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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Agenda

The 146th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday, April 25 at the Pennsylvania Fish and Boat Commission headquarters, 1601 Elmerton Avenue, Harrisburg, PA 17110.

The public session for review of this agenda began on April 25, 2022 at approximately 9:30 a.m.

Call to Order

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

Roll Call

Members Present

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

Public Comments to Commissioners and Staff

Brian Cooper, McKean Township supervisor, thanked the Commission for its efforts on behalf of angling and boating. Jeremiah Weber provided commentary on the proposed bowfishing regulation and asked Commissioners to make additional changes to the wording and to vote based upon verified facts and documented complaints. Tom Long commented on improving muskellunge fishing east of the Susquehanna River.

Staff Recognition

The Bureau of Law Enforcement presented awards for 2021 Officer of the Year, Waterway Conservation Officer (WCO) Chad Doyle; the Top Gun Award to WCO Sean Lake; the Gerald L. Greiner Environmental Protection Award to WCO Rachael Thurner-Diaz; and a Lifesaving Award to WCO Justin Boatwright.

Presentation by Governor's Youth Council

Students, along with their advisor Derek Eberly, from the Governors Youth Council on Hunting, Fishing, and Conservation spoke and gave a presentation to the Board of Commissioners about their experiences during their field trip to Erie and visit to the Huntsdale State Fish Hatchery. The group

thanked the Board and Commission staff for the opportunity to assist in field work and will encourage other students to explore educational activities provided by the Commission.

Review and Approval of Minutes from the January 24, 2022 Meeting

A motion was made by Commissioner Anderson and seconded by Commissioner Small to approve the January 24, 2022 minutes as written. Motion carried by unanimous vote.

Executive Director's Report

Executive Director Timothy Schaeffer discussed numerous programs and projects that staff are currently focused on. A Strategic Plan update was provided to the Commissioners.

Reports of Commissioner Committees

Fisheries and Hatcheries (Commissioner Pastore)

The Fisheries and Hatcheries Committee met on Monday, March 28 at 10:00 a.m. at the Centre Regional Office in Bellefonte to discuss the Chapter 71 rewrite, fish health protocols, stocking authorization, fall trout stocking program overview, and wild trout protections.

Law Enforcement (Commissioner Gibney)

The Law Enforcement Committee met on Friday, April 8 at 2:00 p.m. at the Tom Ridge Environmental Center in Erie to discuss agenda items for the April 2022 quarterly Commission meeting and revocations.

Announcement of Executive Session

Chief Counsel Wayne Melnick announced that an executive session was held on April 25 at approximately 7:45 a.m. to discuss personnel matters, potential real estate acquisitions, and pending litigation.

Announcement of Temporary Changes to Fishing Regulations (Exhibit A)

Chief Counsel Wayne Melnick explained the temporary changes to fishing regulations as described in Exhibit A of this agenda regarding Walnut Creek Marina Basin in Erie County.

FISHERIES

PROPOSED RULEMAKING

A. Amendments to 58 Pa. Code Chapter 71 (PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS) and Chapter 73 (TRANSPORTATION OF LIVE FISH INTO THIS COMMONWEALTH).

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) regulates the introduction and transportation of fish into the Commonwealth through 58 Pa. Code Chapters 71 and 73. In addition, both chapters contain provisions concerning artificial propagation, stocking of Commission fish, prohibited species, triploid Grass Carp, and species susceptible to viral hemorrhagic septicemia (VHS). Staff have identified an opportunity to update the regulations to address current conservation challenges, improve fisheries management and fish health, and simplify the chapters for consistency, flow, and ease. Therefore, the addition of new provisions, retention of existing language of several provisions, and the consolidation of Chapters 71 and 73 into a single chapter would accomplish the goals set forth above.

