

**Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat  
Commission Harrisburg,  
Pennsylvania**

**MINUTES**

**148<sup>th</sup> Meeting**

**Volume 73**

**HARRISBURG,  
PENNSYLVANIA  
July 26, 2022**

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Commonwealth of Pennsylvania  
Pennsylvania Fish and Boat Commission

Minutes

The 148<sup>th</sup> Meeting of the Pennsylvania Fish and Boat Commission was held on Monday, July 26 at the Pennsylvania Fish and Boat Commission headquarters, 1601 Elmerton Avenue, Harrisburg, PA 17110.

The public session for review of this agenda began on July 26, 2022 at approximately 9:30 a.m.

**Call to Order**

The meeting was called to order by Commission President Richard Kauffman and was followed by the Pledge of Allegiance to the Flag.

**Roll Call**

**Members Present**

**Richard Kauffman, President**  
**Robert B.J. Small, Vice President**  
**Donald K. Anderson**  
**William C. Brock**  
**Charles J. Charlesworth**  
**William J. Gibney**  
**Richard Lewis**  
**John E. Mahn, Jr.**  
**Daniel J. Pastore**

**Public Comments to Commissioners and Staff**

Jeremiah Weber provided commentary on the proposed bowfishing regulation and asked Commissioners to make additional changes to the wording and to vote based upon verified facts and documented complaints. He specifically requested a change to the wording for artificial lighting related to frog hunting. Jordan Miller provided commentary on the proposed bowfishing regulation to show support for bowfishing and youth events to teach it, but requested changes to the language to avoid over regulating the waters. Sam Mason provided public comment

regarding the proposed bowfishing rulemaking, and would like Commission Waterways Conservation Officers to enforce the laws currently in place, and not to over regulate the laws.

**Staff Recognition**

The Bureau of Law Enforcement presented a Lifesaving Award to WCO Jonathan Stark.

**Review and Approval of Minutes from the April 25, 2022 and June 10, 2022 Meetings**

A motion was made by Commissioner Anderson and seconded by Commissioner Small to approve the April 25, 2022 and June 10, 2022 minutes as written. Motion carried by unanimous vote.

**Executive Director's Report**

Executive Director Timothy Schaeffer discussed numerous programs and projects that staff are currently focused on. A Strategic Plan update was provided.

**Reports of Commissioner Committees**

**Boating Committee (Commissioner Charlesworth)**

The Boating Committee attended the Boating Advisory Board meeting on June 21, 2022 both in-person and virtually to discuss amendments to 58 Pa. Code Title 58 relating to horsepower restrictions and chapter 111 counties.

**Executive and Administrative Committee (Commissioner Kauffman)**

The Executive and Administrative Committee met on May 19, 2022 both in-person and virtually to discuss proposed fee increases for fishing licenses and boating related items.

**Habitat and Environmental Committee (Commissioner Anderson)**

The Habitat and Environmental Committee met on June 23, 2022 both in-person and virtually to discuss various items such as RAWA, voluntary permit projects, the Conneaut Creek Sea Lamprey Barrier project and the climate action plan.

**Law Enforcement Committee (Commissioner Gibney)**

The Law Enforcement Committee met on June 14, 2022 both in-person and virtually to discuss the bow fishing regulations and one revocation.

**Announcement of Executive Sessions**

Chief Counsel Wayne Melnick announced that an executive session was held on July 26 at approximately 8:00 a.m. to discuss personnel matters, potential real estate acquisitions, and pending litigation.

**Announcement of Notational Vote**

Chief Counsel Wayne Melnick announced the Commission voted on one item by notation vote since the April 25, 2022 and June 10, 2022 meetings. Between July 6, 2022 and July 8, 2022, the Commission, in a 10-0 vote, approved the item found in Appendix A.

## **EXECUTIVE AND ADMINISTRATIVE GRANT APPROVAL**

### A. R3 Education Grant to Bartram's Garden for Riverfront Recreation in Philadelphia.

#### Commentary:

In April 2020, the Pennsylvania Fish and Boat Commission (Commission) approved the R3 Education Grant Program authorizing the Executive Director to approve individual grants of \$25,000 or less per grantee, per year to support grassroots education projects. Grants more than this amount require Commission approval.

Bartram's Garden submitted a proposal during the Commission's annual call for R3 Education grant applications that seeks to expand interest in fishing and boating in underserved populations of Philadelphia.

Bartram's Garden's mission is to create equitable relationships among people and nature through immersive, community-driven experiences that activate the Bartram legacy, Garden, and House, on land and on the Schuylkill River, in Southwest Philadelphia. With this grant award Bartram's Garden will seek to expand its reach and service for providing fishing and boating opportunities while reducing barriers to entry to Southwest Philadelphia, specifically the neighborhoods of Kingsessing, Eastwick, and Elmwood Park. Per the 2019 American Community Survey (ACS), this area is home to roughly 30,000 households, of whom more than 80% identify as Black or African American.

R3 Education grant funds would allow Bartram's Garden to hire a staff member dedicated specifically to providing fishing and boating opportunities as well as acquire additional paddling equipment for participant use. Along with implementing fishing and boating specific programs, this staff member would manage corresponding supplies, equipment, safety protocols, and volunteer recruitment. Bartram's Garden's free river recreation opportunities will target recruitment and reactivation efforts within Philadelphia. With Bartram's Garden spanning 50 acres of public land and attracting over 100,000 visitors each year, this organization is well situated to expand the reach and impact of the Commission's mission.

This project specifically addresses a Commission priority of reaching populations in urban areas of the Commonwealth and Bartram's Garden has been a valuable partner in outreach efforts for the Commission. Commission approval is being requested because the grant to Bartram's Garden exceeds the \$25,000 per year, per grantee.

#### Briefer:

Melissa Gallo, Bureau of Outreach, Education & Marketing

#### Recommendation:

Staff recommends that the Commission approve a grant of \$45,000 to Bartram's Garden to implement fishing and boating programs in the Philadelphia area.

Action:

A motion was made by Commissioner Charlesworth and seconded by Commissioner Anderson to authorize a grant of \$45,000 to Bartram's Gardens, as more particularly described in the commentary. Motion carried by unanimous vote.

**EXECUTIVE AND ADMINISTRATIVE  
GRANT APPROVAL**

B. Erie Access Improvement Program: Amendment to the Grant with the Erie-Western PA Port Authority, Lampe Marina Fish Cleaning Station, Lake Erie, Erie County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The Statewide Public Access Grant Program was established by administratively combining the Commission’s existing Boating Facility Grant (BFG) Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access. Specific program criteria for the Erie Access Improvement Program were established to be consistent with the legislative intent of 30 Pa. C.S. § 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 from the sale of the combination trout permits and Lake Erie permits are to be deposited into a restricted revenue account within the Fish Fund and that this restricted revenue 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 may also be used for other projects that support public fishing on or at Lake Erie, Presque Isle Bay and their tributaries.” The funds generated through this program are deposited into the Lake Erie restricted revenue account, where they are restricted now and into the future for their legislatively intended purposes. Grant requests exceeding \$100,000 per grantee, per year require Commission approval.

At the April 12, 2021, Commission Meeting, the Board of Commissioners approved a grant to the Erie-Western PA Port Authority (Port Authority) in the amount of \$150,000 for the design and construction of a refrigerated building for the storage of fish remains and a fish cleaning station at Lampe Marina. During the engineering phase of the project, it was determined that additional funding would be needed to complete the project due to the increased costs of materials and construction services.

The Port Authority requests additional funding in the amount of \$100,000 for the construction of the project which includes a larger concrete pad for a second fish cleaning table, water service, wastewater drains, a roof and enclosure with sidewalls to the cooler building, and a chain link fence to secure the facility. The additional funding will improve the project by providing features similar to other popular fish cleaning stations in the area.

The property is owned by the Port Authority, and they will be responsible for long term operation and maintenance of the facility.

Original Project Cost:	\$150,000	Original Grant Award:	\$150,000
Amended Project Cost:	\$250,000	Additional Grant Request:	\$100,000



Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve amending its Agreement with the Erie-Western PA Port Authority to provide an additional \$100,000 to complete the fish cleaning facility as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account.

Action:

A motion was made by Commissioner Pastore and seconded by Commissioner Gibney to authorize the Commission amending its Agreement with the Erie-Western PA Port Authority to provide an additional \$100,000, as more particularly described in the commentary. Motion carried by unanimous vote.

**EXECUTIVE AND ADMINISTRATIVE  
GRANT APPROVAL**

C. Erie Access Improvement Program: Amendment to the Grant with the Western Pennsylvania Conservancy, Elk Creek, Erie County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The Statewide Public Access Grant Program was established by administratively combining the Commission’s existing Boating Facility Grant Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access. Specific program criteria for the Erie Access Improvement Program were established to be consistent with the legislative intent of 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 from the sale of the combination trout permits and Lake Erie permits are to be deposited into a restricted revenue account within the Fish Fund and that this restricted revenue 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 may also be used for other projects that support public fishing on or at Lake Erie, Presque Isle Bay and their tributaries.” The funds generated through this program are deposited into the Lake Erie restricted revenue account, where they are restricted now and into the future for their legislatively intended purposes. Grant requests exceeding \$100,000 per grantee, per year require Commission approval.

At its October 16, 2018 meeting, the Board of Commissioners approved a grant to the Western Pennsylvania Conservancy (Conservancy) in the amount of \$200,000 for stabilization of the streambank and construction of habitat improvements on their property along Elk Creek, which also provides a safe and stable platform for anglers. The Commission currently has a public fishing access and conservation easement on this property.

