

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

MINUTES

156th Meeting

Volume 74

**HARRISBURG, PENNSYLVANIA
October 23, 2023**

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Commonwealth of Pennsylvania
 Pennsylvania Fish and Boat Commission

¹Agenda

The 156th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday, October 23, at the Pennsylvania Fish and Boat Commission headquarters, 1601 Elmerton Avenue, Harrisburg, PA 17110.

The public session for review of this agenda began on October 23, 2023, at approximately 10:34 a.m.

Call to Order

This meeting was called to order by the Commission President William J. Gibney and was followed by the Pledge of Allegiance.

Roll Call

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

Public Comments to Commissioners and Staff

There were no public comments provided at this Quarterly Commission Meeting.

Staff and Volunteer Recognition

Executive Director Timothy Schaeffer acknowledged Harry Wade, Hatchery Manager of the Reynoldsville State Fish Hatchery, for receiving the Excellence in Education Award by the Bedford County Chamber of Commerce and on his forthcoming retirement.

Colonel Clyde Warner presented Waterways Conservation Officer Kyle R. Robinson with the National Association of Boating Law Administrators PA Boating Law Enforcement Officer of the Year Award.

¹ All items that have been or will be published in the Pennsylvania Bulletin are formatted in accordance with the [Pennsylvania Code & Bulletin Style Manual](#).

Review and Approval of Minutes from the July 24, 2023 Meeting

A motion was made by Commissioner Hussar and seconded by Commissioner Anderson to approve the July 24, 2023, minutes as written. Motion carried by unanimous vote.

Executive Director's Report

Executive Director Timothy Schaeffer discussed numerous programs and projects on which staff are currently focused including Chapter 71(a), the Monsanto Agreement, Boating Safety Programs and Boat Operator Safety Training, Equal Employment Opportunity Training for Commissioners and Staff, Operation Dry Water and Boating Facility Grants, Dam Safety Improvements, Venture Outdoors, and the Delaware River Watershed.

Reports of Commissioner Committees**Fisheries and Hatcheries (Commissioner Kauffman)**

The Fisheries and Hatcheries Committee met virtually on October 4, 2023 at 1:00 p.m. to discuss the stream sections stocked with trout proposed for Class A wild trout stream designation in October 2023, the overview of results from 2023 multi-modal trout angler survey, understanding the establishment of Flathead Catfish in the Susquehanna River Basin and beyond, the status of Lake Erie fishery, and the overview of Fisheries agenda items planned for the October 2023 quarterly Commission Meeting. There were no public comments provided at this meeting.

Habitat and Environmental (Commissioner Hussar)

The Habitat and Environmental Committee met virtually on October 4, 2023, at 10:00 a.m. to discuss the upcoming threatened and endangered species listing/delisting package, the 2023 habitat improvement projects update, and the communications and outreach plan for aquatic invasive species. There were no public comments provided at this meeting.

Announcement of Executive Session

Commission President William J. Gibney announced that an executive session was held on October 23, 2023, at approximately 8:00 a.m. to discuss personnel, real estate, and legal matters.

**EXECUTIVE AND ADMINISTRATIVE
OTHER MATTERS**

A. Dates for the Pennsylvania Fish and Boat Commission Meetings in 2024.

Commentary:

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

Staff have reviewed the available dates and possible conflicts for scheduling regular Commission meetings for 2024.

Based upon this review, the following dates are proposed for regular Commission meetings in 2024:

- January 22-23, 2024 (Monday and Tuesday)
- April 29-30, 2024 (Monday and Tuesday)
- July 22-23, 2024 (Monday and Tuesday)
- October 21-22, 2024 (Monday and Tuesday)

The January and July 2024 meetings will be held at the Harrisburg headquarters. The April and October 2024 meetings will be held at locations designated by the Commission for the transaction of business.

Briefer:

Timothy D. Schaeffer, Executive Director

Recommendation:

Staff recommend that the Commission approve the dates for the regular meetings of the Commission for 2024 as described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Hussar to approve the dates for the regular meetings of the Commission for 2024 as described in the Commentary. Motion carried by unanimous vote.

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

A. Welte Property Easement Acquisition, Girard Township, Erie County.

The Welte Property Easement Acquisition was removed from the agenda.

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

B. Property Sale, McCreary Thornton Raine House, Fairview State Fish Hatchery, Fairview and Girard Townships, Erie County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns a +/- 88-acre property known as the Fairview State Fish Hatchery (Hatchery), in Fairview and Girard Townships, Erie County. The Hatchery is located 11 miles west of Erie on State Route 5, as depicted on Exhibit B (Location Map). The Hatchery property is made up of multiple parcels acquired between 1972 and 1985. One of the original parcels purchased in 1972 contains the McCreary Thornton Raine house (Dwelling).

The Dwelling is a two-story painted brick residence, with a widow watch/cupola. It is unknown when the Dwelling was constructed, but likely in the late 1800s. Since the early 1970s, the Commission has used the Dwelling as a residence for the Hatchery's manager. In the late 1990s, the manager retired and moved out of the Dwelling. The Commission then utilized the Dwelling as space for fisheries staff until 2020, at which time the condition of the Dwelling deteriorated to the point it was no longer viable space.

The Dwelling is located on the southside of State Route 5 at the northwesterly side of the Hatchery, as depicted on Exhibit C (Site Map). The Commission is currently in the design phase of a Department of General Services project to construct an adequate facility for fisheries staff. As a result, Commission staff would like to offer the Dwelling for sale by auction with the Dwelling ultimately removed from the Hatchery by the successful bidder. If the auction or removal is unsuccessful, then the Commission plans to demolish the Dwelling.

