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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 93rd Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, October 4 and 5, 2010, at the Genetti Hotel & Suites, 200 West Fourth Street, Williamsport, PA 17701.

Commission committees met on October 4 beginning at 10:15 a.m. and on October 5 beginning at 8:00 a.m. The public session for review of this agenda began at or about 10:45 a.m. on October 5.

**Call to Order**

The meeting was called to order by Commission President William R. Worobec and followed by the Pledge of Allegiance to the Flag.

**Roll Call**

**Members Present**

**William R. Worobec, President**  
**Robert A. Bachman, Vice-President**  
**Norman R. Gavlick**  
**Steven M. Ketterer**  
**Leonard L. Lichvar**  
**Edward P. Mascharka III**  
**William J. Sabatose**  
**Glade E. Squires**

**Members Not Present**

**G. Warren Elliott**  
**Thomas C. Shetterly**

**Review and Approval of Minutes from the July 13, 2010 Meeting**

A motion was made by Commissioner Sabatose and seconded by Commissioner Ketterer to approve the July 13, 2010 minutes as written. Motion carried.

### **Awards and Presentations**

During an evening program on Monday, October 4, the Commission formally recognized several waterways conservation officers (WCOs), a local district attorney and four private citizens for their efforts in investigating a 2009 fatal boating incident on the Susquehanna River near Lock Haven, Clinton County. Commissioners also recognized a local resident for her outstanding work on area habitat projects. The awards were presented at the beginning of a special session that the Commission hosted to discuss aquatic resource issues related to Marcellus Shale natural gas drilling.

Tom Kamerzel, Director of Law Enforcement, presented the agency's Top Gun Award to WCO Thomas Nunamacher and to Clinton County District Attorney Michael Salisbury, who accepted the award on behalf of his office. The award recognizes an officer's outstanding effort during the past year in detecting and apprehending boaters operating under the influence.

Mr. Kamerzel also presented Outstanding Service Awards to the following individuals for their assistance with the investigation: WCOs Donald Heiner, Jr., David Decker, Corey Britcher and Ronald Myers; and citizens Robert Barto, Dennis Miller, Justin Breyerton and David Lee Masters. WCO Nunamacher and District Attorney Salisbury also were honored with Outstanding Service Awards.

In addition, Board President William Worobec formally recognized Reneè Carey, executive director of the Northcentral Pennsylvania Conservancy, for her work on more than 30 habitat restoration projects in the area. Ms. Carey coordinated the projects as part of a team that included Dave Keller, Commission area habitat manager, and Jason Fellon, watershed manager with the Department of Environmental Protection.

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

Executive Director John Arway highlighted the "July–September 2010 Quarterly Report" (Exhibit A) that was provided to Commissioners. The Commission's progress is measured by the Strategic Plan report that is included in this document. It tracks the time spent and efforts towards reaching the goals and objectives that have been set.

In his report, Executive Director Arway also reiterated future funding needs and that his first priority is to look at alternative funding options prior to a license fee increase. He expressed special recognition for staff efforts. He acknowledged Leroy Young for the great job he did in chairing the American Fisheries Society Annual Meeting that the Commission hosted in Pittsburgh. Over 1,400 people attended this event. He also extended thanks to Commissioners Lichvar, Mascharka and Shetterly for their participation in the meeting. He extended a thank you to Teresa Erdman for coordinating the Commission meeting in Williamsport. He also expressed thanks to Tim Schaeffer for his extra duty on the Marcellus shale severance tax discussions.

Executive Director Arway reported that he contacted the Governor's Office of Administration and asked them to conduct an organizational structure analysis of the agency. The Commission

already has received a report on the climate survey findings, and workgroups have been organized to address and take action regarding some of the issues that were identified.

At the conclusion of his report, Executive Director Arway distributed “Resource First” lapel pins to all Commissioners. He further noted that every Commission employee will receive one of these pins from their bureau director.

### **Public Comment to Commissioners and Staff**

Mike Burton, PA Bass Federation, Inc., provided comment on the proposed amendment to section 65.24 (relating to miscellaneous special regulations) to impose catch and release regulations on portions of the Susquehanna River and Juniata River that are currently regulated under big bass special regulations.

### **Announcement of Executive Session**

Commissioner Worobec announced that an executive session was held on October 4 at 8:00 a.m. to discuss litigation, personnel and real estate matters.

