

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

MINUTES

155th Meeting

Volume 74

**HARRISBURG, PENNSYLVANIA
July 24, 2023**

Table of Contents

| | |
|--|----|
| Call to Order..... | 1 |
| Roll Call..... | 1 |
| Pledge of Allegiance | 1 |
| Public Comments to Commissioners and Staff..... | 1 |
| Review and Approval of Minutes from the April 24, 2023 and May 17, 2023 Meetings | 1 |
| Executive Director’s Report..... | 1 |
| Reports of Commissioner Committees | 1 |
| Announcement of Executive Session | 1 |
| Notice of Temporary Changes to Fishing Regulations | 1 |
| A. Temporary change to fishing regulations (58 Pa. Code § 65.25) to 58 Pa. Code § 61.2 (Delaware River, West Branch Delaware River and Estuary) to address the Striped Bass fishery | 1 |
| B. Temporary change to fishing regulations (58 Pa. Code § 65.25) to Kahle Lake, Clarion and Venango counties, to lift all seasons, sizes, and creel limits for all species | 1 |
| EXECUTIVE & ADMINISTRATIVE | 2 |
| OTHER MATTERS | 2 |
| A. Erie Access Improvement Program: Amendment to the Grant with the Erie-Western PA Port Authority, Lampe Marina Fish Cleaning Station, Lake Erie, Erie County | 2 |
| B. Commission Strategic Plan for July 1, 2023, to June 30, 2028 | 4 |
| BOATING | 5 |
| FINAL RULEMAKING | 5 |
| A. Amendments to 58 Pa. Code § 93.1 (Registration) and § 93.5 (Display of registration number and validation decal)..... | 5 |
| B. Amendments to 58 Pa. Code § 93.3 (Application for boat registration)..... | 7 |
| BOATING | 9 |
| PROPOSED RULEMAKING..... | 9 |
| A. Amendments to 58 Pa. Code § 111.22 (Dauphin County)..... | 9 |
| B. Amendment to 58 Pa. Code § 97.1 (Personal flotation devices), § 111.3 (Armstrong County), § 111.20 (Crawford County), § 111.24 (Elk County), § 111.26 (Fayette County), § 111.27 (Forest County), § 111.32 (Indiana County), § 111.42 (McKean County), § 111.43 (Mercer County), § 111.56 (Somerset County), § 111.62 (Warren County), and § 111.65 (Westmoreland County) | 10 |
| FISHERIES | 15 |
| FINAL RULEMAKING | 15 |
| A. Amendments to 58 Pa. Code Chapter 71 (PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS) and Chapter 73 (TRANSPORTATION OF LIVE FISH INTO THIS COMMONWEALTH)..... | 15 |

| | |
|--|----|
| FISHERIES | 32 |
| PROPOSED RULEMAKING | 32 |
| A. Amendments to 58 Pa. Code § 65.24 (Miscellaneous Special Regulations): Add Yellow Creek, Section 04, Beford County; Pohopoco Creek, Section 04, Carbon County; Bald Eagle Creek, Section 06, Centre County; Penns Creek, Section 02, Centre County; Fishing Creek, Sections 13 and 14, Clinton County; Little Lehigh Creek, Sections 04 and 07, Lehigh County; Monocacy Creek, Section 09, Lehigh and Northampton Counties; Kishacoquillas Creek, Section 05, Mifflin County; Martins Creek, Section 01, Northampton County; and Monocacy Creek, Section 08, Northampton County | 32 |
| B. Amendments to 58 Pa. Code § 65.26 (Extended Trout Season)..... | 44 |
| FISHERIES | 46 |
| DESIGNATIONS | 46 |
| A. Proposed changes to the list of Class A wild trout streams (58 Pa. Code § 57.8a) | 46 |
| B. Classification of wild trout streams (58 Pa. Code § 57.11): Proposed additions | 47 |
| C. Removal of Kahle Lake, Clarion and Venango counties, from the Big Bass program (58 Pa. Code §65.9) | 49 |
| FISHERIES | 51 |
| OTHER MATTERS | 51 |
| A. Valley Creek Watershed Restoration Grant to the Open Land Conservancy of Chester County for a stream restoration project on an unnamed tributary to Valley Creek, Chester County | 51 |
| Other New Business | 53 |
| Time and Place of October Commission Meeting..... | 53 |
| Election of Commission President and Vice President..... | 53 |
| Adjournment..... | 53 |

Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Agenda

The 155th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday, July 24, 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 24, 2023, at approximately 10:15 a.m.

Call to Order

This meeting was called to order by the Commission President Robert B.J. Small and was followed by the Pledge of Allegiance.

Roll Call

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

Commissioner William C. Brock was excused from the meeting.

Public Comments to Commissioners and Staff

Duane L. Dunmire, Vice President of the Pennsylvania Federation of Sportsmen and Conservationists, took the time to thank the Commission for their continued support and for continuing to work with them to further fishing and boating in the state of Pennsylvania.

David Rothrock from the Pennsylvania Council of Trout Unlimited spoke of their full support of the proposal for the notice of stocking and the protection of brown trout in the 13 stocked Class A stream sections within the Commonwealth.

Adam Pritts from Laurel Trout Farm discussed his concerns with the re-write of Chapters 71 and 73, and wants to ensure the re-write is absolutely 100 percent perfect before final passage.

Ken Maurer from Herndon, Pennsylvania read his petition and voiced his concerns with the loss of access to the fishing at the Frbradam Dam on the Susquehanna River (Sunbury side of the River). He would like people to be able to fish at that location.

Review and Approval of Minutes from the April 24, 2023, and May 17, 2023, Meetings

A motion was made by Commissioner Charlesworth and seconded by Commissioner Hussar to approve the April 24, 2023, and May 17, 2023, minutes as written. Motion carried by unanimous vote.

Executive Director's Report

Executive Director Timothy Schaeffer discussed the importance of Chapter 71(a), Class A Brown Trout Streams, along with numerous programs and projects on which staff are currently focused. A new strategic plan was provided to the Commissioners that replaces the plan that expired on June 30, 2023, and consists of a vision, mission, guiding principles, strategic priorities, and corresponding goals to help guide the Commission's activities through June 30, 2028.

Reports of Commissioner Committees

Boating Committee (Commissioner Mahn)

The Boating Committee met virtually and in-person on June 30, 2023, and discussed updates to § 93.1 (Registration), § 93.3 (Application for boat registration), and § 93.5 (Display of registration number and validation decal), § 97.1 (Personal flotation devices) § 111.3 (Armstrong County), § 111.20 (Crawford County), § 111.24 (Elk County), § 111.26 (Fayette County), § 111.27 (Forest County), § 111.32 (Indiana County), § 111.42 (McKean County), § 111.43 (Mercer County) § 111.56 (Somerset County), § 111.62 (Warren County), and § 111.65 (Westmoreland County), as well as enhancing boat rental business operations and improving rental boat safety, and extending the seasonal life jacket wear requirement.

Executive and Administrative Committee (Commissioner Small)

There was no Executive and Administrative Committee meeting for this quarter.

Fisheries and Hatcheries (Commissioner Lewis)

The Fisheries and Hatcheries Committee met virtually on June 27, 2023 to discuss the proposed rule to create a new chapter (71(a)) of the Commission's regulations aimed at aquatic invasive species prevention, fish health, and stocking fish in waters of the Commonwealth, a proposed alternate management strategy for Class A wild Brown Trout stream sections stocked with trout by the Commission, efficacy of the current minimum size and daily limit for trout under 58 Pa. Code § 61.1 (Commonwealth inland waters) regulations, Atlantic States Marine Fisheries Commission Emergency Action for Atlantic Striped Bass, as well as an overview of Fisheries agenda items planned for the July 2023 quarterly Commission meeting. There were no public comments received.

Announcement of Executive Session

Commission President Robert B.J. Small announced that an executive session was held on May 17, 2023 and July 24, 2023 to discuss personnel, real estate, and litigation matters.

Notice of Temporary Changes to Fishing Regulations

The Executive Director provided the Commissioners with notice of two temporary changes to fishing regulations. He further described the rationale and need behind the changes affecting striped bass and Kahle Lake.

**EXECUTIVE AND ADMINISTRATIVE
OTHER MATTERS**

A. 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 requested additional funds to complete the project.

At the July 26, 2022, Commission Meeting, the Board of Commissioners approved amending the grant with the Port Authority to provide an additional \$100,000. The additional funds would be used to cover the increased costs and to install 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 Port Authority recently opened the bids for construction of the fish cleaning station. The lowest bid came in at \$399,835 to complete the entire project. The Port Authority is requesting an additional \$150,000 to complete the project.

Original Project Cost: \$150,000
Amended Project Cost: \$250,000
Current Project Cost: \$400,000

This is the only public fish cleaning facility in the vicinity, and it is part of a larger facility upgrade that provides public fishing and boating access. 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.

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 \$150,000 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 Anderson to amend the Agreement with the Erie-Western PA Port Authority to provide an additional \$150,000 to complete the fish cleaning facility as more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried by unanimous vote.

