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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 98<sup>th</sup> Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, July 11 and 12, 2011, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on July 11 beginning at approximately 10:00 a.m. and on July 12 beginning at approximately 8:00 a.m. The public session for review of this agenda began at or about 11:30 a.m. on July 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 April 12, 2011 Meeting and the May 24, 2011**

**Special Meeting**

A motion was made by Commissioner Sabatose and seconded by Commissioner Ketterer to approve the April 12, 2011 and the May 24, 2011 minutes as written. Motion carried.

**Awards and Presentations**

Mark Hartle, Chief of Aquatic Resources, Division of Environmental Services, was presented with the Upper Delaware Council, Inc. 2011 Partnership Award for his work co-authoring a

white paper on managing water releases to Delaware River tributaries from New York City water supply reservoirs.

Waterways Conservation Officer Larry Furlong was presented with the Pennsylvania Boating Law Enforcement Officer of the Year Award by the National Association of State Boating Law Administrators and the Northern Association of Boating Administrators. This award is in recognition of his outstanding public service, unmatched professionalism in marine law enforcement and personal commitment to ensuring safe and enjoyable recreational boating.

Commissioner William R. Worobec was recognized for his outstanding leadership and dedication while serving as President of the Commission from July 13, 2010 to July 12, 2011.

### **Election of Commission President and Vice-President**

Commission President William R. Worobec presided over the elections. Commission President Worobec called for nominations for the office of President, and Commissioner Squires nominated Commissioner Robert A. Bachman as President. A motion was made by Commissioner Sabatose and seconded by Commissioner Gavlick to close the nominations. The motion was carried, and nominations were closed. The Commission elected Commissioner Bachman to serve as President of the Commission for 2011-2012.

Commission President Worobec then called for nominations for the office of Vice-President. Commissioner Sabatose nominated Commissioner Steven M. Ketterer as Vice-President. A motion was made by Commissioner Elliott and seconded by Commissioner Gavlick to close the nominations. The motion was carried, and nominations were closed. The Commission elected Commissioner Ketterer to serve as Vice-President of the Commission for 2011-2012.

Commission President Bachman announced that he made Commissioner Committee assignments for the upcoming year. He noted that there are many challenges ahead, and one of them is to address the impaired status of the Susquehanna River and the impact it has had on the smallmouth bass population. He asked the Habitat and Environmental Committee to place emphasis on this effort and work with the Pennsylvania Department of Environmental Protection to improve the water quality of the Susquehanna River. He also indicated that he would like the Fisheries Committee to continue with implementation of elements of the Strategic Plan to improve trout fishing and the unassessed waters program. He further indicated that the Legislative Committee should continue to focus on the Marcellus Shale impact fee and alternative funding initiatives. Finally, he requested all Committee chairs to provide him with their priorities for the upcoming year.

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

Executive Director John Arway highlighted the "April – June 2011 Quarterly Report" (Exhibit A) that was provided to Commissioners. He gave a review of his recent activities and planned upcoming events. The Commission has had a number of retirements, and Director Arway has been providing exit interviews for each employee. Employee Appreciation Day was implemented this year, and several staff took advantage of this new program. Commissioners

have been encouraged to participate as well. Director Arway announced that a historical marker will be placed at headquarters to recognize former Executive Director Ralph Abele for his leadership and achievements during his tenure at the Commission. Laurel Anders was recognized for her coordination of the “Paddle with the Pennsylvania Fish and Boat Commission” event held at Memorial Lake State Park on the evening of Monday, July 11. The public was invited to the event, and it included kayak and paddleboard instruction along with boating safety and fishing education. The event was a great success.

### **Announcement of Executive Session**

Commissioner Worobec announced that executive sessions were held on July 11 at 8:00 a.m. and on July 12 at 9:30 a.m. to discuss personnel and real estate matters.

### **Reports of Commissioner Committees**

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

The Executive and Planning Committee met on Monday, July 11, at approximately 10:05 a.m. Tim Schaeffer provided a Strategic Plan update and budgetary analysis. Tom Kamerzel provided an update on the fish kill hotline. Director Arway provided a presentation on Marcellus Shale natural gas development and impacts to aquatic resources.

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

The Administration Committee met on Monday, July 11, at approximately 2:45 p.m. Agenda items were discussed. Bernie Matscavage provided an update on license sales, boat registration and title sales, along with a cash flow statement review for the Fish Fund and the Boat Fund.

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

The Boating Committee met on Monday, July 11, at approximately 1:35 p.m. Larry Meddock, Executive Director, Water Sports Industry Association, provided a presentation on wakesurfing and tow rope length. Laurel Anders provided a summary of Safe Boating Week activities and of boating fatalities to date.

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

The Communications Committee met on Monday, July 11, at approximately 12:35 p.m. Updates on lapsed angler outreach and on the Cabela’s contest promotion were provided. Ted Walke provided an overview of the Memorial Day Fish-for-Free events.

#### **Fisheries (Commissioner Bachman) –**

The Fisheries Committee met on Tuesday, July 12, at approximately 8:05 a.m. Agenda items were discussed.

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

The Habitat and Environmental Committee met on Tuesday, July 11, at approximately 9:45 a.m. One agenda item was discussed. Mark Hartle provided updates on the progress with instream flows and reservoir releases and the Strategic Plan. An overview and implementation of action plans for aquatic invasive species and species of special concern was provided by Chris Urban.

Branden Ruhe, East Stroudsburg University, provided an update and status report on the Eastern Mud Turtle.

**Law Enforcement (Commissioner Ketterer) –**

The Law Enforcement Committee met on Monday, July 11, at approximately 3:10 p.m. Discussion items included the 20<sup>th</sup> Waterways Conservation Office class graduation scheduled for August 12. An update was provided on the Walnut Creek Marina operations, high profile investigations, promotions and Northcentral Region operations, and the Bureau of Law Enforcement cost containment measures. Southeast Regional Manager Ray Bednarchik and Waterways Conservation Officer Lee Creyer provided a presentation on the Southeast region.

The Committee acted upon proposed revocations. The Committee revoked the fishing privileges of two individuals for a period of one year. 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.

**Legislation (Commissioner Sabatose) -**

The Legislation Committee met on Monday, July 11, at approximately 11:15 a.m. Gary Moore provided a general legislative update. Tim Schaeffer provided updates on the reauthorization of the Sport Fish Restoration and Boating Trust Fund and the license flexibility bill. Director John Arway provided an update on consumptive use and water degradation fees and an impact fee.

