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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 85th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, April 20 and 21, 2009, at the Seven Springs Mountain Resort, Champion, PA 15622.

Commission committees met on April 20 beginning at approximately 8:00 a.m. and on April 21 beginning approximately at 8:00 a.m. The public session for review of this agenda began at or about 1:15 p.m. on April 21.

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
Samuel M. Concilla
Richard W. Czop
Norman R. Gavlick
Steven M. Ketterer
William J. Sabatose
William R. Worobec

Review and Approval of Minutes from the January 30, 2009 Meeting

A motion was made by Commissioner Ketterer and seconded by Commissioner Czop to approve the January 30, 2009 minutes as written. Motion carried.

Presentations

Leonard Lichvar, District Manager, and Amanda Deal, District Resource Scientist and Environmental Educator, of the Somerset Conservation District presented rain barrels to the Commission. The rain barrels are a container placed at the end of a downspout that collects and

stores rooftop runoff. Harvesting rainwater may help to save on water bills, be used for watering gardens and house plants, and is good for washing cars, pets and windows. They also help minimize the detrimental effects of stormwater runoff. Following the Commission meeting, a workshop was held, and additional information was provided.

Executive Director's Report

Dr. Austen extended his thanks to staff and Commissioners who assisted in the eight regional Commissioner district meetings in February and March. It was an excellent series of events, and the meetings were well attended. A full report of the ideas generated and the outcome of those meetings will be provided at the July 2009 Commission meeting. Dr. Austen also highlighted the "PFBC Activity Report – Highlights for First Quarter 2009" (Exhibit A) that was provided to the Commissioners. The report includes an update of major activities and accomplishments over the last three months.

Announcement of Executive Session

An executive session was held on April 13 at 3:00 p.m. to discuss current and potential litigation. An executive session also was held on April 20, at 10:00 a.m. to discuss real estate, litigation and personnel matters.

Reports of Commissioner Committees

Executive and Planning (Commissioner Lichvar) -

The Executive and Planning Committee met on Monday, April 20, at 8:00 a.m. Dr. Austen led a discussion regarding the 2009 Annual Plan of Work, and a review of the Commission's strategic planning efforts was provided.

Administration (Commissioner Worobec) -

The Administration Committee met on Tuesday, April 21, at approximately 11:00 a.m. Brian Barner gave an overview of the American Recovery and Reinvestment Act. Agenda items were discussed.

Boating (Commissioner Ketterer) –

The Boating Committee met on Tuesday, April 21, at 11:30 a.m. Agenda items were discussed, and Scott Bollinger provided a boating facilities grant update.

Communications (Commissioner Shetterly) –

The Communications Committee met on Tuesday, April 21, at approximately 9:45 a.m. Rick Levis provided an overview of how public information is disseminated.

Fisheries (Commissioner Bachman) –

The Fisheries Committee met on Monday, April 20, at approximately 1:00 p.m. Agenda items were discussed. Leroy Young provided a general overview of Bureau of Fisheries issues. Discussion topics included American shad restoration efforts, the West Branch Susquehanna smallmouth bass regulation analysis and the stocked trout cost analysis. The Committee meeting

was well attended by the public, and the Committee heard comments from the public regarding the proposed action on the listing of five mussel species as endangered or threatened. The public also provided comment on shad restoration efforts and provided a report on the local watershed and the problems associated with the watershed.

Habitat and Environmental (Commissioner Anderson) –

The Habitat and Environmental Committee met on Tuesday, April 21, at 10:15 a.m. An agenda item concerning a fish passage grant was discussed. Scott Carney provided an update on the Sinnemahoning Creek Watershed Restoration Grant Program, and Dave Houser provided a presentation on large-scale fish habitat enhancement projects at selected lakes.

Law Enforcement (Commissioner Gavlick) –

The Law Enforcement Committee met on Tuesday, April 21, at approximately 8:00 a.m. Tom Kamerzel provided a bureau update and briefing on the selection process for the 19th Waterways Conservation Officer training class, 2009 Deputy Waterways Conservation Officer class, the Waterways Conservation Officer labor contract, the Bureau of Law Enforcement rank structure, and “Operation Shellshock.”

The Committee also acted upon proposed revocations. The Committee revoked the fishing privileges of two individuals for a period of two years and five individuals for one year. The Committee also revoked the boating privileges of one individual for one year with the requirement that the individual successfully complete a boating safety education course and revoked the boating privileges of one individual for two years with the requirement that the individual successfully complete a classroom boating safety education course.

Legislation (Commissioner Sabatose) –

The Legislation Committee met on Tuesday, April 21, at approximately 9:00 a.m. A legislative update was provided. Tim Schaeffer provided a briefing on the reauthorization of the Lake Erie Permit, the license package and proposed Title 30 amendments.

Public Comment to Commissioners and Staff

Sam Rugh, President, Westmoreland County Sportsmen’s League, provided comment on Resource First and the condition of and funding that is needed for dams in southwestern Pennsylvania. Robert Schellinger, of Senator Don White’s office, provided comment on the proposed action on the listing of five mussel species as endangered or threatened. Randy Buchanan, Trout Unlimited, also provided comment on the proposed action to list five mussel species as endangered or threatened.

EXECUTIVE AND PLANNING

A. 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. The Annual Plan of Work for 2009 is attached as Exhibit B.

Briefer:

Dr. Douglas J. Austen, Executive Director

Recommendation:

Staff recommend that the Commission approve the Annual Plan of Work for 2009 set forth at Exhibit B.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Worobec that the Commission approve the Annual Plan of Work for 2009 set forth at Exhibit B. Motion carried.

ADMINISTRATION

A. Girard American Legion Post 494 Property Rights Acquisition, Girard Township, Erie County.

Commentary:

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

The Commission has been offered an easement on over 6,700 linear feet on both sides of Elk Creek as it flows across a parcel of property owned by Girard American Legion Post 494 in Girard Township, Erie County, for \$70,000. The easement will be for public fishing, boating, and riparian and fishery management and will include the stream corridor and extend at least 35 feet back from the top of bank. In addition to the fishing easement along the stream corridor, an additional easement on the existing parking area located on the property and the access road from Noble Road to the parking area has been offered to ensure access to the fishing easement area and parking. The existing parking area is located adjacent to the creek. A map depicting the subject parcel is attached as Exhibit C.

The easement area is located south of Route 20 along North Creek Road. A portion of the easement area is adjacent to a property on which the Commission has recently exercised an option for a fishing access easement. The Girard American Legion Post easement area is also upstream of the Girard Borough Park (1.5 miles) and downstream of the Erie County Historical Society (1 mile), both of which are open to public fishing.

Elk Creek provides significant steelhead fishing opportunities in the area. Also, Elk Creek received several trout stockings in 2008 in this area, and the acquisition of the subject rights will ensure long-term fishing opportunities. The Commission’s regional law enforcement and fisheries staff have recommended that the site be pursued and acquired if possible.

The seller and the Commission have signed an option agreement that will allow staff to perform its due diligence. The Commission’s exercise of the option will be subject to meeting the due diligence and funding requirements. In addition, the seller has agreed to be responsible for all current applicable real estate and transfer taxes that are normally shared between the buyer and seller. The Commission may, in its sole discretion, pay the costs to obtain and record a subordination of lien for the property.

Briefer:

Scott W. Bollinger, Boating Facilities Program Coordinator

Recommendation:

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

Action:

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

B. Pleasant Gap Administrative Office Complex: Interagency Land Transfer with Department of General Services and Funding for Development of Property.

Commentary:

The Commonwealth of Pennsylvania owns a 13.26-acre tract of land in Benner Township, Centre County, known as Lot 2 of a 4 lot subdivision of lands of the Commonwealth of Pennsylvania for the Centre County Correctional Facility. This 13.26-acre parcel is located next to the Correctional Facility alongside State Route 150 between Bellefonte and State College and is very near the interchange with Interstate 99. The property is currently under the jurisdiction of the Department of General Services (DGS), and DGS has offered to enter into an interagency land transfer agreement with the Commission providing for the transfer of the property at no cost to the Commission.

The land is suitable for construction of the Commission's much needed administrative office complex for Commission staff and operations currently housed in a number of antiquated buildings scattered throughout the Pleasant Gap and Bellefonte areas in Centre County. The size of the parcel of property to be transferred is also ideally suited for future development of a waterways conservation officer and staff training center. A map depicting the subject parcel is attached as Exhibit D.

Staff have estimated that the development of the site with a 25,000 square foot administrative facility will cost approximately \$7.6 million in 2008 dollars. These costs include design, site preparation and construction work. The Commission has secured capital budget authorization for this project in the amounts of \$1.1 million and \$6.5 million through Act 83 of 2006 and Act 41 of 2008, respectively. Both acts provide that this project may be financed by the incurring of debt or by the current revenues of the Fish and Boat Funds. Staff project that the development of this site could occur within five years and that supplemental capital budget authorization will be required if development costs exceed current estimated costs.

