

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

MINUTES

135th Meeting

Volume 70

**HARRISBURG, PENNSYLVANIA
October 22, 2019**

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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 135th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, October 21-22, 2019 at the Pennsylvania Fish and Boat Commission headquarters, 1601 Elmerton Avenue, Harrisburg, PA 17110.

Commission committees met on October 21, beginning at approximately 1:00 p.m., and on October 22, beginning at approximately 8:30 a.m. The public session for review of this agenda began on or around 10:34 a.m. on the 22nd.

Call to Order

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

Roll Call

Members Present

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

Members Not Present

Rocco S. Ali

Review and Approval of Minutes from the July 16, 2019 Meeting

A motion was made by Commissioner Lewis and seconded by Commissioner Anderson to approve the July 16, 2019 minutes as written. Motion carried.

Awards and Presentations

On March 14, 2019, while facilitating a preseason trout stocking in Blair County, Waterways Conservation Officer Sean Sauserman and SGT Craig Garman utilized basic life support training and skills to assist a volunteer stocking assistant who suffered a cardiac event. Recognizing that the volunteer was unresponsive, WCO Sauserman began CPR and continued for an extended time as EMS was delayed due to the remoteness of the location. SGT Garman being familiar with the terrain, was able to find high ground to contact and then guide EMS personnel to the scene. This was necessary as the remoteness of the location did not allow either cellular or radio

transmissions to get through to dispatch. If not for the quick thinking and actions of both officers, the victim might not have survived. The Pennsylvania Fish and Boat Commission commends the actions of these officers and recognizes them with the agency Lifesaving Award.

Recently retired Commissioner G. Warren Elliott was presented a framed American eel print. He also received a letter from the Governor and a certificate of appreciation from Pennsylvania State Representative Keith Gillespie.

Executive Director's Report

The "July - September 2019 Quarterly Report" was provided to Commissioners (Exhibit A). Executive Director Timothy Schaeffer discussed numerous projects and programs that staff are currently focused on.

Announcement of Executive Sessions

Commissioner Hussar announced that an executive session was held on Monday, October 21, at approximately 8:30 a.m. and Tuesday, October 22, at approximately 8:00 a.m. to discuss personnel matters, potential real estate acquisitions, and pending litigations.

Reports of Commissioner Committees

Executive and Administrative (Commissioner Hussar)

The Executive and Administrative Committee met on Monday, October 21, at approximately 1:07 p.m. Agenda items were discussed. Bernie Matscavage provided a Guaranteed Energy Savings Act (GESA) update. He also briefed the Commissioners on the recent fishing license website scam.

Boating (Commissioner Lewis)

The Boating Committee met on Tuesday, October 22, at approximately 8:40 a.m. Colonel Corey Britcher's discussion items included the USCG 2018 Recreational Boating Statistics Report and a presentation on paddle sports and state boating programs. Scott Bollinger presented on the Boating Facilities Grant Program.

Fisheries and Hatcheries (Commissioner Kauffman)

The Fisheries and Hatcheries Committee met on Monday, October 21, at approximately 2:37 p.m. Agenda items were discussed. Dave Nihart gave a presentation on the expanded use of stock trophy trout for 2020. Brian Wisner provided a presentation on the Fish Culture school.

Habitat and Environmental (Commissioner Small)

The Habitat and Environmental Committee met on Tuesday, October 22, at approximately 9:20 a.m. A Recovery of the Chesapeake Logperch presentation was provided by Dave Fischer. Ben Lorson gave a presentation on the fish passage enhancement on Fourmile Creek in Erie County.

Law Enforcement (Commissioner Ali)

The Law Enforcement Committee met on Tuesday, October 22, at approximately 9:15 a.m. There were no agenda items. The Committee acted upon proposed revocations. The Committee revoked the fishing privileges of two individuals for two years and two individuals for five years.

Legislation and Public Outreach (Commissioner Brock)

The Legislation and Public Outreach Committee met on Monday, October 21, at approximately 1:45 p.m. Mike Nerozzi provided a Legislative Update. Robert Hughes, Executive Director of Eastern Pennsylvania Coalition for Abandoned Mine Reclamation, gave a presentation on the Abandoned Mine Lands Trust Fund Reauthorization.

