liability for damages resulting from such action. The lake pool was initially \pm 59 acres in size but has been drawn down to about half that size due to concerns about the operational integrity of the dam (spillway). Staff are working to rehabilitate the dam with the cooperation of Cumberland County, Lower Frankford Township and a nonprofit group known as the "Friends of the Opossum Lake Conservancy."

In the course of conducting an engineering analysis for the rehabilitation of the dam/spillway, staff determined that the Commission only acquired property and/or flowage easements around the lake to a vertical elevation equal to the elevation of the top of the original dam, which does not meet current needs. This was the standard acquisition and design practice of the day.

The Department of Environmental Protection's (DEP) current method for dam and storm event analysis indicates that, even after the proposed dam rehabilitation project is completed, the maximum inundation area will increase vertically by approximately three feet over the Commission's estimate from its property rights acquired in 1959 and 1960. Thus, using current DEP analysis method, there will be several small areas that may be inundated as a result of the Commission's proposed dam rehabilitation project for which the Commission has not acquired the appropriate rights. It is anticipated that there will be less than 10 impacted properties with the subject areas generally being less than $\frac{1}{4}$ acre. Courthouse research and field survey work is needed before a final determination of claims can be made. The rights to be acquired have a minimal value. However, it may be necessary to pay a consideration for these rights. If a consideration is required, the consideration shall be the estimated fair market value of the rights.

It should be noted that the majority of the Commission's Opossum Lake property has been leased to Lower Frankford Township to provide additional public benefit and to assist the Commission with the operation and maintenance of the site and assist with the dam replacement project. The dam area is not included in the lease.

Staff will adhere to the Commission's standard practices for acquiring property, including meeting due diligence and funding requirements.

Briefer:

Richard M. Mulfinger, Director, Bureau of Engineering and Property Services

Recommendation:

Staff recommend that the Commission authorize the acquisition of flowage easements around Opossum Lake extending from the limit of the Commission's current property interests to an elevation being approximately three feet above the elevation of the top of the original dam at Opossum Lake.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Anderson to authorize the acquisition of flowage easements around Opossum Lake extending from the limit of the Commission's current property interests to an elevation being approximately three feet above the elevation of the top of the original dam at Opossum Lake. Motion carried.

C. Thrasher Property Rights Acquisition, Springfield Township, Erie County.

Commentary:

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

The Commission has been offered an easement on over 650 linear feet on both sides of Crooked Creek as it flows across a parcel of property in Springfield Township, Erie County, for \$16,250. 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 parcels is attached as Exhibit C.

The easement area is located south of Route 5 between Happy Valley Road and Springfield Road. The easement is located between the Blake Holliday property and the Holliday Crooked Creek farm property. The Commission is pursuing easements on these properties and together these properties will provide continuous public fishing access to almost one mile of Crooked Creek.

Crooked Creek provides steelhead fishing opportunities in this area. Crooked Creek also receives several trout stockings upstream of this area, and the acquisition of the subject property 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, Director, Bureau of Boating and Access

Recommendation:

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

Action:

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

COMMUNICATIONS

A. Educational Grant to Pennsylvania Trout, Inc. (PA Council of Trout Unlimited) for Expansion of Trout in the Classroom Program.

Commentary:

At its January 2006 meeting, the Commission approved the Sportfishing and Aquatic Resource Education Grant Program and authorized the Executive Director to approve individual grants of \$5,000 or less per grantee per year to support grassroots education projects. For grants in excess of \$5,000, staff will seek separate Commission approval.

To date, 32 groups have received more than \$117,000 to assist them in implementing educational programs. The programs funded vary. Some examples include establishing school and college fishing clubs, urban angling and aquatic resource education programming, paying for field trip expenses and equipping groups serving those with special needs.

Pennsylvania Trout, Inc. (PATU) received a \$5,000 grant in 2006 and again in 2007 to support the expansion of the national Trout in the Classroom program (TIC) in Pennsylvania. TIC provides students with the opportunity to raise trout from eggs (or fry) to fingerlings and then release their fish in approved trout waters. Teachers use this experience to teach students about trout biology, ecology and water quality and fish management.

Commission staff and PATU have been working over the last several years to grow TIC in Pennsylvania. The Commission has been providing fish stock, development of curriculum and technical resources and support materials. PATU and local TU chapters have been providing grassroots level support of TIC classrooms through matching funds for equipment purchase, in-class and field trip assistance and support as well as providing some classrooms with an opportunity to learn fishing skills and fly tying.

