

FISHERIES FINAL RULEMAKING

A. Amendment to 58 Pa. Code § 65.24 (Miscellaneous Special Regulations): remove Opossum Lake, Cumberland County.

Commentary:

Opossum Lake, a 47-acre impoundment owned by the Commonwealth of Pennsylvania and managed by the Pennsylvania Fish and Boat Commission (Commission), is located in Lower Frankford Township in Cumberland County, approximately six miles west-northwest of the Borough of Carlisle. The dam impounds Opossum Creek at river mile 0.5 upstream from its confluence with Conodoguinet Creek. This reservoir was completely dewatered in October 2008 to complete dam and spillway repairs and modifications per Department of Environmental Protection dam safety standards. Following completion of these repairs and modifications, refill occurred by spring 2013, and the Commission resumed annual adult trout stocking to provide immediate angling opportunities. Additionally, the Commission stocked the lake from 2013 through 2015 with select fish species to establish a high-quality, warm-water and cool-water fishery.

Since 2012, Opossum Lake has been managed with Miscellaneous Special Regulations under § 65.24 that allow for the harvest of trout under Commonwealth Inland Waters angling regulations but no harvest of other fish species. The intent of these temporary regulations is to facilitate rapid development of the warm-water and cool-water fish populations in the absence of harvest and, once re-established, the lake would be recommended for removal from the special regulations and moved to one of the Commission's existing warm-water regulation programs.

The black bass and panfish populations were evaluated from 2015 through 2020 to monitor progress towards development of a high-quality, warm-water and cool-water fishery. Sportfish abundance and population size structure have steadily improved to levels where populations can now sustain limited harvest. As such, it is recommended that Opossum Lake be removed from Miscellaneous Special Regulations under § 65.24 in favor of management with the Commission's existing warm-water regulation programs that allow for limited harvest of warm-water and cool-water fish. Upon removal of this regulation, Opossum Lake will be proposed for designation into the Big Bass and the Panfish Enhancement programs in §§ 65.9 and 65.11 (relating to Big Bass and Panfish Enhancement). To facilitate transition of Opossum Lake to the Big Bass and Panfish Enhancement programs, this water must first be removed from Miscellaneous Special Regulations. All other fish species will be managed with Commonwealth Inland Waters angling regulations in § 61.1 (relating to Commonwealth Inland Waters).

Staff propose the following amendment to 58 Pa. Code § 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>
***	***	***
[Cumberland]	[Opossum Lake]	[All species except trout – catch and release/no harvest; it is unlawful to take, kill, or possess any fish except trout. All fish caught other than trout must be immediately returned unharmed. Trout – Inland regulations apply. See §61.1]
***	***	***

A notice of proposed rulemaking was published at 50 Pa.B. 5485 (October 3, 2020) (Exhibit A). The Commission did not receive any public comments regarding the proposal.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

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

Action:

B. Amendment to 58 Pa. Code § 65.24 (Miscellaneous Special Regulations): remove Lake Perez, Huntingdon County.

Commentary:

Lake Perez, a 72-acre impoundment owned by the Pennsylvania State University, is located in Barree Township, Huntingdon County, approximately three miles northeast from the Village of Neffs Mills. The dam impounds Shavers Creek at river mile 13.6 upstream from its confluence with the Juniata River. This reservoir was completely dewatered in late spring 2009 to complete dam and spillway repairs and modifications per Department of Environmental Protection dam safety standards. Following completion of these repairs and modifications, refill occurred during 2014, and the Commission resumed annual adult trout stocking in 2015 to provide immediate angling opportunities. Additionally, the Commission stocked the lake from 2014 through 2018 with select fish species to establish a self-sustaining, high-quality, warm-water and cool-water fishery.

Since 2015, Lake Perez has been managed with Miscellaneous Special Regulations under § 65.24 that allow for the harvest of trout under Commonwealth Inland Waters angling regulations but no harvest of other fish species. The intent of these temporary regulations is to facilitate rapid development of the warm-water and cool-water fish populations in the absence of harvest, and once re-established, the lake would be recommended for removal from the special regulation and moved to one of the Commission's existing warm-water regulation programs.