Public Comment to Commissioners and Staff

There were no comments from the public.

Announcement of Notational Vote

The Commission voted on one item by notational vote since the July 2019 meeting. The Commission approved a contract amendment with the Lake Erie Region Conservancy to provide an additional \$55,000 to complete the acquisition of 181.2 acres of property along Elk Creek in Girard Township, Erie County, as described in Exhibit B.

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

A. Blair Property Easement Acquisition, Spring Township, Crawford County.

Commentary:

Section 2907.2 of the Fish and Boat Code, 30 Pa. C.S. §2907.2, provides that the proceeds from the sale of the special Lake Erie fishing permits and \$6 of the fees for the combination trout/salmon/Lake Erie permits are to be deposited into a restricted account within the Fish Fund and that this restricted account “shall be used to provide public fishing access or to protect or improve fish habitat on or at Lake Erie, Presque Isle Bay and their tributaries, including waters that flow into those tributaries.” The funds generated through this program are deposited into the Lake Erie restricted account where they are restricted now and into the future for their legislatively intended purposes. *Pennsylvania’s Fishing and Boating Access Strategy* ranks this watershed as the top priority for access improvement statewide.

The Commission has been offered an easement on 6,460 linear feet along Conneaut Creek as it flows across a parcel of property in Spring Township, Crawford County, for \$90,000. The easement will be for public fishing, boating, and riparian and fishery management and will include the stream corridor and extend at least 35 feet back from the top of the bank to the extent of the ownership of the seller. The easement area is located along Conneaut Creek off Jerusalem Road north of Springboro, PA. A map depicting the subject parcels is attached as Exhibit C.

The seller and the Commission have signed an option agreement that will allow staff to perform its due diligence. The Commission’s exercise of the option agreement will be subject to meeting the due diligence and funding requirements. In addition, the seller has agreed to be responsible for all current applicable real estate and transfer taxes that are normally shared between the buyer and the seller. The Commission may, at its sole discretion, pay for the costs to obtain and record a subordination of lien for the property.

Conneaut Creek provides significant steelhead opportunities in the area. *Pennsylvania’s Fishing and Boating Access Strategy* indicates a need for more access on this section of Conneaut Creek. The Commission’s regional Law Enforcement and Fisheries staff have recommended that the site be acquired.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission authorize the acquisition of an easement along Conneaut Creek in Spring Township, Crawford County, as described in the Commentary, utilizing monies in the Lake Erie restricted account.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Kauffman to authorize the acquisition of an easement along Conneaut Creek in Spring Township, Crawford County, as described in the Commentary, utilizing monies in the Lake Erie restricted account. Motion carried.

B. New Enterprise Stone and Lime Company, Inc. Lease Agreement, Warrior's Mark Township, Huntingdon County.

Commentary:

The Commission has been offered a lease on 4,690 linear feet along the Little Juniata River as it flows across several parcels of property in Warrior's Mark Township, Huntingdon County, with an initial fee of \$5,000 for the first one-year term. The lease will be for public fishing access and fisheries management. The lease area is located along the Little Juniata River off Route 453 near Tyrone, PA. A map depicting the subject parcels is attached as Exhibit D.

The seller and the Commission have prepared a lease agreement that will allow the area to be open to the public without charge for fishing and fisheries management. Public use shall be subject to the rules, regulations and/or limitations established by the Commission to regulate fishing activities. The public shall have access to the lease area via the waterway and from any public rights of way.

The term of the lease is for one-year renewable annually unless cancelled by either party. The initial lease amount of \$5,000 shall be paid by the Little Juniata River Association. The lease amount shall be revisited upon every renewal and adjusted based on current insurance premium costs. If the insurance can no longer be maintained, the lease may be cancelled.

The Little Juniata River provides significant wild brown trout fishing opportunities in the area. *Pennsylvania's Fishing and Boating Access Strategy* indicates a need for more access on this section of The Little Juniata River. The Commission's regional Law Enforcement and Fisheries staff have recommended that the site be acquired.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission authorize the acquisition of a lease along the Little Juniata River in Tyrone Township, Huntingdon County, as described in the Commentary, utilizing monies provided by the Little Juniata River Association.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Kauffman to authorize the acquisition of a lease along the Little Juniata River in Tyrone Township, Huntingdon County, as described in the Commentary, utilizing monies provided by the Little Juniata River Association. Motion carried.