Since 2006, PATU has provided 19 mini-grants to schools for the purchase of fish tanks and other equipment. Cost for such equipment is approximately \$1,200 per site.

PATU has indicated that additional funds from the Commission over the next three years will enable them to further expand TIC in Pennsylvania. PATU proposes to use this funding to establish new sites over the next three years, as well as supporting field trips and equipment maintenance and replacement. Because this grant request exceeds \$5,000 per year, Commission action is necessary.

Briefer:

Carl Richardson, Manager, Aquatic Resource Education and Outreach Section

Recommendation:

Staff recommend that the Commission approve a grant to Pennsylvania Trout, Inc. in the amount of \$10,000 per fiscal year for the next three fiscal years for a total of \$30,000, beginning on July 1, 2008 and ending June 30, 2011, for the purposes described in the Commentary.

Action:

A motion was made by Commissioner Lichvar and seconded by Commissioner Shetterly to approve a grant to Pennsylvania Trout, Inc. in the amount of \$10,000 per fiscal year for the next three fiscal years for a total of \$30,000, beginning on July 1, 2008 and ending June 30, 2011, for the purposes described in the Commentary. Motion carried.

FISHERIES
PROPOSED RULEMAKING

A. 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. A number of anglers recently have expressed to staff a desire to be permitted to harvest catfish with these gear in all Commonwealth waters. Upon consideration of the request, staff have determined that there is 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. This method of angling is not anticipated to result in any significant population level impacts to catfish, as the angler use levels are likely to be relatively low throughout the Commonwealth.

Currently, under §63.8(b)(1) the harvest of herring is permitted in the Delaware River. Considering the current declines in river herring populations along the entire Atlantic coast, staff further recommend that the harvest of these species by longbows, crossbows, spears, and gigs no longer be permitted. Finally, §63.8(b)(2) restricts the use of use long bows and arrows, including compound bows, crossbows, spears or gigs to take fish within 275 yards of an eel weir. This is an archaic regulation that staff recommend be removed at this time.

Staff propose 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.**

(2) **It is unlawful to use long bows and arrow, including compound bows, crossbows, spears, or gigs to take fish within 275 yards of an eel weir.**

(3) **Except as provided in paragraph (1), it is unlawful to take any fish on the Delaware River by means of long bows and arrow, including compound bows, crossbows, spears and gigs.**

(c) * * *

[(d)] (c) * * *

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 Concilla and seconded by Commissioner Anderson to 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*. Motion carried. (Commissioner Bachman abstained.)

DESIGNATIONS

B. Addition to Class A Wild Trout Waters List: Big Rift Creek, Tioga County.

Commentary:

Pursuant to 58 Pa. Code §57.8a (relating to Class A wild trout streams), it is the Commission's policy to recognize self-sustaining Class A wild trout populations as a renewable natural resource meriting special consideration in development of fisheries management plans and water quality/habitat protection. Class A wild trout populations represent the best of Pennsylvania's naturally reproducing trout populations. Criteria developed for Class A Wild Trout populations are species specific. Wild Trout Abundance Class Criteria include provisions for wild brook trout, wild brown trout, mixed wild brook and brown trout, and wild rainbow trout populations. All must have at least 0.1 kg/ha (0.089 lbs/acre) of trout of the particular species less than 15 cm (5.9 inches) in total length. Biomass minimums for wild brown trout, wild brook trout and mixed wild brook/brown trout populations, where neither species comprises 75 percent or more of the biomass, are 40 kg/ha (35.6 lbs/acre), 30 kg/ha (26.8 lbs/acre), and 40 kg/ha (35.6 lbs/acre), respectively.

Commission staff documented the following stream to have a Class A wild brook trout population in a 2007 survey:

County	Stream	Limits	Brook Trout (kg/ha)	Length (miles)
Tioga	Big Rift Creek	Headwaters to Mouth	35.15	2.15

Besides meeting the total biomass criterion, this stream also met the criterion for biomass less than 15 cm in length with an estimate of 6.3 kg/ha.

