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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 119<sup>th</sup> Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, July 11 and 12, 2016, at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on July 11 beginning at approximately 9:30 a.m. and on July 12 beginning at approximately 8:05 a.m. The public session for review of this agenda began on or about 10:20 a.m. on July 12.

**Call to Order**

The meeting was called to order by Commission President Edward P. Mascharka III and followed by the Pledge of Allegiance to the Flag. Commission President Mascharka, who participated by telephone, then turned the meeting over to Commission Vice-President Glade E. Squires to take roll call.

**Roll Call**

**Members Present**

**Edward P. Mascharka III, President \***  
**Glade E. Squires, Vice-President**  
**Rocco S. Ali \***  
**G. Warren Elliott**  
**Norman R. Gavlick**  
**Eric C. Hussar**  
**Steven M. Ketterer**  
**Leonard L. Lichvar**  
**William J. Sabatose**

\* Present via telephone

**Review and Approval of Minutes from the March 31, 2016 Meeting**

A motion was made by Commissioner Ketterer and seconded by Commissioner Sabatose to approve the March 31, 2016 minutes as written. Motion carried.

### **Awards and Presentations**

The *Pennsylvania Angler and Boater* Confluence Award was presented to Ed Shenk in recognition and appreciation of his long-term commitment to promoting recreational fishing and boating within the pages of the magazine and beyond in all types of media and other forms of presentation. He is the recipient of the third *Pennsylvania Angler & Boater* Confluence Award. In 1962, Ed's first article, "Tying Flies," appeared in the April issue of the then *Pennsylvania Angler*. Between 1962 and 1988, Ed contributed a total of six *Pennsylvania Angler* articles, all related to fly fishing in Pennsylvania. In addition to the *Pennsylvania Angler*, his writing has been published in *Sports Afield*, *Field & Stream*, *Fly Fisherman*, *Flyfisher*, *Trout*, *Fly Fishing Heritage*, *Fly Rod & Reel*, *American Angler*, *American Fly Tyer*, *Fly Tyer* and the *Mid Atlantic Fly Fishing Guide*. In 1989, he published a book, *Fly Rod Trouting*. Ed has tied flies for over 75 years, tying commercially for most of that time. He originated the LeTort Cricket, Flat Wing LeTort Hopper, Shenk Cress Bug and Shenk Sculpin and popularized the dubbing loop or fur chenille method. He was the first to trim these fur loop tied flies to specific shapes such as the flat oval of the Shenk Cress Bug. Ed also originated the Shenk Minnow and the "double trico." He was inducted into the Catskill International Fly Fishing Museum Hall of Fame on October 6, 2012. Ed was also initiated into the Pennsylvania Fly Fishing Museum at Allenberry in Boiling Springs where a display features his accomplishments.

Patrick Domico was presented with the Resource First Award. Pat, founder of Squirrel Tales for Trout, has been instrumental in raising funds for stocking numerous streams, rivers and lakes in Clearfield County, including the West Branch of the Susquehanna River, Curwensville Lake and Parker Dam. For over 40 years, he has served as the host of the Kid's Fishing Derby at Parker Dam State Park, and he has raised funds in order to stock thousands of trout in the West Branch of the Susquehanna River from Curwensville to the Clearfield area. Fishing and the great outdoors offers kids an alternative to many other demands they encounter in their busy lives today. Due to Pat's leadership, enthusiasm and sincere passion for the resource, the West Branch of the Susquehanna River runs beautiful for all families to enjoy.

The 2015 Northeast Conservation Law Enforcement Chiefs Association Officer of the Year Award was presented to Waterways Conservation Officer (WCO) Darrin Kephart. Each year the North East Conservation Law Enforcement Chiefs Association (NECLECA) recognizes an outstanding officer from each member agency as that agency's officer of the year. This year's award winner for the Commission is WCO Kephart. WCO Kephart serves in the Southcentral Region's Southern York County District. His district is composed of a vast diversity of public safety and resource protection responsibilities. Within the scope of fishing related enforcement, WCO Kephart focused on protecting the Susquehanna River Smallmouth Bass with increased enforcement of the catch and immediate release rules. WCO Kephart also participated in multiple special enforcement details for preseason and in season trout stocking endeavors. Within the scope of boating related enforcement, WCO Kephart served as the lead officer on Lake Clarke and the Conowingo Reservoir, committing 31 on-the-water patrol shifts during the 2015 recreational boating season. He conducted 430 boardings and issued 872 warnings for various fishing and boating infractions. During the boating season, WCO Kephart planned, facilitated and participated in five Boating Safety/BUI details. With regard to property protection, WCO Kephart planned and conducted multiple late night patrols, focusing on after hours misconduct at several Commission access areas and other Commission-controlled

properties. WCO Kephart generated six formal incident reports documenting his more serious enforcement investigations. He issued summary citations for 94 Fish and Boat violations and two Crimes Code violations. WCO Kephart facilitated 13 club events, three youth programs, four in-school programs and six legislative visits. He partnered with Trout Unlimited to open up new properties and fishing opportunities on a township mile stretch of Muddy Creek. WCO Kephart also assisted the Pennsylvania State Police with a two-year long homicide investigation involving an overturned ATV into a stream. His local knowledge and willingness to assist with waterborne tests were instrumental in the investigation and trial. As a result of this effort, the ATV operator was found guilty with a life sentence imposed. WCO Kephart also serves as an instructor in several disciplines within the Bureau of Law Enforcement and is also a Field Training Officer.

The 2015 Top Gun Award was presented to Waterways Conservation Officer (WCO) Michael Walsh. Impaired watercraft operators are a serious threat to public safety on Commonwealth waterways. For this reason, enforcing boating under the influence (BUI) laws is one of the most important responsibilities of our waterways conservation officers. In fact, the U.S. Coast Guard estimates that 50 percent of all recreational boating fatalities are alcohol or drug related. Because this is such an important job function for our WCO's, in 1999 the Commission began recognizing that one WCO who put forth an outstanding effort during the past year in detecting and apprehending impaired boaters. For 2015, that officer is WCO Walsh. For the last eight years, WCO Walsh has been assigned the very busy 2035 District, which is Eastern Allegheny County. There he has established an exemplary law enforcement and education program. During the 2015 boating season, he logged 50 on-the-water boat patrol days and led not only the Southwest Region but the Commonwealth with nine BUI arrests. Because of WCO Walsh's efforts, it is an honor to recognize him as our Top Gun Award recipient.

Ted Walke, Chief, Division of Outreach and Marketing, Bureau of Outreach, Education and Marketing, was presented with an Appreciation Award for his exemplary work on the 2016 agency video. Ted was nominated for his work on a special project which is a video about the Commission. Although a longer version of the video was produced, many of you have seen the completed version of the short edition of the video. It has given the Commission an opportunity to showcase all the great work done by staff over the past 150 years. The video serves many purposes – to educate the public about how our services benefit all Pennsylvanians, as a recruitment tool to get those with a passion for nature to come work for the Commission, as a recognition tool for our dedicated staff, and to share with schools and other educational venues so that we can inform and excite young people about the resource because they represent not only our future customers but will also be Pennsylvania's future environmental stewards. Ted began his Commonwealth career as an Artist Illustrator and has worked for the Commission for much of his career. He is currently an Administrative Officer in our Bureau of Outreach, Education and Marketing. He showed the same dedication and creativity with the video project that he shows in everything he's involved with. The Commission is extremely fortunate to have Ted on our team and his work is not only appreciated today but every day.

