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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 128<sup>th</sup> Meeting of the Pennsylvania Fish and Boat Commission was held on Thursday June 14, Monday July 9 and Tuesday, July 10, 2018 at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on June 14, beginning at approximately 10:00 a.m., July 9 beginning at approximately 8:00 a.m. and on July 10 beginning at approximately 8:00 a.m. The public session for review of this agenda began on or about 10:50 a.m. on July 10.

**Call to Order**

The meeting was called to order by Commission President Rocco S. Ali and followed by the Pledge of Allegiance to the Flag.

**Roll Call**

**Members Present**

**Rocco S. Ali, President**  
**Eric C. Hussar, Vice-President**  
**William C. Brock**  
**G. Warren Elliott**  
**Norman R. Gavlick**  
**Richard S. Kauffman**  
**Richard Lewis**  
**Leonard L. Lichvar**  
**Edward P. Mascharka III**  
**Robert B.J. Small**

**Review and Approval of Minutes from the April 24, 2018 Meeting**

A motion was made by Commissioner Lewis and seconded by Commissioner Brock to approve the April 24, 2018 minutes as written. Motion carried.

### **Awards and Presentations**

The “Wave of Excellence” Award was presented to Valerie Groetzing, Operations Manager for License and registration. Val began employment for the Fish & Boat Commission as a Clerical Supervisor in 2001. In 2007 she was promoted to Administrative Officer, her current job class. Her nomination for the Wave of Excellence award from the Northwest Region Office of the Bureau of Law Enforcement comes about as a result of 12 years of dealing with the current staff regarding license and registration issues. The NW Region Office is a very busy office that handles a lot of in-person contacts for Fishing Licenses, Boat Registrations and launch permits, and, as with any business, there are issues that come up. The staff at NWRO have developed a relationship with Val based on her knowledge and ability to handle almost anything that they throw at her. Val never seems to have a bad day and is always committed to resolving any issues. NWRO has seen this transfer into its field force. They know that their region WCO’s contact Valerie directly when they encounter issues in the field and email or call her to get them resolved. The NW Region Office sees this type of coordinated cooperation as a huge benefit when dealing with customers and resolving issues in an expedited manner; for these reasons, the NW Region Office staff chose to pass the Wave of Excellence award to Valerie in honor of Brook Tolbert who posthumously received the award six months ago. Brook was always there to help the public in his position and the NW Region Office sees the same dedication with Val.

Waterways Conservation Officer (WCO) Robert Plumb has been awarded the 2017 NASBLA Boating Officer of the Year for Pennsylvania. This award is given to that officer who has gone above and beyond in the area of boating enforcement and education in each of the states represented by the National Association of State Boating Law Administrators. WCO Plumb serves the Commission in Wayne and Pike Counties, his main boating pool is the busy Lake Wallenpaupack. In addition to mandatory training required by the Bureau of Law Enforcement, WCO Plumb has also voluntarily completed other trainings such as the ARIDE (Advanced Roadside Impaired Driving Enforcement) course. This course helps the officer better identify when an operator is under the influence of drugs. In 2017 WCO Plumb spent 52 days patrolling PA’s waterways via a patrol boat. During these and other patrols he interacted with 455 boats. He conducted or assisted with several accidents including a fatal involving a young high school victim. When not on the water he takes the time to educate the public with various programs, boating classes, and media interviews. Because of these reasons, and many not mentioned, WCO Plumb has commendably served the citizens of the Commonwealth and is very deserving of this recognition.

Waterways Conservation Officer (WCO) Matthew Raetsch is being recognized for his lifesaving efforts during a routine patrol shift on February 24, 2018 with the Lifesaving Award. During that patrol WCO Raetsch encountered an individual that was attempting to commit suicide by jumping into the Monongahela River from the Smithfield Street Bridge. With the assistance of a Pittsburgh Police Officer they were able to pull the victim to safety and get him the help that he needed. If not for WCO Raetsch’s prompt, professional actions the result that day would have been different. Congratulations on your award and thank you for your continued exceptional service to the citizens of this Commonwealth.

Commissioner Rocco S. Ali was recognized and commended for his outstanding leadership and dedication while serving as President of the Commission from October 26, 2016 to July 10, 2018.

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

Commission President Ali presided over the elections. He called for nominations for the office of President, and Commissioner Brock nominated Commissioner Hussar as President. Commissioner Gavlick seconded the nomination. The Commission elected Commissioner Hussar to serve as President of the Commission for 2018-2019.

Commission President Ali then called for nominations for the office of Vice-President. Commissioner Small nominated Commissioner Lewis as Vice-President. Commissioner Kauffman seconded the nomination. The Commission elected Commissioner Lewis to serve as Vice-President of the Commission for 2018-2019.

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

The "April-June 2018 Quarterly Report" (Exhibit A) was provided to Commissioners. Director Arway read a letter he received from a Pittsburgh angler thanking the Commission for our hard work and dedication to providing exceptional fishing opportunities and a great value for license holders. The letter went on to talk about how he supported our goals of a fishing license fee increase and how he was proud to make a donation to the PFBC.

### **Announcement of Executive Sessions**

Commissioner Ali announced that an executive session was held on Monday, July 9, at approximately 8:00 a.m. to discuss personnel matters, potential real estate acquisitions and pending litigations.

### **Reports of Commissioner Committees**

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

The Executive and Administrative Committee met on Monday, July 9, at approximately 10:15 a.m. Agenda items were discussed. A 2018 license sales and boat registration sales report, 2018 Fishing License Button sales update and a Pennsylvania Automated License Service Implementation update was provided by Bernie Matscavage. Paul Urbanik gave an engineering update. Funding concepts presentation was given by Brian Barner. Larry Furlong provided a Launch Permit update.

#### **Boating (Commissioner Elliott) –**

The Boating Committee met on Tuesday, July 10, at approximately 8:28 a.m. Agenda items were discussed. A low head dam issues presentation was presented by Tom Burrell.

**Fisheries (Commissioner Mascharka) –**

The Fisheries Committee met on Thursday, June 14 at approximately 12:55 p.m., and Monday, July 9, at approximately 1:32 p.m. Agenda items were discussed.

On June 14, Dave Nihart discussed Fisheries management activities regarding gill lice and gave an overview of trout waters classification process. Geoff Smith gave a Susquehanna/Juniata Rivers Smallmouth Bass 2017 survey update. A three-part presentation on enhancing fishing opportunities for wild trout including, children's only area expansion, possibilities for catch and release on wild trout and class A waters, and aligning of co-op stockings with streams being affected with hatchery cuts were provided by Brian Wisner, Tom Cochran and Brain Niewinski.

On July 9, Dr. Vicki Blazer presented the other factors affecting Susquehanna River/Juniata River Smallmouth Bass. Kris Kuhn discussed proposed additions to class A wild trout waters, proposed additions, revisions and removals of wild trout stream classifications, additions of Cooks Pond in Bedford County to open year-round fishing, the addition of Lehigh River, section 08 in Carbon County to open year-round fishing, the addition of the West Branch of Susquehanna River, section 05 in Clearfield County to stocked waters open year-round fishing and the addition of Penns Creek, section 05 in Union County to catch and release artificial lures only program.

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

The Habitat and Environmental Committee met on Monday, July 9, at approximately 3:33 p.m. Agenda items were discussed. An overview of Eastern Pennsylvania Coalition for Abandoned Mine Reclamation (EPCAMR) Program Areas in the Anthracite and Northern Bituminous Region related to PA's Past Mining Legacies was presented by Robert Hughes, Executive Director of EPCAMR

**Hatcheries (Commissioner Ali) –**

The Hatcheries Committee met on Thursday, June 14 at approximately 10:00 a.m. and July 10 at approximately 8:57 a.m.

On June 14, Brian Wisner discussed the proposed Bureau of Hatcheries cuts, including a timeline and staffing plans. Tom Cochran discussed the option of smaller fish in lieu of less fish, the numbers and distribution of fish. Brian Niewinski presented how cuts will impact services of Cooperative Nursery Units. Brian Niewinski provided updates on gill lice issues with Coop Nurseries.

On July 10, President Ali gave an over view of the topics covered during the June 14 Committee Meeting and updates on changes to plans of closing hatcheries. Brian Wisner presented plans for Union City's hatchery transformation from raising fish to raising mussels and possible funding opportunities.

**Law Enforcement (Commissioner Gavlick) –**

The Law Enforcement Committee met on Tuesday, July 10 at approximately 8:05 a.m. Agenda items were discussed. Corey Britcher provided a Fiskil Hotline update. There were no revocations.

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

The Legislation and Public Outreach Committee met on Tuesday, July 10. Mike Nerozzi discussed Fee Delegation Authority and License Increase Bills (SB 30, HB 554, SB 460, HB 609), Lake Erie Permit (HB 1686) and H.R. 4647. Steve Kralik provided a Marketing and Outreach update. Carl Richardson discussed the Recruitment, Retention and Reactivation (R3) Plan and Efforts.

**Public Comment to Commissioners and Staff**

None.

**EXECUTIVE AND ADMINISTRATIVE  
PUBLIC ACCESS AND REAL ESTATE MATTERS**

A. Erie Access Improvement Program Grant to North East Township, Erie County.

Commentary:

Section 2907.2 of the Fish and Boat Code, 30 Pa. C.S. §2907.2, provides that the proceeds from the sale of the special Lake Erie fishing permits and \$6 of the fees for the combination trout/salmon/Lake Erie permits are to be deposited into a restricted account within the Fish Fund 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.

North East Township submitted a grant application to the Erie Access Improvement Program to construct an ADA accessible fishing pier on their property near the mouth of Twentymile Creek. The project involved the construction of a reinforced concrete pier cantilevered over the bank of Twentymile creek, safety railing and streambank stabilization upstream and downstream of the fishing pier. Under the procedures approved by the Commission, the Executive Director approved a grant in the sum of \$63,000 and a contract was signed in July of 2017.

This project is phase 2 of a two-part project to develop an ADA accessible parking area, trail and fishing pier at the mouth of Twentymile Creek. Phase 1 improvements included the development of an ADA accessible parking area and trail that leads to the fishing pier. Phase 1 improvements were completed and inspected by staff in February of 2017.

After receiving approval for the engineering drawings, the Township released the project for bid. Upon receiving the bids in June, they found that the low bid exceeded the grant amount by \$85,000. They have requested consideration for additional funding. Because the additional funding places the total contract above the \$100,000 limit for approval authority granted to the Executive Director, staff are presenting the request for an additional \$85,000 funding to the Commission for approval. Staff have reviewed the bids and have found them to be in order. The project cannot be scaled back without having an undesirable impact on the project. The completion of this project will provide the only ADA accessible fishing pier on the east side of Erie County.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission approve amending its contract with North East Township to provide an additional \$85,000 to complete the access development as more fully described in the Commentary and their application and subsequent communications.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Gavlick to approve amending its contract with North East Township to provide an additional \$85,000 to complete the access development as more fully described in the Commentary and their application and subsequent communications. Motion Carried.

