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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 82nd Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, July 14 and 15, 2008, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on July 14 beginning at 8:00 a.m. and on July 15 beginning at 8:00 a.m. The public session for review of this agenda began at or about 1:03 p.m. on July 15.

**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**  
**Norman R. Gavlick**  
**Steven M. Ketterer**  
**Thomas C. Shetterly**  
**William R. Worobec**

**Members Not Present**

**Samuel M. Concilla**  
**Richard W. Czop**

**Review and Approval of Minutes from the April 22, 2008 Meeting**

A motion was made by Commissioner Anderson and seconded by Commissioner Shetterly to approve the April 22, 2008 minutes as written. Motion carried.

**Announcement of Executive Session**

Executive sessions were held on July 14 at approximately 8:00 a.m. and 5:05 p.m. to discuss personnel, litigation and real estate matters. No action was taken.

### **Awards and Presentations**

Waterways Conservation Officer Gary Slutter was presented with the National Association of State Boating Law Administrators 2007 Pennsylvania Fish and Boat Commission's Boating Law Enforcement Officer of the Year Award.

In 2007, Officer Slutter's accomplishments included working 69 days of on-water boat patrol, totaling 329 hours. Gary conducted over 1,200 boardings of boats and issued 352 warnings as well as 154 citations for boating law violations. In addition to his law enforcement accomplishments, Officer Slutter presented the Commission's PA Basic Boating Course on five different occasions in 2007 and provided boating safety information and canoeing training to the 175 children that attended the 2007 Schuylkill County Youth Field Day. Officer Slutter also serves as a Field Training Officer and a CPR/First Aid instructor, providing training to Commission law enforcement officers in the southeast region and the agency's training school. Gary's commitment to boating law enforcement, boating education, safety and public service are a credit to the Commission, his fellow officers and the public that we serve. Gary has recently been promoted to the position of Southeast Assistant Regional Supervisor.

### **Election of Commission President and Vice-President**

Executive Director Austen presided over the elections. Dr. Austen called for nominations for the office of President, and Commissioner Anderson nominated Commissioner Leonard L. Lichvar as President. Commissioner Sabatose seconded the nomination. A motion was made by Commissioner Sabatose 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 President of the Commission for 2008-2009.

Commissioner Worobec nominated Commissioner Thomas C. Shetterly as Vice-President. Commissioner Anderson seconded the nomination. A motion was made by Commissioner Worobec and seconded by Commissioner Sabatose to close the nominations. The motion was carried, and nominations were closed. The Commission elected Commissioner Shetterly to serve as Vice-President of the Commission for 2008-2009.

### **Executive Director's Report**

Dr. Austen's report highlighted the "PFBC Activity Report – Highlights of First and Second Quarters 2008" (Exhibit A) that was provided to the Commissioners. The report includes an update of major activities and accomplishments over the last six months.

Dr. Austen spoke about the implementation of the Point-of-Sale Licensing System and what it has done to advance marketing efforts and license sales. The Commission continues to see access area enhancements across the Commonwealth along with the completion of work at the Fort Hunter Access Area. A joint press conference with the National Park Service, Susquehanna Greenway Partnership, Susquehanna River Trail Association, Pennsylvania Department of Conservation and Natural Resources and the Commission was held on the evening of Monday, July 14, to recognize a portion of the Susquehanna River Water Trail as joining the prestigious ranks of the National Recreation Trails network.

Dr. Austen spoke on recent funding successes that include the 2005 fishing license fee increase, the 2006 Growing Greener II contribution of \$27.5 million to upgrade hatcheries, the recent pass through fee for the point of sale system, and the most recent passage by the legislature providing monies for infrastructure. There is also proposed legislation to provide monies for the Commission's endangered and nongame species protection efforts. Bog turtle protection efforts are occurring amongst several agencies, and the Commission is playing a role in that effort.

The Commission faces huge challenges, though, in regard to energy conservation combined with water protection and allocation. A task force has been formed to work with the Commission's partners to address invasive species, Didymo, and Viral Hemorrhagic Septicemia (VHS) issues. Resource First, the Strategic Plan, and Trout Plan efforts will be important for the future as the Commission moves forward with leading the charge for protection of the resource.

### **Reports of Commissioner Committees**

#### **Executive and Planning (Commissioner Sabatose) -**

The Executive and Planning Committee met on Monday, July 14, at 3:50 p.m. Dr. Austen led a discussion regarding the 2008 Annual Plan of Work, and Tim Schaeffer and Laurel Anders provided an update on the Commission's strategic planning efforts.

#### **Administration and Legislation (Commissioner Worobec) -**

The Administration and Legislation Committee met on Tuesday, July 15, at 8:06 a.m. Tim Schaeffer provided a legislative update, and Brian Barner provided a review of the fiscal year 07/08 budget. A discussion on an agenda item pertaining to proposed regulatory amendments prompted by the new Right-to-Know Law was led by Bernie Matscavage.

During the Administration and Legislation Committee report, action was taken with respect to the agenda item pertaining to the release of documents and records. See agenda item A under "Administration."

#### **Boating, Access and Marinas (Commissioner Ketterer) -**

The Boating, Access and Marinas Committee met on Tuesday, July 15, at 10:20 a.m. Agenda items were discussed, and a presentation on the Walnut Creek Marina renovation and expansion efforts was provided by Urban Engineers. Dan Martin provided a boating accident update, and Dick Mulfinger provided a status report on the Bureau of Engineering and Property Services projects. Scott Bollinger provided an update on the Lake Erie Access Improvement Program.

#### **Communications (Commissioner Lichvar) -**

The Communications Committee met on Monday, July 14, at 4:35 p.m. An update on division personnel, lapsed angler marketing, and the State Record Fish Program was provided.

#### **Fisheries (Commissioner Anderson) -**

The Fisheries Committee met on Monday, July 14, at 9:20 a.m. Agenda items were discussed, and several presentations were provided. Mark Duda, Executive Director, Responsive Management, provided an overview of the *Pennsylvania Trout Fishing Survey*. An update was provided by Leroy Young on field sampling protocols and the Susquehanna Symposium that is scheduled for January 24, 2009 in Harrisburg. John Arway will be serving as the lead in this

effort. Andy Shiels provided an update on the Holtwood Relicensing Project and Viral Hemorrhagic Septicemia (VHS) concerns. Brian Wisner provided an update on the Reynoldsdale State Fish Hatchery plans for production during construction, and Mark Hartle provided presentations on the drawdown of the East Branch Clarion River Reservoir and on instream flow issues on the Upper Delaware and Lehigh Rivers.

**Habitat and Environmental (Commissioner Shetterly) -**

The Habitat and Environmental Committee met on Tuesday, July 15, at 8:45 a.m. An agenda item concerning Landowner Incentive Program grants was discussed. An update was provided regarding the South Branch of the Kinzua Creek Acid Remediation Project, and the Committee was briefed regarding Marcellus shale exploration. During the committee's discussion of Marcellus shale exploration, Commissioner Worobec noted that he was abstaining from the discussion and that he intends to abstain from voting on any matters related to this issue due to a conflict of interest.

During the Habitat Committee report, action was taken with respect to the agenda item pertaining to Landowner Incentive Program grants. See agenda item Q under "Fisheries."

**Law Enforcement (Commissioner Bachman) -**

The Law Enforcement Committee met on Monday, July 14, at 4:35 p.m. Tom Kamerzel provided a report on law enforcement activities and recruitment efforts for a new waterways conservation officer class that is scheduled to start in the summer of 2009.

The Committee also acted upon proposed revocations. The Committee revoked the fishing privileges of one individual for one year and two individuals for two years. The Committee also revoked a charter boat/fishing guide permit for one year.

**Public Comment to Commissioners and Staff**

Bill Simbeck, Bowfish Association of America, thanked the Commission for their work and provided comment regarding the Commission's consideration of amendments to 58 Pa. Code §63.8 (relating to longbows, crossbows, spears, and gigs).

