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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 91st Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, April 19 and 20, 2010, at the Brockwayville Depot, 351 Alexander Street, Brockway, PA 15824.

Commission committees met on April 19 beginning at approximately 10:50 a.m. and on April 20 beginning at approximately 9:10 a.m. The public session for review of this agenda began at or about 11:30 a.m. on April 20.

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
Richard W. Czop
G. Warren Elliott
Steven M. Ketterer
Leonard L. Lichvar
William J. Sabatose

Review and Approval of Minutes from the January 22, 2010 Special Meeting, the January 28, 2010 Meeting and the March 2, 2010 Special Meeting

A motion was made by Commissioner Ketterer and seconded by Commissioner Sabatose to approve the January 22, January 28 and the March 2, 2010 minutes as written. Motion carried.

Executive Director's Report

Executive Director John Arway highlighted the "PFBC Activity Report – Highlights for First Quarter 2010" (Exhibit A) that was provided to the Commissioners. The report includes an update of major activities and accomplishments over the last three months.

He also reported on his activities since his appointment and reiterated his goals to improve employee morale, ensure that the waterways conservation officers receive a fair contract, and find alternative funding to ensure fiscal stability for the Commission. In the upcoming weeks, the Executive Director's schedule is full of numerous events and speaking engagements that he will be attending.

Awards and Presentations

Daniel M. Martin, Director, Bureau of Boating and Access, was recognized for his outstanding contributions to the Commission's boating program from 1988 to 2010. Dan plans to retire on June 25, 2010.

Announcement of Executive Session

Commissioner Shetterly announced that an executive session was held on April 19 at 8:00 a.m. to discuss real estate, litigation and personnel matters.

Reports of Commissioner Committees

Executive and Planning (Commissioner Shetterly) –

The Executive and Planning Committee met on Monday, April 19, at approximately 10:50 a.m. Executive Director John Arway indicated that he will provide a thorough review of the Annual Plan of Work at the July 2010 Commission meeting. Plans for an evening session during the July 2010 Commission meeting also were discussed. Laurel Anders provided an update on the Strategic Plan, and she and Commissioner Worobec explained the possibility of a future Commissioner workshop. Tim Schaeffer provided a briefing on the Abele, Long and Mahon award timelines. Brian Barner provided a presentation on revenue alternatives.

Administration (Commissioner Czop) –

The Administration Committee met on Monday, April 19, at approximately 11:45 a.m. Agenda items were discussed. Jackie Kramer provided an update on a *Pennsylvania Fishing and Boating Access Strategy*.

Boating (Commissioner Ketterer) –

The Boating Committee did not meet. Therefore, there was nothing to report.

Communications (Commissioner Lichvar) –

The Communications Committee met on Tuesday, April 20, at approximately 10:40 a.m. Rick Levis provided a briefing on a marketing program with the Recreational Boating and Fishing Foundation and an update on a public service radio campaign for summer safe boating. An update on the status of the *Pennsylvania Angler and Boater* magazine was provided. Tim Schaeffer announced that a new inventory system has been implemented for accountability of Commission publications.

Fisheries (Commissioner Sabatose) –

The Fisheries Committee met on Monday, April 19, at approximately 1:55 p.m. Agenda items were discussed. Leroy Young provided an overview of the Bureau of Fisheries and the Trout Plan. Susquehanna River smallmouth bass public meetings have been scheduled for June 2010 and will be held at various locations statewide. The American Fisheries Society 140th meeting will be held from September 12-16, 2010 in Pittsburgh. Pennsylvania is hosting the meeting. Timothy Keister, CWT, Chief Chemist, ProChem Tech, International, Inc., provided a presentation on Marcellus Shale and water quality issues. Bob Lorantas provided a presentation on fishing tournaments, and Tom Greene provided a review of refuge areas. A clarification was provided in regard to 2010 Fish for Free Days. May 22, 2010 and June 6, 2010 have been established as this year's Fish for Free Days.

Habitat and Environmental (Commissioner Elliott) –

The Habitat and Environmental Committee met on Monday, April 19, at approximately 1:00 p.m. Agenda items were discussed, and Geoff Smith provided a presentation on the Susquehanna River smallmouth bass health assessment. Nevin Welte provided a presentation on using freshwater mussel communities to inform dam removal decisions. Dave Keller along with Renee Carey, Executive Director, Northcentral Pennsylvania Conservancy; Robert Parker, Watershed Specialist, Bradford County Conservation District; and Jason Fellon, Watershed Manager, Pennsylvania Department of Environmental Protection (DEP) provided an update on the North Central Pennsylvania Stream Improvement project.

Law Enforcement (Commissioner Worobec) –

The Law Enforcement Committee met on Tuesday, April 20, at approximately 9:10 a.m. Tom Kamerzel provided an update on the current class of waterways conservation officers and recruitment efforts for the new class. He also gave a workforce and retirement status report. In addition, Tom provided briefings on the 2010 Walnut Creek Marina operations, gas well inspection efforts and review of possible regulation additions and changes for future action. Last, he provided a boating fatality report. The Committee directed staff to develop a legislative proposal to address serious and wanton waste of fish, enhanced criminal penalties for certain offenses and revocations of privileges for a period in excess of two years.

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

Legislation (Commissioner Czop) –

The Legislation Committee met on Tuesday, April 20, at approximately 10:00 a.m. Updates regarding state and federal legislation, Commissioner vacancies, proposed revisions to the Oil and Gas Act, and Marcellus Shale severance tax were provided.

ADMINISTRATION

A. Howard 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 through December 31, 2014, and that this restricted account “shall be used to provide public fishing access or to protect or improve fish habitat on or at Lake Erie, Presque Isle Bay and their tributaries, including waters that flow into those tributaries.” 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 \$10,000 on approximately 950 linear feet along both sides 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 B.

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 upstream of the Weaver Property and the Miller Property, which are open to public fishing. Parking will be available on the adjacent Miller property.

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 Elliott and seconded by Commissioner Czop 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. Termination of the Three Rivers Ecological Research Center.

Commentary:

At its January 2005 meeting, the Commission formally approved the concept of the Three Rivers Ecological Research Center (3RERC) and authorized its Executive Director to proceed with the development of partnership agreements with potential cooperators, to develop a staffing plan and to initiate the process of applying for grants in support of the 3RERC and other activities in furtherance of the 3RERC. The concept was to bring together under one roof a consortium of Commission staff, staff from partner agencies, university faculty and other professionals engaged in work on the Three Rivers. It was envisioned that the 3RERC would “stand as a merging point for research, ecology and education.” The purposes of the 3RERC have been three-fold: (1) to document the status of the aquatic resources of the Three Rivers; (2) to identify and prioritize the threats to the resources and opportunities to protect and enhance them; and (3) to develop programs and funding to address (1) and (2).

Since its inception, financial support for the operation of the 3RERC has been provided primarily through a \$420,000 State Wildlife Grant (SWG). The Fish and Boat Commission and the Game Commission each year receive a regular allocation of SWG funding for conservation efforts for species of greatest conservation need, and the agencies then allocate those funds to priority projects that they identify. In 2005, the Commission identified efforts associated with the 3RERC as one of its priorities, and a five-year grant was initiated on January 1, 2006 with a termination date of March 31, 2011. The objectives of the grant were to coordinate and support planning responsibilities for Commission jurisdictional species and to oversee management strategies for a wide array of species, including species of greatest conservation need in the Three Rivers. The Commission expected that the 3RERC would work to leverage funding from other sources to enhance its work and advance its development as a hub for research, ecology and education. The SWG funding that the Commission initially allocated to the 3RERC was intended to be “start-up” money until the 3RERC was able to secure funding from outside sources. At the time, the Commission did not contemplate entering into another SWG grant or using other sources of Commission funding to continue its operation.

Unfortunately, by mid-November 2009, the 3RERC had exhausted the SWG funding, approximately 16 months before the termination date of the grant, and has overspent the funding by \$37,230 to date. Although the Commission envisioned that the 3RERC would serve as a catalyst for research funded through grants to support its goals, the 3RERC was successful in acquiring only three grants from outside sources. These grants, which totaled \$21,500, supported important work, such as the Monongahela River Monitoring Project, the development of the River Management Plan and the purchase of sampling equipment. They fell short, however, of what is needed to justify continuation of the 3RERC, which is projected to cost well over \$1,000,000 over the next five-year period. Therefore, the Commission cannot justify the allocation of additional SWG funding to the 3RERC. Future SWG monies will be better spent on grants for specific

studies on the rivers that will further the Commission's efforts to protect its species of greatest conservation need.

For these reasons, the Executive Director has decided to terminate the 3RERC. Staff request that the Commission affirm this decision.

Briefer:

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

Recommendation:

Staff recommend that the 3RERC be terminated for the reasons described in the Commentary.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Ketterer that the 3RERC be terminated for the reasons described in the Commentary. Motion carried.

FISHERIES **FINAL RULEMAKING**

A. 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. 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, the Commission proposed 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. 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, the Commission proposed 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, the Commission proposed 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. 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, the Commission proposed 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. 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, the Commission proposed that Brook Silverside be removed from the Pennsylvania list of candidate species.

A notice of proposed rulemaking containing the amendments was published at 40 Pa. B. 429 (January 16, 2010) (Exhibit C). During the formal comment period, the Commission received one public comment supporting the de-listings. Copies of all public comments were provided to the Commissioners.

Briefer:

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

Recommendation:

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

Action:

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

B. 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 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, the Commission proposed 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). The Area of Occupancy for *A. crepitans* in Pennsylvania is under

4 miles² (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, the Commission proposed 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 mi², qualifying the species for listing as endangered under listing criteria B. 1. (Extent of Occurrence <40 mi²). 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, the Commission proposed that Blue-Spotted Salamander be added to the list of endangered species.

A notice of proposed rulemaking containing the amendments was published at 40 Pa. B. 429 (January 16, 2010) (Exhibit C). During the formal comment period, the Commission received 67 public comments supporting the listings and one public comment advocating that the listings of the Northern Redbelly Dace and the Blue-Spotted Salamander be deferred to allow for additional studies of both species to be undertaken and to explain the basis of the listing for the Blue-Spotted Salamander to the public. The Commission received one public comment supporting the listings after the formal comment period. Copies of all public comments were provided to the Commissioners.

Briefer:

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

Recommendation:

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

Action:

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

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

Commentary:

The Commission recently adopted 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 went into effect on January 9, 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. The Commission accordingly proposed an amendment to this section to reduce the creel limit to three in order to be consistent with §61.2.

A notice of proposed rulemaking containing the amendment was published at 40 Pa. B. 427 (January 16, 2010) (Exhibit D). During the public comment period, the Commission received one public comment supporting the proposal. Copies of all public comments have been provided to the Commissioners.

It is noted that the former Executive Director, acting under the authority of 58 Pa. Code §65.25 (relating to temporary changes to fishing regulations), took immediate action to amend §61.1 in order to be consistent with §61.2. See 39 Pa. B 7165 (December 19, 2009) (Exhibit E). This temporary modification went into effect on January 1, 2010 and will remain in effect until the Commission, by appropriate action, amends §61.1.

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 Ketterer 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.

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

Commentary:

On October 26, 2009, Act 40 of 2009 went 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 is now 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.

A notice of proposed rulemaking containing the amendments was published at 40 Pa. B. 427 (January 16, 2010) (Exhibit D). The Commission did not receive any public comments concerning the proposal.

It is noted that the former Executive Director, acting under the authority of 58 Pa. Code §65.25 (relating to temporary changes to fishing regulations), took immediate action to rescind these regulations. See 39 Pa. B. 6524 (November 7, 2009) (Exhibit F). The temporary modification went into effect on October 26, 2009 and will remain in effect until the Commission, by appropriate action, rescinds the regulations.

Briefer:

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

Recommendation:

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

Action:

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

PROPOSED RULEMAKING

E. Amendments to Sections 61.1 (Commonwealth Inland Waters), 61.2 (Delaware River and River Estuary) and 61.3 (Pymatuning Reservoir) to Prohibit Collection of Live Freshwater Mussels/Clams.

Commentary:

Because mussels, sometimes referred to as clams in slang, have declined greatly in their populations and their ranges have decreased both nationally and within Pennsylvania, the conservation of mussels faces many challenges. Nearly 82% (54 species) of Pennsylvania's native mussels are considered endangered, extirpated or of special concern (PABS 2008). Nationally, mussels are declining; 70% of the 297 native species have an endangered, threatened, special concern or extinct status (Williams and Neves 1995).

Under section 58 Pa. Code §61.1(d) (relating to Commonwealth inland waters) and §61.2(d) (relating to Delaware River and Estuary), harvest of up to 50 fish bait is permitted per day with no seasons or size limits. Inland seasons, sizes and creel limits for fish bait apply to the Susquehanna River and Lehigh River under §§61.7 and 61.8. Under §61.3(c) (relating to Pymatuning Reservoir), there are no season, size or creel restrictions on fish bait. Section 102 of the Fish and Boat Code, 30 Pa. C.S. §102, defines "fish bait" as "Unless otherwise provided by Commission regulation, crayfish or crabs, mussels, clams and the nymphs, larvae and pupae of all insects spending any part of their life cycle in the water."

Harvest of endangered and threatened mussels is prohibited under §§75.1 and 75.2 (relating to endangered and threatened species). Since mussels as a group are severely threatened, additional reduction of mussel populations by harvest as fish bait should be prohibited. Specifically, with the existing laws, the Pennsylvania Biological Survey (PABS) and Commission staff are concerned that:

- (1) Rare species will be harvested because they are difficult to identify correctly. Unless mussels are prohibited from bait use, anglers or other collectors could inadvertently collect rare or protected species. Additionally, enforcement of laws prohibiting harvest of protected species will not be effective if Waterways Conservation Officers are not well trained in the identification of mussels.
- (2) Commercial pressure for mussel harvest for the pearl industry will decimate populations. Mussel shells are collected and pieces of nacre are used to seed pearl-producing oysters. At this time, a commercial harvester can legally take large quantities of mussels, removing many thousands of pounds of mussels a year. With a legal limit of 50 mussels per day and no season, 10 commercial collectors could legally take 500 mussels per day (182,500 mussels per year) as fishbait under existing Commission regulations. Commercial mussel poachers have been convicted for illegal harvest in West Virginia, Ohio, Illinois, Indiana, Michigan and in the southeastern United States. By

prohibiting a legal possession limit of mussels as fishbait, the Commonwealth can better protect its mussel resource.

- (3) The transportation of aquatic invasive mussels could result in the introduction to additional waterways. Discharged zebra mussel and quagga mussels used for bait present significant risk for invasive mussel infestation. Although it is unlawful to possess the exotic zebra mussel and the closely related quagga mussel, they may be inadvertently transported to otherwise uninfested waters as fishbait.

The PABS's Bivalve Subcommittee and the Mollusk Committee have requested that the current mussel harvest with a Pennsylvania fishing license be disallowed. Other states, such as West Virginia, Ohio, Maryland, New Jersey, New York, Indiana, and Illinois, have laws making mussel harvest illegal. Because mussel identification and conservation needs are not widely known, a program to train Waterways Conservation Officers about mussels would improve enforcement of mussel protection laws. Additionally, public outreach about laws for mussel harvest and threats to mussel populations would help to reduce illegal mussel harvest in Pennsylvania.

For the above reasons, staff propose that the harvest of live mussels be prohibited with the following changes to 58 Pa. Code Chapter 61:

§61.1 Commonwealth inland waters:

- (d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogheny Reservoir:

| SPECIES | SEASONS | SIZE | LIMIT |
|--|---------------------------------|------|-----------------|
| *** | *** | *** | *** |
| BAIT FISH FISH BAIT except mud bugs <u>and</u> <u>mussels/clams</u> | *** | *** | *** |
| *** | *** | *** | *** |
| <u>MUSSELS/CLAMS</u> | <u>Closed year-round</u> | | <u>0</u> |
| *** | *** | *** | *** |

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

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

| SPECIES | SEASONS | SIZE | LIMIT |
|-----------------------------|---------------------------------|------|-----------------|
| *** | *** | *** | *** |
| <u>MUSSELS/CLAMS</u> | <u>Closed year-round</u> | | <u>0</u> |
| *** | *** | *** | *** |

§ 61.3. Pymatuning Reservoir.

(c) Except as provided by special regulations the following sizes and creel limits apply to Pymatuning Reservoir[; **no closed season applies**]:

| SPECIES | SEASONS | MINIMUM SIZE | DAILY [CREEL] LIMIT |
|--|---------------------------------|--------------|---------------------|
| WALLEYE | <u>Open year-round</u> | 15 inches | 6 |
| BASS | <u>Open year-round</u> | 12 inches | 5 |
| MUSKELLUNGE AND MUSKELLUNGE HYBRIDS | <u>Open year-round</u> | 30 inches | 2 |
| OTHERS (including Bait Fish and Fish Bait) | <u>Open year-round</u> | None | None |
| TURTLES (each species other than snapping turtles) | <u>Open year-round</u> | None | 2 |
| <u>MUSSELS/CLAMS</u> | <u>Closed year-round</u> | | <u>0</u> |

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 amendments described in the Commentary. If adopted on final rulemaking, these amendments will go into effect on January 1, 2011.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Worobec to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, these amendments will go into effect on January 1, 2011. Motion carried.

DESIGNATIONS

F. Clarification of Limits to the Catch and Release Fly-Fishing Only Area on Bowmans Creek (Wyoming County).

Commentary:

The Commission manages Bowmans Creek Section 04 under catch and release fly-fishing only regulations. The current section limits read as follows: "From the vicinity of SR 292 downstream to near the confluence with Marsh Creek." These limits are vague and have caused confusion among anglers. Historically, the upstream limit was intentionally vague because an individual who owned a short strip of land downstream from the SR 292 bridge wished to fish with bait on his property. That land has changed hands, and the new owners have agreed to catch and release fly-fishing only regulations. Therefore, staff recommend that the Commission re-define the limits of the Bowmans Creek catch and release fly-fishing only area to read as follows: "From the SR 292 bridge downstream to the confluence with Marsh Creek."

A notice of proposed re-designation was published at 40 Pa. B. 1467 (March 13, 2010) (Exhibit G). The Commission received one public comment supporting 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 re-define the limits of Bowmans Creek's catch and release fly-fishing only area as described in the notice of proposed re-designation. If approved, this change will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Worobec to re-define the limits of Bowmans Creek's catch and release fly-fishing only area as described in the notice of proposed re-designation. This change will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

G. Additions and Adjustments to the List of Wild Trout Streams.

Commentary:

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

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

The current version of the wild trout streams list was last revised in April 2009. Staff currently are recommending the addition of 61 new waters to the list and adjustments in the limits of 20 waters. These changes are primarily the result of recent surveys conducted on these waters. Surveying unassessed waters and documenting wild trout populations are consistent with the Commission’s recently adopted Strategic Plan for Management of Trout Fisheries in Pennsylvania and the agency’s Resource First philosophy.

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

| County | Water Name | Tributary To | Wild Trout Limits |
|---------------|-------------------|---------------------|--|
| McKean | Boyer Brook | Potato Creek | Headwaters downstream to mouth |
| Forest | Church Run | Tionesta Creek | Headwaters downstream to mouth |
| Forest | Fools Creek | Tionesta Creek | Headwaters downstream to mouth |
| Forest | Kingsley Run | Tionesta Creek | Headwaters downstream to mouth |
| Forest | Martin Run | Tionesta Creek | Headwaters downstream to mouth |
| Forest | Phelps Run | Tionesta Creek | Headwaters downstream to mouth |
| Forest | Reagan Run | Tionesta Creek | Headwaters downstream to mouth |
| Forest | Rocky Run | Tionesta Creek | Headwaters downstream to mouth |
| Elk | Spring Creek | Clarion River | Confluence of Watson Branch and Gilfoyle Run downstream to confluence Wolf Run |

| County | Water Name | Tributary To | Wild Trout Limits |
|---------------|---|-------------------------------|---|
| Clearfield | Beaver Run | Moshannon Creek | Headwaters to confluence with Gose Run |
| Centre | Boake Run | Sterling Run | Headwaters downstream to mouth |
| Clearfield | Dale Run | Moravian Run | Headwaters to mouth |
| Clearfield | Hartshorn Run | West Branch Susquehanna River | Headwaters to confluence with UNT at RM 1.70 |
| Clearfield | Hogback Run | West Branch Susquehanna River | Headwaters to mouth |
| Centre | Romola Branch | Marsh Creek | Headwater to mouth |
| Snyder | UNT to Middle Creek (Paxtonville) | Middle Creek | Headwaters downstream to mouth |
| Clearfield | UNT to Moravian Run (I80) | Moravian Run | Headwaters to mouth |
| Clearfield | UNT to Moravian Run (Sally's Bottom) | Moravian Run | Headwaters near Wallaceton downstream to mouth |
| Tioga | Norris Brook | Crooked Creek | Headwaters to Catlin Hollow |
| Susquehanna | Pigpen Creek | Starrucca Creek | Headwaters to mouth |
| Susquehanna | Roaring Run | Starrucca Creek | Headwaters to mouth |
| Tioga | Root Hollow | Norris Brook | Headwaters to mouth |
| Tioga | Spoor Hollow | Norris Brook | Headwaters to mouth |
| Tioga | Sweet Hollow | Norris Brook | Headwaters to mouth |
| Pike | Birchy Creek | Shohola Creek | Headwaters downstream to mouth |
| Pike | Burchards Creek | Taylorstown Creek | 0.6 km upst St. Forest border downstream to Taylorstown Creek |
| Lehigh | Catasauqua Creek | Lehigh River | East Woods Street Bridge downstream to former Lehigh Canal |
| Carbon | Long Run | Lehigh River | Headwaters downstream to mouth |
| Pike | Shohola Creek | Delaware River | Downstream border SGL#180 downstream to mouth |
| Pike | Taylorstown Creek | Balliard Creek | Headwaters downstream to backwaters of Lake Greeley |
| Carbon | UNT to Lehigh River (RM 49.95 Glen Onoko Falls) | Lehigh River | Headwater downstream to mouth |
| Wayne | UNT To Sherman Creek (Gardinier Corners) | Sherman Creek | Waterfall near upstream boundary SGL#70 downstream to mouth |
| Lehigh | UNT to Trout Creek (RM 2.74 Old Mill Road) | Trout Creek | Headwaters downstream to mouth |

| County | Water Name | Tributary To | Wild Trout Limits |
|---------------|---|---------------------------|--|
| Pike | Van Campen Brook | Delaware River | National Recreation Area downstream to mouth |
| Chester | Black Horse Creek | Marsh Creek Lake | Headwaters downstream to Marsh Creek Lake |
| Schuylkill | Mahannon Creek | Schuylkill River | Headwaters downstream to SR 0061 |
| Schuylkill | Mahonney Creek | Mahannon Creek | Headwaters downstream to point 370 m. downstream of Berry Rd. (T-687) / E. 2nd. Mountain Rd Jct. |
| Schuylkill | Mill Creek | Schuylkill River | St. Clair sewage treatment plant discharge downstream to mouth (Port Carbon) |
| Bucks | Paunacussing Creek | Delaware River | Headwaters downstream to Old Carversville Rd. (T-378) |
| Chester | Pigeon Run | Pickering Creek | Headwaters downstream to mouth |
| Chester | Pine Creek | Pickering Creek | Headwaters downstream to mouth near Chester Springs village |
| Lancaster | UNT to Hammer Creek | Hammer Creek | Headwaters downstream to mouth in Speedwell Forge County Park |
| Schuylkill | UNT to Schuylkill River (at Middleport) | Schuylkill River | Headwaters downstream to confluence with Schuylkill River along north bank in Middleport |
| Cumberland | Hunters Run | Mountain Creek | Headwaters downstream to mouth |
| Cumberland | Iron Run | Mountain Creek | Headwaters downstream to mouth |
| Perry | Perry Furnace Run | Sherman Creek | Headwaters downstream to mouth |
| Cumberland | Sage Run | Laurel Lake | Headwaters downstream to mouth |
| Cumberland | Tagg Run | Mountain Creek | Headwaters downstream to mouth |
| Perry | UNT to Bull Run | Bull Run | Headwaters downstream to mouth |
| Cumberland | UNT to Cedar Run | Cedar Run | Headwaters downstream to mouth |
| Perry | UNT to Fishing Run | Fishing Run | Headwaters downstream to mouth |
| Somerset | UNT to North Branch Jennings Run | North Branch Jennings Run | Headwaters downstream to mouth |
| Somerset | UNT to North Branch Jennings Run | North Branch Jennings Run | Headwaters downstream to mouth |
| Perry | UNT to Sherman Creek | Sherman Creek | Headwaters downstream to mouth |
| Somerset | Crab Run | Laurel Hill Creek | Headwaters downstream to mouth |
| Somerset | Gross Run | Laurel Hill Creek | Headwaters downstream to mouth |
| Somerset | Paddytown Hollow | Laurel Hill Creek | Headwaters downstream to mouth |

| County | Water Name | Tributary To | Wild Trout Limits |
|----------|---------------|-------------------|---|
| Fayette | Patterson Run | Laurel Run | Headwaters downstream to PA/WV state line |
| Somerset | Smith Hollow | Laurel Hill Creek | Headwaters downstream to mouth |
| Somerset | Spruce Run | Laurel Hill Creek | Headwaters downstream to mouth |
| Somerset | Whipkey Run | Laurel Hill Creek | Headwaters downstream to mouth |

Staff recommend the following adjustments to the list:

| County | Water Name | Tributary To | Wild Trout Limits | Rationale |
|-------------|-----------------------------|--------------------------------|---|--|
| McKean | Schoolhouse Hollow | Willow Creek | PA NY Stateline downstream to mouth | Upper limit adjusted to comply with stateline |
| Warren | South Branch State Line Run | State Line Run | Headwaters downstream to PA NY state line | Lower limit adjusted to comply with stateline |
| Warren | Storehouse Run | Conewango Creek | PA NY Stateline downstream to mouth | Upper limit adjusted to comply with stateline |
| Clearfield | Deer Creek | West Branch Susquehanna River | Headwaters downstream to Confluence with UNT 17973 | Downstream extension (4.6 mi) based on 2009 survey |
| Lycoming | Mill Creek (Montoursville) | Loyalsock Creek | Headwaters downstream to mouth | Old limits were from a nearby Mill Creek. New limits correct |
| Susquehanna | Apalachin Creek | North Branch Susquehanna River | Headwaters downstream to state line | Lower limit adjusted to comply with stateline |
| Susquehanna | Deep Hollow Brook | North Branch Hemlock Creek | Headwaters downstream to state line | Lower limit adjusted to comply with stateline |
| Bradford | Seeley Creek | Chemung River | Headwaters downstream to state line | Lower limit adjusted to comply with stateline |
| Wayne | Sherman Creek | West Branch Delaware River | Headwaters downstream to PA / NY state line | Lower limit adjusted to comply with stateline |
| Wayne | Starboard Creek | Sherman Creek | PA/NY state line downstream to mouth | Upper limit adjusted to comply with stateline |
| Wayne | West Branch Delaware River | Delaware River | PA/NY state line downstream to confluence with East Branch Delaware River | Upper limit adjusted to comply with stateline |
| Schuylkill | Bear Creek | Schuylkill River | Headwaters downstream to T-676 (Woodland Drive) | Downstream reduction based on 2009 survey data |
| Berks | Furnace Creek | Little Manatawny Creek | Headwaters downstream to mouth | Downstream extension based on 2009 survey data |