B. Benedictine Sisters of Erie Easement Acquisition, Harborcreek Township, Erie County.

Commentary:

Section 2907.2 of the Fish and Boat Code, 30 Pa. C.S. §2907.2, provides that the proceeds from the sale of the special Lake Erie fishing permits and \$6 of the fees for the combination trout/salmon/Lake Erie permits are to be deposited into a restricted account within the Fish Fund 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 4,960 linear feet along Sevenmile Creek as it flows across a parcel of property in Harborcreek Township, Erie County for \$105,000. 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 along Sevenmile Creek off Route 5 east of Lawrence Park, PA. A map depicting the subject parcels is attached as Exhibit B.

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.

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

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

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

Action:

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

C. Ransom Easement Acquisition, Spring Township, Crawford 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 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 2,170 linear feet along Conneaut Creek as it flows across a parcel of property in Spring Township, Crawford County for \$30,000. 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 Tower Road immediately downstream of an existing public fishing easement. A map depicting the subject parcels is attached as Exhibit C.

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.

Conneaut 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 Conneaut Creek. The Commission’s regional Law Enforcement and Fisheries staff have recommended that the site be acquired.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission authorize the acquisition of an easement along Conneaut Creek in Spring Township, Crawford County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account.

Action:

A motion was made by Commissioner Ali and seconded by Commissioner Mascharka to authorize the acquisition of an easement along Conneaut Creek in Spring Township, Crawford County, as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried.

D. Property Disposition at the Commission's Canonsburg Lake for the McDowell Lane Bridge Replacement and Causeway Upgrade Project, Washington County.

Commentary:

The Commission owns +/-137 acres in North Strabane and Peters Townships, Washington County, which contain a +/-78-acre impoundment known as Canonsburg Lake and a portion of Little Chartiers Creek, as depicted on Exhibit D 1 of 2. The property is heavily used due to its urban location and its proximity to Pittsburgh which is about 19 miles to the north. The lake is stocked with trout four times a year and channel catfish once a year.

The existing McDowell Lane single lane bridge and causeway are deficient and targeted for replacement during the 2019 construction season. The bridge is owned by Washington County, and each bridge approach is owned by the Township in which it is located. The bridge and causeway will be replaced slightly to the south of their existing alignment. The bridge will be slightly longer, and the bridge and causeway will be widened to accommodate a new five-foot wide walkway. The causeway widening will require portions of the lake to be filled.

The project will require +/-0.4 acres of permanent right of way; +/- 0.2 acres of permanent slope easement and +/- 0.5 acres of temporary construction easement to facilitate construction, as depicted on Exhibit D 2 of 2. The temporary construction easement will revert to the Commission at the end of construction. The project will require the closure of the bridge, causeway and the Commission's small western access area to traffic and public access during construction.

Washington County will pay fair market value for the rights and will accommodate all Commission operational needs during construction. In addition, the public and Commission will benefit in the long term from the project by having the western access area repaved and enlarged and fishing access improved by having the causeway widened. The project area will be restored to a condition equal to or better than its current condition at the end of the project. The project will not have any long-term impacts on the lake.

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

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission authorize the disposition of the property rights to Washington County as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Kauffman and seconded by Commissioner Ali to authorize the disposition of the property rights to Washington County as more particularly described in the Commentary. Motion carried.

E. Property Disposition at the Commission's North East Marina Access, Erie County.

Commentary:

The Commission owns a +/- 18.6-acre property in North East Township, Erie County, known as North East Marina Access (Marina Property), as shown on Exhibit E 1 of 2. The Marina Property is located 5 miles east of North East, between State Route 5 and Lake Erie, with +/-890-feet of frontage on Lake Erie. The property contains a full-service marina, comprising of an administration building with restaurant, tackle shop and repair shop, a boat storage building, large parking area for vehicles, boats and trailers, two public boat launches and a 220 seasonal boat slip marina.

The Marina Property was acquired in the early 1990's through the purchase of two properties. The first was a 13.3-acre interdepartmental land transfer from the Department of General Services in 1991 and the second was a 5.3-acre fee simple acquisition from Margaret Knight in 1994.

In 1994, when the Commission acquired the Margaret Knight property there remained several unresolved matters affecting the property. An adjoining property owner to the west of the Marina Property, Eileen Knight, daughter of Margaret Knight, and her husband owned a +/- 1-acre property, which was originally part of the Margaret Knight property. The driveway serving the +/- 1-acre tract ran across the property of Margaret Knight. When the Commission acquired the Margaret Knight property in 1994, an agreement had not been reached with Eileen Knight and her husband for the use of the driveway to access their property. Additionally, the continued use of a septic system, concrete basketball court, parking and garden areas located on Commission property remain unsettled. Since that time, several proposals have been presented and evaluated and each time a solution could not be agreed upon.

In November 2016, Eileen Knight contacted the Commission offering to purchase enough property from the Commission to resolve the access and encroachment issues. The appraisal value of the requested property is approximately \$6,700 per acre. An approved subdivision plan will determine the final acreage and configuration. The property to be conveyed is not actively used by the Commission, and its disposition will not adversely impact the Commission, its operations, or future plans to utilize or further develop the Marina Property. Commission staff have evaluated the request and determined that it's in the best interest of both parties to bring these issues to a close. It is staff's recommendation that the Commission convey +/- 0.9-acres to Eileen Knight as depicted on Exhibit E 2 of 2.

Eileen Knight will be responsible for all costs associated with the conveyance, including subdivision and recording costs. In addition, any real estate and transfer taxes that are normally shared between the buyer and the seller will be paid by Eileen Knight. The Commission will retain all oil, gas, coal and mineral rights on the property being conveyed. In addition, staff will adhere to the Commission's standard practices for property disposition including meeting due diligence requirements.

Briefer:

Mark H. Mitchell, P.L.S., Chief, Property Services Section, Division of Public Access and Property Services

Recommendation:

Staff recommend that the Commission authorize the disposition of property at North East Marina Access as described in the Commentary.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Brock to authorize the disposition of property at North East Marina Access as described in the Commentary. Motion carried.

## EXECUTIVE AND ADMINISTRATIVE PROPOSED RULEMAKING

### F. Amendment to § 51.71 (Scientific Collectors' Permits) to Increase Permit Fees.

#### Commentary:

58 Pa. Code § 51.71 requires a valid and current scientific collectors' permit issued by the Commission for persons engaged in collections for scientific or educational purposes, of any species of Pennsylvania fishes, amphibians, reptiles or aquatic organisms, during seasons not permitted by regulations governing holders of a Pennsylvania fishing license or other license or permit issued by the Commission (e.g., rattlesnake hunter permit, organized amphibian and reptile hunt permit). This program was initiated by the Commission in January 1966 and was revised several times over the years. In July 1978, the Commission established various fees for different permit types within the scientific collector permit program through terms and conditions of the scientific collectors' permit. Three types of permits with associated fees through this program were developed: Type 1 permit (Research) \$10.00, assistants and permit amendments had no fee; Type 2 (Government) free permit, assistants and permit amendments had no fee; Type 3 permit (Consulting) \$50.00, \$10.00 each assistant and permit amendments. Permit conditions require that all collectors (scientific collector permit holders and their assistants) have current valid fishing licenses prior to issuance of the scientific collectors' permit and any subsequent collecting activity. In January of 2008, the long-term policy was codified, and the fee structure was updated: Type 1 permit (Research) \$30.00, assistants free, and permit amendments \$15; Type 2 (Government) free permit, assistants and permit amendments free; Type 3 permit (Consulting) \$150.00, \$30.00 each assistant, permit amendments \$75.00.

The Natural Diversity Section, housed within the Commission's Bureau of Fisheries, Division of Environmental Services, administers the Scientific Collector Permit (SCP) program. This program has significant staff demands. Administering the program requires staff to receive and review new and renewal permit applications and amendments, and process end-of-year permit reports. A significant part of this administration is ongoing clerical support (dealing with applicant questions, changes to permits, processing payments for permits and amendments) and continual database and system maintenance support provided by our Information Technology staff. Reviewing the applications requires a technical review and substantial staff interaction with potential collectors, often resulting in changes to proposed collections. Staff also periodically check for permit compliance in the field. Permit collection reports are filed by staff and relevant collection information (i.e., rare, threatened and endangered species data) is extracted from reports and submitted to the Pennsylvania Natural Heritage Program to be included in a statewide database for rare species (Pennsylvania Conservation Explorer) that is consulted during the environmental permit review process. Staff also review and issue special permits under 58 Pa. Code § 75.4 for applicants that qualify to conduct threatened and endangered species research and surveys.

Currently, Commission staff review new, renewal, and amended applications and issue approximately 420 Scientific Collector Permits annually. To address an increasing trend of permits and ongoing program demands, Commission Natural Diversity Section and Information Technology staff have been working together to streamline the permit application process and improve the application and reporting process with an interactive, web-based computer application that is accessible to the public. This web-based application is the first of its kind for the Commission and requires regular maintenance and upgrades. Staff proposes to increase the permit fees to offset increasing program costs using the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) tool that is based on annual inflation rates since the fee structure was last updated in January 2008. The proposed permit fee changes adjusted with CPI inflation rate values since January 2008 follow: Type 1 permit (Research) \$40.00, assistants free, and permit amendments \$20; Type 2 (Government) free permit, assistants and permit amendments free (no changes proposed); Type 3 permit (Consulting) \$180.00, \$40.00 each assistant, and permit amendments \$90.00. The following table summarizes the historic and proposed fee structure for the Scientific Collectors' Permit program:

| Scientific Collectors' Permit | 1978 | 2008  | 2019 (proposed) |
|-------------------------------|------|-------|-----------------|
| Type 1 (Research)             | \$10 | \$30  | \$40            |
| Each Assistant                | \$0  | \$0   | \$0             |
| Permit Amendments             | \$0  | \$15  | \$20            |
| Type 2 (Government)           | \$0  | \$0   | \$0             |
| Each Assistant                | \$0  | \$0   | \$0             |
| Permit Amendments             | \$0  | \$0   | \$0             |
| Type 3 (Consulting)           | \$50 | \$150 | \$180           |
| Each Assistant                | \$10 | \$30  | \$40            |
| Permit Amendments             | \$10 | \$75  | \$90            |

Staff propose that §51.71 be amended as follows:

\*\*\*

**§ 51.71. Scientific collectors' permits.**

\*\*\*

(1) *Type I Permit: Nonprofit Research and Education.* The Commission will issue a Type I (Nonprofit Research and Education) permit to individuals whom the Commission deems to be qualified to competently and capably conduct research or educational programs and who are not engaged in scientific collecting for monetary gain.

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(iii) *Fees.* The fee for a Type I permit holder is [~~\$30~~] \$40. Each assistant is free. Permit amendments are [~~\$15~~] \$20 each.

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(3) *Type III Permit: Consulting.* The Commission will issue a Type III (Consulting) permit to individuals whom the Commission deems to be qualified to engage in scientific collecting and who are engaged in private consulting for profit. The Commission will issue a Type III permit to qualified individuals only and will not issue one in the name of a corporation or other business entity.

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(iii) *Fees.* The fee for a Type III permit holder is [~~\$150~~] \$180. Each assistant is [~~\$30~~] \$40. Permit amendments are [~~\$75~~] \$90 each.