**EXECUTIVE AND ADMINISTRATIVE
OTHER MATTERS**

B. Commission Strategic Plan for July 1, 2023, to June 30, 2028.

Commentary:

The Board of Commissioners (Board) requires the Executive Director to develop and maintain a current strategic plan for the Pennsylvania Fish and Boat Commission (Commission). The Board provided guidance and direction to the Executive Director over the course of the past year regarding the development of a new strategic plan, and the Executive Director, with staff, crafted a new plan to guide the agency for the next five years. The new strategic plan replaces the plan that expired on June 30, 2023, and consists of a vision, mission, guiding principles, strategic priorities, and corresponding goals to help guide the Commission's activities until June 30, 2028.

A copy of the strategic plan is attached as Exhibit A.

Briefer:

Timothy D. Schaeffer, Executive Director

Recommendation:

Staff recommend that the Commission adopt the new strategic plan. If approved, the strategic plan will retroactively take effect on July 1, 2023, and guide the agency's efforts until June 30, 2028.

Action:

A motion was made by Commissioner Kauffman and seconded by Commissioner Gibney to adopt the strategic plan effective July 1, 2023 through June 30, 2028. Motion carried by unanimous vote.

**BOATING
FINAL RULEMAKING**

A. Amendments to 58 Pa. Code § 93.1 (Registration) and § 93.5 (Display of registration number and validation decal).

Commentary:

Act 28 of 2022, signed into law on June 27, 2022, amended Title 30 (Fish) of the Pennsylvania Consolidated Statutes, § 5308 relating to registration and titling of boats. The Act establishes a calendar-year boat registration cycle that is valid from January 1 through December 31.

Act 28 requires the Pennsylvania Fish and Boat Commission (Commission) to promulgate final regulations to implement the amendment and publish them in the Pennsylvania Bulletin within 18 months of the effective date of the Act. Commission staff have identified two relevant sections of Title 58 Pa. Code that require amendments to be consistent with the Act.

Staff propose the following changes to § 93.1 and § 93.5:

§ 93.1. Registration.

(a) With the exception of a “Manufacturer/Dealer/Jobber” registration certificate, which is valid for 1 year, **[and a “State Owned” registration certificate, which is valid until the removal of the property from inventory,]** all other boat registration certificates issued under this chapter are valid for a period not exceeding 2 years. The Commission will not issue 1-year registration certificates except to “Manufacturer/Dealer/Jobbers.” The registration period expires on **[March] December** 31 of the second year following issuance.

* * * * *

§ 93.5. Display of registration number and validation decal.

* * * * *

(b) A set of two color-coded validation decals will be issued for display with each registration number. The decal shall be displayed within 6 inches of the registration number and on a level with the number. The decals shall be approximately 3 inches by 3 inches and color-coded to indicate the registration period. Registration numbers and validation decals shall be displayed in the following manner: PA 12 AM or PA 12 AM. A validation decal may be displayed prior to **[April] January** 1 of the period for which it is issued.

* * * * *

On December 5, 2022, the Boating Advisory Board considered an initial proposal that amended the months associated with the boat registration period. The Board recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment. However, upon legality review of the proposed rulemaking, it was discovered that an additional amendment was necessary to Title 58 Pa. Code § 93.1(a). This additional amendment was a technical fix to align regulatory language with statutory limits and Commission practices related to state-owned registrations. On February 7, 2023, the Boating Advisory Board considered the revised proposal and recommended by notational vote that the Commission approve the publication of a notice of proposed rulemaking containing the amendments.

A notice of proposed rulemaking was published at 53 Pa.B. 1679 (Saturday, March 25, 2023) (Exhibit B). The Commission did not receive any public comments relating to this 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 Mahn and seconded by Commissioner Charlesworth to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried by unanimous vote.

**BOATING
FINAL RULEMAKING**

B. Amendment to 58 Pa. Code § 93.3 (Application for boat registration.)

Commentary:

Pennsylvania Fish and Boat Commission (Commission) regulations indicate the required documentation to support an application for boat registration. For boats previously registered, the Commission requires the last registered owner to sign the REV-336 *Application for Pennsylvania Boat Registration and/or Boat Title*. A bill of sale, signed by the last registered owner, may be substituted for the required signature on the REV-336. The Commission finds that a certificate of registration (also known as a boat registration card), signed by the last registered owner, is also sufficient documentation of ownership and consent to transfer registration to the purchaser of the boat. The addition of this documentation to Commission regulations is intended to simplify the boat registration process and provide better customer service.

Staff propose the following change to § 93.3:

§ 93.3. Application for boat registration.

* * * * *

(c) *Previously registered boats*. Application for a certificate of registration for a boat previously registered in this Commonwealth shall conform with the following:

(1) Form REV-336 shall be completed by the purchaser and seller and signed by the last registered owner.

(2) A bill of sale **or certificate of registration**, signed by the last registered owner, may be substituted for the required signature on REV-336.

* * * * *

On December 5, 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 53 Pa.B. 1176 (Saturday, March 4, 2023) (Exhibit C). The Commission did not receive any public comments relating to this 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 Mahn and seconded by Commissioner Anderson to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried by unanimous vote.

BOATING
PROPOSED RULEMAKING

A. Amendment to 58 Pa. Code § 111.22 (Dauphin County).

Commentary:

A slow, no wake zone currently exists on a channel of the Susquehanna River downstream of Goldsboro, Pennsylvania, between Bashore Island and the west shore of the river in Dauphin County. This area was established to protect private cabins that existed on the west side of the island at the time. The island is owned by York Haven Power and the cabins were demolished in 2018-2019, so there is no need for the special slow, no wake restriction on this channel. The channel is generally shallow and weedy, which limits boating activity and speed of operation. Boats must still comply with 58 Pa. Code § 103.3(a), which states that “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.”

Staff propose the following change to § 111.22:

§ 111.22. [Dauphin County] Reserved.

[(1) *Susquehanna River, Lake Frederick. Boats are limited to slow, no wake speed between Bashore Island and the York County shoreline.*]

* * * * *

On June 5, 2023, 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 amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Mahn to approve the publication of a notice of proposed rulemaking containing the amendment

described in the Commentary. The Commissioners discussed the contributions of the Boating Advisory Board to this proposed rulemaking. Motion carried by unanimous vote.

BOATING
PROPOSED RULEMAKING

B. Amendment to 58 Pa. Code § 97.1 (Personal flotation devices), § 111.3 (Armstrong County), § 111.20 (Crawford County), § 111.24 (Elk County), § 111.26 (Fayette County), § 111.27 (Forest County), § 111.32 (Indiana County), § 111.42 (McKean County), § 111.43 (Mercer County) § 111.56 (Somerset County), § 111.62 (Warren County), and § 111.65 (Westmoreland County).

Commentary:

Over the past decade, paddleboarding has been gaining popularity. Paddleboards are now widely available, affordable, and relatively easy to transport. Paddleboards resemble oversized surfboards and models are designed for use on various waterways and conditions. They are primarily operated by a person standing on the board using a paddle in a manner similar to a canoe. Paddleboards are frequently used on lakes and rivers throughout Pennsylvania.

On October 3, 2008, the U.S. Coast Guard (USCG) issued a determination that, when beyond the narrow limits of a swimming, surfing, or bathing area, the device known as a “paddleboard” is a vessel under 46 U.S.C. § 2101 (relating to general definitions). This classification means that no person may use a paddleboard unless in compliance with the Navigation Rules and applicable carriage requirements for this type of vessel. The Pennsylvania Fish and Boat Commission (Commission) adopted the USCG’s definition of paddleboard and associated life jacket carriage requirements in 58 Pa. Code § 109.2 (relating to paddleboards and sailboards), effective January 1, 2015. This section states that a wearable life jacket must be carried on board for each person, “unless otherwise required to be worn in accordance with § 97.1 (relating to personal life jackets).” Staff recommend amendments to § 97.1 to provide clarification regarding life jacket wear requirements, since paddleboards are generally included with canoes and kayaks for recreational boating purposes. Staff also recommend amendments to incorporate paddleboards into Chapter 111 regulations for U.S. Army Corps of Engineers Pittsburgh District lakes where life jacket wear is required on boats less than 16 feet in length or any canoe, kayak or paddleboard.

Staff propose the following changes:

§ 97.1. Personal flotation devices.

* * * * *

(h) Children 12 years of age and younger shall wear an approved wearable PFD while underway on any boat 20 feet or less in length and all canoes, **[and] kayaks and paddleboards**. The operator of the watercraft violates this subsection if he does not cause a child 12 years of age or younger to wear a PFD as required by this subsection.

(i) Beginning November 1 until midnight April 30 of the following year, a person shall wear a Coast Guard approved wearable PFD while underway or at anchor on boats less than 16 feet in length or any canoe, **[or] kayak or paddleboard.**

* * * * *

§ 111.3. Armstrong County.

(a) *Crooked Creek Lake.*

* * * * *

(5) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or] kayak or paddleboard.**

* * * * *

(c) *Mahoning Creek Lake.*

* * * * *

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or] kayak or paddleboard.**

* * * * *

§ 111.20. Crawford County.

