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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 87th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, October 5 and 6, 2009, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on October 5 beginning at 8:00 a.m. and on October 6 beginning at 8:30 a.m. The public session for review of this agenda began at or about 1:30 p.m. on October 6.

**Call to Order**

The meeting was called to order by Commission President Thomas C. Shetterly and followed by the Pledge of Allegiance to the Flag.

**Roll Call**

**Members Present**

**Thomas C. Shetterly, President**  
**William R. Worobec, Vice-President**  
**Robert A. Bachman**  
**Samuel M. Concilla**  
**G. Warren Elliott**  
**Norman R. Gavlick**  
**Steven M. Ketterer**  
**Leonard L. Lichvar**  
**William J. Sabatose**

**Members Not Present**

**Richard W. Czop**

**Review and Approval of Minutes from the July 14, 2009 Meeting**

A motion was made by Commissioner Sabatose and seconded by Commissioner Ketterer to approve the July 14, 2009 minutes as written. Motion carried.

**Awards and Presentations**

David Houser, Conservation Program Specialist, Division of Habitat Management, Bureau of Fisheries, was presented with a certificate of appreciation from the U.S. Army Corps of Engineers for the habitat work that Dave's Lake Habitat Section completed on Corps reservoirs.

Dave's staff was recognized as well. They included Ben Page, Conservation District Field Representative; Phil Thomas, Fisheries Biologist Aid; and Mike Swartz, Fisheries Biologist Aid.

It also was announced that the 2008 recipient of the Ralph W. Abele Conservation Heritage Award is William E. Sharpe of Port Matilda, Pennsylvania. Dr. Sharpe is a retired professor from Penn State University who devoted much of his professional career to producing scientific evidence that showed how acidic deposition was harming the state's aquatic resources, forest health and human health through contamination of water supplies. The Ralph W. Abele Conservation Heritage Award is the highest recognition that the Commission provides to persons who distinguished themselves in the cause of conservation. The Commission established the award in 1991 to recognize citizens of Pennsylvania who have made outstanding contributions to the protection, conservation and enhancement of the aquatic resources of the Commonwealth. The award also serves as a memorial to the late Ralph Abele for his steadfast and courageous work in protecting and conserving our natural resources as Executive Director of the Commission.

Fred Bohls, Pennsylvania Council of Trout Unlimited, presented Commissioner Robert A. Bachman with the Ken Sink Memorial Award for his outstanding service to Pennsylvania Trout Unlimited. This award is not presented every year. It is a high honor reserved for individuals who have made long-term, significant contributions to the Trout Unlimited mission through their work with the Pennsylvania State Council.

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

Dr. Austen announced that this will be his last Commission meeting, and he thanked the Commissioners for the opportunity to serve the Commission and the people of the Commonwealth. The "PFBC Activity Report – Highlights for Third Quarter 2009" (Exhibit A) was provided to the Commissioners. The report includes an update of major activities and accomplishments over the last three months.

#### **Announcement of Notational Vote (Exhibit B)**

The Commission voted on one item by notational vote since the July 2009 meeting. This item relates to the Commission's action to approve the removal of the section of Baldwin Run, Tioga County, from "The Muck" to the mouth of the stream, from the list of Class A Wild Trout Waters so that the revised section limits will read "From the headwaters downstream to the confluence with the unnamed tributary at RM 1.16 (outflow of wetlands)."

#### **Announcement of Executive Session**

Commissioner Shetterly announced that an executive session was held on October 5 to discuss litigation and personnel matters.

## **Reports of Commissioner Committees**

### **Executive and Planning (Commissioner Shetterly) –**

The Executive and Planning Committee met on Monday, October 5, at approximately 10:10 a.m. Meeting dates for 2010 were discussed, and Bernie Matscavage, Director of Administration, provided a review of the Fiscal Year 2010-11 budget request. Dr. Austen provided a review of the Annual Plan of Work.

### **Administration (Commissioner Ketterer) –**

The Administration Committee met on Tuesday, October 6, at approximately 9:50 a.m. Agenda items were discussed. Dan Leonard, Director of Engineering and Property Services, provided a presentation on the quarterly accomplishments of his bureau, high hazard dams and the Department of General Services contracting procedures for procurement of surveying services. Scott Bollinger provided an update on the Erie Access Improvement Program, and Gary Moore, Legislative Liaison, provided an update on Canonsburg Lake.

### **Boating (Commissioner Ketterer) –**

The Boating Committee met on Monday, October 5, at approximately 12:50 p.m. Dan Martin, Director of Boating and Access, provided a 2009 boating accident update and an update on bureau activities. Scott Bollinger provided an update on the Boating Facility Grant Program. Gail Kulp, Education Director, National Association of State Boating Law Administrators, and Dan Martin led a discussion regarding mandatory boating education.

### **Communications (Commissioner Lichvar) –**

The Communications Committee met on Tuesday, October 6, at approximately 11:25 a.m. Rick Levis, Director of Communications, provided an update regarding planned changes to the *Pennsylvania Angler & Boater* magazine for 2010 and on the media resources room on the website. Carl Richardson provided an update on the Education Grant Program and on media responsibilities of regional Outreach and Education Section staff.

### **Fisheries (Commissioner Sabatose) –**

The Fisheries Committee met on Monday, October 5, at approximately 1:40 p.m. Agenda items were discussed, and public comments were made regarding the proposed amendment to section 75.1 to add the Salamander Mussel to the endangered species list. A presentation was provided by the United States Geological Survey on the Susquehanna River Water Quality Study. Leroy Young, Director of Fisheries, led a discussion regarding the Class A re-designation of Cross Fork Creek. Dave Miko provided an update on the State Trout Plan.

### **Habitat and Environmental (Commissioner Elliott) –**

The Habitat and Environmental Committee met on Monday, October 5, at approximately 1:20 p.m. An agenda item concerning a fish passage and habitat restoration grant to American Rivers was discussed. Scott Carney provided an update on the McCoy Dam removal project, and Leroy Young provided an update on Dunkard Creek.

### **Law Enforcement (Commissioner Worobec) –**

The Law Enforcement Committee met on Tuesday, October 6, at approximately 8:36 a.m. Tom Kamerzel, Director of Law Enforcement, provided an update on nursery waters listings, bureau

efforts to assist in the identification of wild trout waters, the Deputy Waterways Conservation Officer class graduation, the progress of the 19<sup>th</sup> Waterways Conservation Officer training class, recruitment of new officers and retirements. He also provided information on Walnut Creek Marina operations, aids to navigation and passenger carrying vessels.