**Public Comment to Commissioners and Staff**

Bill Ferris provided public comment regarding defining a riparian buffer plan for Big Spring Creek.

## ADMINISTRATION FINAL RULEMAKING

### A. 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, the Commission proposed a new regulation that requires all applicable anglers to register either with the Commission or NOAA.

A notice of proposed rulemaking was published at 41 Pa. B. 2444 (May 14, 2011) (Exhibit B). The Commission did not receive any public comments.

Upon review of this regulation prior to final consideration by the Commission, staff have determined that it is appropriate to add language to clarify that an angler is also in compliance if he or she meets the saltwater angler registration requirements of another state. This will allow compliance by anglers who otherwise meet NOAA’s requirements through the purchase of a marine license or registration in another state. Staff propose that the Commission adopt the regulation on final rulemaking with the following addition.

#### §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 **or has met the saltwater angler registration requirements of another state.**

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the regulation as set forth in the notice of proposed rulemaking with the addition described in the Commentary. If adopted, the new regulation will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Mascharka to adopt the regulation as set forth in the notice of proposed rulemaking with the addition described in the Commentary. The new regulation will go into effect on January 1, 2012. Motion carried.

## OTHER MATTERS

### B. Lease to Fairview Evergreen Nurseries, Inc., Fairview State Fish Hatchery, Erie County.

#### Commentary:

The Commission owns a +/-87-acre parcel of land in Fairview Township, Erie County, that is known as the Fairview State Fish Hatchery (SFH). The Commission has leased a portion of this property for 34 years to the Fairview Evergreen Nurseries, Inc., for use in conjunction with its local nursery business. The current lease area is +/-37 acres with a rent of \$4,600 per year. A drawing showing the existing lease area is attached as Exhibit C.

The Commission, at the time it purchased the hatchery property in 1972, had an informal agreement with Fairview Evergreen Nurseries, Inc. to lease part of any unused portion of the hatchery property. Prior to the Commission's purchase, Fairview Evergreen Nurseries, Inc. had a working relationship with the previous property owner. The Commission and Fairview Evergreen Nurseries' lease relationship has continued since the Commission acquired the hatchery property.

The Fairview Evergreen Nurseries' existing lease for the Fairview SFH land expired, but it continues to lease the subject area as a holdover tenant. Fairview Evergreen Nurseries is requesting to continue to lease the +/-37 acres of land at the Fairview SFH for nursery purposes under terms similar to the existing lease. Fairview Evergreen Nurseries is agreeable to a rental payment of \$4,600 per year for a term of five years.

#### Briefer:

Mark H. Mitchell, Chief, Property Services Section, Bureau of Engineering and Property Services

#### Recommendation:

Staff recommend that the Commission authorize the Executive Director to enter into a lease with Fairview Evergreen Nurseries, Inc., at the Commission's Fairview State Fish Hatchery in Erie County, as more particularly described in the Commentary.

#### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Mascharka to authorize the Executive Director to enter into a lease with Fairview Evergreen Nurseries, Inc., at the Commission's Fairview State Fish Hatchery in Erie County, as more particularly described in the Commentary. Motion carried.

C. Property Disposition to the Pennsylvania Department of Transportation, Big Spring Creek, Cumberland County.

Commentary:

The Commission owns a +/-235-acre tract of land in Cumberland County known as the Big Spring Creek property. This property was the site of the former Big Spring State Fish Hatchery. A portion of the Big Spring Creek property is located along Big Spring Creek and S.R. 3007, Section 007 (Big Spring Road). It is a Class A wild trout water and is also a heritage trout angling area.

The Pennsylvania Department of Transportation (PennDOT) is working on a bridge replacement project across Big Spring Creek on S.R. 3007 in West Pennsboro and North Newton Townships, Cumberland County. The current bridge is structurally deficient and will be replaced on existing alignment, but the new bridge will be widened to accommodate current minimum design criteria. Guide rail will be added on both sides of S.R. 3007 along both approaches to protect each corner of the bridge. Improvements will be made to the intersection at Log Cabin Road to increase the intersection radius.

The project will require the Commission to convey fee title to +/-0.02 acre for a permanent road right-of-way and +/-0.01 acre in slope easement. The project also will require PennDOT to acquire temporary construction easement areas of less than ¼ acre from the Commission. A drawing depicting the subject area, as estimated by staff, is attached as Exhibit D. The areas of the temporary construction easement will revert back to the Commission at the completion of the project. The existing parking lot and access road immediately south of the project area will remain accessible to the public during construction activities.

The term of the project will be less than one full construction season. The immediate road area will be closed and traffic will be detoured, but the public and the Commission will still have access to the creek on both sides of the bridge. PennDOT will put the project out for bid in April 2012 (let date) with construction anticipated to begin in June 2012. Right-of-way conveyances must be completed by January 2012 to meet this let date. In-stream work will be completed during 2012 as the permit allows.

During the course of the project, PennDOT will be providing in-stream habitat work as requested by the Commission's Habitat Division. This work will consist of narrowing the channel by placing a rock bench at the right bank under the bridge to increase velocity. In addition, PennDOT will provide the Commission with benefits similar to those offered other claimants impacted by highway improvement projects, such as being paid fair market value for any property acquired and restoration of the impacted and adjoining areas.

Briefer:

Mark H. Mitchell, Chief, Property Services Section, Bureau of Engineering and Property Services

Recommendation:

Staff recommend that the Commission authorize the disposition of the property rights to the Pennsylvania Department of Transportation as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Elliott to authorize the disposition of the property rights to the Pennsylvania Department of Transportation as more particularly described in the Commentary. Motion carried.

## FISHERIES FINAL 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 jiggging 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 has been 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. The Commission therefore proposed amendments addressing these matters.

A notice of proposed rulemaking was published at 41 Pa. B. 2444 (May 14, 2011) (Exhibit B). The Commission did not receive any public comments concerning the proposal.

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 on January 1, 2012.

Action:

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

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

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.

In a notice of proposed rulemaking that was published at 41 Pa. B. 2447 (May 14, 2011) (Exhibit E), the Commission proposed a five-year moratorium on fishing at Leaser Lake to enable the development of a high quality warm and coolwater fishery through the stocking of fingerling of select fish species. Specifically, the notice of proposed rulemaking provided that the lake would be closed to all fishing until June 18, 2016. The Commission did not receive any comments regarding this proposal.