## ADMINISTRATION PROPOSED RULEMAKING

### A. Release of Documents and Records.

#### Commentary:

Act 3 of 2008 has substantially changed the current Right-to-Know Law. Under the new law, which will apply to requests received after January 1, 2009, an agency may promulgate regulations and policies necessary for the agency to implement the statute. Section 51.9 of the Commission's regulations currently provides for the release of Commission documents and records. However, this section must be amended to be consistent with the provisions of the new Right-to-Know Law.

The changes to §51.9 that are necessitated by Act 3 of 2008 include allowing requests for records to come via electronic mail and changing the recipient of the request from the Executive Director to the Director of the Bureau of Administration, who will act as the Commission's Open Records Officer under the new Right-to-Know Law. Act 3 of 2008 provides that most fees charged under the Right-to-Know Law for reproduction of records will now be set for all Commonwealth agencies by the newly created Office of Open Records.

In addition to and separate from the Right-to-Know Law requests, the Commission receives requests for documents through subpoenas. Section 101.6(d) of the Commission's regulations provides for a \$0.50 per page reproduction fee for responses to subpoena requests for investigative reports by Commission officers. The Commission receives subpoenas for a number of documents other than investigative reports. Accordingly, staff propose to add new subsection (d) to §51.9 to cover reproduction costs for all subpoena requests and to remove that provision from §101.6.

Staff propose that §§ 51.9 and 101.6 be amended as follows:

§ 51.9. Release of documents and records.

(a) Consistent with **[the act of June 21, 1957 (P. L. 390, No. 212), as amended by the act of June 29, 2002 (P. L. 663, No. 100)] the act of February 14, 2008 (P.L. 6, No. 3), [and commonly]** known as **the** Right-to-Know Law **[(65 P. S. § § 66.1—66.9)]**, and **[section] sections 324 and 5503** of the code (relating to Commission records; **and accident reports**), the Commission will make public records contained in its files available to requesters for inspection and duplication during the Commission's regular business hours of 8 a.m. to 4 p.m., Monday through Friday (excluding Commonwealth holidays).

(b) Requests for release of public records contained in Commission files shall be made in writing and submitted to: **[Executive Director] Director, Bureau of Administration**, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. Written requests for release of public records may be sent by mail or by means of facsimile **or by e-mail**, or they may be delivered in person during the Commission's regular business hours. The Commission will not accept anonymous[, ] **or** oral **[or e-mail]** requests.

(c) **[If a photocopier or reproduction device under the control of the Commission is used to duplicate information released under this section, the] The requester will be charged [25¢ per letter or legal size page for the copies] the fee prescribed by the Office of Open Records for the reproduction and release of documents on paper or in electronic media. [If the Commission copies oversize pages (in excess of legal size), the charge will be \$1 per page or the actual cost of duplication, whichever is greater. If the Commission copies documents to electronic media (such as, computer diskette), the requester will be charged \$1 per document copied (if 1 megabyte or less in size) plus \$2 per diskette. For electronic documents of more than 1 megabyte in size, the requester will be charged \$3 per document plus \$10 or the cost of the media on which the document is stored, whichever is greater.]** The Commission will charge \$1 per page up to \$5 per document for certified copies. If the Commission mails copies of documents duplicated under this section to the requester, the requester will be charged the actual cost of postage or shipping. All charges shall be payable by check or money order made payable to "Pennsylvania Fish and Boat Commission." The Commission may require a requester to prepay fees if the fees are expected to exceed \$100. The Commission may waive copy charges and mailing charges for good cause or in the public interest. **[When the total copying and mailing charges for a request are \$10 or less, the Commission ordinarily will waive collection.]**

**(d) Subpoenas. Requests for records made by subpoena, in addition to collection of subpoena fees, are subject to a reproduction charge of \$0.50 per page for black and white copies and \$1.00 per page for color copies. Copies provided on electronic media shall be charge at \$1.00 per document, plus \$2.00 per diskette or compact disc. The Commission will charge \$1 per page up to \$5 per document for certified copies requested pursuant to a subpoena.**

§ 101.6. Investigation reports by Commission officers.

\* \* \*

**[(d) The Commission may, in addition to collection of subpoena fees, charge a reproduction fee of 50¢ per page.]**

Briefer:

Bernard M. Matscavage, Director, Bureau of Administration

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. If approved on final rulemaking, these changes will go into effect on January 1, 2009.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Ketterer to approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. If approved on final rulemaking, these changes will go into effect on January 1, 2009. Motion carried.

## **BOATING, ACCESS AND MARINAS**

### **A. Semelka Property Rights Acquisition, North East 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 Lake Erie permits and \$6 of the fee for each combination trout/salmon/Lake Erie permit 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.”

Staff have been working with North East Township to acquire a fishing, boating and hiking access easement on a parcel of land along 20-mile Creek. The Township has been offered the fishing and boating portion of the easement for \$43,000, and the hiking portion will be donated. The easement will provide access to approximately 4,350 linear feet of stream along the east side of 20-mile Creek, and the easement area is located north of Interstate 90 between Gay Road and Hirtzel Road. The easement area also is located downstream of a 19 acre parcel of land to be acquired by North East Township using funds from the Lake Erie restricted account. Together, these two properties will provide access to over 6,200 linear feet or almost 1.2 miles of stream on the east side of 20-mile Creek. A map depicting the subject parcels is attached as Exhibit B.

20-mile Creek contains a steelhead fishery and provides steelhead fishing opportunities in this area. 20-mile Creek also receives several trout stockings in the area, and the acquisition of the subject property rights will provide additional trout fishing opportunities.

The Township is requesting \$43,000 from the Commission to acquire the easement in favor of the Township and the Commission. The Commission’s contribution would be applied towards the purchase of fishing and boating rights only. If approved by the Commission, an agreement between the Township and the Commission would be developed that commits agency funds and that would include specific provisions for the protection of the Commission’s interests and those of the angling public.

In the alternative, the Township may assign its option agreement to the Commission, which would allow staff to perform the necessary due diligence. The Commission would then have the opportunity to exercise the option subject to meeting the due diligence and funding requirements. Under this scenario, the Commission would purchase the easement directly from the property owners, but the Commission and the Township would be co-holders of the easement.

#### Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the Executive Director to enter into a cooperative agreement with North East Township that commits \$43,000 for the acquisition of a fishing, boating and hiking access easement on the Semelka property located on 20-mile Creek in North East Township, Erie County, or in the alternative, authorize the direct acquisition of the property rights by the Commission, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Anderson to authorize the Executive Director to enter into a cooperative agreement with North East Township that commits \$43,000 for the acquisition of a fishing, boating and hiking access easement on the Semelka property located on 20-mile Creek in North East Township, Erie County, or in the alternative, to authorize the direct acquisition of the property rights by the Commission, as more fully described in the Commentary. Motion carried.

B. Erie County Historical Society 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 Lake Erie permits and \$6 of the fee for each combination trout/salmon/Lake Erie permit 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 Commission has been offered an easement on over 1,200 linear feet on one side of Elk Creek as it flows across a parcel of property owned by the Erie County Historical Society 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 C.

The easement area is located between Route 20 and Interstate 90 along Locust Road. The easement is located upstream of the Girard American Legion property that is currently open to public fishing.

Elk Creek provides significant steelhead fishing opportunities in the area. Elk Creek also received several trout stockings in 2008 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, 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 Ketterer and seconded by Commissioner Anderson to authorize the acquisition of the property rights along Elk Creek in Girard Township, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried.

**FISHERIES**  
**FINAL RULEMAKING**

A. 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, the Commission has proposed that a new section in Chapter 65 be adopted, thereby formally establishing this regulatory program.

Under the proposed regulation, 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
ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)	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	7 inches	5 (combined species)
	Extended Season: 12:01 a.m. day after Labor Day to midnight last day of February of the following year.	7 inches	3 (combined species)
	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)		NO HARVEST – Catch and immediate release only

The proposed regulation further provides that it is unlawful to fish in waters designated as Approved Trout Waters Open to Year-Round Fishing without a current trout/salmon permit.