In order for the Commission to move forward with this project, it will need to obtain funding from a source other than the Fish Fund and the Boat Fund. Staff therefore request authorization to explore the possibility of borrowing funds through the same process that was used to finance the development of the Commission's headquarters property located at 1601 Elmerton Avenue, Harrisburg. Specifically, the Elmerton Avenue building and property site were developed through a lease/purchase arrangement, and the long-term financing for the project was provided through the issuance of municipal bonds by the Dauphin County Industrial Development Authority. The municipal bond debt for the headquarters building will be satisfied by the Commission in 2015. Upon satisfaction of this debt, the Commission will own its Elmerton Avenue Headquarters building.

DGS has agreed to transfer the "Route 150" property to the Commission after the Commission has approved the interagency land transfer and has authorized its Executive Director to seek funding for site development and building construction.

Briefer:

Daniel D. Leonard, Director, Bureau of Engineering and Property Services

Recommendation:

Staff recommend that the Commission authorize the Executive Director to enter into an interagency land transfer agreement with the Department of General Services for the transfer of the Route 150 property and to implement plans to fund and develop the property through expenditures from the Fish Fund and Boat Fund and/or the issuance of long-term debt as more fully described in the Commentary.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Ketterer to authorize the Executive Director to enter into an interagency land transfer agreement with the Department of General Services for the transfer of the Route 150 property and to implement plans to fund and develop the property through expenditures from the Fish Fund and Boat Fund and/or the issuance of long-term debt as more fully described in the Commentary. Motion carried.

BOATING

A. Lease of North Bend Access and Hyner Access Properties, Chapman Township, Clinton County.

Commentary:

The Commission owns a ± 5.3 acre parcel along the West Branch of the Susquehanna River in the Village of North Bend, Chapman Township, Clinton County, known as the North Bend Access. The site is located ± 24 miles upriver from Lock Haven and has a rough gravel ramp and dirt parking for two cars. The property is best suited for car-top boats and unpowered boats with potential for larger boats during seasonal high water. The river in this area is a warm water fishery. The property is lightly utilized, which may be a result of its lack of development.

In addition, the Commission owns a ± 1.4 acre parcel along the West Branch of the Susquehanna River in Chapman Township, Clinton County, known as the Hyner Access. The site is located ± 20 miles upriver from Lock Haven and ± 4 miles downriver from the North Bend Access. The site is a vacated public road that led to a former PennDOT bridge site. The bridge was removed and rebuilt immediately (± 150 feet) up river after which PennDOT gave the property to the Commission. The Hyner Access was rebuilt in 2008 with a new concrete plank boat ramp, rip-rap and vehicle turn-around. The stone parking area was stabilized and has room for \pm six vehicles. Like the North Bend Access, the Hyner Access is best suited for car-top boats and unpowered boats with potential for larger boats during seasonal high water. The river in this area is a warm water fishery. The property receives steady, but not heavy, use. The site is highly visible and easily accessible and is located next to a tavern/restaurant.

Chapman Township has requested a lease agreement on both properties to assist with their development, maintenance and operation to benefit the public. Subject to the approval of a lease, the Township will pursue \$47,000 in grant money from the Commission to further develop the North Bend Access. The Township will utilize this grant money to leverage additional grant money from the Pennsylvania Department of Conservation and Natural Resources (DCNR). The improvements that the Township has planned for the North Bend site include the construction of a 12-foot wide concrete boat ramp, vehicle turn-around, improved river front access and an improved gravel parking area that will accommodate not less than eight car-trailer parking spaces, including parking for persons with disabilities. These improvements also will include erosion control rip-rap and access control posts and parking blocks.

A location map showing both sites in relation to Lock Haven is attached as Exhibit E. The development of the North Bend Access will not only increase its public use but will also increase the use and enjoyment of the Hyner Access immediately downriver.

The lease agreement will address the Township's desires and provide the Commission with a degree of liability protection and control to protect the interests of anglers and boaters. The term will be dependent on the needs of the Township; however, it will not

exceed 25 years. The lease will require that the sites remain open for public fishing and boating free of charge along with parking related thereto, and the Township's use of the sites may not significantly impact their aquatic resources. The lease will place the burden of the operational and maintenance responsibilities on the Township, which will save Commission staff time and resources. The Township will be required to seek Commission approval of all development at both sites prior to any actions being taken, and the Commission may provide assistance in its sole discretion.

Briefer:

Scott W. Bollinger, Boating Facilities Program Coordinator

Recommendation:

Staff recommend that the Commission authorize the Executive Director to enter into a lease agreement with Chapman Township for the North Bend and Hyner Accesses, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Concilla to authorize the Executive Director to enter into a lease agreement with Chapman Township for the North Bend and Hyner Accesses, as more fully described in the Commentary. Motion carried.

B. Modification of Property Lines and Easement Acquisition at the Epler Access, Bern Township, Berks County.

Commentary:

The Commission owns a +/-5.4 acre parcel on the Schuylkill River with a +/-0.6 mile right of way in Bern Township, Berks County, known as the Epler Access (aka Eppler Access, aka Ephler Access). The Access has a gravel ramp, paved entrance road and a stabilized grassy parking area. The Access was originally part of a much larger parent tract (+/-95 acres; +/-5,000 feet river frontage) owned by the Commonwealth and controlled by the Department of Environmental Resources (now Department of Environmental Protection – DEP) that was divided off with control and jurisdiction transferred to the Commission in 1982. The property was originally acquired in the 1940's as a silt collection basin.

The Access is somewhat remote but is located +/- 5 miles northwest of the City of Reading. The Access was originally usable by moderate draft boats because of the pooling effect of the Felix Dam immediately down river. However, the dam failed in the late 1990's, and this resulted in a lowering of the water level. The property is no longer utilized as it once was, but it is now well suited for car-top boats and canoes with potential for larger boats during seasonal high water.

The DEP informed Commission staff that it intends to dispose of its residue property adjacent to the Commission's Access. The DEP will need to go through subdivision to dispose of its property because the Commission is retaining its Access property and the entire tract is titled in the name of the Commonwealth. The DEP's survey work is expected to start in early to mid summer. The DEP has requested a formal response from the Commission by mid April specifying any additional property rights desired by the Commission, such as a riverfront easement or realignment of the existing Access property lines. A map showing the Epler Access site is attached as Exhibit F.

Staff would like authorization from the Commission to work with DEP to modify the property lines of the Epler Access provided that the change does not result in an addition or reduction to the area that exceeds +/- 1 acre. This modification will allow the DEP and the Commission some flexibility in the subdivision survey work to address any issues that may be encountered in the field. In addition, staff believe that there is a need to acquire an easement on as much of the DEP's riverfront property as possible in order to protect the long term interests of the anglers and boaters and protect the aquatic resources of the river corridor.

The final Access and easement configuration will be subject to the survey/subdivision process and what is practical on the ground. Any transfer of property rights between the DEP and the Commission will be memorialized in an interagency agreement and will be subject to meeting due diligence requirements.

Briefer:

Scott W. Bollinger, Boating Facilities Program Coordinator

Recommendation:

Staff recommend that the Commission authorize the modification of property lines at the Epler Access as more fully described in the Commentary. In addition, staff recommend that the Commission authorize the acquisition of an easement along the DEP's residue river frontage to the extent practical and acceptable by the DEP in the field.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Anderson to authorize the modification of property lines at the Epler Access as more fully described in the Commentary and further authorize the acquisition of an easement along the DEP's residue river frontage to the extent practical and acceptable by the DEP in the field. Motion carried.

C. Boating Facility Grant Program: Monroe Township, Shady Nook Boat Launch, Susquehanna River, Snyder County.

Commentary:

At its January 2005 meeting, the Commission approved the creation of a grant program providing funds to eligible applicants for the purpose of constructing and improving access for boats. Funds for this program are to be derived primarily from boat registration fees and state motorboat fuels tax. In certain instances, federal aid will also be used if appropriate. Grants exceeding \$100,000 require Commission approval. Staff therefore are seeking approval of the following grant:

Total Project Cost: \$306,851 Recommended Grant: \$230,000

Monroe Township purchased a private boat launch on the Susquehanna River that was originally constructed by PPL on lands within the Township. PPL has sold the power plant and is divesting itself of unneeded property. The current access road is in less than ideal condition and enters the property across other PPL lands and private property. The Township proposes to construct a more direct access road to the launch and to expand the existing parking area. This work will improve access to the launch and eliminate a potential problem when PPL disposes of the other property over which the current access road traverses. The Township purchased two strips of land for the road using Township funds. Boating Facility Grant funds will be used to construct the road surface, expand the parking area and replace the lower fifty feet of the existing concrete plank boat launch ramp which is in poor condition. This facility provides the first access to the west side of the Susquehanna River downstream of the fabridam in Sunbury, PA. The closest usable boat launch facility is located approximately 5.5 miles downstream.

A grant to the Township in the amount of \$145,000 was approved by the Commission in July 2005 for construction of the road and expansion of the parking lot. However, the Township was unable to obtain the necessary property rights to construct the new access road, and the grant was cancelled. Since that time, the Township has acquired the necessary rights, and the Township has reapplied for funding. The Township's current application seeks funding for not only the road and the parking lot but also for the replacement of the lower fifty feet of the existing concrete plank boat launch ramp.