The "Wave of Excellence" Award was presented to Daniel Donato, Manager, Corry and Union City State Fish Hatcheries, Bureau of Hatcheries. For the past nine years, Dan has served as the Hatchery Manager of both the Corry and Union City hatcheries. Before becoming manager, he

served as foreman at the Corry State Fish Hatchery for seven of years. Dan worked at the Oswayo State Fish Hatchery as a Fish Culturist for eight years. Dan started his career at the Commission as a semi-skilled laborer at Tionesta State Fish Hatchery for three seasons. Dan is also a veteran who served three years in the United States Navy and six years in the active duty reserves. Liz Ebeling was the last recipient of the Wave, and she chose Dan because of his “steady-eddy” approach to his career, staff, license holders and public over the years. In recent years, Dan has worked with approximately 20 local land owners as the point person to organize and implement a timeline to monitor their private wells. He also has had to work with the local town and the Pennsylvania Department of Environmental Protection for clearances when a new pipe line from the Foster property to the Corry hatchery was built. As a local, Dan’s relationship with the people of Corry was instrumental in maintaining good communications during these projects and keeping them moving forward. Dan has been involved with the Lake Erie Brown Trout program and has worked diligently at improving conditions at the Corry State Fish Hatchery so they can stock disease free trout into the Lake Erie watershed. He has utilized a Great Lake Restorative Initiative grant to improve biosecurity at Corry which has kept his fish healthier and saved the Commission money. He and his staff are currently in their second year of a new Hybrid Striped Bass fingerling program at Union City. This effort will save money so the Commission will not have to purchase as many Hybrid Striped Bass fingerling for stocking into Commonwealth waters. Dan has been challenged in the past at both Corry and Union City when vacancies were not able to be filled. Dan had to be very creative in getting the work completed in order to cover the stocking of fish and weekends with a limited number of staff. Corry and Union City are currently fully staffed, very proactive in their biosecurity, and the fish at both hatcheries are the projected size and number. Dan is married to Deb and has three adult daughters and four grandchildren. Dan loves to fish, particularly on his annual float trip! Liz Ebeling presented the Wave of Excellence award to Dan. In the following six months, Dan will make the selection for the next recipient of the Wave of Excellence Award.

Commissioner Edward P. Mascharka III was recognized and commended for his outstanding leadership and dedication while serving as President of the Commission from July 14, 2015 to July 12, 2016.

At the conclusion of the awards presentation, Commissioners, Boating Advisory Board members and Board members of the Ralph W. Abele Conservation Scholarship Fund were presented with signed copies of the new book, *To Protect, Conserve, and Enhance: The History of the Pennsylvania Fish and Boat Commission*. The history book not only chronicles the Commission’s path and accomplishments, it also serves as a history of the emergence of Pennsylvania fishing and boating as we know it today. The author, Kenneth C. Wolensky, Ed.D., was present for the occasion.

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

Commission President Mascharka presided over the elections. He called for nominations for the office of President, and Commissioner Ali nominated Commissioner Squires as President. Commissioner Elliott seconded the nomination. 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 Squires to serve as President of the Commission for 2016-2017.

Commission President Mascharka then called for nominations for the office of Vice-President. Commissioner Sabatose nominated Commissioner Ali as Vice-President. Commissioner Hussar seconded the nomination. A motion was made by Commissioner Elliott and seconded by Commissioner Sabatose to close the nominations. The motion was carried, and nominations were closed. The Commission elected Commissioner Ali to serve as Vice-President of the Commission for 2016-2017.

Commission President Squires thanked Commissioner Mascharka for his leadership, energy and friendship. Commissioner Squires will be working with Director Arway to further programs already in place and create new programs to move the agency forward. As the country faces some trying times, a moment was taken to recognize the significance of our law enforcement officers, and Commission President Squires asked Lieutenant Colonel Furlong to pass along to the Commission's officers the Board's sincere thanks, gratitude and appreciation for their service.

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

The "April – June 2016 Quarterly Report" (Exhibit A) was provided to Commissioners. Director Arway gave a review of various important upcoming events including the continuation of the year-long celebration in honor of the Commission's 150th Anniversary. The Commission is hosting a special dedication ceremony and open house on July 23, 2016 at the agency's new Centre Region Office located at 585 East Rolling Ridge Drive in Bellefonte. The dedication event begins at 11:30 a.m., followed by the open house and public activities from 1:00 p.m. to 3:00 p.m. The event is free and open to the public. Activities will include amphibian and reptile displays, an aquarium featuring warmwater species of fish, "Touch-A-Truck" opportunities, and transportation to the Bellefonte State Fish Hatchery for tours, guest speakers and fishing opportunities along Spring Creek.

### **Announcement of Executive Session**

Commissioner Squires announced that an executive session was held on July 11 at 8:00 a.m. to discuss litigation, real estate and personnel matters.

### **Reports of Commissioner Committees**

#### **Executive and Administrative (Commissioner Squires) –**

The Executive and Administrative Committee met on Monday, July 11, at approximately 9:30 a.m. Agenda items were discussed. Bernie Matscavage provided a license sales update. Logistics were discussed regarding the evening Family Fishing Festival, and Steve Kralik gave a multi-year renewal update, new merchandise offerings update and information regarding the Penn State Sports Properties Marketing Partnership. Michele Jacoby and Paul Urbanik provided an engineering update, and Judd Michael, Professor, Penn State University, gave an update on the *Pennsylvania Fish and Boat Commission Business Plan*.

**Boating (Commissioner Ketterer) –**

The Boating Committee met on Tuesday, July 12, at approximately 8:20 a.m. Lt. Colonel Larry Furlong provided a report on the United States Coast Guard 2015 recreational boating statistics.

**Fisheries (Commissioner Squires) –**

The Fisheries Committee met on Monday, July 11, at approximately 1:50 p.m. and reconvened on Tuesday, July 12, at approximately 8:05 a.m. Agenda items were discussed. Rick Lorson provided a catfish plan review and an update on the Youghiogheny River Management Plan. A summary of the first year of the Keystone Select Program was given by Jason Detar, and Brian McHail provided a co-op nursery unit update. A discussion item pertaining to special regulation alternatives for Saucon Creek, Northampton County, was deferred until the September 2016 Commission meeting.

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

The Habitat and Environmental Committee met on Monday, July 11, at approximately 11:15 a.m. Agenda items were discussed. Commissioner Sabatose abstained from discussion and voting on the item relating to the Sinnemahoning Creek Watershed Restoration Grant to Cameron County Conservation District because of concerns over a possible conflict of interest. Ben Page provided an update on the Limestone Run Habitat Project and the use of Save Our Susquehanna Campaign funds.

**Law Enforcement (Commissioner Squires) –**

The Law Enforcement Committee met on Tuesday, July 12, at approximately 8:10 a.m. Updates were given on the Fish Kill hotline, the 21<sup>st</sup> Waterways Conservation Officer class placements, 2016 Operation Dry Water, and highlights of the Bureau of Law Enforcement's Annual Report.

The Committee also acted upon proposed revocations. The Committee revoked the fishing privileges of one individual for a period of five years.

**Legislation and Public Outreach (Commissioner Elliott) –**

The Legislation and Public Outreach Committee met on Tuesday, July 12, at approximately 8:25 a.m. A legislative update included an overview of Senate Bill 1168 (authorization for the Commission to set its own fees), House Bill 2114 (Water Resource Act), and House Resolution 908 (water use fee). An update on high hazard, unsafe dam funding was provided as well. Michele Kittell, Executive Director, Wildlife Leadership Academy, thanked the Commission for its support and provided a presentation on the Pennsylvania Bass School. The Commission's history book was unveiled, and an update was given on the efforts of the Female Angler Recruitment, Retention and Reactivation Workgroup.

