

## Table of Contents

Call to Order .....	1
Roll Call .....	1
Review and Approval of Minutes from the October 5, 2010 Meeting .....	1
Awards and Presentations .....	2
Executive Director's Report.....	2
Announcement of Executive Session .....	3
Reports of Commissioner Committees .....	3
Executive and Planning (Commissioner Worobec) – .....	3
Administration (Commissioner Lichvar) – .....	3
Boating (Commissioner Ketterer) – .....	3
Communications (Commissioner Lichvar) – .....	3
Fisheries (Commissioner Bachman) – .....	4
Habitat and Environmental (Commissioner Elliott) – .....	4
Law Enforcement (Commissioner Ketterer) – .....	4
Legislation (Commissioner Sabatose) - .....	4
Public Comment to Commissioners and Staff .....	5
ADMINISTRATION .....	6
FINAL RULEMAKING.....	6
A. Amendments to Section 51.92 (Royalty Rates).....	6
PROPOSED RULEMAKING .....	7
B. Addition of Section 63.55 (Saltwater Angler Registration).....	7
OTHER MATTERS.....	9
C. Charming Forge Property Rights Exchange, Marion, Heidelberg and North Heidelberg Townships, Berks County. ....	9
D. Clarks Valley Road (Bailey's Grove) Property Acquisition, Middle Paxton Township, Dauphin County. ....	11
E. Tome Property Rights Acquisition, Girard Township, Erie County. ....	12
F. Grant to Girard Borough to Acquire Property in Girard Township and Girard Borough, Erie County. .....	13
G. Grant to the Erie-Western Pennsylvania Port Authority, Lake Erie, Erie County.....	15
BOATING .....	16
FINAL RULEMAKING.....	16
A. Amendment to Section 53.16 (Special Use).....	16
B. Amendment to Section 95.3 (Lights for Boats). ....	17
C. Addition of Section 111.16 (Clarion County). ....	18
D. Amendment to Section 111.20 (Crawford County).....	19

FISHERIES .....	20
PROPOSED RULEMAKING .....	20
A. Amendments to Sections 61.1 (Commonwealth Inland Waters), 61.2 (Delaware River, West Branch Delaware River and River Estuary), 61.4 (Conowingo Reservoir), 61.7 (Susquehanna River and Tributaries) and 61.8 (Lehigh River, Schuylkill River and Tributaries) to Impose Closed Season and Reduce Daily Limit to Zero for River Herring and Housekeeping Changes.....	20
B. Amendment to Section 65.24 (Miscellaneous Special Regulations) to Close Leaser Lake to Fishing. ....	24
DESIGNATIONS .....	26
C. Adjustment to the List of Streams with Natural Reproduction of Trout – Little Juniata River.....	26
D. Additions to the Class A Wild Trout Waters List. ....	27
HABITAT AND ENVIRONMENT.....	29
A. Fish Passage and Habitat Restoration Grant to First Quality Tissue, LLC for Construction of Denil Fishway on Bald Eagle Creek. ....	29
B. Darby Creek Habitat Improvement Grant to American Rivers, Inc.....	30
C. Tulpehocken and Quittapahilla Creek Watershed Enhancement Grant to American Rivers for Dam Removal and Habitat Enhancement on Cacoosing Creek.....	31
D. Great Lakes Restoration Initiative Aquatic Invasive Species Grant. ....	32
LAW ENFORCEMENT.....	33
A. Approval of Establishment of a Fee for Seasonal Slips that can Accommodate Larger Boats at the Walnut Creek Marina.....	33
Other New Business .....	34
Commissioner Agenda Items & Topics for April 2011 Commission Meeting .....	34
Time and Place of April 2011 Commission Meeting.....	34
Adjournment.....	34

Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 94th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, January 24 and 25, 2011, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on January 24 beginning at 10:50 a.m. and on January 25 beginning at 8:00 a.m. The public session for review of this agenda began at or about 2:30 p.m. on January 25.

**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**  
**G. Warren Elliott**  
**Norman R. Gavlick**  
**Steven M. Ketterer**  
**Leonard L. Lichvar**  
**William J. Sabatose**  
**Glade E. Squires**

**Members Not Present**

**Edward P. Mascharka III**  
**Thomas C. Shetterly**

**Review and Approval of Minutes from the October 5, 2010 Meeting**

A motion was made by Commissioner Ketterer and seconded by Commissioner Sabatose to approve the October 5, 2010 minutes as written. Motion carried.

### **Awards and Presentations**

During a lunchtime program on Monday, January 24, Mark Duda, Executive Director, Responsive Management, spoke on fishing trends, funding and the future of fishing in the United States.

During an evening program on Monday, January 24, Commission President William Worobec, Commissioner Glade Squires and Executive Director John Arway jointly presented the Stanley Long Outstanding Volunteer Service Award that honors the Commission's most exemplary and inspiring volunteers. The award was presented to Michael Skurecki of Montgomery County. "Volunteerism is absolutely vital to our success," said Mr. Arway. "Volunteers help us with our stocking efforts, they help us with law enforcement and they help us with our education and outreach programs. Mike exemplifies the volunteer spirit and is well-deserving of this award. He has served for over 15 years as a volunteer Education and Information instructor, teaching Family Fishing and SMART Angler Programs. As a Commission volunteer, Mike conducts an average of 14 day-long programs per year while investing over 70 hours of volunteer time and driving between 400 and 500 miles."

The 2010 Sport Fish Restoration Project Award from the American Fisheries Society was presented by Robert Curry, President of the Fisheries Administration Section, and recognized a Commission research project on panfish.

Also, on Monday night, before the ice fishing seminar began, Commissioners took part in a ceremonial signing of the Anglers' Legacy Pledge. By signing the pledge, Commissioners agreed to share their passion for fishing and the outdoors with at least one person each year. So far, more than 10,000 Pennsylvania anglers have taken the pledge.

At the conclusion of the awards presentation, the Commission hosted a special evening seminar on ice fishing, featuring three pro anglers from North East Ice Tour. The seminar drew a crowd of approximately 65.

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

Executive Director John Arway highlighted the "October–December 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 efforts towards reaching the goals and objectives that have been set. Executive Director Arway spoke on several items contained in the Strategic Plan, alternative funding, the Marcellus Shale impact fee, water compensation options, Title 30 changes, climate survey solutions, emphasis on high profile Susquehanna River issues, progress being made on upper Delaware River flow issues, Monongahela River increase in total dissolved solids, the Lake Erie Access Improvement Program, invasive species training efforts, a Sea Grant partnership, and fish passage efforts.

