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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 84th Meeting of the Pennsylvania Fish and Boat Commission was held on Thursday and Friday, January 29 and 30, 2009, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commissioners participated in a facilitated strategic planning session on January 29 from approximately 9:00 a.m. until noon. Commission committees met on January 29 beginning at approximately 2:40 p.m. and on January 30 beginning at approximately 8:15 a.m. The public session for review of this agenda began at or about 3:00 p.m. on January 30.

Call to Order

The meeting was called to order by Commission President Leonard L. Lichvar and followed by the Pledge of Allegiance to the Flag.

Roll Call

Members Present

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

Members Not Present

Samuel M. Concilla

Review and Approval of Minutes from the October 7, 2008 Meeting

A motion was made by Commissioner Ketterer and seconded by Commissioner Anderson to approve the October 7, 2008 minutes as written. Motion carried.

Awards and Presentations

Marvin Moriarty, regional director for the United States Fish and Wildlife Service's Northeast Region, presented the Fish and Wildlife Service's Eagle Award to the Commission for its efforts in enhancing fishing and boating access for persons with disabilities.

The Commission presented awards to Chris Urban, Chief of the Commission's Natural Diversity Section, and to the Fish and Wildlife Service to recognize their efforts to protect, conserve, enhance and establish the Cherry Valley National Wildlife Refuge.

Executive Director's Report

Dr. Austen's report highlighted the 2008 Annual Report (Exhibit A) that was recently completed and that will be presented to the House Game and Fisheries Committee during a special meeting on February 5, 2009. The National Fish Habitat Action Plan Board will hold its next meeting in Harrisburg on March 4 and 5, 2009, and the Commission will host the meeting. Another important event is the 65th Annual Conference of the Northeast Association of Fish and Wildlife Agencies to be held in April in Lancaster. The Fish and Boat Commission will co-host this event with the Pennsylvania Game Commission.

Announcement of Notational Votes (Exhibit B)

The Commission voted on one item by notational vote since the October 2008 meeting. This item relates to the Commission's action to approve the publication of a notice of proposed rulemaking containing amendments to §61.2 to open the currently closed season for striped bass in the Delaware River and River Estuary. The Commission will consider this item for final adoption during the course of the formal agenda later this afternoon.

Announcement of Executive Session

Commissioner Lichvar announced that an executive session was held on Thursday, January 29, at approximately 1:00 p.m. to discuss litigation, personnel and real estate issues.

Reports of Commissioner Committees

Executive and Planning (Commissioner Lichvar) –

The Executive and Planning Committee met on Friday, January 30, at approximately 11:30 a.m. and then reconvened at approximately 1:15 p.m. following lunch. Dr. Austen led a discussion regarding the 2009 Annual Plan of Work, and future license proposals were discussed. Action on the Annual Plan of Work will be deferred until the April 2009 Commission meeting.

Administration (Commissioner Worobec) –

The Administration Committee met on Friday, January 30, at approximately 8:50 a.m. Agenda items were discussed.

Boating (Commissioner Ketterer) –

The Boating Committee met on Friday, January 30, at approximately 11:00 a.m. Dan Martin reviewed the agenda items and provided the U.S. Coast Guard report and a 2008 Pennsylvania boating accident analysis review. An update on the North East and Walnut Creek Marinas and the Boating Facilities Grant Program were provided as well.

Communications (Commissioner Shetterly) –

The Communications Committee met on Friday, January 30, at approximately 8:15 a.m. Results from the 2008 holiday radio campaign promoting gift vouchers were shared along with an outline of the 2009 marketing/promotional plan. An update was also provided on the Recreational Boating and Fishing Foundation's Lapsed Angler Program for 2009.

Fisheries (Commissioner Bachman) –

The Fisheries Committee met on Thursday, January 29, at approximately 2:40 p.m. Agenda items were discussed. The Committee voted to recommend that the item regarding adding five mussel species to the endangered or threatened lists be deferred until the April 2009 Commission meeting. Staff provided an update on fisheries related issues, expanding the regional opening day of trout season program to southwestern Pennsylvania counties, bass regulations on rivers, and aquatic invasive species efforts. The Committee voted to recommend that the Commission not pursue expansion of the Regional Opening Day of Trout Season Program to the southwestern counties of Pennsylvania. The Committee also voted to recommend that the proposal to establish a Premium Trout Stocked Waters Program be deferred until the next meeting in April. A briefing was provided on removing the designation of waters currently designated as refuge areas and the elimination of the Early Season Trout Stocked Waters Program. The Committee voted to recommend to the full Commission that it authorize additional grant funding to continue the Susquehanna River Water Quality Study.

During the Committee report, a motion was made by Commissioner Ketterer and seconded by Commissioner Czap that the Commission, consistent with the Fisheries Committee's recommendation, not pursue expansion of the Regional Opening Day of Trout Season Program to the southwestern counties of Pennsylvania. Motion carried.

Habitat and Environmental (Commissioner Anderson) –

The Habitat and Environmental Committee met on Friday, January 30, at approximately 9:30 a.m. Mike Brownell, Susquehanna River Basin Commission, provided a presentation on Marcellus shale. Mark Hartle and Bill Lellis, U.S. Geological Survey, provided an update on Delaware River Flexible Flow Management Plan (FFMP) issues. Tim Schaeffer and Scott Carney recently attended a conference of the Pennsylvania Association of Conservation Districts, and an update was provided.

Law Enforcement (Commissioner Gavlick) –

The Law Enforcement Committee met on Thursday, January 29, at approximately 4:30 p.m. Tom Kamerzel provided a bureau update and briefing on the selection process for the 19th Waterways Conservation Officer training class.

The Committee also acted upon proposed revocations. The Committee revoked the fishing privileges of two individuals for a period of two years and one individual for one year. The Committee also revoked the boating privileges of three individuals for two years, one individual for two years with a reduction to one year upon successful completion of a safe boating course and one individual for two years with a reduction to one year upon successful completion of a classroom safe boating course. Commissioner Czop abstained from voting on one of the boating revocations due to a potential conflict of interest.

Legislation (Commissioner Sabatose) –

The Legislation Committee met on Friday, January 30, at approximately 2:15 p.m. A legislative update was provided.

Public Comment to Commissioners and Staff

Rocky Gleason provided public comment on the proposed action to list five mussel species as endangered or threatened.

EXECUTIVE AND PLANNING

A. Sustainable Funding Concepts.

Commentary:

The mission of the Pennsylvania Fish and Boat Commission is to protect, conserve, and enhance aquatic resources and provide fishing and boating opportunities. To carry out that mission, the Commission relies primarily on user fees (e.g., fishing licenses and boat registrations) from anglers and boaters. The Commission traditionally receives about 20 percent of its annual operating expenses from federal sources. The Commission does not receive state general fund revenues even though it performs functions that benefit all Pennsylvanians, including training emergency personnel in water and ice rescue; environmental permit application reviews; and the study and management of non-game reptiles, amphibians, and mollusks.

Historically, the General Assembly and Governor have approved license fee increases every eight to ten years. This model results in subsequent declines in fishing license sales in response to the large increases and an inability of the Commission to plan and operate strategically and efficiently as it approaches the end of the fee cycle. Most recently, the 2005 fishing license increase of 29.2% was followed by a 9.6% decrease in license sales. At the same time, the Commission lacks the statutory authority that would allow it to optimize license sale opportunities afforded by the new electronic Pennsylvania Automated Licensing Service (PALS) system that could be used to target innovative pricing packages to attract and retain anglers and boaters and boost sales and revenues.

The shortcomings in the boom-and-bust phenomenon of the traditional license increase cycle, lack of flexibility, and current economic climate have contributed to a growing interest in innovative ways to fund the Commission's activities. Staff, therefore, request that the Commission endorse the following concepts:

- Defined, annual incremental fee increases rather than the traditional periodic large increase.
- The ability to establish special pricing packages with fees that, when considered separately, will not exceed the currently authorized fees.
- A special habitat and access fee, with funds restricted for habitat and access projects.
- A five-year review and sunset provision freezing fees without legislative authorization for the next five years.