**Public Comment to Commissioners and Staff**

Bill Rulon Miller provided public comment on the final rulemaking item concerning the Timber Rattlesnake status change.

## EXECUTIVE AND ADMINISTRATIVE

### A. Property Disposition at Pleasant Mount State Fish Hatchery for the State Route 371 Bridge Replacement Project, Wayne County.

#### Commentary:

The Commission owns +/-116.8 acres of land in Pleasant Mount Township, Wayne County, containing the Pleasant Mount State Fish Hatchery. The West Branch of the Lackawaxen River is a stocked trout water that runs through the hatchery and crosses under State Route 371 (SR 371 Bridge).

The existing SR 371 Bridge over the West Branch of the Lackawaxen River is deficient and is targeted for replacement during the 2017 construction season. The bridge is owned by the Pennsylvania Department of Transportation (PennDOT) and will be replaced on its existing alignment, but it will be slightly higher and longer.

The SR 371 Bridge project will require +/-0.1 acres of permanent drainage easement to address drainage issues and +/-0.9 acres of temporary construction easement to facilitate construction and perform paving for the Commission, as depicted on Exhibit B1-2. The driveway to the original visitor parking area and the driveway adjacent to the hatch house will be closed during construction. The visitor parking area will be relocated to the north side of SR 371. The temporary construction easement area will revert back to the Commission at the end of the project.

PennDOT will be required to pay fair market value for the easement rights, accommodate all Commission operational needs during construction, and mitigate for any losses or impacts caused by the proposed bridge project. PennDOT will pave the new parking area and driveway and will rebuild and take responsibility for a concrete drainage U-channel and associated culvert south of SR 371. PennDOT will adjust the Commission owned driveways to provide for a smooth transition to the new roadway. The project area will be restored to a condition equal to or better than its current condition at the conclusion of the project. The project will not have any long term impacts on the hatchery's operations or use.

The disposition will be subject to staff performing the necessary due diligence and addressing any issues that arise during that process.

#### Briefer:

Brian Barner, Deputy Director, Office of Administration

#### 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:

At the outset of the Commission's consideration of the Executive and Administrative agenda items A-E, a motion was made by Commissioner Sabatose and seconded by Commissioner Lichvar to authorize the disposition of the property rights to the Pennsylvania Department of Transportation, for items A-E, including this item, as more particularly described in the Commentary. Motion carried.

**B. Property Disposition at Tionesta State Fish Hatchery for the State Route 62 Bridge Replacement Project, Forest County.**

Commentary:

The Commission owns +/-375 acres of land in Tionesta Borough and Tionesta Township, Forest County, containing the Tionesta Access and the Tionesta State Fish Hatchery. The Allegheny River runs adjacent to the Access which is separated from the majority of the Hatchery by State Route 62 (SR 62) that runs parallel to the river. Tubbs Run, a high quality trout stream, flows through Commission property and crosses under SR 62 and outlets into the Allegheny River.

The existing SR 62 bridge over Tubbs Run is deficient and is targeted for replacement during the 2017 construction season. The bridge is owned by the Pennsylvania Department of Transportation (PennDOT) and will be replaced on its existing alignment, but it will be slightly higher, wider and longer. The bridge replacement is part of the new PennDOT public-private partnership program that is trying to fast track bridge replacements by having the projects handled entirely by private consultants.

The SR 62 bridge project will require +/-0.1 acres of right of way and +/-0.3 acres of temporary construction easement to facilitate construction, as depicted on Exhibit C. The bridge will be replaced in halves with one half being worked on while the other half remains open to traffic. A traffic light will be placed to control traffic through the construction zone. The temporary construction easement area will revert back to the Commission at the end of the project.

PennDOT will be required to pay fair market value for the easement rights, accommodate all Commission operational needs during construction and mitigate for any losses or impact caused by the SR 62 bridge project. The new bridge will remove an existing stream obstruction and restore the stream bottom below the bridge to its natural state. The project area will be restored to a condition equal to or better than its current condition at the conclusion of the project. The project will not have any long-term impacts on the access area or hatchery operations.

The disposition will be subject to staff performing the necessary due diligence and addressing any issues that arise during that process.

Briefer:

Brian Barner, Deputy Director, Office of Administration

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:

At the outset of the Commission's consideration of the Executive and Administrative agenda items A-E, a motion was made by Commissioner Sabatose and seconded by Commissioner Lichvar to authorize the disposition of the property rights to the Pennsylvania Department of Transportation, for items A-E, including this item, as more particularly described in the Commentary. Motion carried.

C. Property Disposition at Bradys Bend Access for the State Route 4003 Bridge Replacement Project, Armstrong County.

Commentary:

The Commission owns +/-7.28 acres of land in Bradys Bend Township, Armstrong County, known as the Bradys Bend Access. The Access is on State Route 4003 (SR 4003) at the north side of Sugar Creek and west side of the Allegheny River. The Access is located across the river from East Brady, approximately 7 miles upstream of Lock and Dam 9. The Access is lightly used and has a single lane steep driveway with a small parking area that is half grass and partial gravel.

The existing SR 4003 bridge over Sugar Creek is deficient and is targeted for replacement during the 2017 construction season. The bridge is owned by the Pennsylvania Department of Transportation (PennDOT) and will be replaced on its existing alignment.

The SR 4003 bridge project will require +/-0.02 acres of right of way, +/-0.01 acres of slope easement and +/-0.14 acres of temporary construction easement to facilitate construction, as depicted on Exhibit D. The bridge will be replaced using half-width construction, meaning one half will be worked on while the other half remains open to traffic. A traffic light will be placed to control traffic through the construction zone. The temporary construction easement area will revert back to the Commission at the end of the project.

PennDOT will be required to pay fair market value for the easement rights, will allow the Access to remain open during construction, will accommodate all Commission operational needs during construction, and will mitigate for any losses or impact caused by the SR 4003 bridge project. The project area will be restored to a condition equal to or better than its current condition at the conclusion of the project. The Project will not have any long-term impacts on the Access.

The disposition will be subject to staff performing the necessary due diligence and addressing any issues that arise during that process.

Briefer:

Brian Barner, Deputy Director, Office of Administration

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:

At the outset of the Commission's consideration of the Executive and Administrative agenda items A-E, a motion was made by Commissioner Sabatose and seconded by Commissioner Lichvar to authorize the disposition of the property rights to the Pennsylvania Department of Transportation, for items A-E, including this item, as more particularly described in the Commentary. Motion carried.

D. Property Disposition at Wurtemberg Access for the State Route 488 Bridge Replacement Project, Lawrence County.

Commentary:

The Commission owns +/-0.8 acres of land in Perry Township, Lawrence County, known as the Wurtemberg Access. The Access is about 9 miles southeast of New Castle and located along Slippery Rock Creek and State Route 488 (SR 488). The Access is about 2.5 miles downstream from the lowest trout stocking limit on the creek and offers mixed fishing and seasonal canoeing/kayaking opportunities. The Access is lightly used and has a single lane steep driveway with a small parking area that is half grass and partial gravel.