* * * * *

(e) *Woodcock Creek Lake.*

* * * * *

(4) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or] kayak or paddleboard.**

* * * * *

§ 111.24. Elk County.

East Branch Clarion River Lake—Elk State Park.

* * * * *

(3) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

* * * * *

§ 111.26. Fayette County.

Youghiogheny River Lake. Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

§ 111.27. Forest County.

Tionesta Lake.

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

* * * * *

§ 111.32. Indiana County.

(a) *Conemaugh River Lake.*

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

* * * * *

§ 111.42. McKean County.

Allegheny River Reservoir (Kinzua Dam).

* * * * *

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

§ 111.43. Mercer County.

(a) *Shenango River Lake.*

* * * * *

(5) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

* * * * *

§ 111.56. Somerset County.

Youghiogheny River Lake.

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

* * * * *

§ 111.62. Warren County.

Allegheny River Reservoir (Kinzua Dam).

* * * * *

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

* * * * *

§ 111.65. Westmoreland County.

(a) *Conemaugh River Lake.*

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

* * * * *

(b) *Loyalhanna River Lake.* All persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe, **[or]** kayak **or paddleboard.**

* * * * *

On June 5, 2023, 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 amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Charlesworth to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary Motion carried by unanimous vote.

FISHERIES
FINAL RULEMAKING

A. Amendments to 58 Pa. Code Chapter 71 (PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS) and Chapter 73 (TRANSPORTATION OF LIVE FISH INTO THIS COMMONWEALTH).

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) regulates the introduction and transportation of fish into the Commonwealth through 58 Pa. Code Chapters 71 and 73. In addition, both chapters contain provisions concerning artificial propagation, stocking of Commission fish, prohibited species, triploid Grass Carp, and species susceptible to viral hemorrhagic septicemia (VHS). Staff have identified an opportunity to update the regulations to address current conservation challenges, improve fisheries management and fish health, and simplify the chapters for consistency, flow, and ease. Therefore, the addition of new provisions, retention of existing language of several provisions, and the consolidation of Chapters 71 and 73 into a single chapter would accomplish the goals set forth above.

In the Commonwealth of Pennsylvania, thousands of lakes, ponds, and stream sections are stocked by private individuals each year. To improve the Commission's understanding of stockings occurring in Pennsylvania, protect aquatic resources, and address increased risks associated with aquatic invasive species and pathogens, there is a need to collect information on non-Commission fish stockings occurring in the Commonwealth. As such, Commission staff have undertaken an effort to improve management and oversight of fish and aquatic life transportation and stocking in Pennsylvania through the development of a Notice of Stocking (NOS).

In the United States, over 30 states have requirements for tracking how and when fish are stocked in state waters. Notably, all states in the Northeast except Pennsylvania, require some form of documentation when individuals or entities stock fish in state waters. Section 2102 of the Fish and Boat Code (30 Pa.C.S.) allows the Commission to develop rules and regulations concerning fish and fishing in waters of the Commonwealth, and for the protection, preservation, and management of fish and fish habitat. As such, regulations may be developed for the transport, introduction, import, and export of fish, as well as inspection for disease. Currently, 58 Pa. Code § 73.1 addresses this topic; however, there is need for updated regulations to ensure adequate protection, preservation, and management of aquatic resources are in place.

In conjunction with the creation of the NOS, Commission staff have also developed a fish health inspection protocol to provide additional protection to the Commonwealth's aquatic resources, prevent the introduction of serious pathogens not known to be present in the Commonwealth, and to control the spread and the prevalence of pathogens already present in the Commonwealth. The Commission recognizes that the NOS requirement, fish health inspection protocol, and accompanying regulations will result in changes to the stockings undertaken by private individuals and the aquaculture industry.

Implementation of a NOS and applicable fish health requirements will strike a balance of avoiding serious ecological and financial damages to the Commonwealth's aquatic resources and aquaculture industry, while still allowing interested persons to stock fish for angling purposes.

In addition to stocking and fish health necessities, watercraft inspection requirements can prevent the spread of aquatic invasive species by watercraft throughout the Commonwealth. For example, in 2021, invasive Zebra Mussels were discovered in Raystown Lake in Huntingdon County and were likely introduced by a watercraft. All boaters (with limited exceptions) will be required to drain live wells and bilges by removing the drain plug before transporting watercraft away from a water of the Commonwealth. Moreover, boaters will be prohibited from placing a watercraft, trailer, or related equipment into a water of the Commonwealth if aquatic plants or prohibited species are present. At least 19 states have created watercraft inspection or decontamination programs.

In addition, staff have created a regulatory section that prohibits the release or disposal of live bait fish into waters of the Commonwealth. An individual may continue to collect live bait fish for angling purposes, provided that a bait fish species is not transferred into another drainage the species is not already present.

Besides the creation of new regulatory provisions as outlined above, staff have retained several existing Chapters 71 and 73 sections relating to closed system propagation, introduction and transportation of VHS-susceptible species, stocking of designated waters and Commission fish, triploid Grass Carp requirements, and prohibited species. Through the inclusion of new sections and the retention of existing language, staff believe a new, consolidated Chapter 71a provides adequate protection for the Commonwealth's aquatic resources in relation to current conservation challenges, aligns with the regulations of several neighboring states, and provides improved flow and clarity for regulatory interpretation.

A notice of proposed rulemaking was published at 52 Pa.B. 3423 (June 18, 2022) (Exhibit D). The Commission received a total of 1,073 public comments regarding the initial proposal: 88 supported the proposal, 56 supported portions of the proposal, 523 opposed the proposal, 306 opposed portions of the proposal, and 100 did not pertain to the proposal. Upon consideration of these comments, feedback received from numerous stakeholders and public, and further review of the proposed rulemaking brought before the Commission at the April 25, 2022, quarterly Commission Meeting, the Commission conducted Fisheries and Hatcheries Committee meetings on September 28, 2022; January 4, 2023; April 5, 2023; and June 27, 2023, to further consider and refine the proposal. In addition to Commission and committee meetings, staff actively pursued outreach efforts to solicit additional feedback from various stakeholders through participation and presentation at multiple meetings with the Pennsylvania Aquaculture Advisory Committee, the Pennsylvania Department of Agriculture, Commission cooperative nurseries, and private fishing clubs. Throughout this process, revised drafts of the

proposal were shared with stakeholders to solicit feedback. The result of this comprehensive effort is the proposal detailed herein.

To facilitate the implementation of a NOS, fish health requirements, and watercraft inspection necessities, staff propose that 58 Pa. Code Chapters 71 and 73 be deleted and a new Chapter 71a be created. Staff also propose that §§ 57.8a and 63.51 be amended for editorial reasons with the creation of a new Chapter 71a.

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§ 57.8a. Class A wild trout streams.

It is the policy of the Commission 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 this Commonwealth's naturally reproducing trout fisheries. With rare exceptions, these stream sections are managed solely for the perpetuation of the wild trout fishery with no stocking. However, there may be circumstances that justify stocking a Class A wild trout stream. Prior to granting permission to stock a Class A wild trout stream under § ~~[71.4]~~ 71a.8 (relating to stocking of designated waters), the Executive Director will consult internal decision-making criteria set forth in the *Operational Guidelines for the Management of Trout Fisheries in Pennsylvania Waters* to consider the need for continued stocking at newly designated Class A wild trout streams and obtain the approval of the Commission. Consideration will only be given to requests for continued stocking in stream sections within 1 year of the section being designated as Class A and posted in the *Pennsylvania Bulletin*; however, entities that previously received an exemption or a Special Activities Permit for continued stocking from the Commission between 2010 and the effective date of this amendment will be eligible for consideration.

* * * * *

§ 63.51. Sale of VHS-susceptible species of fish.

* * * * *

(d) It unlawful to sell in this Commonwealth VHS-susceptible species of fish from a VHS-affected or VHS-at risk region, unless the fish meet the requirements of § ~~[73.3(d)(1)]~~ 71a.7 (relating to transportation and importation of VHS-susceptible species of fish).

* * * * *

CHAPTER 71. INTRODUCTION OF FISH INTO COMMONWEALTH WATERS.

It is proposed that Chapter 71 be removed in its entirety and reflected as [RESERVED]. The following sections are proposed to be added and are printed regular type to enhance readability.

CHAPTER 71a. PROPAGATION AND INTRODUCTION OF FISH INTO
COMMONWEALTH WATERS

SUBCHAPTER A. SCOPE AND ADMINISTRATIVE PROVISIONS

§ 71a.1. Authority and definitions. - 2102

- (a) *Authority.* Under section 2102 of the code (relating to rules and regulations), the Commission may promulgate such rules and regulations to preserve, protect, and enhance the fishery interests of the Commonwealth of Pennsylvania.
- (b) *Definitions.* The following words, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. For the purposes of this chapter “stocking,” “stocked,” and “introduction” of fish in waters of this Commonwealth shall have the same meaning.

Department—The Pennsylvania Department of Agriculture.

Diploid—Having two haploid sets of homologous chromosomes.

Genetically Modified—An organism whose genome, chromosomal, or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques, and includes the progeny of any genetically modified organism derived therefrom.

Grass carp—*Ctenophryngodon idella*, also known as white amur.

