

Table of Contents

Call to Order	113
Roll Call	113
Review and Approval of Minutes from the July 12, 2011 Meeting	113
Remarks from Commission President Bachman	114
Awards and Presentations	114
Executive Director’s Report.....	114
Announcement of Notational Votes (Exhibit B).....	114
Announcement of Executive Session	114
Reports of Commissioner Committees	114
Executive and Planning (Commissioner Bachman) –	114
Administration (Commissioner Shetterly) –	115
Boating (Commissioner Ketterer) –	115
Fisheries (Commissioner Worobec) –	115
Communications (Commissioner Gavlick) –	115
Law Enforcement (Commissioner Squires) –	115
Habitat and Environmental (Commissioner Elliott) –	115
Legislation (Commissioner Mascharka) –	115
Public Comment to Commissioners and Staff	116
EXECUTIVE AND PLANNING.....	117
FINAL RULEMAKING.....	117
A. Amendments to Section 51.7 (Public Comments at Commission Meetings).	117
OTHER MATTERS.....	118
B. Dates for Commission Meetings in 2012.	118
C. Review and Approval of Submission of Fiscal Year 2012-13 Budget Request.....	119
ADMINISTRATION	120
A. Non-Surface Use Oil and Gas Cooperative Agreement, Donegal Lake, Donegal Township, Westmoreland County.	120
B. Easement Disposition at Kimmets Lock Access in Lehigh County for the New American Parkway Bridge Project.	121
C. Property Disposition of the Chapman Lake Access in Lackawanna County.....	122
BOATING	123
FINAL RULEMAKING.....	123
A. Amendment to Section 53.2 (Camping and Cooking).	123
B. Amendment to Section 97.1 (Personal Flotation Devices).	124

C. Amendment to Section 97.3 (Sound Producing Devices)	125
D. Amendment to Section 97.5 (Visual Distress Signals)	126
E. Amendment to Section 111.31 (Huntingdon County)	127
F. Amendment to Section 111.43 (Mercer County).....	128
FISHERIES	129
FINAL RULEMAKING.....	129
A. 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 May 1 to Mid- June.....	129
PROPOSED RULEMAKING	133
B. Amendment to Section 65.24 (Miscellaneous Special Regulations): Opossum Lake (7B), Cumberland County.....	133
Other New Business	135
Commissioner Agenda Items & Topics for September 2011 Commission Meeting	135
Time and Place of January 2012 Commission Meeting	135
Adjournment.....	135

Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 99th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, September 26 and 27, 2011, at the Sheraton Erie Bayfront Hotel, 55 West Bay Drive, Erie, PA 16507.

Commission committees met on September 26 beginning at approximately 10:00 a.m. and on September 27 beginning at approximately 8:00 a.m. The public session for review of this agenda began at or about 10:50 a.m. on September 27.

Call to Order

The meeting was called to order by Commission President Robert A. Bachman and followed by the Pledge of Allegiance to the Flag.

Roll Call

Members Present

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

Review and Approval of Minutes from the July 12, 2011 Meeting

A motion was made by Commissioner Sabatose and seconded by Commissioner Mascharka to approve the July 12, 2011 minutes as written. Motion carried.

Remarks from Commission President Bachman

On behalf of the Commission, Commissioner Bachman extended his thanks to everyone in Erie for their warm hospitality. Erie was a great location for the Commission's quarterly meeting, and many thanks to the S.O.N.S. of Lake Erie and everyone who attended the meeting.

Awards and Presentations

The Cambria County Conservation District 2011 Watershed Protection Award was presented to Mark Sausser and Keith Beamer of the Stream Habitat Division in recognition of promoting the protection of a particular watershed through a coordinated land and water resource approach.

The Cambria County Conservation District 2011 Soisson Public Recreation Achievement Award was presented to Ben Page, Mike Swartz and Phil Thomas of the Lake Habitat Division in recognition of having a positive impact concerning safe public recreation opportunities.

Bureau of Engineering and Property Services employees Joseph Egnot, Allen Hall, Robert Johnson, Jack Kuntz and Fred Litzel were presented with an Outstanding Service Award for their Area 1 maintenance team restoration and rehabilitation of the courtesy docks at the Walnut Creek Marina. The team's efforts resulted in a considerable cost savings to the Commission and produced a quality dock that exceeded the construction standards of commercially available new docks.