The successful bidder will be responsible for all costs associated with the removal of the Dwelling and the removal must occur within a certain time period. This conveyance will be subject to staff performing the necessary due diligence.

Briefer:

Mackenzie Hogan, Chief of Real Estate, Property Services Section

Recommendation:

Staff recommend that the Commission authorize the sale of the Dwelling as described in the Commentary.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Mahn to authorize the sale of the Dwelling as described in the Commentary. Motion carried by unanimous vote.

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

C. Lease of Fisherman's Cove Access, Victory Township, Venango County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns a +/-7.8-acre tract of land located along the Allegheny River in Victory Township, Venango County, known as the Fisherman's Cove Access, as depicted on Exhibit D (Location Map). The property was acquired from the Western Pennsylvania Conservancy in 1981.

The Fisherman's Cove Access is operated by the Commission as a primitive fishing and boating access site on the Allegheny River, as depicted on Exhibit E (Site Map). The access site is located three miles along Fisherman's Cove Road, which is a four-mile, dead end, gravel road owned by Victory Township. There is currently a 10-vehicle and 10-trailer, gravel parking area for boaters and anglers to utilize, as well as a 130-foot gravel drive to a gravel boat ramp. The Oil Region Alliance, a local 501(c)3 group, approached the Commission regarding potential opportunities to enhance the access site through different grant programs and potential partnership opportunities with Victory Township to repair and upgrade Fisherman's Cove Road.

The Oil Region Alliance wishes to enter into a lease with the Commission to manage the Fisherman's Cove Access and apply for different grants to perform needed repairs and upgrades at the site. The lease will be for a 25-year term, and the Oil Region Alliance will be responsible for the routine maintenance, operation, repair, and supervision of the lease area. The lease will also require the site to remain open for public fishing and boating free of charge. Fishing and boating will take precedence over all other recreational activities.

Briefer:

Mackenzie Hogan, Chief of Real Estate, Property Services Section

Recommendation:

Staff recommend that the Commission approve the leasing of the Fisherman's Cove Access to the Oil Region Alliance, as described in the Commentary.

Action:

A motion was made by Commissioner Brock and seconded by Commissioner Anderson to approve the leasing of the Fisherman's Cove Access to the Oil Region Alliance, as described in the Commentary. Motion carried by unanimous vote.

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

D. Hereford Manor Property Sale in Franklin Township, Beaver County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns a +/- 408-acre property in Franklin Township, Beaver County, known as Hereford Manor, as depicted on Exhibit F (Location Map). The property was acquired in 1973 from a private landowner at a total cost of \$341,400. When acquired, the property contained two lakes with dams. The lakes were highly popular fishing and boating destinations. However, the dams were subsequently classified as high-hazard, unsafe structures and were removed in 2012. Since the dams were removed, the property has remained open for public recreation, which generally consists of hunting, hiking, and wildlife viewing activities.

In 2022, Franklin Township (Township) approached the Commission regarding its interest in purchasing the Hereford Manor property with the intent of maintaining the property as a public green space, allowing and providing for various recreational opportunities. Commission staff reviewed the request and determined it was in the Commission's and Commonwealth's best interests to sell a majority of the Hereford Manor property to the Township.

The proposed area for sale is +/- 392-acres, as depicted on Exhibit G (Site Map). The Township agreed to pay the Commission \$1,200 per acre, totaling \$470,400.00.

The Township will be responsible for all costs associated with the conveyance, including recording costs. The Commission will retain all oil, gas, coal, mineral, and timber rights on the property being conveyed. This conveyance will be subject to staff performing the necessary due diligence.

Briefer:

Mackenzie Hogan, Chief of Real Estate, Property Services Section

Recommendation:

Staff recommend that the Commission authorize the sale of +/- 392-acres of the Hereford Manor property as described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Hussar to authorize the sale of +/- 392-acres of the Hereford Manor property as described in the Commentary. Motion carried by unanimous vote.

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

E. Property Sale, Hatchery Manager's House, Huntsdale State Fish Hatchery, Dickinson and Penn Townships, Cumberland County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns a +/- 164-acre property known as the Huntsdale State Fish Hatchery (Hatchery), in Dickinson and Penn Townships, Cumberland County. The Hatchery is located six miles west of Mount Holly Springs on State Route 3006, as depicted on Exhibit H (Location Map). The Hatchery property is made up of multiple parcels acquired between 1932 and 1983. In addition to the Hatchery facilities, the property contains a dwelling known as the Hatchery Manager's house (Dwelling).

The Dwelling is a two-story brick residence and was built in a cruciform plan with four gables. It is estimated the Dwelling was built in the 1850s and was the home of General T.C. Miller, a mid-nineteenth century owner of the Cumberland Furnace Iron industry in Huntsdale. Since the 1930s, the Commission used the Dwelling to house the Hatchery Manager, but the Dwelling has been vacant for the last 15 years.

The Dwelling is located on a level lot adjacent to the railroad tracks and Yellow Breeches Creek and across Lebo Road from the current Hatchery administration building/visitor center, as depicted on Exhibit I (Site Map). The Commission would like to offer the Dwelling for sale by auction and require the successful bidder to remove the dwelling within a certain time period. If the auction or removal is unsuccessful, then the Commission plans to demolish the Dwelling.

The purchaser will be responsible for all costs associated with the removal of the Dwelling. This conveyance will be subject to staff performing the necessary due diligence.

Briefer:

Mackenzie Hogan, Chief of Real Estate, Property Services Section

Recommendation:

Staff recommend that the Commission authorize the sale of the Dwelling as described in the Commentary.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Kauffman to authorize the sale of the Dwelling as described in the Commentary. Motion carried by unanimous vote.