The Committee also acted upon proposed revocations. The Committee revoked the fishing privileges of three individuals for a period of two years and one individual for one year. In addition, the Committee revoked the boating privileges of two individuals for two years and ordered them to take and successfully complete a classroom boating safety education course.

**Legislation (Commissioner Gavlick) –**

The Legislation Committee met on Tuesday, October 6, at approximately 12:16 p.m. Updates regarding pending state legislation, proposed Title 30 amendments, the proposed license package, Act 111 and Heart and Lung, and federal legislation were provided.

**Public Comment to Commissioners and Staff**

Fred Bohls, Pennsylvania Council of Trout Unlimited, expressed his thanks for the opportunity to participate in the Trout Management Plan Workgroup.

## EXECUTIVE & PLANNING

### A. Dates for Fish and Boat Commission Meetings in 2010.

#### Commentary:

At the fall meeting each year, the Commission historically has established a schedule for regular meetings for the following year. Under the Fish and Boat Code, the Commission is required to have two meetings each year, one in January and the other in July. These meetings must be held in the Harrisburg area. Traditionally, the Commission has held two additional meetings each year in April or May and September or October.

Staff have reviewed the available dates and possible conflicts for scheduling regular Commission meetings for 2010. This review included a look at holiday, hunting and fishing seasons and other conflicting events. Based upon this review, the following dates are proposed for regular Commission meetings in 2010:

January 27-28, 2010 (Wednesday and Thursday)  
April 19-20, 2010 (Monday and Tuesday)  
July 12-13, 2010 (Monday and Tuesday)  
October 4-5, 2010 (Monday and Tuesday)

The January and July 2010 meetings will be held at the Harrisburg headquarters. The April and October 2010 meetings will be held at locations designated by the Commission for the transaction of business.

#### Briefer:

Dr. Douglas J. Austen, Executive Director

#### Recommendation:

Staff recommend that the Commission approve the dates for the regular meetings of the Commission for 2010 as set forth in the Commentary.

#### Action:

A motion was made by Commissioner Elliott and seconded by Commissioner Sabatose to approve the dates for the regular meetings of the Commission for 2010 as set forth in the Commentary. Motion carried.

## B. Review and Approval of Submission of Fiscal Year 2010-11 Budget Request.

### Commentary:

Under Commonwealth government budget procedures and in accordance with sections 522 and 532 of the Fish and Boat Code (30 Pa. C.S. §§522, 532), the Commission annually submits to the Governor's Budget Office the proposed Commission budget for the following fiscal year. The Commission's submission for Fiscal Year 2010-11 is due at the Budget Office in the early part of October.

Staff have prepared preliminary draft budget documents for submission to the Budget Office. According to the Budget Office, these documents are confidential. After the Executive Director submits the budget request, the Governor's Budget Office may make changes to the spending authority requested by the Commission. These changes are generally a result of changes in the calculations for personnel and/or other costs. The Governor will announce the details of the FY 2010-11 budget in February or March of 2010.

### Briefers:

Bernard M. Matscavage, Director, Bureau of Administration  
Dr. Douglas J. Austen, Executive Director

### Recommendation:

Staff recommend that the Commission authorize the Executive Director to submit a request to the Governor's Budget Office for Fiscal Year 2010-11 spending authority as more fully described in staff's preliminary draft budget documents.

### Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Sabatose to authorize the Executive Director to submit a request to the Governor's Budget Office for Fiscal Year 2010-11 spending authority as more fully described in staff's preliminary draft budget documents. Motion carried.

## ADMINISTRATION

### A. Weaver Property Rights Acquisition, Springfield Township, Erie County.

#### Commentary:

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

The Commission has been offered an easement for \$25,000 on over approximately 2,725 linear feet along one side of Crooked Creek as it flows across a parcel of property in Springfield Township, Erie County. The easement will be for public fishing, boating, and riparian and fishery management and will include the stream corridor and extend 35 feet back from the top of the bank to the extent of the ownership of the seller. A map depicting the subject parcel is attached as Exhibit C.

The easement area is located between Route 5 and Route 20 along Happy Valley Road and extends east along the creek. The subject parcel is approximately 0.5 miles downstream of the Holliday Crooked Creek Farm and Blake Holliday property, which are open to public fishing. Parking will be available on the adjacent Miller property if the Commission acquires a parking easement on that property under Administration agenda item B.

Crooked Creek provides significant steelhead fishing opportunities in the area. In addition, Crooked Creek received several trout stockings in 2009 in this area, and the acquisition of the subject rights will provide additional trout fishing opportunities. The Commission’s regional law enforcement and fisheries staff have recommended that the site be pursued and acquired if possible.

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

#### Briefer:

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

Recommendation:

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

Action:

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

B. Miller Property Rights Acquisition, Springfield Township, Erie County.

Commentary:

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

The Commission has been offered an easement for \$30,000 on over approximately 2,725 linear feet along one side of Crooked Creek as it flows across a parcel of property in Springfield Township, Erie County. The easement will be for public fishing, boating, and riparian and fishery management and will include the stream corridor and extend 35 feet back from the top of the bank to the extent of the ownership of the seller. In addition to the fishing easement along the stream corridor, an easement for a parking area and a footpath from Lucas Road to Crooked Creek has been offered to ensure access to the fishing easement area. A map depicting the subject parcel is attached as Exhibit D.

The easement area is located between Route 5 and Route 20 along Lucas Road and extends east along the creek. The subject parcel is approximately 0.5 miles downstream of the Holliday Crooked Creek Farm and Blake Holliday property, which are open to public fishing.

Crooked Creek provides significant steelhead fishing opportunities in the area. In addition, Crooked Creek received several trout stockings in 2009 in this area, and the acquisition of the subject rights will provide additional trout fishing opportunities. The Commission’s regional law enforcement and fisheries staff have recommended that the site be pursued and acquired if possible.

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

Briefer:

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

Recommendation:

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

Action:

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

## **FISHERIES**

### **FINAL RULEMAKING**

#### A. Amendment to Section 75.1 (Endangered Species) to Add Salamander Mussel.

##### Commentary:

The Commission proposed an amendment to 58 Pa. Code §75.1 (relating to endangered species) that adds the Salamander Mussel to the Pennsylvania endangered 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 E). 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 F).