Executive Director's Report

Executive Director John Arway highlighted the "July – September 2011 Quarterly Report" (Exhibit A) that was provided to Commissioners. He gave a review of his recent activities and spoke of the new ideas that he brought back and would like to implement in Pennsylvania as a result of the Recreational Fishing and Boating Partnership Council, the American Fisheries Society, and the Association of Fish and Wildlife Agencies meetings.

Announcement of Notational Votes (Exhibit B)

The Commission voted on one item by notational vote since the July 2011 Commission meeting. The Commission unanimously approved the reorganization of the agency.

Announcement of Executive Session

Commissioner Bachman announced that an executive session was held on September 26 at 8:00 a.m. to discuss personnel, real estate and litigation matters.

Reports of Commissioner Committees

Executive and Planning (Commissioner Bachman) –

The Executive and Planning Committee met on Monday, September 26, at approximately 10:05 a.m. Agenda items were discussed. Director Arway provided an update on the Commission's

reorganization plans. Tim Schaeffer provided a Strategic Plan update and timeline for reviewing the Plan.

Administration (Commissioner Shetterly) –

The Administration Committee met on Tuesday, September 27, at approximately 8:05 a.m. Agenda items were discussed, and Commissioner Worobec abstained from discussion and voting on items relating to oil and gas leasing and water access.

Boating (Commissioner Ketterer) –

The Boating Committee met on Tuesday, September 27, at approximately 8:20 a.m. Agenda items were discussed, and Laurel Anders provided a summary of boating fatalities to date and circulated a water rescue fact sheet.

Fisheries (Commissioner Worobec) –

The Fisheries Committee met on Monday, September 26, at approximately 3:00 p.m. Agenda items were discussed, and Brian Wisner provided a presentation on the Hatchery Cost Study.

Communications (Commissioner Gavlick) –

The Communications Committee met on Tuesday, September 27, at approximately 9:25 a.m. Ted Walke provided a report on the outcome of the Labor Day Fish-for-Free Day and family fishing festivals, an overview of the Governor's recent float trips, an update on the Spring Creek Canyon Dedication Ceremony, and a presentation on an analysis of audience communications and outreach efforts.

Law Enforcement (Commissioner Squires) –

The Law Enforcement Committee met on Monday, September 26, at approximately 2:00 p.m. Updates were given on Walnut Creek, the Fish Kill hotline and the status of the Bureau of Law Enforcement's work force. Northwest Regional Supervisor Bob Nestor and Assistant Regional Supervisor Tom Edwards provided a presentation on the Northwest region.

The Committee acted upon proposed revocations. The Committee revoked the fishing privileges of seven 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.

Habitat and Environmental (Commissioner Elliott) –

The Habitat and Environmental Committee met on Monday, September 26, at approximately 12:45 p.m. Scott Carney provided updates on SGCN and AIS action plans, the Lehigh feasibility study and eel stocking at Sunbury. Ben Page provided a project overview of Leaser Lake. Mark Hartle provided a presentation on the effects of the July 22-24, 2011 thermal relief release for the Upper Delaware River. Charlie McGarrell provided an update on Big Spring fisheries and habitat monitoring results.

Legislation (Commissioner Mascharka) –

The Legislation Committee met on Monday, September 26, at approximately 11:05 a.m. Discussion items included a new report format, a state update, a federal update, Marcellus Shale

developments and the status of proposed amendments to Title 30. Also provided were updates on Senate Bill 1049 and license flexibility options.

Public Comment to Commissioners and Staff

Commission President Bachman announced that he is determined to ensure that everyone is heard and that public comment is welcome. The public may make comment at the start of Committee meetings or during the public comment portion of the formal agenda of Commission meetings.

Patricia Miller from Senator Earl's office extended thanks and appreciation on the Senator's behalf for the Commission's hard work and Commissioner Mascharka's efforts.

Jerry Skrypzak, President, S.O.N.S. of Lake Erie, commented on a request that the Commission consider an adjustment to the cost of a one-day fishing license.