C. Disposition and Lease of Hankins Pond Property, Wayne County.

Commentary:

The Commission owns a +/-123-acre tract of land in Mount Pleasant Township, Wayne County, containing Hankins Pond, previously a +/-70-acre pond, as depicted in Exhibit E. The Hankins Pond property is located in Wayne County approximately 20 miles northwest of Honesdale. The Commission initially acquired a +/-103-acre parcel in 1917 from the Wayne Storage Water Power Company (former Delaware & Hudson Canal), and then acquired an adjoining +/- 20-acre parcel in 1974 from the Helen Pike/Maculaitis Estate. Hankins Pond was drawn down in 2013 due to concerns about the structural integrity of the spillway and public safety. A recent appraisal valued the +/-103-acre parcel at \$280,000.

In September 2018, when the Commission was preparing to remove a 150-foot section of the Hankins Pond dam, as required by the Pennsylvania Department of Environmental Protection's (DEP) Division of Dam Safety, Wayne County filed a legal action to stop the breach. The Commission filed preliminary objections to the complaint forcing the County to join DEP as an indispensable party since the issue before the court involved a hazard determination made by DEP. The County, DEP, and the Commission have spent the past year negotiating a settlement that will preserve the historical structure of the dam while eliminating the danger of a catastrophic failure should the lake refill in a flood event.

As part of the settlement, DEP has approved a remediation plan for the dam. Under the remediation plan, the County will spend in excess of \$500,000 to construct a 24-foot wide breach, place a pedestrian bridge at the top of this opening, and construct a fire protection catch basin with a dry hydrant for use by local fire and rescue departments. This project will satisfy the downstream safety concerns expressed by the DEP while protecting the historic integrity of the dam. The County plans to fund this project through money from Act 13 Impact Fees, and a potential local share grant from Monroe County.

Additionally, the County has asked the Commission to transfer title to approximately one-third (+/- 40.7 acres) of the property, which will include the dam structure. An approved subdivision plan will determine the final acreage and configuration. The County would like to lease the remaining two-thirds (+/- 81.3 acres) of the property for use as a county park. The lease will be for twenty-five (25) years and will require the County to be responsible for all maintenance. Any new recreational enhancements at the site will require prior review and approval of Commission staff.

The Commission presently has no productive use for the property. Approval of the disposition and lease would relieve the Commission of the responsibility and liability for the dam. Staff estimates that the value of the one-third portion of the property is offset by the approximately \$100,000 in costs the Commission would have incurred to breach the dam. The lease of the remaining property will return the property to a public recreational use. The Commission will retain all oil, gas, coal, mineral and timber rights on the property being conveyed. Staff will adhere to the Commission's standard practices for property disposition including meeting due diligence requirements.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommends that the Commission authorize the Executive Director to enter into an agreement with Wayne County for the conveyance of approximately one-third (+/- 40.7 acres) and the lease of approximately two-thirds (+/- 81.3 acres) of the Hankins Pond property as described in the Commentary.

Action:

A motion was made by Commissioner Gibney and seconded by Commissioner Small to authorize the Executive Director to enter into an agreement with Wayne County for the conveyance of approximately one-third (+/- 40.7 acres) and the lease of approximately two-thirds (+/- 81.3 acres) of the Hankins Pond property as described in the Commentary. Motion carried.

EXECUTIVE AND ADMINISTRATIVE PROPOSED RULEMAKING

D. Amendment to Section 63.2 (Display of Fishing License and Verification of License Purchase).

Commentary:

The Commission is constantly exploring new ways to provide greater convenience for anglers and boaters. In recent years, anglers have remarked that the Commission's requirement to display fishing licenses on an outer garment is antiquated and often inconvenient, particularly when an angler is purchasing a license online on relatively short notice and does not have a license holder. Another common complaint is that due to the display requirement, anglers often lose their license after it becomes unattached somewhere along a stream or on a boat. In these situations, the angler then incurs the added cost of purchasing a duplicate license.