Director Arway concluded with a review of upcoming meetings, events and sports shows that he plans to attend. The House Game and Fisheries Committee's Annual Report is scheduled for February 24, a Fisheries Committee meeting is scheduled for March 7, and Mr. Arway's one year anniversary as Executive Director will be on March 2, 2011.

### **Announcement of Executive Session**

Commissioner Worobec announced that an executive session was held on January 24 at 8:00 a.m. and on January 25 at 12:00 p.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, January 24, at approximately 10:50 a.m. Commissioner Worobec announced that Commissioner Ketterer has been added to this Committee. Commissioner Worobec led a discussion on the review of the Executive and Planning Committee description and responsibilities. The Commissioner Policy Manual was also discussed. Laurie Shepler provided a briefing on public comments at Commission meetings. Tim Schaeffer covered the “Quarterly Report” as it relates to Strategic Plan goals. Director Arway led a discussion on alternative funding.

#### **Administration (Commissioner Lichvar) –**

The Administration Committee met on Monday, January 24, at approximately 2:45 p.m. Commissioner Lichvar led a discussion on the review of the Administration Committee description and responsibilities. Agenda items were discussed. Bernie Matscavage provided a briefing on the status of the Lake Erie restricted revenue account, a status report on an electricity supplier cost savings initiative, a Strategic Plan update on milestone accomplishments for goals managed by the Bureau of Administration, a review of Fiscal Year 2010-11 and Fiscal Year 2011-12 budget reductions and a budget recap. A Strategic Plan update on milestone accomplishments for goals managed by the Bureau of Engineering and Property Services was provided. Commissioner Lichvar provided a briefing on a plan for addressing ideas regarding how information is shared during Board meetings. As a result, a workgroup will be formed to evaluate the needs and viable solutions.

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

The Boating Committee met on Tuesday, January 25, at approximately 12:45 p.m. Commissioner Ketterer led a discussion on the review of the Boating Committee description and responsibilities. Agenda items were discussed. Ryan Walt provided a summary of the 2010 United States Coast Guard Performance Report, a recap of the 2010 boating accident analysis and fatalities, and an update on the Water Rescue Program. Laurel Anders provided a briefing on the *Boating Handbook* and an update on boating safety education courses and certificates. The next Boating Advisory Board meeting is scheduled for February 8, 2011. An update on the Boating Facility Grants Program was provided.

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

The Communications Committee met on Monday, January 24, at approximately 1:00 p.m. Commissioner Lichvar led a discussion on the review of the Communications Committee description and responsibilities. An update on Commission initiatives directed to the Strategic Plan goals was provided. Carl Richardson provided a briefing on the Anglers’ Legacy Initiative and on license sales by category and in correlation to the Recreational Boating and Fishing Foundation (RBFF) retention campaign. Commissioner Squires led a discussion on approaches to marketing procedures and messages.

**Fisheries (Commissioner Bachman) –**

The Fisheries Committee met on Tuesday, January 25, at approximately 8:00 a.m. Commissioner Bachman led a discussion on the review of the Fisheries Committee description and responsibilities. The Committee meeting was well attended by the public, and the Commission received numerous comments on the action concerning smallmouth bass on the Susquehanna River. Agenda items were discussed. Dave Miko provided updates on Fisheries Committee assignments and on the PFBC Lake Erie Advisory Committee, Chuck Murray provided a presentation on Lake Erie fisheries management issues, Geoffrey Smith provided a presentation on Susquehanna River smallmouth bass studies and future plans, Bob Weber provided an update on unassessed waters, and Leroy Young provided an update on Commission initiatives directed to the Strategic Plan goals. A review of plans for the Reynoldsdale State Fish Hatchery and proposed 2011 Fisheries Committee meeting dates followed.

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

The Habitat and Environmental Committee met on Tuesday, January 25, at approximately 11:00 a.m. Commissioner Elliott led a discussion on the review of the Habitat and Environmental Committee description and responsibilities. Agenda items were discussed. Dave Spotts provided an update on Commission initiatives directed to the Strategic Plan goals, on the Marcellus Shale activities, and on the Coldwater Heritage Program. Charlie McGarrell provided a briefing on the Big Spring Habitat Project.

**Law Enforcement (Commissioner Ketterer) –**

The Law Enforcement Committee met on Monday, January 24, at approximately 4:15 p.m. Commissioner Ketterer led a discussion on the review of the Law Enforcement Committee description and responsibilities. Commission initiatives directed to the Strategic Plan goals were discussed. Tom Kamerzel provided updates on Interstate Wildlife Violator Compact membership, the Walnut Creek Marina and the Pollution Hotline. Mr. Kamerzel and Laurie Shepler briefed the committee regarding a legislative proposal for enhancing penalties and revocation periods for serious poaching violations.

The Committee acted upon proposed revocations. The Committee revoked the fishing privileges of four individuals for a period of two years. The Committee also revoked the boating privileges of four individuals for two years and directed them to successfully complete a classroom boating safety education course.

**Legislation (Commissioner Sabatose) -**

The Legislation Committee met on Monday, January 24, at approximately 11:45 a.m. Commissioner Sabatose led a discussion on the review of the Legislation Committee description and responsibilities. Gary Moore provided a briefing on House and Senate Committee memberships and session information. Tim Schaeffer provided updates on the Governor Corbett administration transition, Commissioner hosted legislative events, proposed Title 30 amendments, alternative funding and revisions to the Oil and Gas Act.

**Public Comment to Commissioners and Staff**

George Acord, Susquehanna Fishing Tackle and Pennsylvania Bass Federation, provided public 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.

Bill Gouba, Susquehanna River Tournament Trail, also provided public comment on the proposed amendment to section 65.24.

## **ADMINISTRATION FINAL RULEMAKING**

### A. Amendments to Section 51.92 (Royalty Rates).

#### Commentary:

Under section 503(c) of the Conservation and Natural Resources Act (71 P.S. §1340.503(c)), the Commission, with the concurrence of the Department of Environmental Protection (DEP), is authorized to adjust the amount of royalty payments per ton or cubic yard of usable or merchantable, or both, sand or gravel, or both, extracted from Commonwealth waters. The current royalty rate schedule, which was adopted in 1997 and is set forth in the Commission's regulations at §51.92, expired on December 31, 2010.

A workgroup, consisting of Commission and DEP staff and five representatives from the sand and gravel dredging industry, collaboratively worked together and developed a fair and equitable process for setting royalty rates for the 10-year period of January 1, 2011 through December 31, 2020. The workgroup formally met in April and May 2010 to discuss issues pertaining to setting royalty rates, including the need to simplify the annual rate calculation process and employ a market based approach. With input from DEP and the industry representatives, the Commission proposed that §51.92 be amended to include a new rate schedule.