Briefer:

Brian Barner, Deputy Director

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If approved on final rulemaking, the amendments will go into effect on January 1, 2019.

Action:

A motion was made by Commissioner Ali and seconded by Commissioner Brock to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If approved on final rulemaking, the amendments will go into effect on January 1, 2019. Motion carried.

G. Amendment to Section 71.7 (Triploid Grass Carp), 79.5 (Snapping Turtles), 79.6 (Venomous Snake Permits), and 79.7 (Organized Reptile and Amphibian Hunt permits) to Increase Permit Fees.

Commentary:

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

This program was initiated by the Commission in January 1994. Two types of permits with associated fees were established. A triploid grass carp possession/introduction permit was \$20. A triploid grass carp importation/transportation permit was \$50. In 2012, the fee structure was re-assessed and increased to offset inflation and increasing program costs. A triploid grass carp possession/introduction permit was increased to \$75. A triploid grass carp importation/transportation permit was increased to \$75.

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

The Commission currently issues approximately 350 triploid grass carp permits per year. Staff proposes to increase the permit fees to offset increasing program costs using the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) tool that is based on annual inflation rates since the fee structure was last updated in January 2012. The proposed permit fee changes adjusted with CPI inflation rate values since January 2012 for the triploid grass carp possession/introduction permit is proposed to be \$85; and the triploid grass carp importation/transportation permit is proposed to be \$85.

Similarly, several amphibian and reptile permits have increasing program cost demands, and a similar increase in fee structure approach to offset inflation and increasing program costs are proposed (e.g., using the CPI Inflation tool).

In January 2008, section 79 (Amphibian and Reptiles) was overhauled, reorganized, and updated. A permit was developed for individuals interested in the commercial collection and sale of Snapping Turtles (§ 79.5). The Snapping Turtle permit fee was established at \$50 for PA residents and \$100 for non-residents. Under § 79.6, the Venomous Snake

Permit was updated to allow permit holders to hunt for both the Copperhead and Timber Rattlesnake. The fees for the Venomous Snake Permit was increased from \$5 to \$25 for PA residents, and \$50 for non-residents in January 2008. This program has grown significantly. The past two years have experienced a record number of permits issued since the program began in 1984. In 2017, 1,437 Venomous Snake permits were issued. For groups or organizations that want to conduct competitive Organized Hunts for Reptiles and Amphibians, an Organized Reptile and Amphibian hunt permit may be obtained (§ 79.7). There are currently only six permits issued per year, which mainly focuses on the Timber Rattlesnake, where competitions for the largest and heaviest male snakes occur. One “turtle derby” organized hunt is also permitted annually. The Organized Reptile and Amphibian hunt permit was updated in January 2008 from \$25 to \$100.

The Bureau of Law Enforcement issues the Snapping Turtle and Venomous Snake Permits. BLE staff review incoming applications and issue permits, answer questions from hunters about the application process and hunting regulations, process permits and payments. A significant amount of time is spent on law enforcement details and permit compliance for the Venomous Snake Permit program. The Natural Diversity Section of the Division of Environmental Services receives, reviews, and databases hunter reports, and develops end-of-year summary reports for the programs. Natural Diversity Section staff also administer the Reptile and Amphibian Organized Hunt program (review permit applications, issue permits, attend hunts for permit compliance purposes).

Staff proposes to increase the permit fees for these three permit programs to offset increasing program costs using the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (CPI) tool that is based on annual inflation rates since the fee structure was last updated in January 2008. The table below summarizes the last fees update and newly proposed fees for January 2019:

| <b>Chapter 79 Permit</b>             | <b>2008</b> | <b>2019<br/>(proposed)</b> |
|--------------------------------------|-------------|----------------------------|
| Snapping Turtle Permit-Resident      | \$50        | \$60                       |
| Snapping Turtle Permit-Non-Resident  | \$100       | \$120                      |
| Venomous Snake-Resident              | \$25        | \$30                       |
| Venomous Snake-Non-Resident          | \$50        | \$60                       |
| Organized Reptile and Amphibian Hunt | \$100       | \$120                      |

Staff propose that § 71.7, § 79.5, § 79.6, and § 79.7 be amended as follows:

§ 71.7. Triploid grass carp.

\* \* \*

(c) *Permit required.*

(1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid grass carp (white amur) or introducing them into Commonwealth waters and for importing or transporting triploid grass carp into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit for a fee of ~~[\$75]~~ **\$85**. A person who wishes to import triploid grass carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid grass carp importation/ transportation permit for a fee of ~~[\$75]~~ **\$85**. Permits shall be applied for on forms supplied by the Commission. Applications for permits may be obtained from: Triploid Grass Carp Manager, Bureau of Fisheries, **[450 Robinson Lane] East Rolling Ridge Drive**, Bellefonte, PA 16823**[-9616]**. Permits will not be issued until after January 1, 1994.

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§ 79.5. Snapping turtle permits.

(a) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the common snapping turtle (*Chelydra serpentina*) that persons who hunt, take, catch or kill this species for the purpose of sale, barter or trade have an annual permit for the activity. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, **[450 Robinson Lane] East Rolling Ridge Drive**, Bellefonte, PA 16823**[-9616]**. The fee for residents is ~~[\$50]~~ **\$60** per year; the fee for nonresidents is ~~[\$100]~~ **\$120** per year. The denial of a permit under this section is appealable in the manner provided by Chapter 51, Subchapter E (relating to permit procedures).

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§ 79.6. Venomous snake permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the timber rattlesnake (*Crotalus horridus*) and copperhead (*Agkistrodon contortrix*) that persons who hunt, take, catch or kill these species have a permit for the activity. Application for a permit must be made on a form prescribed by the Commission and accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. The fee for residents is ~~[\$25]~~ **\$30** per year; the fee for nonresidents is ~~[\$50]~~ **\$60** per year. The denial

of a permit under this section is appealable in the manner provided by Chapter 51, Subchapter E (relating to permit procedures).

(b) *Required permit.* It is unlawful to hunt, take, catch, kill or possess a timber rattlesnake or copperhead, in whole or in parts, without first procuring the required permit from the Commission. The required permit shall be in the possession of the permittee at all times while hunting. Permittees shall comply with the terms and conditions of the permit and furnish the reports required thereby. It is unlawful to alter, borrow, lend or transfer a permit under this section.

(c) *Reporting.* Within 10 business days following the capture or kill, or if no snake is captured or killed, within 10 days of the conclusion of the season, the permittee shall complete a report on the form prescribed by the Commission and shall mail the report to the Commission's Natural Diversity Section, **[450 Robinson Lane] East Rolling Ridge Drive**, Bellefonte, PA 16823[-9616].

\*\*\*

#### § 79.7. Organized reptile and amphibian hunt permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of fish), that it is necessary for the proper protection and management of reptiles and amphibians in this Commonwealth that organized reptile and amphibian hunts be conducted under permits issued under this section. The sponsor of an organized reptile and amphibian hunt shall apply for a permit by no earlier than January 1 and no later than March 1 of the year for which the hunt is proposed. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, **[450 Robinson Lane] East Rolling Ridge Drive**, Bellefonte, PA 16823[-9616].. The fee for the permit is ~~[\$100]~~ **\$120**. The denial of a permit under this section is appealable in a manner provided by Chapter 51, Subchapter E (relating to permit procedures).

#### Briefer:

Brian P. Barner, Deputy Director, Office of Administration

#### Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If approved on final rulemaking, the amendments will go into effect on January 1, 2019.

#### Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Kauffman to approve the publication of a notice of proposed rulemaking containing the amendments described in the Commentary. If approved on final rulemaking, the amendments will go into effect on January 1, 2019. Motion carried.

H. Amendment to Section 53.17 (Cutting and Removal of Firewood from Commission Property).

Commentary:

Strategy 1B of the Commission's Strategic Plan is to "Increase traditional revenue sources and secure alternative funding to deliver core programs and services to benefit anglers, boaters, and trust species; deliver select discretionary programs and services to benefit all Pennsylvanians; and meet mandatory personnel costs." This strategy is designed in part to encourage the review and enhancement of existing revenue sources and to investigate and explore the development of alternative funding concepts.

Declines in traditional revenues, rapidly escalating costs associated with maintaining angler and boater demanded fishing and boating programs, and the lack of an enhancement to the fee structure for fishing licenses and permits necessitates the need to develop and implement several new or alternative funding concepts.

At its January 2018 meeting, staff presented initial information to the Board of Commissioners on forty-six funding concepts. As part of the presentation, board members were asked to individually prioritize the concepts and to provide feedback to the Executive Director. As a result, seven staff proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

One of the remaining funding concepts is to evaluate the fee associated with the Commission's permit that authorizes the cutting and removal of dead firewood from Commission property. The Executive Director may issue permits to interested persons when it is determined to be in the best interest of the Commission. The current fee of \$10.00 for each standard rough cord of wood was established in 1984. In 2017, the Commission authorized the cutting and removal of 56 cords of firewood.

To bring the per cord permit fee up to current standards, staff propose that § 53.17 be amended as follows:

§ 53.17. Cutting and Removal of Firewood from Commission Property.

\* \* \*

(c) Firewood permits cost [~~\$10.00~~] **\$50.00** per standard rough cord. A standard rough cord is a pile of stacked wood 4 by 4 by 8 feet (128 cubic feet, including air spaces).

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking amending Section 53.17 to increase the permit fee from \$10.00 to \$50.00 per rough cord for the cutting and removal of dead firewood on Commission property. If approved on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Ali and seconded by Commissioner Mascharka to approve the publication of a notice of proposed rulemaking amending Section 53.17 to increase the permit fee from \$10.00 to \$50.00 per rough cord for the cutting and removal of dead firewood on Commission property. If approved on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

I. Amendment to Section 51.37 (Application and Prerequisites for Becoming an Issuing Agent for the Pennsylvania Automated Licensing Service (PALS)).

Commentary:

Strategy 1B of the Commission's Strategic Plan is to "Increase traditional revenue sources and secure alternative funding to deliver core programs and services to benefit anglers, boaters, and trust species; deliver select discretionary programs and services to benefit all Pennsylvanians; and meet mandatory personnel costs." This strategy is designed in part to encourage the review and enhancement of existing revenue sources and to investigate and explore the development of alternative funding concepts.

Declines in traditional revenues, rapidly escalating costs associated with maintaining angler and boater demanded fishing and boating programs, and the lack of an enhancement to the fee structure for fishing licenses and permits necessitates the need to develop and implement several new or alternative funding concepts.

At its January 2018 meeting, staff presented initial information to the Board of Commissioners on forty-six funding concepts. As part of the presentation, board members were asked to individually prioritize the concepts and to provide feedback to Executive Director Arway. As a result, seven staff proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

One of the remaining funding concepts is to evaluate the fee associated with the Commission's required application fee when a person, sole proprietorship, partnership, or corporation apply to become a fishing license issuing agent of the Commission. The Executive Director may grant an application when accompanied by a security bond and the required application fee. The current application fee of \$150.00 was established in 2006. In 2017, the Commission processed 23 applications.