### **Reports of Commissioner Committees**

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

The Executive and Planning Committee met on Monday, October 4, at approximately 10:15 a.m. Agenda items were discussed. Tim Schaeffer provided an update on the Strategic Plan and the new Quarterly Report format. Executive Director John Arway provided an update on the Association of Fish & Wildlife Agencies 100<sup>th</sup> Annual Meeting and the Legislative Budget and Finance Committee Audit Report. Laurie Shepler introduced Wayne Melnick as the Commission’s new Assistant Counsel. Steve Kralik of the Governor’s Office of Administration provided the Climate Survey results.

#### **Administration (Commissioner Lichvar) -**

The Administration Committee met on Tuesday, October 5, at approximately 8:25 a.m. Agenda items and the National Saltwater Angler Registry were discussed.

#### **Boating (Commissioner Ketterer) -**

The Boating Committee met on Tuesday, October 5, at approximately 9:35 a.m. Agenda items were discussed, and the Committee recommended that the proposed amendment to §95.3 (relating to lights for boats) say 100 feet instead of 150 feet. Specifically, the Committee recommended that the proposed amendment be worded as follows: It is unlawful for a boat operator to use docking lights while underway except when docking and the boat is traveling at slow, no wake speed and is within 100 feet of approaching a dock, a mooring buoy or the shoreline. In addition, Scott Bollinger provided an update on the Boating Facility Grants Program, and Laurel Anders provided an update on boating accidents and fatalities.

**Communications (Commissioner Lichvar) -**

The Communications Committee met on Monday, October 4, at approximately 4:25 p.m. Ted Walke was introduced as the new Division Chief, and he provided a briefing on projects for the next three months and the 2011 Fish for Free days.

**Fisheries (Commissioner Bachman) -**

The Fisheries Committee met on Monday, October 5, at approximately 1:30 p.m. Agenda items were discussed. Elaine Reichert, President of Aquatic Conservation Unlimited, provided a presentation on Upper Delaware River flow management. Leroy Young gave an update on the American Fisheries Society meeting and provided a hatchery program review. Kris Kuhn gave a presentation on the Little Juniata River fingerling trout stocking assessment. The Committee discussed the three rod proposal and recommended it for full Commission consideration. Dave Miko provided an update on coldwater issues and the Trout Plan. Dave Spotts was introduced as the new Chief of the Division of Environmental Services.

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

The Habitat and Environmental Committee did not meet.

**Law Enforcement (Commissioner Ketterer) -**

The Law Enforcement Committee met on Tuesday, October 4, at approximately 8:00 a.m. Tom Kamerzel provided an update on the current class of waterways conservation officers and the selection and plans for filling vacant positions. A report of the steelhead detail was provided. A Walnut Creek Marina update and a Lake Erie commercial fishing report were furnished.

The Committee acted upon proposed revocations. The Committee revoked the fishing privileges of three individuals for a period of one year. The Committee also revoked a snake hunting permit for one individual for two years. In addition, the Committee revoked the boating privileges of one individual for two years with a reduction to one year upon the successful completion of a classroom boating safety education course. The Committee revoked the boating privileges of one individual for six months and required the individual to take a classroom boating safety education course.

**Legislation (Commissioner Sabatose) -**

The Legislation Committee met on Monday, October 4, at approximately 1:00 p.m. Updates regarding the Marcellus Shale severance tax, the Interstate Wildlife Violator Compact, other state legislative items, and proposed Title 30 revisions were provided. A House Game and Fisheries Committee event scheduled for this fall was canceled. Tim Schaeffer and Gary Moore were commended for the fine legislative work that they have been doing.

## **EXECUTIVE AND PLANNING**

### **A. Dates for Fish and Boat Commission Meetings in 2011.**

#### 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 2011. 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 2011:

January 24-25, 2011 (Monday and Tuesday)  
April 11-12, 2011 (Monday and Tuesday)  
July 11-12, 2011 (Monday and Tuesday)  
September 26-27, 2011 (Monday and Tuesday)

The January and July 2011 meetings will be held at the Harrisburg headquarters. The April and October 2011 meetings will be held at locations designated by the Commission for the transaction of business.

#### Briefer:

John A. Arway, Executive Director

#### Recommendation:

Staff recommend that the Commission approve the dates for the regular meetings of the Commission for 2011 as set forth in the Commentary.

#### Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Mascharka to approve the dates for the regular meetings of the Commission for 2011 as set forth in the Commentary. Motion carried.

B. Review and Approval of Submission of Fiscal Year 2011-12 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 2011-12 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; however, changes may also be made to ensure that the Commission's approved budget authorization is aligned with the Governor's fiscal policy as provided to all Commonwealth agencies. The Governor will announce the details of the FY 2011-12 budget in February or March of 2011.