The existing SR 488 bridge over Slippery Rock Creek is deficient and is targeted for replacement in the next year and a half. The bridge is owned by the Pennsylvania Department of Transportation (PennDOT) and will be replaced on its existing alignment, but it will be approximately 8 feet wider and 1 foot longer. The bridge replacement will impact the Access by closing it for approximately 7 months during construction. The closure is required due to concerns with public safety during construction.

The SR 488 bridge project will require +/-0.02 acres of right of way, +/-0.03 acres of slope easement to address wider bridge approaches and +/-0.35 acres of temporary construction easement to facilitate construction, as depicted on Exhibit E. The temporary construction easement area will revert back to the Commission at the end of the project.

PennDOT will be required to pay fair market value for the easement rights, accommodate all Commission operational needs during construction and mitigate for any losses or impact caused by the SR 488 bridge project. The driveway to the access area will be stabilized with new gravel, graded to address drainage issues and widened where possible. The parking area will also be regraded and stabilized with new gravel. All other areas will be restored to a condition equal to or better than their current condition at the conclusion of the project. The Project will not have any long-term impacts on the Access.

The disposition will be subject to staff performing the necessary due diligence and addressing any issues that arise during that process.

Briefer:

Brian Barner, Deputy Director, Office of Administration

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:

At the outset of the Commission's consideration of the Executive and Administrative agenda items A-E, a motion was made by Commissioner Sabatose and seconded by Commissioner Lichvar to authorize the disposition of the property rights to the Pennsylvania Department of Transportation, for items A-E, including this item, as more particularly described in the Commentary. Motion carried.

E. Property Disposition at Spring Creek-West Penn Property for the Linn Street Roadway Improvement Project, Centre County.

Commentary:

The Commission owns +/-30 acres of land in Bellefonte Borough, Spring Township, and Boggs Township, Centre County, known as the Spring Creek - West Penn Access. Spring Creek runs along and through the Access, while State Route 150 (SR 150) runs intermittently along the easterly boundary. The Access was acquired from West Penn Power Company in 1984 and receives significant fishing and kayaking pressure.

The Pennsylvania Department of Transportation (PADOT) needs to rebuild a retaining wall and improve drainage at the Linn Street and SR 150 intersection. This project will impact the upstream portion of the Access. The project calls for a 24-inch concrete storm water pipe to be placed and outlet on the Access, as depicted on Exhibit F. The project will require +/- 0.05 acres of drainage easement and +/-0.16 acres of a temporary construction easement. The pipe will outlet into an open rock lined drainage bed that is designed to dissipate runoff energy and flow and minimize creek sedimentation and erosion. The drainage bed will stop at least 15 feet short of the creek. This will allow for easy passage by anglers and kayakers along the creek and allow the runoff to seep directly into the ground. The temporary construction easement will revert back to the Commission at the end of the project

PennDOT will be required to pay fair market value for the easement rights. PennDOT has agreed to maintain access to Spring Creek for anglers and boaters during construction. The project area will be restored to a condition equal to or better than its current condition at the conclusion of the project. The project will not have any long-term impacts on the Access.

The disposition will be subject to staff performing the necessary due diligence and addressing any issues that arise during that process.

Briefer:

Brian Barner, Deputy Director, Office of Administration

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:

At the outset of the Commission's consideration of the Executive and Administrative agenda items A-E, a motion was made by Commissioner Sabatose and seconded by Commissioner Lichvar to authorize the disposition of the property rights to the Pennsylvania Department of Transportation, for items A-E, including this item, as more particularly described in the Commentary. Motion carried.

F. Freeport Access Property Lease to Freeport Borough, Armstrong County.

Commentary:

The Commission owns +/-1.52 acres of land and easements in Freeport Borough, Armstrong County, which contain a developed power boat access known as the Freeport Access. The site is located on Buffalo Creek but provides access to the Allegheny River which is about 500 feet downstream, as depicted on Exhibit G. The Borough donated +/-0.8 acres to the Commission and the Commission acquired +/-0.7 acres from a private individual to develop the Access in the early 1990s.

Freeport Borough has taken care of routine maintenance, operation and surveillance of the Access since December of 1991 under a maintenance agreement that is set to expire in December 2016. Under the current agreement, the Commission is responsible only for structural repairs at the site. The paved parking area is 25 years old, and the Borough is requesting that the Access be repaved in the near future with some minor amenities added such as a new dock.

The Borough is willing to enter into a 25-year lease of the property provided the Commission will commit to repaving the Access parking area within five years. If the parking area is not repaved within an agreed upon time period, the Borough has requested the ability to terminate the lease. The Borough is willing to pursue grant money to assist in paving and improving the site. The current paved area is +/-0.8 acres.

Under the lease, the site will remain open to the public free of charge for fishing and boating and at reasonable times as mutually agreed by the parties. Fishing and boating activities will have preference at the Access.

A lease with the Borough will be mutually beneficial. The Borough has shown its commitment to fishing and boating by operating and maintaining the site for the last 25 years and by donating a portion of the property.

Briefer:

Brian Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission authorize the lease of the Freeport Access to Freeport Borough, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Ketterer and seconded by Commissioner Gavlick to authorize the lease of the Freeport Access to Freeport Borough, as more particularly described in the Commentary. Motion carried.

G. Brooks Property Rights Acquisition, Girard Borough, Erie County.

Commentary:

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

The Commission has been offered an easement on 1,160 linear feet along Elk Creek as it flows across a parcel of property in Girard Borough, Erie County, for \$20,000. The easement will be for public fishing, boating, and riparian and fishery management and will include the stream corridor and extend at least 35 feet back from the top of the bank to the extent of the ownership of the seller. The easement area is located off of Elk Creek Road across the stream from Girard Borough Park property. A map depicting the subject parcels is attached as Exhibit H.

Elk Creek provides significant steelhead and trout fishing opportunities in the area. *Pennsylvania’s Fishing and Boating Access Strategy* indicates a need for more access on this section of Elk Creek. The Commission’s regional Law Enforcement and Fisheries staff have recommended that the easement be acquired.

The seller and the Commission have signed an option agreement that will allow staff to perform its due diligence. The Commission’s exercise of the option agreement will be subject to meeting the due diligence and funding requirements. In addition, the seller has agreed to be responsible for all current applicable real estate and transfer taxes that are normally shared between the buyer and the seller. The Commission may, at its sole discretion, pay for the costs to obtain and record a subordination of lien for the property.

Briefer:

Brian Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission authorize the acquisition of an easement along Elk Creek in Girard Borough, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Elliott to authorize the acquisition of an easement along Elk Creek in Girard Borough, Erie County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried.

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

### A. Amendment to Section 65.24 (Miscellaneous Special Regulations) – Crappie at Foster Joseph Sayers Lake, Centre County.

#### Commentary:

Foster Joseph Sayers Lake is located in Centre County and currently managed under panfish enhancement regulations for Black and White Crappie (9-inch minimum size limit and 20 fish/day creel limit). While there has been an increase in the trap net catch of legal-size crappie post panfish enhancement regulations, the proportion of legal-size fish is still relatively low at approximately 8%. The majority of adult fish are in the 7-inch and 8-inch length groups, just under the legal size limit. Age and growth analyses for crappie indicate an overall reduction in growth rates, especially for these size groups. Angler Use, Harvest, and Opinion surveys conducted at the lake indicate high angler effort directed towards crappie with high catch rates but reduced harvest under panfish enhancement regulations. In addition, angler satisfaction has slowly declined with both the number and size of crappie caught.

