

Table of Contents

Call to Order.....	41
Roll Call.....	41
Review and Approval of Minutes from the January 25, 2011 Meeting and the March 7, 2011 Special Meeting.....	41
Awards and Presentations.....	41
Executive Director’s Report.....	42
Special Announcement.....	42
Announcement of Executive Sessions.....	42
Reports of Commissioner Committees.....	42
Executive and Planning (Commissioner Worobec) -.....	42
Administration (Commissioner Lichvar) –.....	43
Boating (Commissioner Ketterer) –.....	43
Communications (Commissioner Lichvar) –.....	43
Fisheries (Commissioner Bachman) –.....	43
Habitat and Environmental (Commissioner Elliott) –.....	43
Law Enforcement (Commissioner Ketterer) –.....	43
Legislation (Commissioner Sabatose) -.....	44
Public Comment to Commissioners and Staff.....	44
EXECUTIVE AND PLANNING.....	45
PROPOSED RULEMAKING.....	45
A. Amendments to Section 51.7 (Public Comments at Commission Meetings).	45
OTHER MATTERS.....	47
B. Commissioner Policy Manual.....	47
ADMINISTRATION.....	48
A. Traphagen Property Rights Acquisition, Fairview Township, Erie County.....	48
B. Flowage Easement Acquisitions at Nessmuk Lake, Tioga County.	49
C. Lease of Letterkenny Reservoir Property, Franklin County.....	50
BOATING.....	52
PROPOSED RULEMAKING.....	52
A. Amendment to Section 53.2 (Camping and Cooking).	52
B. Amendment to Section 97.1 (Personal Flotation Devices).	54
C. Amendment to Section 97.3 (Sound Producing Devices).	56
D. Amendment to Section 97.5 (Visual Distress Signals).	57
E. Amendment to Section 111.31 (Huntingdon County).	58

F. Amendment to Section 111.43 (Mercer County).....	59
OTHER MATTERS.....	60
G. Boating Facility Grant Program: Borough of Selinsgrove, Isle of Que Boat Launch, Susquehanna River, Snyder County.	60
COMMUNICATIONS.....	62
A. Educational Grant to Pennsylvania Trout, Inc. (PA Council of Trout Unlimited) to Expand and Sustain the Trout in the Classroom Program.	62
FISHERIES	63
FINAL RULEMAKING.....	63
A. 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.	63
B. Amendments to Section 63.6 (Authorized Devices for Game Fish, Baitfish and Fishbait).....	65
PROPOSED RULEMAKING	66
C. Amendments to Section 63.43 (Fishing for Bass During Spring Season) and Section 65.24 (Miscellaneous Special Regulations) to extend Catch and Release Regulations for Bass into Tributaries of the Susquehanna and Juniata Rivers and to Impose a Closed Season for Bass from Mid-April to Mid-June.....	66
DESIGNATIONS	69
D. Amendments to the List of Wild Trout Streams.....	69
E. Big Bass Special Regulations: Removal of Portions of Susquehanna River and Lower Juniata River.	71
OTHER MATTERS.....	72
F. Renewal of Grant for Conowingo Dam West Lift Operation, Support of Anadromous Fish Spawning and Monitoring of Fish Passageways.....	72
HABITAT AND ENVIRONMENTAL	74
A. Norristown Farm Park Dam Removal Grant to American Rivers.	74
Other New Business	75
Commissioner Agenda Items & Topics for July 2011 Commission Meeting	75
Time and Place of July 2011 Commission Meeting.....	75
Adjournment.....	75

Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 96th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, April 11 and 12, 2011, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on April 11 beginning at 11:20 a.m. and on April 12 beginning at 8:00 a.m. The public session for review of this agenda began at or about 11:20 a.m. on April 12.

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
Edward P. Mascharka III
William J. Sabatose
Thomas C. Shetterly
Glade E. Squires

Review and Approval of Minutes from the January 25, 2011 Meeting and the March 7, 2011 Special Meeting

A motion was made by Commissioner Ketterer and seconded by Commissioner Gavlick to approve the January 25, 2011 and the March 7, 2011 minutes as written. Motion carried.

Awards and Presentations

John Hvizda, Labor Relations Coordinator, Division of Human Resources, Pennsylvania Fish and Boat Commission received the CAPPIE Award from the Capital Area Public Human

Resources Association (CAPHRA). Tony Kern, President, of the CAPHRA presented the award to John. The CAPPPIE is a monthly award that recognizes Human Resource professionals who demonstrate Commitment, Attitude, Professionalism, Proficiency, Innovation, or Expertise. Receiving the CAPPPIE means that you were caught doing something good in the field of Human Resources.

John was nominated for the CAPPPIE as a result of the many hours he dedicated to developing the Commission's very first in-house course that was presented as part of Goal 6 of the Commission's Strategic Plan – The Fundamentals of Supervision course. John really put a lot of time, effort and care into offering a useful course that would not only teach Commission supervisors and managers something but also garner some good conversation and provide some food for thought after the course had ended. The Commission received a lot of positive feedback from the staff who attended, and John played an integral part in getting the Human Resource's portion of the Strategic Plan off the ground and running.

Executive Director's Report

Executive Director John Arway highlighted the "October–December 2010 Quarterly Report" (Exhibit A) that was provided to Commissioners. He addressed the Unassessed Waters Program, funding alternatives, past events and future meetings. Executive Director Arway thanked the Commissioners for their support and participation in the legislator meetings to advocate for alternative funding. An announcement was made pertaining to a special publication, the first in a series of publications, called *The Fishery of Spring Creek: A Watershed Under Siege*. Staff are preparing channel catfish, walleye, and musky management plans consistent with the Strategic Plan with expectations to have them finalized to meet the deadlines.

Special Announcement

Commissioner Worobec announced that the Commission has introduced a new toll-free hotline for the public to report suspected pollution incidents or fish kills. The number 1-855-FISH-KIL (1-855-347-4545) provides the public with a way to quickly alert Commission staff to suspected environmental incidents. The hotline is not meant for general inquiries.