Staff further request that the Commission reaffirm its past support for a special youth license dedicated to youth programs and for general fund revenues to sustain functions of the Commission that benefit all citizens and aquatic resources of the Commonwealth.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission endorse the above concepts and authorize staff to pursue them and other options as a means to maximize the Commission's ability to implement its mission.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Bachman to endorse the above concepts and authorize staff to pursue them and other options as a means to maximize the Commission's ability to implement its mission. Motion carried.

B. Approval of Annual Plan of Work for 2009.

Commentary:

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

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission approve the Annual Plan of Work for 2009.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Anderson to defer action on the Annual Plan of Work for 2009 until the April 2009 Commission meeting. Motion carried.

ADMINISTRATION

A. Lawrence Park Golf Course Property Rights Acquisition, Lawrence Park Township, Erie County.

Commentary:

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

The Commission has been offered an easement by Lawrence Park Golf Club on over 5,447 linear feet on both sides of Fourmile Creek as it flows across a parcel of property in Lawrence Park Township, Erie County, for \$41,000. The easement area borders Route 5 (East Lake Road) at the intersection of Route 5 and Route 955. The northern boundary of the easement area is approximately 750 feet from Lake Erie. The easement will be for public fishing, boating, and riparian and fishery management and will include the stream corridor and extend 25 feet back from the top of bank. The easement also includes a pathway from the public road to the waterway for public access. A map depicting the subject parcel is attached as Exhibit C. Parking will be available on a parcel leased by Lawrence Park Township on Lawrence Parkway.

The Commission is working with the Golf Club and the Township to install devices at two impediments in the waterway to facilitate the movement of steelhead upstream. The first impediment is a dam that is located less than a quarter of a mile from the mouth of Fourmile Creek, and the second impediment is a natural waterfall located less than a quarter of a mile south of the dam. The design and installation of fish passage devices will be funded through grants from the Department of Environmental Protection’s Coastal Zone Management Program and the Department of Conservation and Natural Resources’ Community Conservation Partnerships Program. The installation of the fish passage devices and the existence of the dam will result in a portion of the easement area being posted no fishing. The easement agreement will require the Golf Club to operate, maintain and repair the fish passage devices in accordance with section 3502 of the Fish and Boat Code.

Fourmile Creek contains a steelhead fishery and currently provides limited steelhead fishing opportunities in this area. The easement and installation of fish passage devices will expand the steelhead fishing opportunities on Fourmile Creek. The dam and waterfall where the fish passage devices will be installed are the major impediments to the steelhead moving further upstream. Thus, the installation of the devices will allow steelhead to move beyond the Golf Club property to public lands that are already open for public fishing. These properties include the Lawrence Park Township Park located less than 1 mile from the Golf Club with 2,050 linear feet of stream frontage, the Penn State

Behrends College property with 9,630 linear feet of stream frontage, and Wesleyville Borough Park with 4,870 linear feet of stream frontage.

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. The Commission's regional law enforcement and fisheries staff have recommended that the site be pursued and acquired if possible.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the acquisition of the property rights along Fourmile Creek in Lawrence Park 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 Worobec and seconded by Commissioner Anderson to authorize the acquisition of the property rights along Fourmile Creek in Lawrence Park Township, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried.

B. Lease of Children's Lake and Yellow Breeches Property Interests, South Middleton Township, Cumberland County.

Commentary:

The Commission owns +/- 7.1 acres of land and easements known as Children's Lake and +/- 51.9 acres of easement rights on and along Yellow Breeches Creek in South Middleton Township, Cumberland County, as described in Record Book 523, Page 1055 in the Cumberland County Recorder of Deeds Office. The Central Pennsylvania Conservancy recently approached the Commission with its interest in partnering with the Commission to enhance the operation, utilization, repair and maintenance of Children's Lake and the Commission's Yellow Breeches easement.

To that end, the Conservancy has requested a lease on the entire Yellow Breeches easement area and the portion of Children's Lake south and west of the public roads around the lake but excluding the lake area. The leased area is described on Exhibits D-1, D-2 and D-3. The Conservancy is willing to pursue grant money to help fund necessary improvements and repairs to the leased area and is willing to share any derived funds with the Commission. In addition, the Conservancy will continue to allow public fishing and boating and aquatic resource protection on the leased area. The lease will have a term of 25 years. However, the Commission will reserve the right to terminate the lease upon providing six months notice to the Conservancy, and the Conservancy will be able to terminate on 12 months' notice to the Commission. The Conservancy will be responsible for routine maintenance and operation and will assist with structural repairs.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the lease of the Commission's property at Children's Lake and the easement along Yellow Breeches Creek to the Central Pennsylvania Conservancy as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Anderson to approve the lease of the Commission's property at Children's Lake and the easement along Yellow Breeches Creek to the Central Pennsylvania Conservancy as more particularly described in the Commentary. Motion carried.

BOATING
PROPOSED RULEMAKING

A. Amendments to Section 53.8 (Boats) and Section 97.1 (Personal Flotation Devices).

Commentary:

Section 97.1(f) of the Commission’s regulations follows the Code of Federal Regulations that excludes racing shells, rowing sculls and racing kayaks from the requirements for personal flotation devices (PFDs). However, this subsection provides that the exemption does not apply on Commission and State Park owned or controlled boating waters. Section 53.8 of the Commission’s regulations similarly requires occupants of skulls, shells and racing kayaks to carry or wear Coast Guard approved PFDs on Commission property.

This type of boating is somewhat exclusive due to its nature. Most often, racing shells, sculls and kayaks are used by high school, college or university students or special clubs. They are, with few exceptions, very safe boaters, and the accident record for such boats does not point to a need for requiring PFDs for their occupants. Moreover, there is no support to require occupants of such boats to wear PFDs on small Commission lakes when they are not required to carry them onboard on larger waters.

Section 91.7(f) also provides detailed information on what type of PFDs must be carried by the safety boat accompanying the shells, sculls or racing kayaks. However, section 97.1(f) does not, and may not (because of the federal regulations), require that there to be a safety boat present. Accordingly, it does not make sense to stipulate requirements for safety boats when the safety boats are not required to be on the scene. Also, this section states that safety boats shall carry a sufficient number of Type I, II, III or V PFDs for the occupants of the racing boats that they accompany. However, this also does not make sense. Any PFDs required to be carried should be the type that can easily be thrown to someone in the water (*e.g.*, Type IV throwable PFDs). Moreover, the accident record for such boats does not point to the need for requiring PFDs on safety boats.

Staff therefore propose that §§53.8(b) and 97.1(f) be amended as follows:

§53.8. Boats.

* * *

(b) [Occupants of skulls, shells and racing kayaks are required to carry or wear Coast Guard approved personal flotation devices.]

[(c)]

[(d)] (c) * * *

[(e)] (d) * * *

[(f)] (e) * * *

[(g)] (f) * * *

[(h)] (g) * * *

§97.1. Personal flotation devices.

* * *

(f) This section does not apply to racing shells, rowing sculls and racing kayaks, such as manually propelled boats recognized by National racing associations for use in competitive racing, where the occupants row, scull or paddle with the exception of the coxswain, if one is provided, and which are not designed to carry and do not carry equipment not solely for competitive racing. **[Safety boats accompanying the boats shall carry a sufficient number of readily accessible Type I, II, III or V PFDs for the occupants of the shells, sculls or kayaks. This exemption does not apply on Commission and State Park owned or controlled boating waters.]**

* * *

On October 21, 2008, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking.

Briefer:

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

Recommendation:

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

Action:

At the outset of the Commission's consideration of the boating related agenda items, a motion was made by Commissioner Czop and seconded by Commissioner Ketterer to approve the publication of a notice of proposed rulemaking, containing the amendments described in the Commentary, for all of the boating related agenda items, including this item. If adopted on final rulemaking, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

B. Amendment to Section 91.5 (Parental and Boat Owner Responsibility).

Commentary:

The Commission's current regulations do not include a provision making it unlawful for a boat owner knowingly to allow someone to operate a boat without a boating safety education certificate onboard when the individual is required to have one. Law enforcement staff have requested that this requirement be added.

Staff therefore propose that §91.5. be amended as follows:

§91.5. Parental and boat owner responsibility.