A notice of proposed rulemaking was published at 38 Pa. B. 1588 (April 5, 2008) (Exhibit D). Prior to the formal public comment period, the Commission received two comments opposing the trout/salmon permit requirement because there are anglers who

will fish these waters for species other than trout. The Commission received a total of four comments during the formal comment period – 3 generally support the program and one opposes the permit requirement. After the public comment period, the Commission received one comment opposing the permit requirement. Copies of all public comments were provided to the Commissioners.

Upon further consideration of the trout/salmon permit requirement, staff recommend that on final adoption of the proposed regulation, the Commission consider the following modification. (Language to be removed has a line through it; language to be added is in capital letters).

**(c) It is unlawful to fish in waters RIVERS AND STREAMS designated as Approved Trout Waters Open to Year-Round Fishing without a current trout/salmon permit. A TROUT/SALMON PERMIT IS NOT REQUIRED TO FISH IN LAKES AND PONDS THAT HAVE BEEN DESIGNATED AS APPROVED TROUT WATERS OPEN TO YEAR-ROUND FISHING UNLESS THE PERSON TAKES, KILLS OR POSSESSES, WHILE IN THE ACT OF FISHING, A TROUT OR SALMON ON OR IN THESE WATERS.**

As recognized by several of the individuals who submitted public comments, there will be anglers who will fish these waters for species other than trout. Limiting the permit requirement to designated rivers and streams is consistent with current regulations (58 Pa. Code §63.20(e)) that provide that a person fishes for trout or salmon and therefore is required to have a permit when the person fishes in streams or rivers that are approved trout waters or their tributaries during the period 12:01 a.m. on March 1 until midnight May 31.

Under a separate agenda item, staff recommended that the Commission designate certain waters into this program.

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the new regulation as set forth in the notice of proposed rulemaking with the modification described in the Commentary. If adopted, the new regulation will go into effect on January 1, 2009.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Bachman to adopt the new regulation as set forth in the notice of proposed rulemaking with the modification described in the Commentary. The new regulation will go into effect on January 1, 2009. Motion carried.

B. 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 last 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, the Commission has proposed amending §69.12a 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.

A notice of proposed rulemaking was published at 38 Pa. B. 1589 (April 5, 2008) (Exhibit E). The Commission received one public comment supporting the proposal. 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 amendment as set forth in the notice of proposed rulemaking. If adopted, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

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

### 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. 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, the Commission further has proposed 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 the Commission has proposed removing at this time.

A notice of proposed rulemaking was published at 38 Pa. B. 3241 (June 14, 2008) (Exhibit F). Prior to the official public comment period, the Commission received nine public comments concerning this proposal. All nine support it. During the formal public comment period, the Commission received 12 public comments, of which 11 are in favor the proposal and one opposes allowing the use of weapons like bows and arrows for the taking of catfish except where they occur in nuisance numbers. 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 amendments as set forth in the notice of proposed rulemaking. If adopted, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*.

#### Action:

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

## D. 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, the Commission has proposed a statement of policy, which was published at 38 Pa. B. 1965 (April 26, 2008) (Exhibit G). Although the Commission was not required to publish a notice of a proposed statement of policy prior to adopting one, it did so because of the heightened public interest in this issue.

The Commission received two comments prior to the formal public comment period. One commenter supports the development of wind power, except where there is an impact to sensitive areas, exceptional value and high quality watersheds, Class A wild

trout stream and wilderness trout streams. One commenter suggests placing wind power generating stations on existing hydroelectric dams. After the formal public comment period, the Commission received one public comment supporting the proposed policy. 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 statement of policy as set forth in the notice. If adopted, this policy will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Worobec to adopt the statement of policy as set forth in the notice. This policy will go into effect immediately upon publication in the *Pennsylvania Bulletin*. Motion carried.

## PROPOSED RULEMAKING

E. Amendments to Section 75.2 (Threatened Species) to Remove Smallmouth Buffalo, Longhead Darter and Channel Darter and Amendments to Section 75.3 (Candidate Species) to Remove River Redhorse and Longnose Gar.

### Commentary:

(1) Smallmouth Buffalo (*Ictiobus bubalus*): The smallmouth buffalo is a large, deep-bodied sucker of the Ohio Basin that inhabits deeper sections of large rivers. It occurs in the Lake Michigan drainage and Mississippi River basin from Pennsylvania and Michigan to Montana and south to the Gulf of Mexico; Gulf Slope drainages from Alabama to Texas and New Mexico. It is secure or common across its range. In Pennsylvania, it inhabits the Ohio River, Monongahela River, and lock and dam section of the Allegheny River.

The smallmouth buffalo has recently become common in the Ohio River and can be collected with regularity in the Monongahela and lower Allegheny Rivers. R. Criswell (personal communication) collected in excess of 100 individuals during a single night of electrofishing on the Ohio River in 2003 and Ohio River Sanitation Commission (ORSANCO) personnel collected 49 during a survey in 1992. California University of Pennsylvania personnel collected 17 specimens on an electrofishing run on the Monongahela River in 2003, and 16 were collected by Commission staff in Pool 8 of the Allegheny River in July 2004. Argent and Kimmel (2003) considered the smallmouth buffalo common in several pools they sampled in the Allegheny and Ohio rivers.

Field surveys conducted throughout the historic Pennsylvania range since 1990 have documented a significant expansion in range and population size compared to pre-1990 information. The smallmouth buffalo is absent from the majority of twentieth century collection literature; however, recent electrofishing and gill netting surveys have documented a continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny rivers in Pennsylvania.

This species was run through the Commission's fish species documentation and objective listing/de-listing criteria and met Criteria A. 1. (Population reduction) that the population is increasing, Criteria B.3. (Distribution & Trends) that the distribution is greater than 150 miles of river/stream, and criteria B.4. (Summed Proportion of Watersheds Occupied), which compares all fish species documented occurrences and shows that this species is no longer rare in Pennsylvania.

The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed the Heritage rank of the smallmouth buffalo and recommended it be changed to "apparently secure" (S4) status - uncommon but not rare, and usually widespread in the state. Usually more than 100 occurrences (State Rank Definitions 1996). The PABS committee additionally recommended "delisting" status based on the aforementioned data and apparent commonality of the species in Pennsylvania. PABS definition of delisted

species—species which were once listed but now cited for delisting (Pennsylvania Biological Survey Suggested Status Definitions 2005).

Enough information is available to determine that it is secure in the state at present and to justify the removal of smallmouth buffalo from Pennsylvania's list of threatened fishes. Therefore, staff propose that smallmouth buffalo be removed from the Pennsylvania list of threatened species.

(2) Longhead Darter (*Percina macrocephala*): The longhead darter is a small fish species that prefers warm rivers and large streams and occupies a wide array of habitats, including riffles and runs over substrates of clean gravel, cobble, rubble, and boulders, especially at the interface areas between strong current and backwash. It also occurs in pools with both clean bottoms of gravel and rubble and those covered with silt and/or detritus.

The longhead darter occurs in the Ohio River drainage from New York to North Carolina, and west to Kentucky and Tennessee, but it is rare and highly localized in these locations. In Pennsylvania, it occurs throughout French Creek and the Allegheny River, including the lowermost sections of a number of tributaries in Crawford, Erie, Forest, McKean and Warren counties. It formerly occurred in the Monongahela River drainage (Youghiogheny River and Pigeon Creek).