The current status of the crappie fishery is not satisfactory to many anglers and may be improved through an alternate regulation. Sayers Lake is one of the most productive reservoirs in the state and has the ability to produce a higher quality crappie fishery than currently exists.

The Commission therefore proposed that the daily creel limit be reduced from 20 fish/day to 10 fish/day and proposed a change in the number of fish both over and under nine inches that can be harvested to better manage the population from overexploitation while also being acceptable to anglers. The proposed regulation will allow anglers to harvest 10 crappies/day, of which no more than five crappies may be greater than or equal to nine inches in length. For example, anglers will be able to harvest 10 crappies less than nine inches, or nine crappies less than nine inches and one crappie greater than or equal to nine inches, or eight crappies less than nine inches and two crappies greater than or equal to nine inches, and so on. Under this new regulation, anglers will have a reasonable expectation of harvesting 10 crappies/day should they choose to do so, while still providing some additional protection to the larger fish in the population. This is not the case under the current regulation. The creel limit reduction from 20 fish to 10 fish is designed to prevent an overharvest given the number of anglers that are expected to harvest fish under a less restrictive length limit.

Staff interviewed 111 ice anglers on January 30, 2016 to obtain their feedback on a regulatory change. A significant (74%) majority were in favor of a new regulation. A public information session was also held on February 23, 2016 at Bald Eagle State Park to gain additional angler input. Attendees were split between regulation options and preferred those that allowed more crappies to be harvested. Following the meeting, staff conducted data reviews and modeling of the various regulatory options and arrived at the proposed regulation. This will allow an increased opportunity for harvest while

providing sufficient protection for an increased number of fish to reach quality size exceeding nine inches.

A notice of proposed rulemaking was published at 46 Pa. B. 2557 (May 21, 2016) (Exhibit I). The Commission received one neutral comment during the formal public comment period. Copies of all public comments have been provided to the Commissioners.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

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 January 1, 2017.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Gavlick to adopt the amendment as set forth in the notice of proposed rulemaking. This amendment will go into effect on January 1, 2017. Motion carried.

PROPOSED RULEMAKING

B. Amendment to Section 65.24 (Miscellaneous Special Regulations): Glade Run Lake (20C), Butler County.

Commentary:

Glade Run Lake, a 52-acre impoundment owned by the Commonwealth and managed by the Commission, is located in Middlesex Township, Butler County, approximately ten miles south of the city of Butler and 20 miles northeast of Pittsburgh. The dam impounds Glade Run near its headwaters. This lake was completely dewatered in July of 2011 to make dam and spillway repairs and modifications per dam safety standards of the Pennsylvania Department of Environmental Protection. Following completion of the dam and spillway repairs and modifications as well as construction of numerous habitat enhancement devices, the impoundment will be refilled by approximately January 1, 2017. The Commission will begin to re-establish a high quality warm and coolwater fishery through plants of select forage fish species beginning in fall of 2016 (if the lake is refilled to adequate levels) with gamefish and panfish fingerling plants beginning in 2017. This process will continue for several years. To allow Glade Run Lake’s forage base and warm and coolwater fish communities to develop, staff recommend placing Glade Run Lake under a miscellaneous special regulation that allows for the harvest of trout under Commonwealth inland seasons, sizes, and creel limits but allows catch and release fishing only for all other fish species. The stocking of adult catchable trout will begin in spring of 2017.

Staff recommend this approach to allow a balanced fishery to develop under protective regulations while offering acceptable levels of recreational angling opportunities. Staff recommend that the miscellaneous special regulation be established in early 2017 and extend until the warmwater fish populations rebuild appropriate levels. Staff will continue to monitor the fish populations as they develop and make the necessary adjustments to the species being stocked and the regulations governing the fishery to continually provide high quality recreational angling opportunities at Glade Run Lake. Once the warmwater fishery has been re-established, staff will recommend removal of the miscellaneous special regulation on the lake and inclusion of the lake in one of the Commission’s existing warmwater regulation programs.

Staff propose that §65.24 be amended as follows:

§ 65.24. Miscellaneous special regulations.

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

| <i>County</i>        | <i>Name of Water</i>         | <i>Special Regulations</i>   |
|----------------------|------------------------------|--|
| ***                  | ***                          | ***  |
| <b><u>Butler</u></b> | <b><u>Glade Run 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.</u></b><br><b><u>Trout—Inland regulations apply. See § 61.1.</u></b> |
| ***                  | ***                          | ***  |

Briefer:

Andrew L. Shiels, 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 approved on final rulemaking, this amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

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

## DESIGNATIONS

### C. Classification of Wild Trout Streams: Proposed Additions and Revisions.

#### Commentary:

The Department of Environmental Protection's regulations at 25 Pa. Code § 105.1 define the term "wild trout stream" as "a stream identified as supporting naturally reproducing trout populations by the Fish and Boat Commission under 58 Pa. Code § 57.11 (relating to listing of wild trout streams)." This term has regulatory significance because wetlands that are located in or along the floodplain of the reach of a wild trout stream and the floodplain of streams tributary thereto are considered "exceptional value" and are thus entitled to the highest level of protection.

The Commission adopted a statement of policy at 58 Pa. Code § 57.11 that sets forth the basis for the classification of streams supporting the natural reproduction of trout. Under § 57.11, it is the policy of the Commission to accurately identify and classify stream sections supporting naturally reproducing populations of trout as wild trout streams. The listing of a stream section as a wild trout stream is a biological designation that does not determine how the stream is managed. The statement of policy provides that the Commission's Fisheries Management Division will maintain the list of wild trout streams and that the Executive Director, with approval of the Commission, will from time to time publish the list of wild trout streams in the *Pennsylvania Bulletin* and solicit public comments.

Staff recommend the addition of 99 new waters to the Commission's list of wild trout streams and revisions to the section limits of six waters. These changes are the result of recent surveys conducted on these waters. Exhibit J provides information on the locations and a data summary for each of these waters. Surveying unassessed waters and documenting wild trout populations are consistent with the Commission's Strategic Plan for Management of Trout Fisheries in Pennsylvania, the statewide Strategic Plan and the agency's Resource First philosophy.

A notice of proposed designations was published at 46 Pa.B. 2377 (May 7, 2016) (Exhibit K). The Commission received a total of nine public comments regarding the proposed designations – seven support all of the proposed designations and two support the designation of specific waters. Copies of all public comments have been provided to the Commissioners.

#### Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

#### Recommendation:

Staff recommend that the Commission add 99 new waters to the Commission's list of wild trout streams and revise the section limits of six waters as described in the Commentary. If approved, these additions and revisions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

#### Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Hussar to add 99 new waters to the Commission's list of wild trout streams and revise the section limits of six waters as described in the Commentary. These additions and revisions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

D. Proposed Additions to List of Class A Wild Trout Streams.

Commentary:

Pursuant to 58 Pa. Code § 57.8a (relating to Class A wild trout streams), it is the Commission's policy to manage self-sustaining Class A wild trout populations as a renewable natural resource to conserve that resource and the angling it provides. Class A wild trout populations represent the best of Pennsylvania's naturally reproducing trout populations. Criteria developed for Class A Wild Trout populations are species specific. Wild Trout Biomass Class Criteria include provisions for wild Brook Trout, wild Brown Trout, mixed wild Brook and Brown Trout, wild Rainbow Trout, mixed wild Brook and Rainbow Trout and mixed wild Brown and Rainbow Trout populations.

Staff recommend the addition of three stream sections to the Commission's list of Class A wild trout streams. These changes are the result of recent surveys conducted on these waters. Exhibit L provides information on the locations and a data summary for each of these waters.