To bring the application fee up to current standards, staff propose that § 51.37 be amended as follows:

§ 51.37. Application and Prerequisites for Becoming an Issuing Agent for the Pennsylvania Automated licensing Service (PALS).

\* \* \*

(1) An applicant seeking to become an issuing agent shall complete and submit to the Commission an application on the form prescribed by the Commission and pay a one-time, nonrefundable fee of [~~\$150~~] \$250.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking amending Section 51.37 to increase the one-time, nonrefundable application fee from \$150 to \$250 for any applicant seeking to become a fishing license issuing agent. If approved on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Brock to approve the publication of a notice of proposed rulemaking amending Section 51.37 to increase the one-time, nonrefundable application fee from \$150 to \$250 for any applicant seeking to become a fishing license issuing agent. If approved on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

J. Amendment to Section 51.38 (Operation of the Issuing Agent for the Pennsylvania Automated Licensing Service (PALS)).

Commentary:

Strategy 1B of the Commission's Strategic Plan is to "Increase traditional revenue sources and secure alternative funding to deliver core programs and services to benefit anglers, boaters, and trust species; deliver select discretionary programs and services to benefit all Pennsylvanians; and meet mandatory personnel costs." This strategy is designed in part to encourage the review and enhancement of existing revenue sources and to investigate and explore the development of alternative funding concepts.

Declines in traditional revenues, rapidly escalating costs associated with maintaining angler and boater demanded fishing and boating programs, and the lack of an enhancement to the fee structure for fishing licenses and permits necessitates the need to develop and implement several new or alternative funding concepts.

At its January 2018 meeting, staff presented initial information to the Board of Commissioners on forty-six funding concepts. As part of the presentation, board members were asked to individually prioritize the concepts and to provide feedback to Executive Director Arway. As a result, seven staff proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

One of the remaining funding concepts is to establish a cover price or fee for the annual summary book of Pennsylvania fishing laws and regulations, known also as the "Summary Book or *Summary of Fishing Regulations and Laws*." This publication is prepared and printed annually by the Commission and contains a summary of Pennsylvania's fishing regulations and fishing tips. Historically, this publication has been offered to license holders and the public at no cost, or free of charge. To facilitate the operations of the Issuing Agency and to accommodate this funding concept, staff propose that § 51.38 be amended as follows:

§ 51.38. Operation of the Issuing Agent for the Pennsylvania Automated Licensing Service (PALS).

\* \* \*

(a)(4) Issuing agents shall **[provide] offer** a *Summary of Fishing Regulations and Laws* with each license issued. Issuing agents also shall **[provide] offer** a copy of the summary book to any holder of a Senior Resident Lifetime Fishing License **or other individual** who requests one. **[Issuing agents are encouraged to provide a copy of the summary book, if adequate numbers are available, to other individuals who request one.]**

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking amending Section 51.38 to accommodate the establishment of a cover price for the *Summary of Fishing Regulations and Laws* publication. If approved on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Ali and seconded by Commissioner Brock to approve the publication of a notice of proposed rulemaking amending Section 51.38 to accommodate the establishment of a cover price for the *Summary of Fishing Regulations and Laws* publication. If approved on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

K. Amendment to Section 93.13 (Issuing Agents).

Commentary:

Strategy 1B of the Commission's Strategic Plan is to "Increase traditional revenue sources and secure alternative funding to deliver core programs and services to benefit anglers, boaters, and trust species; deliver select discretionary programs and services to benefit all Pennsylvanians; and meet mandatory personnel costs." This strategy is designed in part to encourage the review and enhancement of existing revenue sources and to investigate and explore the development of alternative funding concepts.

Declines in traditional revenues, rapidly escalating costs associated with maintaining angler and boater demanded fishing and boating programs, and the lack of an enhancement to the fee structure for fishing licenses and permits necessitates the need to develop and implement several new or alternative funding concepts.

At its January 2018 meeting, staff presented initial information to the Board of Commissioners on forty-six funding concepts. As part of the presentation, board members were asked to individually prioritize the concepts and to provide feedback to Executive Director Arway. As a result, seven staff proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

One of the remaining funding concepts is to evaluate the fee associated with the Commission's required application fee when a person, sole proprietorship, partnership, or corporation apply to become an issuing agent for temporary boat registrations of the Commission. The Executive Director may grant an application when accompanied by a security bond and the required application fee. The current application fee of \$100.00 was established in 2001. In 2017, the Commission processed 32 applications.

To bring the application fee up to current standards, staff propose that § 93.13 be amended as follows:

§ 93.13. Issuing Agents.

\* \* \*

(2) An applicant seeking to become an issuing agent for temporary boat registrations shall complete and submit to the Commission an application on the form prescribed by the Commission and pay a one-time, nonrefundable fee of ~~[\$100]~~ \$250.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking amending Section 93.13 to increase the one-time, nonrefundable application fee from \$100 to \$250 for any applicant seeking to become an issuing agent for temporary boat registrations. If approved on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Brock to approve the publication of a notice of proposed rulemaking amending Section 93.13 to increase the one-time, nonrefundable application fee from \$100 to \$250 for any applicant seeking to become an issuing agent for temporary boat registrations. If approved on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

## EXECUTIVE AND ADMINISTRATIVE OTHER MATTERS

### L. Voluntary Permits.

#### Commentary:

Strategy 1B of the Commission's Strategic Plan is to "Increase traditional revenue sources and secure alternative funding to deliver core programs and services to benefit anglers, boaters, and trust species; deliver select discretionary programs and services to benefit all Pennsylvanians; and meet mandatory personnel costs." This strategy is designed in part to encourage the review and enhancement of existing revenue sources and to investigate and explore the development of alternative funding concepts.

The Commission currently expends approximately \$54 million annually on fishing and boating related programs and is experiencing declining revenues from its primary funding source of recreational fishing licenses and permits. Recreational fishing license and permit revenues declined by \$716,000 or 2.84 percent in 2017 from 2016 levels.

Declines in traditional revenues, rapidly escalating costs associated with maintaining angler and boater demanded fishing and boating programs, and the lack of an enhancement to the fee structure for fishing licenses and permits necessitates the need to develop and implement several new or alternative funding concepts.

At its January 2018 meeting, staff presented initial information to the Board of Commissioners on forty-six funding concepts. As part of the presentation, board members were asked to individually prioritize the concepts and to provide feedback to the Executive Director. As a result, seven staff proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

Three of the eight prioritized funding concepts are in the form of a voluntary permit designed to help maintain funding levels for several key fishing related programs. An additional voluntary permit is envisioned to appeal to the potential market that extends beyond the angling community. Individuals, clubs, organizations, businesses, and others who are interested in promoting aquatic habitat conservation could purchase the proposed Voluntary Habitat Conservation Improvement Permit. This permit could be developed, marketed and promoted to this wider audience.

Without any reliable research to support the popularity or demand for each of the voluntary permits, staff developed model sales and revenues targets for each voluntary permit. The following table shows the proposed voluntary permits with the estimated first year sales (units) targets, recommended fee structure, and estimated annual revenues based on the targeted sales levels and proposed fee.

| Funding Concept                                   | Estimated<br>Units | Fee      | Estimated<br>Revenues |
|---|--------------------|----------|-----------------------|
| Voluntary Habitat Conservation Improvement Permit | 5,000              | \$ 10.00 | \$ 50,000             |
| Voluntary Musky Permit                            | 5,000              | \$ 10.00 | \$ 50,000             |
| Voluntary Wild Trout & Enhanced Waters Permit     | 5,000              | \$ 25.00 | \$ 125,000            |
| Voluntary Bass Permit                             | 5,000              | \$ 10.00 | \$ 50,000             |
| <b>Total</b>                                      |                    |          | <b>\$ 275,000</b>     |

Given the lack of supportive research for the demand associated with the voluntary permits, staff propose that the permits be strategically introduced during a seasonally appropriate period throughout 2019. Prior to release or introduction, staff will develop a complimentary and individualized education and marketing program for each permit to garner interest in the permit and to help drive sales. Promotional efforts will be developed and employed which minimize, when possible, direct financial outlays for the development of the programs associated with the permits. Revenues generated from the sale of these permits will be reinvested into their respective program.

With the flexibility the Commission has in originating, developing and managing voluntary permits, marketing efforts will also consist of exploring options for offering additional voluntary permits, combinations of the permits at special or discounted pricing, and for offering multiyear permits and multiyear combination permits.

Because voluntary permits would not be required to fish, they do not need to be established formally either by legislation or regulation. Nevertheless, staff feel it is important to obtain approval from the Board of Commissioners before moving forward with the concept.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission approve the creation of four voluntary permits for the benefit of species specific fishing opportunities and habitat conservation improvement, the fees and details of which will be established by the Executive Director.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Ali to approve the creation of four voluntary permits for the benefit of species specific fishing opportunities and habitat conservation improvement, the fees and details of which will be established by the Executive Director. Motion carried.

M. Establishment of a Cover Price for the Annual *Summary of Fishing Regulations and Laws* Publication.

Commentary:

Strategy 1B of the Commission's Strategic Plan is to "Increase traditional revenue sources and secure alternative funding to deliver core programs and services to benefit anglers, boaters, and trust species; deliver select discretionary programs and services to benefit all Pennsylvanians; and meet mandatory personnel costs." This strategy is designed in part to encourage the review and enhancement of existing revenue sources and to investigate and explore the development of alternative funding concepts.

The Commission currently expends approximately \$54 million annually on fishing and boating related programs and is experiencing declining revenues from its primary funding source of recreational fishing licenses and permits. Recreational fishing license and permit revenues declined by \$716,000 or 2.84 percent in 2017 from 2016 levels.

Declines in traditional revenues, rapidly escalating costs associated with maintaining angler and boater demanded fishing and boating programs, and the lack of an enhancement to the fee structure for fishing licenses and permits necessitates the need to develop and implement several new or alternative funding concepts.

At its January 2018 meeting, staff presented initial information to the Board of Commissioners on forty-six funding concepts. As part of the presentation, board members were asked to individually prioritize the concepts and to provide feedback to the Executive Director. As a result, seven staff proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

One of the eight prioritized funding concepts is to establish a cover price or fee for the annual summary book of Pennsylvania fishing laws and regulations, known also as the "Summary Book or *Summary of Fishing Regulations and Laws*." This publication is prepared and printed annually by the Commission and contains a summary of Pennsylvania's fishing regulations and fishing tips. Historically, this publication has been offered to license holders and the public at no cost, or free of charge.

The Commission contracts for the printing of the publication and distributes approximately 900,000 copies annually through its network of fishing license issuing agents. Given that current production and distribution levels equal about 1 million copies, a modest fee, for example, of \$2.00 per copy for the printed version could generate a respectable revenue source for the Commission. For every 100,000 copies sold, the Commission would generate \$200,000 in gross revenue. If a cover price is established for the print version, the electronic or online version could remain available at no cost through the Commission's website. Given the lack of supportive research for the demand associated with a paid version of this publication and the many unknowns relating to the

distribution and accounting control for the publication through its fishing license issuing agent network, Commission staff will need to employ a level of flexibility and experimentation when establishing and managing the parameters and details of the concept, including the optional inclusion of a distribution incentive for the Commission's fishing license issuing agents and the use of the Pennsylvania Automated License Service (PALS) as a sales conduit.