Announcement of Executive Sessions

Commissioner Worobec announced that executive sessions were held on April 11 at 8:00 a.m. and at 1:00 p.m. and on April 12 at 8:20 a.m. and 10:30 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, April 11, at approximately 11:20 a.m. Agenda items were discussed. 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, April 11, at approximately 4:20 p.m. Agenda items were discussed. Bernie Matscavage provided a workgroup update on the best method for distributing information to Commissioners. A review of Fiscal Year 2010-11 expenditures and revenues and a review of Fiscal Year 2011-12 budget impacts as a result of the Governor's Budget Plan were provided as well. Dan Leonard provided the funding status and repair schedule for high hazard dams.

Boating (Commissioner Ketterer) –

The Boating Committee met on Tuesday, April 12, at approximately 8:30 a.m. Agenda items were discussed. Discussion items included National Safe Boating Week and "Ready, Set, Inflate!" events.

Communications (Commissioner Lichvar) –

The Communications Committee met on Monday, April 11, at approximately 11:42 a.m. An agenda item regarding an educational grant to Pennsylvania Trout, Inc. to expand and sustain the Trout in the Classroom Program was discussed. Ted Walke provided a presentation on Pennsylvania Fish and Boat Commission messaging about aquatic invasive species. The Board was also briefed on the Fish for Free Day promotion plan.

Fisheries (Commissioner Bachman) –

The Fisheries Committee met on Monday, April 11, at approximately 2:50 p.m. Agenda items were discussed. The Committee also took action with respect to the proposed amendments to the wild trout streams list. First, the Committee recommended that the matter be tabled until a special Commission meeting to be held on May 24, 2011. Second, the Committee agreed to meet on or before that date. Third, the Committee recommended that the agency continue with its ongoing efforts to survey unassessed waters and direct the Executive Director to meet with coal industry representatives within 10 business days and report the outcome of that meeting to the Committee.

Habitat and Environmental (Commissioner Elliott) –

The Habitat and Environmental Committee met on Monday, April 11, at approximately 1:15 p.m. An agenda item concerning a grant to American Rivers for the removal of the Norristown Farm Park dam was discussed. Additional discussion items included a summary of the Commission's Habitat Division's 2010 activities, an update on the Eastern Spadefoot Toad Project and the conservation and management of crayfishes.

Law Enforcement (Commissioner Ketterer) –

The Law Enforcement Committee met on Tuesday, April 12, at approximately 8:00 a.m. Discussion items included promotion and transfers and the 20th Waterways Conservation Officer class.

The Committee acted upon proposed revocations. The Committee revoked the fishing privileges of two individuals for a period of two years. The Committee also revoked the boating privileges of one individual for two years and directed him to successfully complete a classroom boating

safety education course. The Committee revoked the rattlesnake hunting permit of one individual for two years.

Legislation (Commissioner Sabatose) -

The Legislation Committee met on Tuesday, April 12, at approximately 9:45 a.m. Gary Moore provided an general legislative update and information regarding the May 5-6, 2011 Senate Game and Fisheries Committee hearing scheduled to take place at the H.R. Stackhouse School in Bellefonte. Executive Director Arway informed the Committee of the April 26 Susquehanna River briefing to be held at the Capitol, and he spoke of the proposed oil and gas permit fee increase. Tim Schaeffer provided updates on oil and gas legislation, Title 30, the license flexibility bill, state wildlife grants and Wallop-Breaux funding and forthcoming advocacy.

Public Comment to Commissioners and Staff

Rob Bates and Bob Herman commented on the Commission's proposed changes to its bass regulations on portions of the Susquehanna and Juniata Rivers.

EXECUTIVE AND PLANNING PROPOSED RULEMAKING

A. Amendments to Section 51.7 (Public Comments at Commission Meetings).

Commentary:

In 1994, the Commission adopted its current regulation pertaining to public comments at Commission meetings. Since that time, the way in which the Commission and its committees have handled public comments has changed, and the current regulation does not reflect current Commissioner thinking or practice. The Commission has always valued public input. Therefore, it is logical that the Commission and its committees follow a uniform method for soliciting and receiving public comments at meetings. It also is logical that the Board and committees receive and consider public comments prior to deliberating and voting.

During the Executive and Planning Committee meeting at the January 2011 Commission meeting, Commissioners discussed this matter and shared their thoughts regarding how public comments should be handled. The committee directed staff to propose amendments that reflect that thinking.

Staff propose that §51.7 be amended, consistent with current practice and Commissioner thinking, as follows:

§51.7. Public comments at Commission meetings.

(a) Public comments at meetings of the full Board.

[a] (1) General rules. The Commission [may] **will** provide a brief public comment period [of no more than 15 minutes duration] at the [conclusion] **beginning** of each public meeting. **The Commission ordinarily will accept public comments following its committee reports and prior to its consideration of the formal agenda.** The Commission may limit comments to matters that are [related to fishing, boating and other matters] within the Commission's jurisdiction that are not repetitive or duplicative of other comments. **[Individual comments during the public comment period may not exceed 3 minutes in duration.] The Commission president or presiding officer will request members of the public wishing to comment to indicate prior to the start of the meeting that they wish to provide public comment. The Commission president or presiding officer will determine the appropriate time limit for individual comments and will announce that limit prior to receiving any comments. If members of the public prepare a written statement, they will be asked to provide a copy to the designated staff person. Members of the public representing a specific organization will be requested to designate one spokesperson to present their collective comments.**

[b] (2) Consideration of agenda items. The Commission ordinarily [does] **will** not permit public comments during the course of its meetings when it considers agenda items or other matters before the Commission. The Commission president or other presiding

officer may invite brief public comments on items other than regulatory actions when he determines that allowing the comments will be useful in the best interests of the Commission. **[Since regulatory actions ordinarily involve the opportunity for public comment, the Commission will not accept public comments on them during public meetings except in cases when the president or other presiding officer finds either that the regulations are being considered for approval without a formal public comment period or that extraordinary circumstances justify receipt of additional public comments.]**

(b) Public comments at committee meetings. The committee chair will provide a brief public comment period at the beginning of each committee meeting. The committee chair will determine an appropriate format for this period, including its length. The chair may limit comments to matters that are related to the charge of the committee that are not repetitive or duplicative of other comments.

Briefer:

Laurie E. Shepler, Chief Counsel

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:

A motion was made by Commissioner Sabatose 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 upon publication in the *Pennsylvania Bulletin*. Motion carried.