A notice of proposed rulemaking containing the new rate schedule was published at 40 Pa. B. 6151 (October 23, 2010) (Exhibit B). The Commission did not receive any public comments regarding the proposal.

The Commission's Executive Director, acting under the authority of 58 Pa. Code §65.25 (relating to temporary changes to fishing regulations), took immediate action to amend §51.92 to impose new royalty rates, effective January 1, 2011. 40 Pa. B. 7446 (December 25, 2010) (Exhibit C). This temporary modification will remain in effect until the Commission, by appropriate action, amends §51.92.

#### Briefer:

Bernard M. Matscavage, Director, Bureau of Administration

#### 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.

## PROPOSED RULEMAKING

### B. Addition of Section 63.55 (Saltwater Angler Registration).

#### Commentary:

Pursuant to federal regulations (50 CFR §§600.1400 – 600.1417) that implement the Magnuson-Stevens Fishery Conservation and Management Act, anglers who target or catch shad, striped bass, and river herring from the Delaware River below Trenton Falls or in the Delaware Estuary are required to register with the National Saltwater Angler Registry Program administered by the National Oceanic and Atmospheric Administration (NOAA). In 2010, the registration was free, and a \$15 fee has been instituted for 2011. See <https://www.countmyfish.noaa.gov/>.

Anglers are not required to register with NOAA, however, if they hold a valid fishing license issued by an “exempted state.” In order for NOAA to designate a state as an “exempted state,” the state must agree to provide certain data to NOAA that can be used to assist in completing marine recreational fisheries statistical surveys or evaluating the effects of proposed conservation and management measures for marine recreational fisheries. To that end, the Commission already has entered into a Memorandum of Agreement (MOA) with NOAA that binds the Commission to create a system for collecting and annually sharing angler data with NOAA. The MOA further exempts Pennsylvania anglers from the national registration requirement and the associated fee. To meet the terms of the MOA, Commission staff propose the following new regulation that requires all applicable anglers to register either with the Commission or NOAA:

#### **§63.55. Saltwater Angler Registration.**

**It is unlawful for a person required by Chapter 27 of the code (relating to fishing licenses) to procure a resident fishing license, a nonresident fishing license, a senior resident lifetime fishing license, or an annual senior resident fishing license to fish for shad, striped bass or river herring in the Delaware River below Trenton Falls or in the Delaware Estuary unless that person has obtained a saltwater angler registration from the Commission or has registered with the National Saltwater Angler Registry Program administered by the National Oceanic and Atmospheric Administration.**

Staff will create a free on-line registration tool via which anglers may register and receive a registration number rather than registering with NOAA and incurring the federal fee. The Commission has received a grant of up to \$10,065 from the Atlantic States Marine Fisheries Commission to fund the development of the on-line tool.

Registered anglers must still possess a valid state fishing license.

#### Briefer:

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

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the regulation described in the Commentary. If adopted on final rulemaking, the new regulation will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Gavlick and seconded by Commissioner Lichvar to approve the publication of a notice of proposed rulemaking containing the regulation described in the Commentary. If adopted on final rulemaking, the new regulation will go into effect on January 1, 2012. Motion carried.

## OTHER MATTERS

### C. Charming Forge Property Rights Exchange, Marion, Heidelberg and North Heidelberg Townships, Berks County.

#### Commentary:

In response to a request for a property rights exchange, the Commission has entered into an agreement of sale pursuant to which the Commission will convey fee title to its +/-22 acre Charming Forge property in return for \$12,000; an easement on a significant defined portion of the other party's property and the Commission's retaining easements on a defined portion of the Charming Forge property. The \$12,000 consideration is based on the appraised value of the subject property taking into account the easements being retained on it. The areas conveyed are depicted in Exhibit D.

The Commission's Charming Forge property is located along Tulpehocken Creek upstream from SR 3037 and contains +/-0.7 miles of stream corridor and an old mill race. The property is located on a significant stream oxbow that has a low gradient. The property was an old mill and power generation site that contained an old dam that was removed in 2003. About 90% of the property is located upstream from the dam site and is accessible by a small area on each side of the SR 3037 Tulpehocken Creek Bridge. The remaining property contains an old mill race that outlets 0.5 mile downstream from the old dam site. Most of the old infrastructure has been removed, but an old control structure for the mill race still remains. There is a dispute between the Commission and the other party regarding the property lines of the mill race.

The Commission acquired the property as a donation in the early 1950's from a local power company. The power company used the site to generate electricity. The site was also used as an old mill called Charming Forge that dates to the 1750s. It also contains a portion of the old Union Canal. The former dam site at the SR 3037 bridge is the downstream limit of Tulpehocken Creek's approved trout water designation. Only the first several hundred feet upstream from SR 3037 is significantly used because of poor access and stream conditions.

The easements to be acquired by the Commission include an additional +/- 1/2 mile of Tulpehocken Creek extending downstream from the SR 3037 bridge. They include the stream corridor and an area extending 15 feet back on each side of the stream. The easement area widens to +/-100 feet from the creek of the right descending bank within 25 feet of Township Road 511 to allow for additional parking. An easement is also being acquired on a two-acre area north and downstream of Township Road 511 and east of the centerline of the creek that will allow for the development of parking. The easements include the rights for public fishing, boating, fishery and riparian buffer management.

The easements offer significantly better access and parking than the Commission's existing property. The easement areas also offer fishing waters with better cover and a higher stream gradient. In addition, the easements will allow for an expansion of the approved trout water designation further downstream. Trout Unlimited has evaluated the

easement area and found higher trout populations with better habitat than the Commission's existing property.

The Commission will retain an easement for fishing, boating, fishery and riparian buffer management over the creek, from high water mark to high water mark, from SR 3037 upstream to the Commission's property line. This easement will include an area on the west bank ranging in width from +/-25 to 130 feet extending 500 feet upstream from SR 3037 and an area on the east bank ranging in width from +/-50 to 110 feet extending +/- 250 feet upstream from SR 3037. Furthermore, the Commission will also retain a fishery and riparian buffer management easement along +/-700 feet of shore frontage extending 15 feet back from the high water mark extending downstream from the old mill race gate structure.

In addition to the easements being retained and acquired by the Commission, the Commission will retain a conservation easement on the entire 22 acres being conveyed. The other party already has conveyed a conservation easement to a local conservancy on property that he owns adjacent to the area the Commission is conveying.

