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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 125th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, September 25 and 26, 2017 at the Bayfront Convention Center, 1 Sassafra Pier, Erie, PA 16507.

Commission President Rocco S. Ali called a meeting of the full Board to order on September 25 beginning at approximately 10:20 a.m. Following a discussion by the Board, a motion was made by Commissioner Gavlick and seconded by Commissioner Lichvar to authorize the Executive Director to cut \$2 million from the fiscal year 2018/19 budget to include consideration of all facilities and personnel.

President Ali called for a roll call vote on the motion:

Commissioner Ali	No
Commissioner Brock	No
Commissioner Elliott	No
Commissioner Gavlick	Yes
Commissioner Hussar	Yes
Commissioner Kauffman	Yes
Commissioner Lewis	Yes
Commissioner Lichvar	Yes
Commissioner Mascharka	No
Commissioner Small	Yes

There were six (6) yes votes and four (4) no votes. Motion carried.

Commission committees subsequently met on September 25 beginning at approximately 11:25 a.m. and on September 26 beginning at approximately 8:15 a.m.

The public session for review of the following agenda began on or about 10:15 a.m. on September 26.

Call to Order

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

Roll Call

Members Present

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

Members Not Present

Norman R. Gavlick

Review and Approval of Minutes from the July 11, 2017 Meeting

A motion was made by Commissioner Elliott and seconded by Commissioner Hussar to approve the July 11, 2017 minutes as written. Motion carried.

Awards and Presentations

On Monday evening, the S.O.N.S. (Save Our Native Species) of Lake Erie was presented with the Pennsylvania Fish and Boat Commission Partnership Award for its continued partnership and dedication to the protection and management of the Lake Erie fishery.

At the formal Commission meeting on Tuesday, September 26, the Commission recognized former Commissioner William J. Sabatose for his extraordinary leadership, wisdom and dedication while serving as the longest serving Commissioner of the Pennsylvania Fish and Boat Commission from December 9, 1987 to July 17, 2017. Commissioner Sabatose has protected, conserved and enhanced the Commonwealth's aquatic resources and has provided fishing and boating opportunities to the citizens of Pennsylvania for almost 30 years. His tireless hard work and passion are now an important part of the Commission's history.

Executive Director's Report

The "July – September 2017 Quarterly Report" (Exhibit A) was provided to Commissioners. Director Arway also spoke about past and future highlights of the Commission.

Announcement of Executive Session

Commissioner Ali announced that an executive session was held on Monday, September 25, at approximately 8:00 a.m. to discuss pending litigation, personnel matters and potential real estate acquisitions.

Reports of Commissioner Committees

Executive and Administrative (Commissioner Ali) –

The Executive and Administrative Committee met on Monday, September 25, at approximately 11:25 a.m. and reconvened on Tuesday, September 26, at approximately 9:05 a.m. A review of the Executive and Administrative Committee charge was provided to Commissioners. Agenda items were discussed. The *Pennsylvania Fish and Boat Commission Business Analysis* was also discussed. Brian Barner provided a review of the 2018-19 budget request and gave an update on license sales and boat registration sales. Steve Kralik spoke on marketing efforts and analyses conducted in 2017 and on the marketing plan for 2018. Michele Jacoby gave an engineering update.

Boating (Commissioner Elliott) –

The Boating Committee met on Tuesday, September 26, at approximately 8:45 a.m. A review of the Boating Committee charge was provided to Commissioners. One agenda item was discussed. Amendments to section 93.1 (registration) and section 93.2 (permanent and temporary registration) of the Commission's regulations were discussed, and no action was taken by the Committee. An update on the Swift Water Emergency Response Team (SWERT) deployment during Hurricane Harvey and a boat accident update were provided.

Fisheries (Commissioner Mascharka) –

The Fisheries Committee met on Monday, September 25, at approximately 3:35 p.m. A review of the Fisheries Committee charge was provided to Commissioners. Agenda items were discussed. Presentations on the Lake Erie fishery status, Lake Erie tributary barrier assessment work, and additions to the Keystone Select Stocked Trout Waters Program were provided. Andy Shiels gave a report on the Wild Trout Summit that was held in August, and Commissioner Lichvar expressed an interest in the formation of a potential Commissioner Wild Trout Workgroup.

Habitat and Environmental (Commissioner Lichvar) –

The Habitat and Environmental Committee met on Monday, September 25, at approximately 2:45 p.m. A review of the Habitat and Environmental Committee charge was provided to Commissioners. Heather Smiles gave an overview of the Division of Environmental Services and provided a presentation on Lake Erie water quality issues. Chris Urban provided a rattlesnake status update, and Ben Page gave an overview of the Lake Habitat Section.

Hatcheries (Commissioner Ali) –

The Hatcheries Committee met on Tuesday, September 26, at approximately 9:15 a.m. A review of the Hatcheries Committee charge was provided to Commissioners. Rob Brown gave an update on the Warm/Coolwater Fish Culture School, and Craig Lucas provided a presentation on the Fairview State Fish Hatchery.