The longhead darter has increased its range considerably during the past 25 years. Although Cooper (1985) did not report this taxon in Pennsylvania upriver of Allegheny Reservoir, it has been collected with frequency in the upper Allegheny River as far as Roulette, Potter County, and in Cole Creek and Potato Creek in McKean County (R. Criswell and J. Stauffer, unpublished data). It was also collected with regularity in the middle Allegheny River between the Allegheny Reservoir and the influence of the lock and dam system near East Brady, Clarion County, and in French Creek during the period 1990 – present (Criswell 1992, R. Criswell and J. Stauffer, unpublished data). The first recent records in the lower Allegheny River are those of single specimens from Armstrong County in 1986 and 1987. Argent and Kimmel (2003) reported the longhead darter from Allegheny County and it was collected from Pool 8 during a Pennsylvania Fish and Boat Commission survey in 2004. It was collected during benthic trawl trials in 2005 in Pools 6, 7, and 8 (R. Spear, unpublished data).

Field surveys conducted throughout the historic Pennsylvania range since 1985 have documented a significant expansion in range and population size compared to pre-1985 information. Although historically represented by limited, widely scattered collections consisting of only a single or few individual(s), recent research has documented continuous distribution throughout French Creek from the New York state line in Erie County to its mouth in Venango County, and the Allegheny River from Potter County downstream to Allegheny County, as well as in the lower sections of a number of larger tributaries to both. Observations of more than 100 individuals at a single station have been reported on at least 3 occasions, and this taxon is now locally common to abundant in both waterways.

This species was run through the Commission's fish species documentation and objective listing/de-listing criteria and met Criteria A. 1. (Population reduction) that the population is increasing. The Fishes Technical Committee of PABS reviewed the Heritage rank of the longhead darter and recommended it be changed to "apparently secure" (S4) status - uncommon but not rare, and usually widespread in the state. Usually more than 100 occurrences (State Rank Definitions 1996). The PABS committee additionally recommended "delisting" status based on the aforementioned data and apparent commonality of the species in Pennsylvania. PABS definition of delisted species—species which were once listed but now cited for delisting (Pennsylvania Biological Survey Suggested Status Definitions 2005).

Enough information is available to make the determination that it is secure in the state at present and to justify the removal of longhead darter from Pennsylvania's list of threatened fishes. Therefore, staff propose that longhead darter be removed from the Pennsylvania list of threatened species.

(3) Channel Darter (*Percina copelandi*): Channel darters are small fish that occur primarily in clear rivers and large streams over substrates of sand and gravel. They occupy a variety of habitats, including riffles, runs, and pools, lakeshores, and sluggish pools with lightly silted bottoms in the Allegheny River. During a study in the Allegheny River, Stauffer et al. (1996) found channel darters in significantly deeper habitats than other darter (*Etheostoma*) species.

The Channel Darter occurs in the Great Lakes/St. Lawrence and Ohio River drainages from southern Quebec and Vermont to Michigan, and south to Kentucky and Tennessee. A disjunct population exists in the Arkansas, Ouchita, and Red River drainages in the southern Midwest, and additional isolates occur in Mississippi/Louisiana and Alabama. In Pennsylvania, they are distributed throughout most of the Allegheny and Ohio rivers. Also a few records exist from the Lake Erie drainage.

The channel darter is locally common in sections of the Allegheny River where clean gravel substrate occurs. Recent benthic trawl surveys of the "Three Rivers" area (Argent, Stauffer et al., and R. Criswell unpublished data) indicate that the channel darter is the most common darter species within samples. Abundance in the wadeable Upper Allegheny River and tributaries appears to be low, and abundance is uncertain in the Lake Erie drainage.

The channel darter is absent from the majority of twentieth century collection literature; however, recent electrofishing and benthic trawl surveys have documented a mostly continuous distribution throughout the Ohio and Allegheny Rivers within Pennsylvania.

This species was run through the Commission's fish species documentation and objective listing/de-listing criteria and met Criteria B.3. (Distribution & Trends) that the distribution is greater than 150 miles of river/stream. The Fishes Technical Committee of PABS reviewed the Heritage rank of the smallmouth buffalo and recommended it be changed to "apparently secure" (S4) status - uncommon but not rare, and usually

widespread in the state. Usually more than 100 occurrences (State Rank Definitions 1996). The PABS committee additionally recommended “delisting” status based on the aforementioned data and apparent commonality of the species in Pennsylvania. PABS definition of delisted species—species which were once listed but now cited for delisting (Pennsylvania Biological Survey Suggested Status Definitions 2005).

Enough information is available to determine that it is secure in the state at present and to justify the removal of channel darter from Pennsylvania’s list of threatened fishes. Therefore, staff propose that channel darter be removed from the Pennsylvania list of threatened species.

(4) River Redhorse (*Moxostoma carinatum*): The river redhorse is a large sucker that inhabits rivers and large creeks. It prefers clearer waters and gravelly or rocky substrates in flowing pools and runs. The river redhorse’s enlarged pharyngeal arches and molariform teeth make it well suited for crushing the shells of mollusks, an important component of its diet.

The river redhorse occurs in the St. Lawrence, Great Lakes and Mississippi River drainages from southern Quebec to central Minnesota and western Iowa, south to northern Alabama and eastern Oklahoma, and on the Gulf Slope from Florida to Louisiana and Mississippi. In Pennsylvania, it occurs in the Ohio River drainage, including the Allegheny, Beaver, Monongahela, Ohio, Shenango, and Youghiogheny Rivers.

Although never abundant, the river redhorse can now be collected regularly in the Allegheny and Ohio Rivers and to a lesser extent in the Monongahela River. It was collected recently in the Shenango River (Criswell et al., 2002) as well. This is the first record there since 1933. Its former and present scarcity may be attributed in part to the difficulty in sampling its large river habitat.

Field surveys conducted throughout the historic Pennsylvania range since 1990 have documented a significant expansion in range and population size compared to pre-1990 information. The river redhorse is absent from the majority of twentieth century collection literature; however, recent electrofishing and gill netting surveys have documented a continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny rivers and in Lake Erie within Pennsylvania.

This species was run through the Commission’s fish species documentation and objective listing/de-listing criteria and met Criteria A. 1. (Population reduction) that the population is increasing and Criteria B.3. (Distribution & Trends) that the distribution is greater than 150 miles of river/stream. The Fishes Technical Committee of PABS reviewed the Heritage rank of the river redhorse and recommended it be changed to “apparently secure” (S4) status - uncommon but not rare, and usually widespread in the state. Usually more than 100 occurrences (State Rank Definitions 1996). The PABS committee additionally recommended “delisting” status based on the aforementioned data and

apparent commonality of the species in Pennsylvania. PABS definition of delisted species—species which were once listed but now cited for delisting (Pennsylvania Biological Survey Suggested Status Definitions 2005).

Enough information is available to determine that it is secure in the state at present and to justify the removal of river redhorse from Pennsylvania's list of candidate fish species. Therefore, staff propose that river redhorse be removed from the Pennsylvania list of candidate species.

(5) Longnose Gar (*Lepisteous osseus*): The longnose gar is a large pelagic fish species with an elongate body, long snout with numerous sharp, needle-like teeth. It prefers medium-sized, low-gradient rivers and large streams, lakes, impoundments, oxbows, and backwaters over a wide variety of substrates.

The longnose gar occurs in the Atlantic Slope drainages from New Jersey and Pennsylvania to Florida, the St Lawrence River, Quebec through Great Lakes (except Lake Superior), and the Mississippi River basin to the Gulf Coast. It also occurs in the Gulf Slope drainages from Florida to Texas. In Pennsylvania, it was historically widespread in the Ohio River drainage, including the Allegheny, Conemaugh, Monongahela, and Ohio rivers, and Conneaut Lake. It also occurs at Presque Isle-Lake Erie, lower Susquehanna River, and Delaware River to Monroe County. It has not been taken recently in the Conemaugh or Susquehanna rivers, and is now considered extirpated from the Delaware River (Horwitz 1986).

The longnose gar has become fairly common in the Ohio River and is taken regularly in the Monongahela River and lower section of the Allegheny River (Argent and Kimmel 2003, unpublished data). Criswell and Stauffer (2003) captured approximately 25 specimens in a single gill net during a sampling effort on the Ohio River. Although it has been taken recently in Conneaut Lake, its population status there is not known. The Lake Erie population is considered stable, and longnose gar can be collected regularly in nearshore areas and around the mouths of tributaries (Roger Kenyon, personal communication – w/ R. Criswell).