Because the cover price is being set for a publication that would be considered as a voluntary purchase, it does not need to be established formally by legislation or regulation. Nevertheless, staff feel it is important to obtain approval from the Board of Commissioners before moving forward with the concept.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission approve the establishment of a cover price for the Summary Book beginning no earlier than the 2019 edition, and authorize the Executive Director to develop marketing, distribution, and pricing strategies for the concept.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Brock to approve the establishment of a cover price for the Summary Book beginning no earlier than the 2019 edition, and authorize the Executive Director to develop marketing, distribution, and pricing strategies for the concept. Motion carried.

N. Establishment of a Commission Property Use and Entrance Permit.

Commentary:

Strategy 1B of the Commission's Strategic Plan is to "Increase traditional revenue sources and secure alternative funding to deliver core programs and services to benefit anglers, boaters, and trust species; deliver select discretionary programs and services to benefit all Pennsylvanians; and meet mandatory personnel costs." This strategy is designed in part to encourage the review and enhancement of existing revenue sources and to investigate and explore the development of alternative funding concepts.

The Commission currently expends approximately \$54 million annually on fishing and boating related programs and is experiencing declining revenues from its primary funding source of recreational fishing licenses and permits. Recreational fishing license and permit revenues declined by \$716,000 or 2.84 percent in 2017 from 2016 levels.

Declines in traditional revenues, rapidly escalating costs associated with maintaining angler and boater demanded fishing and boating programs, and the lack of an enhancement to the fee structure for fishing licenses and permits necessitates the need to develop and implement several new or alternative funding concepts.

At its January 2018 meeting, staff presented initial information to the Board of Commissioners on forty-six funding concepts. As part of the presentation, board members were asked to individually prioritize the concepts and to provide feedback to the Executive Director. As a result, seven staff-proposed concepts were recognized as priorities and one additional concept was added and listed as a priority through the commissioner review process. It was also acknowledged that the remaining concepts, while not a priority, should be advanced as they are more fully reviewed and developed by staff.

One of the remaining funding concepts is to evaluate and establish a program that requires an access fee for members of the public who choose to use Commission property for recreational purposes other than fishing and boating. This concept would extend the user-pays, user-benefits funding model and philosophy that has supported fishing and boating related programs managed by the Commission to its non-traditional customers. One of the many assets held in trust by the Commission for the anglers and boaters of Pennsylvania is its portfolio of property holdings that consist of a network of 250 public boat launches, fifty-four lakes, and access to over 43,000 acres of Commission controlled public lands

This concept is designed to create a new funding stream from the use of the Commission's property holdings to support its core programs. Historically, fishing license and boat registration dollars have provided most, if not all, of the funding needed to keep the Commission's properties open to the public. More recently, anglers and boaters are increasingly outnumbered by other recreational enthusiasts who do not fish or boat. A property use permit fee would help ensure everyone who recreates at one of the Commission's properties pays for their existence and operation.

It is proposed that any individual who enters and uses a Commission owned or controlled property will be required to possess and carry with them either an annual \$25 property use permit, a valid PA fishing license, PA boat registration or Commonwealth issued launch permit. Individuals without such a property use permit or other approved license, registration or permit would be fined. Property use permits would be valid for no less than one year. Exceptions to this new permit requirement could extend to those who are under sixteen years of age and properly accompanied by a licensed or permitted person eighteen years of age or older. Final details for the program may change as it matures through the development and implementation processes.

Property use permits would not need to be displayed while using a Commission owned or controlled property, but would be required to be in possession, as well as a secondary form of identification. Commission owned properties developed through certain funding sources and Commission properties leased to other governmental bodies and open to the public may be exempt from the requirements of the permit.

If the creation of the permit is approved by the Commission, staff will develop and present to the Commission proposed regulations for the management of the program.

Prior to the release or introduction of the final approved permit, staff will develop a complimentary and individualized education and marketing program to garner interest in the property use permit designed to help promote and drive sales.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission approve the creation of a Property Use and Entrance Permit for the benefits as described in the commentary, the details of which will be established by the Executive Director.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Lichvar to approve the creation of a Property Use and Entrance Permit for the benefits as described in the commentary, the details of which will be established by the Executive Director. Motion carried.

## **BOATING FINAL RULEMAKING**

### A. Addition of Chapter 99 (Capacity Plates).

#### Commentary:

Prior to January 1, 2013, the Commission issued capacity plates for certain boats that were operated or offered for sale in this Commonwealth. During an audit of the Commission's Recreational Boating Safety Program in 2011, the United States Coast Guard identified this practice as a violation of the Federal regulation and directed the Commission to stop issuing the plates. In response to this direction, the Commission rescinded Chapter 99. At the time, this decision was thought to be the best way to handle the issue. However, it has since been determined that the best change would have been to rescind only those sections dealing with the Commission's issuance of capacity plates and not to remove other sections that extended the federal standard to Commonwealth waters. Staff examined what other states have done regarding capacity plates and are recommending that certain sections of the former regulation be reinstated.

Following the Board's approval of the proposed rulemaking at its January 23, 2018 meeting, several minor changes were made. Section 99.1 was revised so that it is consistent with 33 C.F.R. § 183.21. Section 99.2 was revised to remove the reference to 33 C.F.R § 183.25. Section 99.3 was revised to remove references to the Coast Guard and the federal regulations.

A notice of proposed rulemaking was published at 48 Pa. B. 2654 (May 5, 2018) (Exhibit F). The Commission did not receive any public comments regarding the proposal.

#### Briefer:

Colonel Corey Britcher, Director, Bureau of Law Enforcement

#### 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 Elliott and seconded by Commissioner Small to adopt the amendments as set forth in the notice of proposed rulemaking. The amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

B. Amendment to Section 111.3 (Armstrong County).

Commentary:

Keystone Lake is a 1000-acre impoundment in Armstrong County that provides water to the Keystone Generation Station, Chief Keystone Power, LLC. The property is leased to the Commission for fishery and aquatic resource management and recreational fishing and boating purposes. Under a prior agreement, a horsepower restriction for motorboats was set at 10 horsepower. The Commission adopted this restriction in section 111.3(b).

In March 2017, the lease agreement for this property was renewed. As part of that renewal, Chief Keystone Power requested that the 10 horsepower restriction be raised to 20 horsepower.

A notice of proposed rulemaking was published at 48 Pa. B. 2654 (May 5, 2018) (Exhibit F). The Commission received six public comments, all supporting the proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

Colonel Corey Britcher, Director, Bureau of Law Enforcement

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 Ali and seconded by Commissioner Lewis 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.

C. Amendment to Section 111.16 (Clarion County)

Commentary:

At the September 2017 Commission meeting, Jeffrey Pfister approached the Commission on behalf of several landowners adjacent to Redbank Creek, Clarion County. The landowners are concerned about boating safety as the creek traditionally had been treated as a Slow No Wake (SNW) zone without an official designation.

In recent years the amount of boating traffic entering Redbank Creek from Pool 9 on the Allegheny River has increased substantially. This traffic goes above SNW even where the creek narrows to less than 200 feet across, creating a safety hazard. The landowners petitioned the Commission for Redbank Creek to be designated as a SNW zone.

The Commission's Bureau of Law Enforcement staff from the Northwest Region were tasked with exploring the issue and to offer an opinion. Upon investigation, they determined that the creek does narrow and the entrance from the river quickly becomes congested with boats. The presence of an old railroad bridge also adds to the congestion as boats must traverse under and between the bridge abutments to navigate safely.

Allegheny Land Trust (Trust), the owner of the bridge that is now part of a rail to trails, is concerned about the erosion damage to both the shore line and the bridge itself due to the excessive wake in a confined area. The Trust has agreed to allow signage to be posted on the bridge structure for the SNW zone.

A notice of proposed rulemaking was published at 48 Pa. B. 2654 (May 5, 2018) (Exhibit F). The Commission did not receive any public comments regarding the proposal.

Briefer:

Colonel Corey Britcher, Director, Bureau of Law Enforcement

Recommendation:

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

Action:

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

## **FISHERIES**

### **FINAL RULEMAKING**

A. Amendment to Section 65.24 (Miscellaneous Special Regulations) to remove the Closed Bass Season from May 1 to mid-June on Portions of the Susquehanna River and Juniata River.

Commentary:

In 2011 and 2012, two black bass angling regulation changes were applied to the Susquehanna River from Sunbury downriver to York Haven (middle Susquehanna River), the Susquehanna River from York Haven downriver to Holtwood Dam (lower Susquehanna River), and the Juniata River from Port Royal downriver to the mouth (lower Juniata River). In 2011, these river sections were removed from the Big Bass Program and a year-round catch-and-immediate-release regulation was enacted. In 2012, this regulation was adjusted to include a closed season for black bass from May 1 to the opening day of bass season in mid-June, with a catch and immediate release regulation remaining for the rest of the year. Bass tournaments were limited to catch-measure-immediate release only, with no weigh-in tournaments allowed.

The regulations implemented during 2011 and 2012 to protect Smallmouth Bass residing in the middle and lower Susquehanna River and the lower Juniata River were not intended to be permanent. Additionally, the Commission has received a number of complaints since these regulations went into effect stating that anglers are violating the closed season and the regulation is largely unenforceable. Further, recent changes in population characteristics of Smallmouth Bass at the middle Susquehanna River, lower Susquehanna River and lower Juniata River warranted a review of the current regulations to determine whether they are continuing to serve their intended role as part of managing these fisheries.

As such, staff propose an adaptive management approach to remove and reinstitute, if necessary, closed season regulations currently applied to these river reaches. By establishing a set of population recovery benchmarks, staff developed guidance on when to remove current closed season regulations as well as when to reinstitute them should conditions change negatively in the future. A secondary benefit of this approach is public transparency as benchmark values for different metrics will be disseminated and annual evaluations will allow for up-to-date comparisons against benchmarks. This approach may streamline and expedite future regulatory action.

Staff developed a series of metrics to assess changes to the Smallmouth Bass population that could warrant removal as well as the application of closed season regulations based upon population characteristics. These data and literature-derived values set benchmarks for changing existing regulations as well as provide guidance for reinstatement should conditions change negatively in the future. These benchmarks are scientifically-based using available data and literature and are set at a standard to reflect the world-class fisheries for which these waters are renowned. The application of the benchmarks will be similar to adaptive management strategies utilized by the Atlantic States Marine Fisheries Commission and the Great Lakes Fishery Commission. These metrics focus on a

combination of measures of relative abundance and size composition of the population. Staff recommend a review period of at least five years be used for evaluation based on the inherent variability in the factors controlling the population, variability in data collection, and longevity of Smallmouth Bass. For these same reasons, staff propose that benchmarks must be met for minimum time periods (e.g., three of five years) rather than for definitive time periods (e.g., consecutive years) given natural variability in healthy fish populations. Additionally, staff suggest that benchmarks be achieved for two of the three metrics for each reach for a five-survey evaluation period.