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

F. Oswayo State Fish Hatchery Property Right-of-Way and Easements for a Bridge Replacement on State Route 4025 Section A01 over Brizzie Hollow in Oswayo Township, Potter County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns a +/-1,239-acre property known as the Oswayo State Fish Hatchery property (Hatchery Property) and containing the Oswayo State Fish Hatchery (Hatchery), located in Oswayo Township, Potter County. The Hatchery is located on State Route 244, on the westside of Oswayo Borough, as depicted on Exhibit J (Location Map). The Hatchery Property was acquired in 1968 using Project 70 Land Acquisition and Borrowing Act funding. The Hatchery consists of concrete raceways, an earthen settling pond, and a hatch-house/administration building that contains indoor early rearing and egg incubator units. Annually the Hatchery raises brook trout, brown trout, rainbow trout, and golden rainbow trout. Water is supplied to the Hatchery by two springs that originate from a non-limestone aquifer.

The Pennsylvania Department of Transportation (PennDOT) intends to remove and replace the State Route 4025 bridge (Bridge) over Brizzie Hollow (Project). The Bridge is located on the Hatchery Property's northside, approximately 0.5 miles north of the Hatchery and State Route 244. The Bridge was constructed in 1953, is in poor condition, and is posted for 17 tons. The Project requires property rights from the Commission.

The Project requires the Commission to convey to PennDOT +/-0.018 acres of permanent right-of-way, 0.005 acres of required drainage easement, and +/- 0.279 acres of temporary construction easement, as depicted on Exhibit K (Site Map). The temporary construction easement will revert to the Commission at the end of construction. The Project is estimated to take four months, and a detour will ensure that construction does not directly impact Hatchery operations.

Usually, legislation is required when property is acquired using Project 70 funding. However, since the right-of-way and easement areas are very small and the impact is not significant, the staff of both the Commission and PennDOT agreed to pursue a waiver of the legislation requirement through an established waiver process.

The Project will not have a long-term adverse impact on the Hatchery Property and will improve Hatchery operations and public safety. The Commission will receive fair market value for the rights it conveys and any impacts on the Hatchery Property. The Hatchery Property will be restored to the Commission's satisfaction. This conveyance will be subject to staff performing the necessary due diligence.

Briefer:

Mackenzie Hogan, Chief of Real Estate, Property Services Section

Recommendation:

Staff recommend that the Commission approve the right-of-way and easements as described in the Commentary.

Action:

A motion was made by Commissioner Mahn and seconded by Commissioner Anderson to approve the right-of-way and easements as described in the Commentary. Motion carried by unanimous vote.

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

G. Property Sale, Speedwell Forge Lake, Elizabeth Township, Lancaster County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns a +/- 248-acre property known as Speedwell Forge Lake which includes a +/- 106-acre lake, in Elizabeth Township, Lancaster County. Speedwell Forge Lake is located six miles northeast of Lititz off Route 501, as depicted on Exhibit L (Location Map). The Speedwell Forge Lake property is made up of multiple parcels acquired between 1961 and 1964, one of which contains a 20-foot right-of-way (Right-of-Way) reserved for the benefit of other residual lands, which are now part of the neighboring property owners' property (Mosimanns).

In 2022, the Mosimanns approached the Commission regarding the need to amend the existing Right-of-Way located on Commission property. Upon further research it was determined due to the topography and composition of the Right-of-Way location, the Mosimanns road was partially constructed outside of the Right-of-Way on the Commission's property. Commission staff evaluated the request and determined it was in the Commonwealth's best interest to sell a small parcel to the Mosimanns to correct the issue, as opposed to amending the Right-of-Way.

The proposed area for sale is +/- 0.7 acres, as depicted on Exhibit M (Site Map). An approved subdivision plan will determine the final acreage and configuration. The Mosimanns agreed to pay the Commission \$18,500 for the proposed area. The property to be conveyed is not actively used by the Commission, and its sale will not adversely impact the Commission, its operations, or future plans to utilize or further develop its Speedwell Forge Lake property.

The Mosimanns will be responsible for all costs associated with the conveyance, including subdivision, and recording costs. In addition, any real estate and transfer taxes that are normally shared between the buyer and the seller will be paid by the Mosimanns. The Commission will retain all oil, gas, coal, and mineral rights on the property being conveyed, and no permanent structures will be permitted to be built within the +/-0.7 acres conveyed. This conveyance will be subject to staff performing the necessary due diligence.

Briefer:

Mackenzie Hogan, Chief of Real Estate, Property Services Section

Recommendation:

Staff recommend that the Commission authorize the sale of property at Speedwell Forge Lake as described in the Commentary.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Kauffman to authorize the sale of property at Speedwell Forge Lake as described in the Commentary. Motion carried by unanimous vote.

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

H. Fee Simple and Easement Acquisition at Trout Run, Fairview Township, Erie County.

Commentary:

Beginning in 1975, the Pennsylvania Fish and Boat Commission (Commission) entered into several agreements with the various owners of the “Flower’s Marina” property for fishery management and stream maintenance projects related to the Commission’s steelhead propagation program. This is the only location that can be easily accessed in the winter months to collect steelhead due to the gradual slope to the stream from Avonia Road, and roughly 95 % percent of the steelhead used for this program are collected from this site. The property is located at the mouth of Trout Run, in Fairview Township, Erie County, as depicted on Exhibit N (Location Map).