Field surveys conducted throughout the historic Pennsylvania range since 1990 have documented a significant expansion in range and population size compared to pre-1990 information. Recent electrofishing and gill netting surveys have documented continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny rivers and in Lake Erie within Pennsylvania.

This species was run through the Commission's fish species documentation and objective listing/de-listing criteria and met Criteria A. 1. (Population reduction) that the population is increasing and Criteria B.3. (Distribution & Trends) that the distribution is greater than 150 miles of river/stream.

The Fishes Technical Committee of PABS reviewed the Heritage rank of the longnose gar and recommended it be changed to "apparently secure" (S4) status - uncommon but

not rare, and usually widespread in the state. Usually more than 100 occurrences (State Rank Definitions 1996). The PABS committee additionally recommended “delisting” status based on the aforementioned data and apparent commonality of the species in Pennsylvania. PABS definition of delisted species—species which were once listed but now cited for delisting (Pennsylvania Biological Survey Suggested Status Definitions 2005).

Enough information is available to determine that it is secure in the state at present and to justify removal of longnose gar from Pennsylvania's list of candidate fishes. Therefore, staff propose that longnose gar be removed from the Pennsylvania list of candidate species.

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, these 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 approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. If adopted on final rulemaking, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

## F. Sale, Introduction, Transportation and Importation of VHS-Susceptible Species of Fish.

### Commentary:

Viral hemorrhagic septicemia (VHS) is an infectious disease found in a variety of fish species. In order to help prevent the spread of the disease, several agencies with jurisdiction, including the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), the Commission and the Pennsylvania Department of Agriculture (PDA), have taken action.

On October 24, 2006, APHIS issued an emergency order prohibiting the importation of certain live fish species from the Canadian provinces of Ontario and Quebec into the United States. In addition, export of live fish of 37 VHS-susceptible species was prohibited from the eight Great Lake boundary states: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. On November 14, 2006, APHIS issued an amended order that allowed restricted movement under requirements for testing and certification that fish are VHS-free. On May 4, 2007, APHIS further amended the order to allow for catch and release fishing activities. Most recently APHIS amended its order on April 2, 2008 to allow VHS-susceptible species of live non-salmonid fish from affected Canadian provinces to be imported into the United States for direct slaughter under an APHIS-issued permit. The APHIS order applies to live fish only. It does not address eggs.

Last year, the Commission adopted a new regulation at §69.3 (relating to the transportation of VHS-susceptible fish out of the Lake Erie watershed). This new regulation, which went into effect on January 1, 2008, applies to live or dead fish (and their parts but not eggs) and makes it unlawful to transport or cause the transportation of VHS-susceptible fish out of the Pennsylvania portion of the Lake Erie watershed into other watersheds in Pennsylvania except when certain conditions are met. Those conditions are (1) the fish are being transported to a disease testing facility and the persons transporting the fish have taken adequate measures to prevent escape and to disinfect discharged water and equipment used in the transportation of the fish and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for testing; (2) the fish are from a group of fish certified as having tested negative for VHS in accordance with the testing protocols adopted by PDA and approved by the Commission; (3) the fish are from an artificial propagation facility certified as having tested negative for VHS in accordance with testing protocols; (4) the fish are being transported to a slaughter facility, processing plant or restaurant and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for slaughter, processing or consumption; or (5) the fish are dead, recreationally caught fish that are being transported solely for the purpose of human consumption. The regulation further provides that for purposes of the section, species of fish that are susceptible to VHS are those species that the Commission has defined as such by notice published in the *Pennsylvania Bulletin*. On two occasions, the Commission has published notices defining VHS-susceptible species of fish. Although the Commission's regulation

addressed the intrastate movement of VHS-susceptible species of fish, it did not address interstate movement.

PDA, which has broad jurisdiction under the Domestic Animal Law and more limited jurisdiction under the Aquaculture Development Law, issued a quarantine order on October 13, 2007. The quarantine order addressed both intrastate and interstate movement of VHS-susceptible species of fish, and its provisions dealing with intrastate movement are consistent with the Commission's regulation at §69.3. The order, like §69.3, applies to live or dead fish and their parts, but it does not apply to eggs. PDA later amended its order on December 8, 2007 to revise its definition of VHS-susceptible species to track APHIS's thinking on the subject.

Commission staff have met on numerous occasions with PDA staff in an effort to develop a coordinated approach for dealing with VHS, and there has been good cooperation between the agencies. Although the PDA order addresses interstate movement of VHS-susceptible species of fish, the Commission's officers cannot enforce it. Therefore, Commission staff propose new regulations, which will be fully enforceable by our officers, that will address the sale, introduction and transportation of VHS-susceptible species of fish from VHS-affected or at risk states or regions. These proposed regulations are attached as Exhibit H. The proposed regulations are consistent with the approach taken by PDA and APHIS in their orders.

Commission staff also propose a new regulation to address the possession and use as bait of eggs taken from VHS-susceptible species of fish from VHS-affected or at risk states or regions and the Lake Erie watershed. In addition, Commission staff propose amendments to §69.3 to further define VHS-susceptible species of fish for purposes of the section, to include provisions regarding their introduction and sale outside the Lake Erie watershed and to address the possession and use as bait of eggs from VHS-susceptible species of fish from the Lake Erie watershed outside the watershed. The proposed provision dealing with eggs is consistent with the proposed new regulation on egg collection that is intended to address egg collection on a statewide basis. (See item G. that follows). The proposed regulation and amendments also are included in Exhibit H.

By notice published in the *Pennsylvania Bulletin* at 38 Pa. B. 3338 (June 14, 2008) (Exhibit I), the Executive Director, acting under the authority of §65.25 (relating to temporary changes to fishing regulations), took immediate action to make it unlawful to sell, introduce, transport or import VHS-susceptible species of fish, dead or alive, and the parts thereof into this Commonwealth from VHS-affected or at risk states, including Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin, and VHS-affected or at risk regions, including the Canadian provinces of Ontario and Quebec, unless certain conditions are met. These temporary modifications went into effect immediately and will remain in effect until January 1, 2009, unless the Commission, by appropriate action, adopts the new regulations.

By second notice published in the *Pennsylvania Bulletin* at 38 Pa. B. 3876 (July 12, 2008) (Exhibit J), the Executive Director, acting under the authority of §65.25, took

immediate action to make it unlawful to possess and use as bait unpreserved, refrigerated or frozen eggs taken from VHS-susceptible species of fish from a VHS-affected or VHS-at risk state or region in or along the waters of the Commonwealth except within the Lake Erie watershed. The Executive Director also took immediate action to make it unlawful to possess and use eggs from VHS-susceptible species of fish from the Lake Erie watershed as bait in other watersheds of this Commonwealth. This action represents a change to §69.3, which previously allowed for the possession and use as bait of eggs from VHS-susceptible species of fish from the Lake Erie watershed in other watersheds of the Commonwealth provided the fish were from a group of fish certified as having tested negative for VHS or were from an artificial propagation facility certified as having tested negative for VHS. These temporary modifications went into effect immediately and will remain in effect until January 1, 2009, unless the Commission, by appropriate action, adopts the new regulations.

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 new regulations and amendments set forth in Exhibit H. If adopted on final rulemaking, the new regulations and amendments will go into effect on January 1, 2009.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Worobec to approve the publication of a notice of proposed rulemaking containing the new regulations and amendments set forth in Exhibit H. If adopted on final rulemaking, the new regulations and amendments will go into effect on January 1, 2009. Motion carried.