Nationwide, Pennsylvania is one of only three states to still require the display of a fishing license, along with Delaware and New Jersey. In 2012, the Pennsylvania Game Commission removed the display requirement for hunting licenses, which has generally been well received by their customers. This change added more confusion for anglers and has led to complaints fielded by waterways conservation officers and regional staff. Removing the display requirement for fishing licenses would provide greater consistency between the two agencies, as many hunters are also anglers. This proposed rulemaking would also help facilitate the eventual purchase and storage of fishing licenses on mobile applications.

In looking at all aspects of removing the display requirement, the most obvious downside is that officers will need to do a field check on every angler since that will be the only way to verify whether or not someone has a license. This practice may lead to more complaints from anglers who get checked multiple times throughout a season; however, the proposed rulemaking would allow anglers to continue displaying their license if they prefer. Additionally, the removal of the display requirement will not change the practice of giving an individual seven days to provide proof of a license purchase when caught without a license in their possession.

A similar rulemaking was approved at the July 2017 Commission meeting. The proposed rulemaking was tabled shortly thereafter due to concerns from the Office of the Attorney General that the measure also allowed the display of licenses using a mobile device, which would require an amendment to Pa. C.S. 30 § 2710 removing the requirement for licenses to be signed "in ink." Staff are concurrently pursuing legislation to remove this provision so a mobile device may be used in the future. This proposed rulemaking would only remove the display requirement, not authorize display on a mobile device.

Staff propose that § 63.2 be amended as follows:

§ 63.2. **[Display] Possession** of fishing license and verification of license purchase.

(a) *Officers designated to check licenses.* A person fishing in waters of this Commonwealth or in boundary waters shall show his fishing license upon the request of a waterways conservation officer, deputy waterways conservation officer or other officer authorized to enforce the code or this title under section 903 of the code (relating to delegation of enforcement powers).

(b) ***[Display on an outer garment] Possession of fishing license.*** It is unlawful for a person required by Chapter 27 of the code (relating to fishing licenses) to purchase a fishing license to fish in the waters of this Commonwealth or in boundary waters **or land** unless the person **has a valid fishing license certificate and associated permits on his person and shows them upon the request of an officer. A person may elect to [displays the] display a** license certificate, a license button or other device approved by the Executive Director on a hat or outer garment while fishing. **If a license button or other device is displayed, the person shall carry the license on his person. [A warning will be issued for a first violation of this section if the person has a valid fishing license in his possession and about his person and shows it upon request.]** An institutional license issued under section 2708 of the code (relating to institutional licenses) may be **[displayed] possessed** or maintained by the person fishing or by the person attending the person who is fishing. **[If a license button or other device is displayed instead of the license certificate, the person shall carry the license certificate about his person.]**

(c) *Fishing without a license in possession.* (1) When a **[resident of this Commonwealth] person** is apprehended for fishing without a license in his possession and claims that he previously purchased a valid fishing license for that year, the officer apprehending the individual shall give the individual 7 days to produce the original of the license certificate, if the individual provides to the officer's satisfaction, at the time of apprehension, positive proof of identity and a residence address within this Commonwealth. The original license certificate shall show all required permits and a purchase date and time prior to the date and time of apprehension.

(2) If it is inconvenient for the individual to produce the certificate in person, the officer may permit the individual to mail the original license certificate to the officer together with a stamped, self-addressed return envelope. If the officer permits the individual to mail the original license certificate to the officer, the officer shall provide the individual with a receipt or other documentation allowing the individual to fish during the period that the original license certificate is not in his possession.

(3) Upon receipt of the original license certificate, the officer shall examine and verify it and return it to the licensee.

(4) If the person apprehended fails to send the original license certificate and required permits to the officer within the time allotted, the officer shall institute summary proceedings against the individual in the manner prescribed by law.