The proposed property exchange will benefit the public because the Commission will dispose of rights that it owns that are not fully utilized in return for rights that will provide an immediate and permanent increase in angling opportunities and resource protection. It also will benefit the public and the resource by allowing the Commission to retain an easement for fishing, boating, fishery and riparian buffer management in critical areas. Collateral benefits include increased parking capacity and improved stream access; resolution of a property line issue without using additional staff time and resources; disposition of fee title to the area where the old power facility was located; and disposition of fee title to the old mill race gate area that is an attractive nuisance and a liability risk.

The agreement of sale is contingent upon clean, good and marketable title, any environmental issues being resolved to each party's satisfaction, land use and zoning that is compatible with each party's intended use and unanimous approval from the Commission. Under the agreement, the other party is responsible for all applicable real estate and transfer taxes that are normally shared between the buyer and seller.

Briefer:

Daniel D. Leonard, 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 Squires and seconded by Commissioner Bachman to authorize the property rights exchange as more particularly described in the Commentary. Motion carried.

D. Clarks Valley Road (Bailey's Grove) Property Acquisition, Middle Paxton Township, Dauphin County.

Commentary:

The Commission has been offered a  $\pm$  27.1 acre parcel, currently known as Bailey's Grove, located along Clarks Valley Road in Middle Paxton Township, Dauphin County. The parcel provides over 5,000 linear feet of frontage on Clarks Creek. The property is zoned A-RR Agricultural-Rural Residential and is located approximately one mile east of the intersection of Clarks Valley Road (Rt. 325) and Rt. 225. The property is located in close proximity to the Children/Disabled Fishing Area on Clarks Creek. State Game Lands 211 is located two miles upstream of this location. A map depicting the parcel is attached as Exhibit E. Clarks Creek is stocked by the Commission above and below Bailey's Grove. Once acquired, the Commission plans to construct a parking area for anglers on the property.

The Central Pennsylvania Conservancy (CPC) purchased the property using a Community Conservation Partnerships Program (C2P2) grant from the Department of Conservation and Natural Resources (DCNR). CPC has offered to sell the property to the Commission for its transaction costs not to exceed \$35,000. The property has been appraised at \$392,000.

The conveyance to the Commission will be free and clear of all liens and judgments with a good and marketable title. The deed will contain DCNR's language regarding the transfer of property purchased using C2P2 grant funds. Namely, under that program, no change in use and no transfer of ownership, control or interest in the property acquired with grant funds may occur, and no encumbrance may be placed on the property without DCNR's consent. In addition, the landowner has required that the property continue to be known as Bailey's Grove.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the acquisition of the approximate 27.1 acre parcel known as Bailey's Grove along Clarks Valley Road, Middle Paxton Township, Dauphin County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Bachman to authorize the acquisition of the approximate 27.1 acre parcel known as Bailey's Grove along Clarks Valley Road, Middle Paxton Township, Dauphin County, as more particularly described in the Commentary. Motion carried.

E. Tome Property Rights Acquisition, Girard Township, Erie County.

Commentary:

Section 2907.2 of the Fish and Boat Code, 30 Pa. C.S. §2907.2, provides that the proceeds from the sale of the special Lake Erie fishing permits and \$6 of the fees for the combination trout/salmon/Lake Erie permits are to be deposited into a restricted account within the Fish Fund for five years and that this restricted account “shall be used to provide public fishing access 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 generated through this program are deposited into the Lake Erie restricted account where they are restricted now and into the future for their legislatively intended purposes. *Pennsylvania’s Fishing and Boating Access Strategy* ranks this watershed as the top priority for access improvement statewide.

The Commission has been offered an easement on over 2,600 linear feet on both sides of Elk Creek as it flows across a parcel of property in Girard Township, Erie County, for \$45,000. The easement will be for public fishing, boating, and riparian and fishery management and will include the stream corridor and extend at least 35 feet back from the top of the bank to the extent of the ownership of the seller. The easement area is located west of and adjacent to the Miller Property which was acquired by Girard Township using funds from the Commission’s Lake Erie Access Improvement Program. Parking is available on the adjacent Miller Property. A map depicting the subject parcel is attached as Exhibit F.

Elk Creek is a popular steelhead fishery; however, access to the creek is severely limited. Elk Creek receives several trout stockings in this area, and the acquisition of the subject rights will link up several easements that the Commission currently holds and provide additional trout fishing opportunities. The Commission’s regional law enforcement and fisheries staff have recommended that the site be 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, at its sole discretion, pay any necessary 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 the Tome property rights along Elk Creek in Girard 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 Bachman and seconded by Commissioner Gavlick to authorize the acquisition of the Tome property rights along Elk Creek in Girard Township, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried.

F. Grant to Girard Borough to Acquire Property in Girard Township and Girard Borough, Erie County.

Commentary:

Section 2907.2 of the Fish and Boat Code, 30 Pa. C.S. §2907.2, provides that the proceeds from the sale of the special Lake Erie fishing permits and \$6 of the fees for the combination trout/salmon/Lake Erie permits are to be deposited into a restricted account within the Fish Fund for five years and that this restricted account “shall be used to provide public fishing access 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 generated through this program are deposited into the Lake Erie restricted account where they are restricted now and into the future for their legislatively intended purposes. *Pennsylvania’s Fishing and Boating Access Strategy* ranks this watershed as the top priority for access improvement statewide.

The property at issue is located along Creek Road and is adjacent to the Girard Borough Park. The property consists of 73 acres and includes approximately 1,895 linear feet of access on Elk Creek. A map depicting the subject parcel is attached as Exhibit F. The property has been appraised at \$480,000. Based on the appraisal, Girard Borough is requesting a grant from the Commission in an amount not to exceed \$240,000. Girard Borough also applied for and received funding from DCNR in the amount of \$240,000 for the acquisition. The grant funds will be used for the purchase price and costs associated with acquiring the property.

Girard Borough will own and control the property subject to the terms and conditions established as part of the acquisition process. The 73-acre tract will become part of the existing adjacent Girard Borough Park. Girard Borough will grant to the Commission an easement for fishing, boating, and riparian and fishery management that will allow for public access along Elk Creek on this property. In addition, Girard Borough has agreed to grant the Commission a parking easement and an easement for fishing, boating, and riparian and fishery management on the adjacent Girard Borough Park property. This will provide an additional 5,310 linear feet of access. The property acquisition and donated easement together will provide 7,205 linear feet of access and create a corridor that is approximately two miles long that extends from Elk Park Road upstream to Route 20.