A notice of proposed change to the list of Class A wild trout waters was published at 38 Pa. B. 1330 (March 15, 2008) (Exhibit D). The Commission received two public comments supporting the addition. 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 approve the addition of Big Rift Creek, Tioga County, to the list of Class A Wild Trout Waters as set forth in the notice. If approved, the designation will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Anderson to approve the addition of Big Rift Creek, Tioga County, to the list of Class A Wild Trout Waters as set forth in the notice. The designation will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

C. Amendments to List of Wild Trout Stream Sections.

Commentary:

The Department of Environmental Protection's regulations at 25 Pa. Code §105.1 define the term "wild trout stream" as "a stream classified as supporting naturally reproducing trout populations by the Fish Commission." The definition goes on to provide that the list of "wild trout streams" is available from the Commission's Fisheries Management Division. This term has regulatory significance because wetlands that are located in or along the floodplain of the reach of a wild trout stream and the floodplain of streams tributary thereto are considered "exceptional value" and thus are entitled to certain protections.

The Commission adopted a statement of policy at 58 Pa. Code §57.11 (relating to listing of wild trout streams) that sets forth the basis for classification of streams supporting natural reproduction of trout. Under 58 Pa. Code §57.11, it is the policy of the Commission to accurately identify and classify stream sections supporting naturally reproducing populations of trout as wild trout streams. The listing of a stream section as a wild trout stream is a biological designation that does not determine how it is managed. The Commission uses many factors in determining the appropriate management of streams. The wild trout list is not the same as the listing of Class A Wild Trout Waters or Wilderness Trout Streams. The statement of policy provides that the Commission's Fisheries Management Division will maintain the list of wild trout streams and that the Executive Director, with the approval of the Commission, will from time to time publish the list of wild trout streams in the *Pennsylvania Bulletin* and solicit public comments.

The current version of the wild trout stream list was last revised in April 2007. Staff are now recommending the addition of 16 new waters to the list and adjustments in the limits of three waters. These changes are primarily the result of new biological surveys conducted on the waters.

A notice describing the proposed changes to the list of wild trout streams was published at 38 Pa. B. 1330 (March 15, 2008) (Exhibit D). Although the notice includes the proposed removal of Mahoning Creek, Montour County (from the headwaters downstream to SR 3001 Bridge), from the wild trout streams list, further staff review has determined that it is not appropriate to remove this stream from the list.

The Commission received a total of eight public comments supporting the addition of Painter Run in Tioga County to the wild trout streams list. The Commission also received one comment that generally supported the additions to the list and opposed the removal of Mahoning Creek. 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 approve the changes to the list of wild trout stream sections as set forth in the notice with the exception of the removal of Mahoning Creek, Montour County. If approved, these changes will go into effect immediately upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Anderson to approve the changes to the list of wild trout stream sections as set forth in the notice with the exception of the removal of Mahoning Creek, Montour County. These changes will go into effect immediately upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

OTHER MATTERS

D. Increase the Grant Amount to the Pennsylvania Cooperative Fish and Wildlife Research Unit.

Commentary:

Provisions for Cooperative Fish and Wildlife Research Units were established by Public Law 86-686 of the 86th United States Congress in 1960 and amended by the Fish and Wildlife Improvement Act of 1978. An agreement in 1964 among the US Fish and Wildlife Service, Penn State University, the Wildlife Management Institute and the Pennsylvania Fish Commission created the Pennsylvania Cooperative Fishery Research Unit, and a 1968 agreement created the Pennsylvania Cooperative Wildlife Research Unit. Subsequently, in 1982, these separate agreements were merged into the Pennsylvania Cooperative Fish and Wildlife Research Unit (Unit).

The Unit provides coordinated, cooperative research and training programs for fish and wildlife resources and resource management professionals. Many of the PFBC professional fisheries staff have been educated at Penn State; many Unit students accept temporary positions with the PFBC providing skilled help with fisheries projects and gaining important work experience. Through the base funding provided to the Unit by both the PFBC and the Pennsylvania Game Commission (PGC) and additional projects funded through work orders, the Unit provides valuable research addressing fisheries and wildlife issues. Some recent examples of assistance provided by the Unit to the PFBC include studying the potential sources of PCB's on both PFBC hatchery fish and wild fish, creel survey design and data analysis on statewide stocked trout and wild trout fisheries, creel survey data analysis on the Lehigh River, stocked walleye survival studies in lakes, coordination of an expert mussel panel to evaluate impacts of dredging on the Allegheny River, and benthic fish studies on the Ohio and Allegheny Rivers.