In the Commonwealth of Pennsylvania, thousands of lakes, ponds, and stream sections are stocked by private individuals each year with fish purchased from commercial fish producers and dealers. To properly manage and protect the Commonwealth's aquatic resources while addressing increased risks associated with aquatic invasive species and pathogens, there is a need to ensure that all proposed stockings of fish into waters of the Commonwealth are reviewed, considered for their ecological risk, and where appropriate, authorized for stocking. As such, Commission staff have undertaken an effort to improve management, oversight, and regulation of fish and aquatic life transportation and stocking in Pennsylvania through the development of a stocking authorization application and review system, including fish health requirements.

In the United States, over 30 states have requirements (stocking authorizations or regulations) for determining how and when fish are stocked in various waters. All states in the Northeast, except Pennsylvania, require individuals to obtain some form of authorization or permission to stock fish. Section 2102 of the Fish and Boat Code (30 Pa.C.S.) allows the Commission to develop rules and regulations concerning fish and fishing in waters of the Commonwealth, and for the protection, preservation, and management of fish and fish habitat. As such, regulations may be developed for the transport, introduction, import, and export of fish, as well as inspection for disease. Currently, 58 Pa. Code § 73.1 of the existing regulations addresses this topic; however, there is need for additional regulatory authority to ensure adequate protection, preservation, and management of aquatic resources are in place.

In addition, staff have created a regulatory section that prohibits the release or disposal of live bait fish into waters of the Commonwealth. An individual may continue to collect live bait fish for angling purposes, provided that a bait fish species is not transferred into another drainage the species is not already present. Likewise, to prevent the spread of invasive or unwanted species, staff have added New Zealand Mud Snail and aquatic plants or the seeds of such plants that have been designated by the Pennsylvania Department of Agriculture, Controlled Plant and Noxious Weed Committee to the prohibited species list. In conjunction with ongoing development of a stocking authorization application and review system, Commission staff have also developed a fish health inspection protocol to provide additional protection to the Commonwealth's aquatic resources, prevent the introduction of

serious pathogens not known to be present in the Commonwealth, and to control the spread and the prevalence of pathogens already present in the Commonwealth. The Commission recognizes that a stocking authorization system, fish health inspection protocol, and accompanying regulations will result in changes to the stockings undertaken by private individuals and the aquaculture industry. However, failure to regulate fish stocking and fish health will increase the likelihood of negative impacts to aquatic resources from unauthorized transportation and introduction of fish into the Commonwealth, which could lead to serious ecological and financial damages to the Commonwealth's aquatic resources and aquaculture industry.

In addition to stocking and fish health necessities, watercraft inspection requirements can prevent the spread of aquatic invasive species by watercraft throughout the Commonwealth. For example, in 2021, invasive Zebra Mussels were discovered in Raystown Lake in Huntingdon County likely introduced by a watercraft. All boaters (with limited exceptions) will be required to drain live wells and bilges by removing the drain plug before transporting watercraft away from a water of the Commonwealth. Moreover, boaters will be prohibited from placing a watercraft, trailer, or related equipment into a water of the Commonwealth if aquatic macrophytes, plants, or prohibited species are present. As of 2018, 19 states have created watercraft inspection or decontamination programs.

Besides the creation of new regulatory provisions as outlined above, staff have retained several existing Chapters 71 and 73 sections relating to closed system propagation, introduction and transportation of VHS-susceptible species, stocking of designated waters and Commission fish, triploid Grass Carp requirements, and prohibited species. Through the inclusion of new sections and the retention of existing language, staff believe a new, consolidated Chapter 71a provides adequate protection for the Commonwealth's aquatic resources in relation to current conservation challenges, aligns with the regulations of several neighboring states, and provides improved flow and clarity for regulatory interpretation.

To facilitate the development and implementation of a stocking authorization application and review system, fish health requirements, and watercraft inspection necessities, staff propose that 58 Pa. Code Chapters 71 and 73 be amended as follows into a consolidated Chapter 71a.

CHAPTER 71. INTRODUCTION OF FISH INTO COMMONWEALTH WATERS.

It is proposed that Chapter 71 be removed in its entirety and reflected as [RESERVED]. The following sections are proposed to be added and are printed regular type to enhance readability.