Due to increased materials and fuel costs, the Conservancy is requesting an additional \$150,000 for this project. To take advantage of and utilize the current lowest, competitive bid for this project, the Conservancy must proceed with construction in 2022 to retain other key grants they have secured for this project. Commission staff have reviewed the cost estimates and recommend additional funding for the project.

Original Project Cost:	\$ 825,000	Original Grant Award:	\$200,000
Amended Project Cost:	\$1,100,000	Additional Grant Request:	\$150,000

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve amending its Agreement with the Western Pennsylvania Conservancy to provide an additional \$150,000 to complete the streambank stabilization and habitat improvement project utilizing monies in the Lake Erie restricted account.

Action:

A motion was made by Commissioner Brock and seconded by Commissioner Charlesworth to authorize the Commission amending its Agreement with the Western Pennsylvania Conservancy to provide an additional \$150,000, as more particularly described in the commentary. Motion carried by unanimous vote.

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

A. Voluntary Public Access and Habitat Incentive Program: Bobik Property Easement Acquisition, Susquehanna Township, Cambria County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) was awarded \$668,361 in grant funding for the Voluntary Public Access and Habitat Incentive Program (VPA-HIP) administered by the U.S. Department of Agriculture's Natural Resources Conservation Service. This competitive grant program provides funding to help state and tribal governments encourage landowners to allow public access to their land for hunting, fishing, and other wildlife-dependent recreation. The Commission is using the VPA-HIP funding to expand its existing Public Fishing Access and Conservation Easement Program, which was created to improve public fishing access along Commonwealth waters.

The Commission has been offered a public fishing access and conservation easement for \$71,000 on 5,925 linear feet along the West Branch of the Susquehanna River east of Route 219 as it flows across two parcels of property in Susquehanna Township, Cambria County. The easement will be for public fishing, boating, and riparian and fishery management, and will include the stream corridor that extends at least 35 feet back from the top of the bank to the extent of the ownership of the seller. A map depicting the subject parcels is attached as Exhibit A.

The seller and the Commission have signed an option agreement that will allow staff to perform 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.

The West Branch of the Susquehanna River provides significant Class A Wild Brown Trout fishing opportunities in the area. *Pennsylvania's Fishing and Boating Access Strategy* indicates a need for more access on this section of the West Branch of the Susquehanna River. Commission staff from across the agency have reviewed this opportunity and recommend that the site be acquired.

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission authorize the acquisition of an easement along the West Branch of the Susquehanna River in Susquehanna Township, Cambria County, utilizing \$71,000 in funding from the VPA-HIP program, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Brock to authorize the acquisition of an easement along the West Branch of the Susquehanna River in Susquehanna Township, Cambria County, as more particularly described in the commentary. Motion carried by unanimous vote.

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

B. Voluntary Public Access and Habitat Incentive Program: Hedstrom Property Easement Acquisition, Fairview Township, Erie County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) was awarded \$668,361 in grant funding for the Voluntary Public Access and Habitat Incentive Program (VPA-HIP) administered by the U.S. Department of Agriculture's Natural Resources Conservation Service. This competitive grant program provides funding to help state and tribal governments encourage landowners to allow public access to their land for hunting, fishing, and other wildlife-dependent recreation. The Commission is using the VPA-HIP funding to expand its existing Public Fishing Access and Conservation Easement Program which was created to improve public fishing access along Commonwealth waters.

The Pennsylvania Fish and Boat Commission (Commission) has been offered an easement for \$14,000 on 860 linear feet along Elk Creek as it flows across a parcel of property in Fairview Township, Erie County. 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. 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 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.

Elk 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 Elk Creek. Commission staff from across the agency have reviewed this opportunity and recommend that the site be acquired.

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission authorize the acquisition of an easement along Elk Creek in Fairview Township, Erie County, utilizing \$14,000 from the VPA-HIP program as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Pastore to authorize the acquisition of an easement along Elk Creek in Fairview Township, Erie County, as more particularly described in the commentary. Motion carried by unanimous vote.

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

C. Young Men's Christian Association of Youngstown Property Easement Acquisition, Springfield Township, Erie County.

Commentary:

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 from the sale of the combination trout permits and 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 may also be used for other projects that support public fishing on or at Lake Erie, Presque Isle Bay, and their 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 Pennsylvania Fish and Boat Commission (Commission) has been offered an easement for \$85,000 on 4,990 linear feet along Crooked Creek as it flows across a parcel of property off Abels Road in Springfield Township, Erie County. 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. 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 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.

Crooked 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 Crooked Creek. Commission staff from across the agency have reviewed this opportunity and recommend that the site be acquired.

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission authorize the acquisition of an easement along Crooked Creek in Springfield Township, Erie County, as more particularly described in the Commentary, utilizing \$85,000 from the Lake Erie restricted account.

Action:

There was an assumed motion to authorize the acquisition of an easement along Crooked Creek in Springfield Township, Erie County, as more particularly described in the commentary. Motion carried by unanimous vote.



**BOATING  
GRANT APPROVAL**

A. Boating Facility Grant Program: Amendment to the Grant with County of Carbon, Mauch Chunk Lake Park, Mauch Chunk Lake, Carbon County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The goal of the program is to ensure Pennsylvania’s recreational anglers and boaters, today and in the future, are provided with access to the highest quality facilities on the Commonwealth’s waterways. The Statewide Public Access Grant Program was established by administratively combining the Commission’s existing Boating Facility Grant (BFG) Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access.

Prior to the Statewide Public Access Grant Program, the Commission’s BFG Program became well known as the primary mechanism for awarding funds for boating-related access improvements from 2005 through 2010. As such, and in keeping with the goals outlined in the Commission’s current Strategic Plan, funding for the BFG Program was reallocated in 2019 to continue to improve boating opportunities and convenience in the Commonwealth through partnerships that update and maintain public boating access.

Funds for the BFG program are derived primarily from boat registration fees, state motorboat fuels tax, restricted revenue accounts and, when available, through various Federal assistance or grant awards. Grant requests exceeding \$100,000 per grantee, per year require Commission approval.

Mauch Chunk Lake is owned by the Commission and leased to the County of Carbon for the development and operation of a county park, which has undergone numerous improvements. In 2005, the County received Boating Facility Grant funds in the amount of \$55,000 to replace the old, dilapidated restrooms at Boat Launch A at Mauch Chunk Lake.

At the April 12, 2021, Commission meeting, the Board of Commissioners approved a grant to the County of Carbon in the amount of \$155,500 to rehabilitate the boat launch area at Site B at the Mauch Chunk Lake Park, including replacing the old, deteriorated restroom with a new ADA accessible restroom. In addition, the County’s plans included repaving the parking area and access road and installing ADA accessible parking spaces. The total estimated cost of the project was \$310,893.

In the process of providing an updated cost estimate for the project, the County discovered the new cost increased to \$336,249. The County is requesting additional funds in the amount of \$25,355 to complete the project. Matching funds for the project will be provided by the County in the amount of \$155,500.

Original Project Cost:	\$310,893	Original Grant Award:	\$155,500
Amended Project Cost:	\$336,249	Additional Grant Request:	\$ 25,355

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve amending its Agreement with the County of Carbon to provide an additional \$25,355 to complete the improvements to Boat Launch B as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Charlesworth and seconded by Commissioner Brock to authorize the Commission amending its Agreement with the County of Carbon to provide an additional \$25,355, as more particularly described in the commentary. Motion carried by unanimous vote.

**BOATING  
GRANT APPROVAL**

B. Boating Facility Grant Program: Amendment to the Grant with Lower Swatara Township, Swatara Creek, Dauphin County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The goal of the program is to ensure Pennsylvania’s recreational anglers and boaters, today and in the future, are provided with access to the highest quality facilities on the Commonwealth’s waterways. The Statewide Public Access Grant Program was established by administratively combining the Commission’s existing Boating Facility Grant (BFG) Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access.

Prior to the Statewide Public Access Grant Program, the Commission’s BFG Program became well known as the primary mechanism for awarding funds for boating-related access improvements from 2005 through 2010. As such, and in keeping with the goals outlined in the Commission’s current Strategic Plan, funding for the BFG Program was reallocated in 2019 to continue to improve boating opportunities and convenience in the Commonwealth through partnerships that update and maintain public boating access.

Funds for the BFG program are derived primarily from boat registration fees, state motorboat fuels tax, restricted revenue accounts and, when available, through various Federal assistance or grant awards. Grant requests exceeding \$100,000 per grantee, per year require Commission approval.

In 2020, the Executive Director approved a grant award of \$87,500 to Lower Swatara Township for the design and construction of a new canoe/kayak access and parking area on their property along Swatara Creek in Dauphin County.

Lower Swatara Township is requesting an additional \$66,533 due to increased costs for materials and services, including additional funding for design, permitting, and oversight, and a 10% contingency reserve.

Original Project Cost:	\$175,000	Original Grant Award:	\$87,500
Amended Project Cost:	\$308,066	Additional Grant Request:	\$66,533

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve amending its agreement with Lower Swatara Township to provide an additional \$66,533 to complete the design and construction of the facility.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Anderson to authorize the Commission amending its Agreement with Lower Swatara Township to provide an additional \$66,533, as more particularly described in the commentary. Motion carried by unanimous vote.