Briefer:

Michael J. Nerozzi, Director of Policy and Planning

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, 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 amendments described in the Commentary. If adopted on final rulemaking, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

**EXECUTIVE AND ADMINISTRATIVE
OTHER MATTERS**

E. Dates for Commission Meetings in 2020.

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 2020. Based upon this review, the following dates are proposed for regular Commission meetings in 2020:

January 27-28, 2020 (Monday and Tuesday)

April 27-28, 2020 (Monday and Tuesday)

July 20-21, 2020 (Monday and Tuesday)

October 19-20, 2020 (Monday and Tuesday)

The January and July 2020 meetings will be held at the Harrisburg headquarters. The April and October 2020 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 2020 as set forth in the Commentary.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Gibney to approve the dates for the regular meetings of the Commission for 2020 as set forth in the Commentary. Motion carried.

FISHERIES **FINAL RULEMAKING**

A. Amendment to Section 65.24 (Miscellaneous Special Regulations): Minsi Lake, Northampton County.

Commentary:

Minsi Lake, a 122-acre fertile impoundment owned by the Commonwealth of Pennsylvania and managed by the Pennsylvania Fish and Boat Commission, is located in Upper Mount Bethel Township in Northampton County, approximately 3.1 miles northeast of the Borough of Bangor. This reservoir was completely dewatered in June 2017 to complete dam and spillway repairs and modifications per Pennsylvania Department of Environmental Protection dam safety standards. The earth-fill dam impounds the East Fork Martins Creek at river-mile 2.3 upstream from its confluence with the West Fork Martins Creek. Prior to the drawdown in 2017, the lake offered angling opportunities for multiple warm-water and cool-water fish species, as well as adult trout stocked by the Commission. Dam and spillway repairs are expected to be completed by early-winter 2019 with re-filling initiated soon after.

The Commission plans to initiate stocking the lake beginning in spring 2020 or as soon as refilling conditions allow with fingerling plants of select fish species to establish a high quality warm-water and cool-water fishery. Immediately upon refilling of the lake, 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. 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 staff will monitor the fish populations as needed while they develop and 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 Minsi Lake. Once the warm-water fishery has been reestablished, 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.

A notice of proposed rulemaking was published at 49 Pa. B. 5213 (September 7, 2019) (Exhibit F). The Commission received a total of seven public comments regarding the proposal, all support the proposed rulemaking.

Staff propose the following amendment:

§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>Northampton</u>	<u>Minsi 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 (relating to Commonwealth inland waters). This miscellaneous special regulation will remain in effect until further notice.</u>
***	***	***

Briefer:

Andrew L. Shiels, Deputy Director of Field Operations

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 in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Kauffman and seconded by Commissioner Anderson to adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

B. Amendment to Section 65.24 (Miscellaneous Special Regulations): Donegal Lake, Westmoreland County.

Commentary:

Donegal Lake, a 90-acre impoundment owned by the Commonwealth of Pennsylvania and managed by the Pennsylvania Fish and Boat Commission, is located in Donegal Township, Westmoreland County, approximately 1.2 miles northeast of the Borough of Donegal. This reservoir was completely dewatered during fall 2016 to complete control tower, dam and spillway repairs and modifications per Pennsylvania Department of Environmental Protection dam safety standards. The earth-fill dam, constructed in 1967, impounds Fourmile Run at river-mile 13.0 upstream from its confluence with Loyalhanna Creek at river-mile 32.7. Prior to the drawdown in 2016, the lake offered angling opportunities for multiple warm-water and cool-water fish species, as well as adult trout stocked by the Commission. Dam and spillway repairs are expected to be completed by early-winter 2019 with re-filling initiated soon after.

The Commission plans to initiate stocking the lake beginning in spring 2020 or as soon as refilling conditions allow with fingerling plants of select fish species to establish a high quality warm-water fishery. Immediately upon refilling of the lake, 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. 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 staff will monitor the fish populations as needed while they develop and 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 Donegal Lake. Once the warm-water fishery has been reestablished, 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.

A notice of proposed rulemaking was published at 49 Pa. B. 5214 (September 7, 2019) (Exhibit G). The Commission did not receive any public comments regarding the proposal.