The black bass and panfish populations were evaluated during 2019 and 2020 to monitor progress towards development of a high-quality, warm-water and cool-water fishery. Sportfish abundance and population size structure have improved to levels where populations can now sustain limited harvest. As such, it is recommended that Lake Perez be removed from Miscellaneous Special Regulations under § 65.24 in favor of management with the Commission's existing warm-water regulation programs that allow for limited harvest of warm-water and cool-water fish. Upon removal of this regulation, Lake Perez will be proposed for designation into the Panfish Enhancement program under § 65.11 (relating to Panfish Enhancement). To facilitate transition of Lake Perez to the Panfish Enhancement program, this water must first be removed from Miscellaneous Special Regulations. All other fish species will be managed with Commonwealth Inland Waters angling regulations under § 61.1 (relating to Commonwealth Inland Waters).

Staff propose the following amendment to 58 Pa. Code § 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>
***	***	***
[Huntingdon]	[Lake Perez]	[All species except trout – catch and release/no harvest; it is unlawful to take, kill, or possess any fish except trout. All fish caught other than trout must be immediately returned unharmed. Trout – inland regulations apply. See §61.1. This miscellaneous special regulation will remain in effect until further notice.]
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A notice of proposed rulemaking was published at 50 Pa.B. 5484 (October 3, 2020) (Exhibit B). The Commission did not receive any public comments regarding the proposal.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

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

Action:

C. Amendment to 58 Pa. Code § 65.24 (Miscellaneous Special Regulations): add Whipple Lake, Huntingdon County.

Commentary:

Whipple Lake, a 17-acre impoundment owned by the Commonwealth of Pennsylvania and managed by the Pennsylvania Department of Conservation and Natural Resources, is located within Whipple Dam State Park, Jackson Township, Huntingdon County, approximately six miles south of the Borough of State College. This lake was completely dewatered in October 2019 to remove sediment and complete structural improvements to the dam. The earth-fill dam impounds Laurel Run at river mile 4.6 upstream from its confluence with Standing Stone Creek. Prior to the drawdown in 2019, the lake offered angling opportunities for multiple warm-water and cool-water fish species, as well as adult trout stocked by the Commission. Sediment removal and dam structure improvements were completed during 2020, with refilling expected to begin in January 2021.

The Commission plans to initiate stocking the lake beginning in spring 2021, or as soon as refilling conditions allow, with catchable trout and fingerling plants of select fish species to establish a high-quality, warm-water and cool-water fishery. Immediately upon refilling of the lake, Commission staff propose to open the lake to fishing under a miscellaneous special regulation that will allow for the harvest of trout under Commonwealth Inland Waters angling regulations, but allow only catch-and-release fishing for all other fish species. Commission staff believe that this approach will allow for the most rapid development of a balanced warm-water and cool-water fish community, while offering acceptable levels of recreational angling opportunities. Fisheries Management Division staff will monitor the fish populations as needed while they develop, make necessary modifications to the species stocked, and recommend adjustments to the regulations governing fish harvest to the Board of Commissioners to continually provide high-quality recreational angling opportunities at Whipple Lake. Once the warm-water fishery is re-established, the lake will be recommended for removal from the miscellaneous special regulation and inclusion in one of the Commission's existing warm-water regulation programs.

Staff propose the following amendment to 58 Pa. Code § 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>
***	***	***
<u>Huntingdon</u>	<u>Whipple Lake</u>	<u>All species except trout – catch and release/no harvest; it is unlawful to take, kill, or possess any fish except trout. All fish caught other than trout must be immediately returned unharmed. Trout – inland regulations apply. See §61.1. This miscellaneous special regulation will remain in effect until further notice.</u>
***	***	***

A notice of proposed rulemaking was published at 50 Pa.B. 5487 (October 3, 2020) (Exhibit C). The Commission did not receive any public comments regarding the proposal.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

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

Action:

D. Amendment to 58 Pa. Code § 57.8a (Class A Wild Trout Streams).

Commentary:

Class A wild trout streams represent the best of this Commonwealth's wild trout resources, and approximately 3% of all flowing waters in this Commonwealth qualify for this designation. As of November 28, 2020, there are 1,037 Class A stream sections that comprise 2,766 stream miles in this Commonwealth. Following designation by the Board of Commissioners, Class A wild trout streams enter a process whereby the Department of Environmental Protection will ultimately designate these streams sections as High Quality, Cold Water Fishes under 25 Pa. Code Chapter 93 (relating to water quality standards). This designation provides additional water quality protection under the Commonwealth's environmental laws and regulations. As such, a Class A designation is an important mechanism to properly protect, conserve, and enhance wild trout populations and the quality of their habitats.

On September 30, 2014 (effective January 1, 2015), the statement of policy at § 57.8a was amended to require the Executive Director to obtain approval from the Pennsylvania Fish and Boat Commission (Commission) prior to granting permission to stock a Class A wild trout stream section. Following the update to § 57.8a, staff developed internal decision-making criteria to allow continued Commission stocking of a limited number of Class A wild trout stream sections. Under these criteria, stream sections that the Commission designates as Class A wild trout streams after December 31, 2014, may remain eligible for stocking with adult and fingerling trout by the Commission to provide additional angling opportunities, provided that the following criteria conditions are met.

1. The stream section was stocked with adult trout during the year immediately prior to its designation as a Class A wild trout stream.
2. Angler use (anglers/mile of stream) in the stream section equals or exceeds the statewide 50th percentile of angler use for the opening weekend of trout season as documented by Commission staff, or the stream section is a special regulation area under Chapter 65 (relating to special fishing regulations) that was stocked by the Commission the year immediately prior to its designation as a Class A wild trout stream.
3. The trout species to be stocked are not the same species as the primary component of the wild trout population.
4. The stocking numbers and frequency will not exceed those of the year prior to the Class A designation.
5. A stream section managed for wild Brook Trout will not be considered for stocking.

6. Prior to implementing a decision to stock a Class A wild trout stream, the Executive Director will obtain the approval of the Commission.

Subsequently, 13 stream sections suspected to support strong Class A wild Brown Trout populations were officially designated as Class A wild trout streams during the 2015-2017 timeframe following updated wild trout surveys, and stocking was continued. Commission staff believe there are very few additional waters in this Commonwealth that would meet the current, internal decision-making criteria used to consider continued stocking of Class A wild trout streams. The 13 Class A wild trout stream sections where stocking continued are heavily fished streams in high-density human population centers of a size and character that can support a fishery featuring both stocked and wild trout components. Common to these waters are robust wild Brown Trout populations, which continue to maintain strong Class A fisheries in the presence of stocking and high angler use. The management approach for these waters includes limiting species stocked to Rainbow Trout, which are easier to catch, rarely develop into a wild population in this Commonwealth, would not genetically impact the existing wild Brown Trout population, and could serve to satisfy anglers that prefer to fish for stocked trout during the early part of trout season.

Historically, there have been very few streams where stocking of trout following Class A designation was considered and warranted. Occasionally, there may be pre-existing youth fishing derbies or clubs and/or private landowners that are not aware a stream section was designated as Class A and unknowingly continue to stock illicitly. Additionally, it is often unknown to Commission staff where private stockings have occurred. This information may become apparent only when the next private stocking is planned, and the landowner discovers a Class A designation has occurred. Therefore, there may be rare cases where a stocking exemption should be considered.

As such, Commission staff have developed additional internal decision-making criteria to account for these types of rare circumstances to consider internal and external requests for continued stocking of newly designated Class A wild trout streams. These criteria will provide Commission staff direction to guide decisions when unusual situations arise, but will not automatically result in continued stocking when criteria are met, as the vast majority of Class A stream sections are best managed solely for wild trout with no stocking. They will offer a mechanism for transparent, timely, and consistent consideration of requests to continue the stocking of newly designated Class A wild trout streams. These criteria will be detailed in the *Operational Guidelines for the Management of Trout Fisheries in Pennsylvania Waters, 5th edition* anticipated to be released in January 2021 and available at www.fishandboat.com. Listed below are several scenarios that may be considered for an exemption.