Law Enforcement (Commissioner Hussar) –

The Law Enforcement Committee met on Tuesday, September 26, at approximately 8:15 a.m. A review of the Law Enforcement Committee charge was provided to Commissioners. An update was given on the Fishkil hotline and the Statewide Radio Program.

The Committee also acted upon proposed revocations. The Committee revoked the fishing privileges of one individual for a period of three years and one individual for five years. The Committee also revoked the boating privileges of two individuals for three years and directed them to successfully complete a classroom boating safety education course.

Legislation and Public Outreach (Commissioner Hussar) –

The Legislation and Public Outreach Committee met on Monday, September 25, at approximately 1:25 p.m. A review of the Legislation and Public Outreach Committee charge was provided to Commissioners. Tim Schaeffer gave a legislative update on fee delegation authority and license increase bills and on the Lake Erie permit. Public outreach presentations provided by staff included a presentation on marketing and outreach, the Pittsburgh and Philadelphia catfish events, and the Youth and Women's Program initiatives. Bill Creighton gave a report on the Paddlesport Safety Campaign, which is a free course offered as a result of a partnership between the Commission and Fresh Air Educators.

Public Comment to Commissioners and Staff

There were no comments or questions from the public.

EXECUTIVE AND ADMINISTRATIVE

A. Dates for Commission Meetings in 2018.

Commentary:

At the fall meeting each year, the 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 2018. This review included a look at holiday, hunting and fishing seasons and other conflicting events.

Based upon this review, the following dates are proposed for regular Commission meetings in 2018:

January 22-23, 2018 (Monday and Tuesday)
April 23-24, 2018 (Monday and Tuesday)
July 9-10, 2018 (Monday and Tuesday)
October 15-16, 2018 (Monday and Tuesday)

The January and July 2018 meetings will be held at the Harrisburg headquarters. The April and October 2018 meetings will be held at locations designated by the Commission for the transaction of business.

Briefer:

John A. Arway, Executive Director

Recommendation:

Staff recommend that the Commission approve the dates for the regular meetings of the Commission for 2018 as set forth in the Commentary.

Action:

A motion was made by Commissioner Ali and seconded by Commissioner Elliott that the Commission approve the dates for the regular meetings of the Commission for 2018 as set forth in the Commentary. Motion carried.

B. Additional Grant to U.S. Department of Agriculture, Natural Resources Conservation Service, for Beechwood Lake Dam PA-454, Clymer Township, Tioga County.

Commentary:

Beechwood Lake Dam in Clymer Township, Tioga County, is a high hazard earth-fill structure owned by the Commonwealth, constructed for flood control and also used for recreation. The U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) (formerly the Soil Conservation Service), funded construction of the dam under the Watershed Protection and Flood Prevention Act Program, and the dam was constructed under the Commission's oversight in 1963. The facility is currently in need of rehabilitation to bring it up to current standards and permit safety regulations.

In 2014, NRCS offered the Commission a plan to design, permit and construct a dam rehabilitation project for Beechwood Lake Dam. Under the plan, NRCS funded 100% of the costs associated with an environmental evaluation of the dam and the preparation of a Supplemental Watershed Plan (Phase 1). If approved, NRCS will fund 100% of the costs associated with design and permitting (Phase 2) and will also fund 65% of the construction costs (Phase 3) with the Commission being responsible for providing a 35% non-federal match.

Through the 2014 Farm Bill, the House Appropriations and Agriculture Committees included provisions to fund the costs of approved dam repair projects. One of the approved projects within this bill was \$445,000 for Phase 1 of the Beechwood Lake Dam Rehabilitation Project. In order to secure these funds, NRCS had to have the funds obligated or spent by September 30, 2014. To meet the deadline, NRCS transferred the funds to the Commission, and the Commission, in turn, granted the funds back to NRCS so it could complete Phase 1 of the project with in-house staff. The Commission authorized this grant at its September 2014 meeting.

The Commission recently became aware that additional funding in the amount of \$65,000 has become available for Phase 1 of this project. These funds may be used for a flood damage assessment if one is determined to be needed by the NRCS National Water Management Center. Again, NRCS proposes to transfer the funds to the Commission and have the Commission, in turn, grant the funds back to NRCS. The transfer of these funds from NRCS to the Commission and the subsequent return of the funds via a grant agreement are necessary to ensure that the full federal funds are applied to the project.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission authorize an additional grant in the amount of \$65,000 to the U.S. Department of Agriculture, Natural Resources Conservation Service, for an environmental evaluation and the preparation of a Supplemental Watershed Plan for Beechwood Lake Dam (Phase 1) as more fully described in the Commentary.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Hussar to authorize an additional grant in the amount of \$65,000 to the U.S. Department of Agriculture, Natural Resources Conservation Service, for an environmental evaluation and the preparation of a Supplemental Watershed Plan for Beechwood Lake Dam (Phase 1) as more fully described in the Commentary. Motion carried.