OTHER MATTERS

B. Commissioner Policy Manual.

Commentary:

The Board of Commissioners approved a set of policy statements in July 2007 to guide their decision-making and relationships with staff. This policy manual was revised in October 2007 and April 2008.

The proposed draft for consideration, set forth in Exhibit B, contains the policies previously adopted by the Board, revisions to the *Board Accountability* and *Board Relationship with the Executive Director* sections, and a new section entitled *Strategic Plan Development, Implementation, and Amendment*. The full revised manual is before the Board for consideration so it may reaffirm past policy statements and formally adopt the revisions and new section.

Briefer:

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

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Gavlick to adopt the revised policy manual as set forth in Exhibit B. Motion carried.

ADMINISTRATION

A. Traphagen Property Rights Acquisition, Fairview 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 3,700 linear feet of Elk Creek as it flows across a parcel of property in Fairview Township, Erie County, for \$48,000. 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. On the south side of Elk Creek, the easement area is 3,150 feet in length. On the north side of Elk Creek, the easement area is 550 feet in length and is adjacent to the Struchen Flats Property that is owned by Fairview Township and is open to public fishing. Ample parking is available on the Struchen Flats Property. A map depicting the subject parcel is attached as Exhibit C.

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 provide additional trout and steelhead 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 Traphagen property rights along Elk Creek in Fairview 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 Mascharka and seconded by Commissioner Gavlick to authorize the acquisition of the Traphagen property rights along Elk Creek in Fairview Township, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried.

B. Flowage Easement Acquisitions at Nessmuk Lake, Tioga County.

Commentary:

The Commission owns a 224-acre tract of land in Delmar Township and Wellsboro Borough, Tioga County, that contains Nessmuk Lake. This acreage includes 0.35 acres of flowage easements. A flowage easement is generally the right to flow water on, flood and inundate an area with water without liability for damages resulting from such action. The normal lake pool size is 60 acres. Staff are working to rehabilitate the dam utilizing H2O PA Act funds.

The majority of the Commission's Nessmuk Lake property has been leased to Wellsboro Borough to provide additional public benefit and to assist the Commission with the operation and maintenance of the site. This agreement is scheduled to expire on March 3, 2022, and staff anticipate pursuing a new agreement. The dam area is not included in the lease.

During the engineering analysis for the rehabilitation of the dam, staff determined that the Commission only acquired property rights at the lake to an elevation necessary to meet the design and regulatory standards in place during the dam's original construction. However, this elevation no longer meets current design and regulatory standards.

The Department of Environmental Protection's (DEP) current method for dam and storm event analysis indicates that after the proposed dam rehabilitation project is completed, the maximum inundation area will increase vertically by approximately 2.2 feet over the elevation anticipated when the dam was originally constructed. Thus, using the current DEP analysis method, there will be several small areas that may be inundated as a result of the Commission's proposed dam rehabilitation project for which the Commission has not acquired the appropriate property rights. Exhibit D shows the area of the impacted properties, which is projected to be five properties. The required flowage easement areas will total just over 2 acres. Courthouse research and final survey work is needed before a final determination of claims can be made. The rights to be acquired have a minimal value; however, it may be necessary to pay for these rights. If consideration is required, the Commission will pay the estimated fair market value of the rights.

Staff will seek to acquire the necessary property rights in an amicable manner but as a last resort may need to rely on the Commission's powers of eminent domain. Staff also will adhere to the Commission's standard practices for acquiring property, including meeting due diligence and funding requirements.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the acquisition of flowage easements as described in the Commentary.

Action:

A motion was made by Commissioner Squires and seconded by Commissioner Lichvar to authorize the acquisition of flowage easements as described in the Commentary. Motion carried.

C. Lease of Letterkenny Reservoir Property, Franklin County.

Commentary:

The Letterkenny Reservoir is a +/-55-acre reservoir that sits on a +/-128-acre tract in Franklin County about 11 miles north of Chambersburg and 15 miles west of the Commission's Big Spring Creek property. The reservoir is an approved trout water that is heavily utilized and is scheduled to receive four trout stockings this year.

The Commission has been involved with Letterkenny Reservoir by means of a cooperative license agreement with the Department of the Army since 1958 and that was renewed in 1961 and amended in 1972 and 1986. The current agreement is set to expire on July 6, 2011. The agreement allows for public fishing and boating. The Commission acquired an additional +/-5.7 acre parcel (in fee) at the Letterkenny Reservoir adjacent to the tract under agreement in order to provide sufficient parking and access at the reservoir. A drawing depicting the subject area is attached as Exhibit E.

The Department of the Army conveyed the 128-acre tract to the Letterkenny Industrial Development Authority (LIDA) in the late 1990's. At the time, Franklin County created two holding and operating entities for this property, LIDA and the Franklin County General Authority (FCGA). LIDA acquired the reservoir tract, but the County intends that FCGA ultimately will hold title to the reservoir when the land transfer process with the Army is complete. LIDA acquired the tract subject to the Commission's agreement with the Army.

In addition, LIDA is obligated under its current water withdrawal permit with the Pennsylvania Department of Environmental Protection that expires in July 2024 to enter into a lease agreement with the Commission for public fishing and boating access. LIDA is willing to enter into a lease agreement and may be willing to enter into a license agreement with the Commission for the Letterkenny Reservoir upon the July 2011 termination of the current license agreement subject to reasonable terms.

Staff are pursuing a lease or license that will run at least through July 2024 and will pursue a longer term that allows for future renewals. A lease requires Commission approval; a license does not. Any new agreement will protect the integrity of the water for LIDA and this shall take precedence. The agreement will also allow for free public fishing and boating, fishery and riparian buffer management and aquatic resource protection and allow for reasonable improvements related thereto. The Commission will continue to have responsibility for routine site maintenance, operation, repair and supervision related to fishing and boating and enforcing its property regulations at the site. However, the Commission will have no responsibility related to the operation, maintenance or repair of the dam. The parties will cooperate at the site to best serve the public, and the Commission will assist and provide technical guidance to the LIDA when possible, subject to the availability of resources and the best interest of the Commission.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize a new lease agreement with the Letterkenny Industrial Development Authority (or Franklin County General Authority) for the purposes more particularly described in the Commentary in the event staff are unable to secure a license agreement.