Ed Kissell, Vice-President, S.O.N.S. of Lake Erie, expressed his appreciation for the Commission's assistance over the years and for bringing the quarterly meeting to Erie.

**EXECUTIVE AND PLANNING
FINAL 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 present 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.

The Commission therefore proposed that §51.7 of its regulations be amended so that it is consistent with current practice and Commissioner thinking. A notice of proposed rulemaking was published at 41 Pa. B. 2977 (June 11, 2011) (Exhibit C). The Commission did not receive any public comments concerning the proposal.

Briefer:

Laurie E. Shepler, Chief Counsel

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 Sabatose and seconded by Commissioner Worobec 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.

OTHER MATTERS

B. Dates for Commission Meetings in 2012.

Commentary:

At the fall meeting each year, the Commission historically has established a schedule for regular meetings for the following year. Under the Fish and Boat Code, the Commission is required to have two meetings each year, one in January and the other in July. These meetings must be held in the Harrisburg area. Traditionally, the Commission has held two additional meetings each year in April or May and September or October.

Staff have reviewed the available dates and possible conflicts for scheduling regular Commission meetings for 2012. This review included a look at holiday, hunting and fishing seasons and other conflicting events. Based upon this review, the following dates are proposed for regular Commission meetings in 2012:

January 30-31, 2012 (Monday and Tuesday)
April 11-12, 2012 (Wednesday and Thursday)
July 16-17, 2012 (Monday and Tuesday)
October 1-2, 2012 (Monday and Tuesday)

The January and July 2012 meetings will be held at the Harrisburg headquarters. The April and October 2012 meetings will be held at locations designated by the Commission for the transaction of business.

Briefer:

John A. Arway, Executive Director

Recommendation:

Staff recommend that the Commission approve the dates for the regular meetings of the Commission for 2012 as set forth in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Mascharka to approve the dates for the regular meetings of the Commission for 2012 as set forth in the Commentary. Motion carried.

C. Review and Approval of Submission of Fiscal Year 2012-13 Budget Request.

Commentary:

Under Commonwealth government budget procedures and in accordance with sections 522 and 532 of the Fish and Boat Code (30 Pa. C.S. §§522, 532), the Commission annually submits to the Governor's Budget Office the proposed Commission budget for the following fiscal year. The Commission's submission for Fiscal Year 2012-13 is due at the Budget Office in the early part of October.

Staff have prepared preliminary draft budget documents for submission to the Budget Office. According to the Budget Office these documents are confidential. After the Executive Director submits the budget request, the Governor's Budget Office may make changes to the spending authority requested by the Commission. These changes are generally a result of changes in the calculations for personnel and/or other costs. The Governor will announce the details of the FY 2012-13 budget in February or March of 2012.

Briefer:

Bernard M. Matscavage, Director, Bureau of Administration
John A. Arway, Executive Director

Recommendation:

Staff recommend that the Commission authorize the Executive Director to submit a request to the Governor's Budget Office for Fiscal Year 2012-13 spending authority as more fully described in staff's preliminary draft budget documents.

Action:

A motion was made by Commissioner Gavlick and seconded by Commissioner Worobec to authorize the Executive Director to submit a request to the Governor's Budget Office for Fiscal Year 2012-13 spending authority as more fully described in staff's preliminary draft budget documents. Motion carried.

ADMINISTRATION

A. Non-Surface Use Oil and Gas Cooperative Agreement, Donegal Lake, Donegal Township, Westmoreland County.

Commentary:

Under section 744 of the Code, 30 Pa. C.S. §744, the Commission may dispose of, by lease, sale, or otherwise, timber, minerals, oil and gas, or rights therein, on or under lands to which it has acquired title. Williams Production Appalachia, LLC (Williams) has presented the Commission with an offer to lease the oil and gas rights under the Commission's +/- 232.56-acre Donegal Lake property located in Donegal Township, Westmoreland County. A map depicting the subject parcel is attached as Exhibit D. Williams has initiated well drilling and development programs on private lands adjacent to the Commission's Donegal Lake property and has the ability to unitize and produce the Commission's oil and natural gas reserves through directional drilling techniques.