- (a) It is unlawful for the owner of a boat knowingly to allow or permit a child 17 years of age or younger to operate **[a watercraft] the boat** in violation of this subpart.
- (b) It is unlawful for a parent or guardian of a child 17 years of age or younger knowingly to allow or permit the child to operate a **[watercraft] boat** in violation of this subpart.
- (c) **It is unlawful for the owner of a boat knowingly to allow an individual who is required to have a boating safety education certificate to operate the boat without having a boating safety education certificate onboard.**

* * *

On October 21, 2008, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking.

Briefer:

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

Recommendation:

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

Action:

At the outset of the Commission's consideration of the boating related agenda items, a motion was made by Commissioner Czop and seconded by Commissioner Ketterer to approve the publication of a notice of proposed rulemaking, containing the amendments described in the Commentary, for all of the boating related agenda items, including this item. If adopted on final rulemaking, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

C. Amendment to Section 101.5 (Confidentiality of Boating Accident Reports).

Commentary:

The confidentiality of boating accident reports is covered in detail in section 5503 of the Fish and Boat Code, 30 Pa. C.S. §5503, and in section 101.5 of the Commission's regulations. The Commission receives requests from time to time for certified abstracts for specific boating accidents. This is the only information that can be released from the Boating Accident Report (PFC-260) filed by the boat operator or owner who was involved in a reportable, recreational boating accident. Commission staff have always asked that such requests be in writing. An e-mail has been viewed by staff to be sufficient. Staff recommend that requests for certified abstracts always be in writing and that language be added to support the Commission's standard practice and clarify this matter to the inquiring public.

Staff propose that §101.5. be amended as follows:

§101.5. Confidentiality of boating accident reports.

* * *

(b) An abstract which contains the date, time, location, weather conditions, names and addresses of the operators, passengers and witnesses and descriptions of the watercraft involved is releasable **upon written request**. The Commission may charge a reproduction fee of 50¢ per page.

* * *

On October 21, 2008, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking.

Briefer:

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

Recommendation:

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

Action:

At the outset of the Commission's consideration of the boating related agenda items, a motion was made by Commissioner Czop and seconded by Commissioner Ketterer to approve the publication of a notice of proposed rulemaking, containing the amendments described in the Commentary, for all of the boating related agenda items, including this item. If adopted on final rulemaking, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

D. Amendment to Section 105.3 (Unacceptable Boating Practices).

Commentary:

The existing regulation concerning pontoon boats allows passengers to ride outside the normal passenger carrying area when the pontoon boat is travelling at slow, no wake speeds. This is an unsafe practice because the passenger can very easily fall overboard, even at the reduced, slow, no-wake speed. Because of the nature of the hull design of pontoon boats, slow, no-wake can be a faster speed than on single hull boats, such as a runabout. If the passenger is in the bow of the boat and falls overboard, he will most likely be struck by the boat's propeller with catastrophic results. This very scenario took place this year on a lake in western Pennsylvania when the pontoon boat operator unexpectedly hit a log, causing a boy who was riding on the bow outside of the normal passenger carrying area to fall overboard and be struck by the boat's propeller.

This proposed amendment places no undue hardship on the operators or passengers of pontoon boats. It does allow our officers to stop pontoon boats that have their passengers so exposed and to inform the operator that this is an unsafe practice.

Staff propose that §105.3 (9) be amended as follows:

§105.3 Unacceptable boating practices

It is unlawful to:

* * *

(9) Operate a pontoon boat while a person is riding outside the passenger carrying area. The passenger carrying area is defined by continuous railings or enclosed spaces intended for persons to use while the pontoon boat is underway. The prohibition does not apply when the operator of the boat is docking, mooring, anchoring or rafting the pontoon boat [**or when the pontoon boat is underway at slow minimum height swell speed or less**].

* * *

On October 21, 2008, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking.

Briefer:

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

Recommendation:

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

Action:

At the outset of the Commission's consideration of the boating related agenda items, a motion was made by Commissioner Czop and seconded by Commissioner Ketterer to approve the publication of a notice of proposed rulemaking, containing the amendments described in the Commentary, for all of the boating related agenda items, including this item. If adopted on final rulemaking, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

E. Amendment to Section 109.1 (Air Boats).

Commentary:

Section 109.1 of the Commission's regulations provides detailed standards for the construction of air boats. However, there is no known example of this regulation being enforced in any part by Commission officers. In fact, a recent technical inquiry by a member of the general public about this regulation could not be answered because there are no known sources for the content of this regulation. There are very few airboats in Pennsylvania, and our law enforcement staff have had few issues with operators of these unusual boats.

Staff propose that §109.1 be deleted as follows:

[§ 109.1. Air boats.

Persons operating a type of boat with an airplane-type motor shall comply with the following:

(1) When the air propeller is capable of being turned laterally and used as a rudder as well as for propulsion, the propeller shall be completely enclosed with a protective housing. The housing shall be metal tubing or heavy wire, or both.

(2) When the boat is steered by a rudder and the propeller is located astern of—behind—the power unit, the propeller shall be housed as follows:

(i) It shall be enclosed at least 50% or 80° from the bottom upward, with two parallel curved metal rods or tubes of at least 1/2-inch diameter, the rods or tubes are to be fastened to the boat rather than to the power unit, and located so that the propeller turns within the enclosure formed by the rods or tubes. There shall be similar metal cross bars at intervals of not more than 30° along the 180° arc or at least six cross bars attached to the two curved parallel housing rods or tubes.

(ii) On these boats, there shall be stout metal rods turning from a point at or near the forward end of the engine or power unit, outward and rearward at an angle, so that if a person becomes overbalanced and falls backward toward a propeller, the person tends to be deflected away from the propeller.

(3) When tractor-type air drive is used, with the propeller located forward of the engine, the entire propeller shall be enclosed by parallel rod or tube housing, the rods or tubes are to be of material and size as previously described in this section. In addition, the 360° housing shall be crossed on the forward side by stout rod or wire sections, placed so that at no point is there an opening greater than 3 inches, vertically or horizontally, through which a person may by accident thrust a hand or arm. An arrangement of stout rods or tubes, as previously described from a forward point, fanning outward and upward to the rim of the nearer, or forward, of the 360° housing rods or tubes, shall be placed so that a person falling backward tends to be thrown outward and away from the propeller.

(4) Regardless of the type of power unit employed, the propeller may not extend horizontally beyond the gunwales of the boat on which it is used.]

On October 21, 2008, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking.

Briefer:

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

Recommendation:

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

Action:

At the outset of the Commission's consideration of the boating related agenda items, a motion was made by Commissioner Czop and seconded by Commissioner Ketterer to approve the publication of a notice of proposed rulemaking, containing the amendments described in the Commentary, for all of the boating related agenda items, including this item. If adopted on final rulemaking, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

F. Amendment to Section 109.6 (Special Marine Events).

Commentary:

Section 109.6(b)(5) of the Commission's regulations provides that the Commission will not issue a special activities permit for a marine event in a State Park unless the applicant first obtains written permission from the Bureau of State Parks, Department of Conservation and Natural Resources (DCNR) for the event. The Commission, however, issues permits for events occurring in State Forests, not just those in State Parks. The regulation goes on to state that for marine events held on waters under the ownership or control of other Federal or State agencies, the Commission will require evidence that the applicant has the permission of the controlling agency.

In order to simplify the regulation, staff suggest that the regulation be revised to simply require the permission of the entity that owns or controls the waters on which the marine event will occur. The Commission routinely issues special activities for marine events that occur on private and public waters, including waters owned or controlled by DCNR, the Pennsylvania Game Commission, the U.S. Army Corps of Engineers, and county and municipal governments.

Staff propose that §109.6 be amended as follows:

§109.6. Special marine events.

* * *

(b) * * *

(5) The Commission will not issue a special activities permit for a marine event [**in a State Park**] unless the applicant first obtains written permission [**from the Bureau of State Parks, Department of Conservation and Natural Resources,**] for the event **from the entity that owns or controls the waters on which the event will occur**. [**For marine events held on waters under the ownership or control of other Federal or State agencies, the**] **The** Commission will require evidence that the applicant has the permission of the controlling **[agency] entity** unless that **[agency] entity** has delegated approval authority to the Commission.