1. Pre-existing youth fishing derbies and special use areas that were properly permitted by the Commission and have a history of more than one past occurrence.

2. Pre-existing private stockings on private property on recently designated (i.e., within one year of posting in the *Pennsylvania Bulletin*) Class A stream sections that have been closed to public angling at the time of Class A designation and at least since 2010. Historic stockings need to be verifiable by documentation, stocking records, and a history of more than one past occurrence.
3. Stream sections stocked by the Commission, a cooperative nursery, and/or a private group or individual the year prior to Class A designation and a history of more than one past occurrence, and which meet the Commission's Class A stocking criteria developed for the 13 Class A streams sections stocked by the Commission. These criteria currently guide staff consideration when making recommendations regarding the continuance of stocking a Class A wild trout stream section and were specifically developed for high-use, urban, and suburban stream sections that support robust Class A wild Brown Trout populations. Stocked species are limited to Rainbow Trout, and the number stocked will remain at or below the levels stocked at the time of Class A designation. Some stream sections may be better managed solely for wild trout in the future; therefore, trout stocking may not occur in perpetuity.
4. Stream sections which previously received an exemption or a Special Activities Permit from the Commission between 2010 and the present to allow for continued stocking of a Class A wild trout stream section. If the exemption was time-limited and not renewed before expiration, it will be considered a new request and a determination will be made according to current exemption criteria.

Exemptions to the prohibition of stocking hatchery trout into Class A wild trout stream sections would be granted only under rare circumstances. Consideration would only be given to requests for continued stocking in stream sections within one 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 from the Commission between 2010 and the present to allow for continued stocking would be eligible for consideration. Should an exemption be granted, the agency would determine the species of trout, number of trout, and frequency of stocking consistent with stocking strategies and historical stocking rates of the stream section to minimize impacts to the Class A wild trout population. No exemptions will be granted for streams where a component of the wild trout fishery is comprised of wild Brook Trout.

Staff propose that 58 Pa. Code § 57.8a be amended as follows:

§ 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. **[There] 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 (relating to stocking of designated waters), the Executive Director will **consult 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 one 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.***

A notice of proposed rulemaking was published at 50 Pa.B. 6903 (December 5, 2020) (Exhibit D). The public comment period for this proposal is still open; therefore, a final comment summary is not provided here. A summary of all public comments will be communicated during the January 25, 2021 Commission meeting.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

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

Action:

FISHERIES

PROPOSED RULEMAKING

E. Amendments to 58 Pa. Code § 65.4a (All-Tackle Trophy Trout) and § 65.7 (Trophy Trout Artificial Lures Only).

Commentary:

Per Issue 15 detailed in the *Strategic Plan for the Management of Trout Fisheries in Pennsylvania 2020-2024*, Pennsylvania Fish and Boat Commission (Commission) staff evaluated the All-Tackle Trophy Trout and Trophy Trout Artificial Lures Only programs to determine if refinements were needed. Currently, both regulations allow for the harvest of two trout, per day, greater than or equal to 14 inches in length, from opening day of trout season through Labor Day, with catch-and-release angling for the remainder of the year. Trophy Trout regulations are applied to some wild trout and fingerling-stocked waters and were established decades ago when a 14-inch trout was substantially larger than an average-sized hatchery fish, and perhaps was considered a “trophy” at that time. These regulations provide inadequate protection to the largest trout in the population, as harvest of trout greater than or equal to 14 inches in length is permitted in streams managed with these regulations. Given that a 14-inch trout no longer constitutes a “trophy” fish for most anglers, and these regulations focus harvest on the largest fish in the population which are most desired by anglers and are biologically important to maintain in the population, Commission staff propose an adjustment to the minimum size and daily creel limit that will still allow anglers to harvest a large trout if they so choose, but also provides increased protection to a majority of the larger trout in streams managed with Trophy Trout regulations.