Review of the most contemporary survey data revealed that all three of the subject reaches met the recovery benchmarks to allow removal of closed season regulations beginning in the 2017 season. Staff will continue to survey population characteristics moving forward to guide future regulatory actions should population characteristics change.

Staff recommend that the closed bass (Smallmouth Bass and Largemouth Bass) season be removed from May 1 to mid-June (with dates described by the usual formula) and no tournaments be permitted during this period. Catch and release restrictions will continue to be applied to those portions of the Susquehanna River and Juniata River currently included under this miscellaneous special regulation. Bass tournaments occurring outside of the mid-April to mid-June period will continue to be restricted to catch-measure-immediate release only as will all bass angling.

Staff also recommend that in the future, the lower Susquehanna River reach be treated independently while the middle Susquehanna River and lower Juniata River reaches be treated jointly for removal or application of closed season regulations. Unrestricted movement of fish between the two systems would complicate treatment of each exclusively. The joint treatment of those reaches would defer to the most conservative option for either reach based upon their data relative to benchmarks.

A notice of proposed rulemaking containing the proposed amendments and soliciting public comments for 60 days was published at 47 Pa. B. 1469 (March 11, 2017) (Exhibit G). In addition, the Commission also held three public informational sessions on April 17 in Harrisburg, April 18 in Columbia, and April 19 in Selinsgrove. During these sessions, the Commission solicited public input using comment cards that asked the public to address two issues, namely, opinions about the adaptive management approach for black bass regulations moving forward and opinions regarding the proposed rulemaking.

The Commission received a total of 179 public comments – 27 were received prior to the formal comment period, 149 were received during and three received after the comment period ended. Of the 179 comments, 67 commenters supported the proposed regulation changes, 90 opposed them, and 22 provided comments that could not be categorized as either supporting or opposing the proposed regulation changes. Copies of all public comments were provided to the Commissioners. Some of the comments also expressed concerns regarding anglers fishing over spawning bass. As such, staff recommend that

on final rulemaking, the Commission add the following language to § 65.24: It is unlawful for an angler to repeatedly cast into a clearly visible bass spawning nest or bed in an effort to catch or take bass. A bass caught and immediately returned unharmed to the waters from which taken will not be considered a violation of this section.

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 with the additional change described in the Commentary. If adopted, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Brock to adopt the amendments as set forth in the notice of proposed rulemaking with the additional change described in the Commentary. These amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

## **FISHERIES DESIGNATION**

### **B. 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 five 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 H provides information on the locations and a data summary for each of these waters.

A notice of proposed designations was published at 48 Pa. B. 2729 (May 5, 2018) (Exhibit I). The Commission received a total of 125 public comments regarding the proposed designations – 94 support the proposed designations, 17 support the designation of a specific water, three oppose the proposed designations, and 11 comments did not pertain to the proposed designations. 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 five 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 Mascharka and seconded by Commissioner Lichvar to add five sections to its 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.

### 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 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 revision to the section limit of one water. These changes are the result of recent surveys conducted at 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 Commission's Resource First philosophy.

A notice of proposed designations was published at 48 Pa. B. 2725 (May 5, 2018) (Exhibit K). The Commission received a total of 143 public comments regarding the proposed designations – 125 support the proposed designations, one supports the designation of a specific water, and 10 comments did not pertain to the proposed designations. 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 limit of one water as set forth in the notice of proposed designations. 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 Mascharka and seconded by Commissioner Ali to add 99 new waters to the Commission's list of wild trout streams and revise the section limit of one water as set forth in the notice of proposed designations. These additions and revisions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

D. Addition of Penns Creek, Section 05, Union County, to the Catch-and-Release Artificial Lures Only program (58 Pa. Code §65.5).

Commentary:

Penns Creek is one of the most popular wild trout streams in Pennsylvania and the eastern United States. The scenery and ability to catch large, wild trout in a wilderness-type setting makes it unique and motivates anglers to travel long distances to fish this stream. Penns Creek, Section 05, currently extends 4.6 miles from 500 meters downstream of Cherry Run downstream to the White Mountain Road (T302) Bridge in Weikert. This portion of Penns Creek is currently designated as a Stocked Trout Water and managed with Commonwealth Inland Waters angling regulations.

During fall 2016, riparian landowners in Section 05 and anglers fishing this portion of Penns Creek requested Commission staff evaluate the current management strategy applied to this stream section and consider alternate angling regulations. To inform future management direction, staff conducted a comprehensive fishery survey during June 2017. Results of the fishery survey documented a Class A wild Brown Trout population throughout the upstream and middle reaches of Section 05. Only about 2% of Pennsylvania streams qualify for Class A designation and it is truly something special, especially for a stream the size of Penns Creek, to support a high quality wild trout fishery.

Subsequently, the limits of Section 05 were adjusted to reflect the extent of the newly documented Class A population and now extend 3.8 miles from 500 meters downstream from Cherry Run downstream to the downstream extent of the island near the end of Jolly Grove Lane. Beginning in 2019, the 3.8-mile reach will be managed as a Class A wild trout stream section with no stocking of trout, and the trout currently stocked into this section will be reallocated to Penns Creek, Section 07, located downstream. Section 07 will extend 4.3 miles from the State Road 235 Bridge in Glen Iron downstream to Creek Road Bridge near Libby Road. These changes will result in more stocked trout allocated to Penns Creek by the Commission, more miles of stocked trout stream, and more water managed for wild trout than currently. This is an exceptional opportunity to improve both wild and stocked trout angling opportunities at the same time.

During fall 2017, riparian landowners along the 3.8-mile reach were surveyed by letter to obtain their collective preference for angling regulations to inform management direction applied to this stream section. Additionally, a public meeting was held in Mifflinburg on February 26, 2018 to obtain additional public input regarding a potential change in angling regulations at Section 05. Landowners representing 83% of Section 05 and 59% of public meeting attendees supported Catch-and-Release Artificial Lures Only angling regulations.

Penns Creek, Section 05, is managed to protect, conserve, and enhance the high-quality wild Brown Trout fishery while meeting landowner and angler preferences to the greatest extent possible. Based on the desires of riparian landowners and public meeting attendees, coupled with updated biological data, application of Catch-and-Release

Artificial Lures Only angling regulations to this stream section is appropriate. If implemented, these regulations would be a downstream extension of the existing Catch-and-Release Artificial Lures Only angling regulations currently applied to Section 04 located immediately upstream, thus providing for consistent management along a longer continuous reach of stream. Furthermore, at Penns Creek, sections 03 and 04 (the adjacent stream reaches located upstream from Section 05), the wild Brown Trout population improved in terms of both abundance and size structure following a stocking cessation and implementation of special regulations and has maintained desirable levels over time. The productive nature of Penns Creek provides ideal conditions to allow for a favorable response of the wild Brown Trout population to the proposed management changes and the intent of this regulation is to allow for similar improvements to the wild Brown Trout population residing in Section 05 as was observed in sections 03 and 04. Commission staff will monitor the response of the fisheries to the stocking cessation and application of special regulations through time.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission add Penns Creek, Section 05, to the Catch-and-Release Artificial Lures Only program (58 Pa. Code §65.5). If formally approved at the Commissioner's quarterly meeting in October 2018, the designation will go into effect on January 1, 2019.

Action:

A motion was made by Commissioner Lichvar and seconded by Commissioner Brock to add Penns Creek, Section 05, to the Catch-and-Release Artificial Lures Only program (58 Pa. Code §65.5). If formally approved at the Commissioner's quarterly meeting in October 2018, the designation will go into effect on January 1, 2019. Motion carried.

## HABITAT AND ENVIRONMENTAL PROPOSED RULEMAKING

A. Amendments to Section 75.1 (Endangered Species) to Add the Pugnose Minnow and Blacknose Shiner, remove the Banded Sunfish and Gravel Chub, and Amendment to Section 75.3 (Candidate Species) to Remove the Central Mudminnow and Eastern Mudminnow.

### Commentary:

(1) Pugnose Minnow (*Opsopoeodus emiliae*) is a small (40-55mm), silver and olive colored, slender, and compressed minnow with a nearly vertical mouth it uses to feed on microcrustaceans at the water's surface. It inhabits sluggish streams, lakes, wetlands, and oxbows, usually where dense vegetation or coarse woody debris is present. It occurs in waters that are clear or turbid. In Pennsylvania, it occurs in a low gradient, turbid stream sections with limited submerged and emergent vegetation, but with considerable downed, in-stream woody debris.

The Pugnose Minnow occurs from the Atlantic Slope in South Carolina across the Gulf Slope to Texas, and northward in the Mississippi River and Great Lakes systems to southern Wisconsin and Ontario (Page and Burr 2011).

The Pugnose Minnow was first collected in Pennsylvania in 2000 (Argent and Spear 2001) and was subsequently collected in 2001 (Criswell and Fischer). In 2016, R. Criswell, D. Fischer and J. Brancato (PADEP) collected 10 individuals of this species, confirming an established population. All collections are from a short section of lower Cussewago Creek, Crawford County, totaling no more than 2 km in length. Although there are no older records for this species, experts consider it native here. Cussewago Creek, particularly the lowermost section where this species was collected, is difficult to sample, and the microhabitat occupied by the Pugnose Minnow is very limited. It could have very easily been overlooked, and historic sampling effort there, particularly for non-game fishes, has been very limited. In addition, this species occurred historically in northeast Ohio (Trautman 1981) and is represented elsewhere in its range by several disjunct populations (Page and Burr 2011). This species appears to be subject to population fluctuations in Pennsylvania. Five surveys were focused on this species in the occupied section of Cussewago Creek between 2006 and 2016 without success.

The level of turbidity that this population of Pugnose Minnows will tolerate is unknown, but any significant increases could be problematic. The state-endangered Hornyhead Chub, *Nocomis biguttatus*, formerly occurred in this waterway, but is now extirpated. We suspect that increased turbidity during the post-1930 period is responsible for this extirpation. Increases in silt loading must be considered the greatest threat to the Pugnose Minnow.

A dam currently impounds a portion of Cussewago Creek 1.5 km below the area occupied by the Pugnose Minnow. There have been discussions concerning the removal of this dam (B. Lorson, PFBC, pers. comm.). It is unclear if the removal of this dam would impact the water level or habitat in the vicinity of the Pugnose Minnow population. It is also unclear if the Pugnose Minnow occupies the impounded area.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Endangered species criteria were met in four categories: A1 (Population Reduction), B3 (Extent of Occupancy in streams is less than 10 miles), B4 (Sum of Proportion of Watersheds Occupied value < 0.2), and B5 (Severely fragmented < 6 locations). 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 Pugnose Minnow 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 proposes that the Pugnose Minnow be added to the list of endangered species under § 75.1.

(2) Blacknose Shiner (*Notropis heterolepis*) is a small olive to pale yellow minnow (40-65mm) found in clear lakes and streams, where it is often associated with aquatic vegetation. In Pennsylvania, this species has been collected in pools, with rubble, gravel, and sand substrates, and completely lacks submerged vegetation.

The Blacknose Shiner is distributed from the Hudson Bay drainage east to Nova Scotia in Canada, and from Maine west to Nebraska, with extinct glacial relict populations in southern Kansas and Missouri (Gilbert 1980, Page and Burr 2011). This species is common in the north of its range, but disappearing from the southern region (Page and Burr 2011).