In 2014, Brian Weber and Katherine Skerlong Weber (Webers) purchased the property formerly known as Flower’s Marina, and the Commission received a verbal authorization from the Webers to continue to access and use the site as the Commission has done in the past. At the beginning of 2023, the Commission began discussions with the Webers to purchase a +/- 0.4-acre portion of property in fee simple, and a +/- 0.3-acre easement to be utilized for access, construction, maintenance, and emergency related purposes, as depicted on Exhibit O (Site Map). The Commission estimates the total acreage to be approximately 0.7 acres, but the areas will be determined by an approved subdivision plan.

The Webers have agreed to convey the desired property rights to the Commission for a fee of \$100,000, and the inclusion of a restrictive covenant in the deed prohibiting public use of or public access to portions of the property conveyed to the Commission. The restrictive covenant will apply to the portion of property westerly of the western edge of Trout Run. Including this restrictive covenant will ensure the Commission has continued access to a critical portion of Trout Run. Commission staff have reviewed this request and determined the acquisition of this property is in the best interest of the Commission. This acquisition will be subject to staff performing the necessary due diligence.

Briefer:

Mackenzie Hogan, Chief of Real Estate, Property Services Section

Recommendation:

Staff recommend that the Commission authorize the acquisition of the fee simple property and authorize the acquisition of the easement area in Fairview Township, Erie County, as described in the Commentary.

Action:

A motion was made by Commissioner Pastore and seconded by Commissioner Anderson to authorize the acquisition of the fee simple property and authorize the acquisition of the easement area in Fairview Township, Erie County, as described in the Commentary.

Motion carried by unanimous vote. Commissioner Pastore commended staff for securing future Commission access to this property that is critical to the Steelhead Program.

BOATING
FINAL RULEMAKING

A. Amendment to 58 Pa. Code § 107.5 (Streams less than 200 feet across).

Commentary:

In 58 Pa. Code § 103.3(a), (relating to restriction for special areas), “[b]oats are limited to slow, no wake speed when within 100 feet of the shoreline; 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.” According to § 103.3(a), boats operating in a waterway less than 200 feet across would be within 100 feet of either shoreline and restricted to slow, no wake speed operation. Therefore, § 107.5(a) of the Pennsylvania Fish and Boat Commission’s (Commission) regulations are redundant and can be deleted.

Staff propose the following changes to § 107.5:

§ 107.5. Streams less than 200 feet across.

(a) **[A boat may not exceed slow, no wake speed on an area of a stream that measures less than 200 feet across except where special regulations have been promulgated by the Commission that provide for zoned areas where higher speeds are permitted under controlled conditions] [Reserved].**

(b) It is unlawful for a person to operate an air-propeller driven boat, an all-terrain vehicle, an air cushion effect vehicle, or similar craft on an area of a stream that is less than 200 feet in width except when special regulations provide otherwise.

* * * * *

On February 6, 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.

A notice of proposed rulemaking was published at 53 Pa.B. 5179 (Saturday, August 19, 2023) (Exhibit P). The Commission did not receive any public comments relating to this proposal.

Briefer:

Laurel L. Anders, Senior Executive Advisor

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 Charlesworth and seconded by Commissioner Mahn to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried by unanimous vote.

BOATING
FINAL RULEMAKING

B. Amendments to 58 Pa. Code § 111.42 (McKean County) and § 111.62 (Warren County).

Commentary:

Allegheny River Reservoir, also known as Kinzua Dam, is a 7,647-acre impoundment in McKean County and Warren County operated by the United States Army Corps of Engineers (USACE). Many of the controlled areas on the lake are indicated in the Commission's regulations and are marked with aids to navigation (buoys) by the USACE. The area near Elijah Run, in the southeastern portion of the reservoir in McKean County, is currently marked by USACE as slow, no wake to protect the boat launch area; however, it is not part of the Commission's regulations. Adding this location to the existing regulations for Allegheny River Reservoir in the *Pennsylvania Code* will assist with enforcement of this restriction. Commission staff also recommend adding another subsection to the McKean County and Warren County regulations that assists the Commission with enforcing other areas marked as slow, no-wake by the USACE.

Staff propose the following changes to § 111.42 and § 111.62:

§ 111.42. McKean County.

Allegheny River Reservoir (Kinzua Dam).

(1) Boats are limited to slow, no wake speed in the following areas:

(i) Chappel Bay.

(ii) Morrison Run Bay.

(iii) From the sewer plant at Kiasutha to the headwaters above Red Bridge.

(iv) Willow Bay.

(v) Sugar Bay.

(vi) Elijah Run boat launch.

(vii) Other coves, bays, inlets, arms and areas marked with slow, no-wake buoys.

* * * * *

§ 111.62. Warren County.

Allegheny River Reservoir (Kinzua Dam).

(1) Boats are limited to slow, no wake speed in the following areas:

- (i) In the vicinity of camping areas and boat launch areas.
- (ii) Dew Drop Bay.
- (iii) Wolf Run Bay.
- (iv) Hodge Bay, North and South Branch.
- (v) Cornplanter Bay.
- (vi) Billies Bay.
- (vii) Willow Bay beginning at the boat launch ramp.
- (viii) Other coves, bays, inlets, arms, and areas marked with slow, no-wake buoys.**

* * * * *

On February 6, 2023, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendments.

A notice of proposed rulemaking was published at 53 Pa.B. 5179 (Saturday, August 19, 2023) (Exhibit Q). The Commission did not receive any public comments relating to this proposal.

Briefer:

Laurel L. Anders, Senior Executive Advisor

Recommendation:

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

Action:

A motion was made by Commissioner Small and seconded by Commissioner Mahn to adopt the amendments as set forth in the notice of proposed rulemaking. Motion carried by unanimous vote.