An agreement between Girard Borough and the Commission will be developed that commits Lake Erie restricted account funds and will include specific provisions for the protection of the Commission’s interests and the angling public. The provisions will include a requirement that Girard Borough or another conservation organization approved by the Commission hold a perpetual conservation easement on the balance of the property if the Borough were to transfer the property to another entity in the future. The Commission will have the option of being either a co-holder or a beneficiary of the easement. If the Commission elects to hold the easement, Commission approval will be required at that time.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize a grant not to exceed \$240,000 to Girard Borough for the acquisition of the property more fully described in the Commentary, to acquire an easement for fishing, boating, and riparian and fishery management that will allow public access along this portion of Elk Creek and to acquire a parking easement and an easement for fishing, boating, and riparian and fishery management on the adjacent Girard Borough Park property.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Gavlick to authorize a grant not to exceed \$240,000 to Girard Borough for the acquisition of the property more fully described in the Commentary, to acquire an easement for fishing, boating, and riparian and fishery management that will allow public access along this portion of Elk Creek and to acquire a parking easement and an easement for fishing, boating, and riparian and fishery management on the adjacent Girard Borough Park property. Motion carried.

G. Grant to the Erie-Western Pennsylvania Port Authority, Lake Erie, Erie County.

Commentary:

Section 2907.2 of the Fish and Boat Code, 30 Pa. C.S. §2907.2, provides that the proceeds from the sale of the special Lake Erie fishing permits and \$6 of the fees for the combination trout/salmon/Lake Erie permits are to be deposited into a restricted account within the Fish Fund for five years and that this restricted account “shall be used to provide public fishing access 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 generated through this program are deposited into the Lake Erie restricted account where they are restricted now and into the future for their legislatively intended purposes. *Pennsylvania’s Fishing and Boating Access Strategy* ranks this watershed as the top priority for access improvement statewide.

Staff have been working with the Erie-Western Pennsylvania Port Authority (Authority) on the construction of a fishing pier at Liberty Park on the shores of Lake Erie in the City of Erie. The Commission awarded a grant from the Erie Access Improvement Program to the Authority in the amount of \$18,500 in July 2009 to develop design and engineering specifications for the fishing pier. The grant was matched with funds from the SONS of Lake Erie. With these grant funds, the Authority awarded a contract to Porter Consulting Engineers. Porter Consulting Engineers has completed its design and engineering specifications for the fishing pier. The estimated construction cost of the pier is \$435,750.

The Authority is requesting a grant in the amount of \$150,000 from the Erie Access Improvement Program to be used toward the construction of the fishing pier. The Authority has obtained matching grants in the amount of \$100,000 from the Department of Conservation and Natural Resources and \$75,000 from the Department of Environmental Protection’s Coastal Zone Management Program to be used for the construction of the fishing pier.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize a grant not to exceed \$150,000 to the Erie-Western Pennsylvania Port Authority to construct a fishing pier at Liberty Park on Lake Erie in Erie County as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Squires and seconded by Commissioner Ketterer to authorize a grant not to exceed \$150,000 to the Erie-Western Pennsylvania Port Authority to construct a fishing pier at Liberty Park on Lake Erie in Erie County as more particularly described in the Commentary. Motion carried.

## **BOATING FINAL 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. Livery operators typically introduce new boaters to recreational boating and routinely provide new and existing boaters with safety instruction. The Commission therefore proposed that the regulation be amended to allow less restrictive use of its accesses by livery operators and their customers. The Commission does not anticipate that user conflicts will result from this change.

A notice of proposed rulemaking was published at 40 Pa. B. 7239 (December 18, 2010) (Exhibit G). The Commission received one comment opposing the proposal. Copies of all public comments were provided to the Commissioners.

#### Briefer:

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

#### 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 Squires to adopt the amendment as set forth in the notice of proposed rulemaking. This amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

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

Commentary:

Section 95.3 of the Commission's regulations provides 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. The Commission therefore proposed that the existing regulation be modified to clarify when it is illegal to use docking lights.

A notice of proposed rulemaking was published at 40 Pa. B. 7239 (December 18, 2010) (Exhibit G). The Commission received six public comments generally expressing support for the regulation provided it does not interfere with the sport of bowfishing or other nighttime fishing activity involving the use of permanently mounted lights. Copies of all public comments were provided to the Commissioners.

Briefer:

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

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 Bachman 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.

C. Addition of Section 111.16 (Clarion County).

Commentary:

The Commission proposed 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. Specifically, the Commission proposed a zone from the mouth of McGourvey Run to the mouth of Blyson Run.

The Commission had received input from anglers that boats have been traveling at high speeds through this section of the Clarion River causing problems with angling on this narrow section of the 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 proposed regulation 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 regulation is adopted, buoys will be placed to clearly mark the area for boaters' information.

A notice of proposed rulemaking was published at 40 Pa. B. 7239 (December 18, 2010) (Exhibit G). The Commission did not receive any public comments concerning the proposal.

Briefer:

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

Recommendation:

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

D. Amendment to Section 111.20 (Crawford County).

Commentary:

Section 111.20 of the Commission's regulations 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. The Commission therefore proposed that §111.20 be amended to delete reference to the steel cribs.

A notice of proposed rulemaking was published at 40 Pa. B. 7239 (December 18, 2010) (Exhibit G). The Commission did not receive any public comments concerning the proposal.

Briefer:

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

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 Elliott 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.

## **FISHERIES** **PROPOSED RULEMAKING**

A. Amendments to Sections 61.1 (Commonwealth Inland Waters), 61.2 (Delaware River, West Branch Delaware River and River Estuary), 61.4 (Conowingo Reservoir), 61.7 (Susquehanna River and Tributaries) and 61.8 (Lehigh River, Schuylkill River and Tributaries) to Impose Closed Season and Reduce Daily Limit to Zero for River Herring and Housekeeping Changes.

Commentary:

Since the mid-1980's, the daily creel limit for river herring, a term applied collectively to blueback herring and alewife, in the Delaware River and Estuary was a total of 35 fish. There was no minimum size limit, and the season was open year-round. Beginning in 2010, the Commission adopted an amendment in coordination with New Jersey and later coordinated with New York reducing the daily creel limit from the historic limit to a limit of 10 river herring from the confluence of the East and West Branches downriver to the Commodore Barry Bridge. The remaining 2.9 river miles below the Commodore Barry Bridge remained at the historic daily limit of 35 herring, in cooperation with New Jersey's Marine Council. The State of Delaware was already managing the fishery with a 10 herring creel limit.

River herring are popular with striped bass anglers who use them either as live or cut bait. Principally, this fishery exists during the spring when river herring and striped bass are migrating into the Delaware River and estuarine waters. Traditionally, anglers jig for river herring at the onset of a trip but are often seen jigging with one rod while another is being passively fished for striped bass.