The base funding provided by the PFBC and the PGC support the Unit's research programs through such things as the provision of support funds for graduate students, travel costs, scientific journal publication costs, office expenses, equipment maintenance, the provision of seed money for new research projects and support of long-term research projects. The current estimated cost for this support is \$75,000 per agency. The Unit agreement was last updated in 2003, but funding provided by both the PFBC and the Pennsylvania Game Commission has remained stable since 1996 at \$40,000 and \$50,000, respectively. The Unit has requested increased support of \$35,000 from the PFBC and \$25,000 from the PGC. The PGC plans to increase its support to \$75,000 beginning in the 2008-09 fiscal year. PFBC staff would like to eventually increase the PFBC's support to \$75,000 as well, particularly in light of an anticipated need to seek additional support in the future from the Unit to address various identified fisheries research needs. Due to current budgetary constraints, however, staff recommend additional support of \$10,000 for a total grant of \$50,000 beginning in the 2008-09 fiscal year, with the understanding that requests from the staff to the Commission for authorization of additional support will be likely in future years.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve increasing the grant to the Pennsylvania Fish and Wildlife Cooperative Research Unit to \$50,000 per year as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Bachman that the Commission approve, consistent with the Fisheries Committee recommendation, increasing the grant to the Pennsylvania Fish and Wildlife Cooperative Research Unit to \$50,000 for the 2008/2009 fiscal year and to \$75, 000 for the 2009/10 fiscal year and thereafter, as more particularly described in the Commentary. Motion carried.

E. Approval of a Grant for the U. S. Army Corps of Engineers Phase II Lehigh River Recreational Enhancements Study Affecting F. E. Walter Dam and the Lehigh River.

Commentary:

Since the 1990s, the U. S. Army Corps of Engineers, Philadelphia District (Corps), the Pennsylvania Fish and Boat Commission and the Department of Conservation and Natural Resources (DCNR) have been investigating whether changes in operational pool levels at F. E. Walter Dam would provide fisheries habitat improvements and improved recreational opportunities. Since 2005, temporary storage of water in the spring and summer has been used to enhance aquatic habitat in F. E. Walter Reservoir and has provided the means to augment flows downstream in the Lehigh River. Cooler water from the reservoir is released to enhance coldwater fisheries in the Lehigh River, and increased whitewater boating opportunities have been generated by periodic whitewater releases.

A Phase I study authorized by section 22 of the Water Resources and Development Act of 1974 was approved on August 4, 2006 and undertaken by the Corps. This study included collection of water quality data for use in water quality modeling in the dam and Lehigh River. The Phase I Study results have not yet been issued as a final report, but results are being prepared in anticipation of Phase II. The cost of the Phase I study was \$150,000. Non-Federal matching funds for this study were provided by DCNR.

Phase II of the study will use a two dimensional model to simulate hydrology and water quality under various operational scenarios at F. E. Walter and Beltzville Dams. Forty-five miles of the Lehigh River from F. E. Walter Dam to Northampton, PA will be examined to determine flow, temperature, dissolved oxygen, hydrogen sulfide, iron, manganese and other parameters under the different operational scenarios.

Federal funds in the amount of \$172,000 have been appropriated for the Phase II study. The study will cost \$344,000 and cannot begin until a commitment of a 50% non-Federal cost-share is received. The Corps sent a letter soliciting a non-Federal cost share to the Commission on February 20, 2008. The Corps also solicited funds from DCNR. Commission staff recommend contributing \$86,000, which is one-half of the required non-Federal cost share, to the study. It is anticipated that DCNR also will provide \$86,000 towards this study.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$86,000 to the U.S. Army Corps of Engineers, Philadelphia District for the purpose of completing the Phase II Lehigh River Recreational Enhancements Study as more fully described in the Commentary.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Worobec to approve a grant in the amount of \$86,000 to the U.S. Army Corps of Engineers, Philadelphia District for the purpose of completing the Phase II Lehigh River Recreational Enhancements Study as more fully described in the Commentary. Motion carried.

Other New Business

None.

Time and Place of July 2008 Commission Meeting

The next meeting is scheduled for July 14-15, 2008 and will be held at the Commission's headquarters in Harrisburg.

Adjournment

A motion was made by Commissioner Anderson and seconded by Commissioner Worobec to adjourn the meeting at approximately 2:00 p.m. Motion carried.