Ornamental Pond—Any outdoor pond constructed as an aesthetic landscape feature that has a closed system of water circulation with no risk of contacting the surface waters of this Commonwealth and does not include aquaculture facilities, ponds constructed to provide fishing opportunity, or ponds used for the confinement or production of baitfish.

Triploid—Having three haploid sets of homologous chromosomes.

§ 71a.2. General. - 2102(c)

Except as provided in §§ 71a.5(a)(1) and 71a.13(a) (relating to notice of stocking to Commission; and bait fish importation and use), no species of fish may be introduced into waters of this Commonwealth, unless baited on a hook for angling purposes, without prior submission of a Notice of Stocking to the Commission on a form prescribed by the Commission. For the purposes of this subsection, “waters of this Commonwealth” does not include waters contained within a property or premise of a propagation or dealer facility licensed under 3 Pa.C.S. §§ 4201—4223 (relating to Aquaculture Development Law). Fish health certification requirements provided in § 71a.6 (relating to fish health certificate requirements) shall be adhered to, when applicable.

SUBCHAPTER B. PROPAGATION OF FISH IN THIS COMMONWEALTH

§ 71a.3. Fish propagation and introduction list. - 2102(c)

- (a) *General.* The Bureau of Fisheries will maintain a list of species by watershed for which the Department may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The Director of the Bureau of Fisheries may update or modify the list of authorized species by adding species to, or deleting species from, the list as necessary to provide for the protection and management of fish and fishing in this Commonwealth. The Commission will provide the list to the Department on or before January 31 each year and whenever the Commission updates or modifies the list. Copies of the list of authorized species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823.
- (b) *Grass Carp.*
- (1) It is unlawful to propagate Grass Carp, diploid or triploid, in this Commonwealth.
 - (2) The introduction or importation of Grass Carp into this Commonwealth or waters of this Commonwealth is prohibited, except that triploid Grass Carp may be introduced as provided in § 71a.10 (relating to triploid Grass Carp).
- (c) *Genetically modified fish.* A genetically modified fish shall not be propagated and introduced into waters of this Commonwealth, without prior written approval from the Commission.

§ 71a.4. Closed system propagation. - 2102(c)

(a) *Closed (no discharge) system.*

- (1) A propagating system may be designated as a closed system only if all of the following criteria are met:
 - (i) There will be 100% recycling water as normal operations.
 - (ii) The system will be housed indoors in a structure enclosed by solid walls, floor, and roof. For purposes of this subsection, a wall, floor, or roof will be considered solid if it is constructed and maintained to prevent unauthorized human or animal intrusions into the closed system facility and to prevent release or escape of aquatic organisms from the closed system.
 - (iii) Water can be added to the system only for making up evaporative loss, cleaning, and fish harvesting or to reduce toxic ammonia/nitrates by diluting.
 - (iv) The system does not discharge water into waters of this Commonwealth.

- (v) No live fish or live fish eggs will be allowed to escape with water discharges. Accidental spillage of live fish or live fish eggs (including truck loading, and the like) will be contained within the facility in a manner that will prevent fish and fish eggs from escaping into the waters of this Commonwealth.
 - (vi) The system operator is registered with the Department.
- (2) The Department will notify the Commission when it receives an application to register a proposed closed system, and the Commission may, within 30 days of receipt of the notice, inspect the system to ensure that it is designed and constructed in a manner to prevent escapement of live fish or live fish eggs into the waters of this Commonwealth. Closed systems registered under this subsection shall, in addition to an initial inspection, be subject to inspection at any time to ensure compliance with the requirements of this section and the Commission may issue an order to suspend operations of any closed system when an inspection discloses that it is not in compliance.
 - (3) The Commission will invite the Department's Aquaculture Advisory Committee or a subcommittee thereof to draft and periodically update construction guidelines for closed system propagators to help them ensure enclosed facilities prevent escape of aquatic organisms into the waters of this Commonwealth. These guidelines will assist registered propagators in the design, construction, and maintenance of closed systems and will assist the Commission in inspecting these systems.
- (b) *Systems with discharges rendered incapable of containing living organisms.* - A system whose discharge of water is rendered incapable of containing self-perpetuating living organisms shall be registered with the Department. The Department will notify the Commission when it receives an application to register a proposed system under this subsection, and the Commission may, within 30 days of receipt of the notice, inspect the system to ensure that it is designed and constructed so that its discharge is rendered incapable of containing live fish or live fish eggs. Systems registered under this subsection shall, in addition to an initial inspection, be subject to inspection at any time to ensure compliance with this section and the Commission may issue an order to suspend operations of any system when an inspection discloses that it is not in compliance. The registration of this system may include any species of fish with the approval of the Department.
 - (c) *Escape of fish into waters of this Commonwealth.* - It is unlawful for an operator of any system registered under subsection (a) or (b) to allow fish to escape into the waters of this Commonwealth.
 - (d) *Written plans for discharge.* - An operator of any system registered under subsection (a) or (b) shall develop, maintain, and make available for immediate inspection by the Commission and the Department upon request a written plan for containing or treating discharge in the event of a discharge system failure.

- (e) *Notification in event of discharge.* - An operator of any system registered under subsection (a) or (b) shall notify both the Commission's Director of the Bureau of Fisheries and the Department's Aquaculture Coordinator immediately in the event of a discharge system failure that is likely to contain viable living organisms. A failure to notify the Commission under this subsection shall be a violation.

SUBCHAPTER C. FISH INTRODUCTION AND HEALTH MANDATES

§ 71a.5. Notice of Stocking to the Commission. - 2102(c)

(a) *General*

- (1) No person shall introduce any species of fish into waters of this Commonwealth (except baited on a hook for angling purposes) without prior submission of a Notice of Stocking to the Commission. For the purposes of this subsection, "waters of this Commonwealth" does not include waters contained within a property or premise of a propagation or dealer facility licensed under 3 Pa.C.S. §§ 4201-4223 (relating to Aquacultural Development Law). Persons who notify the Commission of an intent to stock fish through a Notice of Stocking should also ensure that fish intending to be stocked are limited to those listed on the Notice of Stocking and the Commission's Species by Watershed Approved for Open System (Flow Through) Propagation and Introductions list. An electronic or hard copy of the Notice of Stocking shall be present at the location during the time fish are stocked. In the event the person(s) who filed a Notice of Stocking is not present during the time of stocking, an entity stocking fish on behalf of the authorized person shall possess a copy of the Notice of Stocking.
- (2) Species of fish may not be transported into this Commonwealth from another state, province or country and liberated in a watershed of this Commonwealth without previous written permission from the Commission, nor may a species of fish be transferred from waters in this Commonwealth into another drainage of this Commonwealth where this particular species is not always present without prior written consent from the Commission. Inspection for species composition or presence of disease, or both, will be required at the discretion of the Commission on all lots of fish transported into this Commonwealth. Written permission from the Commission may be obtained by sending a request to: Executive Director, P.O. Box 67000, Harrisburg, PA 17106.
- (3) The following apply:
- (i) All of the following do not require submission of a Notice of Stocking:
- (A) Fish not on a Commission prohibited species list and raised and sold for the intended uses of indoor aquaria.

- (B) Fee fishing operations located on the same property as a propagation facility licensed under 3 Pa.C.S. §§ 4201-4223.
- (C) Outdoor ornamental ponds not discharging into a water of this Commonwealth will not be required to file a Notice of Stocking.
 - (ii) Species obtained through or originating from pet stores or tropical and ornamental fish dealers shall not be released into waters of this Commonwealth.
- (4) Submission of a Notice of Stocking does not authorize individuals or organizations to stock waters that are prohibited from stocking as defined in §§ 57.8a (relating to Class A wild trout streams) and 71a.8 (relating to stocking of designated waters).
 - (b) *Notice of Stocking Forms.* Notices of Stocking will be made on forms prescribed by the Commission. In addition to the information required by 1 Pa. Code § 35.2 (relating to contents of applications), persons notifying the Commission of intent to stock shall provide other information as may be required by the Commission to fully describe the details of the planned stocking.
 - (c) *Exceptions.* All exceptions from a Notice of Stocking submission will require prior written approval from the Executive Director or their designee.
 - (d) *Effective Date.* Beginning on January 1, 2024, the provisions of § 71a.5 (a) – (c) shall be effective.

§ 71a.6. Fish health certificate requirements. - 2102(a); 2102(c)

- (a) A fish health certificate may be required, as specified in subsection (b), for fish being imported into this Commonwealth and shall certify fish intending to be introduced, placed, or stocked in waters of this Commonwealth are free of specific diseases, pathogens, or parasites determined by the Commission to be of a risk to the fishery interests of the Commonwealth. The Commission will consult with the Department for potential testing of dangerous transmissible diseases of fish.
- (b) The Commission shall develop a Fish Health Inspection Protocol for Importation into the Commonwealth and Introduction into Waters of this Commonwealth (protocol). The Commission shall determine which diseases, pathogens, or parasites are required for testing for species of fish intending to be introduced into waters of this Commonwealth. The Commission will consult with the Department for potential testing of dangerous transmissible diseases of fish. Fish health certification requirements and procedures shall be modified or updated by the Commission, as necessary. When updates to the protocol occur, the Commission shall publish the protocol as a Notice in the *Pennsylvania Bulletin* and notify the Department of the changes.