Upon review of the proposed regulation prior to final consideration by the Commission, Fisheries Management staff have determined that the Commission should not institute a complete moratorium on fishing but instead delay the stocking of adult trout until 2014. This approach is necessary to facilitate development of a self sustaining shiner population required to maintain the desired high quality warm/coolwater fishery. Staff also recommend that the Commission allow for the harvest of trout under the Commonwealth's inland seasons, sizes and creel limits and impose catch and release fishing for all other fish species. Staff believe that this approach will allow the fishery to develop under protective regulations while offering acceptable levels of recreational angling opportunities. Staff propose that the miscellaneous special regulation remain in effect until the opening day of bass season on June 18, 2016.

Staff propose that the Commission adopt the following regulation on final rulemaking:

§65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
***	***	***
<b><u>Lehigh</u></b>	<b><u>Leaser Lake</u></b>	<b><u>All species except trout – catch and release/no harvest; it is unlawful to take, kill or possess any fish except trout. All fish caught other than trout must be immediately returned unharmed. Trout – inland regulations apply. See §61.1 (relating to Commonwealth inland waters). This miscellaneous special regulation will remain in effect until June 18, 2016.</u></b>
***	***	***

The positive aspect of this regulatory change is that it will provide anglers the opportunity to fish for adult trout beginning two years following refilling and immediate angling opportunities for warm and cool water fish populations as they grow and reach acceptable lengths for angling. The two-year loss of recreational angling opportunities for adult stocked trout is a negative aspect of this restoration plan; however, Fisheries Management staff believe that the benefits outweigh the short-term loss of recreation.

Fisheries Management staff will monitor the fish populations and will recommend appropriate special regulations prior to 2016 should the fish populations develop quicker than anticipated. 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 opportunities 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 adopt the amendment as set forth in the Commentary. If adopted, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Squires to adopt the amendment as set forth in the Commentary. The amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

## PROPOSED RULEMAKING

C. Amendments to Sections 69.11 and 69.12 and Addition of Section 69.12b to Allow for Adaptive Creel Limits for Walleye and Yellow Perch Based on the Annual Quotas Established by the Lake Erie Committee and Housekeeping Changes.

### Commentary:

The Lake Erie Committee (LEC) is a convening body consisting of fisheries managers from Pennsylvania, Ohio, New York, Michigan and Ontario, Canada, operating under the auspices of the Great Lakes Fishery Commission (GLFC). Critical management issues related to Lake Erie fisheries are discussed and decisions are derived through consensus among the members in the best interest of the resource. One major responsibility of the LEC is to set annual lake wide harvest limits (quotas) for walleye and yellow perch in the form of a Total Allow Catch (TAC) for these species.

Annually, a range (minimum, mean, maximum) of recommended allowable harvests (RAH) for walleye and perch are generated by agency biologists that serve on technical task groups, the Walleye Task Group (WTG) and the Yellow Perch Task Group (YPTG). A compilation of assessment and fishery survey data from across Lake Erie are used to generate population estimates of perch and walleye utilizing state of the art catch-at-age models. Based on these abundance estimates, the RAH's are calculated by the WTG and YPTG and forwarded to the LEC to provide safe guidelines in establishing the annual TAC. Each March, the LEC reviews the RAH of the WTG and YPTG and sets the TAC for yellow perch and walleye based on a set of biological and social metrics.

After the TAC is established, individual harvest limits for each State (and Ontario) are apportioned, based on the percentage of Lake Erie owned by each jurisdiction. It is the responsibility of each fisheries management agency to ensure that local TAC's are not exceeded. These harvest controls are usually met through regional commercial quotas and angling regulations (creel limits, minimum size limits and closed seasons).

A challenge for all of the state fisheries agencies is applying angling regulations in a timely manner, synchronized with the condition of fish stocks. Because regulatory change is typically a lengthy process, harvest regulation changes cannot usually be applied in ample time to provide for effective control. Another issue is the application of analogous sport harvest regulations across jurisdictions. Many anglers believe that when more conservative or liberal regulations are appropriate, they should be applied across the board, effectively sharing in both the pain and the bounty. Ohio implemented this strategy in 2010, Michigan in 2011, and New York expects to adopt this proposal in 2012.

The flexibility of being able to apply creel limits in April, before the onset of each fishing season (similar to setting commercial quotas), will align the harvest controls (regulations) with the condition of the stocks and establish fishing regulations similarly across jurisdictions. Staff therefore propose the following amendments. The amendments to §§69.11, 69.12(c)(4) and portions of 69.12(f) are housekeeping changes. The other

amendments to §69.12(f) and the addition of §69.12b implement the adaptive management approach to establishing daily limits for walleye and yellow perch.

§ 69.11. Applicability of fishing regulations.

Except as otherwise provided in this subchapter, this subpart applies to fish and sport fishing in Lake Erie, **[and its] Lake Erie tributaries and Presque Isle Bay, including peninsula waters.**

§ 69.12. Seasons, sizes and creel limits—Lake Erie, **[and] Lake Erie tributaries and Presque Isle Bay including peninsula waters.**

\* \* \*

(c) It is unlawful to take, catch or kill more than 1 day’s limit of any species of fish as specified in the following chart during 1-calendar day. It is unlawful to possess more than 1 day’s limit of any species of fish as specified in the following chart except under the following circumstances:

\* \* \*

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. **A fish that is injured or is bleeding as a result of being caught will not be considered unharmed and will be considered as part of a daily creel or possession limits.** Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournament and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

\* \* \*

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

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
***	***	***	***
WALLEYE	January 1 to midnight March [15] <b><u>14</u></b> and [12:01 a.m. the first <b><u>Saturday in</u></b> ] May <b><u>1</u></b> to December 31.	15 inches	[6] <b><u>Established annually by April 15**</u></b>
***	***	***	***

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
TROUT and SALMON	<b>8 a.m. [F]</b> first Saturday after April 11 until midnight Labor Day.	9 inches	5 (combined species only 2 of which may be lake trout).
	12:01 a.m. the day after Labor Day until [ <b>midnight</b> ] <b>12:01 a.m.</b> on the Friday before the first Saturday after April 11.	15 inches	3 (combined species only 2 of which may be lake trout).
***	***	***	***
YELLOW PERCH	From December 1 through [ <b>March 31</b> ] <b>April 30</b>	7 inches	<b>[30] Established annually by April 15**</b>
	From [ <b>April 1</b> ] <b>May 1</b> through November 30	None	<b>[30 ] Established annually by April 15**</b>
***	***	***	***