| County | Water Name | Tributary To | Wild Trout Limits | Rationale |
|------------|-----------------------------|----------------------|---|--|
| Lancaster | Hammer Creek | Cocalico Creek | Unnamed tributary at Buffalo Springs downstream to slackwater of Speedwell Forge Lake | Downstream extension based on 2009 survey data |
| Berks | Ironstone Creek | Manatawny Creek | Headwaters downstream to SR 2049 | Corrected downstream State Route number |
| Berks | Little Manatawny Creek | Manatawny Creek | Headwaters downstream to mouth | Upstream extension based on 2009 survey data |
| Montgomery | Manatawny Creek | Schuylkill River | Headwaters downstream to SR 0562 at Earlville. | Downstream extension based on 2009 survey data |
| Montgomery | West Branch Perkiomen Creek | Green Lane Reservoir | Headwaters downstream to slackwater of Green Lane Reservoir | Downstream extension based on 2009 survey data |
| Somerset | Laurel Run | Wills Creek | PA/MD State Line downstream to mouth | Upper limit adjusted to comply with stateline |
| Somerset | North Branch Jennings Run | Out of state | First UNT North of Wellersburg downstream to PA/MD State Line | Lower limit adjusted to comply with stateline |

A notice of proposed designation and re-designation was published at 40 Pa. B. 1468 (March 13, 2010) (Exhibit H). The Commission did not receive any public comments concerning the proposed designations and re-designations.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the changes to the list of wild trout streams as set forth in the notice with the exception of McIntire Run, Fayette County. If approved, these changes will go into effect immediately upon the publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Bachman to approve the changes to the list of wild trout streams as set forth in the notice with the exception of McIntire Run, Fayette County. These changes will go into effect immediately upon the publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

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

Commentary:

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

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

| County | Stream | Limits | Brook Trout Biomass (kg/ha) | Length (miles) | Survey Year |
|-------------------|--|--|------------------------------------|-----------------------|--------------------|
| Columbia/Sullivan | Coles Creek | Headwaters to confluence Marsh Run | 45.60 | 1.73 | 2009 |
| Columbia | Fallow Hollow | Headwaters to mouth | 43.75 | 0.98 | 2009 |
| Columbia | Hess Hollow | Headwaters to mouth | 33.75 | 1.84 | 2009 |
| Pike | Birchy Run | Headwaters to confluence Shohola Creek | 79.18 | 2.21 | 2009 |
| Pike | Burchards Creek | Pond Outflow downstream of Gravel Pit and Pine Road Access downstream to confluence Taylortown Creek | 32.72 | 1.89 | 2009 |
| Luzerne | UNT to Lehigh River downstream FEW Gage RM 76.52 | Headwaters downstream to confluence Lehigh River | 38.34 | 1.11 | 2006 |
| Carbon | UNT to Lehigh River RM 58.48 (1 st Tributary downstream from Black Creek West Bank) | Headwaters downstream to confluence with Lehigh River | 45.12 | 1.25 | 2008 |

| County | Stream | Limits | Brook Trout Biomass (kg/ha) | Length (miles) | Survey Year |
|-------------------|--|---|-----------------------------|----------------|-------------|
| Carbon | UNT to Lehigh River RM 58.09 (2 nd Tributary downstream from Black Creek West Bank) | Headwaters downstream to confluence with Lehigh River | 120.38 | 1.19 | 2006 |
| Schuylkill/Carbon | White Bear Creek | Headwaters downstream to inlet of Mauch Chunk Creek | 94.75 | 3.14 | 2005 |

A notice of proposed designation was published at 40 Pa. B. 1466 (March 13, 2010) (Exhibit I). The Commission did not receive any public comments concerning the proposed designations.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the addition of the streams described in the Commentary to the list of Class A wild trout waters. If approved, these changes will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Worobec to approve the addition of the streams described in the Commentary to the list of Class A wild trout waters. These changes will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

OTHER MATTERS

I. Great Lakes Restoration Initiative Aquatic Invasive Species Funding.

Commentary:

Section 1204 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended, authorizes the United States Fish and Wildlife Service to provide reimbursable, cost-share grants for implementation of federally approved Aquatic Nuisance Species Management Plans. The Pennsylvania Aquatic Invasive Species (AIS) Management Plan is an approved plan, and Pennsylvania is eligible for such funding.

On March 4, 2010, the United States Fish and Wildlife Service invited the Commission to submit a proposal for funding consideration under the Great Lakes Restoration Initiative (GLRI) to implement Pennsylvania's AIS Management Plan. This program does not require a non-federal match.

In collaboration with partners on the Governor's Invasive Species Council, the Commission identified priority AIS projects within, and linked to, the Great Lakes and submitted a two-year, \$1 million proposal on April 2, 2010, with the expectation that the final funding award will be approximately \$800,000 over two years.