Staff propose the following amendment:

§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>Westmoreland</u>	<u>Donegal 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 (relating to Commonwealth inland waters). This miscellaneous special regulation will remain in effect until further notice.</u>
***	***	***

Briefer:

Andrew L. Shiels, Deputy Director of Field Operations

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 in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Charlesworth to adopt the amendment as set forth in the notice of proposed rulemaking. If adopted, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

FISHERIES
PROPOSED RULEMAKING

C. Amendment to Section 69.12 (Seasons, Sizes, and Creel Limits): Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters, Erie County.

Commentary:

Past Commission actions gave authority to the Executive Director to adjust harvest limits for Walleye and Yellow Perch based upon adaptive management methods for Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters. Such flexible management strategies serve to maintain consistency in angler catch rate given the vagaries of weather and other biotic and abiotic influences upon recruitment or production of young for these species. Following that approval, staff identified a slight discrepancy in the start date of Walleye season for Inland Waters and Lake Erie waters. In both cases the start date occurs within one week of one another. To maintain regulatory consistency and simplicity, staff recommend the Lake Erie, Lake tributaries, Presque Isle Bay, and peninsular water Walleye seasonal opening days be the same as that for Commonwealth Inland Waters. This small housekeeping change is expected to be unnoticed by anglers and have negligible impact upon fishing opportunity but will serve to simplify and make clear harvest rules applicable to Walleyes across much of the Commonwealth.

Staff propose the following amendment:

§69.12. Seasons, Sizes, and Creel Limits – Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters.

<i>County</i>	<i>Name of Water</i>	<i>Species</i>	<i>Seasons</i>	<i>Minimum Size</i>	<i>Daily Limit</i>
***	***	***	***	***	***
Erie	Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters	Walleye	January 1—March 14; and <u>[May 1] 12:01 a.m. first Saturday in May to midnight, December 31</u>	15 inches	Established annually by April 15**
***	***	***	***	***	***

** See § 69.12b (relating to Lake Erie Walleye and Yellow Perch adaptive management for establishing daily limits). After the Executive Director establishes the daily limit for the year, the information will be posted on the Commission’s web site and available from any Commission office.

Briefer:

Andrew L. Shiels, Deputy Director of Field Operations

Recommendation:

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

Action:

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

FISHERIES DESIGNATIONS

D. 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 H provides information on the locations and a data summary for each of these waters.

A notice of proposed designations was published at 49 Pa. B. 4628 (August 17, 2019) (Exhibit I). The Commission received a total of 135 public comments regarding the proposed designations: 96 support the proposed designations, 17 oppose the proposed designations, and 22 comments were placed in the "other" category. Copies of all public comments were provided to the Commissioners.

Briefer:

Andrew L. Shiels, Deputy Director of Field Operations

Recommendation:

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

Action:

A motion was made by Commissioner Kauffman and seconded by Commissioner Brock to add three stream sections to its Class A wild trout streams list as described in the Commentary. If adopted, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

E. Classification of Wild Trout Streams: Proposed Additions.

Commentary:

The Department of Environmental Protection's regulations at 25 Pa. Code § 105.1 define the term "wild trout stream" as "a stream identified as supporting naturally reproducing trout populations by the Fish and Boat Commission 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 36 new waters to the Commission's list of wild trout streams. These changes are the result of recent surveys conducted on these waters. Exhibit J 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 49 Pa. B. 4626 (August 17, 2019) (Exhibit K). The Commission received a total of 106 public comments regarding the proposed designations: 98 support the proposed designations and eight comments were placed in the "other" category. Copies of all public comments have been provided to the Commissioners.

Briefer:

Andrew L. Shiels, Deputy Director of Field Operations

Recommendation:

Staff recommend that the Commission add 36 new waters to the Commission's list of wild trout streams as set forth in the notice of proposed designations. If adopted, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Charlesworth to add 36 new waters to the Commission's list of wild trout streams as set forth in the notice of proposed designations. If adopted, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

F. Revision of the limits to nine stream sections managed under the Delayed Harvest Artificial Lures Only Program (58 Pa. Code §65.6).

Commentary:

The Delayed Harvest Artificial Lures Only (DHALO) Program was established in 1983. As a first-of-its-kind regulation in the country, DHALO management is designed to provide for an extended period of catch and release angling for stocked trout; then, as stream conditions become less favorable for the survival of trout (due to decreased flow and elevated water temperatures) harvest is allowed utilizing a reduced creel limit. The objectives of these regulations are to minimize fishing mortality during the catch and release period, maintain high trout population densities to provide for angler catch rates greater than or equal to 1.0 trout/hour, and recycle stocked trout to optimize recreational use. Since the Program's inception, it has been one of the Commission's most popular programs.