CHAPTER 71a. PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS

SUBCHAPTER A. SCOPE AND ADMINISTRATIVE PROVISIONS

§ 71a.1. Authority and definitions. - 2102

- (a) *Authority.* - Pursuant to 30 Pa.C.S. § 2102, the Commission may promulgate such rules and regulations to preserve, protect, and enhance the fishery interests of the Commonwealth of Pennsylvania.

(b) *Definitions.* - The following words, when used in this chapter, have the following meanings:

- (1) “*Diploid.*” Having two haploid sets of homologous chromosomes.
- (2) “*Triploid.*” Having three haploid sets of homologous chromosomes.
- (3) “*Genetically Modified.*” An organism whose genome, chromosomal, or extrachromosomal, is modified permanently and heritably, using recombinant nucleic acid techniques, and includes the progeny of any genetically modified organism derived therefrom.
- (4) “*Department.*” The Pennsylvania Department of Agriculture.

§ 71a.2. General. - 2102(c)

No species of fish shall be introduced into waters of this Commonwealth (except baited on a hook for angling purposes) without an approved stocking authorization from the Commission, except as provided in §§ 71a.5(a)(1) and 71a.13(a). For the purposes of this subsection, “waters of this Commonwealth” does not include waters contained within a property or premise of a propagation facility licensed under the Pennsylvania Aquaculture Development Law (3 Pa.C.S. §§ 4201-4223). All fish health certification requirements provided in § 71a.6 shall be adhered to, when applicable.

SUBCHAPTER B. PROPAGATION OF FISH IN THE COMMONWEALTH

§ 71a.3. Fish propagation and introduction list. - 2102(c)

- (a) *General.* - The Bureau of Fisheries will maintain a list of species by watershed for which the Department may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The Director of the Bureau of Fisheries may update or modify the list of authorized species by adding species to, or deleting species from, the list as necessary to provide for the protection and management of fish and fishing in this Commonwealth. The Commission will provide the list to the Department on or before January 31 each year and whenever the Commission updates or modifies the list. Copies of the list of authorized species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823.
- (b) *Grass Carp.* - It is unlawful to propagate Grass Carp (*Ctenopharyngodon idella*) (diploid or triploid) in this Commonwealth.
 - (1) The introduction or importation of Grass Carp (white amur) into the Commonwealth or waters of this Commonwealth is prohibited, except that triploid Grass Carp may be introduced as provided in § 71a.10 (relating to triploid Grass Carp).

- (c) *Genetically modified fish.* - A genetically modified fish shall not be propagated and introduced into waters of this Commonwealth, without an approved stocking authorization from the Commission.

§ 71a.4. Closed system propagation. - 2102(c)

- (a) *Closed (no discharge) system.* - A propagating system may be designated as a closed system only if all of the following criteria are met:

- (1) There will be 100% recycling water as normal operations.
- (2) Closed systems will be housed indoors in a structure enclosed by solid walls, floor, and roof. For purposes of this subsection, a wall, floor, or roof will be considered “solid” if it is constructed and maintained to prevent unauthorized human or animal intrusions into the closed system facility and to prevent release or escape of aquatic organisms from the closed system.
- (3) Water can be added to the system only for making up evaporative loss, cleaning, and fish harvesting or to reduce toxic ammonia/nitrates by diluting.
- (4) The system does not discharge water into waters of this Commonwealth.
- (5) No live fish or live fish eggs will be allowed to escape with water discharges. Accidental spillage of live fish or live fish eggs (including truck loading, and the like) will be contained within the facility in a manner that will prevent fish and fish eggs from escaping into the waters of this Commonwealth.
- (6) The system operator is registered with the Department. The Department will notify the Commission when it receives an application to register a proposed closed system, and the Commission may, within 30 days of receipt of the notice, inspect the system to ensure that it is designed and constructed in a manner to prevent escapement of live fish or live fish eggs into the waters of this Commonwealth. Closed systems registered under this subsection shall, in addition to an initial inspection, be subject to inspection at any time to ensure compliance with the requirements of this section and the Commission may issue an order to suspend operations of any closed system when an inspection discloses that it is not in compliance.
- (7) The Commission will invite the Department’s Aquaculture Advisory Committee or a subcommittee thereof to draft and periodically update construction guidelines for closed system propagators to help them ensure enclosed facilities prevent escape of aquatic organisms into the waters of this Commonwealth. These guidelines will assist registered propagators in the design, construction, and maintenance of closed systems and will assist the Commission in inspecting these systems.