**BOATING  
FINAL RULEMAKING**

A. Amendment to 58 Pa. Code § 97.2 (Fire extinguishers).

Commentary:

In October 2021, the U.S. Coast Guard (USCG) published a final rule amending the fire extinguishing equipment regulations for recreational vessels propelled or controlled by propulsion machinery (33 CFR Parts 1 and 175, and 46 CFR Part 25). This rule relieves owners of these recreational vessels from certain inspection, maintenance, and recordkeeping requirements that are more suited for commercial vessels and establishes that portable fire extinguishers on recreational vessels shall be maintained in “good and serviceable” condition. The “good and serviceable” standard of this rule maintains the substantive requirements of the National Fire Protection Association’s standard 10 without extra burdens and requirements for recreational boaters. The new standard will continue to ensure that portable fire extinguishers are in good working order and ready for immediate use without imposing unnecessary burdens on the public. Staff would like to update our regulations to match the new USCG final rule.

Staff propose that § 97.2 be amended as follows:

§ 97.2. Fire extinguishers.

\* \* \* \* \*

(c) **The following apply:**

**(1) Fire extinguishers carried in compliance with this section shall be maintained in [a usable condition] good and serviceable working condition and [shall be charged] in compliance with the specifications on the manufacturer’s certification label, meaning all of the following: [Gauges shall be operable and nozzles shall be free of obstruction. In prosecutions for violations of this section, there shall be a rebuttable presumption that a fire extinguisher is not usable if its gauge shows that the extinguisher is discharged.]**

- (i) It shall not be expired;**
- (ii) It has a pressure gauge reading or indicator in the operable range or position, if there is one;**
- (iii) The lock pin is firmly in place;**
- (iv) The discharge nozzle is clean and free of obstruction; and**
- (v) The extinguisher does not show visible signs of significant corrosion or damage.**

**(2) In prosecutions for violations of this section, there shall be a rebuttable presumption that a fire extinguisher is not usable if its gauge shows that the extinguisher is discharged.**

\* \* \* \* \*

On February 7, 2022, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

A notice of proposed rulemaking was published at 52 Pa.B. 3323 (June 11, 2022) (Exhibit D). The Commission did not receive any public comments regarding the proposal.

Briefer:

Laurel L. Anders, Director, Bureau of Boating

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 January 1, 2023.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Brock to adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, the amendment will go into effect January 1, 2023. Motion carried by unanimous vote.

**BOATING  
FINAL RULEMAKING**

B. Amendment to 58 Pa. Code § 111.20 (Crawford County).

Commentary:

Woodcock Creek Lake is a 333-acre flood control project managed by the U.S. Army Corps of Engineers (USACOE) in Crawford County. Recently, the USACOE Project Manager submitted a request through their Pittsburgh District Office to change the local policy to a 20-horsepower limitation on this impoundment. They are requesting this horsepower change to allow increased boating opportunities in response to recent upward trends in boating activity. Staff at the project have requested the Pennsylvania Fish and Boat Commission (Commission) adopt the same regulatory amendment in Title 58 of the Pennsylvania Code so that Waterways Conservation Officers can continue to assist in enforcement of this boating regulation.

Following publication of the proposed rulemaking, the Pittsburgh District Office of the Army Corps recently updated their local policy to reflect this change, and therefore the Commission has decided to revise the effective date of this proposal.

Staff propose that § 111.20 be amended as follows:

§ 111.20. Crawford County.

\* \* \* \* \*

(e) *Woodcock Creek Lake.*

(1) The use of motors in excess of **[10]20** horsepower is prohibited.

\* \* \* \* \*

On February 7, 2022, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

A notice of proposed rulemaking was published at 52 Pa.B. 3324 (June 11, 2022) (Exhibit E). The Commission did not receive any public comments regarding the proposal.

Briefer:

Laurel L. Anders, Director, Bureau of Boating

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 Lewis and seconded by Commissioner Small to 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*. Motion carried by unanimous vote.



**BOATING  
FINAL RULEMAKING**

C. Amendments to 58 Pa. Code § 103.3 (Restrictions for special areas), § 105.1 (Conditions requiring immediate corrective action), § 105.3 (Unacceptable boating practices), § 109.4 (Waterskiing, aquaplaning, kiteskiing and similar activities), § 111.2 (Allegheny County), § 111.3 (Armstrong County), § 111.6 (Berks County), § 111.13 (Carbon County), § 111.58 (Susquehanna County), § 111.64 (Wayne County), and § 111.66 (Wyoming County).

Commentary:

On September 28, 2021, the National Association of State Boating Law Administrators (NASBLA) membership adopted a model act for safe boating practices for boat-towed watersports. This act was originally adopted in 2003, then modified in 2004, 2005, and 2007 to reflect safety issues and current trends in recreational boating activity. In February 2020, the NASBLA Enforcement and Training Committee accepted a charge to examine and update an earlier version of the act, based on new equipment and technologies in towed watersports activities. The revised model act was presented to the NASBLA membership and voted upon at the 2021 annual conference in Pittsburgh, PA. Pennsylvania Fish and Boat Commission (Commission) staff have reviewed and selected relevant portions of the act to incorporate and modernize its regulations in 58 Pa. Code § 109.4 (Waterskiing, aquaplaning, kiteskiing and similar activities), § 103.3 (Restrictions for special areas), § 105.1 (Conditions requiring immediate corrective action), § 105.3 (Unacceptable boating practices), § 111.2 (Allegheny County), § 111.3 (Armstrong County), § 111.6 (Berks County), § 111.13 (Carbon County), § 111.58 (Susquehanna County), § 111.64 (Wayne County), and § 111.66 (Wyoming County). The proposed amendments also include corrections to inconsistent wording relating to these changes. The proposed amendments are intended to clarify the regulations but not modify currently prohibited or allowable activities.

Staff propose the following amendments:

§ 103.3. Restrictions for special areas.

(a) Boats are limited to slow, no wake speed when within 100 feet of the shore line; docks; launching ramps; swimmers or downed skiers **or other boat-towed watersports participants**; persons wading in the water; anchored, moored, or drifting boats; floats, except for ski jumps and ski landing floats; or other areas so marked. This subsection does not apply in a zoned ski area or authorized ski return areas when those areas are found within the areas described in this subsection.

\* \* \* \* \*

§ 105.1. Conditions requiring immediate corrective action.

A condition requiring immediate corrective actions shall exist when a boat:

\* \* \* \* \*

(8) Is pulling a [water skier] **water-skier or other boat-towed watersports participant** without the required observer aboard.

\* \* \* \* \*

§ 105.3. Unacceptable boating practices.

It is unlawful to:

\* \* \* \* \*

(8) Operate within 100 feet of a water-skier or other boat-towed watersports participant being towed by another boat.

\* \* \* \* \*

(11) Operate a motorboat at any speed when towing a person on [waterskis] water skis or other boat-towed devices using a tow rope of 20 feet or less as measured from the transom of the boat. This prohibition does not apply to wake surfing as defined in § 109.4 (relating to waterskiing[, aquaplaning, kiteskiing and similar activities] and other boat-towed watersports).

\* \* \* \* \*

Chapter 109. SPECIALTY BOATS AND [WATERSKIING ACTIVITIES] BOAT-TOWED WATERSPORTS

\* \* \* \* \*

§ 109.4. Waterskiing [, aquaplaning, kiteskiing, and similar activities] and other boat-towed watersports.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Boat-towed device*—An inflatable tube or other device designed to be sat, stood, kneeled, or laid upon while being towed through or on water behind a boat. The term includes water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattresses, parasails, kite skis, and similar devices.

*Boat-towed watersports*—Activities that involve being towed by a boat or riding in or on the wake of a boat such as, but not limited to, waterskiing, wake surfing, and tubing.

*Competent observer*—A person who has the ability to assess when a [skier] person being towed behind a boat is in trouble, knows and understands the waterskiing hand signals, and is capable of helping [a skier] a person being towed.

*PFD*—Personal Flotation Device as defined in § 97.1 (relating to personal flotation devices).

\* \* \* \* \*

*Water ski*—A [device] single or pair of long flat runners designed to be used by a person [to be towed through or on] for planing over water while being towed behind a boat. [The term includes conventional water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattress, parasails, kite skis and similar devices.]

*Waterskiing*—A competitive or recreational water sport in which a person is towed across the water’s surface behind a boat in any fashion on a water ski as defined in this subsection or on **[his] their** bare feet.

(b) **[Skiing hours] Hours. [Ski activities] Waterskiing and other boat-towed watersports** are prohibited between the hours of sunset and sunrise.

(c) *Observer required.* The following conditions apply:

(1) *General rule.* Except as otherwise provided in this subsection, it is unlawful for a person to operate a boat towing or otherwise assisting a person on water skis **or other boat-towed watersports** unless there is at least one competent observer in the boat in addition to the operator of the boat. The observer shall be positioned in the boat to observe the progress of the person being towed. It is unlawful for a person to water ski **or ride a towed device** being towed by a watercraft or device not containing an operator and observer as required by this subsection.

(2) *Special conditions.* The Executive Director, or a designee, may issue a permit to allow a limited exception to paragraph (1). A permit issued under this paragraph will permit operation of a boat towing a **[water skier] water-skier** without an observer, in addition to the operator, on board the boat. These operations will be permitted only under the following conditions:

(i) Both the operator of the boat and the **[water skier] water-skier** meet safety training requirements as evidenced by documented completion of a safe boating course and active membership in a State or National waterskiing organization, which provides members with information on waterskiing safety.

\* \* \* \* \*

(vii) The waterskiing takes place before the hour of 10 a.m. on a day other than a weekend or holiday. The Executive Director, for good cause shown, may permit waterskiing under this section on a Saturday or Sunday before the hour of 10 a.m. if the Executive Director finds that other boating activities on the waters at the same time will not interfere with the **[water-skiing] waterskiing.**

(viii) The waterskiing takes place on waters described and approved for the operations in the permit.