- (c) The Commission may require testing for intrastate introduction, placement, or stocking of fish, as specified in subsection (b), to prevent the introduction or spread of specific diseases, pathogens, or parasites that pose a risk to the fishery interests of the Commonwealth. The Commission will consult with the Department for potential testing of dangerous transmissible diseases of fish.
- (d) The following fish health requirements apply to the importation of fish into this Commonwealth:
 - (1) Fish and fish eggs being imported into this Commonwealth must originate from sources with a copy of the fish health certification report for all applicable fish being stocked as indicated in the protocol, or a copy of the fish health certification report for the artificial propagation facility if the fish are from a facility that has been certified as having tested negative for all applicable fish pathogens, unless the fish meet one of the following requirements:
 - (i) The fish are being transported through the Commonwealth, the shipping container remains bio-secure in transit, and the fish are accompanied by documentation stating the point of origin of the fish and the location outside of the Commonwealth where they are to be delivered.
 - (ii) The fish are being transported to facilities located within this Commonwealth for testing and scientific purposes, the persons transporting the fish have taken adequate measures to prevent escape and to disinfect discharged water and equipment used in the transportation of the fish, and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination where they are to be delivered for testing or scientific purposes.
 - (iii) The fish are being transported to a slaughter facility, processing plant, or restaurant within the Commonwealth, and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination where they are to be delivered for slaughter, processing, or consumption.
 - (iv) The fish are dead, recreationally caught fish that are being transported solely for the purpose of human consumption or taxidermy.
 - (2) Specific testing requirements may vary depending on the species of fish, geographical location of the shipping facility or source, and the final designated end use of the fish being imported into the Commonwealth. The Commission's Protocol shall specify such requirements.
 - (3) Documentation of testing results shall remain with the fish during transport and produced upon request.
- (e) The following fish health requirements apply to the introduction of fish into waters of this Commonwealth:

- (1) Fish being introduced into waters of this Commonwealth must originate from sources that comply with the fish health inspection process described in the Commission's protocol.
- (2) Specific testing requirements may vary depending on the species, origin, and final location of where the fish are being introduced into waters of this Commonwealth. The Commission's protocol shall specify such requirements.
- (3) When applicable, persons who have filed a Notice of Stocking with the Commission or their agent shall have in their possession, and present upon the request of an officer authorized to enforce the code:
 - (i) a copy of the fish health certification report for all applicable fish being stocked as indicated in the Protocol and the Notice of Stocking; or
 - (ii) the Notice of Stocking and a copy of the fish health certification report for the artificial propagation facility if the fish are from a facility that has been certified as having tested negative for all applicable fish pathogens as indicated in the protocol and Notice of Stocking.
- (f) The Commission grants a grace period for full implementation of the protocol through December 31, 2025. Beginning on January 1, 2026, the provisions of § 71a.6 and the protocol shall be effective.

§ 71a.7. Introduction or transportation of VHS-susceptible species of fish. - 2102(c)

- (a) *Intrastate transportation.* It is unlawful to introduce, transport, or cause the transportation of VHS-susceptible species of fish from the portion of the Lake Erie watershed in this Commonwealth into other watersheds of this Commonwealth, except in accordance with § 69.3(b) and (d) (relating to transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed).
- (b) *Interstate transportation.* It is unlawful to introduce, transport, or cause the transportation into the waters of this Commonwealth VHS-susceptible species of fish from an affected or at-risk region or state unless the fish meet the requirements one of the following requirements:
 - (1) The fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department and approved by the Commission. Persons transporting these fish shall have in their possession, and present upon the request of an officer authorized to enforce the code, a copy of the fish health certification reports for all VHS-susceptible fish being transported or a copy of the fish health certification report for the artificial propagation facility if the fish are from a facility that has been certified as having tested negative for VHS.

- (2) The fish are being transported through this Commonwealth and the shipping container (tank, trailer, holding vessel, or other container) remains bio-secure in transit and the fish are accompanied in transit by documentation stating the point of origin of the fish and the location outside of this Commonwealth to which they are to be delivered.
- (3) All of the following apply:
 - (i) The fish are being transported to facilities located within this Commonwealth for testing and scientific purposes.
 - (ii) The persons transporting the fish have taken adequate measures to prevent escape and to disinfect discharged water and equipment used in the transportation of the fish
 - (iii) The fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for testing or scientific purposes.
- (4) The fish are being transported to a slaughter facility, processing plant, or restaurant within this Commonwealth and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for slaughter, processing, or consumption.
- (5) The fish are dead, recreationally caught fish that are being transported solely for the purpose of human consumption.

(c) *International movement.*

- (1) Except as provided in paragraph (2), it is unlawful to import or cause the importation of VHS-susceptible species of fish into this Commonwealth from a VHS-affected or VHS-at risk region.
- (2) VHS-susceptible species of dead fish may be imported into the United States if the fish are recreationally caught and are for human consumption.

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

VHS-affected or VHS-at risk region—Includes the Canadian provinces of Ontario and Quebec or other region that the Animal and Plant Inspection Services of the United States Department of Agriculture (APHIS) later designates by order, or the Commission later defines by notice in the *Pennsylvania Bulletin* as being a VHS-affected region or VHS-at risk region.

VHS-affected or VHS-at risk state—Includes Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin or other state that APHIS later designates by order, or the Commission later defines by notice in the *Pennsylvania Bulletin* as being a VHS-affected state or VHS-at risk state.

VHS-susceptible species—Those listed as a susceptible host species by the World Organization for Animal Health’s Aquatic Manual and listed on the Commission’s Species by Watershed Approved for Open System (Flow Through) Propagation and Introductions list or as the Commission defines by notice in the *Pennsylvania Bulletin*.
The term:

- (1) Includes fish that are dead or alive, preserved, or unpreserved, and the parts of the fish.
- (2) Does not include the eggs of these species.

§ 71a.8. Stocking of designated waters. - 2102(a)

It is unlawful to introduce, place, or stock fish in waters that have been designated by the Commission as catch and release, wilderness trout, or wild trout management waters except with the express written consent of the Executive Director or their designee. This section does not prohibit a person from returning fish unharmed to the waters from which they were caught or taken.

§ 71a.9. Improper stocking of Commission fish. - 2102(a)

When stocking fish reared or salvaged by the Commission or a cooperative nursery recognized by the Commission, the following acts are prohibited:

- (1) Failure to stock fish in waters designated by Commission personnel.
- (2) Diversion of fish to be stocked to waters not open or accessible to free public fishing.
- (3) Mishandling or misuse of fish being stocked in a manner so as to damage or destroy the fish.

§ 71a.10. Triploid Grass Carp. - 2102(c), 2904(a)

(a) *Policy.* As a limited exception to the prohibition of Grass Carp in this Commonwealth, it is the policy of the Commission to permit triploid Grass Carp, certified as such by the United States Fish and Wildlife Service (USFWS) and procured from a producer participating in the USFWS certification program, to be introduced into Commonwealth waters and imported and transported into this Commonwealth in accordance with this section.

(b) *Status.* The triploid Grass Carp is not a game fish.

(c) *Permit required.*

- (1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid Grass Carp or introducing them into Commonwealth waters and for importing or transporting triploid Grass Carp into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pond owner, landowner, or other person who wishes to possess triploid Grass Carp and introduce them into a pond or waters located on property owned, leased, or otherwise controlled by the person shall, before placing triploid Grass Carp in the waters, obtain from the Commission a triploid Grass Carp possession/introduction permit. A person who wishes to import triploid Grass Carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid Grass Carp importation/transportation permit. Permits shall be applied for on forms supplied by the Commission. Live triploid Grass Carp imported and intended for introduction into waters of this Commonwealth shall be in compliance with § 71a.6 (relating to fish health certificate requirements).
- (2) A person aggrieved by a Commission staff action on a permit application may appeal under Chapter 51, Subchapter E (relating to permit procedures) and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

(d) *Dealers and importers.* In addition to the triploid Grass Carp permit required by subsection (c), dealers and importers shall obtain and maintain all licenses, permits, and registrations required by the Department for the sale or transportation of fish.