## G. Collecting Eggs from Fish for Bait or Other Purposes.

### Commentary:

Waterways Conservation Officers during the past year encountered anglers catching large female brown trout and removing the eggs contained within the fish. The fish were released back into the waters from which they were taken. The anglers indicated that they used these eggs as bait to fish for trout in other water areas. The continued removal of eggs from large female trout may have a detrimental effect on the numbers of young of the year fish in a wild trout population and likely cause undue harm to a fish that is released. Currently, the regulations require that fish must be released immediately unharmed from most specially regulated trout waters. Officers successfully charged two individuals for a violation of this regulation and, in doing so, had to prove that the fish were harmed by the removal of the eggs.

In order to clearly prohibit this activity, staff propose the following new regulation, which is consistent with the Commission's "Resource First" policy.

### **§63.53. Egg collection.**

**It is unlawful to take eggs from a fish taken from waters of this Commonwealth outside the Lake Erie watershed or to possess these eggs or use them as bait. Eggs taken from lawfully harvested fish from the Lake Erie watershed may be possessed and used as bait in the Lake Erie watershed only. This section does not prohibit the possession of eggs contained within a lawfully harvested fish that is possessed for the purpose of human consumption.**

By notice published in the *Pennsylvania Bulletin* at 38 Pa. B. 3875 (July 12, 2008) (Exhibit K), the Executive Director, acting under the authority of §65.25 (relating to temporary changes to fishing regulations), took immediate action to make it unlawful to take eggs from a fish taken from waters of this Commonwealth outside the Lake Erie watershed or to possess these eggs or use them as bait. This temporary modification went into effect immediately and will remain in effect until January 1, 2009, unless the Commission, by appropriate action, adopts the new regulation.

### 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 new 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 Bachman to approve the publication of a notice of proposed rulemaking containing the new regulation described in the Commentary. If adopted on final rulemaking, the new regulation will go into effect on January 1, 2009. Motion carried.

## DESIGNATIONS

### H. Designation of Approved Trout Waters Open to Year-Round Fishing.

#### Commentary:

The Commission stocks lakes and streams throughout the Commonwealth with catchable size adult trout to provide for seasonal recreational angling opportunities for trout. By definition, these waters are officially classified as “approved trout waters.” Approved trout waters are closed to all fishing (including the taking of minnows) from March 1 to 8:00 a.m. on the opening day of the trout season. Area Fisheries Managers have identified 31 waters throughout the Commonwealth where the approved trout water designation limits angling opportunities for popular fisheries. In lakes, there are popular fisheries for species including, but not limited to, panfish and muskellunge, and historic white sucker runs exist in many of the streams.

The development of a program entitled “Approved Trout Waters Open to Year-Round Fishing” and designed to allow angling on designated waters during March 1 through the opening day of the trout season will increase recreational angling opportunities on these waters. Waters with this designation will be considered “approved trout waters.” From 8:00 a.m. of the opening day of the trout season through September 1, Commonwealth inland size and creel limits will apply. From January 1 through February 29, and from September 2 through December 31, “extended season” size and creel limits will apply. These waters will be open to fishing from March 1 through the opening day of the trout season; however, no trout will be allowed to be taken or possessed on these waters during this period. Under a separate agenda item, staff asked the Commission to adopt the new regulation establishing this program.

A notice of proposed designation was published at 38 Pa. B. 2744 (June 7, 2008) (Exhibit L) designating 31 waters as Approved Trout Waters Open to Year-Round Fishing. The Commission did not receive any public comments regarding the proposed designations.

#### Briefer:

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

#### Recommendation:

Staff recommend that the Commission designate the 31 waters identified in Exhibit L as Approved Trout Waters Open to Year-Round Fishing under 58 Pa. Code §65.19. If approved, the new designations will go into effect on January 1, 2009.

#### Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Shetterly to designate the 31 waters identified in Exhibit L as Approved Trout Waters Open to Year-Round Fishing under 58 Pa. Code §65.19. The new designations will go into effect on January 1, 2009. Motion carried.

## I. Expansion of Regional Opening Day of Trout Season Program.

### Commentary:

A notice of proposed designation was published at 38 Pa. B. 1904 (April 19, 2008) (Exhibit M) designating all waterways in Allegheny, Beaver, Butler, Greene, Lawrence, Washington and Westmoreland Counties and crossover streams, such as Buffalo Creek and Cornplanter Run in Armstrong County, Indian Creek and Jacobs Creek in Fayette County and Little Neshannock Creek and Neshannock Creek in Mercer County, as part of the Regional Opening Day of Trout Season Program. The Commission sought public comments for 60 days.

Prior to the formal public comment period, the Commission received 11 public comments. Of those comments, four support the proposal and six oppose it. One comment in opposition was sent on behalf of the Ellwood Wampum Rod and Gun Club. One commenter neither supports nor opposes the measure but offers an opinion that the early opening day would be less justified for Butler, Lawrence and Westmoreland Counties. This commenter also notes that an early opening day with more miserable weather could actually turn off anglers, especially young anglers for whom opening day is a great introduction to fishing.

During the formal public comment period, the Commission received ten public comments. One comment supports the proposal in its entirety, and three comments oppose it. One comment specifically supports the inclusion of Westmoreland County in the program, and two comments specifically oppose the inclusion of Lawrence County. A comment from the Apollo Spring Church Sportsmen's Club generally supports the regional opening day but not for the two waters in Armstrong County, Buffalo Creek and Cornplanter Run. Another comment urges the Commission not to include Buffalo Creek in the program. A comment from the Pine Creek Sportsmen Club, Inc. suggests that all of Armstrong County should be included in the program. Copies of all public comments were provided to the Commissioners.

At the Fisheries Committee meeting on June 17, 2008, the Committee considered this item and recommended to defer consideration of the expansion of the Regional Opening Day of Trout Season Program to counties in Southwestern Pennsylvania at this time. The Committee, in making this recommendation, indicated its desire for the Commission to explore expanding this program to the following seven counties beginning in 2010: Allegheny, Beaver, Butler, Fayette, Greene, Lawrence and Washington. The Committee further indicated its desire for the Commission to consider the expansion of the Approved Trout Waters Open to Year-Round Fishing Program to all stocked lakes on a statewide basis beginning in 2010 and to allow harvest during the period, March 1 to the opening day of trout season.

### Briefer:

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

### Recommendation:

In light of the Fisheries Committee recommendation, staff recommend that the Commission defer consideration on the designation of new waters into the Regional Opening Day of Trout Season Program under 58 Pa. Code §65.12.

### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to defer consideration on the designation of new waters into the Regional Opening Day of Trout Season Program under 58 Pa. Code §65.12. Motion carried.

## J. Removal of Waters from the Early Season Stocked Waters Program.

### Commentary:

A notice of proposed designation was published at 38 Pa. B. 1904 (April 19, 2008) (Exhibit M) proposing to remove the following waters from the Early Season Trout Stocked Waters Program: North Park Lake, Allegheny County; Brady Run Lake, Beaver County; Lower Hereford Manor Lake, Beaver County; Raccoon Lake, Beaver County; Glade Run Lake, Butler County; Harbor Acres Lake, Butler County; Bessemer Lake, Lawrence County; Canonsburg Lake, Washington County; Donegal Lake, Westmoreland County; Keystone Lake, Westmoreland County; Lower Twin Lake, Westmoreland County; Mammoth Lake, Westmoreland County; Northmoreland Lake, Westmoreland County; and Upper Twin Lake, Westmoreland County. All of these waters are located in counties that the Commission proposed to add to its Regional Opening Day of Trout Season Program. The Commission sought public comments for 60 days.

Prior to the formal public comment period, the Commission received two public comments regarding this proposal. One comment opposes the proposal as limiting opportunities for those who enjoy the use of the lakes under the Early Season Stocked Waters Program. The other commenter also notes that the removal of the lakes from this program, especially those in Westmoreland County, will penalize the lake fishermen in favor of a change in stream based trout fishing. During the formal public comment period, the Commission did not receive any public comments. Copies of all public comments were provided to Commissioners.