(ix) The waterskiing takes place when the Executive Director or a designee indicates in the permit.

(x) The boat towing the **[water skier] water-skier** displays a special water ski flag of a size and design approved by the Commission.

(xi) The permittee carries the permit onboard while operating the boat towing a **[water skier] water-skier** without an observer.

(d) *Umbilical or remote controls.* A person may not operate a device which is controlled by a person connected to the power source by means of an umbilical or remote control, or both, which tows the person on or through the water.

(e) **[Ski tow] Tow ropes.** **[Ski tow] Tow** ropes may not exceed the following lengths:

\* \* \* \* \*

(f) *PFDs.* It is unlawful for a person to operate a boat on the waters of this Commonwealth for:

(1) Waterskiing **and other boat-towed watersports (except wake surfing)** unless each person being towed is wearing a United States Coast Guard approved wearable PFD in accordance with § 97.1 **[(relating to personal flotation devices)]**. Inflatable PFDs may not be used to meet this requirement.

\* \* \* \* \*

(g) *Water ski wetsuits.* A person engaged in slalom skiing on a marked course or a person engaged in barefoot, jump or trick skiing, or wake surfing may elect to wear a wetsuit designed specifically for the activity in lieu of the United States Coast Guard approved wearable PFD required in § 97.1. A United States Coast Guard approved wearable **[PDF] PFD** described in § 97.1 shall be carried in the tow boat for each skier electing to wear a water ski wetsuit. The nonapproved water ski wetsuit device shall meet the following criteria:

\* \* \* \* \*

(h) *Starting and returning from shore or dock.* Notwithstanding the slow, no wake restrictions contained in § 103.3(b) (relating to restriction for special areas), skiers are permitted to start from the shore or dock if the traffic situation permits this to be done safely and in accordance with other water ski regulations. A **[water skier] water-skier** is not permitted to be returned to dock or shore under power. The skier shall release outside the 100-foot limit. The skier may then coast or glide toward the shore or dock, if the skier does not endanger life and property in so doing and steers clear of swimmers, docks and boats.

\* \* \* \* \*

§ 111.2. Allegheny County.

(a) *Allegheny River.* The following special regulations apply to the Allegheny River:

\* \* \* \* \*

(2) The area behind Nine Mile Island, Mile 10.0 to Mile 10.4 is a designated ski zone. Boats not actively engaged in towing **[water skiers] water-skiers or other boat-towed watersport participants** are limited to slow, no wake speed.

(b) *Monongahela River*. Waterskiing **[is] and other boat-towed watersports are** prohibited from the Glassport Bridge (Mile 19.4) to the Union Railroad Bridge (Mile 21.1) at Clairton.

\* \* \* \* \*

§ 111.3. Armstrong County.

(a) *Crooked Creek Lake*.

(1) A boat may not tow more than one **[water-skier] boat-towed device** on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

\* \* \* \* \*

§ 111.6. Berks County.

(a) *Blue Marsh Lake*.

\* \* \* \* \*

(3) A boat may not tow more than one **[water ski] boat-towed** device.

\* \* \* \* \*

§ 111.13. Carbon County.

(a) *Beltzville Lake—Beltzville State Park*.

\* \* \* \* \*

(3) Waterskiing **[is] and other boat-towed watersports are** prohibited except between sunrise and sunset in the designated ski zone. Boats in this zoned area shall operate in a counter-clockwise direction. Boats not engaged in waterskiing **and other boat-towed watersports** shall remain outside the ski zone area while waterskiing **[is] and other boat-towed watersports are** in progress. A boat may not tow more than one **[water ski] boat-towed device** on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

\* \* \* \* \*

§ 111.58. Susquehanna County.

\* \* \* \* \*

(d) *Laurel Lake*.

\* \* \* \* \*

(3) *Restrictions on operation of boats powered by internal combustion motors.* Operation of boats powered by internal combustion motors is subject to the following restrictions:

(i) **[Ski] Towed devices.** A boat may not tow more than one **[water ski] boat-towed** device.

(ii) *Upper Lake.* Boat speed is limited to slow, no wake speed except that, during the period from noon until 6 p.m., no more than two boats powered by internal combustion motors may, at any one time, operate at speeds greater than slow, no wake speed in the marked boat operating zone. Boats operating in the marked zone shall circle in a counter-clockwise direction and shall be subject to the restrictions in this subsection and the code and this subpart. It is unlawful to water ski **or tow any other boat-towed device** or to operate a boat at greater than slow, no wake speed at any location on the upper lake from 6 p.m. until noon of the following day.

(iii) *Lower Lake.* It is unlawful to water ski **or tow any other boat-towed device** or to operate a boat at greater than slow, no wake speed at any time at any location on the lower lake.

\* \* \* \* \*

§ 111.64. Wayne County.

(a) *Duck Harbor Pond.*

\* \* \* \* \*

(2) A boat may not tow more than one **[water ski] boat-towed** device on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

\* \* \* \* \*

(b) *Long Pond.*

\* \* \* \* \*

(2) Waterskiing **[is] and other boat-towed watersports are** permitted from 10 a.m. until 5 p.m. on weekends and holidays and from 10 a.m. until sunset on weekdays other than holidays.

(3) A boat may not tow more than one **[water ski] boat-towed device** on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

\* \* \* \* \*

§ 111.66. Wyoming County.

*Lake Winola.*

\* \* \* \* \*

(2) A boat may not tow more than one **[water ski] boat-towed** device on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

\* \* \* \* \*

On February 7, 2022, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendments.

A notice of proposed rulemaking was published at 52 Pa.B. 3435 (June 18, 2022) (Exhibit F). The Commission did not receive any public comments regarding the proposal.

Briefer:

Laurel L. Anders, Director, Bureau of Boating

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 January 1, 2023.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Mahn to adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, the amendment will go into effect January 1, 2023. Motion carried by unanimous vote.

## BOATING PROPOSED RULEMAKING

### A. Amendments to 58 Pa. Code § 107.1 (Horsepower restrictions) and § 107.2 (Electric motors).

#### Commentary:

Current regulations limit boat propulsion to electric motors only on Pennsylvania Fish and Boat Commission (Commission) owned or controlled lakes, some State Park lakes, and water bodies specified in Chapter 111 (relating to special regulations counties). These regulations were originally intended to reduce noise, excessive wakes, shoreline erosion and property damage, and reduce the risk of petroleum-based water pollution on certain water bodies. Boats powered by small electric motors (such as trolling motors) and unpowered boats are popular on Pennsylvania water bodies with electric motor only restrictions.

Some exceptions exist for State Park lakes and certain other waters specified in Chapter 111 where internal combustion motors are permitted but with horsepower limitations. Boats propelled by small gas outboard motors and unpowered boats are popular on these waterways.

Recent technological advancements with battery-powered electric boat motors have produced a variety of higher-powered options up to 180 horsepower and 60 miles per hour. While these new units are currently expensive and have limited battery capacity, it is anticipated they will become more affordable and widely available in the future. Boating stakeholders, partner organizations, other state agencies, and staff have expressed concern about the potential increased availability and popularity of high-powered electric motors, which would be legal to be operated on waters under current regulations that allow electric motors only. Additionally, law enforcement staff have expressed concern about the complexity of enforcing horsepower limitations for electric motors to meet the original intent of current regulations.

To address the above issues, Commission staff recommend amending Chapter 107 (relating to boating restrictions) to limit the speed at which electric motors may be operated and clarify that horsepower restrictions apply to internal combustion motors only. These amendments set the conditions by which Chapter 111 regulations are qualified, as noted in § 111.71 (relating to general requirements).

Staff propose the following changes to § 107.1 and § 107.2:

#### § 107.1. Horsepower restrictions.

On waters where horsepower limitations are prescribed, as set forth in Chapter 111 (relating to special regulations counties), **boats with motors larger than the maximum horsepower shall be permitted but the motors may not be used] the use of internal combustion motors in excess of the prescribed horsepower limitation is prohibited.**

#### § 107.2. Electric motors.

Except as otherwise specified in Chapter 111 (relating to special regulations counties):



(1) Electric motors are permitted on Commission owned or controlled lakes and on State Park lakes where boating is permitted.

**(2) Boats propelled by electric motors on Commission owned or controlled lakes, State Park lakes and water bodies specified in Chapter 111 shall not be operated at greater than slow, no-wake speed.**

[(2)] (3) On Commission and State Park owned or controlled lakes, internal combustion motors attached to or installed in boats need not be removed, but the operation of engines is specifically prohibited.

[(3)] (4) Officers authorized to enforce the code and this part and, in the case of State Park lakes, officers and officials of the Bureau of State Parks and operators of emergency vessels may operate boats powered by internal combustion motors in the performance of their official duties on waters otherwise restricted to electric motors only.

On June 21, 2022, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

Briefer:

Laurel L. Anders, Director, Bureau of Boating

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect January 1, 2023.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Charlesworth to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect on January 1, 2023. Motion carried by unanimous vote.

**BOATING  
PROPOSED RULEMAKING**

**B. Amendment to 58 Pa. Code § 111.17 (Clearfield County).**

Commentary:

Treasure Lake is a 379-acre lake within the grounds of a semi-private resort-style residential development of the same name. It is the largest of three lakes on the property and is designated for motorboats. It has a speed limit of 35 mph. Treasure Lake is popular for boat-towed watersports, as well as fishing and kayaking. The lake has a marina with 200 boat rental slips and four boat launches.