Action:

A motion was made by Commissioner Elliott and seconded by Commissioner Mascharka to authorize a new lease agreement with the Letterkenny Industrial Development Authority (or Franklin County General Authority) for the purposes more particularly described in the Commentary in the event staff are unable to secure a license agreement. Motion carried.

BOATING PROPOSED RULEMAKING

A. Amendment to Section 53.2 (Camping and Cooking).

Commentary:

On October 4, 1976, the Commission established the Natural Access Area Program to make available public fishing and boating opportunities to some of the most scenic and inaccessible waterways within the Commonwealth. The program consisted of two distinct types of natural access areas: low development or mini-accesses and primitive rest stop access. The Commission established rules and regulations for access areas designated under this program and a special use permit for overnight camping at a cost of \$2.00 per boat.

On July 29, 1977, the Commission entered into an agreement with the Pennsylvania Department of Environmental Resources (DER) to establish its recently-acquired Allegheny River State Park in Venango County as a primitive rest stop access under the Natural Access Area Program. Although the agreement held the Commission responsible for development and maintenance of the site, all improvements and maintenance has been conducted by DER (now Department of Conservation and Natural Resources) personnel and funds. The Commission has never actively managed or operated the site. The site is still functional today and is known as the Kennerdell Tract of Clear Creek State Forest.

The Commission has not entered into any other agreements or established any other properties under the Natural Access Area Program nor has it collected any permit fees from this program. A variety of agencies and organizations currently offer primitive access opportunities across the state with accompanying regulations, enforcement and management. The Commission will continue to provide assistance for the development of primitive access (often referred to as geo-cell ramps) for unpowered boats. Therefore, it is unnecessary for the Commission to maintain the Natural Access Area Program and to continue its regulation relating to primitive access areas.

Staff therefore propose that §53.2 be deleted as follows:

§53.2. Camping and cooking.

* * *

[(b) *Primitive access areas.* Overnight camping is permitted on properties designated as primitive access areas subject to the following terms and conditions:

- (1) Access to the access area may be gained only by boat, which boat is properly and currently registered in accordance with applicable laws and regulations.**
- (2) Small fires for cooking and warming purposes are permitted only at places where adequate precautions are taken to prevent the spread of fire which may damage adjacent areas. Fires shall be attended to at all times; unattended fires are prohibited. Open fires are prohibited when the forest fire danger in the area of the primitive access area is rated high or extreme.**

(3) Sanitary facilities are primitive only. Human wastes shall be deposited away from normal camp sites and water courses and shall be covered with natural materials.

(4) The following area is designated as a primitive access area – Venango County, Allegheny River, Allegheny River State Park at about mile 109.]

* * *

On February 8, 2011, 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 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.

B. Amendment to Section 97.1 (Personal Flotation Devices).

Commentary:

Since 1995, the Commission has used the U.S. Coast Guard's Boating Accident Report Database to submit details of recreational boating accidents that occur in the Commonwealth. This database assists the Coast Guard and Commission in analyzing recreational boating accident data and identifying trends to inform boating safety decision-making. In the past 15 years, the Commission has reported 1,424 accidents resulting in 187 fatalities in Pennsylvania. Approximately 8% of the accidents (117) occurred during the "off" boating season from November 1st through April 30th. While only a small percentage of total accidents, these cold-water incidents resulted in 24% of the fatalities (45) during the 15-year timeframe.

Because boating safety requirements, equipment and recreational trends change over time, it is sufficient to focus a more detailed analysis on the past 10-year period of recreational boating accident records. From 2000 to 2009, boating accident records revealed a total of 125 fatalities of which 34 (27%) occurred between November 1st and April 30th. More than 82% of these fatalities (28) occurred in unpowered boats and motorboats less than 16 feet in length. Such boats included canoes, rowboats, kayaks and small open motorboats.

The disproportionate number of fatalities in November through April is primarily due to the effects of coldwater immersion. When water temperatures are less than 70 degrees F, cold water shock is a major factor in boating fatalities. Cold water shock causes an involuntary gasp (often resulting in aspiration of water), hyperventilation, breathlessness and a reduced ability to control breathing and swim. Victims who wear a personal flotation device (PFD) when exposed to cold water have potentially life-saving advantages such as insulation from the cold, buoyancy for victims unable to tread water, and reduced risk of aspiration of water.

Therefore, staff propose that §97.1 be amended as follows:

§97.1. Personal flotation devices.

* * *

(i) Beginning November 1 until midnight April 30 of the following year, persons shall wear a Coast Guard approved Type I, II, III or V PFD while underway or at anchor on boats less than 16 feet in length or any canoe or kayak.

On June 15, 2010 and February 8, 2011, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment. The Board did not provide a recommendation on the effective date. However, staff recommend that if adopted, the amendment not go into effect until November 1, 2012 to allow adequate time for public comment and to notify the public of the new requirement.

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 and seeking public comment for 60 days. If adopted on final rulemaking, this amendment will go into effect on November 1, 2012.

Action:

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 and seeking public comment for 60 days. If adopted on final rulemaking, this amendment will go into effect on November 1, 2012. Motion carried.

C. Amendment to Section 97.3 (Sound Producing Devices).

Commentary:

Inland Navigation Rule 32, Part D-Sound and Light Signals, does not make a distinction in terms of required sound equipment for powered versus unpowered vessels. Length of the vessel is the characteristic that determines the type of sound producing device required. The Commission's current regulations are consistent with the Inland Navigation Rule and specifically refer to unpowered boats for ease of reference. However, the use of the word "oral" in describing the requirement for unpowered boats may be misconstrued as meaning shouting or whistling as being an acceptable sound signal. Staff recommend clarifying the requirement and adding a statement indicating that an athletic coach's whistle is an acceptable sound producing device for unpowered boats. Additionally, staff recommend including a prohibition against the use of sound signals except in the case of an emergency.

Staff therefore propose that §97.3 be amended as follows:

§97.3. Sound producing devices.