Briefer:

Bernard M. Matscavage, Director, Bureau of Administration  
John A. Arway, 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 2011-12 spending authority as more fully described in staff's preliminary draft budget documents.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Ketterer to authorize the Executive Director to submit a request to the Governor's Budget Office for Fiscal Year 2011-12 spending authority as more fully described in staff's preliminary draft budget documents. Motion carried.

## ADMINISTRATION

A. Susquehanna Conference of the United Methodist Church Property Rights Acquisition, Porter Township, Huntingdon County.

### Commentary:

The Little Juniata River Association and other local interests are concerned about the future of public fishing access in the Upper Juniata Watershed. The Association therefore contacted the Commission and agreed to submit a grant application to the Department of Conservation and Natural Resources (DCNR) for funding to acquire public fishing access and conservation easements in the watershed. The Commission agreed to match the grant funding with funds received from American Hydro Power Company, L.P. and paid into a restricted revenue account pursuant to a settlement agreement with the Commission. Under the agreement, settlement funds may be used for projects jointly approved by the Commission and American Hydro that enhance fishery resources in the Juniata River and its tributaries. These projects may include but are not limited to fisheries habitat restoration or enhancement; fish stocking; creation of, expansion of, and preservation of, facilities to encourage, improve and expand the recreational use of the fishery, and utilization of the same by the public and local fishing persons; and any other action to enhance the fishery resources, as deemed reasonable and appropriate by the parties. The Commission and American Hydro have jointly agreed that such funds may be used to acquire fishing access and conservation easements in the Juniata River watershed. The Little Juniata River Association and the Commission have entered into an agreement that will transfer the DCNR funds to the Commission.

The Commission has been offered a public fishing access and conservation easement over approximately 4,172 linear feet on one side and 151 linear feet on the opposite side of the river on the Little Juniata River as it flows across a parcel of property in Porter Township, Huntingdon County, for \$69,400. A map depicting the subject parcel is attached as Exhibit B. 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 additional easement for a parking area and footpaths from Barree Road to the Little Juniata River has been offered to ensure access to the fishing easement area. The easement will be paid for from American Hydro settlement funds deposited into a restricted account in the amount of \$37,200 and grant funds from DCNR in the amount of \$32,200.

The easement area, also known locally as the Green Hills Campground, is located along Mountain Road. The subject parcel is located adjacent to the Dopp property that is open to public fishing.

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 requirements. The Commission may, in its sole discretion, pay the costs to obtain and record a subordination of lien for the property.

Briefer:

Laurel L. Anders, Director, Bureau of Boating and Access

Recommendation:

Staff recommend that the Commission authorize the acquisition of property rights along the Little Juniata River in Porter Township, Huntingdon County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Lichvar to authorize the acquisition of property rights along the Little Juniata River in Porter Township, Huntingdon County, as more particularly described in the Commentary. Motion carried.

B. Allison Property Rights Acquisition, Porter Township, Huntingdon County.

Commentary:

The Little Juniata River Association and other local interests are concerned about the future of public fishing access in the Upper Juniata Watershed. The Association therefore contacted the Commission and agreed to submit a grant application to the Department of Conservation and Natural Resources (DCNR) for funding to acquire public fishing access and conservation easements in the watershed. The Commission agreed to match the grant funding with funds received from American Hydro Power Company, L.P. and paid into a restricted revenue account pursuant to a settlement agreement with the Commission. Under the agreement, settlement funds may be used for projects jointly approved by the Commission and American Hydro that enhance fishery resources in the Juniata River and its tributaries. These projects may include but are not limited to fisheries habitat restoration or enhancement; fish stocking; creation of, expansion of, and preservation of, facilities to encourage, improve and expand the recreational use of the fishery, and utilization of the same by the public and local fishing persons; and any other action to enhance the fishery resources, as deemed reasonable and appropriate by the parties. The Commission and American Hydro have jointly agreed that such funds may be used to acquire fishing access and conservation easements in the Juniata River watershed. The Little Juniata River Association and the Commission have entered into an agreement that will transfer the DCNR funds to the Commission.

The Commission has been offered a public fishing access and conservation easement over approximately 7,600 linear feet on one side of the river on the Little Juniata River as it flows across a parcel of property in Porter Township, Huntingdon County, for \$102,900. A map depicting the subject parcel is attached as Exhibit C. 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 footpath from Allison Road to the Little Juniata River has been offered to ensure access to the fishing easement area. The subject parcel is located across the Little Juniata River from the Dopp property, which is open to public fishing. A portion of the easement value will be paid for from settlement funds deposited into the restricted account and the grant funds from DCNR.

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 requirements. The Commission may, in its sole discretion, pay the costs to obtain and record a subordination of lien for the property.