A notice of proposed designations was published at 46 Pa.B. 2382 (May 7, 2016) (Exhibit M). The Commission received a total of 10 public comments regarding the proposed designations - nine support all of the proposed designations and one supports the designation of a specific water. Copies of all public comments have been provided to the Commissioners.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission add three stream sections to its Class A wild trout streams list as described in the Commentary. If approved, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Lichvar to add three stream sections to the Commission's Class A wild trout streams list as described in the Commentary. These additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

## **HABITAT AND ENVIRONMENTAL FINAL RULEMAKING**

A. Amendment to Section 75.1 (Endangered Species) to Add Hornyhead Chub; Amendment to Section 75.2 (Threatened Species) to Remove the Mountain Brook Lamprey and Amendments to Section 75.3 (Candidate Species) to Remove the Hornyhead Chub, Ohio Lamprey, Bowfin and Timber Rattlesnake.

Commentary:

(1) Hornyhead Chub (*Nocomis biguttatus*): The Hornyhead Chub is a medium sized minnow with a robust body. Adult length is typically 4 to 6 inches. Breeding males have a distinct bright red spot behind the eye. It is a nest building minnow, constructing large pebble mounds by transporting gravel with its mouth. It inhabits clear, small to medium-sized streams with clean gravel, rubble and sandy substrates. In general, the Hornyhead Chub is highly intolerant of increased siltation and intermittent flows.

The Hornyhead Chub occurs in North America from the Mohawk River system in New York, west to the Red River system in Manitoba and North Dakota, and south to the Ohio River drainage. It also occurs in the Ozark drainages in Missouri and Arkansas and in an isolated section of West Virginia.

In Pennsylvania, it was historically reported from two locations in Cussewago Creek in Crawford County and a number of locations in the Shenango River drainage in Crawford, Lawrence and Mercer counties. It was also reported in collections from the Shenango system as well as Conneaut Creek in Crawford and Erie counties. Recent intensive field work that included surveys of historic sites as well as additional sites presenting suitable habitat in these historic drainages has demonstrated a precipitous decline in Hornyhead Chub populations in Pennsylvania. This species is now apparently confined to approximately 12 miles of Neshannock Creek in Lawrence and Mercer counties and two miles of Conneaut Creek in Crawford County.

The Hornyhead Chub was initially listed as a candidate species in 1999. The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Using the "Extent of Occupancy" criterion (B.3) within the Commission's listing process, the Hornyhead Chub's linear occupied stream distance exceeds the cutoff of 10 miles for endangered status by only four miles; however, significant threats to its continued existence remain, particularly in Conneaut Creek. In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S1 – meaning it is critically imperiled in the Commonwealth with a high to very high risk of extirpation due to its limited range and/or few populations or occurrences. The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed this documentation and rank assignment and recommended that the Hornyhead Chub be listed as endangered. Enough information is available to make the determination that it is endangered in the Commonwealth at present and to justify its addition to Pennsylvania's list of endangered fishes. Therefore, the Commission proposed that the Hornyhead Chub be removed from the Pennsylvania list of candidate species under § 75.3 and added to the list of endangered species under § 75.1.

(2) Mountain Brook Lamprey (*Ichthyomyzon greeleyi*). The Mountain Brook Lamprey is a small, non-parasitic lamprey. Adult sizes are small, generally 4 to 6 inches total length. Body color is dark olive on back and sides, often mottled, transitioning abruptly to a white belly, giving a bi-colored appearance. It is easily confused with the parasitic Ohio Lamprey (*Ichthyomyzon bdellium*), which is generally larger with a proportionally larger oral disc and has coloration that fades gradually toward the belly (not strongly bi-colored).

The Mountain Brook Lamprey prefers clear, small-medium sized creeks but can be occasionally found in larger waters. In Pennsylvania, it frequently occurs in stocked trout streams but is seldom found in colder streams containing wild Brook Trout (*Salvelinus fontinalis*). Larvae, known as ammocoetes, generally prefer sluggish areas with deposits of mud, muck, silt, sand, detritus and coarse woody debris.

This species occurs in North America from the Ohio River drainage in southwestern New York to northern Alabama and Georgia, where it is highly localized. In Pennsylvania, it occurs throughout the Allegheny River drainage, including the Loyalhanna Creek, French Creek and Clarion River drainages, and the upper Allegheny River. A small portion of Neshannock Creek in the Beaver River drainage is also occupied.

In 1999, the Mountain Brook Lamprey was listed as a threatened species. Since then, nearly all of this species' historic range in Pennsylvania has been resurveyed and no retraction of its range was noted. In fact, extensions of its known range have been documented, which now includes the Clarion River, Loyalhanna Creek and North Fork Redbank Creek.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.1 (Population Reduction) in that there has been no reduction in historic distribution. Since the Mountain Brook Lamprey occupies more than 150 river miles of waterway, it significantly exceeds Criterion B.3 (Extent of Occupancy). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4 – meaning it is secure in the Commonwealth with a very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Mountain Brook Lamprey be delisted. Enough information is available to make the determination that it is secure in the Commonwealth at present and to justify its removal from Pennsylvania's list of threatened fishes. Therefore, the Commission proposed that the Mountain Brook Lamprey be removed from the Pennsylvania list of threatened species under § 75.2.

(3) Ohio Lamprey (*Ichthyomyzon bdellium*). The Ohio Lamprey is a medium sized parasitic lamprey with a single dorsal fin and well developed teeth. Adult size is generally 5 to 10 inches total length. Body color is slate-gray to yellowish-gray, fading to a lighter belly.

The Ohio Lamprey occurs in large streams to large rivers during parasitic phase but enters smaller streams to spawn. Adults are generally found in riffles and runs over gravel, cobble and rubble. Ammocoetes generally prefer sluggish sections of small-medium sized streams with significant deposits of mud, muck, silt, sand, detritus and coarse woody debris. Ammocoetes generally burrow in substrate and filter feed on bacteria, protozoa and decaying phytoplankton and plant material. Host fishes include Paddlefish, Common Carp, carpsuckers, redhorses, black basses, larger catfishes, madtoms, Walleye and darters. There

is no evidence to support the belief of some that Ohio Lampreys negatively impact game fish populations.

This species occurs in North America from the Ohio River basin from New York to Illinois, and south to northern Georgia. In Pennsylvania, it occurs in the Ohio River, Conewango Creek, Mahoning Creek, Potato Creek, Oswayo Creek and the Allegheny River and the following streams and their tributaries: French Creek, Oil Creek, Sandy Creek and Brokenstraw Creek.

In 1999, the Ohio Lamprey status was changed from threatened to candidate. Current data indicate little if any range reduction has occurred when historic and recent records are compared. It is evident that the Ohio Lamprey remains well-distributed in the Ohio River drainage and may have expanded somewhat, with its known range including nine counties - Allegheny, Armstrong, Crawford, Erie, Forest, McKean, Potter, Venango and Warren. Of the 150 records reviewed, 52 are post-1999. The Ohio Lamprey likely maintains a continuous distribution throughout the Allegheny River.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.1 (Population Reduction) in that there has been no reduction in historic distribution. Since the Ohio Lamprey occupies more than 150 river miles of waterway, it also significantly exceeds Criterion B.3 (Extent of Occupancy). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4 – meaning it is secure in the Commonwealth with a very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of PABS reviewed this documentation and rank assignment and recommended that the Ohio Lamprey be delisted. Enough information is available to make the determination that it is secure in the Commonwealth at present and to justify its removal from Pennsylvania's list of candidate fishes. Therefore, the Commission proposed that the Ohio Lamprey be removed from the Pennsylvania list of candidate species under § 75.3.