- (b) *Systems with discharges rendered incapable of containing living organisms.* - A system whose discharge of water is rendered incapable of containing self-perpetuating living organisms shall be registered with the Department. The Department will notify the Commission when it receives an application to register a proposed system under this subsection, and the Commission may, within 30 days of receipt of the notice, inspect the system to ensure that it is designed and constructed so that its discharge is rendered incapable of containing live fish or live fish eggs. Systems registered under this

subsection shall, in addition to an initial inspection, be subject to inspection at any time to ensure compliance with this section and the Commission may issue an order to suspend operations of any system when an inspection discloses that it is not in compliance. The registration of this system may include any species of fish with the approval of the Department.

- (c) *Escape of fish into waters of this Commonwealth.* - It is unlawful for an operator of any system registered under subsection (a) or (b) to allow fish to escape into the waters of this Commonwealth.
- (d) *Written plans for discharge.* - An operator of any system registered under subsection (a) or (b) shall develop, maintain, and make available for immediate inspection by the Commission and the Department upon request a written plan for containing or treating discharge in the event of a discharge system failure.
- (e) *Notification in event of discharge.* - An operator of any system registered under subsection (a) or (b) shall notify both the Commission's Director of the Bureau of Fisheries and the Department's Aquaculture Coordinator immediately in the event of a discharge system failure that is likely to contain viable living organisms. A failure to notify the Commission under this subsection shall be a violation.

SUBCHAPTER C. FISH INTRODUCTION AND HEALTH MANDATES

§ 71a.5. Stocking authorization from Commission. - 2102(c)

- (a) *General.* - No species of fish shall be introduced, placed, or stocked (except baited on a hook for angling purposes) into waters of this Commonwealth without an approved stocking authorization from the Commission. For the purposes of this subsection, "waters of this Commonwealth" does not include waters contained within a property or premise of a propagation facility licensed under the Pennsylvania Aquaculture Development Law (3 Pa.C.S. §§ 4201-4223). Inspection for species composition or presence of disease, or both, will be required at the discretion of the Commission on all lots of fish transported into this Commonwealth. Persons authorized by the Commission to stock fish shall ensure water used to transport fish does not contain nonnative, injurious, or harmful pathogens, or any other fish or aquatic species other than those expressly authorized. An electronic or hard copy of the authorization shall be present at the approved location and date during the time fish are stocked. In the event the authorized person(s) is not present during the time of stocking, an entity stocking fish on behalf of the authorized person shall possess a copy of the authorization. The Commission retains the right to amend an issued stocking authorization for fisheries management or fish health purposes.
- (1) Fish not on a Commission prohibited species list and raised and sold for the intended uses of indoor aquaria; fee fishing operations located on the same property as a propagation facility licensed under 3 Pa.C.S. §§ 4201-4223; and outdoor ornamental ponds not discharging into a water of this Commonwealth will not require a stocking authorization. Species obtained through or originating from pet stores or tropical and ornamental fish dealers shall not be released into waters of this Commonwealth.