As of March 16, 2009, the Commission received a total of 174 public comments, including oral and written comments provided at the March 2<sup>nd</sup> 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 five comments between January 7 and January 30, of which four support the proposal and one 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](http://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 G). The results of that reanalysis and reevaluation are as follows:

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, in consultation with the Commission and concurrence of the dredgers, has amended the dredgers' permits to provide for a specialized protocol to be utilized when Salamander Mussels are found in pre-dredging surveys.

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. This criterion for extent of occupancy provides for endangered status for species occupying less than 10 river miles.

##### *B.4*

Criterion B.4 is met due to the severe fragmentation and continuing decline of the Salamander mussel as described below:

##### *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.

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, this amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

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

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.

The Commission therefore proposed 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, the Commission proposed 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. The Commission further proposed 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, the Commission 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.

A notice of proposed rulemaking was published at 39 Pa. B. 3455 (July 11, 2009) (Exhibit H). During the formal comment period, the Commission received two public comments concerning the proposal. One comment questions the need for a reduction in the creel limit; the other supports it. After the formal comment period, the Commission received one comment from the Delaware Riverkeeper Network, supporting the change but urging the Commission to extend the reduced limit to the entire river and not exempt the 2.9 miles downstream of the Commodore Barry Bridge. Copies of all public comments have been provided to the Commissioners.

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, this amendment will go into effect on January 1, 2010.

Action:

A motion was made by Commissioner Gavlick and seconded by Commissioner Elliott to adopt the amendment as set forth in the notice of proposed rulemaking. This amendment will go into effect on January 1, 2010. 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 (ASMFC'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 proposed 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 were 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, the Commission proposed that effective January 1, 2010, the reduced 10 fish 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, the Commission also proposed imposing a 10 fish per day creel limit on the Lehigh River and Schuylkill River.

The Commission further proposed 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, the Commission 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.

A notice of proposed rulemaking was published at 39 Pa. B. 3455 (July 11, 2009) (Exhibit H). The Commission did not receive any public comments concerning this proposal.

After the Commission approved publication of the notice of proposed rulemaking containing proposed amendments to its regulations pertaining to river herring, the ASMFC approved Amendment 2 to the Interstate Fishery Management Plan for Shad and River Herring. The amendment prohibits commercial and recreational fisheries of river herring beginning January 1, 2012, unless a state or jurisdiction develops and submits for approval a sustainable management plan by January 1, 2010. The amendment defines a sustainable fishery as "a commercial and/or recreational fishery that will not diminish the potential future stock reproduction and recruitment." Submitted plans must clearly

demonstrate that the state or jurisdiction's river herring fisheries meet this new definition of sustainability through the development of sustainability targets that must be achieved and maintained.

The ASMFC's approval of Amendment 2 was taken in response to widespread concern regarding the decline of river herring stocks. While many populations of blueback herring and alewife, collectively known as river herring, are in decline or remain depressed at stable levels, lack of fishery-dependent and independent data makes it difficult to ascertain the status of river herring stocks coastwide. Between 1985 and 2007, commercial landings of river herring decreased by 97 percent from 13.6 million pounds to 317,000 pounds.

Commission staff have been working with other state agencies with jurisdiction that includes parts of the Delaware River or Delaware Estuary to develop a coordinated interstate approach for future regulations. This coordinated approach has resulted in staff's recommendation that the Commission adopt the amendments set forth in the notice of proposed rulemaking. It should be noted that a total moratorium on river herring is likely for the states of New Jersey, Delaware and Pennsylvania, beginning in January 2012 as a result of the ASFMC action to approve Amendment 2 to the Interstate Fishery Management Plan for Shad and River Herring.

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking. If adopted, these amendments will go into effect on January 1, 2010.

Action:

A motion was made by Commissioner Gavlick and seconded by Commissioner Bachman to adopt the amendments as set forth in the notice of proposed rulemaking. These amendments will go into effect on January 1, 2010. 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, the Commission proposed that §73.3(d) be amended to delete paragraph (1). 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.

A notice of proposed rulemaking was published at 39 Pa. B. 3458 (July 11, 2009) (Exhibit I). The Commission did not receive any public comments regarding this proposal.

By separate notice published at 39 Pa. B. 1368 (March 14, 2009) (Exhibit J), 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 adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, the amendment will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

Action:

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

## PROPOSED RULEMAKING

E. Amendment to Section 75.1 (Endangered Species) to Remove Silver Chub, Amendments to Section 75.2 (Threatened Species) to Remove Mooneye, Goldeye and Skipjack Herring and Amendment to Section 75.3 (Candidate Species) to Remove Brook Silverside.

### Commentary:

(1) Silver Chub (*Macrhybopsis storeriana*): The Silver Chub is a small, slender, silvery minnow with large eyes, small mouth, and small, posterior maxillary barbel. It inhabits large rivers and lakes, where it prefers clean sand and gravel substrates. The Silver Chub's nationwide distribution includes the Lake Erie drainage in Ontario, New York, Pennsylvania, Ohio, and Michigan; Mississippi River basin from Pennsylvania and West Virginia to the Midwest, and south to Gulf Coast drainages from Alabama to Louisiana. In Pennsylvania, they occur in Lake Erie, and in the Allegheny, Monongahela, and Ohio River drainages (Argent & Carline 2005).

The Silver Chub was probably common in all the large rivers in the Pennsylvania portion of the Ohio River drainage prior to European settlement (Trautman 1981). It was abundant in the Monongahela in the late 1800's (Evermann and Bollman 1886). It was apparently extirpated during the early 1900's, when conditions in these rivers were degraded (Ortmann 1909). ORSANCO collected a single specimen in 1957 and eight in 1959 from the lower Allegheny River. Cooper (1983) collected a single specimen from Lake Erie in the vicinity of the mouth of Walnut Creek in 1971.

The Silver Chub is rarely taken in Lake Erie and was considered extirpated in the Ohio River drainage by Gilbert (1985). It was collected in 1986 in the Ohio River and has subsequently been documented in the Monongahela and lower Allegheny as well (unpublished data – California University of Pennsylvania, Ohio River Sanitation Commission (ORSANCO), Pennsylvania State University, PFBC). It has been collected more often since the early 1990's, with collections ranging from one to 24 specimens (unpublished data – California University of Pennsylvania, ORSANCO, Pennsylvania State University, PFBC). Multiple size classes including juveniles have been collected recently in the Ohio River (personal communication, T. Stecko PSU unpublished data 2009).