Commission staff recommend amending the All-Tackle Trophy Trout and Trophy Trout Artificial Lures Only regulations to allow the harvest of one trout per day greater than or equal to 18 inches in length from opening day of trout season through Labor Day, with catch-and-release angling for the remainder of the year. This size and creel limit were thoroughly researched by staff through evaluation of Commission data, review of trout regulations in other states, and discussions among fisheries managers in this Commonwealth and elsewhere. The proposed changes received strong support during previous wild trout workgroups, were supported by the results of a survey conducted at the 2017 Wild Trout Summit, and are supported biologically through Commission data. Implementing a size restriction above 18 inches would essentially equate to catch-and-release regulations based on the size distribution of fish in these streams. A total of 11 waters are currently included in the Trophy Trout regulation program and most are destination waters that receive high angler use from resident and non-resident anglers.

Staff propose that 58 Pa. Code § 65.4a be amended as follows:

§ 65.4a. All-Tackle Trophy Trout.

* * * * *

- (b) It is unlawful to fish in designated and posted all-tackle trophy trout areas except in compliance with the following requirements.
- (1) Open to fishing year-round.
 - (2) There are no tackle restrictions
 - (3) Minimum size is: [~~14~~] **18** inches, caught on, or in possession on, the waters under regulation.
 - (4) The daily creel limit is: [~~two trout – combined species~~] **one trout** except for the period from the day after Labor Day to 8 a.m. of the first Saturday after April 11 of the following year, when trout may not be killed or had in possession.
 - (5) A current trout/salmon permit is required.

Staff propose that 58 Pa. Code § 65.7 be amended as follows:

§ 65.7. Trophy Trout Artificial Lures Only.

* * * * *

- (b) It is unlawful to fish in areas designated and posted trophy trout artificial lures only except in compliance with the following requirements:
- (1) Fishing may be done with artificial lures only, constructed of metal, plastic, rubber, or wood, or with flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly-fishing gear. Use or possession of other lures or substances is prohibited.
 - (2) Open to fishing year round.
 - (3) The minimum size is: [~~14~~] **18** inches, caught on or in possession on the waters under regulation.
 - (4) The daily creel limit is [~~two trout – combined species –]~~ **one trout** except during the period from the day after Labor Day to 8 a.m. of the first Saturday after April 11 of the following year, when no trout may be killed or had in possession on the waters under regulation.
 - (5) Taking of bait fish or fish bait is prohibited.
 - (6) A current trout/salmon permit is required.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If approved on final rulemaking, the amendments will go into effect on January 1, 2022.

Action:

FISHERIES DESIGNATIONS

F. Proposed changes to the list of Class A wild trout streams.

Commentary:

Pursuant to 58 Pa. Code § 57.8a (relating to Class A wild trout streams), it is the Commission's policy to manage self-sustaining Class A wild trout populations as a renewable natural resource to conserve that resource and the angling it provides. Class A wild trout populations represent the best of Pennsylvania's naturally reproducing trout populations. Criteria developed for Class A wild trout populations are species specific. Wild trout biomass class criteria include provisions for wild Brook Trout, wild Brown Trout, mixed wild Brook 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 25 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 50 Pa.B. 6744 (November 21, 2020) (Exhibit F). The public comment period for this proposal is still open; therefore, a final comment summary is not provided here. A summary of all public comments will be communicated during the January 25, 2021 Commission meeting.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission add 25 stream sections to its Class A wild trout streams list as described in the Commentary. If approved, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

G. Classification of wild trout streams: proposed additions, revisions, and amendment.

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 located in or along the floodplain of the reach of a wild trout stream and the floodplain of streams tributary thereto are considered "exceptional value" and are thus entitled to the highest level of protection.