In the glaciated northwestern portion of Pennsylvania, there are historic records from the Lake Erie drainage, Shenango River drainage, and the upper Allegheny River drainage. The only recent records are from two tributaries to the Allegheny River in Erie and McKean counties.

The Blacknose Shiner was thought to be extirpated from Pennsylvania until recently, with no collection reports from the late 1930s through 2009. It was formerly known from Erie and Crawford counties. Following collections in 2009, the status was updated to "undetermined" and the historically occupied waterways were intensively surveyed. Populations were found in a single, small drainage in Erie County within its historically known distribution. Another population is found in a tributary to the upper Allegheny River outside of the known native range in Pennsylvania and is considered to be introduced, but it could possibly be native. The known lineal occupied distance within the native range is only 2 km and justifies a change in status from undetermined to endangered.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Endangered species criteria were met in four categories: A1 (Population Reduction), B3 (Extent of Occupancy in streams <10 miles), B4 (Sum of Proportion of Watersheds Occupied < 0.2), and B5 (Severely fragmented < 6 locations). 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 Blacknose Shiner 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 proposes that the Blacknose Shiner be added to the list of endangered species under § 75.1.

(3) Banded Sunfish (*Enneacanthus obesus*) are small sunfish (50-90mm) with an olive colored body having 5-8 dark vertical bars extending to its ventral side. It occupies sluggish, calm sections of streams and rivers, as well as bogs, marshes, swamps, ponds, and lakes. It is closely associated with dense stands of rooted and suspended aquatic vegetation over substrates of silt, sand, mud, and detritus.

It is native to the coastal lowlands from southern New Hampshire to central Florida in both the Atlantic and Gulf drainages (Lee 1980). In Pennsylvania, it occurred historically in the tidal portion of Delaware River drainage in Bucks, Delaware, and Philadelphia counties (Fowler 1940, Cooper 1983).

Two circa 1850 collections include 4 specimens (UMMZ 86801) and 8 specimens (ANSP 12876). Three records from 1907-1914 each contain 1 or 2 specimens (ANSP 41855, 41859, and 41874). It is obvious, given these numbers and the very limited extent of suitable Coastal Plain habitat on the Pennsylvania side of the Delaware River/Estuary, that the Banded Sunfish was never particularly common or widely distributed in the Commonwealth. The 1977 collection included 3 specimens and likely represented waifs and not a population given the paucity of records before and after.

The Banded Sunfish is currently listed as an endangered species. It has not been collected or verified in Pennsylvania since 1977, when 3 specimens were taken from an impingement screen at a power plant on the Delaware River near Philadelphia in Delaware County (Cooper 1983). All earlier records are from the Coastal Plain in Bucks and Philadelphia counties, and predate 1915 (Stauffer et al. 2016). Despite targeted sampling by multiple researchers (R. Criswell, Academy of Natural Sciences in Philadelphia, and Philadelphia Water Department), no specimens have been collected and most suitable historic habitat has been altered or destroyed (Criswell 1998, Horwitz et al. 2006, unpublished data). Based on this information, it can be surmised that this species no longer occurs in the Commonwealth and should be removed from the Pennsylvania endangered species list.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Because there are currently no extant records of the Banded Sunfish, no threatened and endangered species listing criterion were met. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Banded Sunfish be delisted. Enough information

is available to make the determination that it no longer occurs within the Commonwealth at present and to justify its removal from Pennsylvania's list of endangered fishes. Therefore, the Commission proposes that the Banded Sunfish be removed from the Pennsylvania list of endangered species under § 75.1.

(4) Gravel Chub (*Erimystax x-punctatus*) is a slender, medium-sized (65-95mm) yellow to olive green chub that inhabits large creeks and rivers with clear to somewhat turbid water, over substrate that includes significant amounts of clean sand, gravel, and rock. It is essentially a benthic fish that occurs in riffles and runs, in both shallow and deeper water.

The Gravel Chub is native from southern Ontario and western New York west to Minnesota and south to Arkansas. It was known to inhabit the Ohio River basin of western Pennsylvania (and New York) with most of the verified occurrences associated with the Allegheny River.

The historic distribution of the Gravel Chub is somewhat obscured by its taxonomic past. The Gravel Chub was recognized as distinct relatively recently and wasn't formally described as a species until 1956 (Hubbs and Crowe), well after the collection record had begun. It is likely that early reports of the generically similar Streamline Chub, *Erimystax dissimilis* included the Gravel Chub. Cope (1881) reported the Streamline Chub to be "especially numerous in the creeks of Western Pennsylvania".

We are aware of 13 collections of the Gravel Chub from Pennsylvania. Collections made before the species description (Hubbs and Crowe 1956) were re-identified from museum specimens. The earliest was made by Edward D. Cope in the late 1800s from the Youghiogheny River (later identified by Robert E. Jenkins, ANSP1824). This collection indicates that the Gravel Chub was likely much more widely distributed initially in the upper Ohio River basin than indicated by later collections. The subsequent 12 collections were all made during the period 1935-1985 from the Allegheny River or from the lower reaches of tributaries to the Allegheny River. Similarly, Carlson et al. (2016) reported on collections known from the Allegheny River in New York during this same period with no occurrences reported after 1979.

There are no recent verified reports of Gravel Chubs from the Allegheny River drainage. From approximately 2000 to present, the rivers of the Ohio River drainage in western Pennsylvania have been intensively surveyed with electrofishing and trawling gears at hundreds of sites (Koryak et al. 2009, Freedman et al. 2009, Lorson 2009, Koryak et al. 2011, Stauffer et al. 2016, PFBC unpublished data). Efforts by R. Criswell and D. Fischer have also specifically targeted the Gravel Chub at historic collection localities and areas containing seemingly optimum habitat. Despite the collective ability of these efforts to detect changes in the status of species requiring similar environmental conditions (e.g. Streamline Chub, Mountain Madtom, Northern Madtom, Channel Darter, Longhead Darter, River Darter, Gilt Darter, Bluebreast Darter, Tippecanoe Darter, Spotted Darter), no verified specimens of Gravel Chubs have been collected. The lack of

collections of the Gravel Chub in western Pennsylvania and New York indicate that it is now likely extirpated from the “Three Rivers” drainage area.

This species is of moderate concern globally. Although locally common in some areas, populations are declining over much of its range (Page and Burr 2011). The Ontario and Kentucky populations have been extirpated. Trautman (1981) suggested that increased siltation was responsible for a contraction of its range in Ohio. Impoundments are likely a contributing factor in reducing suitable habitat by altering flow and promoting the deposition of silt. Carlson et al. (2016) reported that one historic locality in New York is now inundated by the Allegheny Reservoir. On the Monongahela River and lower Allegheny River, a series of navigational locks and dams and urban development have extensively altered natural habitats. The dredging industry has utilized the impounded sections of the upper Ohio River and Allegheny River to mine glacial sand and gravel, further altering the river bottoms.

The disappearance of the Gravel Chub from Pennsylvania and New York remains somewhat of a mystery. The Gravel Chub was apparently able to survive in the Allegheny River drainage throughout most of the 1900s as indicated by collections during 1935-1985. Environmental quality generally improved in the Allegheny River drainage in the 1970s and 1980s largely due to the implementation of the Clean Water Act (Koryak et al. 2009). During this period, many lithophilic fishes reinvaded portions of the Allegheny River drainage where pollution had been problematic, and in some areas, these fishes have become abundant (Ortmann 1909, Stauffer et al. 2016; PFBC unpublished data). Apparently, the Gravel Chub did not benefit similarly.

Trautman (1981) observed that competition between the Gravel Chub and its congener, the Streamline Chub, appeared to be rather keen, especially while feeding. The Streamline Chub is presently well distributed and common to abundant in the Allegheny River and its larger tributaries (Stauffer et al. 2016, PFBC unpublished data). It is also present in the upper Ohio River. In the state of Ohio, where Gravel Chubs and Streamline Chubs are still found together, these species appear to segregate into different habitats. Brian Zimmerman (Ohio State University Museum of Biodiversity) provided the following personal communication discussing his observations in Ohio.

“In Ohio the Streamline Chub *Erimystax dissimilis* and Gravel Chub *E. x-punctatus* both have greatly increased in abundance and distribution over the past 20-30 years. They do seem to differ in habitat in that the Streamline Chub is found in smaller and clearer streams than the Gravel Chub. In our two large river systems that have large populations of both (Muskingum and Scioto rivers) the Gravel Chub stays almost entirely in the main stem and the largest of tributaries where the turbidity of the water is often greater. Streamline Chubs in these two systems are found significantly further upstream and in smaller tributaries to these systems. The water clarity may just be a factor of stream size. These two also differ in habitat preference in that Streamline Chub are more often in deeper water in more "run-like" habitat and Gravel Chub are often found shallower on large gravel riffles of the large rivers they inhabit in Ohio. Clarity and or depth may be

playing a role in why Streamline Chub have expanded into the upper Ohio River and a few tributaries on the eastern edge of Ohio. This presumably is a downstream extension of the very large population in PA in the Allegheny and upper Ohio Rivers. Gravel Chub on the other hand have not been found in this area.”

Experts speculate that historic habitat modification in the upper Ohio River basin and possibly interspecific competition have contributed to the extirpation of the Gravel Chub from the Allegheny River drainage. It appears that turbidity presently plays a role in the distribution of Gravel Chub populations as they recolonize waters in Ohio. As polluted waters in western Pennsylvania have recovered throughout the late 1900s, they have become clearer. It is possible that this has played an additional role in further reducing optimal conditions for the Gravel Chub or by providing a competitive edge for the Streamline Chub.

The Gravel Chub is currently listed as endangered in Pennsylvania. The Gravel Chub persisted in Pennsylvania and New York in the Allegheny River basin throughout the worst period of pollution during the early and mid-1900s. Despite this, it hasn't been observed in Pennsylvania since 1985. Many intensive fisheries survey efforts have been conducted recently throughout its range here, including specific efforts targeted at the Gravel Chub. Based on this information, it appears that this species no longer occurs in the Commonwealth and should be delisted from the endangered species list.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. Because there are currently no extant records of the Gravel Chub in the Commonwealth, no threatened and endangered species listing criterion were met. The Fishes Technical Committee of the PABS reviewed this documentation and rank assignment and recommended that the Gravel Chub be delisted. Enough information is available to make the determination that it no longer occurs within the Commonwealth at present and to justify its removal from Pennsylvania's list of endangered fishes. Therefore, the Commission proposes that the Gravel Chub be removed from the Pennsylvania list of endangered species under § 75.1.

(5) Central Mudminnow (*Umbra limi*) is a relatively small (54mm), elongated fish that occurs in marshes, swamps, springs, ditches, lake margins, and the pools of smaller streams. It is usually found in the presence of dense vegetation and soft substrates, but they have been collected in shaded, stagnant, swampy areas that lack vegetation. Suitable substrates include thick organic material, gravel, sand, and silt (Stauffer et al. 2016). Becker (1983) noted a preference for clear water that may be stained light or dark brown, and it is found less frequently in turbid conditions.