The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed the Heritage rank of the Silver Chub and recommended that it be changed from “critically imperiled” (S1) to “vulnerable-apparently secure” (S3S4) status - uncommon but not rare, and usually widespread in the state. (State Rank Definitions 1996). The PABS committee additionally recommended “delisting” status based on the above referenced data and apparent commonality of the species in Pennsylvania. PABS definition of delisted species - species which were once listed but now cited for delisting (Pennsylvania Biological Survey Suggested Status Definitions 2005).

The Silver Chub was listed as endangered in Pennsylvania based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the historic

Pennsylvania range since 1990 have documented an expansion in range and population size compared to pre-1990 information. These species were considered extirpated during the first half of the twentieth century; however, recent electrofishing and benthic trawl surveys have documented a more or less continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers. Based on recent records, it appears that this species is now fairly widespread in the lock and dam section of the “Three Rivers” (Crisswell and Stauffer 2005).

This species was evaluated through the Commission’s fish species documentation and objective listing/de-listing criteria (Exhibit K). The Silver Chub now occupy much of their former range and their population is increasing. Therefore, it no longer meets endangered species listing criteria. Nor does it meet the threatened species listing criteria. Enough information is available to make the determination that this species is secure in the state at present and to justify removal from Pennsylvania’s list of endangered fishes. Therefore, staff propose that Silver Chub be removed from the Pennsylvania list of endangered species.

(2) Mooneye (*Hiodon tergisus*): The Mooneye is a medium-sized, deep-bodied pelagic fish that inhabits large rivers and reservoirs. The Mooneye is known from the St. Lawrence – Great Lakes drainage (except Lake Superior), Mississippi River and Hudson Bay basins from Quebec to Alberta and south to the Gulf; Gulf Slope drainages from Alabama to Louisiana (Page and Burr 1991). In Pennsylvania, it occurs in the Monongahela and Ohio Rivers, and the lock and dam section of the Allegheny River, and formerly occurred in Lake Erie (Fowler 1940, Cooper 1983).

Lessueur's original 1818 description of this species, based in part on specimens collected in Pittsburgh, is apparently the only historic record from the Ohio River drainage in the state (Cooper 1985). In Lake Erie, it was collected in 1920 near Erie, Pennsylvania (UMMZ 55667). The Mooneye was common in Ohio waters before 1900, but has decreased greatly since, and is rarely taken in Lake Erie (Trautman 1981). It was probably fairly common in Pennsylvania before 1900 as well but was apparently extirpated during the early 1900’s when conditions in these rivers were degraded. Its recent recolonization is undoubtedly a result of improved water quality (Crisswell & Stauffer 2005).

The Mooneye was collected in 1987 in the Allegheny River and since has been collected as far upriver as River Mile 60 and has subsequently been documented in the Monongahela and lower Ohio Rivers as well (unpublished data – California University of Pennsylvania, ORSANCO, Pennsylvania State University, PFBC). It has been collected more often since the early 1990’s, with collections ranging from 1- 22 specimens (unpublished data – California University of Pennsylvania, ORSANCO, Pennsylvania State University, PFBC).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Mooneye and recommended that it be changed from “imperiled-vulnerable” (S2S3) to “apparently secure” (S4) status - uncommon but not rare, and usually widespread in the state.

Usually more than 100 occurrences (State Rank Definitions 1996). The PABS committee additionally recommended “delisting” status based on the above referenced data and apparent commonality of the species in Pennsylvania.

The Mooneye was listed as threatened in Pennsylvania based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the historic Pennsylvania range since 1990 have documented a significant expansion in range and population size compared to pre-1990 information. The Mooneye was considered extirpated from the state, with no collections reported between 1920 and 1987 (Cooper 1985, unpublished data); however, recent electrofishing and gillnet surveys have documented a more or less continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers. This species was evaluated through the Commission’s fish species documentation and objective listing/de-listing criteria (Exhibit K). The Mooneye no longer meets listing the threatened species listing criteria as the distribution and population of the Mooneye is increasing in Pennsylvania.

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

(3) Goldeye (*Hiodon alosoides*): Similar in shape and form to the Mooneye, the Goldeye inhabits large turbid rivers and the silty shallows of large lakes. It is known from tributaries to James Bay in Quebec and Ontario; Arctic, Missouri, Mississippi, and Ohio River drainages from Northwest Territories to Pennsylvania and south to Louisiana (Page and Burr 1991). In Pennsylvania, the Goldeye was known from the Ohio River Basin.

The historic distribution of Goldeye within Pennsylvania is difficult to determine. Fowler (1911 & 1919) reported collections from the Beaver River (1 specimen) and the Youghiogheny River (2 specimens) made by Edward D. Cope, presumably in the 1860s or 1870s. Trautman (1981) reported that in Ohio it was far more numerous in the Ohio River below Portsmouth than in the industrially polluted upper Ohio River near the Pennsylvania state line, and remained fairly common there during the period 1955-1980. However, no recent records exist in Pennsylvania.

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Mooneye and recommended it be changed to “extirpated” (SX) status – believed to be extirpated from the state (State Rank Definitions 1996). The PABS committee additionally recommended “delisting” status based on the above referenced data and lack of contemporary collections of the species in Pennsylvania.

The Goldeye was listed as threatened in Pennsylvania based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the Ohio River basin during the last 110 years have not yielded a known collection of Goldeye supported by a preserved voucher specimen. These surveys include increasingly

intensive efforts using multiple methodologies implemented by multiple scientific entities.

At this time, enough information is available to make the determination that the Goldeye is presumed extirpated from Pennsylvania and to justify its removal from Pennsylvania's list of threatened fishes. Therefore, staff propose that Goldeye be removed from the Pennsylvania list of threatened species.

(4) Skipjack Herring (*Alosa chrysochloris*): The Skipjack Herring is a streamlined, laterally compressed herring with a large mouth and protruding lower jaw. It inhabits open waters of medium to large rivers and reservoirs. The Skipjack Herring is known from the Hudson Bay drainage (Red River) and Mississippi River basin from Minnesota south to the Gulf of Mexico, and from southwestern Pennsylvania to South Dakota, Nebraska, Kansas, Oklahoma, and Texas Gulf Slope drainages from Florida to Texas (Page and Burr 1991). In Pennsylvania, it is known from the Ohio, Monongahela and Allegheny River basins.