BOATING
FINAL RULEMAKING

C. Amendment to 58 Pa. Code § 111.60 (Union County).

Commentary:

Boating has historically been prohibited at Halfway Lake at R.B. Winter State Park due to the small size of the lake (approximately 6 acres). In recent years, the Department of Conservation and Natural Resources agreed to allow unpowered boats to operate on the lake. Therefore, the Pennsylvania Fish and Boat Commission (Commission) must update its regulations.

Staff propose the following changes to § 111.60:

§ 111.60. Union County.

Halfway Lake—R.B. Winter State Park. **[Boating is prohibited] It is unlawful to operate a boat powered by a motor.**

* * * * *

On February 6, 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.

A notice of proposed rulemaking was published at 53 Pa.B. 5180 (Saturday, August 19, 2023) (Exhibit R). The Commission did not receive any public comments relating to this proposal.

Briefer:

Laurel L. Anders, Senior Executive Advisor

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

Commentary:

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

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

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

Manufacturer and retailer specifications for electric motors frequently refer to kilowatt (kW) rather than HP, whereas Commission regulations refer only to HP. In enforcing HP limitations, Waterways Conservation Officers (WCOs) typically rely on HP ratings that are marked on the boat's cowling (motor cover). If the HP rating is not marked on the cowling or the marking is not legible, WCOs may instead rely on documentation provided by the boat operator (such as an owner's manual), the results of an internet search of motor make and model, or, if the kW rating is known, use a conversion calculation to determine HP. The widely accepted conversion calculation is $\text{kW} \times 1.341 = \text{HP}$. For example, a 15 kW electric motor converts to approximately 20 HP, which is a common HP limitation across Pennsylvania.

To address these issues, Commission staff recommended amending Chapter 107 (relating to boating restrictions) to limit the speed at which electric motors may be operated and clarify that horsepower restrictions apply to both electric and internal combustion motors.

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

On July 26, 2022, the Commission approved the publication of a notice of proposed rulemaking containing these amendments. The notice was published at 52 Pa.B. 5651 (September 3, 2022). The Commission did not receive any public comments regarding the proposal; however, during the comment period, it was discovered that other complementary changes in Chapter 107 were necessary to effect the changes in the proposal.

These additional recommended changes were incorporated into a final rulemaking agenda item for Commission action. These changes were not published in the *Pennsylvania Bulletin* but were made public as part of the agenda for the October 24, 2022, Commission meeting. On October 24, 2022, the Commission voted to adopt the amendments as set forth in the notice of proposed rulemaking, which did not include the necessary additional changes presented at the meeting. The final-form rulemaking was published at 52 Pa.B. 7381 (December 3, 2022) and went into effect on January 1, 2023.

To correct this error and provide an opportunity for public comment on the additional changes, staff recommend reconsideration of the following changes to Chapter 107:

§ 107.1. Horsepower restrictions.

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

§ 107.2. Electric motors.

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

(1) Electric motors are permitted on Commission owned or controlled lakes and on State Park lakes where boating is permitted. **On waters where horsepower limitations are prescribed in Chapter 111, electric motors in excess of maximum horsepower limitations or equivalent kilowatt ratings shall not be used.**

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

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

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

* * * * *

On August 14, 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, Senior Executive Advisor

Recommendation:

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

Action:

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

FISHERIES FINAL RULEMAKING

A. Amendment 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). 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 in § 57.8a (relating to Class A wild trout streams) 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, 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 in § 61.1 (relating to Commonwealth inland waters) 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 § 65.14 (relating to catch and release fly-fishing only). Thirteen 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*, Commission 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 supports alternate management to optimize these fisheries.

Commission 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 (that is, 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, 3 in the 50th percentile, and 1 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 7 inches than were estimated to be present. Additionally, anglers harvested an estimated 23% of the wild brown trout population greater than or equal to 7 inches, of which over 35% of the trout were large (\geq 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 (\geq 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 the Commonwealth’s stocked and wild trout streams in 2004 and 2005, Commission 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 (\geq 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 (See § 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>
* * * * *		

<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—five 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 .</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 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 .</u></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.</u></p>
* * * * *		
<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</u></p>

		<p><u>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 .</u></p>
<p>* * * * *</p>		
<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 .</u></p>

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<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 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</u></p>

		<p><u>the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1.</u></p>
<u>Lehigh County</u>	<u>Little Lehigh Creek, Section 07, from 0.25 miles upstream of Country Club Road bridge downstream to Fish Hatchery Road bridge</u>	<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 .</u></p>
<u>Lehigh and Northampton counties</u>	<u>Monocacy Creek, Section 09, from Schoenersville Road bridge downstream to the confluence with Lehigh River</u>	<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>

		<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.</u></p>
* * * * *		
<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 .</u></p>
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<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 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 .</u></p>
<p>*****</p>		

<u>Northampton County</u>	<u>Monocacy Creek, Section 08, from Illicks Mill Dam downstream to Schoenersville Road bridge</u>	<u>All tackle types are permitted.</u> <u>Brown trout—catch and release/no harvest; it is unlawful to take, kill, or possess brown trout at any time.</u> <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> <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> <u>All species except trout—inland regulations apply. See § 61.1 .</u>
* * * * *		

A notice of proposed rulemaking was published at 53 Pa.B. 5497 (September 2, 2023) (Exhibit S). The Commission received a total of eight public comments regarding the proposed rulemaking: four support the proposal and four oppose the proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking. 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 adopt the amendment as set forth in the notice of proposed rulemaking.

Commissioners inquired about the internal process for creating and removing these miscellaneous special regulations. Motion carried by unanimous vote.