* * *

On October 21, 2008, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking.

Briefer:

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

Recommendation:

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

Action:

At the outset of the Commission's consideration of the boating related agenda items, a motion was made by Commissioner Czop and seconded by Commissioner Ketterer to approve the publication of a notice of proposed rulemaking, containing the amendments described in the Commentary, for all of the boating related agenda items, including this item. If adopted on final rulemaking, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

G. Amendment to Section 111.17 (Clearfield County).

Commentary:

Curwensville Lake is a U.S. Army Corps of Engineers, Baltimore District (USACOE) impoundment of the West Branch of the Susquehanna River in central Clearfield County. It is managed jointly by the USACOE and the Clearfield County Recreation and Tourism Authority, not unlike the relationship sometimes found with USACOE and DCNR-State Parks.

The lake comprises 790 acres with 19 shoreline miles and unrestricted horsepower. The lake provides open water adjacent to the dam with the majority of the water in a serpentine pattern based upon the original river contours. The lake narrows severely in its upper reaches. Use of the upper area is popular, but not conducive to unrestricted horsepower boating. These upper reaches, most of which are less than 200 feet in width, have been posted and enforced as a slow, no-wake area but have never been defined by regulation. Giving clear and legal definition of the SNW area is of joint interest of the agencies and will enhance fairness in public notice and enforceability.

The USACOE has requested that the slow, no-wake area be marked in the area upriver of the cliff at Ferguson and the area between the old viaduct pillars.

Staff propose that §111.17 be amended as follows:

§111.17. Clearfield County.

* * *

(d) Curwensville Lake.

(1) Boats are limited to slow, no wake speeds in the following areas:

(i) Upriver of the cliff at Ferguson.

(ii) Between the old viaduct pillars.

* * *

On October 21, 2008, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking.

Briefer:

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

Recommendation:

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

Action:

At the outset of the Commission's consideration of the boating related agenda items, a motion was made by Commissioner Czop and seconded by Commissioner Ketterer to approve the publication of a notice of proposed rulemaking, containing the amendments described in the Commentary, for all of the boating related agenda items, including this item. If adopted on final rulemaking, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

H. Amendment to Section 111.20 (Crawford County).

Commentary:

Pymatuning Lake is part of Pymatuning State Park. The Department of Conservation and Natural Resources (DCNR) regulates the waterway's horsepower limit and has recently set it at 20 horsepower, like several other lakes owned or controlled by DCNR. In the past, the Commission removed all references to horsepower limits on DCNR waterways from Chapter 111 of the Commission's regulations. Removal of Pymatuning Lake will complete that process.

Staff, therefore, propose that §111.20 be amended as follows:

§111.20. Crawford County.

* * *

(c) [Pymatuning Lake – Pymatuning State Park. The use of motors in excess of 10 horsepower is prohibited.]

[**(d)** * * *

[**(e)** **(d)** * * *

[**(f)** **(e)** * * *

On October 21, 2008, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking.

Briefer:

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

Recommendation:

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

Action:

At the outset of the Commission's consideration of the boating related agenda items, a motion was made by Commissioner Czop and seconded by Commissioner Ketterer to approve the publication of a notice of proposed rulemaking, containing the amendments described in the Commentary, for all of the boating related agenda items, including this item. If adopted on final rulemaking, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

OTHER MATTERS

I. Amendment to Boating Facility Grant to East Donegal Township Riverfront Park, Susquehanna River, Lancaster County.

Commentary:

At the January 2006 Commission meeting, the Commission approved a Boating Facility Grant Program grant of \$230,000 to the East Donegal Township for major improvements to the Riverfront Park boat ramp on the Susquehanna River in Lancaster County. During construction, unstable sub-base material was encountered during the installation of the concrete ramp planks. This unacceptable sub-base material must be removed and replaced with suitable bearing material. This condition was not identified or anticipated by the designer or the contractor. The condition and necessary remediation represents a minor change in the scope of work of the project. East Donegal Township has acted in good faith and informed Commission staff of the situation. The Commission's Engineering and Boating and Access staff met with the Township to discuss the problem and to develop a solution. Both parties agree that a small additional grant of up to \$10,000 will allow the Township to complete the work as intended in the original project proposal. This will be an outstanding facility and will greatly enhance fishing and boating in this area of the Susquehanna River in Lancaster County.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the Executive Director to amend its cooperative agreement with East Donegal Township to provide additional grant funding of up to \$10,000 to correct unforeseen conditions in the boating access ramp sub-base material that caused construction cost overruns to the Riverfront Park boating facilities project.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Gavlick to authorize the Executive Director to amend its cooperative agreement with East Donegal Township to provide additional grant funding of up to \$10,000 to correct unforeseen conditions in the boating access ramp sub-base material that caused construction cost overruns to the Riverfront Park boating facilities project. Motion carried.

FISHERIES

FINAL RULEMAKING

A. Amendments to Section 61.2 to Open Currently Closed Season for Striped Bass in Delaware River and River Estuary.

Commentary:

Since 1992, during the time period when Delaware River and Estuary striped bass were in restoration mode, there has been an April and May closure to the harvest of striped bass from the spawning grounds in Pennsylvania, New Jersey and Delaware. The Commission's regulation defines the segment to which the closure applies as extending from the Pennsylvania/Delaware state line upstream to the Calhoun Street Bridge, which is located just upstream from the head-of-tide and joins Morrisville, Pennsylvania with Trenton, New Jersey.

In 1997, the Atlantic States Marine Fisheries Commission declared that the Delaware River stock of striped bass had been restored to historical population levels based on high juvenile recruitment, high spawning stock biomass and low fishing mortality. Despite being restored, management of the fishery within the Basin states remained conservative with high size limits (28 inches), low creel limits (2 fish per day) and spawning ground closures to harvest. In Pennsylvania, this meant that the season downstream from Calhoun Street Bridge closed on April 1, just as the adult striped bass population was building, and reopened on June 1, just as the bulk of the adult striped bass population had emigrated from Pennsylvania. Pennsylvania's anglers were given little opportunity to harvest striped bass, and striped bass angling when fish were most abundant was discouraged by the season closure.

Delaware River and Estuary striped bass harvest has been low. During the 2002 four state creel census, only 582 striped bass were harvested in the stretch that extended from the Delaware River Memorial Bridge near Wilmington, Delaware, upstream to the river's branches in New York. Pennsylvania's tagging data supported this observation of low harvest, particularly from Pennsylvania. Of the 2,872 striped bass that were tagged in the Delaware Estuary spawning grounds between Pennsylvania and New Jersey from 1995 through 2007, only 34 tags were returned from Pennsylvania's waters. Observations by the Commission's Waterways Conservation Officers and biologists have been that the vast majority of striped bass caught in Pennsylvania are yearlings, two-year olds, and some three-year olds caught in late spring and summer as by-catch in other fisheries and as a targeted catch and release fishery in the tidal and non-tidal river.

Male striped bass are abundant during April and May on the spawning grounds and about 90% are shorter than the 28 inch length limit. Furthermore, very few sub-legal female striped bass are present on the spawning grounds. Pennsylvania anglers desire an opportunity to take advantage of this restored striped bass population and the potentially excellent fishing that it could provide. Past regulatory and habitat protection efforts by the Commission have largely benefited coastal anglers and anglers outside of Pennsylvania.

The Commission, therefore, proposed that an April and May fishery be established in the seasonally closed portions of the Delaware River and Estuary that is designed to specifically target mature male striped bass. The Commission further proposed that this fishery be regulated with a 20 inch to 26 inch slot limit from which two fish per day can be harvested during April and May. There will be a 28 inch length limit and two fish per day creel limit in all other months of the year, and there will be no closed season. Regulations for the remainder of the river will remain unchanged.