- (b) *Stocking Authorization Applications.* - Applications will be made on forms prescribed by the Commission. In addition to the information required by 1 Pa. Code § 35.2 (relating to contents of applications), applicants shall provide other information as may be required by the Commission to fully review the application. Incomplete applications will be returned without action.
- (c) *Staff review.* - Commission staff will administratively review stocking authorization applications filed with the Commission. If, after administrative review, staff conclude the proposed stocking activity is unlikely to result in adverse impacts to fish, fish habitat, or fishing, the stocking authorization may be approved. If, after administrative review of the application, staff determine the proposed stocking activity creates a likelihood of adverse impacts to fish, fish habitat, or fishing, staff may amend an application for fisheries management or fish health purposes in order to approve a proposed stocking activity. If no such amendment is possible, a stocking authorization may be denied.
- (d) *Appeals.* - A party aggrieved by a staff decision under this subchapter may appeal to the Commission in the manner provided by 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).
- (e) *Procedure.* - The Commission will designate one or more presiding officers to conduct hearings on issuance or denials of a stocking authorization. Part II of 1 Pa. Code (relating to general rules of administrative practice and procedure) applies to proceedings under this subchapter. The presiding officer will file a proposed report with the Commission as provided in 1 Pa. Code § 35.202 (relating to proceedings in which proposed reports are prepared). A party filing exceptions to a proposed report may, by motion, request the opportunity to present oral argument to the Executive Director. If the motion is granted, oral argument will ordinarily be scheduled before the Executive Director. Oral argument to the Executive Director will not exceed 15 minutes per party. This subsection supplements 1 Pa. Code § 35.214 (relating to oral argument on exceptions). The Commission's chief counsel will either represent the staff in proceedings before the presiding officer or the Executive Director, or will advise and counsel the Executive Director on its final decision.
- (f) *Final agency action.* - After considering the entire record in the case, including an oral argument permitted before the Executive Director, the Executive Director will grant or deny the requested stocking authorization. The Executive Director's decision will be forwarded to the parties in writing and will constitute the agency adjudication on the matter under review.
- (g) *Exceptions.* - All exceptions from a stocking authorization will require prior written approval from the Commission.
- (h) *Implementation Date.* - Beginning on January 1, 2025, the provisions of § 71a.5 (a) – (g) shall be effective. From January 1, 2023 through December 31, 2024, all persons stocking fish in waters of this Commonwealth shall complete and send a Notice of Stocking to the Commission. Such Notice shall be on a form provided by the Commission and possessed by a person(s) while a stocking occurs.

§ 71a.6. Fish health certificate requirements. - 2102(a); 2102(c)

- (a) A fish health certificate may be required for fish being imported into this Commonwealth and shall certify fish intending to be introduced, placed, or stocked in waters of this Commonwealth are free of specific diseases, pathogens, or parasites determined by the Commission to be of a risk to the fishery interests of the Commonwealth. The Commission will consult with the Department for potential testing of dangerous transmissible diseases of fish.
- (b) The Commission shall develop a *Fish Health Inspection Protocol for Importation into the Commonwealth and Introduction into Waters of this Commonwealth* (Protocol). The Commission shall determine which diseases, pathogens, or parasites are required for testing for species of fish intending to be introduced into waters of this Commonwealth. The Commission will consult with the Department for potential testing of dangerous transmissible diseases of fish. Such fish health certification requirements and procedures shall be modified or updated by the Commission, as necessary. When updates to the Protocol occur, the Commission shall publish the Protocol as a Notice in the *Pennsylvania Bulletin* and notify the Department of such changes.
- (c) The Commission may require testing for intrastate introduction, placement, or stocking of fish in order to prevent the introduction or spread of specific diseases, pathogens, or parasites that pose a risk to the fishery interests of the Commonwealth. The Commission will consult with the Department for potential testing of dangerous transmissible diseases of fish.
- (d) The following fish health requirements apply to the importation of fish into the Commonwealth of Pennsylvania:
 - (1) Fish and fish eggs being imported into the Commonwealth must originate from sources with a copy of the fish health certification report for all applicable fish being stocked as indicated in the Protocol, or a copy of the fish health certification report for the artificial propagation facility if the fish are from a facility that has been certified as having tested negative for all applicable fish pathogens, unless the fish meet one of the requirements below:
 - (i) The fish are being transported through the Commonwealth, the shipping container remains bio-secure in transit, and the fish are accompanied by documentation stating the point of origin of the fish and the location outside of the Commonwealth where they are to be delivered.
 - (ii) The fish are being transported to facilities located within the Commonwealth for testing and scientific purposes, the persons transporting the fish have taken adequate measures to prevent escape and to disinfect discharged water and equipment used in the transportation of the fish, and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination where they are to be delivered for testing or scientific purposes.