At the Fisheries Committee meeting on June 17, 2008, the Committee recommended to defer consideration of expansion of the Regional Opening Day of Trout Season Program at this time. The removal of the above waters from the Early Season Trout Stocked Waters Program was predicated on the expansion of the Regional Opening Day Program to the seven counties. In light of the Committee's recommendation, staff recommend that the Commission defer consideration of removing waters from the Early Season Trout Stocked Waters Program at this time.

### Briefer:

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

### Recommendation:

In light of the Fisheries Committee recommendation, staff recommend that the Commission defer consideration of the removal of the above waters from the Early Season Trout Stocked Waters Program under 58 Pa. Code §65.10.

### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Anderson to defer consideration of the removal of the above waters from the Early Season Trout Stocked Waters Program under 58 Pa. Code §65.10. Motion carried.

K. Designation of Water Limited to Specific Purpose - Exclusive Use Fishing Area (Children Only):  
Carbaugh Run, Franklin County.

Commentary:

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

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

The Commission has received a request to designate the section of Carbaugh Run, 955 feet in length from the junction with Conococheague Creek upstream to the Route 30 bridge, as an exclusive use area for children. The landowner, Caledonia State Park, has approved the proposed designation. The primary sponsor is the Chambersburg Rod & Gun Club, which has agreed to be responsible for administration and control of the area, posting signs and assisting in enforcement. The sponsors have explained how the area will be used throughout the year. Copies of the supporting documentation are contained in Exhibit N.

This section of stream supports a low density (Class D) wild brook trout population. The stream is currently being stocked with trout by the Commission within the proposed exclusive use area. The stream section has been posted with signs since January advising anglers of the proposed exclusive use designation. The Commission received no public comments regarding the proposed designation.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve this designation. If approved, this designation will go into effect on January 1, 2009.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Shetterly to approve this designation. This designation will go into effect on January 1, 2009. Motion carried.

L. Designation of Water Limited to Specific Purpose - Exclusive Use Fishing Area (Children and Special Populations): Conococheague Creek, Franklin County.

Commentary:

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

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

The Commission has received a request to designate the section of Conococheague Creek, 1050 feet in length from a cable crossing the stream 1300 feet below the Tallow Hill Bridge upstream to an additional cable crossing the stream 250 feet below the Tallow Hill Bridge, as an exclusive use area for children and special populations. The landowner, Joseph G. Wenger, has approved the proposed designation. The primary sponsor is the Chambersburg Rod & Gun Club, which has agreed to be responsible for administration and control of the area, posting signs and assisting in enforcement. The sponsors have explained how the area will be used throughout the year. Copies of the supporting documentation are contained in Exhibit O.

This section of stream does not support a wild trout population. The stream is stocked with trout by the Commission approximately 1.4 miles upstream of the proposed exclusive use area. The stream section has been posted with signs since January advising anglers of the proposed exclusive use designation. The Commission received comments from three individuals regarding the proposed designation, one in favor and two opposed. 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 this designation. If approved, this designation will go into effect on January 1, 2009.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Worobec to approve this designation. This designation will go into effect on January 1, 2009. Motion carried.

M. Removal of Butternut Creek, Section 2, Wayne County, from the Delayed Harvest Artificial Lures Only Program.

Commentary:

Section 2 of Butternut Creek in Wayne County was added to the Delayed Harvest Artificial Lures Only (DHALO) Program on July 1, 1994. From January 1, 1977 to June 30, 1994, it had been managed in the Fly Fishing Only Program. This section extends from Butternut Road (SR 3002) downstream 2.1 miles to the mouth. Lack of safe access has become a major problem in the area, and an associated by-product is the reduction in safe parking for stocking personnel and anglers trying to gain access along the stream. There are only two access points: the bridges on Butternut Road (this area is posted) and SR 0191 (no safe parking in the immediate area). The local Waterways Conservation Officer has been working with the current landowners in the SR 0191 bridge area to reconsider the closing of their land to allow for safer parking of anglers and the stocking truck but to no avail. Currently, the truck must stop in the roadway in order to stock. Stocking points are now limited to the I-84 bridge, which is near the confluence of the stream.

Staff propose to remove Section 2 from the Catchable Trout Program as a result of these access problems and also to remove the section from the DHALO Program.

A notice of proposed designation was published at 38 Pa. B. 2744 (June 7, 2008) (Exhibit L). The Commission did not receive any public comments regarding this removal.

Briefer:

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

Recommendation:

Staff recommend that the Commission remove Section 2 of Butternut Creek, Wayne County, from the Delayed Harvest – Artificial Lures Only Program under 58 Pa. Code §65.6. If approved, this change in designation will go into effect on January 1, 2009.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Shetterly to remove Section 2 of Butternut Creek, Wayne County, from the Delayed Harvest – Artificial Lures Only Program under 58 Pa. Code §65.6. This change in designation will go into effect on January 1, 2009. Motion carried.

## N. Addition of Brady's Lake, Monroe County, to the Big Bass and Panfish Enhancement Special Regulations Programs.

### Commentary:

Brady's Lake is a 229-acre manmade impoundment owned by the Pennsylvania Game Commission (PGC) that is located in State Game Lands 127 in Coolbaugh Township in Monroe County. Anglers and boaters gain access to the lake via a 3.3 mile paved road in SGL 127 off SR 0940 near Pocono Lake Preserve. The lake was managed under statewide inland regulations for all game species prior to its drawdown in 2003. Boating is permitted, and there is an electric motor only restriction.

In 2000, the PGC submitted a drawdown application to permanently breach the dam (Permit No. 60-00) as it was in dire need of repair. The potential loss of Brady's Lake generated an enormous public outcry. State and local representatives working together secured funding to rebuild the dam. On June 20, 2003, Governor Rendell earmarked those funds for release to the Department of Environmental Protection, the agency in charge of the rebuild project, to begin the reconstruction of the dam. The reconstruction was completed in 2007, and the lake was refilled by early 2008.

The PFBC began restocking the lake in 2008 with yellow perch fry, fingerling largemouth bass and black crappie and various lifestages of golden shiner for forage. The stocking of these species will continue through 2012. In addition, fingerling bluegill and pumpkinseed stockings will commence in 2010 and also continue through 2012.

During the drawdown period from 2003 through 2007, two remnant pools remained that contained various lifestages of game and forage species. Due to their presence, staff are recommending that Brady's Lake be added to the Big Bass Regulation and Panfish Enhancement Special Regulations programs. Species recommended for placement in the Panfish Enhancement Special Regulation program are yellow perch, crappie, and bluegill/pumpkinseed. All other species will be regulated under Commonwealth inland regulations. These programs will allow limited harvest to take place, thereby aiding the rebuilding of the lake's fishery through moderation of adult predatory sizes and allowing the PFBC stockings to improve the fishery.

These designations will remain in effect through at least 2012, when lake surveys will be completed to evaluate the necessity of continuation. PGC staff in the Dallas office are supportive of the implementation of these special regulations and the evaluation process outlined in this agenda item.

A notice of proposed designation was published at 38 Pa. B. 2744 (June 7, 2008) (Exhibit L). The Commission received one public comment supporting these designations and expressing that the designations will expedite the restoration of this lake to the high quality fishery it once was. 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 Brady's Lake, Monroe County, to its list of "Big Bass Regulation" waters under 58 Pa. Code §65. 9 and to its list of "Panfish Enhancement Special Regulations" waters under 58 Pa. Code §65.11. If approved, these designations will go into effect on January 1, 2009.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Gavlick to approve the addition of Brady's Lake, Monroe County, to the Commission's list of "Big Bass Regulation" waters under 58 Pa. Code §65. 9 and to its list of "Panfish Enhancement Special Regulations" waters under 58 Pa. Code §65.11. These designations will go into effect on January 1, 2009. Motion carried.