Staff will explore whether this project is eligible for United States Fish and Wildlife Service funding through the Sport Fish Restoration Program. However, the grant to the Township is not contingent upon securing it.

Briefer:

Scott W. Bollinger, Boating Facilities Program Coordinator

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$230,000 to Monroe Township, Snyder County, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Worobec to approve a grant not to exceed \$230,000 to Monroe Township, Snyder County, as more fully described in the Commentary. Motion carried.

D. Boating Facility Grant Program: North Branch Land Trust, Property Acquisition, North Branch of the Susquehanna River, Luzerne County.

Commentary:

At its January 2005 meeting, the Commission approved the creation of a grant program providing funds to eligible applicants for the purpose of constructing and improving access for boats. Funds for this program are to be derived primarily from boat registration fees and state motorboat fuels tax. In certain instances, federal aid will also be used if appropriate. Grants exceeding \$100,000 require Commission approval. Staff therefore are seeking approval of the following grant:

Total Project Cost: \$428,100 Recommended Grant: \$150,000

The North Branch Land Trust plans to pursue the fee simple acquisition of a 22-acre property located along the North Branch of the Susquehanna River near West Pittston, PA. The property has approximately 1,000 linear feet of frontage along the River and 300 feet of riparian buffer. A map depicting the property is attached as Exhibit G. The North Branch Land Trust proposes to acquire the property and work toward the development of a public boat launch facility on the site. There are no other public boat launch facilities within five miles upstream or downstream of the proposed site. The acquisition of the property is Phase 1 of the project and will provide public access. Acquisition will protect open space for development as a future boating facility. The Pennsylvania Department of Conservation and Natural Resources has approved a grant in the amount of \$213,000 for the acquisition of the property. Staff recommend funding not to exceed \$150,000 from the Boating Facility Grant Program.

Although the site is currently suitable for unpowered boats and shore fishing, staff recommend that as a condition of the grant, the Land Trust be required to construct facilities, including a ramp, parking area and access road, for powered boats within five years of acquiring the site. Staff further recommend that as a condition of the grant, the Land Trust be required to convey a conservation easement to the Commission over the entire 22-acre parcel.

Briefer:

Scott W. Bollinger, Boating Facilities Program Coordinator

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$150,000 to the North Branch Land Trust, Luzerne County, as more fully described in the Commentary. Staff further recommend that the Commission approve the acquisition of a conservation easement over the entire 22-acre parcel as described in the Commentary.

Action:

A motion was made by Commissioner Gavlick and seconded by Commissioner Ketterer to approve a grant not to exceed \$150,000 to the North Branch Land Trust, Luzerne County, and to approve the acquisition of a conservation easement over the entire 22-acre parcel as described in the Commentary. Motion carried.

E. Boating Facility Grant Program: Borough of Ohioville, Lock 57 Community Park, Ohio River, Beaver County.

Commentary:

At its January 2005 meeting, the Commission approved the creation of a grant program providing funds to eligible applicants for the purpose of constructing and improving access for boats. Funds for this program are to be derived primarily from boat registration fees and state motorboat fuels tax. In certain instances, federal aid will also be used if appropriate. Grants exceeding \$100,000 require Commission approval. Staff therefore are seeking approval of the following grant:

Total Project Cost: \$243,713 Recommended Grant: \$142,000

The Borough of Ohioville received a Boating Facility Grant in 2005 in the amount of \$190,000 to construct a new boat launch facility along the Ohio River. The new facility consists of an access road, boat launch, parking area and vault restrooms. The project was completed in August of 2007. However, when the Borough bid the project, the cost estimates came back much higher than anticipated. In order to reduce costs, the paving of the parking area and access road was eliminated from the original project. The Borough of Ohioville is requesting additional funds from the Boating Facility Grant Program to complete the paving of the access road and parking area.

The Borough cites heavy usage as the need for paving the road and parking area. In addition, the Borough of Ohioville received a grant from the Pennsylvania Department of Conservation and Natural Resources to construct a fishing pier for persons with disabilities and a picnic pavilion. The park and boat launch are located along Little Beaver Creek. The closest public boat launch facility is located approximately 13 miles upriver at Monaca, PA.

Staff will explore whether this project is eligible for United States Fish and Wildlife Service funding through the Sport Fish Restoration Program. However, the grant to the Borough is not contingent upon securing it.

Briefer:

Scott W. Bollinger, Boating Facilities Program Coordinator

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$142,000 to the Borough of Ohioville, Beaver County, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Anderson to approve a grant not to exceed \$142,000 to the Borough of Ohioville, Beaver County, as more fully described in the Commentary. Motion carried.

F. Boating Facility Grant Program: Luzerne County, Wilkes-Barre Nesbitt Park Boat Launch, North Branch of the Susquehanna River, Luzerne County.

Commentary:

At its January 2005 meeting, the Commission approved the creation of a grant program providing funds to eligible applicants for the purpose of constructing and improving access for boats. Funds for this program are to be derived primarily from boat registration fees and state motorboat fuels tax. In certain instances, federal aid will also be used if appropriate. Grants exceeding \$100,000 require Commission approval. Because the following grant relates to Phase 2 of a project and the Commission previously approved funding for Phase 1, staff are seeking Commission approval:

Total Estimated Project Cost: \$250,000

Recommended Grant: \$75,000

Luzerne County proposes to improve the existing single lane boat launch located in Nesbitt Park in the City of Wilkes-Barre. In 2007, the Commission awarded Luzerne County funding from the Boating Facility Grant Program in the amount of \$200,000 to complete Phase 1 of the project. Phase 1 includes widening and improving the existing single lane boat launch into a two-lane launch, constructing a parking area, constructing an overflow parking area, providing for lawn restoration and various plantings, and the purchase and installation of signage and kiosks.

The County has submitted a new application to perform Phase 2 of the project. Phase 2 includes the installation of erosion and sedimentation controls, earthwork, paving of the parking area and access road, the construction of an overflow parking area and the creation of a bioretention area. The County was awarded funding from the Pennsylvania Department of Conservation and Natural Resources in the amount of \$300,000 for Phases 1 and 2 of this project.

This is the only public boat launch facility for the City of Wilkes-Barre and the surrounding communities. The closest boat launch facilities are located three miles downstream at the Hanover Township Access and 13 miles upstream at Apple Tree Road. The boat launch ramp is deteriorated and in need of repair. The improvements to the boat launch facility will directly benefit and support the public recreational boating activities of the area and will improve access to the river for emergency search and rescue operations.

Briefer:

Scott W. Bollinger, Boating Facilities Program Coordinator

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$75,000 to Luzerne County, as more fully described in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Gavlick to approve a grant not to exceed \$75,000 to Luzerne County, as more fully described in the Commentary. Motion carried.

FISHERIES

FINAL RULEMAKING

A. Amendments to Section 75.1 (Endangered Species) to add Salamander Mussel, Rabbitsfoot, and Snuffbox and Amendments to Section 75.2 (Threatened Species) to add Sheepnose and Rayed Bean.

Commentary:

The Commission has proposed amendments to 58 Pa. Code §§ 75.1 and 75.2 (relating to endangered species; and threatened species) that list five mussel species as endangered or threatened. Specifically, the Commission has proposed to add the Salamander Mussel, Rabbitsfoot and Snuffbox to the Pennsylvania endangered species list and to add the Sheepnose and Rayed Bean to the Pennsylvania threatened species list.

A notice of proposed rulemaking, containing the amendments and seeking public comments, was published at 38 Pa. B. 6617 (December 6, 2008) (Exhibit H). The original public comment period was December 6, 2008 through January 6, 2009. On January 30, 2009, the Commission extended the comment period until March 15 and directed staff to hold a public meeting on the listings in the greater Pittsburgh area prior to the April meeting. A notice extending the public comment period until March 15 and advising the public of the meeting on March 2, 2009 in Kittanning was published at 39 Pa. B. 1074 (February 21, 2009)(Exhibit I).

As of March 16, 2009, the Commission received a total of 174 public comments, including oral and written comments provided at the March 2nd meeting. During the formal comment period of December 6, 2008 through January 6, 2009 and the extended comment period of January 31 through March 15, 2009, the Commission received 169 comments: 106 comments favor the proposal, 62 comments oppose it and one is undetermined. The Commission received 5 comments between January 7 and January 30, of which 4 support the proposal and 1 opposes it. The opposing comments were submitted by employees of the sand and gravel dredging industry (including a form letter signed by 30 employees of Glacial Sand and Gravel Company) and 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 Commission also received opposing comments from the Pennsylvania Department of Transportation (which was later clarified), the Port of Pittsburgh Authority, Freeport Terminals, Campbell Transportation, the National Waterways Foundation and Laborers Local 1058. 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, the U.S. Department of the Interior, Fish and Wildlife Service, the U.S. Environmental Protection Agency, Mountain Watershed Association, Penn State University Sea Grant Program, Sustainable Environmental and Economic Partnership, French Creek Valley Conservancy, North Branch Land Trust, Wildlands Conservancy, Allegheny County Sportsmen's League, Center for Healthy Environments and Communities, the Carnegie Museum of Natural History and the Delaware River Network . Copies of all public comments and the transcript from the March

2 meeting were provided to the Commissioners. The Commissioners also were provided with copies of a comment/response document, which is available on the Commission's website at www.fishandboat.com under "Featured Topics."