In March 2022, the Treasure Lake Board of Directors voted to amend its policies to extend the maximum boat length on Treasure Lake from 25 feet to 26 feet, consistent with the U.S. Coast Guard’s definition of a Class 1 vessel (16 feet to 25.9 feet). The Treasure Lake Board of Directors has requested the Pennsylvania Fish and Boat Commission (Commission) adopt the same regulatory amendment in Title 58 Pa. Code so that Waterways Conservation Officers can continue to assist in enforcement of this boating regulation.

Staff propose the following change to § 111.17:

§ 111.17. Clearfield County.

(a) *Treasure Lake.*

\* \* \* \* \*

(3) Boats longer than [~~25~~] 26 feet in length are prohibited.

\* \* \* \* \*

On June 21, 2022, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

Briefer:

Laurel L. Anders, Director, Bureau of Boating

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect January 1, 2023.

Action:

A motion was made by Commissioner Brock and seconded by Commissioner Mahn to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect on January 1, 2023. Motion carried by unanimous vote.

## LAW ENFORCEMENT FINAL RULEMAKING

### A. Amendment to 58 Pa. Code § 63.5 (Methods of fishing).

#### Commentary:

Over the last several seasons, Waterways Conservation Officers (WCOs) of the Pennsylvania Fish and Boat Commission (Commission) have asked to update § 63.5 (Methods of Fishing) to include the attempt to take fish by unlawful methods. Officers have noticed an increase in individuals using nets to attempt to take fish. This request is primarily in response to issues during the Steelhead Run in the Lake Erie tributaries but would have application in other areas of the state. For consistency, similar language exists in § 63.9 (Snatch fishing, foul hooking, and snag fishing).

Staff from the Commission's Bureau of Law Enforcement have conferred and support a change to the regulation that would prohibit the attempt to take fish by unlawful methods.

Staff propose that § 63.5 be amended as follows:

#### **§ 63.5. Methods of fishing.**

It is unlawful to use a method for taking fish **or attempting to take fish** from the waters of this Commonwealth, including boundary lakes and rivers, unless the use of the method is specifically authorized by law or this part.

A notice of proposed rulemaking was published at 52 Pa.B. 3321 (June 11, 2022) (Exhibit G). The Commission received a total of one public comment opposing the proposal. Copies of all public comments were provided to the Commissioners.

#### Briefer:

Colonel Clyde Warner, 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 Anderson and seconded by Commissioner Small to 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*. Motion carried by unanimous vote.

**LAW ENFORCEMENT  
FINAL RULEMAKING**

B. Amendment to 58 Pa. Code § 63.9 (Snatch fishing, foul hooking and snag fishing).

Commentary:

Over the last several years, anglers have asked the Pennsylvania Fish and Boat Commission (Commission) whether devices such as trout beads are a legal device for use in Commonwealth waters. These devices consist of a small bead that sits several inches above the hook and generally hook a fish on the outside of the mouth. Under the current regulations, any fish not hooked inside the mouth must be released unharmed to the waters it was taken from.

Staff from the Bureaus of Law Enforcement and Fisheries have conferred and support a clarification of the regulations which would permit these devices.

Staff propose that § 63.9 be amended as follows:

**§ 63.9. Snatch fishing, foul hooking, and snag fishing.**

\* \* \* \* \*

**(c) Nothing in this section prohibits the use of a device so long as the eye of the hook is no more than 2 inches below the device.**

A notice of proposed rulemaking was published at 52 Pa.B. 3322 (June 11, 2022) (Exhibit H). The Commission received a total of two public comments regarding the proposal: one supports the proposal, and one opposes the proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

Colonel Clyde Warner, 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 Gibney and seconded by Commissioner Anderson to 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*. Motion carried by unanimous vote.

**LAW ENFORCEMENT  
FINAL RULEMAKING**

C. Amendment to 58 Pa. Code § 63.15a (Officially-recognized fish cleaning stations).

Commentary:

Waterways Conservation Officers of the Pennsylvania Fish and Boat Commission (Commission) are requesting that a 2 inch by 2 inch piece of skin remain on fish fillets and the chunking of the fillets be prohibited. This will assist in the identification of fish that are harvested and processed at noncommercial officially recognized fish cleaning stations throughout the Commonwealth. Without the skin, it is difficult for officers to identify the species of fish from the fillet. Chunking makes it difficult for officers to identify the number of fish filleted.

Staff from the Commission’s Bureau of Law Enforcement have conferred and support a change to the regulation which would prohibit the removal of skin from fish fillets at noncommercial officially recognized fish cleaning stations. This will simplify the identification of the fish that are harvested or processed at these locations.

Staff propose that § 63.15a be amended as follows:

**§ 63.15a. Officially-recognized fish cleaning stations.**

\* \* \* \* \*

**(e) Identification. Noncommercial officially-recognized fish cleaning station users shall leave at least a 2-inch by 2-inch piece of skin on processed fillets for identification purposes. Cutting the fillets into pieces (also known as chunking) is prohibited.**

A notice of proposed rulemaking was published at 52 Pa.B. 3434 (June 18, 2022) (Exhibit I). The Commission received a total of two public comments opposing the proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

Colonel Clyde Warner, 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 Anderson and seconded by Commissioner Small to 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*. Motion carried by unanimous vote.

**LAW ENFORCEMENT  
FINAL RULEMAKING**

D. Amendment to 58 Pa. Code § 63.8 (Long bows, crossbows, spears and gigs).

Commentary:

The Pennsylvania Fish and Boat Commission (Commission), specifically the Bureau of Law Enforcement (Bureau), has received an increasing number of complaints regarding bowfishing. Most of these complaints revolve around the intense bright lighting used to locate fish along the shoreline. In addition to the lighting, the noise created by the internal combustion, gas-powered generators used by some to operate the lighting has also generated complaints to the Bureau and created conflicts with property owners along Commonwealth waterways.

After receiving feedback from agency staff, property owners, anglers, fishing guides, and legislators, staff have conferred and support a clarification of the regulation as listed below.

The Law Enforcement Committee considered this proposal on December 15, 2021, and recommended the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

A notice of proposed rulemaking was published at 52 Pa.B. 1494 (March 12, 2022) (Exhibit J). The Commission received a total of 34 public comments regarding the proposed rulemaking: one supports the proposal, 29 oppose the proposal, and four do not pertain to the proposed rulemaking. Copies of all public comments were provided to the Commissioners.

**§ 63.8. Long bows, crossbows, spears and gigs.**

\* \* \* \* \*

**(d) Exceptions:**

**(1) It is unlawful to use bow and arrow (including compound bows and crossbows), spears and gigs in any special regulation trout waters.**

**(2) It is unlawful to cast direct rays of a spotlight, mounted headlight, or any other artificial light of any kind from any watercraft, upon any occupied building, or another watercraft.**

**(3) It is unlawful to use generators on board a watercraft engaged in bowfishing with a noise level that exceeds 90 dB(a). The noise emission test measurement will be made with the sound level meter at a distance of at least 4 feet above the water at a point where the transom gunwale and the port or starboard gunwale intersects.**

Briefer:

Colonel Clyde N. Warner, Jr., Director, Bureau of Law Enforcement

Recommendation:

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

Action:

A motion was made by Commissioner Gibney and seconded by Commissioner Lewis to 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*. Motion carried with one opposed.

**LAW ENFORCEMENT  
PROPOSED RULEMAKING**

A. Amendment to 58 Pa. Code § 63.8 (Long bows, crossbows, spears and gigs).

Commentary:

The Pennsylvania Fish and Boat Commission (Commission), specifically the Bureau of Law Enforcement, has received an increasing number of comments from bow fishing anglers who want to see snakehead added to the list of approved species that can be targeted with long bows, crossbows, spears, and gigs. Snakeheads are an invasive species that are found in many Commonwealth waters and continue to spread across the state. Many of the states surrounding Pennsylvania already allow this activity.

After receiving feedback from agency staff, property owners, anglers, and fishing guides, staff have conferred and support a clarification of the regulation as listed below.

**§ 63.8. Long bows, crossbows, spears and gigs.**

(a) *General.* Except as otherwise provided in this part, **snakehead**, carp, suckers and catfish may be taken with long bows and arrow, including compound bows, crossbows, spears or gigs any hour of the day or night aided by a light at night if so desired, in Commonwealth waters and waters bounding and adjacent thereto.

\* \* \* \* \*

Briefer:

Colonel Clyde N. Warner, Jr., Director, Bureau of Law Enforcement

Recommendation:

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

Action:

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



## FISHERIES FINAL RULEMAKING

A. Amendment to 58 Pa. Code § 65.24 (Miscellaneous Special Regulations): Remove Penns Creek, Section 03, Centre and Mifflin counties.

Commentary:

Penns Creek is a large, limestone-influenced stream that supports a robust wild Brown Trout fishery in its upstream reaches. The stream is approximately 67 miles in length and is delineated into eight stream sections for fisheries management purposes. The Pennsylvania Fish and Boat Commission (Commission) has documented wild trout in approximately 37 miles of the stream from the headwaters downstream to Glen Iron, with approximately 29 miles being designated as Class A wild trout waters. Penns Creek, Section 03, extends for 7.0 miles from the confluence with Elk Creek in Coburn downstream to 600 meters downstream of the confluence with Swift Run. Section 03 was managed as a stocked trout fishery until 1992 when it was designated by the Commission as a Class A wild trout stream and the stocking of hatchery-reared trout was discontinued in favor of wild trout management.

To address landowner and angler feedback, increase the abundance of large wild Brown Trout in the population, and provide the opportunity to use all tackle types and harvest some trout, a new Miscellaneous Special Regulation (58 Pa. Code § 65.24; slot limit) was established on Penns Creek, Section 03, beginning January 1, 2014. The slot limit regulation allows for year-round fishing, use of all tackle types, and the harvest of two trout per day that are at least seven inches but less than 12 inches in length, from the opening day of the regular season for trout through Labor Day, with no harvest permitted the remainder of the year.