(4) Bowfin (*Amia calva*). The Bowfin is a large, stout-bodied fish, with an extended ribbon-like dorsal fin and rounded, caudal fin. The Bowfin is noted for its voracious feeding habits usually consuming other fishes. It is capable of breathing atmospheric oxygen, an important adaptation to life in swamps and marshes, where low dissolved oxygen levels, high water temperatures and low water conditions occur frequently. The Bowfin inhabits swamps, marshes, ditches, ponds and lakes, and sluggish sections of rivers and creeks, where it prefers areas with submerged vegetation, undercut banks and coarse woody debris.

This species occurs in North America from Quebec to northern Minnesota in the St. Lawrence River-Great Lakes and Mississippi River basins south to the Gulf of Mexico and on the Atlantic and Gulf Coastal Plain from Susquehanna River drainage, Pennsylvania, to the Colorado River, Texas. It has been introduced elsewhere. In Pennsylvania, it is native to the Lake Erie and Ohio River drainages and introduced in the Susquehanna and Delaware River systems.

The Bowfin was listed as a Pennsylvania candidate species in 1991. It has persisted throughout the collection record in the Lake Erie drainage. It was reported from the Pittsburgh area prior to 1882 but was probably extirpated from the Ohio River drainage in

Pennsylvania by 1900. There are no historic records from the Pymatuning Lake region or the French Creek drainage in Crawford and Erie counties, but it was apparently introduced into these systems in the 1980's or 1990's. Those populations have significantly expanded since 2000, and it is now well established in suitable habitat there. The Bowfin is currently common to abundant in Presque Isle Bay, Erie County, and may now be taken regularly in Pymatuning Lake. It also occurs in French Creek and several tributaries, including Conneauttee Creek, Muddy Creek and Cussewago Creek; it is common to abundant in Conneaut Lake and Conneaut Marsh. In addition, it is now widely distributed in the Allegheny River below Kinzua Dam, and it has recently been found in the Ohio and Monongahela rivers as well. Populations were known to have been stocked by the Commission in Buhl Lake, Mercer County; Lake Somerset, Somerset County; Glendale Lake, Cambria County; and Black Moshannon Lake, Centre County. As a result of this expansion, staff consider the Bowfin to be recovered in the Ohio River system. This recovery, along with the stable population in the Lake Erie drainage, justifies removing the Bowfin from the Commission's list of candidate species.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.1 (Population Reduction) in that there has been no reduction in historic distribution, and Criterion B.3 (Extent of Occupancy), because it occupies more than 150 river miles of waterway. In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4 – meaning it is secure in the Commonwealth with a very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Bowfin be delisted. Enough information is available to make the determination that it is secure in the Commonwealth at present and to justify its removal from Pennsylvania's list of candidate fishes. Therefore, the Commission proposed that the Bowfin be removed from the Pennsylvania list of candidate species under § 75.3.

(5) Timber Rattlesnake (*Crotalus horridus*): The Timber Rattlesnake is a large, heavy bodied, venomous snake of the pit viper family (Viperidae). They typically have transverse "V" shaped dark bands on black or brown body color. The tail is black with a rattle and the head color distinguishes the color phase of the snake – black or yellow. Timber Rattlesnakes inhabit the forested, mountainous regions of Pennsylvania. They prefer upland forested areas where they forage for small mammals. Talus and/or scree slopes, rocky ledges, outcrops and boulder fields generally with southerly exposures contain the entrances to over-wintering dens.

The current national range of the Timber Rattlesnake encompasses 31 states from Vermont and New Hampshire south to northern Florida, west to eastern Texas and then north through eastern Oklahoma, Kansas and Nebraska, through Iowa into southeastern Minnesota. From southwestern Wisconsin the range retreats south, away from the Great Lakes, through western and southern Illinois and southern Indiana and Ohio.

Prior to European settlement, the range of the Timber Rattlesnake is thought to have spanned most of Pennsylvania. Today, Timber Rattlesnakes occur in 50 of 67 Pennsylvania counties, within forested, mountainous regions with strongholds mainly within the southwest, central and northeast region of Pennsylvania (e.g., Ridge and Valley Province, Laurel Highlands, Allegheny Plateau and the Pocono Plateau).

Historically, overhunting and habitat loss have been major threats to Timber Rattlesnake populations. The conversion of forest to agricultural land during the settlement of Pennsylvania by Europeans was likely responsible for the early extirpation of Timber Rattlesnakes from many portions of the Commonwealth (Surface 1906). Significant declines in Timber Rattlesnake populations were noted in the 1960-70's, primarily due to overhunting. Many counties maintained bounties on Timber Rattlesnakes and held "round ups," where hundreds of animals were harvested at these events.

In 1978, the Commission listed the Timber Rattlesnake as a candidate species due to reported population declines from overhunting and habitat loss. Protective measures and regulations by the Commission gradually increased, including permitting of organized hunts (1982), bag limits (1982, then reduced further in 1993), hunting season shortened to protect gravid females (1993), minimum size limit and prohibiting take of females (2007). These regulations were designed to discourage harvest of Timber Rattlesnakes, especially gravid females and immature snakes. Also, oversight of organized hunts by Commission personnel and law enforcement has increased, and education and protection measures by the Commission and other state land-holding agencies (Pennsylvania Department of Conservation and Natural Resources, Pennsylvania Game Commission) have also improved.

For the past 20 years, the Commission has reviewed development projects throughout the state for their potential to impact Timber Rattlesnake habitat. Recommendations to adjust alignments or modify project areas to avoid dens and gestation areas, seasonal work restrictions or having Timber Rattlesnake monitors on site during construction to move snakes out of harm's way have avoided and minimized direct and indirect impacts to Timber Rattlesnakes and their sensitive habitats.

In the past decade, encroachment by oil and gas development into Timber Rattlesnake strongholds has increased significantly with the relatively new shale gas industry in Pennsylvania. The northcentral portions of the range, once considered the core undisturbed populations, have been subject to high volume of exploration, well pad construction, pipeline construction and associated roads and infrastructure. However, anecdotal evidence thus far shows that while there are increasing threats to Timber Rattlesnakes through exposure to human disturbance, some of the habitat alteration (e.g., pipeline development) can provide important additional basking habitat in areas where canopy closure has posed problems for available basking and gestating habitat. Additionally, most of the well pads thus far are on the top of slopes and plateaus and do not interfere directly with den habitat (Commission observations).

In the last 25 years, Commission biologists began compiling more refined locational information from amateur and professional herpetologists concerned with the conservation of Pennsylvania's Timber Rattlesnake. Over 600 historic rattlesnake "dens" (without field checking, many were suspected to be basking areas) were mapped in Pennsylvania. Then, in 2003, the Commission allocated State Wildlife Grant funding to begin a statewide assessment of these historic Timber Rattlesnake sites, including determining habitat type, ranking the site quality and assessing threats for each site. Phase 1 of the project (2003-2006) resulted in visits to 467 historic sites, with 39% (182) confirmed to harbor Timber Rattlesnake. More than 80% of these confirmed sites were ranked as moderate to good quality in terms of viability and habitat.