* * *

(c) *Unpowered boats.* – Unpowered boat operators are required to **[have some means of making an efficient oral or mechanical sound signal] carry a device capable of sounding a prolonged blast for 4-6 seconds** that can be heard by another boat operator in time to avoid a collision. **An athletic coach's whistle is an acceptable sound producing device for unpowered boats. It is unlawful to use a sound producing device on the water under any circumstance except a situation in which assistance is needed because of immediate or potential danger to the persons onboard or it is necessary to attract the attention of another boat.**

* * *

On February 8, 2011, 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 Squires 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 97.5 (Visual Distress Signals).

Commentary:

The Commission's regulation for visual distress signals (VDS) is consistent with the Federal Navigation Regulations (33 C.F.R. §175.125) requiring that VDS must be in serviceable condition. However, there is no definition for "serviceable" as it relates to inspecting VDS. Unlike life jacket regulations that do provide examples of "serviceable condition," VDS requirements lack these examples. Therefore, staff recommend adopting the standards used by the U.S. Coast Guard Boating Safety Division.

Staff propose that §97.5 be amended as follows:

§97.5. Visual distress signals.

* * *

(g) It is unlawful to operate a boat unless each signal required by subsection (b) or (c) is in serviceable condition and the service life of the signal, if indicated by a date marked on the signal, has not expired. **As used in this subsection, serviceable means that the device is fully functional to carry out the purpose for which it was designed and is free of damage and defects.**

* * *

On February 8, 2011, 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 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.

E. Amendment to Section 111.31 (Huntingdon County).

Commentary:

During the summer of 2010, a joint meeting was held between representatives of the Commission, U.S. Army Corps of Engineers (Corps), U.S. Coast Guard Auxiliary, and Raystown Concessionaires concerning the current zoning on Raystown Lake. The Corps' goal for Lake Raystown is to reduce the costs of the buoy program by transferring costs to parties who benefit; eliminating buoys that are redundant to Commission regulations; replacing buoys with signage; and analyzing existing lake zoning versus observed usage patterns. As a result of the meeting and subsequent discussions, the Corps developed a plan that recommends changes to enhance recreation on the lake. Specifically, the plan recommends eliminating the "slow, no wake speed" designation in the areas of Hawns Run Cove and Anderson Bay.

The narrow geography of Hawns Run Cove already restricts a portion of the cove to slow, no wake according to Commission regulations. The Corps recommends removing the regulation currently restricting the entire cove, thereby eliminating the need for the three buoys at the entrance to the cove.

The Corps' plan also states that Anderson Bay is rarely used by recreational boaters and is more frequently used by trolling anglers. Therefore, based on usage of the bay, there is no need to designate the bay as a slow, no wake zone. This proposal would eliminate approximately 15 buoys.

Staff propose that §111.31 be amended as follows:

§111.31. Huntingdon County.

(a) *Lake Raystown.*

(1) Boats are limited to slow, no wake speed in the following areas:

(i) **[Hawns Run Cove,]** Seven Points, Yocum Bay, **[Anderson Bay,]** Woodcock Valley Cove, James Creek Cove, Great Trough Creek Cove, Coffee Run Cove and Shy Beaver Cove.

* * *

On February 8, 2011, 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 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.

F. Amendment to Section 111.43 (Mercer County).

Commentary:

State Game Lands 270 contains approximately 300 acres of Lake Wilhelm. In 2006, electric motors were permitted on a sizeable part of Lake Wilhelm that runs through State Game Lands 270 from the old log boom to the State Propagation Area above the Sheakleyville Bridge. The area is fairly shallow and filled with stumps. Currently, the area is posted with "Electric Motors Only" posters at the boat launches, Sheakleyville Bridge, and at the old boom which is now just a line of buoys. There is currently no Commission regulation prohibiting the operation of boats powered by internal combustion motors in this area. The remainder of the lake is owned by the Department of Conservation and Natural Resources' Bureau of State Parks and has a 20 horsepower restriction on it.

Waterways Conservation Officers have received numerous complaints from anglers that individuals are using gasoline powered motors in the "Electric Motors Only" area. The Pennsylvania Game Commission was contacted, and they support the staff-proposed regulation. Currently, if an individual is caught running a gasoline motor in this area, the individual's information must be turned over to the Game Commission for enforcement.

Staff therefore propose that §111.43 be amended as follows:

§111.43. Mercer County.

(a) Shenango River Lake.

* * *

(b) Lake Wilhelm.

(1) The operation of boats powered by internal combustion motors is prohibited from a point approximately 200 yards north of the Interstate 79 causeway over Lake Wilhelm upstream to the Pennsylvania Game Commission Propagation Area above the Sheakleyville Causeway (State Route 1018, Milledgeville Road).

On February 8, 2011, 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 Squires 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.

OTHER MATTERS

G. Boating Facility Grant Program: Borough of Selinsgrove, Isle of Que Boat Launch, Susquehanna River, Snyder County.

Commentary:

The Borough of Selinsgrove submitted an application in 2005 to make improvements to a boat ramp at the Isle of Que that included widening the preparation area, paving the launch approach, installing a concrete boat launch ramp, paving the parking area and installing bank stabilization to protect the ramp and the adjoining shoreline. Under the procedures approved by the Commission, the Executive Director approved a grant not to exceed \$88,000, and a contract was executed with the Borough during the second quarter of 2006.

In November of 2007, the Borough informed the Commission that the construction of the facility was completed. The Commission performed a final engineering inspection of the facility and determined that there were several deficiencies pertaining to the construction of the boat launch ramp. In December of 2007, the Commission sent a letter to the Borough informing them of the results of the final inspection and recommending changes to the facility. In addition, the Commission agreed to extend the completion date of the project to provide additional time to complete the project. The Borough of Selinsgrove informed the Commission that it did not have the funding to make the recommended changes to the facility.

In the 2009 grant round, the Borough submitted plans for a change order to make a number of the recommended changes to the facility. The Commission reviewed the change order but did not approve funding for the project because it did not address all of the concerns at the facility. Since that time, the Commission and the Borough have been trying to resolve the issues with the facility, and they have negotiated a resolution that will address the Commission's concerns and will provide the Borough with a safe and modern boat launch facility. The Borough has agreed to develop a remediation plan and timeline that is agreeable to both parties and meets established boating facility design standards. The Borough also agreed to pay design and engineering costs for the remediation work and to close the existing boat launch in order to complete construction. In addition, the Borough and Commission have agreed that the remediation construction is estimated to cost \$40,000.