A notice of proposed rulemaking was published at 38 Pa. B. 6935 (December 20, 2008) (Exhibit E). The Commission received a total of 23 public comments regarding the proposal. One comment that was received before the start of the official comment period supported the proposal. The Commission received 21 comments during the official comment period. Nineteen favored the proposal, and two opposed it. Two of the favorable comments also would like to see the April-June season extended to the upper Delaware River, with one comment suggesting a 12-20 inch limit for harvest on the upper Delaware. The other comment suggested a smaller slot limit during April-June for the entire river of 16-20 inches. One commenter thought that this proposal will help improve herring populations. One of the commenters who oppose the proposal was concerned that it will lead to greater mortality of female striped bass. After the official comment period, the Commission received one comment supporting the proposal. Copies of all public comments were provided to the Commissioners.

Pennsylvania coordinated its proposal with the State of Delaware, which took the lead in data analysis and reporting. The two states have made similar slot and creel limit proposals that will apply to different months of the year. Delaware's proposal will target male striped bass in summer and fall that have emigrated from the spawning grounds and taken up residency in Delaware. The Atlantic States Marine Fisheries Commission's Striped Bass Management Board approved both proposals on October 20, 2008.

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, these amendments will go into effect on April 1, 2009.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Czop to adopt the amendments as set forth in the notice of proposed rulemaking. These amendments will go into effect on April 1, 2009. Motion carried.

B. Amendments to Section 75.1 (Endangered Species) to add Salamander Mussel, Rabbitsfoot, and Snuffbox, and Amendments to Section 75.2 (Threatened Species) to add Sheephnose and Rayed bean.

Commentary:

The Commission has proposed that the following mussel species be added to its endangered or threatened species lists:

(1) Salamander mussel (*Simpsonaias ambigua*). Salamander mussels occur in sand or silt under large, flat stones in swift current in streams and rivers. Unlike other mussel species in Pennsylvania, it is the only species whose glochidia (mussel larvae) host is not a fish, but the mudpuppy (*Necturus maculosus*), which typically occupies similar rock shelter habitat.

Historically, Salamander mussels occurred in the Great Lakes Basin and throughout most of the Mississippi River system. The Salamander mussel was known from 90 streams/lakes in 15 states and Canada. The Salamander mussel historically occurred within the lakes, streams and rivers of the following states and provinces: Pennsylvania, Minnesota, Wisconsin, Michigan, Tennessee, Ohio, Missouri, Kentucky, Indiana, Illinois, Iowa, Arkansas, New York, West Virginia, and Ontario, Canada. Recent occurrences have been reported from only 53 of these streams/lakes in the following 11 states: Pennsylvania, Ohio, West Virginia, New York, Kentucky, Tennessee, Michigan, Illinois, Indiana, Iowa, and Missouri. Multiple streams may comprise single Salamander mussel population segments, essentially decreasing the number of extant populations. Existing populations are generally separated and genetically isolated from each other by barriers such as impoundments or riverine reaches of unsuitable or otherwise unoccupied habitat.

Only three waterbodies in Pennsylvania have records of the Salamander mussel. Research suggests that live Salamander mussels are not easily detected; the oldest historic record (collected by Stansbery 1970 (Clarke 1985)) indicates the presence of Salamander mussels in Navigational Pool 5 of the Allegheny River. Presently the Salamander mussel is considered to exist only in Navigational Pool 5 and 6 of the Allegheny River (Smith 2005, 2007) and in Dunkard Creek (Welte 2008). Shells were found in 1985 and 1995 in French Creek (T. Smith, personal communication), but no live individuals were detected. Surveys of French Creek and its tributaries did not detect the presence of live Salamander mussels (Smith and Crabtree 2005, Smith and Crabtree, *in review*).

The Salamander mussel was evaluated by staff using the Commission's mussel species documentation and listing/de-listing criteria. The species review showed that a population reduction is projected to be greater than 80% in the next ten years, the extent of stream/river occupancy is projected to be less than 10 miles, the species exists at less than 6 locations, and a continued, documented decline has occurred, all of which satisfies endangered status. These mussels face direct and indirect threats to their habitat from a number of industrial activities. The potential also exists for a single catastrophic event (e.g., sodium hydroxide spill) to compromise the Allegheny River/French Creek/Dunkard Creek populations or their host species.

The Bivalve Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed the Heritage rank of the Salamander Mussel and recommended that it be designated for "critically imperiled" (S1) status. Critically imperiled is defined as extremely rare or having

factor(s) making it especially vulnerable to extirpation from the state, i.e., five or fewer occurrences or very few remaining individuals or acres (State Rank Definitions 1996). The PABS committee additionally recommended endangered listing status based on the aforementioned data and potential endangerment of the species in Pennsylvania. The Salamander mussel is currently under a Federal status review by the U.S. Fish and Wildlife Service (USFWS) to consider its endangered, threatened or candidate status.

Sufficient information has been collected from streams and rivers within Pennsylvania to warrant the species to be elevated from rare (non-listed) to endangered status. Therefore, the Commission has proposed that the Salamander mussel be added to the Pennsylvania list of endangered species.

(2) Rabbitsfoot (*Quadrula cylindrica cylindrical*). The Rabbitsfoot is a freshwater mussel that inhabits small to medium-sized streams and some larger rivers. It usually occurs in shallow areas along the bank and adjacent runs and shoals where the water velocity is reduced. Specimens may also occupy deep-water runs and have been reported in 9-12 feet of water. Bottom substrates generally include sand and gravel. This species seldom burrows but lies on its side on the stream bottom (Ecological Specialists, Inc. 1993, Parmalee and Bogan 1998, Watters 1988).

The Rabbitsfoot historically occurred in Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, and West Virginia. Historically, the Rabbitsfoot occurred in the lower Great Lakes sub-basin and Mississippi River Basin. The Rabbitsfoot was previously known from 138 streams in 15 states. Rabbitsfoot populations are considered to still exist in only 49 streams in 13 states, which represents a 65% decline (USFWS 2008). Furthermore, in the streams where it does exist, populations with few exceptions are highly fragmented and restricted to short reaches. The Rabbitsfoot mussel is currently under a Federal status review by the USFWS to consider its endangered, threatened or candidate status.

In Pennsylvania, Rabbitsfoot populations are known to currently occur in the Allegheny River, French Creek, Muddy Creek, LeBoeuf Creek, and Conneautee Creek. Current threats to the Rabbitsfoot in the Allegheny River include channel maintenance activities, sedimentation, bridge replacement projects, agricultural activities, silvicultural activities, and rapid expansion of the oil and gas industry. If coal mining increases in western Pennsylvania, it would become an additional threat to the Rabbitsfoot in the Allegheny River. There is always potential for a single, catastrophic event (e.g., sodium hydroxide spill) to impact the French Creek or Allegheny River subpopulations. Other threats to the Rabbitsfoot in French Creek include nutrients from agriculture, aging septic systems (R.R. Evans, WPC, pers. comm., 2003), sedimentation, and municipal runoff and effluents. As with the Allegheny River, the rapid expansion of oil and gas development in northwestern Pennsylvania is a concern within the French Creek watershed. LeBoeuf and Conneautee Creeks are both tributaries to French Creek and face similar threats. Portions of Muddy Creek occur on the Erie National Wildlife refuge, which affords these portions protection. However, Muddy Creek is still threatened by sedimentation, agricultural runoff, expanding development in non-refuge lands, and the rapid expansion of oil and gas development.

Rabbitsfoot was evaluated by staff using the Commission's mussel species documentation and listing/de-listing criteria. The species review showed that a population reduction of greater than 80% is projected in the next ten years.

The Bivalve Technical Committee of PABS reviewed the Heritage rank of the Rabbitsfoot and recommended that it be designated for "critically imperiled" (S1) status. Critically imperiled is defined as extremely rare or having factor(s) making it especially vulnerable to extirpation from the state, i.e., five or fewer occurrences or very few remaining individuals or acres (State Rank Definitions 1996). The PABS committee additionally recommended endangered listing status based on the aforementioned data and potential endangerment of the species in Pennsylvania. Enough information has been collected from streams and rivers within Pennsylvania to warrant the Rabbitsfoot to be elevated from rare (non-listed) to endangered status. Therefore, the Commission has proposed that Rabbitsfoot be added to the Pennsylvania list of endangered species.

(3) Snuffbox (*Epioblasma triquetra*). The Snuffbox is found in small to medium-sized creeks to larger rivers and lakes. It occurs in swift currents of riffles and shoals and wave-washed lakeshores over gravel and sand with occasional cobble and boulders and generally burrows deep into the substrate except when spawning or attracting a host (Parmalee and Bogan 1998).