(e) *Restrictions on introduction of triploid Grass Carp.*

- (1) The Commission will not approve the stocking or release of triploid Grass Carp into a water body wholly or partially in this Commonwealth that is currently known to be inhabited by a species of animal or plant currently listed as status endangered, threatened, candidate, or other special concern status, by a state or Federal agency with jurisdiction for the species, without prior written approval for the stocking or release by the agency or agencies which classified the species as endangered, threatened, candidate, or of special concern.
- (2) The Commission will not approve stocking or release of triploid Grass Carp into wetlands under Federal or state jurisdiction except in compliance with applicable Federal or state regulations including, when required, the written approval for the stocking or release by the involved agency or agencies.
- (3) The Commission will not approve stocking or release of triploid Grass Carp into a body of water more than 5 acres in surface area until the applicant submits an environmental inspection report prepared by a biologist, fisheries scientist, or

environmental scientist acceptable to the Commission. The environmental inspection report shall include all of the following:

- (i) A certification that the preparer has personally inspected the pond or body of water and that the stocking of triploid Grass Carp will have no adverse environmental impacts on the waters where stocked or waters upstream or downstream of the waters.
 - (ii) A description of the measures taken by the applicant to prevent the escape of the Grass Carp into waters upstream or downstream of the stocked waters.
 - (iii) Additional information as the Commission may require.
- (4) The Commission may require an applicant for a permit to stock triploid Grass Carp in a pond or body of water of 5 or less acres in surface area to submit an environmental inspection report in the format described in paragraph (3) when the staff's review of the application indicates that further inspection or review of the proposed stocking is appropriate under the circumstances.
 - (5) The issuance of permits under this section will be subject to the public notice and comment provisions of Chapter 51, Subchapter E.
- (f) *Prohibited acts.*
- (1) It is unlawful to transport, import, possess, or introduce triploid Grass Carp in this Commonwealth unless the person possessing, transporting, importing, or introducing the Grass Carp obtains and maintains required permits, possesses a valid bill of sale or bill of origin from a producer participating in the USFWS triploid Grass Carp certification program, and the Grass Carp are certified by the USFWS to be triploid Grass Carp. Permits shall be displayed upon request to an officer authorized to enforce the code or this part. The certification of triploid status shall be obtained from the producer at the time of purchase.
 - (2) Persons, organizations, or companies are prohibited from giving, trading, or exchanging triploid Grass Carp except to persons holding valid triploid Grass Carp possession/introduction permits.
- (g) *Revocation or suspension of permits.* Failure to abide by regulations, permits, and permit conditions pertinent to triploid Grass Carp possession, transportation, and introduction may result in suspension or revocation of the applicable permits in accordance with Chapter 51, Subchapter C (relating to suspension, denial, or revocation of licenses, permits, registrations or privileges). Revocation or suspension shall be in addition to other applicable penalties provided by law or regulation.

SUBCHAPTER D. PROHIBITED SPECIES, AQUATIC INVASIVE SPECIES, AND VECTOR PREVENTION

§ 71a.11. Prohibited species. - 2102(c)

(a) It is unlawful to introduce, import, possess, or transport in or through this Commonwealth, or the waters of this Commonwealth, the following species:

- (1) Snakeheads (all species).
- (2) Black Carp (*Mylopharyngodon piceus*).
- (3) Bighead Carp (*Hypophthalmichthys nobilis*).
- (4) Silver Carp (*Hypophthalmichthys molitrix*).
- (5) Zebra Mussel (*Dreissena polymorpha*).
- (6) Quagga Mussel (*Dreissena rostriformis bugensis*).
- (7) Round Goby (*Neogobius melanostomus*).
- (8) Freshwater Tubenose Goby (*Proterorhinus semilunaris*).
- (9) European Rudd (*Scardinius erythrophthalmus*).
- (10) Crayfish (all live species), except when any of the following apply:
 - (i) Possessed and used as bait on, in or about the water from which taken.
 - (ii) Possessed or imported for testing and scientific purposes or restaurant consumption, adequate measures have been taken to prevent their escape, and they are accompanied by documentation stating the point of origin and the destination to which they are to be delivered.
 - (iii) Dead with the head removed or salted and dried for angling purposes.
- (11) Ruffe (*Gymnocephalus cernua*).

(b) *Exceptions.* Species in subsection (a) (1)—(4) may be possessed in this Commonwealth for the purposes of consumption or slaughter only. All other exceptions for species in subsection (a) shall require prior written approval from the Commission's Executive Director.

§ 71a.12. Watercraft requirements and prohibitions. - 2102(c)

(a) *General.* No person shall intentionally place or attempt to place a watercraft, trailer, or water-related equipment into waters of this Commonwealth, including aquatic

plant harvesting or control equipment, that has aquatic plants or prohibited species attached, in whole or in part, except as provided in this section.

(b) *Removal and confinement.*

(1) A waterways conservation officer may order:

- (i) The removal of aquatic plants, or prohibited species listed in § 71a.11(a) from a watercraft, trailer, or water-related equipment before being transported or before it is placed into waters of this Commonwealth.
 - (ii) Confinement of the watercraft at a mooring, dock, or other location until the related equipment is removed from the water.
 - (iii) Removal of watercraft from a water of this Commonwealth to remove prohibited invasive species if the water has not been listed by the Commission as being infected with that species.
 - (iv) A prohibition on placing a watercraft into a water of this Commonwealth when the watercraft has aquatic plants, or prohibited invasive species attached in violation of subsections (a) or when water has not been drained or the drain plug not removed in violation of subsection (c).
 - (v) Decontamination of a watercraft, if possible, on site.
- (2) An order for removal of prohibited invasive species under paragraph (1)(i) or decontamination of a watercraft under Paragraph (1)(v) may include issuing a notice that specifies a time frame for completing the removal or decontamination, and re-inspection of the watercraft.

(c) *Persons transporting watercraft.*

- (1) When leaving a water of this Commonwealth, a person must drain a watercraft holding water (including those without plugs) and live wells and bilges by removing the drain plug before transporting the watercraft. Transporting includes moving the watercraft over land between connected or unconnected waterbodies but does not include moving watercraft within the immediate area required for loading and preparing the watercraft for transport over land. A person transporting game fish as a result of a tournament for weigh-in purposes is not subject to this subsection.
- (2) Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting watercraft.

- (3) A person shall ensure the watercraft, trailer, motor, boating gear, and conveyance used to transport the watercraft and trailer are free of aquatic organisms, including vegetation.

§ 71a.13. Bait fish importation and use. - 2102(a); 2102(c)

- (a) A person shall not release or dispose live bait fish into any water of this Commonwealth, except live bait fish baited on a hook for angling purposes, without prior submission of a Notice of Stocking to the Commission. A person may collect live bait fish for angling. A species of bait fish collected for use as bait may not be transferred from waters in this Commonwealth into another drainage of this Commonwealth where this particular species does not already exist. This subsection does not apply to the Commission, or a propagation facility licensed by the Department under 3 Pa.C.S. §§ 4201-4223 for the purpose of releasing bait fish into waters of this Commonwealth as food for aquaculture or fisheries management purposes.
- (b) Live bait fish imported and intended for introduction into waters of this Commonwealth shall be in compliance with § 71a.6 (relating to fish health certificate requirements).
- (c) This subsection does not apply to dead bait fish (salted or frozen) sold for angling purposes outside the Lake Erie watershed. The provisions of § 71a.7 (relating to introduction or transportation of VHS-susceptible species of fish) shall be adhered to for purposes of this section.

CHAPTER 73. TRANSPORTATION OF LIVE FISH INTO THE COMMONWEALTH.

It is proposed that Chapter 73 be removed in its entirety and reflected as [RESERVED].

Briefers:

Robert Caccese, Director of Policy, Planning & Communications
David Nihart, , Chief, Division of Fisheries Management
Coja Yamashita, Fisheries Biologist

Recommendation:

Staff recommend the Commission approve the publication of a notice of final rulemaking containing the amendments described in the Commentary. If adopted on final rulemaking, these amendments will go into effect on January 1, 2024.

Action:

A motion was made by Commissioner Hussar and seconded by Commissioner Gibney to approve the publication of a notice of final rulemaking containing the amendments described in the Commentary. Commissioners discussed the staff's efforts to engage with all stakeholders during the long, detailed rulemaking process, the work to align

Pennsylvania with its neighboring states, and the need to periodically reevaluate the effectiveness of 71(a). Motion carried by unanimous vote.

FISHERIES
PROPOSED RULEMAKING

A. Amendments to 58 Pa. Code § 65.24 (Miscellaneous special regulations): Add Yellow Creek, Section 04, Bedford County; Pohopoco Creek, Section 04, Carbon County; Bald Eagle Creek, Section 06, Centre County; Penns Creek, Section 02, Centre County; Fishing Creek, sections 13 and 14, Clinton County; Little Lehigh Creek, Sections 04 and 07, Lehigh County; Monocacy Creek, Section 09, Lehigh and Northampton counties; Kishacoquillas Creek, Section 05, Mifflin County; Martins Creek, Section 01, Northampton County; and Monocacy Creek, Section 08, Northampton County.

Commentary:

In the mid-2000's, productive stream sections were identified that supported high densities of wild Brown Trout and were being stocked by the Pennsylvania Fish and Boat Commission (Commission). Angler counts documented very high angler use of these stream sections in the early part of trout season, particularly on the opening day of the regular season for trout. As part of the Commission's *Strategic Plan for Management of Trout Fisheries in Pennsylvania 2010-2014*, staff identified the need to resurvey the stream sections to determine if they supported Class A wild trout populations and designate appropriately. Inaccurate designation leads to inadequate water quality protection and inconsistent application of fisheries management strategies.