In response to the comments and the interest in the proposed listings by members of industry, the environmental community and the general public, the Commission's staff conducted further analysis, clarified the A.2 criterion after consultation with the Pennsylvania Biological Survey and reevaluated each of the proposed species as it relates to the objective criteria (Exhibit J). The results of that reanalysis and reevaluation are as follows:

(1) Salamander Mussel (*Simpsonaias ambigua*). Staff determined that the Salamander Mussel met the following criteria. This determination is consistent with the information contained in the notice of proposed rulemaking. Staff therefore continue to recommend that the Salamander Mussel be listed as endangered.

CRITERIA A

A.2

As related to a decline in the area of occupancy, extent of occurrence and/or quality of habitat, four Pennsylvania subpopulations of Salamander Mussels have been documented within the past 39 years: Allegheny River pool 5, Allegheny River pool 6, French Creek and Dunkard Creek. Presently, only two subpopulations are considered extant (i.e., still in existence, not extinct): Allegheny River pool 5 and Allegheny River pool 6. The Dunkard Creek subpopulation is considered functionally extirpated (i.e., locally extinct) since there is no evidence of recruitment. The French Creek subpopulation is considered extirpated since no live Salamander Mussels have ever been collected, despite repeated surveys. The Allegheny River pool 5 subpopulation is under direct threat from proposed commercial sand and gravel operations. The Allegheny River pool 6 subpopulation is threatened by genetic isolation, natural mortality and the threat of a catastrophic pollution event. Combined with the threats below, a projected 80% population reduction within the next 10 years is expected for the Salamander Mussel.

As related to actual or potential levels of exploitation, the lock and dam system in the Allegheny and Ohio Rivers, combined with maintenance/commercial sand and gravel dredging, have altered and destroyed Salamander Mussel habitat, eliminated habitat continuity and genetically isolated subpopulations occurring in the Allegheny and Monongahela River systems. Allegheny River pool 5 has recently received authorization for dredging. The Department of Environmental Protection (DEP) has required setbacks to protect individual Salamander Mussels pending this proposed listing, which the dredgers have appealed to the Environmental Hearing Board.

As related to the effects of introduced taxa, hybridization, pathogens, pollutants, competitors or parasites, zebra mussels have colonized the Allegheny River, Ohio River and French Creek. Mortality from zebra mussel infestation is expected. Anthropogenic disturbances (i.e., disturbances derived from human activities) such as acute or chronic pollution events could destroy remaining live Salamander Mussels in Dunkard Creek or either Allegheny River subpopulation. Sedimentation from oil and gas developments, forestry and agricultural practices could have an adverse effect on mussel/host interactions and reduce Salamander Mussel recruitment. The Salamander Mussel is the only known North American mussel to

use an amphibian as a host. Any alteration or reduction to host habitat (e.g., loss of large flat rocks, sediment burial of large flat rocks) is likely to alter host numbers or behavior and reduce Salamander Mussel recruitment.

CRITERIA B

B.3

Evidence of Salamander Mussels (represented by live, fresh dead or relic shells) has been found at 10 sites over a total of 5.8 stream miles including functionally extirpated or extirpated sites (Dunkard Creek and French Creek) and Allegheny River pool 5 and pool 6.

B.4.a

There are only three known locations for live Salamander Mussels: Dunkard Creek, Allegheny River pool 5, and Allegheny River pool 6.

B.4.b

B.4.b.3. The Commission projects a continuing decline in the area, extent and/or quality of habitat of at least 75%. This percentage is derived from the expected loss of suitable water quality and habitat for the functionally extirpated Dunkard Creek subpopulation and considers the extirpation of the French Creek population. If the habitat for the Allegheny River pool 5 Salamander Mussel subpopulation is lost due to commercial sand and gravel dredging and natural mortality or pollution events reduce the Salamander Mussel subpopulation in pool 6, the continuing decline is projected to be at least 75%.

B.4.b.4. The number of areas of occupancy is conservatively projected to decline by at least 50%. Based upon recent survey data (within the past 25 years), four areas of occupancy are known. The French Creek and Dunkard Creek subpopulations are considered functionally extirpated or extirpated (= 50% decline) and if the Allegheny River pool 5 subpopulation is lost due to commercial sand and gravel dredging, the decline will be greater (= 75% decline).

B.4.b.5. A continued decline in mature individuals is projected to be at least 50%. Only one live Salamander Mussel was found but no recruitment observed in Dunkard Creek. Because mature individuals in Dunkard Creek are not likely to produce new recruits, this subpopulation is not counted as capable of reproduction. The French Creek subpopulation is considered extirpated. A projected continued decline of at least 50% is estimated.

B.4.b.6. The presence of a mature but apparently non-reproducing subpopulation in Dunkard Creek and extirpated French Creek subpopulation establishes an observed decline of 50%. The reproductive and recruitment status of the Allegheny River pool 5 subpopulation is unknown. Recruitment has been observed in the Allegheny River pool 6 subpopulation.

(2) Rabbitsfoot (*Quadrula cylindrica cylindrical*). The notice of proposed rulemaking indicated that the Rabbitsfoot met the criterion for population reduction over the next three generations (A.2) for the endangered criterion. After further analysis and reevaluation, Commission staff have determined that the Rabbitsfoot does not meet the A criteria but rather meets the B criteria as follows. Staff continue to recommend that the Rabbitsfoot be listed as endangered.

CRITERIA B

B.4.a

As related to fragmentation, six extant locations for Rabbitsfoot are known. Based upon its historic Pennsylvania range, the Rabbitsfoot population is severely fragmented.

B.4.b

B.4.b.3. A total of thirteen historic subpopulations are known for the Rabbitsfoot: Allegheny River (pools 5, 6, and 9), French Creek, LeBoeuf Creek, Muddy Creek, Conneaut Creek, Pymatuning Creek, Shenango River, Beaver River, Ohio River (New Cumberland and Montgomery pools), Monongahela River. Seven subpopulations are considered extant: Allegheny River (East Brady, Althom), French Creek, LeBoeuf Creek, Muddy Creek, Conneaut Creek, and Shenango River, representing a 46% subpopulation decline. Aside from the French Creek subpopulation, remaining subpopulations are small and vulnerable to pollution events.

B.4.b.4. The number of areas of occupancy is conservatively projected to decline by at least 40%. Based upon recent survey data (within the past 25 years), seven subpopulations are known. The Conneaut Creek (0.75 river miles), LeBoeuf Creek (0.75 river miles), Shenango River (0.1 river mile), Allegheny River (2 subpopulations, totaling 5 river miles) and Muddy Creek subpopulations are considered vulnerable to the threats of chronic (sedimentation) or localized pollution events.

(3) Snuffbox (*Epioblasma triquetra*). The proposed rulemaking indicated that the Snuffbox met the criteria for population reduction of greater than 80% in the next ten years (A.2) and a documented continuing decline (B.4.b). After further analysis and reevaluation, Commission staff have determined that the Snuffbox also meets the criteria for endangered status for a 80% population reduction over the past three generations (A.1) and severe fragmentation and continuing decline (B.4.a, and B.4.b). Staff therefore continue to recommend that the Snuffbox be listed as endangered.

CRITERIA A

A.1

As related to a decline in area of occupancy, extent of occurrence and/or quality of habitat, twenty subpopulations of Snuffbox are known from Pennsylvania: Ohio River (New Cumberland and Montgomery pools), Allegheny River (pools 5, 6, 7, 8, Kinzua Dam downstream to pool 9), French Creek, LeBoeuf Creek, Woodcock Creek, Muddy Creek, West Branch French Creek, Conneaut Outlet, Beaver River, Shenango River, Pymatuning Creek, Little Shenango River, Dunkard Creek, Little Mahoning Creek, and Lake Erie. No recent surveys have documented live Snuffbox in Lake Erie, Ohio River (New Cumberland and Montgomery pools), Beaver River, or the Allegheny River (pools 5, 6, 7, and 8). The upper Allegheny River, LeBoeuf Creek, West Branch French Creek, Conneaut Outlet, Little Mahoning Creek, Shenango River, Little Shenango River, and Dunkard Creek subpopulations are considered very small, unknown or declining. This status provides a suspected 80% population reduction decline over the past three generations (~81 years).

A.2

As related to a decline in area of occupancy, extent of occurrence and/or quality of habitat, twenty subpopulations of Snuffbox are known from Pennsylvania: Ohio River (New Cumberland and Montgomery pools), Allegheny River (pools 5, 6, 7, 8, Kinzua Dam downstream to pool 9), French Creek, LeBoeuf Creek, Woodcock Creek, Muddy Creek, West Branch French Creek, Conneaut Outlet, Beaver River, Shenango River, Little Shenango River, Pymatuning Creek, Dunkard Creek, Little Mahoning Creek, and Lake Erie. No recent surveys have documented live Snuffbox in Lake Erie, Ohio River (New Cumberland and

Montgomery pools), Beaver River, or the Allegheny River (pools 5, 6, 7, and 8). The upper Allegheny River, LeBoeuf Creek, West Branch French Creek, Conneaut Outlet, Little Mahoning Creek, Shenango River, Little Shenango River, and Dunkard Creek subpopulations are considered very small, unknown or declining. Combined with threats, a projected total population reduction of 80% is expected in the next three generations (~81 years).