BOATING FINAL RULEMAKING

A. Amendment to Section 105.3 (Unacceptable Boating Practices).

Commentary:

In late 2015, Volvo Penta approached the Commission about amending section 105.3(12) of the Commission's regulations to permit boaters within the Commonwealth to utilize Volvo's new Forward Facing Drive for wake surfing. Pennsylvania was one of three states at the time that had regulations in place that forbid wake surfing behind inboard/outboard motors. This topic was then discussed at the National Association of State Boating Law Administrators (NASBLA) annual conference at which time the safety protocols that manufacturers were held to by the United States Coast Guard (USCG) were reviewed. The consensus was that if the manufacturer was under strict guidelines from the USCG for development, the states should do what they could to allow those approved developments to be used on state waters.

Before the boating season in 2016, this issue was reviewed by the Bureau of Law Enforcement (BLE). This review included a review of other states' laws and regulations pertaining to the subject as well as any accident statistics. It was found that most states have no motor restrictions for wake surfing beyond using common sense. Several states that are considering regulations are not looking to limit motors such as the Forward Facing Drive. At that time, an enforcement guidance memo was distributed by BLE HQ allowing discretionary usage of this type of motor if found on Commonwealth waters.

With this in mind, staff did not want to remove the regulation but instead recommended amending it to allow for advancements within the boating industry to be used upon Commonwealth waters. The Commission, accordingly, proposed amending §105.3 to make it unlawful to operate a motorboat propelled by an outboard motor, inboard/outboard motor or water jet while a person is wake surfing in or on the wake of the motorboat, unless the propulsion system is specifically designed by the manufacturer for that activity.

A notice of proposed rulemaking was published at 47 Pa. B. 3974 (July 22, 2017) (Exhibit B). The Commission received three public comments supporting the proposal. Copies of all public comments have been provided to the Commissioners.

Briefer:

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

Recommendation:

Staff recommend that the Commission adopt the proposed 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 Elliott and seconded by Commissioner Kauffman to adopt the proposed amendment as set forth in the notice of proposed rulemaking. The amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

FISHERIES DESIGNATIONS

A. Proposed Additions to List of Class A Wild Trout Streams.

Commentary:

Pursuant to 58 Pa. Code § 57.8a (relating to Class A wild trout streams), it is the Commission's policy to manage self-sustaining Class A wild trout populations as a renewable natural resource to conserve that resource and the angling it provides. Class A wild trout populations represent the best of Pennsylvania's naturally reproducing trout populations. Criteria developed for Class A Wild Trout populations are species specific. Wild Trout Biomass Class Criteria include provisions for wild Brook Trout, wild Brown Trout, mixed wild Brook and Brown Trout, wild Rainbow Trout, mixed wild Brook and Rainbow Trout and mixed wild Brown and Rainbow Trout populations.

Staff recommend the addition of three stream sections to the Commission's list of Class A wild trout streams. These changes are the result of recent surveys conducted on these waters. Exhibit C provides information on the locations and a data summary for each of these waters.

A notice of proposed designations was published at 47 Pa. B. 4062 (July 22, 2017) (Exhibit D). The Commission received a total of 11 public comments supporting the proposed designations. Copies of all public comments have been provided to the Commissioners.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

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

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Brock that the Commission add three stream sections to the Commission's Class A wild trout streams list as described in the Commentary. These additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

B. Classification of Wild Trout Streams: Proposed Additions, Revisions, and Removals.

Commentary:

The Department of Environmental Protection's regulations at 25 Pa. Code § 105.1 define the term "wild trout stream" as "a stream identified as supporting naturally reproducing trout populations by the Fish and Boat Commission under 58 Pa. Code § 57.11 (relating to listing of wild trout streams)." This term has regulatory significance because wetlands 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 99 new waters to the Commission's list of wild trout streams, the revisions to the section limits of two waters, and the removal of one water from the list. These changes are the result of recent surveys conducted on these waters. Exhibit E 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 47 Pa. B. 4050 (July 22, 2017) (Exhibit F). The Commission received a total of 13 public comments regarding the proposed designations – 12 support all of the proposed designations and one supports the designation of a specific water. Copies of all public comments have been provided to the Commissioners.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission add 99 new waters to the Commission's list of wild trout streams, revise the section limits of two waters, and remove one water from the list as set forth in the notice of proposed designations. If approved, these additions, revisions and removal will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Brock that the Commission add 99 new waters to the Commission's list of wild trout streams, revise the section limits of two waters, and remove one water from the list as set forth in the notice of proposed designations. These additions, revisions and removal will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

Other New Business

None.

Time and Place of January 2018 Commission Meeting

The next meeting will be held on January 22-23, 2018 in Harrisburg.

Adjournment

A motion was made by Commissioner Elliott and seconded by Commissioner Hussar to adjourn the meeting at approximately 11:00 a.m. Motion carried.