Early accounts indicated that the Skipjack Herring was evidently uncommon in Pennsylvania. Rafinesque (1820) stated that it seldom went as far upriver as Pittsburgh. Trautman (1981) reported that rivermen occasionally took individuals between Marietta, Ohio, and the Pennsylvania state line. Fowler (1919) reported an occurrence from the Conemaugh River, Indiana County, that he thought was likely a Skipjack Herring. However, Fowler (1940) also reported this species from Blair County, a questionable record at best. Cooper (1985) considered it extirpated and thought it possible that the species never had been collected from Pennsylvania. It was occasionally collected in the Pennsylvania portion of the Ohio River during the mid-1980's and has continued to increase in numbers (unpublished data).

Recent records show the Skipjack Herring is well distributed and taken regularly in the Ohio and Monongahela Rivers (Criswell and Stauffer 2005; Unpublished data – ORSANCO, Penn State University, PFBC, California University of Pennsylvania).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Skipjack Herring and recommended it be changed to “apparently secure” (S4) status - uncommon but not rare, and usually widespread in the state. Usually more than 100 occurrences (State Rank Definitions 1996). The PABS committee additionally recommended “delisting” status based on the above referenced data and apparent commonality of the species in Pennsylvania.

The Skipjack Herring was listed as threatened in Pennsylvania based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the historic Pennsylvania range since the 1990s have documented an expansion in range and population size compared to pre-1990 information. The Skipjack Herring was considered extirpated until the mid-1980's; however, recent electrofishing and gillnet surveys have documented a more or less continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers. This species was evaluated through

the Commission's fish species documentation and objective listing/de-listing criteria (Exhibit K). The Skipjack Herring now occupy their former range (widespread in the Ohio and Monongahela and increasing in the Allegheny) and the population is increasing in Pennsylvania. They no longer meet the threatened species listing criteria.

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

(5) Brook Silverside (*Labidesthes sicculus*): The Brook Silverside is a slender, elongate fish with a nearly straight dorsal profile anteriorly, including a flattened head. It inhabits lakes and sluggish sections of large streams and rivers, where it occurs primarily in schools near the surface in open water, often over substrates of silt, sand, or mud. The Brook Silverside is known from the St. Lawrence-Great Lakes drainage (except Lake Superior), and Mississippi River basin from southern Quebec to eastern Minnesota and south to Louisiana; Atlantic and Gulf drainages from South Carolina to Texas. It has been introduced elsewhere (Page and Burr 1991). In Pennsylvania, it is known from the Ohio River and Lake Erie drainages in western part of state (Cooper 1983).

Little historical information on abundance is available for Pennsylvania. Trautman (1981) reported that in Ohio the brook silverside was abundant and distributed throughout the state prior to 1900 but was severely reduced and many populations were extirpated. He identified the chief factor causing this decline as increased turbidity levels. Since this species is generally detected during surveys targeting other fishes in Pennsylvania, comprehensive data on distribution and abundance is lacking. It probably declined significantly in our western rivers, as did many other fishes, and is now rebounding there.

In the last 25 years, collection records indicate that the Brook Silverside is found to be locally common in larger water bodies, especially lakes and impounded sections of large rivers. It is collected regularly in the Allegheny, Monongahela, and Ohio Rivers, French Creek and tributaries, Shenango River and its tributaries, and major impoundments, and Lake Erie (California University of Pennsylvania, ORSANCO, Pennsylvania State University, PFBC).

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

The Brook Silverside was listed as a candidate species in Pennsylvania based on a limited number of collections and apparent low numbers. Recent field surveys conducted throughout the historic Pennsylvania range have documented a significant expansion in range and population size compared to pre-1990 information. This species was evaluated

through the Commission's fish species documentation and objective listing/de-listing criteria (Exhibit K). The Brook Silverside population and distribution is increasing in Pennsylvania, such that they no longer meet the candidate species listing criteria.

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

Briefer:

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

Recommendation:

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

Action:

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

F. Amendments to Section 75.1 (Endangered Species) to add Northern Redbelly Dace, Northern Cricket Frog and Blue-Spotted Salamander.

Commentary:

(1) Northern Redbelly Dace (*Phoxinus eos*): The Northern Redbelly Dace is a small (5cm; 2 in) cyprinid. Characterized as a colorful minnow, this dace has a dark olive or brown back with spots, and two dark, broad bands on the side. The space between the two bands is cream, reddish, or dark. The stomach is cream-colored except in breeding males where the stomach is yellow-orange to red. It occurs in ponds and slow and swampy sections of streams. In Pennsylvania, it appears to be strictly confined to springs, wetlands and sections of waterways impounded by beavers (Doug Fischer, personal observation).

The Northern Redbelly Dace's national distribution includes the Atlantic, Great Lakes, Hudson Bay, upper Mississippi, Missouri, and Peace-Mackenzie River drainages, from Nova Scotia west to Northwest Territories and British Columbia, south to northern Pennsylvania, Wisconsin, Nebraska, and Colorado (Page and Burr 1991). In Pennsylvania, it was formerly known from Meshoppen Creek, Susquehanna County (Cooper 1983). It currently inhabits the Allegheny River drainage in Erie and Warren counties (unpublished data). It also occurs adjacent to northwest Pennsylvania in the Brokenstraw Creek and Conewango Creek drainages in New York (Smith 1985). This species is listed as endangered in Massachusetts.

Only one historic occurrence record – Susquehanna County exists in Pennsylvania (Cope 1862). More recently, five occurrences were documented in 2008: French Creek drainage in Erie and Warren Counties (2) and the Brokenstraw Creek drainage in Warren County (3). Apparently three of these occupied waterways have not been previously surveyed, and surveys on the remaining two did not include the occupied sections or habitat suitable for Northern Redbelly Dace (Raney 1938, Stauffer 1987, E. Cooper field notes, PFBC unpublished data). The total known lineal occupancy appears to be no more than 10 km.

The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed the Heritage rank of the Northern Redbelly Dace and recommended it be changed from Extirpated (SX) to “critically imperiled” (S1) – in the state because of extreme rarity or because of some factor(s) making it especially vulnerable to extirpation from the state. Typically five or fewer occurrences or very few remaining individuals or acres occur in the state (State Rank Definitions 1996). The PABS committee additionally recommended endangered status based on the above referenced data and apparent rarity of the species in Pennsylvania.