In 2016, the PFBC launched the Keystone Select Stocked Trout Waters Program with eight stream sections managed with DHALO regulations. Initial assessment of angler opinion regarding the Program revealed that 72 percent of anglers polled planned to make more trips to Keystone Select Stocked Trout Waters since more large trout are being stocked and 96 percent supported expansion of the Program. Due to its extreme popularity among trout anglers, the Program was expanded to include 22 stream sections.

Staff recommend the extension of section limits to nine stream sections managed with DHALO regulations; eight of which are also included in the Keystone Select Stocked Trout Waters Program. The Keystone Select Stocked Trout Waters Program continues to be very popular among trout anglers and these section limit extensions will provide additional angling opportunities in DHALO waters that contain large brood trout throughout the spring and early-summer.

A notice of proposed designations was published at 49 Pa. B. 5261 (September 7, 2019) (Exhibit L). The Commission received a total of nine public comments regarding the proposed designations: six support the proposed designations, two support the proposed designation of a specific water, and one comment opposes the proposed designations. Copies of all public comments have been provided to the Commissioners.

Briefer:

Andrew L. Shiels, Deputy Director of Field Operations

Recommendation:

Staff recommend the Commission revise the limits to nine stream sections managed under the DHALO Program (58 Pa. Code §65.6). If adopted, the designation will go into effect on January 1, 2020. The stream sections and proposed limit revisions are listed below:

- (1) Chest Creek, Section 03, Cambria County, Ridge Avenue downstream to Thomas Mill Road;

- (2) First Fork Sinnemahoning Creek, Section 04, Potter County, Rt 872 bridge at Schoolhouse Run downstream to Berge Run;
- (3) Kinzua Creek, Section 04, McKean County, Guffey Road Bridge (Rocky Road) downstream to Westline Road bridge;
- (4) Loyalsock Creek, Section 05, Lycoming and Sullivan counties, 1.0-mile upstream Sullivan County line downstream to unnamed tributary located 0.9-mile upstream of Plunketts Creek;
- (5) Lycoming Creek, Section 04, Lycoming County, 0.5-mile upstream Daugherty Run downstream to 0.1-mile downstream of the SR 0015 bridge (Old Route 15) near Haleeka;
- (6) McMichael Creek, Section 05, Monroe County, 0.13 km downstream from the Turkey Hill Road (T-416) Bridge downstream to Glenbrook Road (SR 2004) Bridge;
- (7) Middle Creek, Section 04, Snyder County, 0.3-mile upstream of Pine Swamp Road downstream to Covered Bridge Road;
- (8) Pine Creek, Section 06, Tioga County, Marsh Creek downstream to Bear Run; and
- (9) Little Pine Creek, Section 04, Lycoming County, Little Pine Creek Road bridge located 1.0-mile upstream Otter Run downstream to inflow of Little Pine Lake (Not a Keystone Select Stocked Trout Water).

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Charlesworth to revise the limits to nine stream sections managed under the DHALO Program (58 Pa. Code §65.6). If adopted, the designation will go into effect on January 1, 2020. The stream sections and proposed limit revisions are listed above. Motion carried.

HATCHERIES OTHER MATTERS

- G. Grant to United States Fish and Wildlife Service for the Collection of American Shad Eggs from the Potomac River to Support American Shad Restoration in the Susquehanna River Basin.

Commentary:

This item seeks to establish a three-year agreement with the United States Fish and Wildlife Service (FWS) for the collection of American Shad eggs from the Potomac River during the spring spawning runs of 2020, 2021 and 2022. Payment for services would come from a Commission restricted revenue account, Atlantic Coastal Fisheries Cooperative Management Act awards, and the Commission's Fish Production Services operating budget. Since 2006, the Commission has maintained Memoranda of Agreement with FWS for the collection of fertilized American Shad eggs from the Potomac River for use in American Shad stock restoration efforts in the Susquehanna River.