O. Addition of Gouldsboro Lake, Monroe County, to the Big Bass and Panfish Enhancement Special Regulations Programs.

Commentary:

Gouldsboro Lake is a 250-acre manmade impoundment primarily owned by the Pennsylvania Department of Conservation and Natural Resources. Riparian ownership is 90 percent State Park, and 10 percent private landowners, which is closed to public access. It is maintained by the staff from Tobyhanna State Park. Anglers and boaters gain access to the lake via SR 507 in Gouldsboro. The lake was managed under statewide inland regulations for all game species prior to its drawdown in 2005. Boating is permitted, and there is an electric motor only restriction. The reconstruction process was completed in 2007, and the lake was refilled by the onset of 2008.

The Commission began restocking the lake in 2008 with yellow perch fry, fingerling largemouth bass and black crappie and various lifestages of golden shiner for forage. The stocking of these species will continue through 2012. In addition, fingerling bluegill and pumpkinseed stockings will commence in 2010 and also continue through 2012.

During the drawdown period from 2003 through 2007, a large remnant pool remained that contained various lifestages of game and forage species. Due to their presence, the staff are recommending that Gouldsboro Lake be placed into the Big Bass Regulations and Panfish Enhancement Special Regulations programs. Species recommended for placement in the Panfish Enhancement Special Regulations program are yellow perch, crappie, and bluegill/pumpkinseed. All other species will be regulated under Commonwealth inland regulations. These programs will allow limited harvest to take place, thereby aiding the rebuilding of the lake's fishery through moderation of adult predatory sizes and allowing Commission stockings to improve the fishery.

These regulations will remain in effect through at least 2012, when lake surveys will be completed to evaluate the necessity of their continuation. The Region 4 Office of State Parks and staff at Tobyhanna/Gouldsboro State Park are supportive of the implementation of these special regulations and the evaluation process outlined in this agenda item.

A notice of proposed designation was published at 38 Pa. B. 2744 (June 7, 2008) (Exhibit L). The Commission received one public comment supporting these designations and expressing that the designations will expedite the restoration of this lake to the high quality fishery it once was. 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 Gouldsboro Lake, Monroe County, to its list of "Big Bass Regulation" waters under 58 Pa. Code §65. 9 and to its list

of “Panfish Enhancement Special Regulations” waters under 58 Pa. Code §65.11. If approved, these designations will go into effect on January 1, 2009.

Action:

A motion was made by Commissioner Gavlick and seconded by Commissioner Anderson to approve the addition of Gouldsboro Lake, Monroe County, to the Commission’s list of “Big Bass Regulation” waters under 58 Pa. Code §65. 9 and to its list of “Panfish Enhancement Special Regulations” waters under 58 Pa. Code §65.11. These designations will go into effect on January 1, 2009. Motion carried.

## OTHER MATTERS

### P. Aquatic Nuisance Species Management Plan Grants.

#### Commentary:

Aquatic invasive species (AIS) threaten the ecological and economic viability of the aquatic resources of the Commonwealth. Due in large part to the rapid rise in global trade over the last decade or so, AIS are entering Pennsylvania at an increasing rate. As an example, since the mid-1980's, with the introduction of the zebra mussel, AIS have been entering Lake Erie and many of the other Great Lakes in alarming numbers. It is estimated that 20 to 30 new and potentially invasive species are now being introduced to the region annually.

As a consequence of this influx of AIS, in October of 2006, the Pennsylvania Invasive Species Council (PISC) completed the *Pennsylvania Aquatic Invasive Species Management Plan* (the Plan). The Plan serves as the primary strategic planning tool providing guidance for the many different facets of the statewide fight against AIS. The overall strategic plan contains eight major management objectives, and couched within each of these are specific tactical goals with actions for implementation of the Plan. Primary responsibility for development of the Plan and its implementation and coordination lies with PISC member Pennsylvania Sea Grant.

In 2007, acceptance of the Plan by the U.S. Fish and Wildlife Service (USFWS) made the Commonwealth of Pennsylvania eligible to apply for federal funding for Plan implementation. The funding is made available through a USFWS grant program authorized by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. At the request of PISC, the Commission, as an eligible state agency, applied for the USFWS funding with the understanding that funds received would be passed on to PA Sea Grant in its role as the primary implementing entity for the Plan. A subsequently successful proposal, *Implementation of the Pennsylvania AIS Management Plan: Proposed FY 2008 Work Plan and Funding Request* was submitted to USFWS and has been funded in the amount of \$43,134.

Commission staff wish to enter into a cooperative agreement with Pennsylvania Sea Grant authorizing the pass through of funds received from USFWS for the implementation of the Plan. This action will be in accordance with the provisions of the above funding proposal. For future years, staff are requesting that the Commission authorize the Executive Director to approve future individual grants using up to \$100,000 of USFWS pass-through monies per grantee per year for projects meeting the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 objectives and/or the objectives of the Plan. 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 authorize the Executive Director to enter into a cooperative agreement with Pennsylvania Sea Grant and to further authorize the Executive Director to approve future individual grants using up to \$100,000 of USFWS pass-through monies per grantee per year for projects meeting the objectives of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and/or the *Pennsylvania Aquatic Invasive Species Management Plan*. For grants exceeding those amounts, staff will seek separate Commission approval.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Bachman to authorize the Executive Director to enter into a cooperative agreement with Pennsylvania Sea Grant and to further authorize the Executive Director to approve future individual grants using up to \$100,000 of USFWS pass-through monies per grantee per year for projects meeting the objectives of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 and/or the *Pennsylvania Aquatic Invasive Species Management Plan*. For grants exceeding those amounts, staff will seek separate Commission approval. Motion carried.

Q. Landowner Incentive Program Grants.

Commentary:

The Landowner Incentive Program (LIP) began in FY 2002 and is funded through the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. §§4601-4 through 11) and includes administrative expenses and conservation efforts to be carried out on private lands. Since its inception, Congress has provided over \$112 million for LIP. The grant program features two tiers of competition and funding. Tier 1 grants are capped at a maximum of \$180,000 per state and are intended to provide a base for states to fund staff and their associated support to develop new or to enhance existing landowner incentive programs. Tier 2 grants are intended for actual, on-the-ground implementation of landowner incentive projects. They provide technical or financial assistance to private landowners through a variety of means for these implementation projects. Because federal funding for wildlife conservation activities on private lands has historically been limited, the additional funding provided by LIP is allowing many states and territories to begin implementing conservation actions that they previously were unable to fund.

LIP provides grants to state and tribal conservation agencies to help landowners restore habitats of listed, proposed, candidate, or other species determined to be at-risk on private and tribal lands. Species of greatest conservation need, identified in the Pennsylvania Wildlife Action Plan, are the target species for LIP.

The Commonwealth, led by PFBC and Pennsylvania Game Commission (PGC) staff, has received \$2.975 million through this program and is applying Tier 1 grants for administering the development of Permanent Conservation Easements (Tier 2) and for working with private landowners. To further advance the protection and management of species of greatest conservation need and associated habitats on private lands by providing technical assistance, including landowner contacts, the development of conservation management plans, as well as the development and distribution of outreach materials, the PFBC staff are seeking to develop third-party agreements with various conservation partners using LIP Tier 1 funds. Staff are, therefore, requesting that the Commission authorize the Executive Director to approve individual grants utilizing up to \$100,000 of LIP pass-through monies per grantee per year for projects meeting LIP 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 authorize the Executive Director to approve individual grants utilizing up to \$100,000 of Landowner Incentive Program pass-through monies per grantee per year for projects meeting Landowner Incentive Program objectives. For grants exceeding those amounts, staff will seek separate Commission approval after appropriate staff review.

Action:

A motion was made by Commissioner Shetterly and seconded by Commissioner Worobec to authorize the Executive Director to approve individual grants utilizing up to \$100,000 of Landowner Incentive Program pass-through monies per grantee per year for projects meeting Landowner Incentive Program objectives. For grants exceeding those amounts, staff will seek separate Commission approval after appropriate staff review. Motion carried.

**Other New Business**

None.

**Time and Place of October 2008 Commission Meeting**

The next meeting is scheduled for October 6-7, 2008 and will be held at the Commission's headquarters in Harrisburg.

**Adjournment**

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