Historically, the Snuffbox occurred in portions of the Great Lakes basin, and throughout most of the Mississippi River system. The Snuffbox was historically known from 208 streams/lakes in the following 18 states and Canada: Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, Wisconsin, and in Ontario, Canada. Existing populations are known from 73 streams and lakes in 14 states and Canada. However, it is probable that the species persists in some of the 135 streams/lakes where it is considered extirpated and it may occur in some other streams. Multiple streams may comprise single Snuffbox populations, essentially decreasing the number of existing populations. Current populations are generally separated and genetically isolated from each other by barriers such as impoundments or riverine reaches of unsuitable and otherwise unoccupied habitat (Butler 2007).

Historical literature suggests that at one time the Snuffbox was relatively abundant in certain Pennsylvanian streams such as the upper Ohio River and Beaver River (Rhoads 1899) and Allegheny River (Ortmann 1909). The Lake Erie population is considered extirpated. Besides these waters, Snuffbox have been reported from French Creek, West Branch French Creek, LeBoeuf Creek, Muddy Creek, Conneaut Outlet, Woodcock Creek, Little Mahoning Creek, Dunkard Creek, Shenango River, and Little Shenango River.

Snuffbox collections occurred sporadically since 1898 (Rhoads 1899). Populations were documented in the Allegheny River from Forest County downstream to Armstrong County. The construction of nine locks and dams on 72 miles of the Allegheny River between Armstrong County and Pittsburgh and other activities disrupted historical mussel habitat and Snuffbox populations. Completion of the Kinzua Dam on the upper Allegheny River main stem in 1965 destroyed potential Snuffbox habitat.

Muddy Creek contains Snuffbox that are considered part of the more extensive French Creek population (Mohler et al. 2006). Smith and Crabtree (2005) reported abundance estimates from quantitative samples in French Creek which suggest that although present in most locations, Snuffbox occur at relatively low mean densities. No Snuffbox were found in Little Mahoning Creek during 15 timed-area surveys (T.A. Smith, personal communication). Snuffbox habitat in the Shenango River has been destroyed by two reservoirs (Pymatuning Lake and Shenango River Lake). These impoundments eliminated Snuffbox habitat in about 50% of the 75-mile river. Snuffbox are currently present in the upper reaches of the Shenango River basin (Butler 2007). The Little Shenango River has a population reported from the lower portion of the river basin. The remaining habitat is separated by dams and reservoirs.

No Snuffbox were found during recent mussel surveys of New York's tributaries to the Allegheny River (Smith and Horn 2006, Smith 2007, Smith and Meyer 2008b), and no Snuffbox were found in the pooled portions of the Allegheny River (Smith and Meyer 2008c). Only French Creek is considered a stronghold for the species in Pennsylvania. Presently, Snuffbox can be collected throughout French Creek but usually at relatively low numbers. Snuffbox are also sporadically collected from the Allegheny River from Forest to Armstrong County.

The Snuffbox population is declining nationwide and within Pennsylvania. The Snuffbox mussel is currently under a Federal status review by the USFWS to consider its endangered, threatened or candidate status. The proportion of watersheds occupied by Pennsylvania's Snuffbox population declined by approximately 23%, i.e., from 22 watersheds to 17 watersheds within the past 25 years. Several streams with Snuffbox populations may occur within the same watershed in some cases. Of 107 individual streams with historic Snuffbox populations, only 40 streams remain; a 37% reduction (Butler 2007).

The construction of the navigational lock and dam system in the Allegheny River in the 1920's and 1930's invariably changed the character of the river habitat. The locks and dams were built along a 72 mile section of the river. The construction of the Kinzua Dam for flood control has altered the natural flow regime and habitat of the upper Allegheny River. These mussels face direct and indirect threats to their habitat from a number of industrial activities. Formerly, a strong hold for Pennsylvania's rich mussel fauna, the river bottom habitat in the Allegheny River, which is important for the survival of this mussel species, is rapidly being depleted by these practices. Other direct and indirect threats to the Allegheny River include sedimentation and pollution from oil and gas development, bridge replacement projects, and silvicultural activities. Coal mining activities in southwestern Pennsylvania have contributed to the degradation of the Monongahela River and its tributaries, which may have provided suitable habitat to the Snuffbox at one time. Threats to French Creek include sedimentation, municipal runoff and industrial and municipal waste water treatment plant discharges. Aquatic invasives, such as zebra mussels, have been observed in the upper Allegheny River watershed (e.g., Edinboro Lake) and within French Creek. A single catastrophic event (e.g., sodium hydroxide spill) could impact the French Creek population or their host fish species.

Snuffbox was evaluated by staff using the Commission's mussel species documentation and listing/de-listing criteria. The species review showed that a population reduction of greater

than 80% is projected in the next ten years. A continued decline of this species has been documented. These factors support endangered status.

The Bivalve Technical Committee of the PABS reviewed the Heritage rank of the Snuffbox and recommended it be designated as “critically imperiled” (S1) status. Critically imperiled is defined as extremely rare or having factor(s) making it especially vulnerable to extirpation from the state, i.e., five or fewer occurrences or very few remaining individuals or acres (State Rank Definitions 1996). The PABS committee additionally recommended endangered listing status based on the aforementioned data and apparent endangerment of the species in Pennsylvania.

Enough information has been collected from streams and rivers within Pennsylvania to justify that the Snuffbox be elevated from rare (non-listed) to endangered status. Therefore, the Commission has proposed that Snuffbox be added to the Pennsylvania list of endangered species.

(4) Sheepnose (*Plethobasus cyphus*). The Sheepnose is primarily a larger-stream species. It occurs primarily in shallow shoal habitats with moderate to swift currents over coarse sand and gravel. Habitats with Sheepnose may also have mud, cobble and boulders. Specimens in larger rivers may occur in deep runs (Butler 2002, Oesch 1984, Parmalee and Bogan 1998).

Historically, the Sheepnose occurred throughout much of the Mississippi River system with the exception of the upper Missouri River system and most lowland tributaries in the lower Mississippi River system. This species is known from the Mississippi, Ohio, Cumberland, Tennessee, and Ohio Rivers, and scores of tributary streams rangewide. The Sheepnose was historically known from 77 streams in 15 states: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin (Butler 2002). According to Parmalee and Bogan (1998) and Neves (1991), the Sheepnose has been extirpated throughout much of its former range or reduced to isolated populations. The only records known from some streams are archeological specimens (Butler 2002).

The Sheepnose has been eliminated from 51 of the 77 streams from which it was historically known; a decline of 66% (Butler 2002). This species has also been eliminated from long reaches of former habitat in hundreds of miles of the Illinois, Cumberland, and other rivers, and from several reaches of the Mississippi and Tennessee Rivers. In addition, the species is no longer present in the state of Arkansas (Butler 2002). Sheepnose are designated federally as a candidate species.

Historically, Ortmann (1909) considered the Sheepnose to occur “more abundantly” in the Allegheny in Armstrong County than it did in the Ohio in Pennsylvania, where he sampled it “sparingly.” Records indicate that Sheepnose were collected within the Monongahela River near Monessen, Ohio River near Shippingport (New Cumberland Pool, Dashields Pool), Beaver River near Wampum, and Allegheny River Pools 5 and 8.

Populations of the Sheepnose in Pennsylvania were generally considered to exist if live or fresh dead specimens had been collected after 1982 (~25 years ago). Currently, populations of the Sheepnose are only known from the Allegheny River in Forest and Venango Counties.

Zimmerman (2002) reported several live and fresh dead specimens, including juveniles, near Oil City. This evidence suggests the presence of a viable population of the Sheepnose in the upper Allegheny River (Butler 2002). The proportion of watersheds occupied by Pennsylvania's Sheepnose population has declined from seven to two, or 71%, within the past 25 years. Several streams may occupy the same watershed.

Threats to Sheepnose include direct and indirect threats to their habitat from a number of industrial activities, sedimentation and pollution. There is potential for a single, catastrophic event (e.g., sodium hydroxide spill) to impact the Allegheny River population.