Amendment 2 to the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Shad and River Herring states that river herring abundance has declined since the mid-1990's and currently remains at a depressed level along the Atlantic Coast. Amendment 2 calls for closure of river herring fisheries that cannot be demonstrated to be sustainable. Considering the coastwide declines in river herring and the lack of data to support that the fishery is sustainable, Pennsylvania is coordinating a proposed total closure for the Delaware River river herring fishery with the other three basin states (*i.e.*, New Jersey, New York, and Delaware) through the Delaware River Fish and Wildlife Management Cooperative. This regulatory change will apply to the entire Delaware River and Delaware Estuary inclusive of both tidal and non-tidal reaches to the Pennsylvania/Delaware state line.

In light of this change, changes are also necessary in the Lehigh River, the Schuylkill River and their tributaries (§61.8) and in the Conowingo Reservoir (§61.4). The Lehigh and Schuylkill Rivers flow into the Delaware River and are thus inhabited by a portion of the anadromous river herring populations that enter the Delaware River. The Conowingo Reservoir is the first portion of the Susquehanna River inhabitable by anadromous river herring that migrate up the Susquehanna River. Harvest of the anadromous populations of river herring is already prohibited in the portions of the Susquehanna River and its tributaries upstream of Conowingo Reservoir under current regulations (§61.7). The

more liberal regulations in the other inland waters of the Commonwealth (§61.1) are acceptable in that these populations are landlocked and thus distinct from the anadromous populations addressed by ASMFC and intended to be addressed by the proposed regulation changes.

Finally, in addition to the changes mentioned above, some housekeeping changes are needed to make the terminology for river herring consistent throughout Chapter 61.

Staff therefore propose the following amendments:

§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:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * *	* * *	* * *	* * *
<b><u>RIVER HERRING (alewife and blueback herring)</u></b> ***	Open year-round	No minimum	50
* * *	* * *	* * *	* * *

\*\*\* Note: Unlawful to take, catch or kill American shad, hickory shad and **river herring** (alewife and blueback herring) [(collectively known as river herring)] in Susquehanna River and its tributaries. See §§61.4 and 61.7.

§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 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:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * *	* * *	* * *	* * *
RIVER HERRING (alewife and blueback herring)	[Open year-round] <b><u>Closed (no open season)</u></b>	[No minimum] <b><u>Closed</u></b>	[From Pennsylvania line upstream to the Commodore Barry Bridge: <b>35</b> From the Commodore Barry Bridge upstream: <b>10</b> ] <b><u>0</u></b>
* * *	* * *	* * *	* * *

§61.4. Conowingo Reservoir.

\* \* \*

(d) The following seasons, sizes and creel limits apply to the Conowingo Reservoir, which includes the Susquehanna River from the Maryland State Line upstream to Holtwood Dam:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * *	* * *	* * *	* * *
<b>[ALEWIFE and BLUEBACK HERRING (collectively known as river herring)] <u>RIVER HERRING (alewife and blueback herring)</u></b>	<b>[January 1 through June 15] <u>Closed (no open season)</u></b>	<b>[No minimum] <u>Closed</u></b>	<b>[No daily limit] <u>0</u></b>
* * *	* * *	* * *	* * *

§61.7. Susquehanna River and tributaries.

\* \* \*

(d) The following seasons, sizes and creel limits apply to the Susquehanna River and its tributaries, including the Juniata River, the West Branch, ‘North Branch’ and other tributaries within the Susquehanna River Basin except the Conowingo Reservoir—see §61.4 (relating to Conowingo Reservoir) and except for waters subject to special regulations (see Chapter 65 (relating to special fishing regulations)):

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * *	* * *	* * *	* * *
<b>AMERICAN and HICKORY SHAD and [ALEWIFE and BLUEBACK HERRING (collectively known as river herring)] <u>RIVER HERRING (alewife and blueback herring)</u></b>	<b>Closed [year round] <u>(no open season)</u></b>	<b>Closed</b>	<b>0</b>
* * *	* * *	* * *	* * *

§ 61.8. Lehigh River, Schuylkill River and tributaries.

\* \* \*

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

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * *	* * *	* * *	* * *
RIVER HERRING (alewife and blueback herring)	<b>[Open year-round] <u>Closed (no open season)</u></b>	<b>[No minimum] <u>Closed</u></b>	<b>[10] <u>0</u></b>
* * *	* * *	* * *	* * *

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, the amendments will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Squires and seconded by Commissioner Bachman to 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 on January 1, 2012. Motion carried.

B. Amendment to Section 65.24 (Miscellaneous Special Regulations) to Close Leaser Lake to Fishing.

Commentary:

Leaser Lake is a 117-acre Commission-owned impoundment located in the rural northwestern corner of Lehigh County in the Ontelaunee/Maiden Creek drainage basin and is situated approximately 20 miles directly northwest of center-city Allentown. The lake was subjected to a complete drawdown in the fall of 2008 following a partial drawdown to a safe level of 40 acres that was maintained for a number of years. The final drawdown was necessary to carry out extensive repairs to the leaking dam. The lake provided fishing for resident warm/coolwater fish populations as well as a seasonal catchable trout fishery, with many individuals traveling from the Lehigh Valley metropolitan area (Allentown-Bethlehem-Easton) to fish in the lake’s scenic setting.

The Division of Fisheries Management will propose a stocking plan for Leaser Lake that will be directed at establishing a high quality warm/coolwater fish population based on fingerling stockings. Adult trout stockings will follow after the warm/coolwater fishery is opened. Past experiences with another Leaser Lake drawdown and the creation of other warm/coolwater fisheries in new southeastern Pennsylvania impoundments have been that in order to develop high quality fish populations and fisheries in reclaimed or new lakes, which is something the public has expected when a “new” lake is opened, the lakes need to be closed to fishing for an extended period of time. This allows fish populations and individual fish to grow to desirable sizes that satisfy anglers when the lakes are opened. Based upon past growth rates in Leaser Lake, the lake will need to be closed to fishing until the opening day of bass season in June 2016.

Staff therefore propose the following amendment:

§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>Lehigh</b>	<b>Leaser Lake</b>	<b>Closed to all fishing until June 18, 2016</b>
***	***	***

The positive aspect of the proposal is the offering of an exceptional warm/coolwater fishing opportunity in an urban area when the lake is opened. The negative aspect is the loss of recreational angling for several years, including a catchable trout program. Staff believe that the benefits outweigh the short term loss of recreation. Staff will monitor the fish populations and, if all goes as anticipated, will recommend appropriate special regulations prior to 2016. The lake was formerly in the Panfish Enhancement Program regulated under §65.11.