As related to actual or potential levels of exploitation, the lock and dam system in the Allegheny and Ohio Rivers, combined with maintenance/commercial sand and gravel dredging have destroyed Snuffbox habitat, eliminated habitat continuity and genetically isolated upstream subpopulations from other subpopulations. Large impoundments such as the Allegheny Reservoir, Pymatuning Reservoir and Shenango River Lake have also destroyed Snuffbox habitat and eliminated genetic/host connectivity to downstream subpopulations.

As related to the effects of introduced taxa, hybridization, pathogens, pollutants, competitors or parasites, zebra mussels have destroyed the Lake Erie subpopulation and colonized the Allegheny River, Ohio River and French Creek. Mortality from zebra mussel infestation is expected. Anthropogenic disturbances such as acute or chronic pollution events could destroy remaining live Snuffbox in Dunkard Creek or other subpopulations. Sedimentation from oil and gas developments, forestry and agricultural practices could have an adverse effect on mussel/host interactions. The Snuffbox uses a unique strategy (fish capture) to lure hosts and transmit glochidia (parasitic larvae phase of freshwater mussels). Excessive turbidity associated with increased sedimentation would likely alter host numbers or behavior and reduce Snuffbox recruitment.

CRITERIA B

B.4.a

The Snuffbox is severely fragmented across its Pennsylvania present range. This means that the Snuffbox is found in small and relatively isolated subpopulations that may go extinct with a reduced probability of re-colonization.

B.4.b

B.4.b.3. Twenty historic subpopulations of Snuffbox are known from Pennsylvania: Ohio River (New Cumberland and Montgomery pools), Allegheny River (pools 5, 6, 7, 8, Kinzua Dam downstream to pool 9), French Creek, LeBoeuf Creek, Woodcock Creek, Muddy Creek, West Branch French Creek, Conneaut Outlet, Beaver River, Shenango River, Pymatuning Creek, Little Shenango River, Dunkard Creek, Little Mahoning Creek, and Lake Erie. No recent surveys have documented live Snuffbox in Lake Erie, Ohio River (New Cumberland and Montgomery pools), Beaver River, or the Allegheny River (pools 5, 6, 7, 8, Kinzua Dam downstream to pool 9). The upper Allegheny River, LeBoeuf Creek, West Branch French Creek, Conneaut Outlet, Little Mahoning Creek, Shenango River, Little Shenango River, and Dunkard Creek subpopulations are considered very small, unknown or declining. This status provides an inferred 80% decline.

(4) Sheepnose (*Plethobasus cyphus*). The proposed rulemaking indicated that the Sheepnose met the threatened criterion of 50% population reduction in the next ten years (A.2). At the time, the Sheepnose also met at least one endangered criterion. However,

exercising its best professional judgment, the PABS Bivalve Subcommittee recommended that it be listed as a threatened species due to evidence of reproduction and recruitment in the one subpopulation/location in which it exists. The Commission therefore proposed that the Sheepnose be listed as threatened. After further analysis and reevaluation, Commission staff have determined that the Sheepnose also meets the threatened criterion for extent of occupancy in stream or river miles (*B.3*) and the endangered criterion for historic population reduction (*A.1*). Despite the species' meeting at least one endangered criterion, Commission staff continue to recommend that the Sheepnose be listed as threatened based on the PABS Bivalve Subcommittee's prior finding of evidence of reproduction and recruitment in the one subpopulation/location in which it exists.

CRITERIA A

A.1

As related to decline in area of occupancy, extent of occurrence and/or quality of habitat, nine historic subpopulations of Sheepnose are known from Pennsylvania: Allegheny River (pools 5, 6, 7, and 8), Ohio River (New Cumberland, Montgomery, and Pittsburgh pools), Monongahela River and Beaver River. This species was previously considered extirpated from Pennsylvania, i.e., a suspected 100% historic population reduction. However, a population of Sheepnose was recently discovered in the middle Allegheny River. This is Pennsylvania's only known extant Sheepnose population. In an historic context, if the middle Allegheny River (Kinzua Dam downstream to pool 9) population is assumed to be a historically present subpopulation, this provides a suspected 90% population reduction over the past four generations (100 years).

A.2

As related to decline in area of occupancy, extent of occurrence and/or quality of habitat, nine historic subpopulations of Sheepnose are known from Pennsylvania: Allegheny River (pools 5, 6, 7, and 8), Ohio River (New Cumberland, Montgomery, and Pittsburgh pools), Monongahela River and Beaver River. This species was previously considered extirpated. A recently discovered population in the middle Allegheny River subpopulation is the only subpopulation considered extant. This subpopulation appears to be thriving and expanding its range. With continuation of the threats detailed below, the Sheepnose status provides a projected 50% population reduction suspected to be met over the next three generations (~75 years).

A localized or catastrophic pollution event in this stretch of the Allegheny River would have a devastating impact on this population. Combined with the threats described below, the Sheepnose is likely to achieve a projected 50% population reduction over the next three generations (75 years).

As related to actual or potential levels of exploitation, the lock and dam system in the Allegheny and Ohio Rivers, combined with maintenance/commercial sand and gravel dredging have destroyed Sheepnose habitat, eliminated habitat continuity and genetically isolated subpopulations occurring in the Allegheny and Monongahela River systems. Sedimentation from oil and gas developments, forestry and agricultural practices could have an adverse effect on mussel/host interactions and reduce Sheepnose recruitment. The Sheepnose produces narrow, red lanceolate packets of glochidia called conglutinates. These

conglutinates resemble fish prey items, specifically worms. Excessive turbidity associated with increased sedimentation would likely alter host numbers or behavior (e.g. ability of fish to find and consume conglutinates) thereby reducing Sheepnose recruitment.

As related to the effects of introduced taxa, hybridization, pathogens, pollutants, competitors or parasites, zebra mussels have colonized the Allegheny River and Ohio Rivers. Mortality from zebra mussel infestation is expected. Anthropogenic disturbances such as acute or chronic pollution events could destroy the remaining Allegheny River Sheepnose subpopulation.

CRITERIA B

B.3

As related to extent of occupancy, the Allegheny River subpopulation occupies 25 river miles. Greater than 10 river miles and less than 50 river miles meets threatened status.

(5) Rayed bean (*Villosa fabalis*). The notice of proposed rulemaking indicated that the Rayed Bean meets one criterion for threatened status: Population reduction over the next ten years (A.2). After further analysis and reevaluation, Commission staff have determined that the Rayed Bean also meets the historic population reduction criterion (A.1). Although the Rayed Bean meets the population reduction criteria, there are ongoing and pending studies that could affect the listing determination. Therefore, staff recommend that the Commission take no action to list the Rayed Bean at this time.

CRITERIA A

A.1

As related to a decline in area of occupancy, extent of occurrence and/or quality of habitat, thirteen historic subpopulations are known for the Rayed Bean: upper Allegheny River to pool 9, Allegheny River pools (6 and 8), French Creek, LeBoeuf Creek, Cussewago, Ohio River, Shenango River, Beaver River, Mahoning River, Little Mahoning, Conewango Creek, and Pymatuning Creek. Six subpopulations are considered extant: upper Allegheny River, Allegheny River pools (2), French Creek, LeBoeuf Creek, and Cussewago Creek. This status provides an observed (54%) population reduction decline over the past four generations (~80 years).

As related to actual or potential levels of exploitation, the lock and dam system in the Allegheny and Ohio Rivers, maintenance/commercial sand and gravel dredging, and water quality degradation have combined to destroy Rayed Bean habitat, eliminated habitat continuity and genetically isolated subpopulations. Large impoundments such as the Allegheny Reservoir, Pymatuning Reservoir and Shenango River Lake have also destroyed Rayed Bean habitat and eliminated genetic/host connectivity to downstream subpopulations.

As related to the effects of introduced taxa, hybridization, pathogens, pollutants, competitors or parasites, zebra mussels have colonized the Allegheny River, Ohio River and French Creek. Mortality from zebra mussel infestation is likely to have occurred. Anthropogenic disturbances such as acute or chronic pollution events may have eliminated or reduced existing live Rayed Bean in one or more subpopulations.

A.2

As related to a decline in area of occupancy, extent of occurrence and/or quality of habitat, thirteen historic subpopulations are known for the Rayed Bean: upper Allegheny River to Pool 9, Allegheny River Pools (6 and 8), French Creek, LeBoeuf Creek, Conewango Creek, Cussewago Creek, Little Mahoning Creek, Ohio River, Shenango River, Beaver River, Mahoning River, and Pymatuning Creek. Six subpopulations are considered extant: upper Allegheny River to Pool 9, Allegheny River pools (6 and 8), French Creek, LeBoeuf Creek, and Cussewago Creek. This status provides an observed (54%) population reduction decline over the past three generations (~60 years). If one subpopulation is lost (leaving 5 extant subpopulations) due to habitat destruction or an acute/chronic pollution event (see threats described below) then this will result in a projected 62% decline over the next ten years or three generations (~60 years).