Williams has offered the Commission a non-surface use agreement that includes a five-year primary term, a \$3,000 per acre up-front bonus payment of \$697,680 and an 18% royalty rate through the life of the agreement. The bonus payment and all royalties will be deposited into the Fish Fund where they will be used to fund efforts to revitalize and repair Commonwealth-owned high hazard dams managed by the Commission.

The agreement will allow for the careful development of the Commission's oil and gas reserves without allowing well pad construction or drilling on Commission property. The agreement will also include water monitoring and conservation provisions. Oil and gas development will be regulated by the Commonwealth's oil and gas regulations and the Commission's standard Non-Surface Use Oil and Gas Cooperative Agreement.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration, Boating and Engineering

Recommendation:

Staff recommend that the Commission authorize the Executive Director to enter into a Non-Surface Use Oil and Gas Cooperative Agreement with Williams Production Appalachia, LLC for the development of oil and natural gas at the Commission's Donegal Lake property in Donegal Township, Westmoreland County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Squires and seconded by Commissioner Lichvar to authorize the Executive Director to enter into a Non-Surface Use Oil and Gas Cooperative Agreement with Williams Production Appalachia, LLC for the development of oil and natural gas at the Commission's Donegal Lake property in Donegal Township, Westmoreland County, as more particularly described in the Commentary. Motion carried.

Commissioner Worobec abstained because of concerns over a possible conflict of interest.

B. Easement Disposition at Kimmets Lock Access in Lehigh County for the New American Parkway Bridge Project.

Commentary:

The Commission owns a +/- 2-acre easement for access, fishing and boating activities and vehicular parking on a tract of land in the City of Allentown, Lehigh County, known as the Kimmets Lock Access. The City of Allentown owns the underlying fee title and conveyed the easement to the Commission at no cost in 1997. The site is an existing developed fishing and boating access on a former canal area that outlets and provides access to the Lehigh River. The site is heavily used and provides access for small and medium sized motorized boats and personal watercraft. The City of Allentown operates and maintains the site.

The City of Allentown (City) in cooperation with the Pennsylvania Department of Transportation (PennDOT) is working on the development of a new bridge crossing the Lehigh River for use in conjunction with a new roadway named the American Parkway. This new bridge will benefit, promote and enhance the local community. The bridge project will require two piers to be placed within the Commission's easement area and require about half the site to be closed periodically during the bridge construction phase. The bridge project will include enhancements to the site such as dredging, a new ramp, a new walkway and new entrances to the site. Habitat work will be provided to the area waterways to mitigate for impacts to the aquatic resources; however, this component of the project is a permit condition and not a property issue.

In order for the City of Allentown and PennDOT to move forward with this project, the Commission will need to quitclaim its easement rights for the area where the piers will be placed and waive any objections to work at the site. The parties believe the quitclaim of the easement rights does not have any value. The placement of the piers will not have a significant impact on the public's use of the site after the project, and site work will enhance and maintain the public's use of the site.

In return for a quitclaim of its easement rights, the Commission will require the City to reconfirm by deed covenant or functionally equivalent document that it will continue to operate, maintain and repair the Kimmets Lock Access and keep the site open to the public free of charge. This work will include any necessary dredging to keep the launch area and channel to the river open for boats as required in the permits for the project.

Briefer:

Mark Mitchell, P.L.S, Chief, Property Services Section

Recommendation:

Staff recommend that the Commission authorize the disposition of property rights as described in the Commentary.

Action:

A motion was made by Commissioner Gavlick and seconded by Commissioner Ketterer to authorize the disposition of property rights as described in the Commentary. Motion carried.

C. Property Disposition of the Chapman Lake Access in Lackawanna County.

Commentary:

The Commission owns land and easements in Scott Township, Lackawanna County, known as the Chapman Lake Access. Chapman Lake is a +/-90-acre natural lake that has been enlarged by a small three-foot high dam. The Commission's property consists of a +/- 0.5-acre lot located approximately 200 feet from Chapman Lake. It is shown on Exhibit E. The Commission acquired the property in 1954 to supplement lake front private property that provided public access to Chapman Lake. As part of the conveyance, the Commission acquired limited lake rights and easements to and along Chapman Lake. The Commission's property was never significantly used, and the private property has been closed to public access for over 10 years. Chapman Lake was extensively stocked preseason and in-season with trout and was very heavily utilized by the public when there was access over private property. Stocking of the lake ceased at the same time access was terminated through the previously opened private property.