The Potomac River is a significant source of American Shad eggs for hatchery operations and shad restoration efforts on the Susquehanna River. Between 2006 and 2018, the Potomac River supplied some 44.5-million viable eggs for larval shad culture which resulted in nearly 28.9-million larval shad released into the Susquehanna Basin (or 75% of larval shad production). Comparatively, tank spawning of Susquehanna River shad produced some 12.3-million viable eggs that resulted in nearly 9.5-million fry stocked over the same period. Additionally, adult American Shad sampled at Conowingo Dam between 2012 and 2018, a time period when hatchery origin adults would have only resulted from Potomac and Susquehanna river eggs, averaged 44% hatchery in origin. Further, American Shad population estimates in the lower Susquehanna River and passage at the hydroelectric dams remain at depressed levels. Underperforming fish passages at some of the Susquehanna River hydroelectric dams continue to limit adult passage and ultimately hinder natural reproduction and population growth.

American Shad restoration initiatives resulting from recent Federal Energy Regulatory Commission re-licensing efforts at Conowingo, Muddy Run, and York Haven hydroelectric projects on the Susquehanna River will likely not translate into positive population-level outcomes much before 2021 or beyond (e.g., increased adult passage and transplant into open-river habitat to promote natural reproduction). A consistent source of hatchery-produced shad fry are needed to bridge the gap while the Conowingo Dam relicensing is being finalized and mandated improvements to fish passage at the hydroelectric facilities are being implemented.

This project will cost \$459,662 over three years. Year-1 will be paid through a combination of fund sources which include approximately: \$74,982 in Atlantic Coastal Fisheries Cooperative Management Act awards, \$36,079 from a Commission restricted revenue account, and \$37,654 from Fish Production Services FY19/20 operations budget (totaling

\$148,715). Year-2 (\$153,176) and Year-3 (\$157,771) will be paid through available grant funding and Fish Production Services operating budgets.

There are three primary objectives of this project:

(1) *Collection & Delivery*: Collection of a maximum number of fertilized American Shad eggs (up to 10 million per year) from the Potomac River. Fertilized eggs are to be packaged and delivered to the PFBC's Van Dyke facility.

(2) *Biological Sample Collection & Analysis*: (a) Collection of scales and otolith samples and sex and length data from a sub-set of fish used for spawning (as required by Potomac River Fisheries Commission collection permit); and (b) Collection of up to 60 adult American Shad for Wild Fish Health Survey conducted by FWS staff at the Lamar National Fish Hatchery and Northeast Fishery Center.

(3) *Daily & Final Reporting*: Daily reports filed by FWS field supervisor after each egg collection to update PFBC Van Dyke staff on success of egg collection efforts and a summary report filed by FWS by September 30 of each year of the agreement.

Briefer:

Andrew L. Shiels, Deputy Director of Field Operations

Recommendation:

Staff recommend that the Commission authorize the Executive Director to enter into a three-year agreement with the United States Fish and Wildlife Service for the purposes described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Lewis to authorize the Executive Director to enter into a three-year agreement with the United States Fish and Wildlife Service for the purposes described in the Commentary. Motion carried.

Other New Business

A motion was made by Commissioner Brock and seconded by Commissioner Anderson to support House Bill 1584. House Bill 1584, sponsored by Representative Garth Everett, would extended WCOs the ability to seek coverage under the Police and Firemen Collective Bargaining Act, commonly known as Act 111. At the time the Fish and Boat Code was enacted in 1980, Act 111 coverage was limited to the Pennsylvania State Police, municipal police, municipal firemen and a few other classes of state employees. Today, Department of Conservation and Natural Resources Rangers, Capitol Police and, in 1993, Pennsylvania Game Wardens are covered under Act 111. Act 111 provides that covered classes of employees do not have the right to strike during a collective bargaining impasse. Impasses are instead resolved through binding arbitration. Motion carried.

Time and Place of January 2020 Commission Meeting

The next meeting will be held on January 27-28, 2020 in Harrisburg.

Adjournment

A motion was made by Commissioner Brock and seconded by Commissioner Anderson to adjourn the meeting at approximately 11:22 a.m. Motion carried.