As related to actual or potential levels of exploitation, the lock and dam system in the Allegheny and Ohio Rivers, combined with maintenance/commercial sand and gravel dredging have destroyed and will continue to destroy Rayed Bean habitat, eliminated habitat continuity and genetically isolated subpopulations. Large impoundments such as the Allegheny Reservoir, Pymatuning Reservoir and Shenango River Lake have also destroyed Rayed Bean habitat and eliminated genetic/host connectivity to downstream subpopulations.

As related to the effects of introduced taxa, hybridization, pathogens, pollutants, competitors or parasites, zebra mussels have colonized the Allegheny River, Ohio River and French Creek. Mortality from zebra mussel infestation is expected. Anthropogenic disturbances such as acute or chronic pollution events could destroy remaining live Rayed Bean in one or more subpopulations. Sedimentation from oil and gas developments, forestry and agricultural practices could have an adverse effect on mussel/host interactions and reduce Rayed Bean recruitment. Excessive turbidity associated with increased sedimentation would likely alter available host fish numbers or behavior and reduce Rayed Bean recruitment.

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 except with respect to the Rayed Bean. If adopted, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*. With regard to the Rayed Bean, staff recommend that the Commission defer consideration until such time as staff have considered the results of ongoing and pending studies.

Action:

A motion was made by Commissioner Bachman to adopt the amendments to §75.1 to add the Salamander Mussel, Rabbitsfoot and Snuffbox to the Pennsylvania endangered species list and the amendments to §75.2 to add the Sheepnose and Rayed Bean to the Pennsylvania threatened species list as set forth in the December 2008 notice of proposed rulemaking. This motion died for a lack of a second.

A motion was then made by Commissioner Sabatose and seconded by Commissioner Czop that the Commission:

- (1) Adopt the amendments to §75.1 to add the Rabbitsfoot and Snuffbox to the Pennsylvania endangered species list as set forth in the December 2008 notice of proposed rulemaking;
- (2) Adopt the amendment to §75.2 to add the Sheepnose to the Pennsylvania threatened species list as set forth in the December 2008 notice of proposed rulemaking;
- (3) Defer action to list the Rayed Bean as a threatened species until such time as staff have considered the results of ongoing and pending studies;
- (4) Defer action to list the Salamander Mussel as an endangered species at this time because the companies that conduct sand and gravel dredging in the Ohio and Allegheny Rivers have indicated that they will not pursue any existing or additional legal proceedings relating to the Salamander Mussels within the next 60 calendar days in an effort to reach a mutually acceptable understanding;
- (5) Direct the Executive Director to work in partnership with the Department of Environmental Protection and the companies that conduct sand and gravel dredging in the Ohio and Allegheny Rivers to determine, using all available scientific data, if the Salamander Mussel is endangered and, if so, to develop agreed upon ways to protect the mussels where dredging operations are to occur; and
- (6) Direct the Executive Director to report back to the Board within 60 calendar days with the mutually agreed results of the collaborated efforts.

Motion carried.

A motion was then made by Commissioner Czop and seconded by Commissioner Ketterer to appoint Commissioner Concilla to monitor, as a liaison, the progress of the partners working together during this 60-day period. Motion carried.

PROPOSED RULEMAKING

B. Amendment to Section 61.2 (Delaware River and River Estuary) to Reduce Creel Limit for American Shad.

Commentary:

Since the mid-1980's, the daily creel limit for American shad in the Delaware River, the West Branch and the Estuary has been six fish with no minimum length limit, and there has been a year-round season. While in years past American shad was a popular gamefish and anglers often harvested them for consumption, in more recent years it has principally become a catch-and-release fishery. A large-scale creel survey in 2002 resulted in an estimated angler catch of 35,281 shad, of which 6,627 (19%) were harvested (Versar 2003). The 2002 harvest rate was about a third of the estimated 1986 creel survey harvest rate (49%) but was close to the estimated harvest rate for the 1995 (20%) survey. Individual angler trip data voluntarily submitted to the Delaware River and Estuary Angler Logbook Program from 2002 to 2006 indicated that anglers harvested a total of 139 shad of the 1,748 caught (8%) from 496 trips. Three or more shad were harvested on only four trips.

In 2007, the Atlantic States Marine Fisheries Commission's Shad and River Herring Technical Committee and American Shad Stock Assessment Subcommittee developed a coast wide stock assessment that indicated that adult American shad stocks in the Delaware River have been declining since 1994. Nevertheless, the annual production of juvenile shad has remained stable. In some other coastal rivers, adult shad stocks have declined as well. Despite the continued depressed abundance and documented low harvest rates of adult American shad in the Delaware River and River Estuary, the creel limit of American shad in Pennsylvania has remained at six fish per day.

Staff therefore propose a reduction of the daily creel limit of American shad to three fish in cooperation with the other boundary states (New Jersey, New York and Delaware). Resource managers from all four states participating in the Delaware River Fish and Wildlife Cooperative Technical Committee have verbally agreed that this reduction in the daily creel limit will not negatively impact angler use, and it is a proactive protective measure given the declining status of shad stocks in the Delaware River and other coastal river systems.

At a recent (February 18, 2009) meeting between the Commission and the New Jersey Division of Fish and Wildlife, New Jersey staff indicated that their organization is actively pursuing a reduced daily creel limit from the current six fish to three fish in the Delaware River. Their Freshwater Fishery Council has approved the proposed reduction and will solicit public comments this summer. New Jersey staff expect to have the reduced creel limit in place by January 1, 2010; however, due to the fact that the freshwater and marine divisions of the agency have jurisdiction over different parts of the river, the proposed regulation will only pertain to the Delaware River mainstem waters from the New Jersey/New York state border, downstream to the Commodore Barry Bridge. In the remaining 2.9 river miles, from of the Commodore Barry Bridge to the Delaware state line, the creel limit will remain at six in New Jersey until at least 2011, when it is anticipated that New Jersey's Marine Fishery Council will reduce the creel limit in that section to three.

New York is moving forward with a proposed amendment to reduce the American shad creel limit to three per day in the upper Delaware River. They indicated that a 2010 date for implementation is extremely optimistic and that 2011 is more realistic.

Delaware's only recreational shad angling occurs on the Brandywine Creek, and it is extremely limited. Delaware is moving to reduce the creel limit of herring (they do not make a distinction between American shad and river herring) from 10 combined/day to six combined/day. They anticipate doing this in conjunction with a change in the commercial regulations, but they do not anticipate this change occurring for the 2010 season.

In the interest of coordination with the regulations of New Jersey and New York, Commission staff propose that effective January 1, 2010, the reduced creel limit be applied to the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge. Staff propose the following amendment:

§61.2. Delaware River, West Branch Delaware River and River Estuary.

* * *

(d) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and [to] Delaware River tributaries, from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
* * *	* * *	* * *	* * *
AMERICAN SHAD	Open year-round	No minimum	<u>From Pennsylvania line upstream to the Commodore Barry Bridge:</u> 6 <u>From the Commodore Barry Bridge upstream: 3</u>
* * *	* * *	* * *	* * *

Staff further propose that for the remaining 2.9 miles downstream of the Commodore Barry Bridge, the current daily limit of six remain in effect until such time as New Jersey's Marine Council effectuates a change. At that time, staff will seek public comments on an amendment that reduces the creel limit of the lower section to three, with an effective date that coincides with the Marine Council's regulation change.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking reducing the creel limit to three for American shad in the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge as more fully described in the Commentary. If

approved on final rulemaking, the amendment will go into effect on January 1, 2010. Staff further recommend that the Commission approve the publication of a subsequent notice of proposed rulemaking reducing the creel limit on the remaining 2.9 miles of the river downstream of the Commodore Barry Bridge to be consistent with the timing of the New Jersey Marine Council's regulatory change.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Czop to approve the publication of a notice of proposed rulemaking reducing the creel limit to three for American shad in the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge as more fully described in the Commentary and which if approved on final rulemaking will go into effect on January 1, 2010, and to further approve the publication of a subsequent notice of proposed rulemaking reducing the creel limit on the remaining 2.9 miles of the river downstream of the Commodore Barry Bridge to be consistent with the timing of the New Jersey Marine Council's regulatory change. Motion carried.

C. Amendments to Sections 61.2 (Delaware River and River Estuary) and 61.8 (Lehigh River, Schuylkill River and Tributaries) to Reduce Creel Limit for River Herring.

Commentary:

Since the mid-1980's, the daily creel limit for river herring, a term applied collectively to blueback herring and alewife, in the Delaware River, West Branch and Estuary, has been a total of 35 herring, with no minimum length limit, and the season is open year-round. River herring are popular with striped bass anglers who use them either as live or cut bait. Principally, this fishery exists during the spring when river herring and striped bass are migrating into the Delaware River and Estuarine waters. Traditionally, anglers jigged for river herring for use as bait at the onset of a trip and during the trip. However, it has been alleged that an illegal transport fishery has developed in which entrepreneurs catch river herring from the Delaware River and transport them to the New Jersey coast for sale as bait to coastal anglers.