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

Staff recommend the addition of 26 new waters to the Commission's list of wild trout streams, revision to the section limits of eight waters currently listed, and an amendment to the name of one water currently listed. 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 50 Pa.B. 6742 (November 21, 2020) (Exhibit H). The public comment period for this proposal is still open; therefore, a final comment summary is not provided here. A summary of all public comments will be communicated during the January 25, 2021 Commission meeting.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission add 26 new waters to the Commission's list of wild trout streams, revise the section limits of eight waters currently listed, and amend the name 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:

H. Addition of Opossum Lake, Cumberland County, to the Big Bass (58 Pa. Code § 65.9) and the Panfish Enhancement (58 Pa. Code § 65.11) programs.

Commentary:

Opossum Lake, a 47-acre impoundment owned by the Commonwealth of Pennsylvania and managed by the Pennsylvania Fish and Boat Commission (Commission), is located in Lower Frankford Township, Cumberland County, approximately six miles west-northwest of the Borough of Carlisle. The dam impounds Opossum Creek at river mile 0.5 upstream from its confluence with Conodoguinet Creek. This reservoir was completely dewatered in October 2008 to complete dam and spillway repairs and modifications per Department of Environmental Protection dam safety standards. Following completion of these repairs and modifications, refill occurred by spring 2013, and the Commission resumed annual adult trout stocking to provide immediate angling opportunities. Additionally, the Commission stocked the lake from 2013 through 2015 with select fish species to establish a high-quality, warm-water and cool-water fishery.

Since 2012, Opossum Lake has been managed with Miscellaneous Special Regulations under § 65.24 that allow for the harvest of trout under Commonwealth Inland Waters angling regulations but no harvest of other fish species. The intent of these temporary regulations was to facilitate rapid development of the warm-water and cool-water fish populations in the absence of harvest and, once re-established, the lake would be recommended for removal from the miscellaneous special regulation and moved to one of the Commission's existing warm-water regulation programs.

The black bass and panfish populations were evaluated from 2015 through 2020 to monitor progress towards development of a high-quality, warm-water and cool-water fishery. Sportfish abundance and population size structure have improved to levels where populations can now sustain limited harvest. Upon removal of Opossum Lake from Miscellaneous Special Regulations under § 65.24, it is recommended that the black bass fishery in this reservoir be managed with Big Bass angling regulations under § 65.9, and the crappie fishery be managed with Panfish Enhancement angling regulations under § 65.11. Panfish Enhancement regulations allow for year-round harvest of crappies (Black Crappie and White Crappie) greater than or equal to nine inches in length, with a daily limit of 20. The total creel cannot exceed 50 panfish combined. Big Bass regulations applied to lakes allow for the harvest of four black bass (Largemouth Bass, Smallmouth Bass, and Spotted Bass; combined species) greater than or equal to 15 inches in length from January 1 to midnight the day before the first Saturday after April 11, and 12:01 a.m. the first Saturday after June 11 to midnight December 31. No harvest is permitted from 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11. All other fish species not managed under these special regulations will be managed with Commonwealth Inland Waters angling regulations under § 61.1.

A notice of proposed designations was published at 50 Pa.B. 7116 (December 12, 2020) (Exhibit I). The public comment period for this proposal is still open; therefore, a final

comment summary is not provided here. A summary of all public comments will be communicated during the January 25, 2021 Commission meeting.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission add Opossum Lake, Cumberland County, to the Big Bass program (58 Pa. Code § 65.9) and the Panfish Enhancement program (58 Pa. Code § 65.11) for crappies. If adopted, this designation will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

I. Addition of Lake Perez, Huntingdon County, to the Panfish Enhancement program (58 Pa. Code § 65.11).

Commentary:

Lake Perez, a 72-acre impoundment owned by the Pennsylvania State University, is located in Barree Township, Huntingdon County, approximately three miles northeast from the Village of Neffs Mills. The dam impounds Shavers Creek at river mile 13.6 upstream from its confluence with the Juniata River. This reservoir was completely dewatered in late spring 2009 to complete dam and spillway repairs and modifications per Department of Environmental Protection dam safety standards. Following completion of these repairs and modifications, refill occurred during 2014, and the Pennsylvania Fish and Boat Commission (Commission) resumed annual adult trout stocking in 2015 to provide immediate angling opportunities. Additionally, the Commission stocked the lake from 2014 through 2018 with select fish species to establish a self-sustaining, high-quality, warm-water and cool-water fishery.