The Commission recently received several inquiries from the general public as to the possible sale and disposition of its property at Chapman Lake. Because this property is not being used by the public and the rights that the Commission acquired are not adequate to provide sufficient public access to the lake, it is in the Commission's best interest to dispose of the property. Disposition of the property will result in the Commission's maintenance staff no longer needing to maintain the site.

Staff recommend disposing of the property using the following guidelines:

- Offer the property for public bid after it has been marketed for no less than two months.
- Market the property by placing advertisements in local publications, by placing a sign on the property and through direct mails to all parties that have expressed an interest in the property.
- Use the appraised value of the property provided by a Pennsylvania licensed certified appraiser as a guide in evaluating bid submissions and reserve the right to reject any and all bids if deemed not to be in the best interest of the Commission.
- Convey ownership of the property by quitclaim deed with no warranty as to use and to the highest bidder with such bidder being responsible for all transaction costs.

Briefer:

Mark Mitchell, P.L.S, Chief, Property Services Section

Recommendation:

Staff recommend that the Commission authorize the disposition of the property as described in the Commentary.

Action:

A motion was made by Commissioner Shetterly and seconded by Commissioner Mascharka to authorize the disposition of the property as described in the Commentary. Motion carried.

BOATING FINAL 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 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 to establish Allegheny River State Park in Venango County as the first primitive rest stop access under the Natural Access Area Program.

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 for public fishing and boating opportunities. Therefore, the Commission proposed to discontinue its Natural Access Area Program and its regulation relating to primitive access areas.

A notice of proposed rulemaking was published at 41 Pa. B. 2978 (June 11, 2011) (Exhibit F). The Commission did not receive any public comments concerning the proposal.

Briefer:

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

Recommendation:

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

Action:

A motion was made by Commissioner Shetterly and seconded by Commissioner Worobec to adopt the amendment as set forth in the notice of proposed rulemaking. This amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

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

Commentary:

In the past 15 years, a disproportionate number of recreational boating fatalities occurred in Pennsylvania from November through April 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 when exposed to cold water have potentially life-saving advantages such as insulation from the cold, buoyancy for victims who are unable to tread water, and reduced risk of aspiration of water. In an effort to reduce the number of fatalities related to coldwater immersion, the Commission proposed that §97.1 be amended to require life jackets to be worn on small and unstable boats during the period most noted for cold water temperatures, *i.e.*, November 1 through April 30.

A notice of proposed rulemaking soliciting public comments for a period of 60 days was published at 41 Pa. B. 2975 (June 11, 2011) (Exhibit G). The Commission received a total of 42 comments – eight prior to, 28 during and six after the formal comment period. The majority of the comments oppose the proposal with the primary reasons being unnecessary government regulation and intrusion on personal decision. Copies of all public comments were provided to the Commissioners.

Briefer:

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

Recommendation:

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

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Worobec to adopt the amendment as set forth in the notice of proposed rulemaking. This amendment will go into effect on November 1, 2012. Motion carried.

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

Commentary:

The Commission's current regulations are consistent with Inland Navigation Rule 32, Part D-Sound and Light Signals, regarding required sound equipment for boats. However, the Commission's 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. The Commission proposed clarifying the requirement by adding a statement indicating that an athletic coach's whistle is an acceptable sound producing device for unpowered boats. Additionally, the Commission proposed including a prohibition against the use of sound signals except in the case of an emergency.

A notice of proposed rulemaking was published at 40 Pa. B. 2978 (June 11, 2011) (Exhibit F). The Commission had received one public comment generally supporting the proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

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

Recommendation:

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

Action:

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

D. 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. The Commission therefore proposed defining "serviceable" based on the standards used by the U.S. Coast Guard, Boating Safety Division.

A notice of proposed rulemaking was published at 40 Pa. B. 2978 (June 11, 2011) (Exhibit F). The Commission did not receive any public comments concerning the proposal.