Penns Creek, Section 03, provided a unique opportunity to evaluate this new special regulation on a productive limestone stream. The Penns Creek trout population was monitored before and after implementation of the slot limit regulation. Results of the monitoring revealed a substantial increase in the electrofishing catch rates of larger Brown Trout (greater than or equal to 16 inches in length) during the slot limit regulation implementation period (2014-2019). These results suggest that the slot limit regulation likely played an important role in the increased electrofishing catch of large Brown Trout in Section 03. In addition to fishery independent monitoring, staff conducted an angler use, harvest, and opinion survey to evaluate the social aspects of the regulation change and estimate angler harvest in 2019. Results documented low harvest of trout during the survey and high angler support for continuance of the slot limit regulation. Despite low angler harvest under the current slot limit regulation, this regulation provides the opportunity for anglers to harvest intermediate-sized trout if desired, which was an important social consideration when the regulation was originally implemented.

Given the success of the experimental slot limit regulation program on Penns Creek, Section 03, and potential opportunities to utilize this regulation at other suitable wild trout waters, the Commission established a new special regulation program known as Trout Slot Limit in 2021. The Trout Slot Limit program has two subprograms: All-Tackle Trout Slot Limit and Artificial Lures Only Trout Slot Limit. As such, it is recommended that Penns Creek, Section 03, be removed from Miscellaneous Special Regulations in favor of management

under the newly established Trout Slot Limit program. Upon removal of this regulation, Penns Creek, Section 03, will be proposed for designation into the All-Tackle Trout Slot Limit program (58 Pa. Code § 65.4c) at the October 2022 Commission meeting with an implementation date of January 1, 2023. If approved, the name of the regulation applied to Penns Creek, Section 03, will change; however, the regulation itself would remain the same.

To facilitate transition of Section 03 into the All-Tackle Trout Slot Limit program, this water must first be removed from Miscellaneous Special Regulations. All other fish species will be managed with Commonwealth Inland Waters angling regulations (58 Pa. Code § 61.1).

Staff propose that 58 Pa. Code § 65.24 be amended as follows:

§ 65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
* * * * *		
<b>[Centre and Mifflin]</b>	<b>[Penns Creek, from the confluence of Elk Creek downstream 7 miles to 600 meters downstream of Swift Run]</b>	<b>[Open to fishing year-round. All tackle types are permitted. From 8 a.m. on the opening day of the regular season for trout through Labor Day—the daily creel limit for trout is 2 (combined species). Trout must be at least 7 inches but less than 12 inches in length to be killed or possessed. From the day after Labor Day until 8 a.m. on the opening day of the regular season for trout, no trout may be killed or possessed. Inland regulations apply to all other species. This miscellaneous special regulation will remain in effect until further notice.]</b>
* * * * *		

A notice of proposed rulemaking was published at 52 Pa.B. 1494 (March 12, 2022) (Exhibit K). The Commission did not receive any public comments regarding the proposed rulemaking.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

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 on January 1, 2023.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Charlesworth to adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, the amendment will go into effect on January 1, 2023. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

**FISHERIES**  
**FINAL RULEMAKING**

B. Amendment to 58 Pa. Code § 65.24 (Miscellaneous Special Regulations): Remove Little Chartiers Creek, Section 05, Washington County.

Commentary:

Little Chartiers Creek is a 17.5-mile-long tributary to Chartiers Creek in Washington County, approximately six miles east-northeast of the City of Washington. Little Chartiers Creek is delineated into five stream sections for fisheries management purposes and is impounded at river mile 0.37, creating Canonsburg Lake, a 76-acre impoundment owned by the Commonwealth of Pennsylvania and managed by the Pennsylvania Fish and Boat Commission (Commission). Little Chartiers Creek, Section 02, is managed as a Stocked Trout Water (STW) and Canonsburg Lake is managed as a Stocked Trout Water Open to Year-round Fishing. The remainder of Little Chartiers Creek (sections 01, 03-05) is not managed as a STW and not stocked by the Commission with hatchery-reared trout.

Little Chartiers Creek, Section 05, is approximately 0.5 miles in length and extends from the outflow of Canonsburg Lake downstream to the confluence with Chartiers Creek. Although Section 05 is not managed as a STW, this section has been managed under Miscellaneous Special Regulations since the early 1980s. This regulation prohibits angling from the end of the extended season for trout through 8 a.m. on the opening day of the regular season for trout, which aligns with the management of STWs. Historically, the rationale for this special regulation was to prohibit angling in Section 05 during the closure period following the stocking of trout in Canonsburg Lake, which could escape downstream into Little Chartiers Creek. Escapement of stocked trout created unwanted and disruptive angler behavior in Section 05 and warranted management with these special regulations. During the annual regulatory review process, Commission staff determined that these regulations are no longer necessary and recommend removal. If removed, this change would simplify regulations and increase angling opportunities while continuing to provide adequate resource protection.

Upon removal of this special regulation, Section 05 will revert to Commonwealth Inland Waters angling regulations (58 Pa. Code § 61.1). To facilitate transition of Section 05 to management with Commonwealth Inland Waters angling regulations, this water must first be removed from Miscellaneous Special Regulations.

Staff propose that 58 Pa. Code § 65.24 be amended as follows:

§ 65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
* * * * *		
<b>[Washington]</b>	<b>[Little Chartiers Creek, from Canonsburg Lake Dam approximately 1/2 mile downstream to the</b>	<b>[Fishing is prohibited from 12:01 a.m. the third Monday in February to 8 a.m. the opening day of the regular season for trout.]</b>

	<b>mouth of Chartiers Creek]</b>	
* * * * *		

A notice of proposed rulemaking was published at 52 Pa.B. 1496 (March 12, 2022) (Exhibit L). The Commission did not receive any public comments regarding the proposed rulemaking.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

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 on January 1, 2023.

Action:

A motion was made by Commissioner Mahn and seconded by Commissioner Anderson to adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, the amendment will go into effect on January 1, 2023. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

**FISHERIES**  
**FINAL RULEMAKING**

C. Amendment to 58 Pa. Code § 61.2 (Delaware River, West Branch Delaware River and River Estuary) to address the American Shad fishery.

Commentary:

American Shad are an anadromous species. Adults inhabit the marine waters of the Atlantic Ocean, annually returning to natal freshwater systems during spring for spawning. Young-of-the-year utilize freshwater systems as nurseries, before out-migrating during fall. American Shad fulfill a foundational ecological role as forage for many piscivores within oceanic, costal, and connected inland waters, in addition to supporting well-established recreational and commercial fishing opportunities throughout their range along the Atlantic Coast.

Multiple state, federal, and tribal jurisdictions jointly manage American Shad fisheries along the Atlantic Coast, including the Atlantic States Marine Fisheries Commission (ASMFC) and specifically within the Delaware River basin, the Delaware River Basin Fish and Wildlife Management Cooperative (Co-op). The Pennsylvania Fish and Boat Commission (Commission) is a member of both entities. ASMFC's Amendment 3 to the Interstate Fishery Management Plan for Shad and River Herring requires Delaware River basin states jointly submit a Sustainable Fisheries Management Plan for continuance of American Shad fisheries for all connected waters within the Delaware River basin.

In 2020, the ASMFC stock assessment workgroup developed the most current consensus population assessment for the Atlantic Coast. Findings specific to the Delaware River basin, indicated the Delaware River American Shad population is experiencing unsustainable mortality. Given the ASMFC stock assessment workgroup findings, Co-op members, including Pennsylvania, have agreed to reduce American Shad harvest by approximately 33% for both the recreational and commercial fisheries.

Pennsylvania does not have a commercial fishery for American Shad; however, a popular recreational fishery exists in the Delaware River basin. Given the agreed upon 33% reduction in American Shad harvest by Co-op member states, it is recommended that the Commission amend the daily creel of American Shad from three to two fish per day on waters managed under 58 Pa. Code § 61.2 (Delaware River, West Branch Delaware River and River Estuary) regulations. New York, New Jersey, and Delaware are seeking similar reductions to the recreational daily creel limits within their respective jurisdictional waters in the Delaware River basin.

Staff propose that 58 Pa. Code § 61.2 be amended as follows:

§ 61.2. Delaware River, West Branch Delaware River and River Estuary.

SPECIES	SEASONS	<i>MINIMUM</i> SIZE	DAILY LIMIT
* * * * *			
AMERICAN SHAD	Open year-round	No minimum	<b>[3]2</b>
* * * * *			

A notice of proposed rulemaking was published at 52 Pa.B. 3320 (June 11, 2022) (Exhibit M). The Commission received one public comment supporting the proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

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 on January 1, 2023.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Small to adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, the amendment will go into effect on January 1, 2023. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

**FISHERIES**  
**PROPOSED RULEMAKING**

A. Amendment to 58 Pa. Code § 61.2 (Delaware River, West Branch Delaware River and River Estuary) to address the Atlantic Striped Bass fishery.

Commentary:

At its May 2022 quarterly meeting, the Atlantic States Marine Fisheries Commission (ASMFC), which includes the Commonwealth as a member, approved Amendment 7 to the Interstate Fishery Management Plan for Atlantic Striped Bass. The most recent Striped Bass stock assessment determined the stock was overfished and that overfishing was occurring. Based on these findings, the ASMFC’s Striped Bass management plan calls for management actions to rebuild the stock. As part of Amendment 7, new requirements were established to address recreational release mortality, among other management plan components. Recreational release mortality is a large component of annual fishing mortality, and Amendment 7 establishes a new gear restriction which prohibits gaffing Striped Bass when fishing recreationally. This new restriction, along with the existing circle hook requirement when fishing recreationally with bait, are intended to increase the chance of survival after a Striped Bass is released alive. To align with the provisions of Amendment 7, it is recommended to prohibit the use of a gaff when fishing for Striped Bass in the Delaware River, West Branch Delaware River, and River Estuary.