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**\*\* See § 69. 12b (relating to Lake Erie walleye and yellow perch adaptive management for establishing daily limit). After the Executive Director establishes the daily limit for the year, the information will be posted on the agency webpage and will be available from any Commission office.**

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**§ 69.12b. Lake Erie walleye and yellow perch adaptive management for establishing daily limits.**

**The Executive Director or designee will monitor the walleye and yellow perch populations in Lake Erie taking into account commercial and recreational harvest. Based on that information, the Executive Director will establish daily limits for walleye and yellow perch that are necessary and appropriate for the better protection and management of the fishery. The Executive Director will establish the daily limits for walleye and yellow perch each year and will announce them on or before April 15. In any given year, the Executive Director may revise the daily limit for walleye or yellow perch if he determines that conditions so warrant. The daily limits will remain in effect until the Executive Director establishes new daily limits. Anglers are responsible for obtaining the current daily limits for walleye and yellow perch on Lake Erie including Presque Isle Bay prior to fishing those waters.**

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 or upon publication in the *Pennsylvania Bulletin*, whichever occurs later.

Action:

A motion was made by Commissioner Elliott and seconded by Commissioner Mascharka 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 or upon publication in the *Pennsylvania Bulletin*, whichever occurs later. Motion carried.

D. Addition of Section 69.19 to Establish a Lake Erie Cast Net Permit for Harvest of Emerald Shiners and Spottail Shiners.

Commentary:

The discovery of viral hemorrhagic septicemia (VHS) in the Great Lakes watershed resulted in the creation of federal and state regulations intended to contain the disease within the Great Lakes. The United States Department of Agriculture - Animal Plant Health Inspection Service (USDA-APHIS) prohibits the interstate transport of 37 VHS susceptible fish species, unless they are determined to be VHS free based on analysis from a certified laboratory. Similar regulations imposed by the Pennsylvania Department of Agriculture and the Commission prohibit the transport of 27 of these species outside of the Great Lakes watershed (10 of these species are marine or not found in the Great Lakes). Among the VHS susceptible species listed are emerald and spottail shiners, which are popular baitfish preferred by Lake Erie yellow perch anglers. These restrictions have resulted in limited availability and significant increases in the cost of these species at local bait shops. In response, the sportsmen's group, SONS of Lake Erie, has requested that harvest limits of emerald shiners be increased from 50 per day to 150 per day.

Staff identified two concerns with this request: 1) the formation of entitlement regulations unique to Lake Erie and 2) protest by Pennsylvania's Lake Erie commercial seine fishery, which pays for a license that allows for the harvest and sale of baitfish. Upon review, staff determined that this issue could be best addressed by implementing a cast/throw net permit similar to the permit system currently in place on Blue Marsh Lake, Nockamixon Lake, Beltzville Lake, Raystown Lake, Lake Wallenpaupack, Lake Arthur and Shenango River Lake that allows for the harvest of certain baitfish (gizzard shad or alewife) in excess of the creel limit of 50 per day provided under the general fishing regulations. Including Lake Erie under this permit system will not provide a special privilege to Erie anglers in the form of enhanced baitfish harvest limits beyond what is allowed in other areas of the Commonwealth. In addition, it will address possible opposition by commercial seine operators because anglers will also be paying for the opportunity to harvest additional shiners.

Staff therefore propose the following new regulation:

**§ 69.19. Permit for the use of cast nets, throw nets or dip nets by sport anglers.**

**(a) The Executive Director or designee may issue permits for the use of cast nets, throw nets or dip nets for the taking of emerald shiners or spottail shiners from Lake Erie including Presque Isle Bay.**

**(b) In addition to other permit conditions that the Executive Director may require, the cast nets or throw nets may be no greater than 10 feet in radius (20 feet in diameter) and the dip nets may be no greater than 10 feet in diameter.**

**(c) Notwithstanding the provisions of § 69.12 (relating to seasons, sizes and creel limits – Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters), holders of a permit issued under this section may take, catch, kill or possess a daily creel limit of 200 emerald shiners and spottail shiners (combined species).**

**(d) A person may apply for a permit for the use of cast nets, throw nets or dip nets by completing the form prescribed by the Commission. The applicant shall submit the completed form to the Commission along with the fee specified in section 2902 of the code (relating to net permits).**

**(e) It is unlawful to use cast nets, throw nets or dip nets for the taking of emerald shiners or spottail shiners or to take, catch, kill or possess more than the daily creel limit of emerald shiners or spottail shiners as set forth in § 69.12 without the required permit. A permit for the use of cast nets, throw nets or dip nets shall be carried so that it can be presented to an officer authorized to enforce the code. The permit holder is the only person authorized to use the cast net, throw net or dip net.**

**(f) It is unlawful to use emerald shiners or spottail shiners taken under a permit for the use of cast nets, throw nets or dip nets as bait in any water other than Lake Erie and Lake Erie tributaries including Presque Isle Bay.**

**(g) It is unlawful to sell, offer for sale, trade or barter live, dead or preserved emerald shiners or spottail shiners taken under a permit for the use of cast nets, throw nets or dip nets.**

**(h) It is unlawful to transport or export live, dead or preserved emerald shiners or spottail shiners taken under a permit for the use of cast nets, throw nets or dip nets out of the Lake Erie watershed.**

**(i) The holder of a permit for the use of cast nets, throw nets or dip nets may possess an unlimited number of preserved emerald shiners or spottail shiners at his residence provided the residence is located within the Lake Erie watershed.**

**(j) It is unlawful for a holder of a permit under this section to use a cast net, throw net or dip net within 100 yards of a holder of a commercial seine license.**

**(k) It is unlawful for a holder of a permit under this section to use a cast net, throw net or dip net within an area 300 feet from the mouth of any stream or within the confines of a tributary stream to Lake Erie.**

**(l) It is unlawful for a holder of a permit under this section to use a cast net, throw net or dip net to interfere with sport anglers or boaters.**

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 new regulation described in the Commentary. If adopted on final rulemaking, the new regulation will go into effect on January 1, 2012 or upon publication in the *Pennsylvania Bulletin*, whichever occurs later.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Worobec to approve the publication of a notice of proposed rulemaking containing the new regulation described in the Commentary. If adopted on final rulemaking, the new regulation will go into effect on January 1, 2012 or upon publication in the *Pennsylvania Bulletin*, whichever occurs later. Motion carried.