In 2002, catch and harvest of river herring in the Delaware River and Estuary were estimated in a large-scale creel survey (Versar 2003). This survey resulted in an estimate of a total catch of 7,553 river herring of which 4,916 (65%) were harvested. Most of the fish harvested were taken from tidal waters (1,465 fish, Delaware Memorial Bridge to Trenton, NJ) and the lower reach of the non-tidal Delaware River (5,105 fish, Trenton, NJ upstream to Delaware Water Gap). Field observations by the creel clerks during the course of the 2002 survey indicated that only a small number of anglers target river herring. Many of these anglers were noted to have elaborate live-wells in their vehicles for keeping river herring alive, which accounted for the relatively high estimated harvest rates.

The Atlantic States Marine Fisheries Commission's Draft Amendment 2 to the Interstate Fishery Management Plan for Shad and River Herring states that river herring abundance has declined precipitously since the mid-1990's and remains depressed along the Atlantic Coast. Pennsylvania therefore is proposing a reduction in the daily creel limit to 10 along with the other Delaware River and Estuary boundary states of New York and New Jersey. Delaware's herring creel limit is already 10 per day. The proposed action will unify regulations throughout the Delaware River. Resource managers participating in the Delaware River Fish and Wildlife Cooperative Technical Committee from all four states have verbally agreed that a reduction of the daily creel limit would not negatively impact angler use. This creel limit reduction is designed to allow for the continued use of river herring as a bait source by the individual angler, while reducing the economic incentive for the illegal sale of the fish for bait. New Jersey researchers conducted an informal survey of the most likely impacted commercial guides fishing the Delaware River. The results of the survey indicated strong support for the proposed reduction in the daily creel limit.

At a recent (February 18, 2009) meeting between the Commission and the New Jersey Department of Environmental Protection, Division of Fish and Wildlife, New Jersey staff indicated that their organization is actively pursuing the reduced river herring creel limit. Their Freshwater Fishery Council has already approved the proposed reduction, and public comments will be solicited this summer. New Jersey staff expect to have the reduced river herring creel limit in place by January 1, 2010; however, due to the fact that the freshwater and marine divisions of the agency have jurisdiction over different parts of the river, the proposed regulation will only pertain to the Delaware River mainstem waters from the New

Jersey/New York state border, downstream to the Commodore Barry Bridge. In the remaining 2.9 river miles from of the Commodore Barry Bridge to the Delaware state line, the creel limit will remain at 35 in New Jersey until at least 2011, when it is anticipated that New Jersey's Marine Fishery Council will reduce the creel limit in that section to 10.

New York is not proposing any changes to its river herring creel limits due to the fact that they do not anticipate river herring ascending that far up the Delaware River.

Delaware's only recreational shad angling occurs on the Brandywine Creek, and it is extremely limited. Delaware is moving to reduce its creel limit of herring (they do not make a distinction between American shad and river herring) from 10 combined/day to six combined/day. They anticipate doing this in conjunction with a change in the commercial regulations, but they do not anticipate this change occurring for the 2010 season.

In the interest of coordination with the regulations of New Jersey, Commission staff propose that effective January 1, 2010, the reduced creel limit be applied to the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge. Given the anadromous fish restoration efforts on the two major tributaries to the Delaware, staff also propose imposing a 10 fish per day creel limit on the Lehigh River and Schuylkill River.

Staff propose the following amendments:

§61.2. Delaware River, **West Branch Delaware River** and River Estuary.

* * *

(d) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and [to] Delaware River tributaries, from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
* * *	* * *	* * *	* * *
RIVER HERRING (alewife and blueback herring)	Open year-round	No minimum	<u>From Pennsylvania line upstream to the Commodore Barry Bridge: 35</u> <u>From the Commodore Barry Bridge upstream: 10</u>
* * *	* * *	* * *	* * *

§ 61.8. Lehigh River, Schuylkill River and tributaries.

* * *

(d) The following seasons, sizes and creel limits apply to the Lehigh River **upstream of the first dam in Easton, Pennsylvania** and its tributaries and the Schuylkill River upstream of the I-95 Bridge and its tributaries:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
AMERICAN SHAD	Open year-round	No minimum	1
<u>RIVER HERRING</u> <u>(alewife and blueback herring)</u>	<u>Open year-round</u>	<u>No minimum</u>	<u>10</u>
* * *	* * *	* * *	* * *

Staff further propose that for the remaining 2.9 miles downstream of the Commodore Barry Bridge, the current daily limit of 35 river herring remain in effect until such time as New Jersey’s Marine Council effectuates a change. At that time, staff will seek public comments on an amendment that reduces the creel limit of the lower section to 10, with an effective date that coincides with the Marine Council’s regulation change.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the publication of a notice of the proposed rulemaking reducing the creel limit to 10 for river herring in the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge and imposing a 10 fish per day creel limit on the Lehigh River and Schuylkill River, as more fully described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2010. Staff further recommend that the Commission approve the publication of a subsequent notice of proposed rulemaking reducing the creel limit on the remaining 2.9 miles of the river downstream of the Commodore Barry Bridge to be consistent with the timing of the New Jersey Marine Council’s regulatory change.

Action:

A motion was made by Commissioner Czop and seconded by Commissioner Bachman to approve the publication of a notice of the proposed rulemaking reducing the creel limit to 10 for river herring in the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge and imposing a 10 fish per day creel limit on the Lehigh River and Schuylkill River, as more fully described in the Commentary and which if adopted on final rulemaking will go into effect on January 1, 2010, and to further approve the publication of a subsequent notice of proposed rulemaking reducing the creel limit on the remaining 2.9 miles of the river downstream of the Commodore Barry Bridge to be consistent with the timing of the New Jersey Marine Council’s regulatory change. Motion carried.

D. Amendment of Section 73.3 (Transportation and Importation of VHS-Susceptible Species of Fish).

Commentary:

Viral hemorrhagic septicemia (VHS) is an infectious disease found in a variety of fish species. Effective January 1, 2009, the Commission adopted 58 Pa. Code §73.3 to help prevent the spread of the disease in the Commonwealth. Under §73.3(d), it is unlawful to import or cause the importation of VHS-susceptible species of fish into Pennsylvania from a VHS-affected or VHS-at risk region, except as follows: (1) VHS-susceptible species of live fish may be imported into the United States if the requirements of 9 CFR §§93.910 through 93.916 are met; or (2) VHS-susceptible species of dead fish may be imported into the United States if the fish are recreationally caught and are for human consumption.

At the time of adoption, the language of §73.3(d)(1) was consistent with the interim rule of the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) that was slated to go into effect on January 9, 2009. However, by notice published in the *Federal Register* (74 FR 1), the U.S. Department of Agriculture announced that it has delayed the effective date of the interim rule indefinitely to provide APHIS with time to make some adjustments to the interim rule that are necessary for the rule to be successfully implemented. The provisions of §73.3(d)(1), therefore, have no effect.

Accordingly, staff recommend that §73.3(d) be amended as follows:

§73.3. Transportation and importation of VHS-susceptible species of fish.

* * *

(d) *International movement.* It is unlawful to import or cause the importation of VHS-susceptible species of fish into this Commonwealth from a VHS-affected or VHS-at risk region, except as follows:

(1) **[VHS-susceptible species of live fish may be imported into the United States if the requirements of 9 CFR 93.910—93.916 (relating to general provisions for VHS-regulated fish are met.) Reserved.**

(2) VHS-susceptible species of dead fish may be imported into the United States if the fish are recreationally caught and are for human consumption.

This amendment is a “housekeeping” change that is limited to the movement of live VHS-susceptible species of fish from the Canadian provinces of Ontario and Quebec. It will not affect the Commission's regulations with respect to intrastate and interstate transportation or the international movement of dead fish. Under §73.3(d)(2), VHS-susceptible species of dead fish may be imported into the United States from Ontario and Quebec if the fish are recreationally caught and are for human consumption. However, until such time as APHIS adopts a rule pertaining to the international movement of live fish, the Commission's regulations will be silent on the subject. Prior orders issued by APHIS regarding international movement of live VHS-susceptible species of fish will

govern, but the Commission's waterways conservation officers will not be able to enforce them.

By notice published in the *Pennsylvania Bulletin* at 39 Pa. B. 1368 (March 14, 2009) (Exhibit K), the Executive Director, acting under the authority of 58 Pa. Code §65.25 (relating to temporary changes to fishing regulations), already has taken immediate action to rescind §73.3(d)(1). This temporary modification went into effect immediately and will remain in effect until the Commission, by appropriate action, rescinds the regulation.

Briefer:

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

Recommendation:

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

Action:

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

DESIGNATIONS

E. Amendments to the List of Wild Trout Streams.

Commentary:

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

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

The current version of the wild trout stream list was last revised in April 2008. Staff are recommending the addition of 10 new waters to the list and adjustments in the limits of three waters. These changes are primarily the result of recent surveys conducted on these waters.