Therefore, the Borough has requested consideration for additional funding not to exceed \$40,000. Because the additional funding places the total contract above the \$100,000 limit for approval authority granted to the Executive Director, staff are presenting the request for an additional \$40,000 funding to the Commission for approval.

Briefer:

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

Recommendation:

Staff recommend that the Commission amend its contract with the Borough of Selinsgrove to provide additional funds not to exceed \$40,000 to complete the access area remediation as more fully described in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Gavlick to amend its contract with the Borough of Selinsgrove to provide additional funds not to exceed \$40,000 to complete the access area remediation as more fully described in the Commentary. Motion carried.

COMMUNICATIONS

A. Educational Grant to Pennsylvania Trout, Inc. (PA Council of Trout Unlimited) to Expand and Sustain the Trout in the Classroom Program.

Commentary:

At its January 2006 meeting, the Commission authorized the Executive Director to approve individual grants of \$5,000 or less per grantee per year to support grassroots education projects. For grants in excess of \$5,000, staff will seek separate Commission approval.

Pennsylvania Trout, Inc. (PATU) received a \$5,000 grant in 2006 and again in 2007 to support the expansion of the national Trout in the Classroom program (TIC) in Pennsylvania. TIC provides students with the opportunity to raise trout from eggs (or fry) to fingerlings and then release their fish in approved trout waters. Teachers use this experience to teach students about trout biology, ecology and water quality and fish management.

On April 22, 2008, the Commission voted to approve a grant to PATU, in the amount of \$10,000 per fiscal year for three fiscal years, beginning on July 1, 2008 and ending June 30, 2011, to continue expansion of the program.

Commission staff and PATU have been working over the last several years to grow TIC in Pennsylvania. In addition to the grant, the Commission is providing fish stock and leading the development of curriculum and technical resources and support materials. PATU and local TU chapters are providing grassroots level support of TIC classrooms through matching funds for equipment purchase, in-class and field trip assistance and support. Some partners are also providing classrooms with an opportunity to learn fishing skills and fly tying.

Since 2006, PATU has provided 126 mini-grants to schools for the purchase of aquarium equipment and to support field trips. Of the 126 mini-grants awarded, 74 grants were funded through Commission grants to PATU.

PATU has indicated that additional funds from the Commission over the next three years will enable them to further expand and sustain TIC in Pennsylvania. PATU proposes to use this funding to establish new sites over the next three years as well as supporting field trips, equipment maintenance and replacement. Because this grant request exceeds \$5,000 per year, Commission action is necessary.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant to Pennsylvania Trout, Inc. in the amount of \$10,000 per fiscal year for the next three fiscal years beginning on July 1, 2011 and ending June 30, 2014, for the purposes described in the Commentary.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Lichvar to approve a grant to Pennsylvania Trout, Inc. in the amount of \$10,000 per fiscal year for the next three fiscal years beginning on July 1, 2011 and ending June 30, 2014, for the purposes described in the Commentary. Motion carried.

FISHERIES

FINAL RULEMAKING

A. 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 of catch rates of smallmouth bass in the lower Susquehanna River (below Sunbury, PA) and in the lower Juniata River (below Newport) have fallen below reference 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 production and survival of young.

Historically, reductions in smallmouth bass young-of-year indices 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, the Commission proposed amending §65.24 (relating to miscellaneous special regulations) to impose catch and release regulations on smallmouth and largemouth bass in portions of the Susquehanna River and Juniata River that are currently regulated under §65.9 (relating to big bass special regulations). Tournaments will be prohibited during the bass spawning period in the spring. 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. Staff believe that action is necessary now to reduce fishing mortality 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.

The Executive Director exercised his authority under §65.25 (relating to temporary changes to fishing regulations) to make the proposed changes effective on January 1, 2011. (40 Pa. B. 6366 (October 30, 2010) (Exhibit F)). The temporary modifications went into effect on January 1 and will remain in effect until the Commission, by appropriate action, amends §65.24.

A notice of proposed rulemaking containing the proposed amendments to §65.24 and soliciting public comments for a period of 90 days was published at 40 Pa. B. 7238 (December 18, 2010) (Exhibit G). The public comment period ended on March 17, 2011. Prior to the public comment period, the Commission received 74 comments. The Commission received 78 comments during the official period. Comments received after the close of the comment period were not counted. The majority of the comments received support the proposal. Some of the common themes of the comments are that the main problem is water quality not angler harvest; the regulation will not help recruitment; guides may impact bass by fishing during the spawning season; the Commission should develop a permit system for livewell tournaments; the Commission should close the spawning season to fishing; and the Commission should expand the regulations into the tributaries. Copies of all public comments were provided to the Commissioners.

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking. However, staff also recommend that the Commission consider additional changes to its regulations to address the problem of declining smallmouth bass populations. The additional amendments that are proposed, which would not go into effect until January 1, 2012, are included in agenda item, "Fisheries, C."

Briefer:

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

Recommendation:

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

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. The amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

B. 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.

A notice of proposed rulemaking containing the proposed amendments and soliciting public comments for a period of 60 days was published at 40 Pa. B. 7237 (December 18, 2010) (Exhibit H). The Commission received a total of 227 comments as of the close of the public comment on February 15, 2011. (Comments received prior to the October 2010 meeting at which the Commission approved the notice of proposed rulemaking were not counted. However, copies of those public comments were provided to the Commissioners at the April 2010 meeting.) Of the 227 comments received after the October meeting, seven were received before the comment period, and 220 were received during the comment period. There was overwhelming support for this proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking. If adopted, these amendments will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Lichvar and seconded by Commissioner Mascharka to adopt the amendments as set forth in the notice of proposed rulemaking. These amendments will go into effect on January 1, 2012. Motion carried.

PROPOSED RULEMAKING

C. Amendments to Section 63.43 (Fishing for Bass During Spring Season) and Section 65.24 (Miscellaneous Special Regulations) to extend Catch and Release Regulations for Bass into Tributaries of the Susquehanna and Juniata Rivers and to Impose a Closed Season for Bass from Mid-April to Mid-June.