E. Amendments to Chapter 69 (Fishing in Lake Erie and Boundary Lakes), Subchapters C (Commercial Fishing Licenses) and D (Commercial Fishing, Seasons and Nets) to Increase the Number of Commercial Seines from 10 to 40 and Implement Other Commercial Fishing Changes.

Commentary:

Related to the inadequate supply of shiners is the limited availability of commercial seine licenses for Lake Erie. Since 2007, there have been numerous requests for commercial seine licenses that have not been granted due to regulatory constraints limiting the availability of seine licenses. Currently there are only 10 seine licenses available, which are held by six individuals (one individual holds three licenses, two individuals hold two licenses and three individuals hold one license). It should be noted that seine licenses are assigned to an individual net, which sometimes results in multiple licenses per applicant.

The impact of this fishery on shiner populations has been minimal. Harvest by the existing commercial seine fishery has averaged about 5,700 pounds annually since 1987, representing less than 2% of the total biomass estimates from assessment trawls conducted by the Commission's Lake Erie Research Unit. Harvest can fluctuate significantly and is correlated to the abundance of the population. Harvest has steadily increased in the last three years and peaked at 17,673 pounds in 2010, coinciding with prodigious increases in emerald shiner abundance and demand for this popular baitfish by perch anglers during this same time period.

Increasing the number of available seine licenses in §69.21 from 10 to 40 should increase the local availability of shiners and help control the escalating cost of baitfish while having no measurable impact on shiner populations. In addition, limiting the commercial harvest to emerald and spottail shiners, gizzard shad and alewife in §69.35 will reduce the potential of accidental introduction of exotic species (i.e., round gobies) via feral baitfish collections.

In addition to these change, staff have conducted a comprehensive review of Subchapters C and D and propose amendments to other commercial fishing regulations. Staff propose the amendments set forth in Exhibit F.

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 or upon publication in the *Pennsylvania Bulletin*, whichever occurs later.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Elliott 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 or upon publication in the *Pennsylvania Bulletin*, whichever occurs later. Motion carried.

F. Amendment to Section 71.7 (Triploid Grass Carp) to Increase Permit Fees.

Commentary:

Under section 2904 of the Fish and Boat Code, 30 Pa. C.S. §2904 (relating to permits for protection and management of fish), the Executive Director with the Commission's approval may require permits for the taking, catching, killing, possession, introduction, removal, importing, transporting, exporting or disturbing of fish when it is determined that the permits may be needed to insure proper protection and management of any species of fish. This section also authorizes the Commission to establish fees and to promulgate regulations. Under the section, the Commission may not establish a fee in excess of \$5 per permit for trout/salmon permits; there is no other restriction on fees. This section further provides that the Commission may not issue permits under the authority of the section for any game fish other than trout or salmon.

The Commission adopted regulations at 58 Pa. Code §71.7 pertaining to the possession and introduction of triploid grass carp (white amur). Section 71.7 of the Commission's regulations provides that permits shall be required for possessing triploid grass carp, introducing them into Commonwealth waters and importing or transporting them into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit. A person who wishes to import triploid grass carp into this Commonwealth shall obtain from the Commission a triploid grass carp importation/transportation permit.

This program was initiated by the Commission in January 1994. Two types of permits with associated fees were established, and those fees are the same today. A triploid grass carp possession/introduction permit is \$20. A triploid grass carp importation/transportation permit is \$50.

For bodies of water that are more than 5 acres in surface area or are considered to be of special concern, an applicant is required to submit an environmental inspection report prepared by a biologist or fisheries or environmental scientist acceptable to the Commission. This is a detailed report that requires personal inspection of the body of water. Currently, section 71.7 states that the applicant may request the Commission to conduct the inspection and prepare the report upon payment of a fee of \$200. Today, this fee would not begin to cover costs that would be incurred by staff to perform such an environmental inspection of a large body of water or a water of special concern.

The Aquatic Resource Section within the Commission's Bureau of Fisheries, Division of Environmental Services, administers the triploid grass carp program. Administering the program requires staff to review permit applications, maintain a database, process and approve the permits. Reviewing the applications requires a technical review, some field views and clerical support.

In 2010, the Commission issued 307 triploid grass carp permits, and in the past five years, approximately 1700 triploid grass carp permits have been issued by the Commission. Staff time spent reviewing and processing triploid grass carp permits costs approximately \$75 per

permit. Staff therefore propose to increase the fees in section 71.7 to help offset inflation and increasing program costs and to remove the option for applicants to request the Commission to perform the environmental inspection for a \$200 fee.

Staff propose that §71.7 be amended as follows:

§ 71.7. Triploid grass carp.

\* \* \*

(c) *Permit required.*

(1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid grass carp (white amur) or introducing them into Commonwealth waters and for importing or transporting triploid grass carp into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit for a fee of ~~[\$20]~~ **75**. A person who wishes to import triploid grass carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid grass carp importation/ transportation permit for a fee of ~~[\$50]~~ **75**. Permits shall be applied for on forms supplied by the Commission. Applications for permits may be obtained from: Triploid Grass Carp Manager, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, PA 16823-9616. Permits will not be issued until after January 1, 1994.

(2) A person aggrieved by a Commission staff action on a permit application may appeal under Chapter 51, Subchapter E (relating to permit procedures) and 1 Pa. Code Part II (relating to the general rules of administrative practice and procedure).

\* \* \*

(e) *Restrictions on introduction of triploid grass carp.*

\* \* \*

**[(6) When an applicant for a triploid grass carp permit is required to submit an environmental inspection report, the applicant may request the Commission to conduct the inspection and prepare the report upon payment of a fee of \$200.]**

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 approved on final rulemaking, the amendments will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Worobec to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If approved on final rulemaking, the amendments will go into effect on January 1, 2012. Motion carried.