With respect to the catchable trout program, there are numerous alternative stream fishing

locations throughout the Lehigh Valley, northwestern Lehigh County and nearby northeastern Berks County. These locations include 14 miles of nearby Ontelaunee and Maiden Creeks.

Briefer:

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

Recommendation:

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

Action:

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

## DESIGNATIONS

### C. Adjustment to the List of Streams with Natural Reproduction of Trout – Little Juniata River.

#### 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 the floodplain of the reach of a wild trout stream and the floodplain of streams tributary thereto are considered "exceptional value" and thus are entitled to certain protections.

The Commission adopted a statement of policy at 58 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 Commission uses many factors in determining the appropriate management of streams. The statement of policy provides that the Commission's Fisheries Management Division will maintain the list of wild trout streams and that the Executive Director, with the approval of the Commission, will from time to time publish the list of wild trout streams in the *Pennsylvania Bulletin* and solicit public comments.

Based on previous inventory information, the Commission designated the Little Juniata River as a wild trout stream from the headwaters downstream to the Bellwood Sewage Treatment Plant outflow. Inventory information collected during August 2010 confirmed that a naturally reproducing trout population extends approximately 19.7 miles further downstream to the Barree Road Bridge (SR 4004). Therefore, staff propose that the Commission extend the wild trout stream limits of the Little Juniata River to include this area. If approved, the revised limits will be from the headwaters downstream to the Barree Road Bridge (SR 4004).

A notice of proposed re-designation was published at 40 Pa. B. 7305 (December 18, 2010) (Exhibit H). The Commission received one public comment supporting the proposed re-designation. Copies of all public comments were provided to the Commissioners.

#### Briefer:

Leroy M. Young, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission approve the change to the list of wild trout streams as set forth in the notice. If approved, this change will go into effect immediately upon the publication of a second notice in the *Pennsylvania Bulletin*.

#### Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Lichvar to approve the change to the list of wild trout streams as set forth in the notice. This change will go into effect immediately upon the publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

D. 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 and 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 biomass criteria include provisions for wild brook trout, wild brown trout, mixed wild brook and brown trout, and wild rainbow trout populations. Wild brook trout, brown trout, and mixed brook/brown trout fisheries must all 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 (26.7 lbs/acre), and 40 kg/ha (35.6 lbs/acre), respectively. Class A wild rainbow trout criteria are a total biomass of rainbow trout less than 15 cm (5.9 inches) in total length of at least 2.0 kg/ha (1.78 lbs/acre).

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

County	Stream	Section	Limits	Brook Trout (kg/ha)	Brown Trout (kg/ha)	Rainbow Trout (kg/ha)	Stream or Section Length (miles)	Survey Year
Venango	Bear Run	01	Headwaters to mouth	55.19			0.87	2005
Venango	Reese Run	01	Headwaters to mouth			6.54	3.41	2005
Warren	Mix Run	01	Headwaters to mouth	32.51			1.13	2006
Blair/ Huntingdon	Little Juniata River	05	RR bridge at the east (downstream) border of Ironville to the mouth of Spruce Creek		181.50		6.96	2010
Huntingdon	Little Juniata River	06	Mouth of Spruce Creek to Barree Road Bridge (SR4004)		159.34		3.60	2010
Lycoming	Jacobs Run	01	Headwaters to mouth	42.60			5.62	2010
Lycoming	Hagermans Run	02	Confluence with UNT at RM 2.41 downstream to US Rt 15	46.30			1.51	2010
Potter	Little Lyman Run	01	Headwaters to mouth	39.68	0.82		4.08	2010

A notice of proposed designation was published at 40 Pa. B. 7305 (December 18, 2010) (Exhibit I). The Commission received one public comments supporting the proposed designations of Little Lyman Run in Potter County and the Little Juniata River in

Huntingdon County. Copies of all public comments were provided to the Commissioners.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve the 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 Bachman 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.

## **HABITAT AND ENVIRONMENT**

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

#### Commentary:

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

At the January 2008 meeting, the Commission approved a grant of up to \$450,000 to First Quality Tissue to construct the fishway. However, construction and oversight bids received by First Quality Tissue totaled approximately \$565,000. The Commission therefore increased the amount of the grant to \$600,000 to account for the higher than anticipated bids and to provide a contingency should unforeseen cost overruns occur. The Commission approved that increase at its April 2009 meeting.

Staff are once again requesting that the approved grant amount be increased. Staff request that the total grant be increased to \$650,000 to account for higher than anticipated bids. This latest increase is attributed to the significant amount of time that it took to reach an agreement with First Quality Tissue and the inflationary cost increases during that period.

#### Briefer:

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

#### Recommendation:

Staff recommend that the Commission approve a grant of up to \$650,000 to First Quality Tissue, LLC for fishway construction as more fully described in the Commentary.

#### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Elliott to approve a grant of up to \$650,000 to First Quality Tissue, LLC for fishway construction as more fully described in the Commentary. Motion carried.

B. Darby Creek Habitat Improvement Grant to American Rivers, Inc.

Commentary:

Federal and state agencies received \$27.5 million to restore conditions for fish, birds, sensitive habitats, wildlife and recreational use of the Delaware River areas impacted in 2004 by an oil spill from the vessel *Athos I* that dumped more than 250,000 gallons of crude oil into the river. The National Oceanic and Atmospheric Administration (NOAA), United States Fish and Wildlife Service, Pennsylvania, New Jersey and Delaware collectively will receive the funds from the U.S. Coast Guard Oil Spill Liability Trust Fund (OSLTF) for nine restoration projects.

The Commission will receive approximately \$1.3 million of this award to restore habitat on Darby Creek, a Delaware River tributary in southeastern Pennsylvania. This money will be used to remove three dams and a remnant bridge pier followed by restoration of nearby riparian areas and in-stream habitat enhancements. The Commission will partner with American Rivers, Inc., which will act as project manager. American Rivers already has completed the engineering designs and obtained all necessary state and federal permits with funding provided by a Growing Greener grant. Staff are requesting approval of a grant not to exceed \$1.1 million to American Rivers for project management and implementation. The balance of funding (\$200,000) will be used to support Commission staff costs and monitoring activities as well as NOAA costs.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant of up to \$1.1 million to American Rivers, Inc. for the Darby Creek improvements as more fully described in the Commentary.

Action:

A motion was made by Commissioner Squires and seconded by Commissioner Gavlick to approve a grant of up to \$1.1 million to American Rivers, Inc. for the Darby Creek improvements as more fully described in the Commentary. Motion carried.