Staff recommend that the following stream sections be added to the list:

County of Mouth	Water Name	Tributary To	Section Limits
Cambria	Browns Run	West Branch Susquehanna River	Headwaters downstream to mouth
Cambria	Howells Run	North Branch Little Conemaugh River	Headwaters downstream to First SR 2013 Bridge downstream of Ebensburg
Clearfield	Deer Creek	West Branch Susquehanna River	Headwaters downstream to confluence with Little Deer Creek
Clearfield	Little Deer Creek	Deer Creek	Headwaters downstream to confluence with UNT 25998 near Gillingham
Elk	North Branch Island Run	Island Run	Headwaters downstream to mouth

County of Mouth	Water Name	Tributary To	Section Limits
Elk	South Branch Island Run	Island Run	Headwaters downstream to mouth
Mercer	UNT to East Branch Wolf Creek	East Branch Wolf Creek	Headwaters downstream to mouth
Montour	West Branch Chillisquaque Creek	Chillisquaque Creek	Headwaters downstream to SR 0044 Bridge in Exchange
Schuylkill	Spies Run	Catawissa Creek	Headwaters downstream to mouth
Schuylkill	UNT to Catawissa Creek (RM 36.96)	Catawissa Creek	Headwaters downstream to mouth

Staff recommend the following adjustments to the list:

County of Mouth	Water Name	Tributary To	Limits	Adjustment
Tioga	Baldwin Run	Marsh Creek	Headwaters downstream to confluence with UNT at RM 1.16 (outflow of wetlands)	Downstream removal based on 2008 data that confirmed wild trout were absent from the lower 1.16 miles of stream
Union	Spruce Run	Buffalo Creek	Headwaters downstream to confluence with Black Run	Downstream extension based on 2008 data documenting the presence of a wild brown trout population
Wayne	Rose Pond Branch	East Branch Dyberry Creek	Headwaters downstream to mouth	Stream Name Change from Rose Pond Brook to Rose Pond Branch

A notice describing the proposed changes to the list of wild trout streams was published at 39 Pa. B. 1366 (March 14, 2009) (Exhibit L). In addition to the proposed additions and adjustments described above, the notice included the removal of Little Piney Creek, Somerset County, from Elk Lick Rod & Gun Club Dam downstream to the mouth. This removal was prematurely included in the notice, and therefore, staff recommend that the Commission not take action regarding the removal of Little Piney Creek from the list at this time. The Commission received one public comment supporting the additions to the list.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the changes to the list of wild trout streams as set forth in the notice with the exception of the removal of Little Piney Creek,

Somerset County. If approved, these changes will go into effect immediately upon the publication of a second notice in the *Pennsylvania Bulletin*.

Action:

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

OTHER MATTERS

F. Funding Increase for Cooperative Nursery Grant Program.

Commentary:

The Cooperative Nursery Program is the largest volunteer organization officially affiliated with the Commission. Annually, over 1 million trout, steelhead and warmwater/coolwater species are reared and stocked into Commonwealth waters by nursery sponsors. Support for these volunteers comes in the form of three full-time and one part time Commission employee(s) and funding through Commission grants.

At the fall 1996 meeting, the Commission approved the Cooperative Nursery Grant Program with the amount of funding set at \$15,000. The Commission, at its October 1998 meeting, approved the continuation of the grant program and increased the level of funding to \$25,000 (plus the amount of donations received by the Commission that were specifically earmarked for this purpose). At the April 2000 meeting, the amount of funding was increased to \$30,000. From the program's inception through 2001, individual grants were limited to \$1,000 per cooperative nursery per year unless specifically approved by a vote of the Commission.

At the April 2002 meeting, the Commission modified the grant program to increase the level of funding to \$60,000 and to include fish feed as an item for which grants could be approved under certain well-defined circumstances. Individual grants were increased from \$1,000 to \$3,000 per cooperative nursery per year. Grants exceeding \$3,000 per sponsor have required Commission approval. At the April 2003 meeting, the Commission discontinued the feed grant component of the program and otherwise continued the program with total grants not to exceed \$70,000. That level of funding has remained constant since FY 03-04. In FY09-10, the level of funding will increase to \$80,000.

Grants may be used to construct new facilities, add to existing facilities and make upgrades to infrastructure, water quality enhancement or equipment. Grants cannot be used for political activities or to purchase fish feed. Prospective recipients complete an application and submit it to the Cooperative Nursery Unit for consideration, and Unit staff award and administer the grants. Since 1997, approximately \$515,266 has been awarded to various organizations through this program resulting in the development of 354 projects. Projects range from raceway construction to back-up generators and security fencing. Funds have been spent as follows: 48% for infrastructure needs such as raceways, buildings, covers, screens, protection from predation, and general nursery improvements; 29% for equipment such as stocking tanks, dip nets, belt feeders, cleaning equipment, and dissolved oxygen meters; and 22% for fish life support equipment such as air blowers, systems aerators, diffuser stones, valves, and PVC piping. One percent was spent on fish food during a trial period in 2002 by those clubs who were willing to stock fish in waters selected by Fisheries Management as part of the Commission's normal allocation.

This program has been very effective in putting funds directly into the hands of the sponsors. Additional scrutiny is being focused on water quality issues related to fish hatcheries of all types by regulatory agencies. Presently, Cooperative Nursery Unit staff are reviewing the effluent treatment capabilities of the nurseries and expect to recommend improvements at a number of them. The Cooperative Nursery Unit intends to allocate grant funding for facility upgrades directly related to waste handling and effluent treatment. These funds will allow the nurseries to address staff recommendations. In light of increasing costs due to inflation and so that sponsors can tackle somewhat larger projects, staff recommend that the Commission increase the current per-sponsor project limit from \$3,000 to \$5,000 per year.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the Executive Director to approve individual grants of \$5,000 or less per project sponsor per year. For grants in excess of \$5,000, staff will seek separate Commission approval.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Gavlick to authorize the Executive Director to approve individual grants of \$5,000 or less per project sponsor per year. For grants in excess of \$5,000, staff will seek separate Commission approval. Motion carried.
(Commissioner Sabatose indicated for the record that he abstained).

G. Approval of Grant under Agreement with AES Ironwood to the Berks County Conservancy.

Commentary:

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

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

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

Commission staff solicited applications by October 15, 2008 for the Tulpehocken and Quittapahilla Creek Watershed Enhancement Grant Program. A Commission staff committee received applications, reviewed them in February of this year and is now seeking approval of the following grant in excess of \$10,000.

The Berks County Conservancy is proposing a dam removal project on Tulpehocken Creek, approximately 800 feet upstream from its confluence with the Schuylkill River. Removal of the dam, owned by the City of Reading, will allow free movement of fish, improve aquatic habitat, and enhance the adjacent City of Reading Confluence Park and the Berks County Stonecliffe Park areas. The total project cost is \$155,000. The Berks County Conservancy has requested \$39,000 from the Commission to be used for the design and construction phases of the project. Contributions from American Rivers, the Berks County Conservancy and a proposed National Fish and Wildlife Foundation Grant are to be used to fund the balance of the project.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$39,000 to the Berks County Conservancy for removal of the Tulpehocken Dam in the City of Reading as more fully described in the Commentary.

Action:

A motion was made by Commissioner Shetterly and seconded by Commissioner Anderson to approve a grant in the amount of \$39,000 to the Berks County Conservancy for removal of the Tulpehocken Dam in the City of Reading as more fully described in the Commentary. Motion carried.

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

Commentary:

In 2007, the United States Fish and Wildlife Service (USFWS) provided the Commission with \$969,180 to develop fish passage at three dams in the West Branch of the Susquehanna River watershed. First Quality Tissue owns one of these dams located at the confluence of Bald Eagle Creek near Lock Haven. Engineering designs for the Denil fishway at the dam have been completed and approved by the USFWS, and all necessary federal and state permits have been obtained.

At the January 2008 meeting, the Commission approved a grant of up to \$450,000 to First Quality Tissue to construct the fishway. However, recent construction and oversight bids received by First Quality Tissue total approximately \$565,000. Staff therefore request that the Commission approve increasing the amount of the grant to \$600,000 to account for the higher than anticipated bids and to provide a contingency should unforeseen cost overruns occur.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant of up to \$600,000 to First Quality Tissue, LLC for fishway construction.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Shetterly to approve a grant of up to \$600,000 to First Quality Tissue, LLC for fishway construction. Motion carried.

Other New Business

Commissioner Sabatose expressed that he would like the removal of refuge area designations to be discussed at the next Commission meeting and all public comments to be provided to the Commissioners prior to any future action being taken.

A motion was made by Commissioner Czop and seconded by Commissioner Concilla directing staff to acquire at least one dozen law enforcement badges to be issued to current Commissioners. The remainder of the inventory will be reserved for newly appointed Commissioners in the future. Motion carried.

Commissioner Czop stated that he would like the Commission to recognize Melody Zullinger, Executive Director, Pennsylvania Federation of Sportsmen's Clubs, for her outstanding leadership with the Federation with a plaque or some other memento. Her last day of employment was May 22, 2009.

Time and Place of July 2009 Commission Meeting

The next meeting is scheduled for July 13-14, 2009 and will be held at the Commission's headquarters in Harrisburg.

Adjournment

A motion was made by Commissioner Worobec and seconded by Commissioner Concilla to adjourn the meeting at approximately 2:20 p.m. Motion carried.