## DESIGNATIONS

G. Extension of Delayed Harvest Artificial Lures Only Area: Quittapahilla Creek, Section 04, Lebanon County.

Commentary:

In 1992, a 1.1 mile portion of Quittapahilla Creek in the vicinity of Annville, Lebanon County, was approved for management in the Delayed Harvest Artificial Lures Only (DHALO) Program. The section extended from the Spruce Street Bridge (T-398) downstream to the Route 934 Bridge. Following landowner postings in 1996 at the downstream portion of the DHALO area, the stream section was reduced to 0.9 miles in length and currently extends from the Spruce Street Bridge (T-398) downstream to the lower boundary of the Quitty Nature Park. Ownership of the current section is 50% public and 50% private and is entirely open to fishing. The 2.9-mile section immediately downstream from the DHALO section is stocked with adult trout and managed with statewide regulations. Land ownership in this section is entirely private and is open to fishing.

During 2010, Fisheries Management staff were asked by a landowner to determine the feasibility of extending the current section downstream 0.2 miles to the Route 934 Bridge (the original DHALO area). Staff sent letters to property owners who would be affected by the proposed extension to determine current attitudes towards the proposal. All 10 property owners returned the letters, and all were in favor of the proposed extension. Due to overwhelming support for the extension, staff recommend that the Commission extend the section of Quittapahilla Creek that is currently managed as a DHALO Area under §65.6 from 0.9 miles to 1.1 miles with the new limits being from the Spruce Street Bridge (T-398) downstream to the Route 934 Bridge.

A notice of proposed designation was published at 41 Pa. B. 2914 (June 4, 2011) (Exhibit G). 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 extend the section of Quittapahilla Creek currently managed as a Delayed Harvest Artificial Lures Only Area under 58 Pa. Code §65.6 as set forth in the notice. If approved, the designation will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Squires and seconded by Commissioner Lichvar to extend the section of Quittapahilla Creek currently managed as a Delayed Harvest Artificial Lures Only Area under 58 Pa. Code §65.6 as set forth in the notice. The designation will go into effect on January 1, 2012. Motion carried.

#### H. Removal of Big Bass Regulations: Memorial Lake (7D), Lebanon County.

##### Commentary:

Memorial Lake is an 84-acre impoundment owned by the Pennsylvania Department of Military and Veterans Affairs (DMVA) and leased by the Pennsylvania Department of Conservation and Natural Resources. It is located at Memorial Lake State Park within the boundary of the Indiantown Gap Military Reservation in Lebanon County. The dam for Memorial Lake was constructed in 1946 by DMVA to create a recreation and rehabilitation site for wounded servicemen stationed at Indiantown Gap Military Reservation. The lake was made a nursery water by the Pennsylvania Fish Commission in 1952 and remained closed to public fishing until the Department of Environmental Regulation established a park around the lake and opened it to public fishing for the first time in 1964. The lake is located on Indiantown Run, 2.8 km (1.75 mi.) upstream of its confluence with Swatara Creek.

The Commission has managed Memorial Lake with Big Bass Special Regulations since 1992. Memorial Lake was placed into the Big Bass program in an attempt to increase the number of bass larger than 12 inches and to intensify the predation on bluegill over a wider range of size groups to bring predator and prey communities into balance. Surveys were conducted in 1992, 1993, 1996, 1997, 1999, 2005 and 2009 to evaluate the effects of Big Bass regulations on the fishery. Results from the surveys indicate that on average, abundance has increased following application of the Big Bass program, and the Big Bass regulations were successful at stockpiling largemouth bass between 12 inches and 15 inches in length. However, they resulted in little or no improvement in the density of largemouth bass greater than 15 inches. Additionally, below average growth rates and poor condition indices, post implementation, were likely caused by a near doubling of density of largemouth bass  $\geq 12$  inches and  $<15$  inches. A lack of legal size bass, poor bass condition indices and an increased propensity for anglers to practice catch and release fishing suggest that the rule be removed. This represents a paradigm shift. Where in the past, rules were applied to limit harvest, here, we anticipate that removal of the Big Bass regulations will not lead to any change in size structure or angler harvest behavior. Therefore, staff recommend removal of Big Bass regulations from Memorial Lake in favor of statewide bass regulations.

A notice of proposed designation was published at 41 Pa. B. 2914 (June 4, 2011) (Exhibit G). 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 Memorial Lake from its list of Big Bass Regulation waters managed under 58 Pa. Code §65.9 as set forth in the notice. If approved, this change will go into effect January 1, 2012.

##### Action:

The Fisheries Committee recommended that this item be “tabled.” During the full Commission meeting, a motion was made by Commissioner Worobec and seconded by Commissioner Mascharka to “table” this agenda item and defer consideration until a later date. Motion carried.

I. Change to Section Limits of Exhibition Area on Spring Creek, Centre County, and Extension of Section Managed by Catch and Release All-Tackle Regulations.

Commentary:

In April 2011, Fisheries Management Area 3 staff was contacted by the Borough of Bellefonte regarding the Borough's interest in reducing the length of Spring Creek that is closed to angling as an exhibition area in downtown Bellefonte to provide for increased public angling opportunities. The Commission currently manages Spring Creek, Section 05, as an exhibition area from the railroad trestle located 100 meters upstream of the dam in Talleyrand Park downstream to Lamb Street Bridge, a length of approximately 550 meters. It is proposed that the reach of Spring Creek flowing through Talleyrand Park be managed as an exhibition area and that the adjacent reach downstream of the park be opened to public angling. The new limits of the exhibition area will be from the railroad trestle located 100 meters upstream of the dam in Talleyrand Park downstream to High Street Bridge, a distance of approximately 200 meters.

If approved, it is also proposed that the Commission manage the approximately 350-meter reach of Spring Creek that will be re-opened to public angling as part of Section 06 under catch and release all-tackle regulations. The description of the limits of the catch and release all-tackle area will remain the same. They are from the Boalsburg Road Bridge (SR 3010) at Oak Hall upstream of Hanson Quarry (formerly HRI/Neidig Bros. Quarry) downstream to the mouth with the exception of the special regulations area at Fishermen's Paradise and the exhibition area in Bellefonte.

There is a long history of trout angling in Spring Creek in Bellefonte, and the Borough is interested in restoring public angling opportunities to a portion of the reach while still providing for an exhibition area. Staff fully support the proposed change as it will open approximately 350 meters of Spring Creek to public angling while still providing for an exhibition area in the park.