FISHERIES
FINAL RULEMAKING

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

Commentary:

During a comprehensive review of permits associated with the Pennsylvania Fish and Boat Commission's (Commission's) Bureau of Fisheries programs and regulations, Commission staff identified an opportunity to update and further clarify language in § 65.26; specifically, the proposed amendment apply to § 65.26 (b). 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 season 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 **season** 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 must 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.]**

* * * * *

A notice of proposed rulemaking was published at 53 Pa.B. 5504 (September 2, 2023) (Exhibit T). The Commission received one public comment supporting the proposal. A copy of the public comment was provided to the Commissioners.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

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

Action:

A motion was made by Commissioner Brock and seconded by Commissioner Anderson to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried by a vote of eight in favor and none opposed. Commissioners Hussar and Kauffman were not present for the vote as they had briefly excused themselves from the meeting.

FISHERIES PROPOSED RULEMAKING

A. Amendment to 58 Pa. Code § 75.1 (Endangered species): Add Digger Crayfish; remove Black Bullhead and Threespine Stickleback; Amendment to 58 Pa. Code § 75.2 (Threatened species): Add the Longsolid; and Amendment to 58 Pa. Code § 75.3 (Candidate species): Remove the Least Brook Lamprey and Brook Stickleback.

Commentary:

(1) The Digger Crayfish *Creaserinus fodiens* is a primary burrowing crayfish that spends the majority of its time underground in burrows. Burrowing crayfish, including *C. fodiens*, usually occur within or adjacent to forested ephemeral (vernal) pools, bottomland forested floodplains, roadside ditches, small streams, seeps, reservoir shores, wet meadows and prairies, forested swamps and ponds, agricultural ditches, and other wet areas where they dig burrows through moist soils to reach the underlying ground water.

Burrowing crayfish are important components of the ecosystems where they reside. They are ecosystem engineers that mix and disturb large volumes of soil, which is important in maintaining plant diversity. Burrowing crayfish provide critical habitat for the Eastern Massasauga rattlesnake *Sistrurus catenatus* and Kirtland's Snake *Clonophis kirtlandii*, both endangered in Pennsylvania. These two species brumate (that is, hibernate) in crayfish burrows. Studies in locations elsewhere indicate that crayfish burrows also provide critical habitat for rare and endangered odonates (that is, dragonflies and damselflies), especially during summer when surface conditions are dry.

The Digger Crayfish is a highly variable species with a distribution covering substantial portions of the eastern United States, including Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia, as well as Ontario, Canada. In 2014, the Digger Crayfish was first discovered in northwest Pennsylvania (Crawford County). Additional intensive sampling conducted in 2020 at numerous locations in northwestern Pennsylvania also detected the species in southern Erie County.

The status of this species was reviewed using the Pennsylvania Fish and Boat Commission's (Commission) documentation and objective listing/delisting process. The range of the species (Extent of Occurrence) in Pennsylvania is small (7.7 square miles) and well under the less than 40 square mile criterion (B1) for endangered status in the state. Within this range, which includes unsuitable, unoccupied habitats, the Digger Crayfish only occurs in a 3.5 square mile area (Area of Occupancy), which is under the less than four square mile criterion (B2) for endangered status in the Commonwealth. The Digger Crayfish is only known to occur in nine locations in Pennsylvania. Two of the locations are disconnected from the other seven, and all locations are disconnected from populations in other states, limiting dispersal and gene flow, which will likely negatively impact the species over the long-term.

In addition, the Digger Crayfish was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S1, meaning it is Critically Imperiled in the Commonwealth with a high risk of extirpation due to its restricted range and/or populations or occurrences. The Invertebrate Technical Committee of the Pennsylvania Biological Survey (PABS) concurred with this documentation and rank assignment. Enough information is available to make the determination that it is endangered within the Commonwealth at present. Therefore, based on extent of occurrence and area of occupancy, staff propose that the Digger Crayfish be added to Pennsylvania's list of endangered species.

(2) The Black Bullhead *Ameiurus melas* is a small catfish, reaching 6.5-9 inches in length as an adult. It can be distinguished from similar bullhead species by the presence of black pigmented membranes on its fins. It inhabits backwaters, oxbows, impoundments, lakes, ponds, and sluggish streams. Large populations are known to occur in turbid and silty waterways.

The Black Bullhead was listed as a Pennsylvania endangered species in 1999. It is native from southern Canada and Montana, south to northern Mexico and east to the Saint Lawrence River, the Appalachian Mountains, and Alabama. It has been introduced elsewhere. In Pennsylvania, there are historic records from the Kiskiminitas River and the Lake Erie basin, as well as from Lawrence, Mercer, and Westmoreland counties. There have been no verified reports or collections of this species since 1985. From approximately 2000 to present, the rivers of the Ohio River drainage in western Pennsylvania have been intensively surveyed with electrofishing and trawling gears at hundreds of sites. Efforts have also specifically targeted the Black Bullhead at historic collection localities in Erie, Lawrence, Mercer, and Westmoreland counties. Despite these efforts, no Black Bullheads have been detected.

Since the Black Bullhead has not been detected in Pennsylvania in 38 years, the Commission's objective listing/delisting process could not be applied. It was, however, evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of SX, meaning it is considered extirpated in the Commonwealth. The Fishes Technical Committee of the PABS concurred with this documentation and rank assignment. As such, staff recommend that it be removed from the list of endangered species.

(3) The Threespine Stickleback *Gasterosteus aculeatus* is a small fish with three distinct dorsal spines. The Fourspine Stickleback *Apeltes quadracus* also occurs within the same general historic range but can be distinguished by the additional dorsal spine and the distance between the spines. Adults are usually 1.5-3 inches in length.