Briefer:

Laurel L. Anders, Director, Bureau of Boating and Access

Recommendation:

Staff recommend that the Commission authorize the acquisition of property rights along the Little Juniata River in Porter Township, Huntingdon County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Lichvar and seconded by Commissioner Bachman to authorize the acquisition of property rights along the Little Juniata River in Porter Township, Huntingdon County, as more particularly described in the Commentary. Motion carried.

C. Piney Springs Property Rights Exchange, Woodbury Township, Blair County.

Commentary:

The Commission owns +/-199 acres of property known as Piney Springs in Woodbury Township, Blair County, about 10 miles east-southeast of Hollidaysburg, and that includes +/-5,000 feet of frontage along Piney Creek, a Class A Trout stream. It consists of several noncontiguous parcels that contain numerous massive springs that have a flow near 2,000 gpm. The property is primarily a stream corridor and farm fields with small meadows and woodlots and contains a house and barn, two old spring houses, and several small outbuildings.

The property was acquired in the mid-1960's by combining a number of smaller parcels to a larger property known as the Umbower farm. The purpose of the acquisition was to secure a potential hatchery site, to provide fishing opportunities in Piney Creek and to provide a buffer and protection for the stream and the springs.

An agreement is in place for the farming and care of the agricultural fields. However, the vacant house and barn have been a significant and costly maintenance and vandalism burden. They have been in a state of deterioration since they were vacated by the last tenants roughly 10 years ago. The vacant house and barn are neither used nor needed by the Commission, and staff have fielded and investigated a number of options for the subdivision of the property and disposition of the house and barn.

In response to the only offer that provided tangible real property that will benefit the public and protect the resource, the Commission has secured an option agreement. Under the option agreement, the Commission will convey fee title to the house, barn and +/-4 acres of the Piney Creek property in exchange for acquiring fee title to +/- 2,025 feet of Piney Creek (+/-4 acres) adjacent to and downstream of the Commission's existing property; retaining water and access rights on the +/-4 acres being conveyed; retaining oil, gas, mineral and coal rights on the +/-4 acres being conveyed; and receiving a payment of approximately \$7,500 at closing, subject to agreement as to precise boundary lines, survey and subdivision approval. The \$7,500 payment is based on equal areas being exchanged and will increase if the Commission nets less area and will decrease if the Commission nets more area. The transaction includes the acquisition of 2,025 feet of Class A stream frontage along Piney Creek for fishing, boating and resource protection in return for the disposition of property that is not needed or used by the Commission and does not benefit sportsmen.

Under the option agreement, the Optionor will provide the necessary survey and subdivision work normally required of the Commission. The Optionor also will receive a temporary license agreement for maintenance of the subject tract. This license agreement will terminate on closing, upon termination of the option agreement for nonperformance or 30 days after notice that the option will not be exercised, whichever occurs first. In addition, the Optionor will pay the Commission's share of the transfer tax and real estate tax. The subject property rights exchange is depicted in Exhibit D. Final property areas will be contingent on an approved subdivision plan.

During the option period, staff will perform the necessary due diligence. The Commission's exercise of the option will be subject to meeting those requirements. The property was acquired using Project 70 funding, and legislation will be required to dispose of the property.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the property rights exchange as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Lichvar to authorize the property rights exchange as more particularly described in the Commentary. Motion carried.

## BOATING PROPOSED RULEMAKING

### A. Amendment to Section 53.16 (Special Use).

#### Commentary:

Section 53.16(d) of the Commission's regulations restricts the number of watercraft that may be launched or retrieved by livery operators at a Commission access to eight watercraft or less in any one-hour period except with the advance written approval of the Commission's Executive Director. Administrative Policy 2006-003 (Exhibit E) sets forth the conditions under which the Executive Director will grant that approval. Livery operators typically introduce new boaters to recreational boating and routinely provide new and existing boaters with safety instruction. Commission staff therefore recommend that the regulation be amended to allow less restrictive use of our accesses by livery operators and their customers. Commission staff do not anticipate that user conflicts will result from this change.

Staff propose that some parts of the current Administrative Policy be added to §53.16(d) as follows:

§53.16. Special use.