Notices of proposed designation were published at 41 Pa. B. 2914 (June 4, 2011) (Exhibit G). The Commission received one public comment opposing the proposed re-designations. 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 revise the limits of the exhibition area on Spring Creek, Centre County, and extend the section currently managed under catch and release all-tackle regulations under 58 Pa. Code §65.15 as set forth in the notice. If approved, the changes will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Worobec to revise the limits of the exhibition area on Spring Creek, Centre County, and extend the section currently managed under catch and release all-tackle regulations under 58 Pa. Code §65.15 as set forth in the notice. The changes will go into effect on January 1, 2012. Motion carried.

J. Change in Designation of Four Lakes from Approved Trout Waters to Approved Trout Waters Open to Year-Round Fishing.

Commentary:

The Commission stocks lakes and streams throughout the Commonwealth with adult trout to provide seasonal recreational trout angling opportunities. By definition, these waters are officially classified as “approved trout waters.” Approved trout waters are closed to all fishing from March 1 to 8:00 a.m. on the opening day of trout season.

Area Fisheries Managers have identified four lakes in southeastern and southcentral Pennsylvania where the approved trout waters designation limits angling opportunities for other popular fish species, such as panfish and black bass. The designation of these four lakes as “Approved Trout Waters Open to Year-Round Fishing” will allow angling to occur from March 1 through the opening day of trout season and will increase recreational angling opportunities on these waters. From 8:00 a.m. on the opening day of trout season through Labor Day, Commonwealth inland size and creel limits for trout apply. From January 1 through the last day of February and from the day after Labor Day through December 31, “extended season” size and creel limits for trout apply. These lakes will be open to fishing from March 1 through the opening day of trout season; however, no trout will be allowed to be taken or possessed on these lakes during this period. All four waters are in the Regional Opening Day of Trout Season Program.

Lakes proposed to be designated as Approved Trout Waters Open to Year-Round Fishing are:

County	Water
Bucks	Lake Luxembourg
Cumberland	Laurel Lake
Lancaster	Muddy Run Recreation Lake
Schuylkill	Sweet Arrow Lake

A notice of proposed designation was published at 41 Pa. B. 2914 (June 4, 2011) (Exhibit G). 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 designate the four lakes as Approved Trout Waters Open to Year-Round Fishing managed under 58 Pa. Code §65.19 as set forth in the notice. If approved, the new designations will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Lichvar to designate the four lakes as Approved Trout Waters Open to Year-Round Fishing managed under 58 Pa. Code §65.19 as set forth in the notice. The new designations will go into effect on January 1, 2012. Motion carried.

K. Addition to the Class A Wild Trout Waters List: Big Spring Creek, Section 02, Cumberland County.

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 renewable natural resources meriting special consideration in the development of fisheries management plans and water quality/habitat protection. Class A wild trout populations represent the best of Pennsylvania’s naturally reproducing trout populations. Criteria developed for Class A Wild Trout populations are species specific. Wild Trout Abundance Class Criteria include provisions for wild brook trout, wild brown trout, mixed wild brook and brown trout, and wild rainbow trout populations. All must have at least 0.1 kg/ha (0.089 lbs/acre) of trout of the particular species less than 15 cm (5.9 inches) in total length. Biomass minimums for wild brown trout, wild brook trout and mixed wild brook/brown trout populations, where neither species comprises 75 percent or more of the biomass, are 40 kg/ha (35.6 lbs/acre), 30 kg/ha (26.8 lbs/acre), and 40 kg/ha (35.6 lbs/acre), respectively. The biomass minimum criterion for wild rainbow trout is a total biomass of wild rainbow trout less than 15 cm (5.9 inches) total length of at least 2.0 kg/ha (1.78 lbs/acre).

During a survey conducted on August 29, 2009, Commission staff documented a population of wild rainbow trout in Big Spring Creek Section 02 with a total biomass of 90.91 kg/ha (80.91 lbs/acre). This biomass estimate included 6.62 kg/ha (5.89 lbs/acre) of wild rainbow trout less than 15 cm (5.9 inches) which exceeds the minimum criteria of 2.0 kg/ha (1.78 lbs/acre) for Class A rainbow trout designation.

Rainbow trout biomass data from Big Spring Creek, Cumberland County, Section 02

County	Stream	Limits	Rainbow Trout < 15 cm (5.9 in; kg/ha)	Length (miles)
Cumberland	Big Spring Creek – Section 02	Former Piper Mill Dam (RM 4.47) DNS to Nealy Rd Bridge (RM 3.54)	6.62	0.93

A notice of proposed designation was published at 41 Pa. B. 2913 (June 4, 2011) (Exhibit G). 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 approve the addition of Big Spring Creek, Section 02, Cumberland County, to its list of Class A wild trout waters. If approved, this designation will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Worobec to approve the addition of Big Spring Creek, Section 02, Cumberland County, to its list of Class A wild trout waters. This designation will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

## OTHER MATTERS

### L. Great Lakes Restoration Initiative Aquatic Invasive Species Grant.

#### Commentary:

At its January 25, 2011 meeting, the Commission approved a grant of up to \$297,025 of Great Lakes Restoration Initiative (GLRI) pass-through monies to the Pennsylvania Department of Environmental Protection (DEP). The purpose of the grant is to implement elements of Pennsylvania's Aquatic Invasive Species (AIS) Management Plan. Since the grant was approved, a task that was originally assigned to the Commission has been transferred to DEP, thus requiring an additional \$8,649 of the GLRI pass-through monies to be provided to DEP. This task will require DEP to purchase materials and supplies to reduce the spread of AIS by DEP personnel working in and near Lake Erie.

In implementing the Pennsylvania AIS Management Plan, 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; (5) piloting innovative control methods; and (6) purchasing watershed-dedicated equipment, materials and supplies for use by personnel traveling between watersheds having the potential to infect or be infected by Lake Erie as well as within the Lake Erie watershed. To fulfill these duties, DEP will require a total of \$305,674 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 \$305,674 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 Elliott and seconded by Commissioner Mascharka to approve a grant of up to \$305,674 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.

M. Grant to United States Fish and Wildlife Service for the Collection of American Shad Eggs from the Potomac River to Support American Shad Restoration in the Susquehanna River Basin.

Commentary:

This item seeks approval to establish a five year agreement with the United States Fish and Wildlife Service (FWS) for the collection of American shad eggs from the Potomac River during the spring spawning runs of 2012 through 2016.