The majority of the remaining Sheepnose populations appear to be small and geographically isolated. The one factor that most noticeably results in population isolation is impoundment of rivers as well as stream reaches heavily impacted by toxic effluents and contaminated sediments. The patchy distributional pattern of populations in short river reaches makes them much more susceptible to extirpation due to the lack of recolonization from other populations. A single catastrophic event, such as a toxic chemical spill, could cause the extirpation of small, isolated Sheepnose occurrences. High levels of isolation make natural repopulation of any extirpated population impossible without human intervention. Population isolation also prohibits the natural interchange of genetic material between populations (USFWS 2008).

The likelihood is high that some or all of Pennsylvania's Sheepnose populations are below the effective population size (EPS) required to maintain long-term genetic and population viability. Recruitment reduction or failure is a potential problem for many small mussel populations rangewide, a potential condition exacerbated by reduced range sizes and increasingly isolated populations. If these trends continue, further significant declines in total Sheepnose population size and consequent reduction in long-term viability may soon become apparent. Its present distribution and status may be indicative of the detrimental bottleneck effect resulting when the EPS is not attained (USFWS 2008).

Staff evaluated the Sheepnose using the Commission's mussel species documentation and listing/de-listing criteria. A 50% reduction in the next ten years is projected for this species, which satisfies threatened status.

The Bivalve Technical Committee of PABS reviewed the Heritage rank of the Sheepnose and recommended it be designated as "critically imperiled" (S1) status. However, recent survey information (R. Vilella pers. comm.) from the upper Allegheny suggests that the PABS committee will be changing the status from S1 to S2 status (imperiled) - in the state because of rarity or because of some factor(s) making it very vulnerable to extirpation from the state. Typically six to 20 occurrences or few remaining individuals or acres qualify a species for an S2 rank (State Rank Definitions 1996). The PABS committee additionally recommended threatened listing status, i.e., species that may become endangered within the foreseeable future throughout their range in Pennsylvania unless the causal factors affecting the organism are abated.

Enough information has been collected from streams and rivers within Pennsylvania to warrant the Sheepnose be elevated from rare to threatened status. Therefore, the Commission has proposed that Sheepnose be added to the Pennsylvania list of threatened species.

(5) Rayed bean (*Villosa fabalis*). The Rayed bean is known from smaller headwater creeks but records exist in larger rivers. They are usually found in or near riffle areas, and in the shallow, wave-washed areas of glacial lakes, including Lake Erie. In Lake Erie, it is generally associated with islands in the western portion of the lake. Substrates typically include gravel and sand. It is sometimes associated with vegetation (e.g., water willow; *Justicia americana*, or water milfoil; *Myriophyllum* sp.) in and adjacent to riffles and shoals. Specimens are typically buried among the roots of the vegetation (Butler 2002).

Historically, the Rayed bean occurred in parts of the upper (i.e. Lake Michigan drainage) and lower Great Lakes systems, and throughout most of the Ohio and Tennessee River systems. The Rayed bean was historically known from 106 streams, lakes, and some man-made canals in 10 states. The Rayed bean historically occurred in Illinois, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. Existing populations are known from 22 streams and one lake in five states. The Rayed bean has disappeared from 78% of the total number of streams and other waterbodies from which it was historically known. (23 current waterbodies compared to 106 historic waterbodies.) The Rayed bean has been eliminated from long stretches of former habitat in hundreds of miles of the Maumee, Ohio, Wabash, and Tennessee Rivers and from numerous stream reaches in their tributaries. In addition, the species is no longer known from the states of Illinois, Kentucky, Tennessee, Virginia, and West Virginia representing half the states from which it was formerly known (Butler 2002).

Ortmann (1909) documented low numbers of Rayed beans from the Allegheny River system. Presently, the Allegheny River population is one of the largest known, rangewide. The population extends from Cataraugus County, New York, to Armstrong County, Pennsylvania. It is currently found live in the Allegheny River (Pools 6, 8 and 9), French Creek and LeBoeuf Creek (Smith and Meyer 2008a; 2008 b). Rayed bean shell material has been found in Allegheny River Pool 7 (Smith and Meyer 2008a; 2008b). Populations of Rayed bean also occur in French Creek and Cussewago Creek (Smith and Crabtree 2005).

Rayed bean are currently distributed within the upper Allegheny River watershed (Cussewago Creek, tributary to Conewango Creek and French Creek; LeBoeuf Creek) and within the middle Allegheny River and from Navigational Pools 6, 8 and 9. The Allegheny River population is one of the largest, rangewide (Butler 2002). However, the Rayed bean is declining nationwide and within Pennsylvania. Nationally, of 106 individual streams/waterbodies with historic Rayed bean populations, only 23 streams remain (a 78% stream reduction) (Butler 2002). The Rayed bean is currently designated as a federal candidate and is under review to be listed as an endangered species.

The greatest threats to the French Creek population include sedimentation, municipal runoff and effluents. The rapid expansion of oil and gas exploration and development threatens existing populations (e.g., brines, organics) and stream sedimentation loading from the increasing number of dirt and gravel roads and well sites. Aquatic invasives, such as zebra mussels have been observed in the upper Allegheny River watershed (e.g., Edinboro Lake) and within French Creek.

These mussels face direct and indirect threats to their habitat from a number of industrial activities. There is potential for a single, catastrophic event (e.g., sodium hydroxide spill) to impact this population.

The majority of the remaining Rayed bean populations appears to be small and geographically isolated. The factor that most noticeably results in population isolation is impounding of rivers but another factor is stream reaches that are heavily impacted by toxic effluents and contaminated sediments. The patchy distributional pattern of populations in short river reaches makes them much more susceptible to extirpation due to the lack of recolonization from other populations. A single catastrophic event, such as toxic chemical spills, could cause the extirpation of small, isolated Rayed bean occurrences. High levels of isolation make natural repopulation of any extirpated population impossible without human intervention. Population isolation also prohibits the natural interchange of genetic material between populations (USFWS 2008).

The likelihood is high that some or all of Pennsylvania's Rayed bean populations are below the effective population size (EPS) required to maintain long-term genetic and population viability. Recruitment reduction or failure is a potential problem for many small mussel populations rangewide, a potential condition exacerbated by reduced range sizes and increasingly isolated populations. If these trends continue, further significant declines in total Rayed bean population size and consequent reduction in long-term viability may soon become apparent. Its present distribution and status may be indicative of the detrimental bottleneck effect resulting when the EPS is not attained (USFWS 2008).

Staff evaluated this species using the Commission's mussel species documentation and listing/de-listing criteria. The population is projected to be reduced by greater than 50% in next ten years, which satisfies a threatened status listing.

The Bivalve Technical Committee of PABS reviewed the Heritage rank of the Sheepnose and recommended it be designated as "critically imperiled/imperiled" (S1S2) status. This combined status, on the border of critically imperiled and imperiled status, is due to the species' extreme rarity or because of some factor(s) making it especially vulnerable to extirpation from the state. "Critically imperiled" factors include the existence of five or fewer occurrences or very few remaining individuals or acres. "Imperiled status" can be due to rarity or because of some factor(s) making it very vulnerable to extirpation from the state, i.e., typically six to 20 occurrences or few remaining individuals or acres (State Rank Definitions 1996). The PABS committee additionally recommended a threatened listing status (Pennsylvania Biological Survey Suggested Status Definitions 2005) based on the aforementioned data and apparent endangerment of the species in Pennsylvania.

Enough information has been collected from streams and rivers within Pennsylvania to warrant the Rayed bean to be elevated from rare to threatened status. Therefore, the Commission has proposed that Rayed bean be added to the Pennsylvania list of threatened species.