Briefer:

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

Recommendation:

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

Action:

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

E. Amendment to Section 111.31 (Huntingdon County).

Commentary:

During the summer of 2010, the U.S. Army Corps of Engineers (Corps) jointly developed a plan that recommends changes to enhance recreation on the lake. The Corps' goals for Lake Raystown are 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 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, and Anderson Bay is more frequently used by trolling anglers rather than recreational boaters. Therefore, the Commission proposed to remove the slow, no wake designation from both areas.

A notice of proposed rulemaking was published at 40 Pa. B. 2978 (June 11, 2011) (Exhibit F). The Commission did not receive any public comments concerning the proposal.

Briefer:

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

Recommendation:

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

Action:

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

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. Currently, the area is posted with “Electric Motors Only” posters at the boat launches, Sheakleyville Bridge and 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. Therefore, the Commission proposed an amendment prohibiting such. 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.

A notice of proposed rulemaking was published at 40 Pa. B. 2978 (June 11, 2011) (Exhibit F). The Commission did not receive any public comments concerning the proposal.

Briefer:

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

Recommendation:

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

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Worobec to adopt the amendment as set forth in the notice of proposed rulemaking. This amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

FISHERIES

FINAL RULEMAKING

A. 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 May 1 to Mid-June.

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 amended §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 were previously regulated under §65.9 (relating to big bass special regulations). Tournaments are now prohibited during the bass spawning period in the spring, and during the remainder of the year, only catch-measure-immediate release tournaments are permitted. The new regulations, which went into effect on June 11, 2011, 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.

For the reasons set forth above and as a result of the public comments received in response to the Commission's original notice of proposed rulemaking, the Commission proposed further changes to its 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.

Specifically, the Commission proposed instituting a closed season from mid-April to mid-June on the lower Susquehanna and lower Juniata Rivers to reduce angling related stress during the spawning period which will provide additional protection to the bass populations of the main rivers. The Commission also proposed extending the catch and release and closed season regulations into the tributaries to 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. The Commission proposed 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.

A notice of proposed rulemaking was published at 41 Pa. B. 2976 (June 11, 2011) (Exhibit H). The Commission received over 50 public comments regarding the proposal prior to the formal public comment period. No comments were received during the formal comment period. The nature of the comments ranged widely. Most commenters were opposed to the closed season portion of the proposal. Concerns were expressed by a number of businesses and guides regarding the economic impact of a closed season. Many commenters stated that the main problem with the rivers' fisheries is water quality rather than impacts from fishing. Another commented that the regulation will be difficult to enforce. Some questioned whether the data and science are adequate to support the regulation. A number of commenters expressed their concerns with the impacts of guided fishing in the spring. Commenters expressed little concern with extending both the catch and release regulation and the closed season into the mouths of tributaries. Copies of all public comments were provided to the Commissioners.

Additionally, on July 6, 2011, Commission staff met with several guides that operate their businesses in the portion of the Susquehanna River and Juniata River affected by the proposed regulations. These discussions revealed that the major concern of the guides was the length of the proposed closed season.

Staff considered the public comments and continue to support a closed season during the bass spawning period in the spring as well as the extension of the regulation ½ mile into the tributaries. Staff acknowledge the concerns with water quality conditions, and the Commission has initiated and continues to cooperate in the investigation of water quality conditions and disease incidence in young-of-year bass throughout the Susquehanna River watershed. However, more restrictive fishing regulations will lend support to recovery of the fishery in the face of other possible causes of the observed population declines. Upon further review of population modeling results that are designed to predict the effects of the regulations on the fishery, and in consideration of the concerns with the length of a closed season, staff recommend that on final rulemaking, the Commission shorten the closed season from the previously proposed period (mid-April to mid-June) to May 1 to mid-June. This closure period should result in similar protection levels to the longer closed season. Additionally, for consistent application of seasonal restrictions, staff also recommend that tournaments be prohibited during this same period (May 1 to mid-June).

In summary, staff recommend that on final rulemaking, the Commission amend §65.24 to read as follows. Staff further recommend that the Commission adopt the amendment to §63.43 as proposed.