The Commission cooperates with various state and federal agencies and hydropower companies to restore American shad to the Susquehanna, Lehigh and Schuylkill Rivers. Restoration efforts are coordinated through the Susquehanna River Anadromous Fish Restoration Cooperative (SRAFRFC) and the Delaware River Fish and Wildlife Management Cooperative (DRFWMC). One component of this effort is production of hatchery-reared American shad larvae at the Commission's Van Dyke Hatchery. Fertilized American shad eggs are required to initiate the hatchery activities. These eggs may be obtained from various sources, including the Potomac, Susquehanna and Delaware Rivers.

The importance of the Potomac River as an egg source for American shad restoration on the Susquehanna River is quite apparent when comparing egg yields and viabilities between collection operations. Over the past five seasons (2006-2010), strip spawning operations conducted by the FWS on the Potomac River have produced more than 44.7 million eggs with an average viability of 38.8% or some 17.3 million eggs that ultimately hatched. Strip spawning operations on the Delaware River (conducted by Commission Fisheries Management Area 5 staff) produced 22.1 million eggs between 2006 and 2010 with an average viability of 33.8%. Tank spawning operations on the Susquehanna River over the same time period produced 36 million eggs with an average viability of 17.1% or some 6.2 million eggs for culture work.

Between 1989 and 2006, the Hudson River was a vital source of fertilized American shad eggs. No eggs have been collected from the Hudson River since 2006 due to concerns over stock declines in that river. The loss of the Hudson River as an egg source is unfortunate because of its consistent production of high quality eggs. Egg production from the Delaware, Potomac and Susquehanna rivers have been consistently below the historical production from the Hudson River and it has become apparent that additional or expanded sources of eggs will be required to meet the goal of 10-15 million larvae stocked.

Vital components of American shad restoration in the Susquehanna River basin are reliable sources of high quality eggs and experienced field crews. The Potomac River has become a crucial component in recent years due not only to the loss of the Hudson River as an egg source but also because of the greater volumes of viable eggs provided for culturing (when compared to the Delaware and Susquehanna egg sources). Furthermore, the FWS field crew responsible for egg collections on the Potomac River has become very proficient and reliable in locating spawning areas, collecting fish, fertilizing eggs and delivering egg shipment to the Van Dyke hatchery.

There are three primary objectives of this project:

- (1) *Collection & Delivery:* Collection of a maximum number of fertilized American shad eggs (up to 10 million per year) from the Potomac River via gillnetting (or other collection methods mutually acceptable to the Commission and FWS) and strip spawning of ripe

females and males. Fertilized and water hardened eggs are to be packaged and delivered to the Van Dyke Hatchery.

- (2) *Biological Sample Collection & Analysis:* (a) Collection of up to 60 adult American shad for viral assays once each spring (assay work conducted by FWS staff at the Lamar National Fish Hatchery and Northeast Fishery Center); and (b) Collection of scales and otolith samples and sex and length data from a sub-set of fish used for spawning (as required by Potomac River Fisheries Commission collection permit).
- (3) *Daily & Final Reporting:* (a) Daily, oral reports filed by FWS field supervisor after each egg collection to update Van Dyke Hatchery staff on success of egg collection efforts, estimated time of arrival of eggs and prospects for egg collection efforts for the next nights' fishing; and (b) Draft final report filed by FWS by August 15 of each year of the agreement.

The annual costs for collection of American shad eggs from the Potomac River by the FWS are estimated at \$111,200 in 2012 and 2013, \$113,500 in 2014, \$115,700 in 2015 and \$118,000 in 2016. The entire five year project cost of \$569,600 is expected to be borne by the Commission. However, annual costs or a portion of annual costs may be defrayed through grant sources such as Atlantic Coastal Cooperative Fisheries Management Act which funds “*Bio-monitoring and Assessment Project for American Shad and River Herring in the Susquehanna River Basin, July 1, 2010 through June 30, 2015,*” and/or additional grant funding sources that may become available.

Briefer:

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

Recommendation:

Staff recommend that the Commission authorize the Executive Director to enter into a five year agreement with the United States Fish and Wildlife Service for the purposes described in the Commentary.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Squires to authorize the Executive Director to enter into a five year agreement with the United States Fish and Wildlife Service for the purposes described in the Commentary. Motion carried.

## **HABITAT AND ENVIRONMENTAL**

### **A. Grant to Central Counties Concerned Sportsmen Association.**

#### Commentary:

On April 12, 2011, the Commission entered into an agreement with EOG Resources, Inc. (EOG) to settle claims in connection with the company's pollution of Alex Branch in 2009. In lieu of fines and civil damages stemming from the incident, EOG paid the Commission \$99,125, of which \$41,625.00 was placed in a restricted receipt account to be utilized for liming operations at Parker Dam State Park in Huston Township, Clearfield County, or other habitat improvement projects deemed necessary by the Commission in its sole discretion.

Central Counties Concerned Sportsmen Association (CCCS) consists of 12 clubs throughout the central region. CCCS or one of its member clubs historically has bought limestone sand each year for the past ten years, which has been applied to Laurel Run immediately upstream of the Parker Dam inlet by staff of the Department of Conservation and Natural Resources (DCNR). The limestone sand helps neutralize the water quality within the impoundment and allows the Commission to manage the waterway as an approved stocked trout water.

Staff are requesting approval of a grant in the amount of \$15,000 to CCCS to reimburse CCCS for its expenses associated with the continued liming operations at Parker Dam in an amount not to exceed \$1,500 per year for a total of ten years. The Bureau of Law Enforcement will administer the grant and will verify the purchase and delivery of the limestone sand each year.

#### Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

#### Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$15,000 to Central Counties Concerned Sportsmen Association for the purposes described in the Commentary.

#### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Squires to approve a grant in the amount of \$15,000 to Central Counties Concerned Sportsmen Association for the purposes described in the Commentary. Motion carried.

**Other New Business**

Commissioner Squires noted that with this being the Commission's 98<sup>th</sup> meeting, it seems appropriate to plan a special event for the 100<sup>th</sup> meeting. Executive Director Arway concurred.

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

The deadline for the submittal of Commissioner agenda items and topics for the September 2011 Commission meeting was established as September 8, 2011.

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

The next meeting is scheduled for September 26-27, 2011 in Erie.

**Adjournment**

A motion was made by Commissioner Sabatose and seconded by Commissioner Mascharka to adjourn the meeting at approximately 12:40 p.m. Motion carried.