The Threespine Stickleback inhabits shallow, vegetated areas of tidal pools, creeks, marshes, estuaries, and inshore waters, usually in or near marine or brackish waters. It occurs widely in the Arctic and Atlantic drainages south to the Chesapeake Bay. In the Pacific drainages it occurs from Alaska to Baja, California, and has been widely

introduced elsewhere. In Pennsylvania, it is confined to the tidal Delaware River and a few tributaries.

The Threespine Stickleback was listed as a Pennsylvania endangered species in 1999. There are very few records for this species in Pennsylvania, and it has not been collected or verified in the Commonwealth since 1997. Despite repeated surveys during the past 15-20 years of waterways where this species has previously been documented, and surveys of other tidal tributaries to the Delaware River, no Threespine Sticklebacks have been detected. In addition, there have been no reports of this species from the Pennsylvania Scientific Collectors Permit reporting system during this period.

Due to a lack of recent records, the Commission's objective listing/delisting process could not be applied. Staff conclude that the Threespine Stickleback no longer regularly occurs in Pennsylvania. Based on Commission surveys and the historical record, staff conclude that this species is an estuarine form in the Commonwealth that utilizes our inland waters on an irregular, occasional basis. As such, practically no efforts can be advanced to enhance its status in the Commonwealth. As such, staff recommend that it be removed from the list of endangered species.

(4) The Longsolid *Fusconaia subrotunda* is a freshwater mussel species currently known to occur in Alabama, Kentucky, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. It is considered extirpated from Georgia, Indiana, and Illinois. Historically, Longsolid have been reported from the following Pennsylvania streams and rivers: Ohio River, Beaver River, Slippery Rock Creek, Mahoning River, Shenango River, Pymatuning Creek, Allegheny River, French Creek, Muddy Creek, Monongahela River, and Cheat River. The Longsolid still occurs in the following Commonwealth streams and rivers: Shenango River, Allegheny River, French Creek, and Muddy Creek. Generally, the Longsolid co-occurs with other state and federal listed mussel species.

On March 9, 2023, the United States Department of the Interior, Fish and Wildlife Service, designated Longsolid as federally threatened throughout its entire ranges.

Section 102 of Title 30 (relating to definitions) defines endangered species as "All species and subspecies of fish which: (1) have been declared by the Secretary of the United States Department of the Interior to be threatened with extinction and appear on the Endangered Species List or the Native Endangered Species List published in the *Federal Register*; or (2) have been declared by the Executive Director to be threatened with extinction and appear on the Pennsylvania Endangered Species List published in the *Pennsylvania Bulletin*." Because Longsolid has been designated as federally threatened throughout its range, which includes this Commonwealth, staff propose that it be added to the Commonwealth's list of threatened species.

(5) The Least Brook Lamprey *Lampetra aepyptera* is a small, non-parasitic lamprey. Adults are usually 3.5-6 inches in length. A similar species, the American Brook

Lamprey *Lethenteron appendix*, also occurs in western Pennsylvania, but these two species have never been collected from the same stream.

The Least Brook Lamprey inhabits generally clean, clear streams and brooks of moderate gradient. It is often found in Stocked Trout Waters. Larvae, known as ammocoetes, generally prefer sluggish areas with deposits of mud, muck, silt, sand, detritus, and coarse woody debris. This species occurs on Atlantic Slope from southeastern Pennsylvania to North Carolina, and the Mississippi River basin from western Pennsylvania to Missouri and Arkansas, and south to Mississippi. It is also found in Gulf Coast drainages from Georgia to Mississippi. In western Pennsylvania, this lamprey has been reported from Allegheny, Armstrong, Beaver, Butler, Fayette, Indiana, and Westmoreland counties. It also occurs in a small area of the Susquehanna River drainage in southern Chester County.

The Least Brook Lamprey was listed as a candidate species in 1999. Lamprey-specific field work conducted during 1996 and 2002-2009 confirmed that nearly all historic (pre-1995) waterways remained occupied, and additional populations were reported. The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.2 (Population Reduction) in that there has been no reduction in historic distribution. Since the Least Brook Lamprey occupies more than 150 linear miles of waterway and occurs at more than 20 locations with no known decline, it exceeds Criteria B.3 (Area of Occupation) and B.5 (Distribution and Trends). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4, meaning it is secure in the Commonwealth with a very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of the PABS concurred with this documentation and rank assignment. Enough information exists to determine that this species is currently secure in the Commonwealth and to justify its removal from Pennsylvania's list of threatened fishes. Therefore, the Commission proposes that the Least Brook Lamprey be removed from the Pennsylvania list of candidate species.

(6) The Brook Stickleback *Culaea inconstans* is a small fish with 4-6 dorsal spines. Adults are generally 1.5-2.5 inches long. No other stickleback is known to occur within its native range in Pennsylvania. It inhabits cool, calm waters of lakes, ponds, sluggish streams, wetlands, and bogs. It prefers areas of heavy vegetation or woody debris over muck, detritus, and sand. It occurs in the Arctic and Atlantic drainages in Canada, and in the Great Lakes and Mississippi drainages from Montana to New York and Pennsylvania. It occurs in the Lake Erie and Ohio River drainages in northwestern Pennsylvania, roughly from Lawrence and Butler counties to Potter County, as well as a few locations elsewhere in the Ohio River basin. It has been introduced into the Susquehanna River drainage.

The Brook Stickleback was listed as a Pennsylvania candidate species in 1999. From 1990 to present, it was determined to be rather widely distributed in northwestern Pennsylvania. It is currently known to occur in Cambria, Clarion, Crawford, Elk, Erie, McKean, Mercer, Potter, Venango, and Warren counties.