Since 2015, Lake Perez has been managed with Miscellaneous Special Regulations under § 65.24 that allow for the harvest of trout under Commonwealth Inland Waters angling regulations, but no harvest of other fish species. The intent of these temporary regulations was to facilitate rapid development of the warm-water and cool-water fish populations in the absence of harvest and, once re-established, the lake would be recommended for removal from the miscellaneous special regulation and moved to one of the Commission's existing warm-water regulation programs.

The black bass and panfish populations were evaluated during 2019 and 2020 to monitor progress towards development of a high-quality, warm-water and cool-water fishery. Sportfish abundance and population size structure have improved to levels where populations can now sustain limited harvest. Upon removal of Lake Perez from Miscellaneous Special Regulations under § 65.24, it is recommended that the sunfish and crappie fisheries in this reservoir be managed with Panfish Enhancement angling regulations under § 65.11. This regulation allows for year-round harvest of sunfish (Bluegill and Pumpkinseed) greater than or equal to seven inches in length and crappies (Black Crappie and White Crappie) greater than or equal to nine inches in length, with a daily limit of 20. When Panfish Enhancement regulations apply to more than one species in the same waterway, the creel limit is 20 for each species with the total creel not to exceed 50 panfish combined. All other fish species will be managed with Commonwealth Inland Waters angling regulations under § 61.1. The owner of Lake Perez, the Pennsylvania State University, supports this management approach.

A notice of proposed designations was published at 50 Pa.B. 7116 (December 12, 2020) (Exhibit I). The public comment period for this proposal is still open; therefore, a final comment summary is not provided here. A summary of all public comments will be communicated during the January 25, 2021 Commission meeting.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission add Lake Perez, Huntingdon County, to the Panfish Enhancement program (58 Pa. Code § 65.11) for sunfish and crappies. If adopted, this designation will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

FISHERIES **OTHER MATTERS**

J. Proposed exemptions to 58 Pa. Code § 57.8a (Class A Wild Trout Streams) to allow for the continued stocking of trout at 12 Class A stream sections.

Commentary:

On September 30, 2014 (effective January 1, 2015), the statement of policy at 58 Pa. Code § 57.8a (Class A Wild Trout Streams) was amended to require the Executive Director to obtain approval from the Pennsylvania Fish and Boat Commission (Commission) prior to granting permission to stock a Class A wild trout stream section. Following the update to § 57.8a, staff developed internal decision-making criteria to allow continued Commission stocking of a limited number of Class A wild trout stream sections. Subsequently, 13 stream sections that support strong Class A wild Brown Trout populations were officially designated as Class A wild trout streams during the 2015-2017 timeframe following updated wild trout surveys, and stocking was continued. The stream sections where stocking continued are heavily fished waters in high-density human population centers of a size and character that can support a fishery featuring both stocked and wild trout components.

Historically, there have been very few streams where stocking of trout following Class A designation was considered and warranted. However, there are rare cases, beyond the current 13 stocked Class A wild trout stream sections, where a stocking exemption should be considered. To account for these rare circumstances, staff developed additional decision-making criteria to consider internal and external requests for continued stocking of newly designated Class A wild trout streams. These criteria provide staff direction to guide decisions when unusual situations arise, but do not automatically result in continued stocking when criteria are met, as most Class A stream sections are best managed solely for wild trout with no stocking. They offer a mechanism for transparent, timely, and consistent consideration of requests to continue the stocking of newly designated Class A wild trout streams. These criteria, listed below, can also be found in the *Operational Guidelines for the Management of Trout Fisheries in Pennsylvania Waters, 5th edition* anticipated to be released in January 2021 and available at www.fishandboat.com.