The Northern Redbelly Dace was described by Cope (1862) from specimens collected in Meshoppen Creek, Susquehanna County, Pennsylvania. No specimens have been reported from the state since, and this taxon was considered extirpated (Cooper 1983). This species was evaluated through the Commission's fish species documentation and objective listing criteria (Exhibit L and met Criteria B.3. (Distribution & Trends), that the extent of occupancy in the stream/river is less than 10 miles. Recently discovered populations of this species in northeastern Erie and northwestern Warren counties justify a change in status from extirpated to endangered. Therefore, staff propose that Northern Redbelly Dace be added to the Pennsylvania list of endangered species.

(2) Northern Cricket Frog (*Acris crepitans*): The Northern Cricket Frog is Pennsylvania's smallest frog species, averaging around 23mm (0.875 inches). This small tree frog is variable in coloration and markings. The dorsal body color can be golden brown, tan, gray or olive and can vary among individuals depending on ground temperature (R. Koval, per. obs.). Most often middorsal stripes are present and vary in color from brown to lime green. The most characteristic marking of the Northern Cricket Frog are the V-shaped or dark triangle spot located between the eyes and the well defined longitudinal stripe along the rear surface of the dark dorsal thigh.

Breeding habitats are typically described as permanent bodies of water such as slow-moving streams, ponds, lakes, marshes, bogs and swamps, but breeding sites can also be semi-permanent ponds and seasonal forest pools. Often, breeding microhabitats within these larger systems are open-canopied, usually contain emergent vegetation, and contain areas of flat, sparsely vegetated patches along the margins of open water (Bayne 2004, Gibbs et al. 2007, White and White 2002). Upland habitats surrounding breeding habitats are varied but include: floodplain forest, small scrub-shrub islands in impoundments, mature deciduous forest with rocky substrates, mature deciduous forest with sandy substrates and old fields.

The Northern Cricket Frog is known from southeastern New York, south along the Atlantic Coastal states, and west along the Gulf Coast from northwestern Florida to eastern Texas. Southern populations range as far north as Tennessee and Missouri. Isolated populations occur on the Coastal Plain of South Carolina. It is listed as an endangered species in New York and as a species of concern in Ohio.

The Northern Cricket Frog was historically distributed throughout the southeastern and southcentral portions of the Commonwealth with several apparently disjunct populations found in northeastern and southwestern Pennsylvania. Pennsylvania counties of historical occurrence included: Allegheny, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Franklin, Lebanon, Montgomery, Philadelphia, and York. Nearly half of all records were collected from within or near the coastal plain in southern Bucks, Delaware, Montgomery, and Philadelphia Counties. All records considered historical were initially documented before 1983.

The Northern Cricket Frog is apparently extirpated from approximately 92% of historically (initially discovered pre-1983: 34 of 37 locations) documented collection sites. Two of the three historical sites considered extant are included as a 'best case scenario' since investigations or surveys have not been conducted for the species at these locations. The species may very well have disappeared from these locations as well. A total of six recent new sites have been initially documented since 1983. Of these sites, 50% (3 of 6) are considered extirpated, and an additional 33% (2 of 6) are located in a heavily disturbed industrial/urbanized landscape making future viability uncertain (these sites are considered extant in this analysis). Presently, of the 43 total sites that have been adequately documented as valid collection locations in Pennsylvania, only 14% (6 of 43) are considered extant. Suitable habitats in the vicinity of all but two of the historical collection locations (single sites in Chester and Franklin Counties have not been investigated since their initial discovery, but are considered extant in this analysis as a best case scenario) have been investigated in the last fifteen years, thus documenting a significant (86%) population reduction for this species in Pennsylvania in the last 20 years (Listing Criterion A.1.: Range Reduction of

>80% in the last 20 years) (Exhibit L). The Area of Occupancy for *A. crepitans* in Pennsylvania is under 4 miles<sup>2</sup> (Listing Criterion B.2) and severely fragmented (Listing Criterion B.2.a). Additionally, declines are projected in the area of occupancy, area/extent/and or quality of habitat, number of locations or subpopulations, and number of mature individuals (Listing Criterion B.2.b).

The Amphibian and Reptile Technical Committee of PABS reviewed the Heritage rank of the Northern Cricket frog and recommended it be changed to “critically imperiled” (S1) – critically imperiled in the state because of extreme rarity or because of some factor(s) making it especially vulnerable to extirpation from the state. As the species meets Listing Criteria A.1. and B.2., the Committee recommended the status of the Northern Cricket Frog (*Acris crepitans*) be elevated to endangered in Pennsylvania. Therefore, given the apparent rarity and threats to the statewide population, and multiple listing criteria met, staff propose that Northern Cricket Frog be added to the list of endangered species.

(3) Blue-Spotted Salamander (*Ambystoma laterale*): The Blue-Spotted Salamander is member of the Ambystomatidae (mole salamander) family. They are characterized as a small to medium sized salamander (122 mm; 5 in) with a pattern of bright blue spots scattered over a grayish-black or black body. They live mostly a terrestrial, fossorial/subterranean existence. Blue-spotted Salamanders require both breeding (aquatic) and non-breeding (upland) habitats. Breeding habitat in Pennsylvania consists of hardwood swamps, open marshes, oxbow ponds, ditches, and seasonal forest pools, often within or near floodplains of large streams and rivers (Ruhe unpublished). Non-breeding habitat can be characterized as deciduous and mixed forests surrounding breeding habitats.

Blue-Spotted Salamanders occur in Southeastern Quebec to Lake Winnipeg, south through the Great Lakes region and New England to northern Indiana and northern New Jersey. The United States portion of this range includes the states of Connecticut, Iowa, Illinois, Indiana, Massachusetts, Maine, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Vermont, and Wisconsin. Hybrid *A. laterale* populations (in association with *A. jeffersonianum*, *A. texanum*, and *A. tigrinum*) occur throughout the range of this species. The Blue-Spotted Salamander is listed as endangered in Ohio and New Jersey and as a species of concern in New York.

The Blue-spotted Salamander complex (including associated hybrids) is a peripheral species to Pennsylvania with all known populations being found in northern tier counties bordering the states of New Jersey and New York: the Delaware River drainage (Northampton County), and the Allegheny River drainage (McKean County and Warren County).

The Blue-spotted Salamander was not discovered in Pennsylvania until April of 2000. The Blue-spotted Salamander probably did not recently colonize Pennsylvania; rather this species had likely escaped detection due to locations being situated in fairly rural areas and general similarity in appearance to the Jefferson Salamander. This species was not detected during the seven-year long Pennsylvania Herpetological Atlas project.

The Blue-spotted Salamander was first discovered in Pennsylvania in McKean County (Allegheny River drainage) during the spring of 2000 as part of a distribution-wide survey for the Jefferson Salamander (*Ambystoma jeffersonianum*) and Blue-spotted Salamander

complex (Bogart and Klemens 2008, Ruhe *unpublished*). Two additional populations were subsequently found in Northampton (Delaware River drainage) and Warren (Allegheny River drainage) Counties (Bogart and Klemens 2008, Ruhe unpublished). The Northampton County population was discovered in October 2003 and the Warren County population in October 2008 (Ruhe unpublished).

The known extent of occurrence for the Blue-spotted Salamander in Pennsylvania encompasses an area of under 3 mi<sup>2</sup>, qualifying the species for listing as endangered under listing criteria B. 1. (Extent of Occurrence <40 mi<sup>2</sup>) (Exhibit L). As the Blue-spotted Salamander meets the listing criteria B.1, the Amphibian and Reptile Technical Committee of PABS recommends that the Blue-spotted Salamander be listed as an endangered species. Therefore, based upon the limited range of the species within the Commonwealth, the small number of known sites and threats to these sites, staff propose that Blue-Spotted Salamander be added to the list of endangered species.

Briefer:

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

Recommendation:

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

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Elliott to approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. If adopted on final rulemaking, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

G. Amendment to Section 61.1 (Commonwealth Inland Waters) to Reduce Creel Limit for American Shad.

Commentary:

Under Fisheries agenda item B, Commission staff have recommended that the Commission adopt an amendment to §61.2 (relating to Delaware River and River Estuary) that reduces the creel limit for American shad on the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge from six to three. This change, if adopted on final rulemaking, will go into effect on January 1, 2010.

Upon further review of the Commission's regulations, however, staff have determined that an amendment to §61.1 (relating to Commonwealth inland waters) is also needed. This section provides for a daily limit for American shad of six on all inland waters that are not covered by other sections within Chapter 61 of the Commission's regulations. Section 61.2, which is applicable only to those Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence, does not cover other large tributaries upriver of the tidal influence, such as the Lackawaxen River located in Pike County. It is likely that a limited number of shad enter some of the larger tributaries upriver of the tidal influence. Currently, the limit for American shad on those Delaware River tributaries is six under §61.1. Staff accordingly recommend an amendment to this section to reduce the creel limit to three in order to be consistent with §61.2.

It is noted that other sections within Chapter 61 provide greater protection for American shad. For example, under §61.4 (relating to Conowingo Reservoir) and §61.7 (relating to Susquehanna River and tributaries), there is no open season and the daily limit is zero. Section 61.8 (relating to Lehigh River, Schuylkill River and tributaries) allows for a daily limit of one fish.

Briefer:

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

Recommendation:

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

Action:

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

H. Amendments to Section 65.24 (Miscellaneous Special Regulations) regarding Lake Erie Tributaries.

Commentary:

On October 26, 2009, Act 40 of 2009 will go into effect. This act amends section 2907.2 of the Fish and Boat Code, 30 Pa. C.S. §2907.2 (relating to Lake Erie fishing permits), to provide that a special Lake Erie permit is required to fish in Lake Erie, Presque Isle Bay and their tributaries, including waters that flow into those tributaries, instead of “the Pennsylvania waters of Lake Erie, Presque Isle Bay and their tributaries” only. This amendment requires anglers, effective October 26, to procure a Lake Erie fishing permit in order to fish in Conneaut Creek, Turkey Creek and their tributaries when previously one was not required because although these streams begin in Pennsylvania, they enter Lake Erie in Ohio. Although a Lake Erie permit will be required to fish these streams, Act 40 also provides that proceeds derived from their sale may now be used to fund projects on those waters.

The Commission’s regulations at §65.24 (relating to miscellaneous special regulations) currently provide that a Lake Erie permit is not required on Conneaut Creek, Turkey Creek and their tributaries. In order to be consistent with the new law, this section must be amended to remove that language.

In addition, the Commission currently applies the seasons, sizes and creels limits applicable to Lake Erie and its tributaries under §69.12 to the portion of Conneaut Creek that flows through Erie County. However, the Commission applies the seasons, sizes and creel limits applicable to Commonwealth inland waters under §61.1 to the portion of Conneaut Creek and its tributaries that flow through Crawford County except with regard to salmon and steelhead that are addressed in §65.24. In order to be consistent with the new law, §65.24 must be amended to remove the existing language. With this change, the Commission will apply the Lake Erie seasons, sizes and creel limits to the entire length of Conneaut Creek and its tributaries. The Commission is actively developing a viable steelhead fishery in Conneaut Creek by annually stocking smolts.

Staff propose that §65.24 be amended as follows.

§65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

| <i>County</i>              | <i>Name of Water</i>                                                                                                                     | <i>Special Regulations</i>                                                                                                                                                                                                                                            |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ***                        | ***                                                                                                                                      | ***                                                                                                                                                                                                                                                                   |
| <b>[Crawford and Erie]</b> | <b>[Conneaut Creek<br/>E. Branch Conneaut Creek<br/>M. Branch Conneaut Creek<br/>W. Branch Conneaut Creek<br/>Mud Run<br/>Stone Run]</b> | <b>[Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11.<br/>Minimum size limit: 15 inches.<br/>Daily creel limit: 3 (combined species).<br/>Lake Erie fishing permit is not required.]</b> |

|                   |                                                                                     |                                                                                                                                                                                                                                                                       |
|-------------------|-------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>[Crawford]</b> | <b>[Crazy Run]</b>                                                                  | <b>[Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11.<br/>Minimum size limit: 15 inches.<br/>Daily creel limit: 3 (combined species).<br/>Lake Erie fishing permit is not required.]</b> |
| ***               | ***                                                                                 | ***                                                                                                                                                                                                                                                                   |
| <b>[Erie]</b>     | <b>[E. Branch<br/>Conneaut Creek<br/>Marsh Run<br/>Temple Run<br/>Turkey Creek]</b> | <b>[Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11.<br/>Minimum size limit: 15 inches.<br/>Daily creel limit: 3 (combined species).<br/>Lake Erie fishing permit is not required.]</b> |

Briefer:

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

Recommendation:

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

Action:

A motion was made by Commissioner Concilla and seconded by Commissioner Gavlick to approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. If adopted on final rulemaking, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

## DESIGNATIONS

### I. Addition of Walker Run, Luzerne County, to the List of Streams that Support Natural Reproduction of Trout.

#### Commentary:

Walker Run, Luzerne County, is a tributary to the North Branch Susquehanna River in Luzerne County. It enters the river at Beach Haven, just over 2 miles upstream of Berwick. Fisheries Management Area 4 staff surveyed this stream in 2006, and the Division of Environmental Services re-surveyed Walker Run in 2009. Both surveys found wild brown trout, and the Division of Environmental Services survey found both fingerlings and multiple year classes. Currently, Walker Run is involved with the permitting process for a nuclear power plant near Berwick, and action is needed to clarify the status of this stream and its surrounding wetlands, as any wetlands riparian to a wild trout stream are classified as exceptional value by the Pennsylvania Department of Environmental Protection.