In addition to the ASMFC mandated amendment, staff identified an opportunity to further clarify language in § 61.2 (b) pertaining to the legal harvestable size range for Striped Bass. The current language describes the minimum legal harvestable length but does not account for the maximum legal harvestable length in the Striped Bass slot limit. Although the harvest slot limit in the regulation chart clearly defines the upper and lower limits to the legal harvestable length range, it is recommended to add clarifying language to the body of the text in the regulation.

Staff propose that 58 Pa. Code § 61.2 be amended as follows:

§ 61.2. Delaware River, West Branch Delaware River and River Estuary.

\* \* \* \* \*

(a) It is unlawful to take, catch, kill or possess fish, except during the seasons specified in this section. It is not a violation of this section if a fish caught out of season from water where fishing for other species is lawful is immediately returned unharmed to the waters from which it was taken.

(b) It is unlawful to take, catch, kill or possess fish of less than the minimum size **or greater than the maximum size** specified in this section. It is not a violation of this section if an undersized **or oversized** fish taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.



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

(1) A person may possess any number of lawfully caught fish at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may, while transporting fish from the place where caught to his residence, possess a number of fish equal to no more than two times the daily creel limit for that species of fish. In prosecution for violation of this section, it shall be a rebuttable presumption that a person transporting fish from a fishing site caught all of the fish during 1 calendar day.

(3) A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

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

(5) Fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither the donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

(d) It is unlawful to fish with bait for any species of fish in the tidal Delaware Estuary, including tributaries from the mouths of the tributaries upstream to the limit of tidal influence using any hook type other than non-offset (in-line) circle hooks. The definition of a non-offset (in-line) circle hook is a non-offset hook where the point is pointed perpendicularly back towards the shank. The term "non-offset" means the point and the barb are in the same plane as the shank.

**(e) It is unlawful for any person to gaff or attempt to gaff any Striped Bass at any time when fishing.**

[(e)] (f) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

\* \* \* \* \*

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect on January 1, 2023.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Gibney to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect on January 1, 2023. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

## FISHERIES DESIGNATIONS

### A. Proposed changes to the list of Class A wild trout streams (58 Pa. Code § 57.8a).

#### Commentary:

Pursuant to 58 Pa. Code § 57.8a (relating to Class A wild trout streams), it is the Pennsylvania Fish and Boat Commission's (Commission) 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 Trout and Brown Trout, wild Rainbow Trout, mixed wild Brook Trout and Rainbow Trout, and mixed wild Brown Trout and Rainbow Trout populations.

Staff recommend the addition of nine 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 and subsequent data review. Exhibit N provides information on the locations and a data summary for each of these waters.

A notice of proposed designations was published at 52 Pa.B. 2940 (May 14, 2022) (Exhibit O). The Commission received a total of 312 public comments regarding the proposed designations: 307 support the entire proposal and five do not pertain to the proposal. Copies of all public comments were provided to the Commissioners.

#### Briefer:

David C. Nihart, Chief, Division of Fisheries Management

#### Recommendation:

Staff recommend that the Commission add nine stream sections to its Class A wild trout streams list as set forth in the notice of proposed designations. 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 Anderson and seconded by Commissioner Charlesworth to add nine streams to its Class A Wild trout streams list as set forth in the notice of proposed designations. If approved, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

## FISHERIES DESIGNATIONS

### B. Classification of wild trout streams (58 Pa. Code § 57.11): Proposed additions.

#### 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 (Commission) under 58 Pa. Code § 57.11 (relating to listing of wild trout streams)." This term has regulatory significance because wetlands that are 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 19 new waters to the Commission's list of wild trout streams. These changes are the result of recent surveys conducted on these waters. Exhibit P provides information on the locations and a data summary for each of these waters. Surveying unassessed waters and documenting wild trout populations are consistent with the Commission's Strategic Plan for Management of Trout Fisheries in Pennsylvania, the statewide Strategic Plan, and the agency's Resource First philosophy.

A notice of proposed designations was published at 52 Pa.B. 2939 (May 14, 2022) (Exhibit Q). The Commission received a total of 307 public comments regarding the proposed designations: 303 support the proposal, one opposes the designation of a specific water, and three comments do not pertain to the proposal. Copies of all public comments were provided to the Commissioners.

#### Briefer:

David C. Nihart, Chief, Division of Fisheries Management

#### Recommendation:

Staff recommend that the Commission add 19 new waters to the Commission's list of wild trout streams as set forth in the notice of proposed designations. 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 Charlesworth and seconded by Commissioner Small to add 19 new waters to the Commission's list of wild trout streams as set forth in the notice of proposed designations. If approved, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

## FISHERIES DESIGNATIONS

### C. Classification of wilderness trout streams (58 Pa. Code § 57.4): Proposed additions.

#### Commentary:

Originally established in April 1969, the Wilderness Trout Streams program represents the Commission's first formal wild trout program. The program was designed to protect and promote native (Brook Trout) fisheries, the ecological requirements necessary for natural reproduction of trout, and wilderness aesthetics. The superior quality of these watersheds is considered an important part of the overall angling experience on Wilderness Trout Streams. Therefore, all stream sections included in this program qualify for the Exceptional Value (EV) special protected water use classification, which represents the highest protection status provided by the Pennsylvania Department of Environmental Protection under 25 Pa. Code Chapter 93 (Water Quality Standards).

As stated in 58 Pa. Code § 57.4, "It is the policy of the Commission to maintain the wilderness trout streams program where stream remoteness and populations of naturally reproducing trout combine to offer sport fishing opportunity for the recreation of anglers in a wilderness setting away from roads or vehicular access. It is the Commission's intent to advocate proper watershed management to maintain the wilderness setting and to advance and seek the highest water quality standards through the Department of Environmental Protection."

The Wilderness Trout Streams program was last updated in 2002. As a result of the Unassessed Waters Initiative and wild trout stream re-inventories over the past two decades, numerous streams have been identified that meet the criteria for inclusion in the Wilderness Trout Streams program. The need to develop listing packages and propose designation of qualify streams was identified in the *Strategic Plan for Management of Trout Fisheries in Pennsylvania 2020-2024* (Issue 21).

Staff recommend the addition of 19 stream sections to the Commission's list of wilderness trout streams. These changes are the result of recent surveys conducted on these waters. All of the proposed stream sections are currently designated as EV under 25 Pa. Code Chapter 93 and are located on Department of Conservation and Natural Resources land. Exhibit R provides information on the locations and a data summary for each of these waters.

A notice of proposed designations was published at 52 Pa.B. 3394 (June 11, 2022) (Exhibit S). The Commission received a total of eight public comments regarding the proposed designations: seven support the proposal and one comment does not pertain to the proposal. Copies of all public comments were provided to the Commissioners.

#### Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission add 19 stream sections to the Commission's list of wilderness trout streams as set forth in the notice of proposed designations. 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 Gibney and seconded by Commissioner Anderson to add 19 stream sections to the Commission's list of wilderness trout streams as set forth in the notice of proposed designations. If approved, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

## FISHERIES DESIGNATIONS

D. Removal of Speedwell Forge Lake, Lancaster County, from the Catch and Release Lakes program (58 Pa. Code § 65.17) and addition to the Big Bass program (58 Pa. Code § 65.9).

Commentary:

Speedwell Forge Lake, a 106-acre impoundment owned by the Commonwealth of Pennsylvania and managed by the Pennsylvania Fish and Boat Commission (Commission), is located in Elizabeth Township in Lancaster County, approximately three miles north of the Borough of Litiz. The dam impounds Hammer Creek at river mile 7.9 upstream from its confluence with Cocalico Creek. This reservoir was completely dewatered in November 2011 to complete dam and spillway repairs and modifications per Pennsylvania Department of Environmental Protection dam safety standards. Following completion of these repairs and modifications, refill occurred by spring 2016, and the Commission stocked the lake from 2016 through 2021 with select fish species to establish a high-quality, warm-water and cool-water fishery.

Since 2016, Speedwell Forge Lake has been managed in the Catch and Release Lakes program (58 Pa. Code § 65.17) which allows only catch-and-release fishing for all fish species. The intent of these temporary regulations was to facilitate rapid development of the warm-water and cool-water fish populations in the absence of harvest, and once re-established, the lake would be recommended for removal from these regulations and moved to one or more of the Commission's existing warm-water regulation programs.

The black bass and panfish populations were evaluated from 2017 through April 2022 to monitor progress towards development of a high-quality, warm-water and cool-water fishery. Sportfish abundance and population size structure have improved to levels where populations can now sustain limited harvest. As such, it is recommended to remove Speedwell Forge Lake from the Catch and Release Lakes program (58 Pa. Code § 65.17) and manage the black bass fishery in this reservoir with Big Bass angling regulations (58 Pa. Code § 65.9). Big Bass regulations applied to lakes allow for the harvest of four black bass (Largemouth Bass, Smallmouth Bass, and Spotted Bass; combined species) greater than or equal to 15 inches in length from January 1 to midnight the day before the second Saturday in April, and 12:01 a.m. the second Saturday in June to midnight December 31. No harvest is permitted from 12:01 a.m. the second Saturday in April to 12:01 a.m. the second Saturday in June. All other fish species not managed under these special regulations will be managed with Commonwealth Inland Waters angling regulations (58 Pa. Code § 61.1).