\* \* \*

(d) *Commercial use.* – Commission-owned and controlled access areas are for the use of the fishing and boating public and will not be converted to any commercial use that in any way impairs free public use of such areas. **[The Commission finds that the commercial practice of renting or loaning large numbers of watercraft, including boats, canoes, kayaks and other devices, for launching and retrieval at Commission access areas does impair general free public use of the public facilities. It is unlawful for a commercial enterprise to use Commission-owned or -controlled access areas for the launch or retrieval of more than eight watercraft rented, loaned or supplied from one source within a 1 hour period except with the advance written approval of the Executive Director. The commercial enterprise that rents, loans or otherwise provides watercraft for launch or retrieval at Commission-owned or -controlled access areas shall be responsible to ensure that the watercraft are not used in violation of this subsection. This subsection does not apply to persons who operate an authorized concession at Commission-owned or -controlled access areas. As used in this subsection, the term “commercial enterprise” means a business that rents or loans watercraft for consideration.] Limited commercial use relating to fishing and boating that does not interfere with free public use of the access will be permitted subject to the following conditions.**

- (1) **All boats launched or retrieved from Commission-owned and controlled access areas shall be currently registered or display current launch permit decals.**
- (2) **The commercial enterprise may not interfere in any way with the free public use of the ramp, parking or other facilities at the access area.**

- (i) For Commission-owned and controlled access areas with eight parking spaces or less, no more than one of the available parking spaces may be used by the commercial enterprise.**
- (ii) For Commission-owned and controlled access areas with nine to 20 parking spaces, no more than three of the available parking spaces may be used by the commercial enterprise.**
- (iii) For Commission-owned and controlled access areas of 21 parking spaces or more, no more than five of the available parking spaces may be used by the commercial enterprise.**
- (iv) Pre-trip instructions provided by the commercial enterprise to its customers shall be conducted in an area at the access area away from the launch ramp so as to not interfere with other parties launching boats.**
- (3) The commercial enterprise shall yield at all times to other public users of the boat ramp when launching or retrieving boats.**
- (4) The use of a Commission-owned and controlled access area shall be based on the facility in its current condition. The Commission will not add amenities or make improvements at the access based on increased commercial use of the access.**
- (5) This subsection does not apply to persons who operate an authorized concession at Commission-owned or controlled access areas.**
- (6) This subsection does not apply to accesses on the upper Delaware River where Commercial Use Authorization Provisions for Guides are in force by the National Park Service.**
- (7) As used in this subsection, the term “commercial enterprise” means a business that rents or loans boats for consideration.**

On June 15, 2010, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

Briefer:

Laurel L. Anders, Director, Bureau of Boating and Access

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 Sabatose and seconded by Commissioner Mascharka 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.

B. Amendment to Section 95.3 (Lights for Boats).

Commentary:

The Commission's regulations provide boaters with detailed information on the requirements for types, configurations and locations of navigation lights on boats. Section 95.3(a) states, in part, that "A boat from sunset to sunrise and during periods of restricted visibility shall carry and exhibit the lights prescribed by the Inland Navigation Rules." Inland Navigation Rule 20, Part C--Lights and Shapes, states that "The rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out."

Many boaters assume that docking lights may be used while a vessel is underway (when lights are required). Since docking lights can easily be mistaken for stern lights or all-round white lights, docking lights may not be displayed while a vessel is underway. However, it is clear that there is a need for boaters to use docking lights to safely approach a dock, a mooring buoy or even the shoreline. Staff therefore recommend that the existing regulation be modified to clarify when it is illegal to use docking lights.

Staff propose that §95.3 be amended as follows:

§95.3. Lights for boats.

\* \* \*

**(g) Docking lights. It is unlawful for a boat operator to use docking lights while underway except when docking and the boat is traveling at slow, no wake speed and is within 150 feet of approaching a dock, a mooring buoy or the shoreline. For purposes of this subsection, a docking light is a flood or spotlight type of light permanently installed or permanently mounted on a motorboat that is used to illuminate a boat's forward course of travel.**

On June 15, 2010, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

Briefer:

Laurel L. Anders, Director, Bureau of Boating and Access

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:

At the Boating Committee meeting, the Committee recommended that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendment described in the Commentary with one modification – that is, to change 150 feet to 100 feet.

During the full Commission meeting, a motion was made by Commissioner Ketterer and seconded by Commissioner Gavlick to approve the publication of a notice of proposed rulemaking containing the proposed amendment described in the Commentary with the modification recommended by the Boating Committee. If adopted on final rulemaking, this amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

C. Addition of Section 111.16 (Clarion County).

Commentary:

Staff propose creating a slow, no-wake zone for just over two miles at the very uppermost limit to power boating and skiing activities created by the Piney Dam on the Clarion River (Exhibit F). The Commission has received input from anglers that boats have been traveling at high speeds through the indicated section of the Clarion River causing problems with angling on this narrow section of the Clarion River. Parts of the river in this stretch are less than 200 feet across and, therefore, in essence are already slow, no-wake. The Commission's Northwest Region Manager reports that the proposed area is upstream of the very uppermost limit to where unlimited horse power boating is appropriate. The proposal makes it clear to the boating public that this section is in fact slow, no-wake and makes enforcement of the restriction feasible by Commission law enforcement personnel. If the proposed amendment is adopted, buoys will be placed to clearly mark the area for boaters' information.