The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criteria B.3 (Extent of Occupancy) and B.5 (Distribution and Trends) and is known to occur in excess of 20 locations. In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4, meaning it is secure in the Commonwealth with a very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of the PABS concurred with this documentation and rank assignment. Enough information exists to determine that it is currently secure in the Commonwealth. Therefore, staff propose that the Brook Stickleback be removed from the Pennsylvania list of candidate species.

Briefer:

Christopher A. Urban, Chief, Natural Diversity Section

Recommendation:

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

Action:

A motion was made by Commissioner Small and seconded by Commissioner Brock to approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. Commissioners further inquired about the criteria for a species to be included on one of the lists. 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 seven stream sections to the Commission's list of Class A wild trout streams. These changes are the result of a recent surveys conducted on these waters and subsequent data review. Exhibit U 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. 5256 (August 19, 2023) (Exhibit V). The Commission received a total of 122 public comments regarding the proposed designation: all support the proposed designations, and one supports specific waters in the proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission add seven 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 Mahn and seconded by Commissioner Brock to add seven 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 and revision.

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 Pennsylvania 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 60 new waters to the Commission’s list of wild trout streams and a revision to the section limits of one water currently listed. These changes are the result of recent surveys conducted on these waters. Exhibit W 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. 5253 (August 19, 2023) (Exhibit X). The Commission received a total of 121 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 60 new waters to the Commission’s list of wild trout streams and revise the section limits of one water currently listed 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 Charlesworth to add 60 new waters to the Commission's list of wild trout streams and revise the section limits of one water currently listed as set forth in the notice of proposed designations. Motion carried by unanimous vote.

FISHERIES DESIGNATIONS

C. Revision of the limits to one stream section managed under the Catch and Release Fly-Fishing Only program (58 Pa. Code § 65.14).

Commentary:

Slippery Rock Creek is a 49.71-mile-long stream that originates near the Borough of Eau Claire and flows southwest to its confluence with Connoquenessing Creek near the Borough of Ellwood City. The stream is currently managed as five stream sections for fisheries management purposes. Sections 01 and 05 are managed under Commonwealth Inland Waters regulations (58 Pa. Code § 61.1) and are not included in the Pennsylvania Fish and Boat Commission's (Commission) Stocked Trout Waters (STW) program. Sections 02 and 03, which total 20.85 miles in length, are also managed under Commonwealth Inland Waters regulations but are included in the STW. Section 04 is also included in the STW program; however, this section is managed under Catch and Release Fly-Fishing Only special regulations (58 Pa. Code § 65.14).

Section 04 extends 0.50 miles from the Heinz Camp property downstream to 0.25 miles below Armstrong Road bridge and is located primarily within the Pennsylvania Department of Conservation and Natural Resources McConnells Mill State Park. Section 04 has been managed with Catch and Release Fly-Fishing Only regulations since 2006. Prior to 2006, the section was managed in the former Delayed Harvest Fly-Fishing Only program.

Stream sections included in the Catch and Release Fly-Fishing Only program reflect the traditional involvement of fly-fishing in the Commonwealth and include waters long associated with fly-fishing only regulations, which is true of Slippery Rock Creek, Section 04. Section 04 is very popular among anglers and receives high angler use; however, this stream section is short in length (0.5 miles). To further expand fly-fishing opportunities on this high use, popular stream section, an extension to the existing limits is warranted and supported by the landowners. Commission staff have consulted riparian landowners and determined that a 0.25-mile downstream extension of Section 04 could be accommodated. If approved by the Commission, the revised section managed with Catch and Release Fly-Fishing Only regulations would total 0.75 miles in length. As such, staff propose the limits of Slippery Rock Creek, Section 04, Lawrence County, be revised to Heinz Camp lower property line downstream to the lower McConnells Mill State Park boundary line.

A notice of proposed designations was published at 53 Pa.B. 5858 (September 16, 2023) (Exhibit Y). The open public comment period for this proposal was ongoing when this agenda was finalized; therefore, a final comment summary is not provided here. A summary of all public comments will be communicated during the Commission meeting.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission revise the limits of Slippery Rock Creek, Section 04, managed under the Catch and Release Fly-Fishing Only program (58 Pa. Code § 65.14) as described in the Commentary. If approved, the designation will go into effect on January 1, 2024.

Action:

A motion was made by Commissioner Kauffman and seconded by Commissioner Brock to revise the limits of Slippery Rock Creek, Section 04, managed under the Catch and Release Fly-Fishing Only program (58 Pa. Code § 65.14) as described in the Commentary. The Executive Director asked the Chief Counsel to clarify which section was being amended because of a typographical error in the materials provided in advance of the meeting, and the Chief Counsel clarified that 58 Pa. Code § 65.14 is being amended as correctly set forth in Exhibit Y. Motion carried by unanimous vote.

Other New Business

Commissioner Lewis asked if the stream bank, which is located at Slippery Rock Creek, Section 04, Lawrence County between Heinz Camp downstream to the lower McConnells Mill State Park, was open to the public and received a response.

Time and Place of January 2024 Commission Meeting

Announcement of the January 22-23, 2024, quarterly Commission Meeting in Harrisburg, Pennsylvania at the Pennsylvania Fish and Boat Commission headquarters, 1601 Elmerton Avenue, Harrisburg, Pennsylvania, 17110.

Adjournment

A motion was made by Commissioner Brock and seconded by Commissioner Mahn to adjourn the meeting at 12:48 p.m. Motion carried by unanimous vote.