A notice of proposed designations was published at 52 Pa.B. 3294 (June 4, 2022) (Exhibit T). The Commission did not receive any public comments regarding the proposal.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management



Recommendation:

Staff recommend that the Commission remove Speedwell Forge Lake, Lancaster County, from the Catch and Release Lakes program (58 Pa. Code § 65.17) and add this reservoir to the Big Bass program (58 Pa. Code § 65.9). If adopted, these designations will go into effect January 1, 2023.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Mahn to remove Speedwell Forge Lake, Lancaster County, from the Catch and Release Lakes program (58 Pa. Code § 65.17) and add this reservoir to the Big Bass program (58 Pa. Code § 65.9). If adopted, these designations will go into effect January 1, 2023. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

## FISHERIES DESIGNATIONS

E. Addition of Colyer Lake, Centre County; and Lake Nessmuk, Tioga County to the Panfish Enhancement program (58 Pa. Code § 65.11) for Yellow Perch.

Commentary:

Colyer Lake, a 77-acre impoundment owned by the Commonwealth of Pennsylvania (Commonwealth) and managed by the Pennsylvania Fish and Boat Commission (Commission), is located in Potter Township in Centre County, approximately nine miles east-southeast of the Borough of State College. Lake Nessmuk, a 60-acre impoundment owned by the Commonwealth and managed by the Commission, is located in Delmar Township in Tioga County, approximately one mile south of the Borough of Wellsboro.

In 2016, both lakes were added to the Catch and Release Lakes program (58 Pa. Code § 65.17) which allows only catch-and-release fishing for all fish species. The intent of these temporary regulations was to facilitate rapid development of the warm-water and cool-water fish populations in the absence of harvest, and once re-established, the lakes would be recommended for removal from these regulations and moved to one or more of the Commission's existing warm-water regulation programs.

The black bass and panfish populations were evaluated from 2017 through May 2021 to monitor progress towards development of a high-quality, warm-water and cool-water fishery. Sportfish abundance and population size structure improved to levels where populations can sustain limited harvest. At the July 2021 Commission meeting, the Board approved the removal of both lakes from the Catch and Release Lakes program (58 Pa. Code § 65.17) and added them to the Big Bass program (58 Pa. Code § 65.9) and the Panfish Enhancement program (58 Pa. Code § 65.11) for crappies and sunfish. However, no action was taken to manage Yellow Perch under the Panfish Enhancement program in either lake. Upon further consideration, it is recommended to also include Yellow Perch in the species group managed under this program.

Panfish Enhancement regulations allow for year-round harvest of sunfish (Bluegill and Pumpkinseed) greater than or equal to seven inches in length and crappies (Black Crappie and White Crappie) and Yellow Perch greater than or equal to nine inches in length with a daily limit of 20. When Panfish Enhancement regulations apply to more than one species in the same waterway, the creel limit is 20 for each species with the total creel not to exceed 50 panfish combined. All other fish species not managed under these special regulations will be managed with Commonwealth Inland Waters angling regulations (58 Pa. Code § 61.1).

A notice of proposed designations was published at 52 Pa.B. 3294 (June 4, 2022) (Exhibit T). The Commission did not receive any public comments regarding the proposal.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission add Colyer Lake, Centre County; and Lake Nessmuk, Tioga County to the Panfish Enhancement program (58 Pa. Code § 65.11) for Yellow Perch. If adopted, these designations will go into effect January 1, 2023.

Action:

A motion was made by Commissioner Pastore and seconded by Commissioner Anderson to add Colyer Lake, Centre County; and Lake Nessmuk, Tioga County to the Panfish Enhancement program (58 Pa. Code § 65.11) for Yellow Perch. If adopted, these designations will go into effect January 1, 2023. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

## FISHERIES DESIGNATIONS

F. Removal of Sugar Lake, Crawford County; Belmont Lake, Wayne County; and Prompton Lake, Wayne County from the Brood Stock Lakes program (58 Pa. Code § 65.18).

Commentary:

Under 58 Pa. Code § 65.18 (relating to brood stock lakes), the Executive Director of the Pennsylvania Fish and Boat Commission (Commission), with the approval of the Commission, may designate lakes as brood stock lakes to which 30 Pa.C.S. § 2102 (relating to rules and regulations), shall apply. According to the regulation, the designation of waters as brood stock lakes shall be effective upon posting of the waters after publication of a notice that the waters have been so designated in the *Pennsylvania Bulletin*.

It is unlawful to fish in the lakes designated as brood stock lakes except in compliance with the following requirements.

- (1) From 12:01 a.m. April 1 to midnight May 31, fishing for Muskellunge and Muskellunge hybrids (tiger muskellunge), Northern Pike, and pickerel is permitted on a catch-and-release/no-harvest basis only.
- (2) From 12:01 a.m. April 1 to midnight May 31, it is unlawful to take, kill, or possess any Muskellunge and Muskellunge hybrids, Northern Pike, and pickerel taken from lakes designated under this section.
- (3) From 12:01 a.m. April 1 to midnight May 31, all Muskellunge and Muskellunge hybrids, Northern Pike, and pickerel caught shall be immediately returned unharmed to the lake from which taken.

These regulations are intended to restrict harvest and fish consumption from designated lakes during the Food and Drug Administration mandated withdrawal period associated with these anesthetics and to help maintain high-abundance populations for use as brood stock. During the catch-and-release/no-harvest period defined by this regulation, fish anesthetics are used during culture operations for Muskellunge, tiger muskellunge, Northern Pike, and pickerel, thus necessitating the harvest closure.

There is justification to remove three lakes from the Brood Stock Lakes program based on lake characteristics. Prompton Lake, Wayne County, has not been used as a brood stock lake since 2014. Additionally, Smallmouth Bass in Prompton Lake have tested positive for Largemouth Bass virus, and out of an abundance of caution, brood fish are no longer collected from this water. Belmont Lake, Wayne County, was historically stocked with Muskellunge, but no stockings have occurred since 2014. As such, Belmont Lake does not support a population of Muskellunge in numbers sufficient to support brood stock collections for culture purposes. Sugar Lake, Crawford County, is stocked with Muskellunge; however, these stockings have failed to produce a robust population. Consequently, the lake has not been used for a source of brood stock for more than 15 years. Removal of the lake from the program would allow abundant Chain Pickerel to be

harvested during the current no-harvest period, which has been advocated for by local anglers.

A notice of proposed designations was published at 52 Pa.B. 3294 (June 4, 2022) (Exhibit T). The Commission did not receive any public comments regarding the proposal.

Briefer:

Brian B. Wisner, Director, Bureau of Hatcheries

Recommendation:

Staff recommend that the Commission remove Prompton Lake and Belmont Lake, Wayne County; and Sugar Lake, Crawford County, from the Brood Stock Lakes program (58 Pa. Code § 65.18). If approved, these changes will go into effect January 1, 2023.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Gibney to remove Prompton Lake and Belmont Lake, Wayne County; and Sugar Lake, Crawford County, from the Brood Stock Lakes program (58 Pa. Code § 65.18). If approved, these changes will go into effect January 1, 2023. Motion carried by unanimous vote.

Commissioner Brock was absent for this vote.

## **NOTATIONAL VOTE MEASURES**

The Commission voted on one item by notational vote since the April 25, 2022 and June 10, 2022 meetings. Between July 6, 2022 and July 8, 2022, the Commission, in a 10-0 vote, approved the item found in Appendix A.

## APPENDIX A

**PENNSYLVANIA FISH AND BOAT COMMISSION**  
**NOTATIONAL VOTE**

F. Approval of Union City Fish Hatchery Furlough.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) is currently moving forward with the transition of the Union City Fish Hatchery from a hatchery to a biological center. Upon completion of the transition, Union City will no longer raise fish but instead raise mussels, reptiles, amphibians, and other non-fish species. The result will be a lack of fish culture work as the facility's needs will be for biologists rather than culturists. One existing fish culturist employee may need to be furloughed. The employee will be offered the opportunity to fill current fish culturist vacancies at other Commission hatcheries, but if he declines, lack of work at Union City will necessitate his furlough.

The Commissioners' Handbook currently provides that the Commissioners will review and approve all requests to sanction furlough actions due to lack of work or lack of funds before official notice is provided to the Governor's Office of Administration, the affected union, and employees.

Briefer:

Timothy D. Schaeffer, Executive Director

Recommendation:

Staff recommend that the Commission approve the furlough as proposed in the Commentary.

Action:

Between July 6, 2022 and July 8, 2022, the Commission, in a 10-0 vote, approved the item.



## **Other New Business**

### **Time and Place of October 2022 Commission Meeting**

Announcement of the October 24-25, 2022 quarterly Commission Meeting in Harrisburg, PA at 10:00 a.m.

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

A motion was made by Commissioner Anderson and seconded by Commissioner Lewis to elect Commissioner Robert B.J. Small as the new President of the Commission. Motion carried by unanimous vote. Commissioner Brock was absent for this vote.

A hand made gavel was presented from Commissioner Kauffman to Commissioner Small.

A motion was made by Commissioner Anderson and seconded by Commissioner Lewis to elect William Gibney as the new Vice President of the Commission. Motion carried by unanimous vote. Commissioner Brock was absent for this vote.

### **Adjournment**

A motion was made by Commissioner Small and seconded by Commissioner Lewis to adjourn the meeting at 1:51 p.m. Motion carried by unanimous vote. Commissioner Brock was absent for this vote.