Staff propose that a new §111.16 be added as follows:

**§111.16. Clarion County**

**Clarion River.--Boats are limited to slow, no-wake speed from the mouth of McGourvey Run to the mouth of Blyson Run.**

On June 15, 2010, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

Briefer:

Laurel L. Anders, Director, Bureau of Boating and Access

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 Ketterer 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.

D. Amendment to Section 111.20 (Crawford County).

Commentary:

The Commission's regulation prohibits the anchoring of boats in the area along the western shoreline of Conneaut Lake commonly referred to as the "sand bar" and further provides that the no anchor zone will extend along the shoreline to a line of buoys approximately 75 feet out from the end of the steel cribs at either end of the zone.

Over the years there have been changes to the shoreline on Conneaut Lake. Waterways Conservation Officers are concerned about enforcing the existing regulation because the contours of the shoreline vary in the designated area and the end parameters (steel cribs) referred to in the regulation are no longer visible or present.

Staff therefore propose that §111.20 be amended as follows:

§111.20. Crawford County.

\* \* \*

(b) *Conneaut Lake*.--The anchoring of boats is prohibited in the area along the western shoreline of the lake commonly referred to as the "sand bar." The no anchor zone will extend along the shoreline to a line of buoys **[approximately 75 feet out from the end of the steel cribs at either end of the zone]**.

On June 15, 2010, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

Briefer:

Laurel L. Anders, Director, Bureau of Boating and Access

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 Mascharka and seconded by Commissioner Ketterer 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.

## **FISHERIES** **FINAL RULEMAKING**

A. Amendments to Sections 61.1 (Commonwealth Inland Waters), 61.2 (Delaware River and River Estuary) 61.3 (Pymatuning Reservoir) and 69.12 (Seasons, Sizes and Creel Limits – Lake Erie and Lake Erie Tributaries) 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 58 Pa. Code §61.1(d) (relating to Commonwealth inland waters), §61.2(d) (relating to Delaware River and Estuary) and §69.12 (relating to seasons, sizes and creel limits – Lake Erie and Lake Erie tributaries), 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, the Commission has proposed that the harvest of live mussels in Pennsylvania be prohibited.

A notice of proposed rulemaking was published at 40 Pa. B. 3669 (July 3, 2010) (Exhibit G). During the formal public comment period, the Commission received two comments supporting the proposal. One of the commenters, however, noted that there are individuals who collect non-native species of *Corbicula* for consumption and who will be prohibited from doing so if the proposed amendments are adopted. Copies of all public comments have been provided to the Commissioners.

After the publication of the notice of proposed rulemaking, staff discovered that §69.12 was not among the sections proposed to be amended to prohibit the harvest of live mussels. This omission was inadvertent. Because the amendment of §69.12 does not enlarge the original purpose of the proposed rulemaking (which is to protect declining populations of native mussels by prohibiting harvest on a statewide basis), staff recommend that the Commission amend the section on final rulemaking as follows:

§69.12. Seasons, sizes and creel limits – Lake Erie and Lake Erie tributaries.

\* \* \*

(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
***	***	***	***
<b>BAIT FISH FISH BAIT, <u>except mussels/clams</u></b>	***	***	***
<b><u>MUSSELS/CLAMS</u></b>	<b><u>Closed year-round</u></b>		<b><u>0</u></b>
***	***	***	***

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 along with the amendment to §69.12 as described in the Commentary. If adopted, these amendments will go into effect on January 1, 2011.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Mascharka to adopt the amendments as set forth in the notice of proposed rulemaking along with the amendment to §69.12 as described in the Commentary. These amendments will go into effect on January 1, 2011. Motion carried.

## PROPOSED RULEMAKING

B. Additions to Section 65.24 (Miscellaneous Special Regulations) to Impose Catch and Release Regulations to Portions of the Susquehanna River and Juniata River that are Currently Regulated under Big Bass Special Regulations.

### Commentary:

In recent years, annual Commission biological assessment catch rates of smallmouth bass in the lower Susquehanna River (below Sunbury, PA) and in the Juniata River have fallen below the catch rates of the middle to late 1990's. This has not been the case for other rivers or river reaches in Pennsylvania, including the West Branch of the Susquehanna River and the North Branch of the Susquehanna River. These decreases in catch rates have been attributed, in part, to decreases in young-of-year recruitment.