Between 2011 and 2015, biologists resurveyed 13 stream sections, and all were determined to support robust wild Brown Trout populations that qualified for Class A wild trout streams designation. In 2014, the Commission updated its Class A wild trout streams policy (58 Pa. Code § 57.8a) to allow for rare circumstances in which Commission stocking could be considered and the new policy became effective January 1, 2015. Following that policy change, the 10 stream sections were designated by the Commission as Class A wild trout streams in 2015 and stocking of trout continued. Three additional Stocked Trout Water (STW) stream sections were designated Class A wild trout streams by the Commission through January 2017, bringing the total number of Class A wild trout streams stocked by the Commission to 13.

Twelve of the 13 stream sections are managed under Commonwealth Inland Waters regulations (58 Pa. Code § 61.1) which allow for the harvest of five trout per day, greater than or equal to seven inches in length (combined species) from 8 a.m. on the opening day of the regular season for trout through Labor Day, catch and release from the day after Labor Day through the third Sunday in February (extended trout season) the following year, and closed to all fishing from the third Monday in February until 8 a.m. on the opening day of the regular season for trout. Yellow Creek, Section 05, is the remaining stream section and is managed with Catch and Release Fly-Fishing Only regulations (58 Pa. Code § 65.14). All 13 of the stream sections are stocked with adult Rainbow Trout only by the Commission during both preseason and in-season stocking periods, and four of the stream sections are also stocked in-season with fingerling Rainbow Trout only.

As part of the Commission's *Strategic Plan for the Management of Trout Fisheries in Pennsylvania 2020-2024*, staff identified the need to collect updated biological and social data on these fisheries to inform future management of these stream sections.

Deliverable tasks included: 1) by 2022, resurvey the wild Brown Trout populations and conduct angler use, harvest, and opinion surveys to inform fisheries management of the 13 Class A stream sections stocked with trout; and 2) between 2022 and 2024, consider options and make recommendations to the Board of Commissioners to adjust current management if the data support alternate management to optimize these fisheries.

Staff resurveyed the wild Brown Trout populations in all 13 of the stream sections during summer 2021. Wild Brown Trout biomass ranged from 10 kg/ha at Little Lehigh Creek, Section 07, to 175 kg/ha at Yellow Creek, Section 05. Except for the four stream sections in the Lehigh Valley, all others supported a similar biomass in 2021 compared to the Class A qualifying surveys that were conducted between 2011 to 2015.

In addition to the Brown Trout population assessments, angler surveys (i.e., counts and interviews with effort focused on opening day) were conducted at 11 of the 13 stream sections during 2021. A more in-depth assessment from the opening day of the regular season for trout (April 17, 2021) through Labor Day (September 6, 2021) was conducted on Bald Eagle Creek, Section 06, to evaluate angler use, catch, harvest, and opinions. Yellow Creek, Section 05, was not included in the angler survey given that it is managed as a catch-and-release fishery open to year-round angling.

The angler assessments provided valuable insight regarding opinions needed to inform future management of these waters. The only management option in which most (57%) anglers were opposed was a stocking cessation. This result was not unexpected given that most anglers caught stocked Rainbow Trout, particularly on opening day, and this perceived sentiment was a driving factor in the continuance of stocking following Class A designation in 2015 through 2017.

On opening day of the 2021 trout season, 1,442 anglers were counted on the 12 stream sections during the 8 a.m. angler use assessments. Angler use ranged from 10 anglers per mile (25th percentile) to 91 anglers per mile (95th percentile) with eight waters at or above the 75th percentile, three in the 50th percentile, and one in the 25th percentile compared to statewide opening day angler use data at STWs. Additionally, 866 anglers were interviewed over the course of the surveys. About one quarter (25%) of anglers indicated they harvest trout at least half the time. Approximately 49% of anglers indicated they harvest both wild Brown Trout and stocked Rainbow Trout, 4% of anglers usually only harvest wild Brown Trout, and 47% of anglers usually only harvest stocked Rainbow Trout.

Anglers caught and harvested more stocked Rainbow Trout than wild Brown Trout. The catch and harvest of Rainbow Trout on Bald Eagle Creek, Section 06, was high over the course of the survey with nearly three times more the amount of adult Rainbow Trout caught than were stocked and an estimated 57% of the Rainbow Trout stocked into this stream section harvested by anglers. The catch and harvest of wild Brown Trout on Bald

Eagle Creek, Section 06, was also high during the survey. Anglers caught just over 1.5 times more wild Brown Trout greater than or equal to seven inches than were estimated to be present. Additionally, anglers harvested an estimated 23% of the wild Brown Trout population greater than or equal to seven inches, of which over 35% of the trout were large (≥ 14 inches). Anglers were estimated to harvest 212 wild Brown Trout per mile, of which 74 per mile were greater than or equal to 14 inches. This represents a relatively high harvest of the wild Brown Trout population, particularly the large trout (≥ 14 inches) and suggests that harvest may be limiting the abundance and the size structure of the wild Brown Trout population in Bald Eagle Creek, Section 06.

When trout stocking occurs, it attracts substantially more harvest-oriented anglers. In statewide surveys of Pennsylvania’s stocked and wild trout streams in 2004 and 2005, staff documented that stocked trout streams had greater than five times higher harvest rates than streams managed for wild trout without stocking. Given the similarities of Bald Eagle Creek, Section 06, to the 11 other Class A stream sections stocked with trout and managed with Commonwealth Inland Waters regulations, it is likely that similar harvest rates are occurring, and harvest is also precluding those wild Brown Trout fisheries from reaching their full potential and negatively impacting population size structure.

Most (66%) anglers interviewed indicated support for an alternate management approach that would require catch and release of Brown Trout while allowing for the continued harvest of Rainbow Trout under Commonwealth Inland Waters regulations. This would eliminate harvest mortality and could provide an opportunity for the wild Brown Trout population to expand, including large (≥ 14 inches) wild Brown Trout that are most desirable to anglers, while continuing to provide an opportunity for anglers to harvest stocked Rainbow Trout.

Given the wild Brown Trout population characteristics and estimated angler use, harvest, and opinions determined during the recent assessment of the 12 stream sections managed as both Class A wild trout stream sections and STWs, staff propose implementing a Miscellaneous special regulation (58 Pa. Code § 65.24) on the 12 stream sections that would manage Brown Trout with catch-and-release regulations and maintain Commonwealth Inland Waters regulations for all other species with all tackle types permitted, while continuing to stock these stream sections with Rainbow Trout at current rates and frequency.

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> |
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| <p><u>Bedford County</u></p> | <p><u>Yellow Creek, Section 04, from the confluence with Beaver Creek downstream to Red Bank Hill</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |
| <p>* * * * *</p> | | |
| <p><u>Carbon County</u></p> | <p><u>Pohopoco Creek, Section 04, from the outlet of Beltzville Lake downstream to Hideaway Hunting and Fishing Club cable across creek</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess</u></p> |

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| | | <p><u>any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |
| <p>* * * * *</p> | | |
| <p><u>Centre County</u></p> | <p><u>Bald Eagle Creek, Section 06, from the confluence with Spring Creek downstream to the inlet of Sayers Lake near Boggs/Howard Township line</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |

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| <p><u>Centre County</u></p> | <p><u>Penns Creek, Section 02, from the State Road 45 bridge in Spring Mills downstream to the confluence with Elk Creek</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |
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| <p><u>Clinton County</u></p> | <p><u>Fishing Creek, sections 13 and 14, from the confluence with Cedar Run downstream to Country Club Road bridge in Mill Hall</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |
| <p>* * * * *</p> | | |
| <p><u>Lehigh County</u></p> | <p><u>Little Lehigh Creek, Section 04, from the confluence with Spring Creek downstream to Wild Cherry Lane bridge</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess</u></p> |

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| | | <p><u>any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |
| <p><u>Lehigh County</u></p> | <p><u>Little Lehigh Creek, Section 07, from 0.25 miles upstream of Country Club Road bridge downstream to Fish Hatchery Road bridge</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |

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| <p><u>Lehigh and Northampton counties</u></p> | <p><u>Monocacy Creek, Section 09, from Schoenersville Road bridge downstream to the confluence with Lehigh River</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |
| <p>* * * * *</p> | | |

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| <p><u>Mifflin County</u></p> | <p><u>Kishacoquillas Creek, Section 05, from 1.5 miles upstream of the confluence with Tea Creek downstream to the Penn Central Railroad bridge</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |
| <p>* * * * *</p> | | |
| <p><u>Northampton County</u></p> | <p><u>Martins Creek, Section 01, from the confluence of the East and West Branch of Martins Creek downstream to the outflow of the Bangor sewage treatment plant near unnamed tributary</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess</u></p> |

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| | | <p><u>any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |
| <p>*****</p> | | |
| <p><u>Northampton County</u></p> | <p><u>Monocacy Creek, Section 08, from Illicks Mill Dam downstream to Schoenersville Road bridge</u></p> | <p><u>All tackle types are permitted.</u></p> <p><u>Brown Trout—catch and release/no harvest; it is unlawful to take, kill, or possess Brown Trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill, or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p> |

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Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. If adopted on final rulemaking, this amendment will go into effect on January 1, 2024.

Action:

A motion was made by Commissioner Charlesworth and seconded by Commissioner Hussar to approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. Discussion ensued regarding strategic management of the resource. Motion carried by unanimous vote.