A notice was published at 39 Pa. B. 5212 (August 29, 2009) (Exhibit M) proposing to add Walker Run, from the headwaters downstream to the mouth, to the Commission's list of wild trout streams. The Commission did not receive any public comments concerning the proposed designation.

#### Briefer:

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

#### Recommendation:

Staff recommend that the Commission add Walker Run, Section 01, to the list of streams that support natural reproduction of trout.

#### Action:

A motion was made by Commissioner Gavlick and seconded by Commissioner Ketterer to add Walker Run, Section 01, to the list of streams that support natural reproduction of trout. Motion carried.

J. Removal of Delayed Harvest Artificial Lures Only Designation on Fishing Creek (Columbia County), Section 04.

Commentary:

The Commission implemented Delayed Harvest Artificial Lures Only regulations on Fishing Creek, Section 04, beginning with the 2002 season. The project currently extends approximately 0.7 miles from the upstream Kriebel property line downstream to a point located 180 yards upstream from the Benton Borough line. Most of the riparian area along the project is a farm field that belongs to a single landowner. A new owner purchased this field in the spring of 2009 and posted it against public access. All efforts by staff, a local official and local sportsmen's groups to change the new owner's mind have failed.

A notice of proposed re-designation was published at 39 Pa. B. 5213 (August 29, 2009) (Exhibit N). The Commission received four public comments expressing disappointment over the proposed re-designation. Copies of all public comments have been provided to the Commissioners.

Briefer:

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

Recommendation:

Staff recommend that the Commission remove Fishing Creek, Section 04, from the Delayed Harvest Artificial Lures Only program.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Worobec to remove Fishing Creek, Section 04, from the Delayed Harvest Artificial Lures Only program. Motion carried.

## OTHER MATTERS

K. Fish Passage and Habitat Restoration Grant to American Rivers, Inc. for Removal of Lower (Shoop) Dam on Middle Spring Creek, Southampton Townships, Cumberland and Franklin Counties.

Commentary:

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

The Commission has obtained up to \$200,000 from the Pennsylvania Turnpike Commission to mitigate impacts associated with the Milepost 199 to Milepost 200.5 Total Reconstruction and Widening Projects. The funding is earmarked to address the removal of Lower (Shoop) Dam and associated stream bank and habitat restoration activities on Middle Spring Creek, Southampton Townships, Cumberland and Franklin Counties. Staff propose to provide up to \$200,000 in the form of a grant to American Rivers, Inc. to finance the project. The Commission's Division of Habitat Management will provide the necessary technical assistance and oversight as well as administer the contract on behalf of the Commission.

Briefer:

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

Recommendation:

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

Action:

A motion was made by Commissioner Elliott and seconded by Commissioner Sabatose to approve a grant of up to \$200,000 to American Rivers, Inc. for the removal of Lower (Shoop) Dam. Motion carried.

## L. Strategic Plan for Management of Trout Fisheries in Pennsylvania.

### Commentary:

In keeping with its Resource First policy, the Commission has completed a Strategic Plan for the Management of Trout Fisheries in Pennsylvania. The purpose of this strategic plan is to establish a set of goals for trout management and identify specific strategies designed to achieve these goals. It sets the immediate direction of trout management within the agency, identifies priority needs and provides a means for measuring progress toward achieving these goals.

The plan was developed based on input provided by a work group that consisted of Commission staff, anglers affiliated with a variety of sportsmen's organizations, and independent trout anglers that are not affiliated with an organized group. This plan will guide the direction of trout management for the agency over the course of the next five years. Some of the key issues addressed in the plan include the following: the sampling of unassessed wild trout streams, protection of Class A wild trout waters, trout stocking in Class B streams, managing waters through fingerling stocking, stocked trout movement, instream flow and habitat protection and improvement, public access to trout waters, and the Lake Erie steelhead and brown trout stocking program. Significant progress in addressing these issues over the life of this plan will insure that adequate protection is being afforded to the resource and that the fisheries provided through the management of wild trout and the stocking of hatchery trout will provide excellent angling opportunities in Pennsylvania.

A copy of the Plan is attached as Exhibit O.

### Briefer:

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

### Recommendation:

Staff recommend that the Commission adopt the Strategic Plan for Management of Trout Fisheries in Pennsylvania. If approved, the plan will go into effect beginning January 1, 2010.

### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Ketterer to adopt the Strategic Plan for Management of Trout Fisheries in Pennsylvania. The plan will go into effect beginning January 1, 2010. Motion carried.

**Other New Business**

A motion was made by Commissioner Elliott and seconded by Commissioner Sabatose as follows: The mission of the Fish and Boat Commission states in part that we will protect, conserve and enhance our aquatic resources. Similarly, the National Fish Habitat Action Plan is a targeted effort, nationwide through Fish Habitat Partnerships, to make a substantial and much needed impact upon improving the quality of our nation's fish habitat. Five of these fish habitat partnerships will positively affect the resources of the Commonwealth of Pennsylvania. With that in mind, it is moved that the Commission fully endorse the National Fish Habitat Action Plan and the National Fish Habitat Conservation Act that is currently being considered in Congress as Senate Bill 1214 and House Resolution 2565. Furthermore, the Commission will make a "call to action" to all of our conservation partners to actively work with their congressional delegation to advocate for full support the National Fish Habitat Conservation Act through co-sponsorship of the bill and to work towards its passage. Motion carried.

**Time and Place of January 2010 Commission Meeting**

The next meeting is scheduled for January 27-28, 2010 and will be held at the Commission's headquarters in Harrisburg.

**Adjournment**

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