Briefer:

Timothy D. Schaeffer, Director, Bureau of Policy, Planning, and Communications

Recommendation:

Staff recommend that the Commission authorize the Executive Director to approve individual grants utilizing \$100,000 or less of Great Lakes Restoration Initiative pass-through monies per grantee per year for projects that implement elements of Pennsylvania's Aquatic Invasive Species Management Plan. For grants exceeding that amount, staff will seek separate Commission approval after appropriate staff review.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Worobec to authorize the Executive Director to approve individual grants utilizing \$100,000 or less of Great Lakes Restoration Initiative pass-through monies per grantee per year for projects that implement elements of Pennsylvania's Aquatic Invasive Species Management Plan. For grants exceeding that amount, staff will seek separate Commission approval after appropriate staff review. Motion carried.

J. Unassessed Waters with the Potential to Support Wild Trout – Funding for Environmental Studies.

Commentary:

The Commission has identified roughly 45,000 flowing waters within the Commonwealth that have yet to be surveyed and have the potential to support populations of wild trout. Using GIS technology staff have prioritized these waters by sub-watershed to help guide biologists in identifying and surveying the waters most at risk of degradation from human activities. The prioritization process focuses on regions of the state where wild trout are known to occur, areas where human population density has increased by at least 10% since the last U.S. Census, and areas where Marcellus shale drilling activity is likely to occur. Surveying and properly classifying these waters is one of the best ways to protect these resources. The Commission's current staff of field biologists have shifted priorities beginning in 2009 to focus on surveying these waters; however, limited staffing severely restricts the number of waters that can be surveyed in a given season. This could result in a rate of degradation that outpaces our ability to properly protect these waters. Identifying other non-agency qualified sampling teams could substantially increase the number of waters that can be protected on an annual basis.

The Susquehanna River Heartland Coalition (comprised of Bloomsburg University, Susquehanna University, Bucknell University, Lock Haven University, Kings College, and Lycoming College and representatives from the Pennsylvania Department of Environmental Protection, the Northcentral Pennsylvania Conservancy, the Western Pennsylvania Conservancy, SEDA-COG, Forum-for-the-Future, and the Geisinger Health System) is interested in putting two teams on this work this year. They have estimated they can sample 40 streams at a cost of about \$20,000 and have identified a donor who will be able to cover at least half of this cost. Similar collaborative efforts are possible in the future if grants are provided from the Commission to universities, conservancies and other organizations and agencies.

The Commission's Division of Fisheries Management has developed a set of standard sampling protocols for this work. The Division is in the process of developing a field training program and has taken the necessary steps to provide oversight of this program to insure its success.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the Executive Director to provide grants of \$100,000 or less per year to qualified universities, organizations, agencies and other entities to conduct surveys on unassessed streams that are likely to contain wild trout. For grants exceeding that amount, staff will request separate Commission approval.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Worobec to authorize the Executive Director to provide grants of \$100,000 or less per year to qualified universities, organizations, agencies and other entities to conduct surveys on unassessed streams that are likely to contain wild trout. For grants exceeding that amount, staff will request separate Commission approval. Motion carried.

K. Funding of Susquehanna River Studies.

Commentary:

At its January 2010 regular meeting, the Commission passed a resolution pursuant to which it strongly recommended that the Pennsylvania Department of Environmental Protection (DEP) and the U.S. Environmental Protection Agency immediately expand ongoing efforts to find the sources and causes of pollution that are contributing to the demise of the Susquehanna's smallmouth fishery and restore this national treasure to its former healthy status. The Commission continues to work with DEP, the United States Geological Survey and the Susquehanna River Basin Commission to investigate the potential causes of disease in young-of-year smallmouth bass and low smallmouth bass recruitment levels that have been occurring in the Susquehanna River basin since 2005. The information gathered from these annual assessments has provided researchers with insights into the factors that may be influencing young-of-year smallmouth bass survival. However, as is often the case when investigating new phenomena, increases in our knowledge can lead to never before considered research needs that should be pursued. Grant opportunities may provide the Commission with an opportunity to leverage Commission funds for new research.

In order for the Commission to address these unforeseen research needs in a timely and appropriate fashion and take advantage of grant opportunities as they arise, it will be beneficial for the Executive Director to have authorization from the Commission to approve grants supporting these research needs.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the Executive Director to approve grants of \$100,000 or less per year in support of PFBC approved studies relating to the Susquehanna River. For grants exceeding that amount, staff will request separate Commission approval.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Ketterer to authorize the Executive Director to approve grants of \$100,000 or less per year in support of PFBC approved studies relating to the Susquehanna River. For grants exceeding that amount, staff will request separate Commission approval. Motion carried.

Other New Business

Commissioner Shetterly announced that he wishes to form a committee of interested Commissioners to assist in the compilation of Commission by-laws.

Public Comment to Commissioners and Staff

There were no comments or questions from the public.

Time and Place of July 2010 Commission Meeting

The next meeting is scheduled for July 12-13, 2010 and will be held in Harrisburg, PA.

Adjournment

A motion was made by Commissioner Sabatose to adjourn the meeting at approximately 12:00 p.m. Motion carried.