FISHERIES
PROPOSED RULEMAKING

B. Amendments to 58 Pa. Code § 65.26 (Extended trout season).

Commentary:

During a comprehensive review of permits associated with Pennsylvania Fish and Boat Commission (Commission) Bureau of Fisheries programs and regulations, staff identified an opportunity to update and further clarify language in 58 Pa. Code § 65.26 (Extended trout season); specifically, proposed amendments apply to § 65.26 (b) pertaining to permits for the application of extended trout regulations to waters that are not stocked with trout by the Commission. The intent is to align the permit for the application of extended season trout regulations to waters that are not stocked trout waters and the beginning of the extended closure period (third Monday in February), and to place the application review responsibility more appropriately on the bureau directly responsible for consideration, the Bureau of Fisheries. As the Section is currently written, permits are valid into the extended season closure period, which is inconsistent with current seasons, sizes, and creel limits applied to waters included in the Commission's Stocked Trout Waters program.

Staff propose that 58 Pa. Code § 65.26 be amended as follows:

§ 65.26. Extended trout season.

* * * * *

(b) *Waters not stocked trout waters.* The Executive Director **or designee** may grant a permit to apply extended trout regulations to waters that are not stocked trout waters upon written application of the owner or lessee of the lands on which the waters are located. **Applications shall be made on forms provided by the Commission.** Applications will be reviewed to ensure that applying extended trout season regulations to the waters in question is consistent with the best appropriate fisheries management of the waters in question, and to ensure that approval of the application will have no adverse effect on the preservation and expansion of public fishing opportunities within this Commonwealth. Approval or disapproval of applications shall be subject to review under Chapter 51, Subchapter E (relating to permit procedures). Permits for extended trout season on waters other than stocked trout waters will be valid until the last day of [**February**] **the extended trout season** of the 6th year after the year in which they are issued. [**For example, a permit issued in June 1984 will expire on February 28, 1990.**]

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

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

Action:

A motion was made by Commissioner Kauffman and seconded by Commissioner Gibney to approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. Motion carried by unanimous 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 five stream sections to the Commission's list of Class A wild trout streams. These changes are the result of recent surveys conducted on these waters and subsequent data review. Exhibit E provides information on the locations and a data summary for each of these waters.

A notice of proposed designations was published at 53 Pa. B. 2815 (May 20, 2023) (Exhibit F). The Commission received a total of 70 public comments regarding the proposed designations: all support the proposed designations. 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 five 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 Hussar and seconded by Commissioner Gibney to add five stream sections to its Class A wild trout streams list as set forth in the notice of proposed designations. Motion carried by unanimous 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 nine new waters to the Commission’s list of wild trout streams. These changes are the result of recent surveys conducted on these waters. Exhibit G 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 53 Pa.B. 2815 (May 20, 2023) (Exhibit H). The Commission received a total of 70 public comments regarding the proposed designations: all support the proposed designations. 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 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 Gibney and seconded by Commissioner Hussar to add nine new waters to the Commission's list of wild trout streams as set forth in the notice of proposed designations Motion carried by unanimous vote.

FISHERIES DESIGNATIONS

C. Removal of Kahle Lake, Clarion and Venango counties, from the Big Bass program (58 Pa. Code § 65.9).

Commentary:

Kahle Lake, a 251-acre impoundment owned by the Commonwealth of Pennsylvania and managed by the Pennsylvania Fish and Boat Commission (Commission), is located in Clarion and Venango counties, approximately four miles northeast of the Borough of Emlenton. The earth-fill dam impounds the Mill Creek at river mile (RM) 6.2 upstream from its confluence with Allegheny River at RM 93.7. The lake offers angling opportunities for multiple warm-water and cool-water sportfish.

This reservoir will be completely dewatered in 2024 to complete dam and spillway repairs and modifications per Pennsylvania Department of Environmental Protection dam safety standards. Following reconstruction of the dam and spillway, refilling will be initiated soon after. Effective June 10, 2023, the Executive Director of the Commission, acting under the authority of 58 Pa. Code § 65.25 (relating to Temporary changes to fishing regulations), lifted all seasons, sizes, and creel limits for all species at Kahle Lake. This action was taken to encourage angler harvest to reduce the number of fish in the lake in advance of the complete drawdown.

The Commission plans to initiate stocking the lake as soon as refilling conditions allow, with fingerling plants of select fish species to establish a high-quality, warm-water and cool-water fishery. At a future quarterly Commission meeting, staff will propose the addition of Kahle Lake to the Catch and Release Lakes program (58 Pa. Code § 65.17) to allow for the most rapid development of a balanced warm-water and cool-water fish community, while offering acceptable levels of recreational angling opportunities. Once the fish populations can sustain limited harvest, the lake will be recommended for removal from the Catch and Release Lakes program and inclusion in one or more of the Commission's existing warm-water regulation programs that accommodate appropriate fish harvest while maintaining high-quality recreational angling opportunities.

Given the impending lake drawdown, action taken by the Executive Director to enact the current temporary change in fishing regulations, and to facilitate transition of Kahle Lake to temporary management under the Catch and Release Lakes program upon refill, this water must be removed from the Big Bass (58 Pa. Code § 65.9) program.

A notice of proposed designations was published at 53 Pa.B. 3169 (June 10, 2023) (Exhibit I). The Commission did not receive any public comments regarding the proposed designation.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission remove Kahle Lake, Clarion and Venango counties, from the Big Bass program. If approved, the designation will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Anderson to remove Kahle Lake, Clarion and Venango counties, from the Big Bass program. Motion carried by unanimous vote.

FISHERIES
OTHER MATTERS

A. Valley Creek Watershed Restoration Grant to the Open Land Conservancy of Chester County for a stream restoration project on an unnamed tributary to Valley Creek, Chester County.

Commentary:

Following a legal settlement with four railway companies that contaminated the Valley Creek Watershed in Chester and Montgomery counties with polychlorinated biphenyls (PCBs) from their property known as the Paoli Railyard Superfund Site, the Pennsylvania Fish and Boat Commission (Commission) entered into a Memorandum of Agreement with the United States Department of Interior in 2000 that created a Trustee Council. Furthermore, the agreement established the principles by which the Trustee Council will approach restoration of site-related damages. The Trustee Council is comprised of one PFBC staff representative (Chief, Division of Environmental Services) and one Department of Interior staff representative from the National Park Service's Valley Forge National Historical Park. The Trustee Council established the Valley Creek Watershed Restoration Grant program to provide a mechanism for the Trustee Council to pass funds from the Natural Resource Damage Settlement (NRDS) to eligible parties for the implementation of a focused list of eligible project types to restore the Valley Creek watershed as described in the *Valley Creek Restoration Plan*.

At its January 24, 2006, meeting, the Commission authorized the Executive Director to approve individual pass-through grants up to and including \$100,000 per grantee per fiscal year, utilizing Paoli Restoration Fund monies for projects meeting the objectives of the restoration plan and approved by the Trustee Council. For individual pass-through grants exceeding \$100,000, staff will seek separate Commission approval.

The Open Land Conservancy of Chester County (Conservancy) applied for a grant to the Trustee Council to complete a stream restoration project on their George Lorimer Preserve in Tredyffrin Township, Chester County. The Trustee Council approved the grant of up to \$111,000 from NRDS funds to the Conservancy to administer and manage the removal of an existing dam and associated pond, fill the severely eroded pond bypass channel, restore the natural stream channel, and plant native vegetation within the riparian corridor to stabilize the eroding stream banks. The stream is an unnamed tributary to Valley Creek which is an Exceptional Value special protection waterway that supports a Class A wild Brown Trout fishery. Division of Habitat Management staff will administer the funds on behalf of the Trustee Council and will continue to provide technical assistance and coordination of the overall project.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission authorize a grant not to exceed \$111,000 to the Open Land Conservancy of Chester County for the stream restoration project as described in the Commentary.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Kauffman to authorize a grant not to exceed \$111,000 to the Open Land Conservancy of Chester County for the stream restoration project as described in the Commentary. Commissioners discussed the value of these waters to the community. Motion carried by unanimous vote.

Other New Business

There was no new business.

Time and Place of October 2023 Commission Meeting

Announcement of the October 23-24, 2023 quarterly Commission Meeting in Harrisburg, PA at the Pennsylvania Fish and Boat Commission headquarters, 1601 Elmerton Avenue, Harrisburg, PA 17110.

Election of Commission President and Vice President

The nominating Committee (President Richard S. Kauffman, Commissioner Eric C. Hussar and Commissioner Richard Lewis) put forth the nominations of William J. Gibney as President and Daniel J. Pastore as Vice President of the Board of Commissioners with the Pennsylvania Fish and Boat Commission for the term beginning July 2023 and ending July 2024. Motion carried by unanimous vote.

Staff and Volunteer Recognition

Executive Director Timothy Schaeffer recognized President Robert B.J. Small for his hard work and dedication for serving as President of the Board of Commissioners with the Pennsylvania Fish and Boat Commission for the last term.

Adjournment

A motion was made by Commissioner Small and seconded by Commissioner Kauffman to adjourn the meeting at 12:33 p.m. Motion carried by unanimous vote.