C. Tulpehocken and Quittapahilla Creek Watershed Enhancement Grant to American Rivers for Dam Removal and Habitat Enhancement on Cacoosing Creek.

Commentary:

In the spring of 1998, AES Ironwood, L.L.C. (AES) began developing an electric generating facility in South Lebanon Township, Lebanon County, and received approval from the Delaware River Basin Commission (DRBC) and the Susquehanna River Basin Commission (SRBC) for the use of water from the Tulpehocken and Quittapahilla Creek watersheds. On June 25, 1998, the Commission entered into an agreement with AES pursuant to which AES agreed to provide an annual financial contribution of \$24,000 in 1998 dollars to be applied to projects to improve the aquatic habitat, water quality and recreational use in the Tulpehocken and Quittapahilla Creek watersheds. The agreement also provides that the annual contribution will be applied to projects such as fishery habitat restoration or enhancement, fish stocking, fishing access, maintenance or creation of facilities to encourage, improve or expand recreational use of the fishery or studies related to these issues.

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

Commission staff solicited applications in 2010 for the Tulpehocken and Quittapahilla Creek Watershed Enhancement Grant Program. A Commission staff committee received applications, reviewed them and is now seeking approval of the following grant in excess of \$10,000. American Rivers, Inc. has proposed to remove the Paper Mill Dam on Cacoosing Creek, which is a barrier to the movement of resident and migratory fishes. The Paper Mill Dam lies approximately 400 feet upstream of the confluence with Tulpehocken Creek and is the 1<sup>st</sup> barrier on Cacoosing Creek, a stream that supports naturally reproducing trout populations. This project will restore lotic conditions, benefit local fisheries and provide increased recreational opportunities along Cacoosing Creek. In addition, this project will eliminate outdated infrastructure, remove a potential public safety hazard and restore native vegetation within the former impoundment and stream corridor. The total project cost is approximately \$155,000 with \$40,000 (25%) match provided by American Rivers. The Commission will provide up to a maximum sum of \$110,000 from the Tulpehocken and Quittapahilla Creek Watershed Enhancement Grant Program.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant of up to \$110,000 to American Rivers, Inc. for dam removal and habitat enhancement on Cacoosing Creek as more fully described in the Commentary.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Lichvar to approve a grant of up to \$110,000 to American Rivers, Inc. for dam removal and habitat enhancement on Cacoosing Creek as more fully described in the Commentary. Motion carried.

D. Great Lakes Restoration Initiative Aquatic Invasive Species Grant.

Commentary:

At the April 20, 2010 Commission meeting, the Commission authorized the Executive Director to approve individual grants utilizing \$100,000 or less of Great Lakes Restoration Initiative (GLRI) pass-through monies per grantee per year for projects that implement elements of Pennsylvania's Aquatic Invasive Species (AIS) Management Plan. For grants exceeding that amount, staff are required to seek separate Commission approval after appropriate staff review.

As one of the Commission's partners, the Pennsylvania Department of Environmental Protection (DEP) will assist with the implementation of the AIS Management Plan. Specifically, DEP will be responsible for: (1) developing an early detection, monitoring and inventory program for Pennsylvania waters of Lake Erie, its watershed and high-risk water bodies immediately outside of the Pennsylvania Lake Erie Basin; (2) reporting new AIS discoveries to appropriate jurisdictional agencies; (3) conducting research and risk assessment that will include developing a scientifically rigorous risk assessment process to identify and rank those AIS of highest risk to Pennsylvania's Great Lakes Watershed as well as to assess the vulnerability of specific Pennsylvania aquatic ecosystems to invasion; (4) assisting in developing scientifically sound AIS control and management strategies; and (5) piloting innovative control methods. To fulfill these duties, DEP will require \$297,025 of GLRI pass-through funds.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant of up to \$297,025 to the Pennsylvania Department of Environmental Protection for implementation of Pennsylvania's Aquatic Invasive Species Management Plan as more fully described in the Commentary.

Action:

A motion was made by Commissioner Bachman and seconded by Commissioner Lichvar to approve a grant of up to \$297,025 to the Pennsylvania Department of Environmental Protection for implementation of Pennsylvania's Aquatic Invasive Species Management Plan as more fully described in the Commentary. Motion carried.

## LAW ENFORCEMENT

A. Approval of Establishment of a Fee for Seasonal Slips that can Accommodate Larger Boats at the Walnut Creek Marina.

Commentary:

The Commission's regulations at section 53.12a(a)(1) provide that the Commission will from time to time establish and modify the seasonal, daily and other boat mooring fees and fees for overnight parking of boats applicable to access areas and marinas under the ownership or control of the Commission. The regulations further provide that the Commission will publish a notice containing the fees or a revision to the fees as a notice in the *Pennsylvania Bulletin*.

At the Walnut Creek Marina, we currently limit the maximum length of boats requesting seasonal slips to 23 feet in length. For the majority of the slips, this maximum length is appropriate to allow ease of navigation for boats leaving and entering the slips. However, on the outer most "A" dock, there are 15 slips that can handle larger boats up to 26 feet in length and not cause navigation issues within the marina basin. These boats will still be limited to the 8 foot beam or less restriction in place for the entire marina. The Commission has had annual requests by owners of larger boats to obtain a seasonal slip in the marina. Many of these customers are anglers wishing to keep their boats in closer proximity to the more productive fishing areas in Lake Erie. The marina would like to be able to offer this limited number of slips to larger boats at an increased seasonal mooring fee.

Staff therefore propose establishing a seasonal mooring fee of \$1000 for this limited number of slips that can hold the larger boats. The current seasonal mooring fee of \$725 will remain the same for all of the other slips. If we do not have enough owners of larger boats requesting these slips, they will be available to boat owners with boats not exceeding 23 feet in length at the current \$725 seasonal slip fee.

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Recommendation:

Staff recommend that the Commission establish a \$1000 seasonal mooring slip fee for the limited number of slips at the Walnut Creek Marina that can handle boats up to 26 feet in length.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Squires to establish a \$1000 seasonal mooring slip fee for the limited number of slips at the Walnut Creek Marina that can handle boats up to 26 feet in length. Motion carried.

**Other New Business**

None.

**Commissioner Agenda Items & Topics for April 2011 Commission Meeting**

The deadline for the submittal of Commissioner agenda items and topics for the April 2011 Commission meeting was established as March 18, 2011.

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

The next meeting will be held on April 11-12, 2011 in Harrisburg. Commission President Worobec announced that dress attire for this meeting will be corporate casual.

**Adjournment**

A motion was made by Commissioner Sabatose to adjourn the meeting at approximately 3:30 p.m. Motion carried.