1. Pre-existing youth fishing derbies and special use areas that were properly permitted by the Commission and have a history of more than one past occurrence.
2. Pre-existing private stockings on private property on recently designated (i.e., within one year of posting in the *Pennsylvania Bulletin*) Class A stream sections that have been closed to public angling at the time of Class A designation and at least since 2010. Historic stockings need to be verifiable by documentation, stocking records, and have a history of more than one past occurrence.

3. Stream sections stocked by the Commission, a cooperative nursery, and/or a private group or individual the year prior to Class A designation, have a history of more than one past occurrence, and meet the following sub-criteria.
 - a) The stream section was stocked with adult trout during the year immediately prior to its designation as a Class A wild trout stream.
 - b) Angler use (anglers/mile of stream) in the stream section equals or exceeds the statewide 50th percentile of angler use for the opening weekend of trout season as documented by Commission staff, or the stream section is a special regulation area under 58 Pa. Code Chapter 65 (relating to special fishing regulations) that was stocked by the Commission the year immediately prior to its designation as a Class A wild trout stream.
 - c) The trout species to be stocked are not the same species as the primary component of the wild trout population.
 - d) The stocking numbers and frequency will not exceed those of the year prior to the Class A designation.

4. Stream sections which previously received an exemption or a Special Activities Permit from the Commission between 2010 and the present to allow for continued stocking of a Class A wild trout stream section. If the exemption was time-limited and not renewed before expiration, it will be considered a new request and a determination will be made according to other exemption criteria.

Exemptions to the prohibition of stocking hatchery trout into Class A wild trout stream sections will be granted only under rare circumstances. Consideration is only given to requests for continued stocking in stream sections within one 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 from the Commission between 2010 and the present to allow for continued stocking are eligible for consideration. Should an exemption be granted, the Commission will determine the species of trout, number of trout, and frequency of stocking consistent with stocking strategies and historical stocking rates of the stream section to minimize impacts to the Class A wild trout population. All stocking provisions will be communicated in writing by the Commission to the entity receiving the exemption for continued stocking on Class A designated waters. Stocking exemptions will be valid for no more than five years at which time the need for continuance may be evaluated.

To date, Commission staff have identified 13 potential exemptions to 58 Pa. Code § 57.8a (Class A Wild Trout Streams) that meet the criteria to consider the continuance of trout stocking at 12 Class A stream sections. Of these 13 potential exemptions, 10 are associated with youth fishing derbies that occur on a small portion of the stream section. The general exemption classification, stream name, stream section, county, and commissioner district are listed below.

Youth fishing derbies

- 1) Beaver Run (Section 01), Clearfield County, Commissioner District 3
- 2) Freeman Run (Section 03), Potter County, Commissioner District 3
- 3) McElhattan Creek (Section 02), Clinton County, Commissioner District 3
- 4) Yellow Creek (Section 02), Bedford County, Commissioner District 4
- 5) Letort Spring Run (Section 03), Cumberland County, Commissioner District 6
(two events)
- 6) Laurel Run (Section 02), Berks County, Commissioner District 8
- 7) Unnamed tributary to Tulpehocken Creek (Womelsdorf) (Section 02), Berks
County, Commissioner District 8
- 8) Wyomissing Creek (Section 03), Berks County, Commissioner District 8

General fishing derbies (adult and youth participants)

- 9) Kishacoquillas Creek (Section 05), Mifflin County, Commissioner District 4

Children/Disabled Fishing Areas

- 10) Marvin Creek (Section 01), McKean County, Commissioner District 3

Previous stocking exemption granted

- 11) Cross Fork (Section 03), Potter County, Commissioner District 3
- 12) Warriors Mark Run (Section 01), Huntingdon County, Commissioner District 4

A notice of proposed exemptions was published at 50 Pa.B. 7254 (December 19, 2020) (Exhibit J). The public comment period for this proposal is still open; therefore, a final comment summary is not provided here. A summary of all public comments will be communicated during the January 25, 2021 Commission meeting.

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission approve 13 exemptions to 58 Pa. Code § 57.8a (Class A Wild Trout Streams) to allow for the continued stocking of trout at 12 Class A stream sections as described in the Commentary.

Action: