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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 126th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, January 22 and 23, 2018 at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on January 22 beginning at approximately 9:35 a.m. and on January 23 beginning at approximately 8:35 a.m. The public session for review of this agenda began on or about 11:20 a.m. on January 23.

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 September 26, 2017 Meeting

A motion was made by Commissioner Elliott and seconded by Commissioner Kauffman to approve the September 26, 2017 minutes as written. Motion carried.

Awards and Presentations

Former Commissioner Steven M. Ketterer was recognized for his outstanding leadership and dedication while serving as Commissioner of the Pennsylvania Fish and Boat Commission from 2007 to 2017.

An Outstanding Service Award was presented to Chris Calhoun, Lead Water Rescue Instructor Trainer. The Commission recognizes Chris Calhoun for his contributions made to the Commonwealth for the development of the internationally recognized Pennsylvania Water Rescue Program and his significant, lasting and continuous impact in the field of water, aviation and technical rescue.

The “Wave of Excellence” Award was presented in tribute to and memory of Brook Tolbert, Waterways Conservation Officer, Northwest Region Office. In keeping with Executive Director Arway’s interest in recognizing a job well done, the Commission implemented an employee recognition program entitled the “Wave of Excellence” Award program. The concept is for Commission employees to recognize other Commission employees who have gone above and beyond the call of duty in performing their work or who have provided extraordinary customer service. Brook Tolbert is the twelfth recipient to receive the “Wave of Excellence” Award or the “WE” Award. Brook was nominated by a fellow co-worker and the eleventh recipient of the award, Scott Fedei. Brook was known to put “we” (the Commission) above “me.” The award was presented to Brook’s mother and father.

Teresa Erdman, Executive Secretary, was recognized for her years of outstanding service to the Board of Commissioners, Commission staff, and the anglers and boaters of Pennsylvania. She will be retiring on January 26, 2018 with over 24 years of service.

Executive Director’s Report

The “September – December 2017 Quarterly Report” (Exhibit A) was provided to Commissioners. Director Arway also spoke about the Commission’s outreach efforts and moving forward with the Strategic Plan. Despite the challenges, Director Arway is proud of the Board’s support and looks forward to the Commission’s connection to recreation across the state. A series of eight regional sportsmen’s forums, one in each Commission district, are scheduled between February and April 2018. The goal is to provide an open forum on water and fisheries issues and to engage sportsmen’s groups, the public and Commission staff. An invitation was extended, and dates were provided.

Announcement of Executive Session

Commissioner Ali announced that an executive session was held on Monday, January 22, at approximately 8:05 a.m. to discuss pending litigation and potential real estate acquisitions. An executive session was also held on Tuesday, January 23, at approximately 10:50 a.m. to discuss personnel matters.

Reports of Commissioner Committees

Executive and Administrative (Commissioner Ali) –

The Executive and Administrative Committee met on Monday, January 22, at approximately 9:35 a.m. Agenda items were discussed.

Commission President Ali announced a new business development workgroup. The purpose of the workgroup is to study, identify and report its findings on Commission growth opportunities as well as areas where Commission business operations and practices can be made more cost effective. The workgroup consisting of four Commissioners and key Commission staff will be appointed, and the workgroup will be charged with responsibility for completing an in-depth review of the Pennsylvania State University Business Analysis and will report its findings to the Executive and Administrative Committee. The first report will be given at the July 2018 Commission meeting.

Brian Barner introduced Eric Richey, CEO, Sovereign Sportsman Solutions (S3), who provided a presentation on the new Pennsylvania Automated Licensing Service (PALS) system. Brian provided an update on the Indian Caverns property acquisition. Steve Kralik provided an update on the *Pennsylvania Fish and Boat Commission Business Analysis*. A recap of the 2017 license sales and boat registration sales was provided along with a 2018 sales update. Alternative revenue options were discussed. Michele Jacoby gave an engineering update.

Boating (Commissioner Elliott) –

The Boating Committee met on Tuesday, January 23, at approximately 8:55 a.m. Agenda items were discussed. A 2017 boating summary of accidents and fatalities along with a Water Rescue Program review was provided by Ryan Walt.

Fisheries (Commissioner Mascharka) –

The Fisheries Committee met on Monday, January 22, at approximately 3:25 p.m. Agenda items were discussed. Fisheries personnel changes were provided. Daryl Pierce gave a presentation on the Upper Delaware River flexible flow management plan and fisheries management efforts. Commissioner Lichvar gave an update on the wild trout workgroup.

Habitat and Environmental (Commissioner Lichvar) –

The Habitat and Environmental Committee met on Monday, January 22, at approximately 2:10 p.m. A presentation on PCBs in the Shenango River was provided by Michael (Josh) Lookenbill, Bureau of Clean Water, Pennsylvania Department of Environmental Protection. Howard Reinert, Professor, Biology School of Science, The College of New Jersey, gave a presentation on the impact of habitat restoration on the Eastern Massasauga Rattlesnake. Bob Morgan provided a presentation on the ecological threat and resulting interactions with concerned citizens and legislators as it relates to Hydrilla. Fred Strathmeyer, Deputy Secretary for Plant Industry and Consumer Protection, Pennsylvania Department of Agriculture, spoke about the Pennsylvania Invasive Species Council.

Hatcheries (Commissioner Ali) –

The Hatcheries Committee met on Tuesday, January 23, at approximately 9:40 a.m. Updates were provided on the Reynoldsdale State Fish Hatchery post-construction project, the Benner Spring State Fish Hatchery, and the Anadromous Fish Restoration Unit.

Law Enforcement (Commissioner Hussar) –

The Law Enforcement Committee met on Tuesday, January 23, at approximately 8:35 a.m. Agenda items were discussed. Colonel Corey Britcher gave an update on the Fishkil hotline, and Lt. Colonel Tom Burrell provided an update on the 2017 special investigation efforts. The Committee also acted upon proposed revocations. The Committee revoked the fishing privileges of one individual for a period of three years. The Committee revoked the boating privileges of one individual for two years and directed him to successfully complete a classroom boating safety education course.

Legislation and Public Outreach (Commissioner Hussar) –

The Legislation and Public Outreach Committee met on Monday, January 22, at approximately 1:00 p.m. Public outreach presentations included a presentation on the First Catch Center and the Recruitment, Retention, and Reactivation (3Rs) Plan goals. A marketing update for the 2018 trout season was provided. Carl Richardson gave a presentation on the Southwick Associates program analysis. Amidea Daniel provided an update on youth and women's programs, and Chris Styers, New Birth of Freedom, spoke about Hooked on Scouting. Director Arway gave a legislative update on fee delegation authority and license increase bills and on the Lake Erie permit.

Public Comment to Commissioners and Staff

There were no comments or questions from the public.

EXECUTIVE AND ADMINISTRATIVE

A. Ransom 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 3,960 linear feet along Conneaut Creek as it flows across a parcel of property in Spring Township, Crawford County, for \$50,000. 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 at river mile 29.9 off Fisher Road north of Conneautville, PA. A map depicting the subject parcel is attached as Exhibit B.

Conneaut Creek provides significant steelhead and trout fishing 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 an easement be acquired.

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.

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 more particularly described in the Commentary, utilizing monies in the Lake Erie restricted account.

Action:

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

B. Flowage Easement Acquisitions, Tamarack Lake, East Mead and West Mead Townships, Crawford County.

Commentary:

The Commission owns a +/-819-acre tract of land in East Fairfield, East Mead and West Mead Townships, Crawford County, which contains Tamarack Lake, a +/-562-acre lake created by two dams, Tamarack Lake Dam A and Dam B. Additionally, the Commission owns four flowage easements totaling +/-5.9 acres. A flowage easement is the right to periodically flow water on, inundate and flood an area without liability for damages resulting from such action.

Tamarack Lake Dam A and Dam B are classified as a high hazard dams by the Pennsylvania Department of Environmental Protection (DEP). Due to internal erosion of Dam A's embankment soils, the dam was determined to be unsafe, and in August 2012, the lake was drained. Rehabilitation of both dams began in November 2017 to bring both dams into compliance with current regulatory dam safety standards.

When the dams were originally constructed, the Commission acquired property and flowage easements to meet the design and regulatory standards in place at that time. Due to changes in regulatory standards, the Commission is now required to obtain flowage easements to meet the current design storm elevations.

The DEP's current method for dam and storm event analysis indicates that the proposed dam rehabilitation project will increase the maximum water elevation by approximately 0.8 feet. Thus, there will be an area between the originally purchased easement boundary and the new design flood elevation that may be inundated. This area will need to be acquired as flowage easements. The areas are expected to have minimal value. The Commission will pay the estimated fair market value of the rights or accept donations if offered. The flowage easement areas are estimated to be approximately 1.0 acre and will include approximately seven parcels, as identified on Exhibit C. The exact acreage and number of affected properties will be determined through research and property surveys.

Staff will pursue the acquisition of the new easement areas in an amicable manner and only utilize the Commonwealth's power of eminent domain as a last resort. Additionally, staff will adhere to the Commission's standard practices for acquiring property including meeting due diligence and funding requirements.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission authorize the acquisition of the flowage easements described in the Commentary.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Lichvar to authorize the acquisition of the flowage easements described in the Commentary. Motion carried.

C. Flowage Easement Acquisitions, Minsi Lake, Upper Mount Bethel Township, Northampton County.

Commentary:

The Commission owns a +/-308-acre tract of land in Upper Mount Bethel Township, Northampton County, which contains Minsi Lake, a +/-117-acre lake. Additionally, the Commission owns one flowage easement totaling +/-0.22 acre. A flowage easement is the right to periodically flow water on, inundate and flood an area without liability for damages resulting from such action.

Minsi Lake Dam is classified as a high hazard, unsafe dam by the Pennsylvania Department of Environmental Protection (DEP). The lake was drained in June 2017 in advance of the anticipated rehabilitation of the dam, which is required to bring the dam into compliance with current regulatory dam safety standards. Design for the rehabilitation of the dam is complete, and construction is expected to begin by summer 2018.

When the dam was originally constructed, the Commission acquired property and flowage easements to meet the design and regulatory standards in place at that time. Due to changes in regulatory standards, the dam's rehabilitation will require raising the dam approximately 2.3 feet. Thus, there will be an area between the originally purchased easement boundary and the top of dam elevation that may be inundated. This area will need to be acquired as flowage easements. The areas are expected to have minimal value. The Commission will pay the estimated fair market value of the rights or accept donations if offered. The flowage easement areas are estimated to be approximately eight acres and will include approximately 15 parcels, as identified on Exhibit D. The exact acreage and number of affected properties will be determined by document research and property surveys.

Staff will pursue the acquisition of the new easement areas in an amicable manner and only utilize the Commonwealth's power of eminent domain as a last resort. Additionally, staff will adhere to the Commission's standard practices for acquiring property including meeting due diligence and funding requirements.

Briefer:

Brian P. Barner, Deputy Director, Office of Administration

Recommendation:

Staff recommend that the Commission authorize the acquisition of the flowage easements described in the Commentary.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Hussar to authorize the acquisition of the flowage easements described in the Commentary. Motion carried.

BOATING PROPOSED RULEMAKING

A. Addition of Chapter 99 (Capacity Plates).

Commentary:

Prior to January 1, 2013, the Commission issued capacity plates for certain boats that were operated or offered for sale within the Commonwealth. During an audit of the Commission's Recreational Boating Safety Program in 2011, the U.S. Coast Guard identified this practice as a violation of the Federal regulation and directed the Commission to stop issuing the plates. In response to this direction, the Commission removed the entire chapter of its regulations pertaining to capacity plates. At the time, this decision was thought to be the best way to handle the issue. However, it has since been determined that perhaps the best change would have been to remove only those sections dealing with the Commission's issuance of capacity plates and not to remove other sections that extended the federal standard to Commonwealth waters. Staff examined what other states have done regarding capacity plates and are recommending that certain sections of the former regulation be reinstated.

Staff propose that Chapter 99 be added as follows:

CHAPTER 99. CAPACITY PLATES

§ 99.1. Boats requiring capacity plates.

(a) A capacity plate shall be permanently affixed to a monohull boat less than 20 feet in length designed to carry two or more persons and to be propelled by machinery or oars as its principal source of power if one of the following applies:

(1) The boat is manufactured, transferred, sold or offered for sale in this Commonwealth.

(2) The boat is operated on waters of this Commonwealth.

(b) Pontoon boats, canoes, sailboats, kayaks, inflatable boats, hydroplanes, personal watercraft and boats considered by the Commission to be of unusual or unique design are exempt from this chapter.

(c) As used in this chapter, "manufacture" means to construct or assemble a boat or alter a boat in a manner that changes its weight carrying capacity.

§ 99.2. Information required.

The capacity plate shall contain the following information as described in 33 CFR § 183.25 (relating to display of markings):

(1) For boats designed for or represented by the manufacturer as being suitable for use with outboard motors:

(i) The total weight of persons, motor, gear, and other articles placed aboard which the boat is capable of carrying safely under normal conditions.

(ii) The recommended number of persons consistent with the weight capacity of the boat and the presumed weight in pounds of those persons. The presumed weight per person may not be less than 150 pounds.

(iii) The maximum horsepower of the motor that the boat is designed or intended to accommodate.

(2) For other boats to which the requirement applies:

(i) The total weight of persons, gear, and other articles placed aboard which the boat is capable of carrying safely under normal conditions.

(ii) The recommended number of persons consistent with the weight capacity of the boat and the presumed weight in pounds of those persons. The presumed weight per person may not be less than 150 pounds.

§ 99.3. Replacement plates.

If the manufacturer did not affix a plate, if a plate is damaged to the point of being not discernable, or if a plate is removed, the owner of the boat shall make application to the manufacturer or the United States Coast Guard for a replacement in accordance with 33 CFR Part 183, subpart B (relating to display of capacity information).

§ 99.4. Prohibited acts.

(a) A person may not tamper with or remove a capacity plate or any of the information shown.

(b) A person may not sell or otherwise transfer ownership of a boat subject to this chapter that does not comply with this chapter.

(c) A person may not operate a boat displaying an illegible capacity plate. Owners of these boats shall apply for a replacement plate as provided in § 99.3 (relating to replacement plates).

(d) A person may not operate a boat for which a capacity plate is required unless the boat displays the capacity plate.

(e) A manufacturer, dealer or other person may not offer a boat for sale for which a capacity plate is required unless a capacity plate is properly affixed.

On December 7, 2017, the Boating Advisory Board considered this proposal and unanimously recommended that the Commission approve the publication of a notice of proposed rulemaking containing the proposed addition of Chapter 99.

Briefer:

Colonel Corey Britcher, Director, Bureau of Law Enforcement

Recommendation:

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

B. Amendment to Section 111.3 (Armstrong County).

Commentary:

Keystone Lake is a 1000-acre impoundment in Armstrong County that provides water to the Keystone Generation Station, Chief Keystone Power, LLC. The property is leased to the Commission for fishery and aquatic resource management and recreational fishing and boating purposes. Under a prior agreement, a horsepower restriction for motorboats was set at 10 horsepower. The Commission adopted this restriction in a regulation in section 111.3(b).

In March of 2017, the lease agreement for this property was renewed. As part of that renewal, Chief Keystone Power requested that the 10 horsepower restriction be raised to 20 horsepower.

Staff therefore propose that § 111.3 be amended as follows:

§ 111.3. Armstrong County.

* * *

(b) *Keystone Lake*. The use of motors in excess of [10] 20 horsepower is prohibited.

On December 7, 2017, the Boating Advisory Board considered this proposal and unanimously recommended that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendment.

Briefer:

Colonel Corey Britcher, Director, Bureau of Law Enforcement

Recommendation:

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

Action:

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

C. Amendment to Section 111.16 (Clarion County).

Commentary:

At the September 2017 Commission meeting, Mr. Jeffrey Pfister approached the Commission on behalf of several landowners adjacent to Redbank Creek, Clarion County. The landowners are concerned for boating safety as the creek had been traditionally treated as a Slow No Wake (SNW) zone locally even without an official designation as such.

In recent years the amount of boating traffic entering Redbank Creek from Pool 9 on the Allegheny River has increased substantially. This traffic goes above SNW even where the creek narrows to less than 200 feet across, creating a safety hazard. The landowners have petitioned the Commission for Redbank Creek to be designated as a SNW zone.

Bureau of Law Enforcement staff from the Northwest Region were tasked with exploring the issue and to offer an opinion. Upon investigation, they determined that the creek does narrow and the entrance from the river quickly becomes congested with boats. The presence of an old railroad bridge also adds to the congestion as boats have to traverse under and between the bridge abutments to navigate safely.

Allegheny Land Trust, the owner of the bridge that is now part of a rail to trails, is concerned about the erosion damage to both the shore line and the bridge itself due to the excessive wake in a confined area. If the amendment is adopted, the Trust has agreed to allow signage to be posted on the bridge structure for the SNW zone.

Staff propose that § 111.16 be amended as follows:

§111.16. Clarion County.

(a) *Clarion River.* * * *

(b) Redbank Creek. Boats are limited to slow, no wake speed on the entire creek from its headwaters to its confluence with the Allegheny River.

On December 7, 2017, the Boating Advisory Board considered this proposal and unanimously recommended that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendments.

Briefer:

Colonel Corey Britcher, Director, Bureau of Law Enforcement

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 Mascharka 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.

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 34 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 E 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. 7146 (November 18, 2017) (Exhibit F). The Commission received a total of 57 public comments regarding the proposed designations – all 57 support all of 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 34 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 Hussar and seconded by Commissioner Brock to add 34 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 and Revisions.

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 and revisions to the section limits of two waters. 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 47 Pa. B. 7142 (November 18, 2017) (Exhibit H). The Commission received a total of 62 public comments regarding the proposed designations – all 62 support all of 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 99 new waters to the Commission's list of wild trout streams and revise the section limits of two waters as set forth in the notice of proposed designations. If approved, these additions and revisions 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 Hussar to add 99 new waters to the Commission's list of wild trout streams and revise the section limits of two waters as set forth in the notice of proposed designations. These additions and revisions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

C. Removal of Shenango River, Section 04, Mercer County, from the Stocked Trout Waters Open to Year-Round Fishing Program (58 Pa. Code § 65.19).

Commentary:

Shenango River, Section 04, extends 1.5 miles from the outlet of Shenango Dam downstream to the State Road 3025 Bridge (Buckeye Drive/North Walnut Street). Shenango River, Section 04, provides angling opportunities for diverse warm-water fisheries as well as for stocked hatchery-reared trout. Section 04 is currently designated by the Commission as a stocked trout water to open to year-round fishing to provide angling opportunities for resident warm-water fishes on a year-round basis. It is unlawful to fish in rivers and streams with this designation without a current trout/salmon permit.

In August 2017, the Pennsylvania Department of Environmental Protection issued a Do Not Eat consumption advisory for all fish residing in the Shenango River downriver from Shenango Dam. Subsequently, the Commission terminated all future fish stocking, including hatchery trout, in this reach of the Shenango River until further notice. However, the naturally reproducing warm-water fisheries present in the Shenango River, Section 04, continue to provide recreational angling opportunities. Given the stocking cessation of hatchery trout in Shenango River, Section 04, it is appropriate to remove the Stocked Trout Waters Open to Year-Round Fishing designation to eliminate the requirement of anglers to possess a current trout/salmon permit while fishing this portion of the Shenango River.

A notice of proposed designation was published at 47 Pa. B. 7653 (December 16, 2017) (Exhibit I). The Commission did not receive any public comments.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission remove the Shenango River, Section 04, from the Stocked Trout Waters Open to Year-Round Fishing Program (58 Pa. Code § 65.19). If approved, the designation will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Elliott to remove the Shenango River, Section 04, from the Stocked Trout Waters Open to Year-Round Fishing Program (58 Pa. Code § 65.19). The designation will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

D. Addition of Shenango River, Section 03, Mercer County, to the Stocked Trout Waters Open to Year-Round Fishing Program (58 Pa. Code § 65.19).

Commentary:

Shenango River, Section 03, extends 3.8 miles from the Hamburg Road Bridge (State Road 4012) at New Hamburg downstream to the pipeline crossing upstream from the Big Bend Access Area. Currently, this portion of the Shenango River is managed as a stocked trout water to provide seasonal recreational trout angling opportunities for adult hatchery-reared trout. Stocked trout waters are closed to all fishing from March 1st to 8:00 a.m. on the opening day of trout season.

Shenango River, Section 03, was added to the adult trout stocking program in 2017 to mitigate angling opportunities lost associated with the cessation of trout stocking at Shenango River, Section 04, due to a Do Not Eat consumption advisory issued by the Pennsylvania Department of Environmental Protection for all fish residing in the Shenango River downriver from Shenango Dam. In addition to angling opportunities for stocked trout, Shenango River, Section 03 also provides diverse warm-water angling opportunities. However, current regulations for stocked trout waters limit angling opportunities for resident warm-water species during the period between March 1st and the opening day of trout season. As such, designating Shenango River, Section 03, as a stocked trout water open to year-round fishing would allow for trout angling on a catch-and-release basis during the current closed period as well as for resident warm-water species, thus substantially increasing and diversifying recreational angling opportunities. Waters with this designation are managed with Commonwealth inland waters regulations for the remainder of the year.

A notice of proposed designation was published at 47 Pa. B. 7653 (December 16, 2017) (Exhibit I). The Commission did not receive any public comments.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission add the Shenango River, Section 03, to the Stocked Trout Waters Open to Year-Round Fishing Program (58 Pa. Code § 65.19). If approved, the designation will go into effect upon publication in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Kauffman to add the Shenango River, Section 03, to the Stocked Trout Waters Open to Year-Round Fishing Program (58 Pa. Code § 65.19). The designation will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried.

**LAW ENFORCEMENT
FINAL RULEMAKING**

A. Amendment to Section 65.14 (Catch and Release Fly-fishing Only).

Commentary:

In an ongoing attempt to simplify regulations, staff are continually looking at ways to improve upon current regulations. One area that has come into question recently is the 18 feet maximum length of leader material or monofilament line allowed in catch and release fly-fishing only areas.

In examining this question, it was brought to staff's attention that this limitation also excludes several acceptable fly-fishing practices such as European Nymphing. Law enforcement staff indicate that rarely is the length of leader material measured as it does not create significant problems streamside. Based on these findings, the Commission proposed amending § 65.14 to remove the reference to a maximum of 18 feet.

A notice of proposed rulemaking was published at 47 Pa. B. 5786 (September 16, 2017) (Exhibit J). The Commission did not receive any public comments regarding the proposal.

Briefer:

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

Recommendation:

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

Action:

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

PROPOSED RULEMAKING

B. Amendment to Section 53.11 (Off-highway Vehicles and Snowmobiles).

Commentary:

Section 53.11(c) of the Commission's regulations allows persons who are exempt from the fishing license requirement under section 2709(b) of the Fish and Boat Code (relating to exemptions from license requirements) and persons who are deprived of the use of a leg or both legs in a manner that significantly limits mobility to apply for a permit to use an off-road motorized vehicle on Commission property for the purpose of gaining access to fishing or boating opportunities. A recent review of this section and the Commission's application disclosed that both are in need of updating so that they meet current requirements of the Americans with Disabilities Act (ADA) and U.S. Department of Justice regulations implementing the requirements of the ADA. In addition, to give the Commission more flexibility in adapting to future changes in the law, staff propose removing certain language from the regulation and instead relying on the application form and the conditions stated in the permit. Staff also propose housekeeping changes to subsection (a).

Staff therefore propose that § 53.11 be amended as follows:

§ 53.11. Off-highway vehicles **[and]**, snowmobiles, **and mobility devices**.

(a) *General rule.* Except as provided in subsection (c), the use of off-road motorized vehicles[, **including trail bikes, Tote Gotes, all terrain vehicles (ATVs), air cushioned vehicles, track vehicles, hydrofoils and the like,**] is prohibited on Commission-owned or -controlled property. **As used in this subsection, the term, "off-road motorized vehicle," means a motorized vehicle specifically designed for this use. The term includes but is not limited to trail bikes, Tote Gotes, all terrain vehicles (ATVs), air cushioned vehicles, track vehicles and hydrofoils. It does not include a vehicle licensed or registered for on-road use, such as a 4 by 4 sport utility vehicle and the like.**

(b) *Snowmobiles.* * * *

(c) *Persons with disabilities.*

(1) *Motorized wheelchairs.* * * *

(2) *Other [motorized vehicles] power-driven mobility devices.* The Executive Director or a designee may permit persons [**exempt from the fishing license requirement under section 2709(b) of the code (relating to exemptions from license requirements) and persons who are deprived of the use of a leg or both legs in a manner that significantly limits mobility] who have a disability for which they need to use other power-driven mobility devices (OPDMD) to use [**an off-road motorized vehicle**] **them** on Commission property for the purpose of gaining access to fishing or boating opportunities under the following conditions:**

(i) The person applies in writing for permission **on the form provided by the Commission** [**stating the nature of the disability, the description of the vehicle and the**

areas for which use is proposed. The application should be sent to] and sends the application to:

Director, Bureau of Law Enforcement, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. **[The application shall include a statement from a physician or a chiropractor licensed to practice in this Commonwealth describing the disability and certifying that the applicant meets the requirements of this section.]**

(ii) [The vehicle is operated by the person with a disability or a person identified in the application to operate the vehicle for the person with disability.] The person who has received permission under subparagraph (i) complies with the written conditions of the permit.

(iii) [The person agrees that he will be responsible for the operation of the vehicle, the suitability of the site for the operation, and for damages caused by operation of the vehicle.] For purposes of this paragraph, the term, OPDMD, is defined as any mobility device, other than a wheelchair, powered by battery, fuel or other engine that is used by persons with a mobility disability for the purpose of locomotion. This term includes golf carts, electronic personal assistance mobility devices such as the Segway or any mobility device designed to operate in areas without defined pedestrian routes, regardless of whether it is designed primarily for use by persons with a mobility disability.

[(iv) The person acknowledges that the Commission does not represent that Commission properties, except those specifically marked and designated for access by persons with disabilities, are suitable for any such use.

(d) As used in this section, the term, “off-road motorized vehicle,” means a motorized vehicle specifically designed for this use. The term does not include a vehicle licensed or registered for on-road use, such as a 4 by 4 sport utility vehicle and the like.]

Briefer:

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

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 Elliott and seconded by Commissioner Small 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.

Other New Business

None.

Time and Place of April 2018 Commission Meeting

The next meeting will be held on April 23-24, 2018 in Harrisburg.

Adjournment

A motion was made by Commissioner Lewis to adjourn the meeting at approximately 12:15 p.m.
Motion carried.