Commentary:

Under agenda item, “Fisheries, A,” the Commission may take action to impose catch and release regulations to portions of the Susquehanna River and Juniata River. If the Commission adopts the proposed amendments, they will go into effect upon publication in the *Pennsylvania Bulletin*. However, for the reasons given in “Fisheries, A” and as a result of the public comments received in response to the notice of proposed rulemaking, staff propose additional changes to the Commission’s regulations to address declining smallmouth bass populations. The proposed changes include imposing a closed season for bass during the spawning period and extending the catch and release and closed season regulations into the tributaries to these rivers.

Instituting a closed season from mid-April to mid-June on the lower Susquehanna and lower Juniata Rivers will reduce angling related stress during the spawning period which will provide additional protection to the bass populations of the main rivers. Extending the catch and release and closed season regulations into the tributaries will further protect the mainstem fisheries as staff have documented that some bass do move into the tributaries from the rivers from time to time. This action will also simplify enforcement of the regulations for anglers fishing near the tributary mouths. Staff propose that the regulations extend to a point ½ river-mile upstream from the mouth of all tributaries to the affected reaches of the Susquehanna and Juniata Rivers. The proposed regulations should be relatively easy to understand by anglers.

Staff propose that §65.24 be amended as follows. (Note: this proposal assumes that the Commission adopted the proposed catch and release regulations under agenda item, “Fisheries, A.”)

§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>
***	***	***
Cumberland, Dauphin, Juniata, Lancaster, Northumberland,	Susquehanna River (98.0 miles) from the inflatable dam near Sunbury downstream to Holtwood Dam, <u>including all</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 – <u>Closed season; [N]no</u>

<p>Perry, Snyder, York</p>	<p><u>tributaries to a point 1/2 mile upstream from the confluence</u></p>	<p>tournaments[;]. <u>During the closed season, it is unlawful to target or attempt to catch a bass. A bass that is accidentally caught during the closed season must be immediately released unharmed without being removed from the water. It is unlawful to possess bass in, on or along these waters.</u></p> <p>Remainder of the year – <u>No harvest – catch and immediate release only;</u> [C]catch-measure-immediate release tournaments only.</p>
<p>Dauphin, Juniata, Perry</p>	<p>Juniata River (31.7 miles) from SR0075 bridge at Port Royal downstream to the mouth, <u>including all tributaries to a point 1/2 mile upstream from the confluence</u></p>	<p>Bass (smallmouth and largemouth) – <u>[No harvest year-round – catch and immediate release only;]</u> From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11 – <u>Closed season;</u> [N]no tournaments[;]. <u>During the closed season, it is unlawful to target or attempt to catch a bass. A bass that is accidentally caught during the closed season must be immediately released unharmed without being removed from the water. It is unlawful to possess bass in, on or along these waters.</u></p> <p>Remainder of the year – <u>No harvest – catch and immediate release only;</u> [C]catch-measure-immediate release tournaments only.</p>
<p>***</p>	<p>***</p>	<p>***</p>

In light of the proposed changes, staff also propose that §63.43 be amended to clarify that it does not apply to these waters. Staff propose that §63.43 be amended as follows:

§63.43. Fishing for bass during spring season.

(a) * * *

(b) This section does not apply to portions of the Susquehanna and Juniata Rivers and their tributaries that are regulated under §65.24 (relating to miscellaneous special regulations).

Briefer:

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

Recommendation:

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

Action:

A motion was made by Commissioner Sabatose 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, these amendments will go into effect on January 1, 2012. Motion carried.

DESIGNATIONS

D. Amendments to the List of Wild Trout Streams.

Commentary:

The Department of Environmental Protection's regulations at 25 Pa. Code §105.1 define the term "wild trout stream" as "a stream classified as supporting naturally reproducing trout populations by the Fish 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 a floodplain of the reach of a wild trout stream, and the floodplain of streams tributary thereto, are considered "exceptional value" and are thus entitled to the highest level of protection.

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

The current version of the wild trout streams list was last revised in April 2010. Staff are recommending the addition of 99 new waters to the list, adjustments in the limits of eight waters and removal of 16 waters from the list. These changes are primarily the result of recent surveys conducted on these waters. Surveying unassessed waters and documenting wild trout populations are consistent with the Commission's recently adopted Strategic Plan for Management of Trout Fisheries in Pennsylvania and the agency's Resource First philosophy.

Notices of proposed designation and re-designation were published at 41 Pa. B. 1294 (March 5, 2011) (Exhibit I) and 41 Pa. B. 1412 (March 12, 2011) (Exhibit J). The Commission received five comments from individuals regarding the proposed changes to the list. There was overwhelming support among those individuals for the additions, particularly, Bennett Brook. The Commission also received comments from the Pennsylvania Coal Association, Rosebud Mining Company and members of the General Assembly requesting that the Commission defer consideration of the listings until a future meeting to allow additional time for review and comments. Copies of all public comments were provided to Commissioners.

Briefer:

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

Recommendation:

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

Action:

A motion was made by Commissioner Elliott and seconded by Commissioner Gavlick to accept the Fisheries Committee recommendation to postpone consideration of this matter until May 24, 2011. This postponement will allow Director Arway to meet with industry and elected representatives within the next 10 business days and report the outcome of those meetings to the Fisheries Committee. It will also allow the Committee to meet on or before May 24 to consider the matter and make a recommendation to the full Board. Motion carried.

E. Big Bass Special Regulations: Removal of Portions of Susquehanna River and Lower Juniata River.

Commentary:

Under agenda item, “Fisheries, A,” the Commission may take action to impose catch and release regulations to portions of the Susquehanna River and Juniata River that are currently regulated under Big Bass Special Regulations in §65.9. The portion of the Susquehanna River that is affected is 98.0 miles from the inflatable dam near Sunbury downstream to the Holtwood Dam. The portion of the lower Juniata River that is affected is 31.7 miles from the SR0075 bridge at Port Royal downstream to the mouth. If the Commission adopts the proposed amendments on final rulemaking, that action will effectively remove these waters from regulation as “Big Bass Regulation” waters.

A notice of proposed re-designation was published at 41 Pa. B. 1293 (March 5, 2011) (Exhibit K). The Commission did not receive any public comments regarding the proposed re-designations.