Historically, reductions in smallmouth bass young-of-year recruitment could be explained, in part, by late spring river discharge. High late spring discharges tend to lead to reduced densities of young smallmouth bass, whereas lower spring discharges tend to lead to higher densities of young in summer assessments. Since 2002, while this pattern continued on the North Branch, recruitment on the mainstem has been consistently below average. Since 2005, the Commission has documented that low flows and relatively warm water temperatures have been associated with high incidences of Columnaris bacterial disease in young-of-year bass. Columnaris is a common soil bacterium that typically does not appear unless fish are under some type of stress. Studies conducted by the United States Geological Survey in 2008 and 2009 have documented that low stream flows and warmer water temperatures are associated with relatively low dissolved oxygen levels in near shore nursery habitat for young-of-year bass. These conditions are typically associated with relatively high plant growth and point to possible nutrient loading concerns. Work continues to identify the causes of low recruitment and disease, with immediate solutions challenging a broad spectrum of scientists from state and federal resource management agencies.

Reduced densities of smallmouth bass are likely to continue until and unless survival of above average year classes persists through adulthood in the lower Susquehanna River and Juniata River. In order to preserve good quality fishing in the face of declining smallmouth bass abundance and provide for enhanced preservation of young fish recruiting to the population, staff recommend that catch and release restrictions be applied to those portions of the Susquehanna River and Juniata River currently included in the Big Bass Program (Figure 1). Tournaments will be prohibited during the bass spawning period in the spring, and during the remainder of the year, catch-measure-immediate release tournaments only will be permitted. The proposed regulations will apply to all species of black bass residing in the Susquehanna and Juniata Rivers to remain consistent with the way that black bass historically have been managed in these rivers.

Preliminary modeling has demonstrated anticipated increases in smallmouth bass density ( $\geq$  age 4) in association with these regulations of 15% or less in the near term versus no regulatory change. Although these anticipated changes are relatively small, staff believe that action is necessary now since improvements in recruitment indices in the lower Susquehanna and lower Juniata River have not been evident and are impossible to forecast in advance.

The Commission remains steadfast in its commitment to improving and sustaining high quality black bass fishing in the Susquehanna drainage and throughout the Commonwealth. Staff will continue monitoring the abundance of all sizes of smallmouth bass and continue indexing production of young. These regulations may be revisited in the future depending on the condition of the fishery.

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><u>Cumberland, Dauphin, Juniata, Lancaster, Northumberland, Perry, Snyder, York</u></b>	<b><u>Susquehanna River (98.0 miles) from the inflatable dam near Sunbury downstream to Holtwood Dam</u></b>	<b><u>Bass (smallmouth and largemouth)– No harvest year-round – catch and immediate release only; From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11 – No tournaments; Remainder of the year – Catch-measure-immediate release tournaments only</u></b>
<b><u>Dauphin, Juniata, Perry</u></b>	<b><u>Juniata River (31.7 miles) from SR0075 bridge at Port Royal downstream to the mouth</u></b>	<b><u>Bass (smallmouth and largemouth)– No harvest year-round – catch and immediate release only; From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11 – No tournaments; Remainder of the year – Catch-measure-immediate release tournaments only</u></b>
***	***	***

If adopted on final rulemaking, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*, which likely will not occur until late spring of 2011. In the interim, it is important to preserve good quality fishing and to provide for enhanced preservation of young fish recruiting to the population. Accordingly, if the Commission approves the publication of a notice of proposed rulemaking containing these amendments, the Executive Director will exercise his authority under §65.25 (relating to temporary changes to fishing

regulations) to make the changes effective on January 1, 2011. Temporary changes under that section expire on January 1 of the following year or six months after they are effected, whichever comes later, unless the Commission by appropriate action has adopted the amendments.