A notice of proposed rulemaking was published at 38 Pa. B. 6617 (December 6, 2008) (Exhibit F). As of January 14, 2009, the Commission received a total of 83 public comments regarding the proposed listings. The Commission received one comment supporting the

proposal prior to the formal comment period. During the formal comment period, the Commission received 79 comments: 74 comments favor the proposal, and five comments oppose it. The Commission received three comments after the close of the official comment period, all of which support the proposal. The opposing comments were submitted exclusively by road building and extraction industries, including the Associated Pennsylvania Constructors, PA Aggregates and Concrete Association, PA Coal Association, The Marcellus Shale Committee representing the Independent Oil and Gas Association of PA and the PA Oil and Gas Association, and the three active Allegheny and Ohio River commercial sand and gravel dredging companies. The supporting comments were submitted by individuals, biologists, the Pennsylvania Biological Survey - Mollusk Technical Advisory Committee, the Little Juniata River Association, The Nature Conservancy, Pennsylvania Environmental Council, Juniata Valley Audubon, The Moshannon Group of the Sierra Club, American Rivers, Freshwater Mollusk Conservation Society and the U.S. Department of the Interior, Fish and Wildlife Service. 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, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Ketterer that the Commission postpone action on the listing of the five mussel species until the April Commission meeting and that the Commission direct staff to schedule and hold a public meeting on the listing in the greater Pittsburgh area prior to the April meeting and extend the public comment period until March 15. Motion carried.

C. 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, the Commission has proposed 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, the Commission has proposed 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, the Commission has proposed 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, the Commission has proposed 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, the Commission has proposed that longnose gar be removed from the Pennsylvania list of candidate species.

A notice of proposed rulemaking was published at 38 Pa. B. 5035 (September 13, 2008) (Exhibit G). The Commission received one public comment supporting the proposed delistings. 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, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

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

PROPOSED RULEMAKING

D. Addition of Section 65.20 (Premium Trout Stocked Waters Program).

Commentary:

Staff are recommending a new stocked trout program designed to provide anglers with the opportunity to fish over a relatively high density of larger stocked trout. This program is designed to reallocate a portion of the existing 2- and 3-year old brood fish as well as the golden rainbow trout into select waters across the state. Staff offer "Premium Stocked Trout Waters Program" as the program name.

The proposed program is designed to utilize the trout available from the current hatchery operations, meaning there would be no changes to hatchery production. Staff propose that approximately one-third of the brood fish currently available for stocking (approximately 10,000 trout) will be allocated to the waters selected for this program. The remaining brood fish will continue to be allocated to the remainder of the approved trout waters under the current procedures. Waters selected for the Premium Stocked Trout Waters Program will continue to receive their full allocation of hatchery trout; however, a significantly larger portion of the allocation will be comprised of the larger 2- and 3-year old fish that would have been allocated under the existing program. Waters selected for the program will meet a set of biological and social criteria developed to maximize both angler use and biological conditions favorable to support larger fish longer into the trout fishing season.

It is proposed that the fishing season follow the current Approved Trout Waters season for the region of the state in which the waters are located. However, in an effort to extend the period of time that premium trout will be available to anglers, and in an attempt to spread the catch of premium trout to more anglers, staff propose a new set of harvest criteria. There will be a creel limit of five trout per day, only two of which may exceed 18 inches in length.

Staff propose the following new regulation:

§65.20. Premium Stocked Trout Waters Program.

(a) The Executive Director, with the approval of the Commission, may designate waters as part of the Premium Stocked Trout Waters Program. The designation of waters as part of the Premium Stocked Trout Waters Program shall be effective upon publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as part of the Premium Stocked Trout Waters Program 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.

SEASONS	MINIMUM SIZE	DAILY LIMIT
<u>Regular Season: 8 a.m. first Saturday after April 11 (or the first Saturday after March 28 for waters in the Regional Opening Day of Trout Season Program) to midnight Labor Day</u>	<u>7 inches</u>	<u>5 (combined species), only two of which may exceed 18 inches in length</u>
<u>Extended Season: 12:01 a.m. day after Labor Day to midnight last day of February of the following year</u>	<u>7 inches</u>	<u>3 (combined species), only two of which may exceed 18 inches in length</u>

(c) It is unlawful to fish in rivers and streams designated as part of the Premium Stocked Trout Waters Program without a current trout/salmon permit. A trout/salmon permit is not required to fish in lakes and ponds that have been designated as part of the Premium Stocked Trout Waters Program unless the person takes, kills or possesses, while in the act of fishing, a trout or salmon on or in these waters.

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, this new regulation will go into effect on January 1, 2010.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Anderson that the Commission postpone consideration of the Premium Trout Stocked Waters Program until the April Commission meeting at which time staff will provide a list of waters proposed for inclusion in the Program. Motion carried.

DESIGNATIONS

E. Additions to the Class A Wild Trout Waters List.

Commentary:

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

Commission staff have documented that the following stream sections have Class A wild trout populations:

County	Stream	Limits	Brook Trout (kg/ha)	Brown Trout (kg/ha)	Length (miles)	Survey Year
Schuylkill	UNT to Little Schuylkill River	Headwaters @ spring fed pond to mouth	35.92		0.81	2006
Potter	Cross Fork	Confl with Rhulo Hollow/Bear Trap Lodge downstream to Confl with Windfall Run	17.05 (2005) 18.6 (2006) 33.58 (2007)	37.67 (2005) 34.94 (2006) 64.7 (2007)	1.83	2005 2006 2007
Luzerne	Phillips Creek Sec 01	Headwaters to Route 118	ST 46.01		1.80	2001
Luzerne	Phillips Creek Sec 02	Route 118 to Mouth	ST 22.59 BT 28.14		3.16	2001
Luzerne	Kitchen Creek Sec 01	Confluence Ganoga Glen/Glen Leigh to Shedy Hill Road (T 559)	ST 47.12		4.15	2001
Luzerne	Crooked Creek	Headwaters to Mouth	ST 41.06		1.80	2001
Luzerne	Maple Run Sec 01	Headwaters to Pipeline Crossing	ST 90.37		2.42	2001
Luzerne	Wasp Branch	Headwaters to Mouth	ST 45.98		1.74	2001

A notice of proposed designation was published at 38 Pa. B. 6824 (December 13, 2008) (Exhibit H). During the public comment period, the Commission received one public comment stating the commenter’s belief that the West Branch of Codorus Creek in York County should be considered for inclusion on the list. 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 additions to the Class A wild trout waters list as set forth in the notice of proposed designation. If approved, the additions to the Class A wild trout waters list will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Gavlick and seconded by Commissioner Sabatose to approve the additions to the Class A wild trout waters list as set forth in the notice of proposed designation. The additions to the Class A wild trout waters list will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

OTHER MATTERS

F. Authorization for Additional Funding for the Susquehanna River Water Quality Study.

Commentary:

Juvenile bass mortality events in 2005, 2007 and 2008 have caused angler concerns about the fate of the Susquehanna River smallmouth bass fishery. The Commission previously tasked staff to evaluate existing datasets for the water quality of the Susquehanna River in order to determine potential risks to juvenile smallmouth bass. At its January 2008 meeting, the Commission authorized its Executive Director to grant up to \$200,000 from the Fish Fund and additional funding to be solicited from the Pennsylvania Department of Environmental Protection, Susquehanna River Basin Commission and other funding partners to the U.S. Geological Survey to conduct a study entitled "*Temperature, Dissolved Oxygen & Nutrient Monitoring in the Susquehanna River – Summer 2008*". The objectives of the study were to (1) characterize long-term temperature and dissolved oxygen regimes in critical reaches of the Susquehanna River system; (2) evaluate juvenile bass microhabitats and determine whether stressful conditions exist in these areas that are different from river main stem conditions; (3) compare temperature and dissolved oxygen of the Susquehanna to the Delaware and Allegheny Rivers; and (4) identify patterns of nutrient concentrations in the Susquehanna River system.

So that additional sampling and monitoring may take place during the summer of 2009, staff request that the Commission authorize additional funding for this effort.

Briefer:

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

Recommendation:

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

Action:

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

Other New Business

None

Time and Place of April 2009 Commission Meeting

The next meeting is scheduled for April 20-21, 2009 and will be held at the Seven Springs Mountain Resort in Somerset County.

Commissioner Lichvar also reminded everyone of the Susquehanna River Symposium scheduled for 9:00 a.m. on Saturday, January 31, at the River Rescue Hall in Harrisburg.

Adjournment

A motion was made by Commissioner Sabatose and seconded by Commissioner Shetterly to adjourn the meeting at approximately 3:50 p.m. Motion carried.