Briefer:

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

Recommendation:

Staff recommend that the Commission remove portions of the Susquehanna River and lower Juniata River from regulation as “Big Bass Waters” under §65.9 as set forth in the notice of proposed re-designation. If approved, these re-designations will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Gavlick to remove portions of the Susquehanna River and lower Juniata River from regulation as “Big Bass Waters” under §65.9 as set forth in the notice of proposed re-designation. If approved, these re-designations will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

OTHER MATTERS

F. Renewal of Grant for Conowingo Dam West Lift Operation, Support of Anadromous Fish Spawning and Monitoring of Fish Passageways.

Commentary:

This item is to renew a grant agreement with the United States Fish and Wildlife Service (USFWS) that was approved five years ago by the Commission.

The West Lift is the fish lift on the western side of the Susquehanna River at the Conowingo Dam. After the East Lift was constructed in the late 1980s and put into service as the primary means of moving American shad and other fishes upstream past the Conowingo Dam, the West Lift has been used primarily to obtain fish for tagging, egg collection and gathering of biological monitoring data.

Exelon Corporation (Exelon) operates Conowingo Dam. Exelon has been very cooperative in continuing each year to provide an operator for the West Lift in cooperation with the Susquehanna River Technical Committee (SRTC). In addition, Exelon covers the cost of equipment repairs and maintenance.

The SRTC, comprised of representatives from Exelon, Maryland Department of Natural Resources (MDNR), USFWS, Susquehanna River Basin Commission and the Commission, advises Exelon on matters relating to fish passage at Conowingo Dam. Under the 1989 Settlement Agreement, licensees of the Conowingo Hydro-electric Project No. 405 (i.e. Exelon), are committed to “continue to operate and maintain the existing facility (West Lift), if funding for sorting and trucking is provided by others, until such time as SRTC determines it is no longer needed to support the restoration program.” Presently, the USFWS and Exelon are in the process of signing a contract for the operation of the West Lift in 2011. Additionally, Exelon has recently indicated interest in a multi-year agreement to provide an operator for the West Lift. The SRTC, as in the past, desires to continue operation of the West Lift for at least another four years and continue efforts to obtain American shad eggs from sources at or below Conowingo Dam. The members of the SRTC agree that this project should continue to be funded.

There are three primary objectives of this project:

(1) To provide adult American and hickory shad for tank spawning and thus a source of Susquehanna River eggs for hatchery production. This will reduce dependence on the Potomac River egg source, while developing a naturally occurring Susquehanna River strain.

(2) To support research and management actions. The shad and herring captured will provide an index of strength of the run. Shad otolith analysis will be continued to evaluate the contribution of wild and hatchery produced shad in the returning adults. The West Lift sampling is an ideal site to recapture previously tagged shad for population estimates. Shad

captured in the West Lift have and will be used for radiotelemetry, genetic, and tagging studies.

(3) To enhance monitoring of migratory fish in tributaries and at upstream fish passage facilities.

The annual cost to SRTC for operation of the Conowingo West Lift continues to be estimated at about \$150,000. Contributions of other SRTC partners, specifically MDNR, and in-kind contributions by Exelon for equipment, maintenance and an operator allow these expenses to be met. During the last five years of this grant, the Commission was successful in utilizing Atlantic Coastal Cooperative Fisheries Management Act funds to defray a portion of the Commission's contribution to the project. The Commission expects to continue to use federal funds for part of this obligation (through its "*Bio-monitoring and Assessment Project for American Shad and River Herring in the Susquehanna River Basin, July 1, 2010 through June 30, 2015*").

SRTC has agreed to continue the historically, effective funding approach whereby the USFWS's Susquehanna River Coordinator (who is also chairperson of the Susquehanna River Anadromous Fish Restoration Cooperative (SRAFC) and SRTC) will manage a restricted USFWS account for funding supplied by fishery agencies, SRAFC utility settlement balance funds and federal aid support. USFWS (SRAFC coordinator) will provide a grant, or manage a contract with Exelon, to provide for Conowingo West Lift operations and the other projects.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize a grant of up to \$75,000 each year for four years (fiscal years 2011 through 2014) to the United States Fish and Wildlife Service (Susquehanna River Anadromous Fish Restoration Cooperative) for the purposes described in the Commentary.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Elliott to authorize a grant of up to \$75,000 each year for four years (fiscal years 2011 through 2014) to the United States Fish and Wildlife Service (Susquehanna River Anadromous Fish Restoration Cooperative) for the purposes described in the Commentary. Motion carried.

HABITAT AND ENVIRONMENTAL

A. Norristown Farm Park Dam Removal Grant to American Rivers.

Commentary:

The Commission has obtained \$200,000 from the Pennsylvania Turnpike Commission to mitigate impacts associated with Milepost A20 to Milepost A30 Total Reconstruction and Widening Project. The funding is earmarked to address the removal of Norristown Farm Park Dam and associated stream habitat enhancement. The dam, owned by the Pennsylvania Department of Conservation and Natural Resources, is located on Stony Creek, Montgomery County. Stony Creek is stocked with trout by the Commission. It also is inhabited by a warmwater fishery that includes redbreast sunfish, rock bass, smallmouth bass and largemouth bass. Staff propose to provide \$200,000 in the form of a grant to American Rivers, Inc. to perform the project. American Rivers will serve as project manager with the Commission's Division of Habitat Management providing the needed technical and administrative assistance on behalf of the Commission.

Briefer:

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

Recommendation:

Staff recommend that the Commission approve a grant of up to \$200,000 to American Rivers, Inc. for the removal of the Norristown Farm Park Dam and the Stony Creek improvements as described in the Commentary.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Sabatose to approve a grant of up to \$200,000 to American Rivers, Inc. for the removal of the Norristown Farm Park Dam and the Stony Creek improvements as described in the Commentary. Motion carried.

Other New Business

None.

Commissioner Agenda Items & Topics for July 2011 Commission Meeting

The deadline for the submittal of Commissioner agenda items and topics for the July 2011 Commission meeting was established as June 17, 2011.

Time and Place of July 2011 Commission Meeting

The next meeting is scheduled for July 11-12, 2011 and will be held in Harrisburg, PA.

Adjournment

A motion was made by Commissioner Sabatose and seconded by Commissioner Bachman to adjourn the meeting at approximately 12:20 p.m. Motion carried.