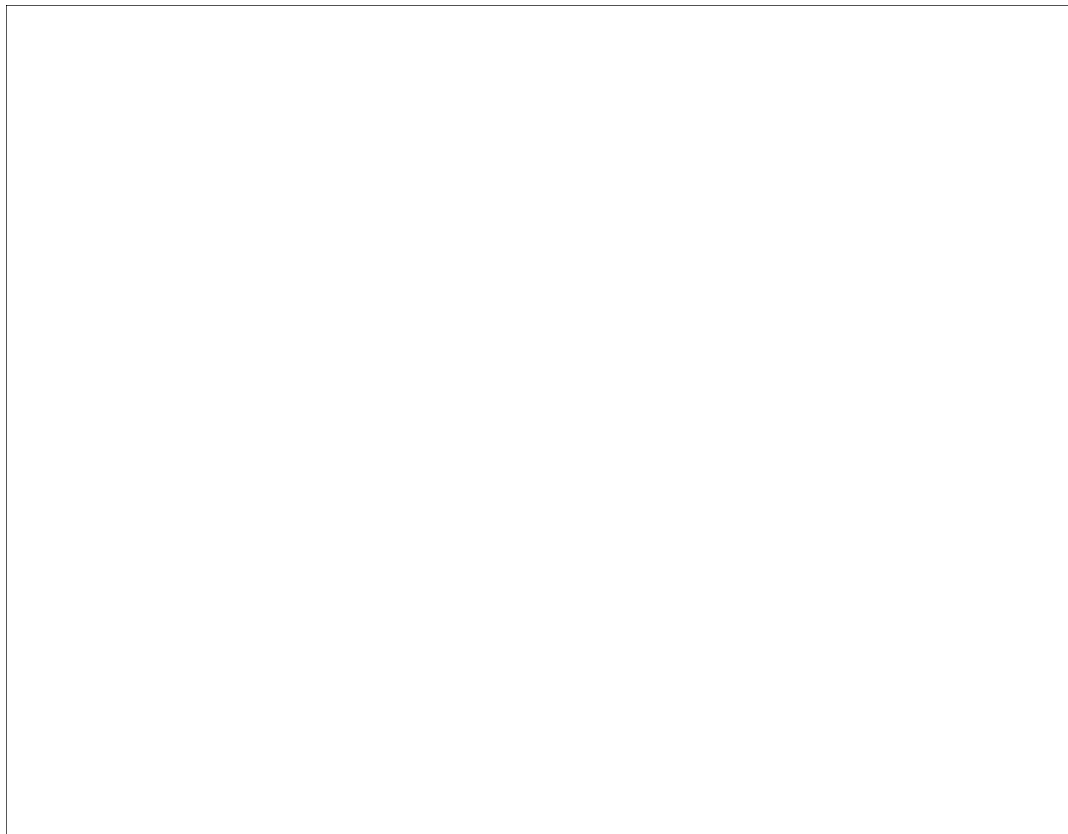


Figure 1. Pennsylvania's major rivers with grey highlight illustrating proposed catch and immediate release areas on the lower Susquehanna River and lower Juniata River. These areas are currently included in the Big Bass Program under §65.9.

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, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

At the Fisheries Committee meeting, the Committee recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary and that the Commission solicit public comments for 90 days.

During the full Commission meeting, a motion was made by Commissioner Bachman and seconded by Commissioner Lichvar to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary and soliciting public comments for 90 days. If adopted on final rulemaking, the amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

C. Amendments to Section 63.6 (Authorized Devices for Game Fish, Baitfish and Fishbait).

Commentary:

Under section 63.6 of the Commission's regulations, no more than two lines may be used at one time when fishing, except while ice fishing under section 63.10. This restriction dates back to at least the 1930's. Recently, several anglers have expressed interest in having this regulation amended to allow for the use of three lines.

Because harvest is primarily controlled through the use of season, size limit and creel limit regulations, a change in the number of devices from two to three should have little effect on managing the fisheries of the Commonwealth. Any concerns about this change are likely to be social. The Fisheries Committee, therefore, recommends that the Commission solicit public comments through the publication of a notice of proposed rulemaking containing the following amendments:

§ 63.6. Authorized devices for game fish, baitfish and fishbait.

(a) It is unlawful to fish for game fish with more than **[two] three** lines of any description, whether fished by rod or by hand, at one time except while ice fishing in accordance with §63.10 (relating to ice fishing). \*\*\*

(b) It is unlawful to fish for baitfish with more than **[two] three** lines of any description, whether fished by rod or by hand, at one time with not more than three hooks attached to each line; a dip-net or minnow seine not over 4 feet square or 4 feet in diameter, and a minnow trap, with not more than two openings, which may not exceed 1 inch in diameter. \*\*\*

(d) It is unlawful to use more than **[two] three** lines at any time, except while ice fishing in accordance with §63.10, when fishing for game fish, baitfish or both.

\*\*\*

Briefer:

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

Recommendation:

The Fisheries Committee recommends that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary and soliciting public comments for 60 days. If adopted on final rulemaking, these amendments will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Lichvar and seconded by Commissioner Mascharka to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary and soliciting public comments for 60 days. If adopted on final rulemaking, these amendments will go into effect on January 1, 2012. Motion carried.

**Other New Business**

None.

**Time and Place of January 2011 Commission Meeting**

The next meeting is scheduled for January 24-25, 2011 and will be held in Harrisburg, PA.

**Adjournment**

A motion was made by Commissioner Mascharka and seconded by Commissioner Bachman to adjourn the meeting at approximately 11:15 a.m. Motion carried.