During Phase 2 of the project (2005-2011), 1,087 sites (both historic and previously unassessed) were assessed and 71% (770) was found to be occupied by Timber Rattlesnakes. An occupied site averaged six snakes observed during the assessment, with a range of one to 75 per site. The status of the assessed sites was as follows: 39.2 % of the sites were ranked as above high to medium quality, 35.2 % of the sites were ranked as lower quality sites, 25.3% of the sites were considered historic sites, and 0.3% of the sites were classified as extirpated. Additionally, 65% of the occupied sites surveyed during the site assessment project documented the presence of gravid females, neonates or juvenile timber rattlesnakes, and an additional 20% of occupied sites had snakes that were not examined for their reproductive status. Site assessments have continued annually as part of Phase 3 of the project (2011-present). To date, 1,742 sites have been assessed for the project (2003-2014), resulting in 35.8% of the sites considered high to medium quality sites, 35.5% of the sites represent lower quality sites, and 28.4% of the sites were rated as historic or unoccupied at the time of the surveys (1241 (71%) of assessed sites were occupied). Large portions (estimated 50%) of the Timber Rattlesnake range remain unassessed due to lack of landowner permissions or access difficulty.

A Species Action (recovery) Plan was developed for the Timber Rattlesnake in June 2011 (<http://fishandboat.com/water/amprep/species-plan-timber-rattlesnake.pdf>). Commission staff have been working with its conservation partners to implement actions towards the recovery of the species. Protection of the Timber Rattlesnake will continue, warranting no changes to the take regulations or venomous snake hunt program. Additionally, an external workgroup comprised of representatives from the state and federal landholding agencies and experts in Timber Rattlesnake natural history was convened in order to review current conservation practices for the Timber Rattlesnake as well as develop and enhance best management practices for the Timber Rattlesnake on state lands, public education programs promoting protection of Timber Rattlesnakes, and cooperative agreements with industry likely to encounter critical Timber Rattlesnake habitat. Finally, the Commission is working with East Stroudsburg University to develop a robust long-term population monitoring program of the statewide population in order to track changes in the population and continue our understanding of the conservation status of the Timber Rattlesnake in the Commonwealth.

The Amphibian and Reptile Committee of PABS reviewed the Heritage rank of the Timber Rattlesnake and found it be “vulnerable-apparently secure” (S3S4) status - uncommon but not rare, and usually widespread in the state. On June 22, 2015, the PABS Committee recommended “delisting” status based on the aforementioned data and apparent commonality of the species in Pennsylvania.

The Timber Rattlesnake was listed in 1978 as a Pennsylvania candidate species, based on limited knowledge of populations and reported declines due to overhunting and habitat alteration. After a 12-year statewide assessment project was conducted, current data indicate the rattlesnake retains an extensive distribution across the Commonwealth, with large populations remaining in many areas, thus eliminating it from listing consideration based on criteria B (Extent of Occurrence), C (Population Estimates and Decline), D (Small Population Size) or E (Probability of Extinction). The threat of overhunting has been significantly reduced through regulations and permit programs. Threats to habitat are ever-changing but may be managed through education and management of the species on public lands. Threats are not quantifiable enough to meet criteria A2 (Projected Population Reduction). The

Timber Rattlesnake exceeds minimum requirements needed for listing as candidate, threatened or endangered status. The Timber Rattlesnake currently appears secure within the state, which justifies removal from Pennsylvania's list of candidate species. Therefore, the Commission proposed that the Timber Rattlesnake be removed from the Pennsylvania list of candidate species under § 75.3.

A notice of proposed rulemaking containing the proposed amendments was published at 45 Pa. B. 6691 (November 21, 2015) (Exhibit N). The only public comments that the Commission received relate to the Timber Rattlesnake delisting proposal. The Commission received a total of 73 comments during the formal comment period – two support and 71 oppose. The Commission received over 2200 comments after the formal comment period opposing the proposal. Most of the public comments received after the comment period were e-mail form letters generated by a posting on the Center for Biological Diversity's website. These comments do not raise any issues that were not raised during the formal comment period. Commissioners have been provided with copies of the public comments and a Comment/Response Document that summarizes and addresses the issues raised in the comments.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

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

Action:

A motion was made by Commissioner Hussar and seconded by Commissioner Lichvar to adopt the amendments as set forth in the notice of proposed rulemaking. These amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

A second motion was made by Commissioner Mascharka and seconded by Commissioner Ali that staff give an annual briefing during the Habitat and Environmental Committee each year until deemed no longer necessary by the Board of the status of the Timber Rattlesnake and the ongoing support work that is being done. Motion carried.

## OTHER MATTERS

### B. Sinnemahoning Creek Watershed Restoration Grant to Cameron County Conservation District.

#### Commentary:

At the October 2008 meeting, the Commission established the Sinnemahoning Creek Watershed Restoration Grant Program. This program was funded by a settlement agreement between the Commonwealth of Pennsylvania and Norfolk Southern, pursuant to which Norfolk Southern paid the Commission \$3,675,000 as restitution for natural resource damages stemming from a June 30, 2006 sodium hydroxide spill into Big Fill Run, Sinnemahoning-Portage Creek, Driftwood Branch of Sinnemahoning Creek and Sinnemahoning Creek. Under the agreement, the Commission must use these monies for developing and implementing projects that benefit recreational fishing and boating and the aquatic resources of Cameron, McKean, Elk and Potter Counties. Projects to be considered will include, but will not be limited to, acid mine drainage abatement; habitat protection, enhancement and restoration; the acquisition of properties (in fee or easements) for public fishing and access, as well as improvements to existing access areas; and aquatic inventories. The Commission authorized the Executive Director to approve individual grants in the amount of \$100,000 or less per grantee per year for projects meeting the objectives of the grant program. For grants exceeding that amount, staff will seek separate Commission approval.

The Cameron County Conservation District proposes to conduct a project entitled “*Finley 63 Passive Treatment System.*” The objective of the project is to complete construction of a passive system to treat mine discharge into Finley Run, a tributary to Sterling Run, Cameron County. Engineering design and a maintenance and operations plan for the system have been completed by J Ream Engineering Consultants, LLC, Emporium, PA. The Conservation District will submit a permit application, preparation of which (along with the design) is funded by another grant program, to the Pennsylvania Department of Environmental Protection.

Completion of this project is likely to extend the existing range of naturally reproducing trout at least an additional 1.1 miles downstream from the unpolluted headwaters by reducing metals and acidity from a discharge (FIN63) at an abandoned coal surface mine. When combined with several other acid mine drainage remediation projects already completed in recent years or currently funded and authorized for future construction, these efforts are a major step in restoring water quality and aquatic life to the historic wild trout fisheries within Finley Run, May Hollow Run, Portable Run and Sterling Run. As a condition of the grant agreement, the Conservation District will be required to maintain and operate the treatment system during its useful life. Operation, monitoring and maintenance of the proposed treatment facility should require minimal time and resources due to the nature and amount of mine discharge entering the system and based on the design of a passive treatment facility.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve a grant in the amount of \$121,050 to the Cameron County Conservation District for the purposes described in the Commentary.

Action:

A motion was made by Commissioner Elliott and seconded by Commissioner Hussar to approve a grant in the amount of \$121,050 to the Cameron County Conservation District for the purposes described in the Commentary. Motion carried.

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

**Other New Business**

None.

**Time and Place of September 2016 Commission Meeting**

The next meeting will be held on September 26-27, 2016 in Erie.

**Adjournment**

A motion was made by Commissioner Elliott and seconded by Commissioner Ali to adjourn the meeting at approximately 11:40 a.m. Motion carried.