§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, Perry, Snyder, York	Susquehanna River (98.0 miles) from the inflatable dam near Sunbury downstream to Holtwood Dam, <u>including all tributaries to a point ½ mile upstream from the confluence</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] <u>May 1</u> to 12:01 a.m. the first Saturday after June 11 – <u>Closed season; [N]no tournaments[;];</u> <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> Remainder of the year – <u>No harvest – catch and immediate release only; [C]catch-measure-immediate release tournaments only.</u>
Dauphin, Juniata, Perry	Juniata River (31.7 miles) from SR0075 bridge at Port Royal downstream to the mouth, <u>including all tributaries to a point ½ mile upstream from the confluence</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] <u>May 1</u> to 12:01 a.m. the first Saturday after June 11 – <u>Closed season; [N]no tournaments[;];</u> <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> Remainder of the year – <u>No harvest – catch and immediate release only; [C]catch-measure-immediate release tournaments only.</u>
***	***	***

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the amendments as described in the Commentary. If adopted, these amendments will go into effect on January 1, 2012.

Action:

A motion was made by Commissioner Worobec and seconded by Commissioner Mascharka to adopt the amendments as described in the Commentary. These amendments will go into effect on January 1, 2012. Motion carried.

PROPOSED RULEMAKING

B. Amendment to Section 65.24 (Miscellaneous Special Regulations): Opossum Lake (7B), Cumberland County.

Commentary:

Opossum Lake, a 59-acre impoundment owned by the Commission is located in Lower Frankford Township, Cumberland County, approximately six miles west-northwest of the Borough of Carlisle. This lake was completely dewatered in 2008 to make dam and spillway repairs and modifications per Pennsylvania Department of Environmental Protection Dam Safety standards. The dam, constructed in 1960, impounds Opossum Creek approximately one-half mile upstream from the mouth at Conodoguinet Creek. Access to the shoreline is primarily from the eastern shore where a paved road parallels 75% of this shoreline. Additionally, two concrete boat ramps provide boat access for non-powered and electric motor craft. Prior to the drawdown, the lake offered angling opportunities for multiple warm and coolwater fish species and adult stocked trout originating from Commission spring, fall and winter plants. This is the second time the lake has been subject to a full drawdown, the first occurring in 1985. A successful grass roots effort was launched to secure funding to assist in the rebuilding of the dam structure. As a result, refilling of the lake is anticipated to begin in the spring of 2012.

Staff plan to reclaim the lake and establish a high quality warm and coolwater fishery through fingerling plants of select species and a two-year moratorium on adult trout stocking. This approach is necessary to facilitate development of a self-sustaining shiner population, which will provide forage for game and panfish populations. Division of Fisheries Management staff propose to open the lake to fishing under a miscellaneous special regulation that will allow for the harvest of trout under Commonwealth inland seasons, sizes and creel limits but allow only catch and release fishing for all other fish species. Staff believe this approach will allow the fishery to develop under protective regulations while offering acceptable levels of recreational angling opportunities.

The positive aspect of this proposal is that the lake will provide anglers the opportunity to fish for adult trout beginning two years following refilling and provide 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 stocked adult 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 recommend appropriate special regulations prior to 2016 should the fish populations develop more quickly than anticipated. The black bass population previously residing in Opossum Lake was managed through the Big Bass Program. With respect to the catchable trout program, there are numerous alternative stream fishing opportunities throughout the Cumberland Valley and surrounding areas, and several lakes in the area stocked with adult trout have been providing recreational angling opportunities during the current draw down period.

Staff propose the following amendment:

§65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
***	***	***
<u>Cumberland</u>	<u>Opossum Lake</u>	<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>
***	***	***

Briefer:

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

Recommendation:

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

Action:

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

Other New Business

None.

Commissioner Agenda Items & Topics for September 2011 Commission Meeting

The deadline for the submittal of Commissioner agenda items and topics for the January 2012 Commission meeting was established as January 4, 2012.

Time and Place of January 2012 Commission Meeting

The next meeting will be held on January 30-31, 2012 in Harrisburg.

Adjournment

A motion was made by Commissioner Lichvar to adjourn the meeting at approximately 12:05 p.m. Motion carried.