Central Mudminnows are known from the St. Lawrence River drainage west through the Great Lakes to southern Manitoba, and south through the Mississippi River Basin to western Tennessee (Gilbert 1980). In Pennsylvania, they occur in the Shenango and upper Allegheny river systems, and Lake Erie drainages (Stauffer et al. 2016).

Historically, the Central Mudminnow was found to be rather widely distributed in northwestern Pennsylvania during the period 1990-present, and is known to occur in Crawford, Mercer, Erie, Venango, and Warren counties at present (Stauffer et al. 2016). A lack of recent records from Beaver and Lawrence counties is most likely an artifact of inadequate targeted surveys there. A number of post-1990 collections include ten or more individuals, and 150 individuals were counted at one Erie County site in 2009. The Central Mudminnow is common to abundant in the Conneaut Marsh and wetlands in the Pymatuning region; these rather extensive wetlands are the largest in the state.

There are no recent records from the extreme southernmost portion of its range in Pennsylvania. However, given its preference for vegetated wetlands and other waterways that are difficult to survey or are not typically sampled by fishery managers and ichthyologists, it is likely that a significant number of populations exist that have not yet been detected. Although wetlands acreage has declined significantly in the state, and the Central Mudminnow was probably more abundant prior to those losses, it is still rather widespread and locally common.

The Central Mudminnow was listed as a Pennsylvania candidate species in 1991. It occurs in the Shenango and upper Allegheny river systems, and Lake Erie drainages. Since its listing, a significant amount of field work has been performed in this species' native drainage, and many additional populations have been documented in five counties. At some sites the Central Mudminnow was found to be common or abundant. Experts believe that many undetected populations remain, due to this species' specialized habitat and occupation of wetlands that are not typically surveyed by fishery managers or ichthyologists. Based on this information, we believe that removal of this species from the list of candidate species is appropriate.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion Criterion B.3 (Extent of Occupancy) because it occupies more than 150 river miles of waterway. Additionally, Criterion B.5 for candidate status is exceeded: no extreme fragmentation and no fluctuation or decline of populations has been documented or suspected and more than 20 occurrences have been documented or suspected. 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 Central Mudminnow 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 proposes that the Central Mudminnow be removed from the Pennsylvania list of candidate species under § 75.3.

(6) Eastern Mudminnow (*Umbra pygmaea*) is a larger mudminnow (107mm) that inhabits backwaters, braided creek mouths, wetlands, vegetated and soft-bottom lake margins, and sluggish or still sections of streams. It occurs in clear to somewhat turbid

water, usually where dense aquatic vegetation or decaying organic material provides adequate cover. Mudminnows can withstand low dissolved oxygen concentrations (utilizing the gas bladder as a lung), low pH, and temperature extremes, making them tolerant of harsh conditions (Jenkins and Burkhead 1994, Kuhne and Olden 2014). They have been collected in slightly tannin-stained Pocono Mountains lakes, and Hastings (1984) reported it from pH as low as 4.0.

The Eastern Mudminnow occurs from south-eastern New York south to the St. Johns River, Florida, and west along the Gulf Slope to the Aucilla River (Gilbert 1980). In Pennsylvania, it is native to the Delaware River drainage (Stauffer et al. 2016). It has recently been reported from the Susquehanna River basin at multiple sites, where we consider it to be introduced (D. Fischer, unpublished data).

We are aware of 23 pre-1920 records for this species, all from the Philadelphia region (Bucks and Philadelphia counties); between 1920 and 1990 approximately 20 collections were made, which included documentation in Carbon, Chester, Delaware, Monroe, and Pike counties (Stauffer et al. 2016; Criswell and Fischer). Most pre-1990 records document 1-9 individuals per station, but one pre-1920 collection from Bucks County (ANSP 23850) consisted of 23 individuals. There is little doubt, however, that the Eastern Mudminnow was more common than these records reflect, given its preference for debris-laden habitats and the fact that early surveyors were limited to nets and seines. Abundance data for the period 1920-1990 is lacking.

Within the last 25 years, the Eastern Mudminnow was found to be somewhat common in the Bucks, Chester, Delaware, and Philadelphia counties area and some of the Pocono Mountains region during the period 1990-present (Stauffer et al. 2016). Occurrences have been documented by the Academy of Natural Sciences in Philadelphia in Bucks, Philadelphia, Delaware, Lackawanna, Monroe, Philadelphia, Pike and Wayne counties (R. Horwitz, personal communication). Since 1990, extralimital collections have occurred in Bradford, Dauphin, Lackawanna, and Luzerne counties within the Susquehanna River drainage (Stauffer et al. 2016; D. Fischer and M. Bilger, unpublished data). It is unclear if the collections from the Susquehanna River drainage are indicative of bait releases or established populations. A significant amount of suitable habitat in northeastern Pennsylvania remains unsurveyed due to access issues.

The Eastern Mudminnow was listed as a Pennsylvania candidate species in 1991. It occurs in the Delaware River drainage. Since its listing, a significant amount of field work has been performed in this species' native drainage. A number of additional populations have been documented and this species continues to exist at sites where it was documented prior to 1991. Experts believe that many undetected populations remain, due to this species' specialized habitat and occupation of wetlands that are not typically surveyed by fishery managers or ichthyologists; and given the vast amount of private land containing natural ponds and wetlands in northeastern Pennsylvania where access by surveyors is not available. Based on this information the removal of this species from the list of candidate species is warranted.

The current status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion Criterion B.3 (Extent of Occupancy), because it occupies more than 150 river miles of waterway. Additionally, Criterion B.5 for candidate status is exceeded: no extreme fragmentation and no fluctuation or decline of populations has been documented or suspected and more than 20 occurrences have been documented or suspected. 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 Eastern Mudminnow 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 proposes that the Eastern Mudminnow be removed from the Pennsylvania list of candidate species under § 75.3.

Briefer:

Andy L. Shiels, Director, Bureau of Fisheries

Recommendation:

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

Action:

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

**LAW ENFORCEMENT  
FINAL RULEMAKING**

A. Amendment to Section 53.11 (Off-highway Vehicles and Snowmobiles).

Commentary:

Section 53.11(c) currently allows persons who are exempt from the fishing license requirement under section 2709(b) of the Fish and Boat Code (relating to exemptions from license requirements) and persons who are deprived of the use of a leg or both legs in a manner that significantly limits mobility to apply for a permit to use an off-road motorized vehicle on Commission property for gaining access to fishing or boating opportunities. A recent review of this section and the Commission's application disclosed that both are in need of updating so that they meet current requirements of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C.A. §§ 12101-12213) and United States Department of Justice regulations implementing the requirements of the ADA. In addition, to give more flexibility in adapting to future changes in the law, the Commission proposed deleting certain language from § 53.11 and relying on the application form and the conditions in the permit. The Commission also proposed housekeeping changes to subsection (a).

A notice of proposed rulemaking was published at 48 Pa. B. 2655 (May 5, 2018) (Exhibit L). The Commission did not receive any public comments regarding the proposal.

Briefer:

Colonel Corey L. Britcher, Director, Bureau of Law Enforcement

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 Ali and seconded by Commissioner Small to adopt the amendments as set forth in the notice of proposed rulemaking. The amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

B. Approval of fee increase for seasonal slip usage at the Walnut Creek Marina.

Commentary:

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

Fees for the usage of slips were last addressed in 2011 when a \$1000 annual fee was established for larger boats greater than 23 feet in length to utilize several slips on A dock. At that time, the rental rate for all other slips remained at \$725. The \$725 rental rate was established in 2009. Prior to 2009, the rental rate was set at \$575. Most marinas offer slip space based on a price per foot length of boat. Staff examined the rates charged at various marinas in the Erie area and found that most marinas charge \$60 - \$75 per foot for slip space. Based on the per foot of length formula, the PFBC currently offers slip rentals at an area low rate of \$31.52 per foot for boats 23 feet in length and less.

Additionally, staff analyzed the types of amenities currently being offered at area marinas for the various slip sizes and corresponding rental rates. While most marinas offer gas, electricity, and public rest rooms with showers, the Commission's Walnut Creek Marina does not offer these amenities and there are no plans to offer them in the future. However, public rest rooms without showers are available at the Walnut Creek Marina.

In the Erie area, there is one marina that closely resembles Walnut Creek in size that charges \$835 (41.75/ft) for boats 20 feet in length and less. For any boats greater than 20 feet in length and up to 24 feet, or for slips with electricity the slip rental is \$1065 (44.38/ft). This marina does, however, offer gas, showers, and electricity.

Staff reviewed the fees and amenities offered at competing marinas in the area and determined that it would be advantageous to raise the slip rental rates beginning with the 2019 season for boats 23 feet in length and less to \$775 (\$33.69/ft.), and to adjust the rates again for the 2022 season to \$800 (\$34.78/ft). Slip rates for boats greater than 23 feet in length should be raised to \$1025 starting in the 2019 season.

The Boating Advisory Board approved these changes at a meeting held on June 26, 2018.

Briefer:

COL Corey L. Britcher, Director, Bureau of Law Enforcement

Recommendation:

Staff recommend that the Commission establish a \$775 seasonal mooring slip fee for boats 23 feet in length and less starting with the 2019 season and that this fee be adjusted to \$800 for the 2022 season moving forward, and that the Commission establish a \$1025 seasonal mooring slip fee for boats greater than 23 feet in length beginning with the 2019 season.

Action:

A motion was made by Commissioner Ali and seconded by Commissioner Small to establish a \$775 seasonal mooring slip fee for boats 23 feet in length and less starting with the 2019 season and that this fee be adjusted to \$800 for the 2022 season moving forward, and that the Commission establish a \$1025 seasonal mooring slip fee for boats greater than 23 feet in length beginning with the 2019 season. Motion carried.

## LAW ENFORCEMENT PROPOSED RULEMAKING

C. Amendment Section 65.21 (Waters Limited to Specific Purposes – Exclusive Use Fishing Areas).

Commentary:

Under Title 30 Section 2307 the Commission has the authority to promulgate regulations for Exclusive Use Fishing Areas. Those regulations are laid out in Title 58 Section 65.21. In sub-section (b) the term children is defined as a person “12 years of age or under”.

In recent discussions Commissioners and staff have questioned why the age is 12 when an individual is not required to purchase a license until they have reached 16 years of age. Staff has explored the history of the age determination and has not found an argument one way or the other. Additionally, Commissioners and staff have been looking for additional opportunities to get more youth interested in fishing. The rationale in changing the age to 15 and under for these areas would be the hope of bringing more angling opportunities to a broader range of youth.

Staff propose that section 65.21 be amended as follows:

(b) As used in this section, the term “children” means persons [12] 15 years of age or under.

Briefer:

Colonel Corey Britcher, Director, Bureau of Law Enforcement

Recommendation:

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

Action:

A motion was made by Commissioner Ali and seconded by Commissioner Lichvar to adopt the proposed regulation as set forth in the notice of proposed rulemaking. If adopted on final rulemaking, this addition will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

**Other New Business**

None

**Time and Place of October 2018 Commission Meeting**

The next meeting will be held on October 15-16 in Harrisburg or another location to be determined.

**Adjournment**

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