- (iii) The fish are being transported to a slaughter facility, processing plant, or restaurant within the Commonwealth, and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination where they are to be delivered for slaughter, processing, or consumption.
 - (iv) The fish are dead, recreationally caught fish that are being transported solely for the purpose of human consumption or taxidermy.
- (2) Specific testing requirements may vary depending on the species of fish, geographical location of the shipping facility or source, and the final designated end use of the fish being imported into the Commonwealth.
- (3) Documentation of testing results shall remain with the fish during transport and produced upon request.
- (e) The following fish health requirements apply to the introduction of fish into waters of this Commonwealth:
 - (1) Fish being introduced into waters of this Commonwealth must originate from sources that comply with the fish health inspection process described in the Commission's Protocol.
 - (2) Specific testing requirements may vary depending on the species, origin, and final location of where the fish are being introduced into waters of this Commonwealth.
 - (3) The stocking authorization applicant or their agent shall have in their possession, and present upon the request of an officer authorized to enforce the code, a copy of the fish health certification report for all applicable fish being stocked as indicated in the Protocol and the approved authorization; or the approved authorization and a copy of the fish health certification report for the artificial propagation facility if the fish are from a facility that has been certified as having tested negative for all applicable fish pathogens as indicated in the Protocol and authorization.
 - (4) Fish being introduced into waters of this Commonwealth must be free of clinical signs of disease such as visible lesions, hemorrhaging, and visible fungi.
- (f) *Implementation Date.* - The Commission grants a two-year period for full implementation of the Protocol through December 31, 2024. Beginning on January 1, 2025, the provisions of § 71a.6 and the Protocol shall be effective. All existing gill lice certification requirements required for Special Activity Permits issued by the Commission and the requirements in § 71a.7 shall be adhered to and in full effect on January 1, 2023.

§ 71a.7. Introduction or transportation of VHS-susceptible species of fish. - 2102(c)

- (a) For purposes of this section, the following terms have the following meanings:
 - (1) Species of fish that are susceptible to viral hemorrhagic septicemia (VHS) are those species that the Animal and Plant Health Inspection Service of the United States

Department of Agriculture (APHIS) designates by order or the Commission defines by notice in the *Pennsylvania Bulletin*.

- (i) The term “VHS-susceptible species” includes fish that are dead or alive, preserved or unpreserved, and the parts thereof.
 - (ii) The term “VHS-susceptible species” does not include the eggs of these species.
- (2) A VHS-affected or VHS-at risk state includes Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin or other state that APHIS later designates by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.
- (3) A VHS-affected or VHS-at risk region includes the Canadian provinces of Ontario and Quebec or other region that APHIS later designates by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.
- (b) *Intrastate transportation.* - It is unlawful to introduce, transport, or cause the transportation of VHS-susceptible species of fish from the portion of the Lake Erie watershed in this Commonwealth into other watersheds of this Commonwealth, except in accordance with § 69.3(b) and (d) (relating to transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed).
- (c) *Interstate transportation.* - It is unlawful to introduce, transport, or cause the transportation into the waters of this Commonwealth VHS-susceptible species of fish from an affected or at-risk region or state unless the fish meet the requirements below:
 - (1) The fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Department and approved by the Commission. Persons transporting these fish shall have in their possession, and present upon the request of an officer authorized to enforce the code, a copy of the fish health certification reports for all VHS-susceptible fish being transported or a copy of the fish health certification report for the artificial propagation facility if the fish are from a facility that has been certified as having tested negative for VHS.
 - (2) The fish are being transported through this Commonwealth and the shipping container (tank, trailer, holding vessel, or other container) remains biosecure in transit and the fish are accompanied in transit by documentation stating the point of origin of the fish and the location outside of this Commonwealth to which they are to be delivered.
 - (3) The fish are being transported to facilities located within this Commonwealth for testing and scientific purposes and the persons transporting the fish have taken adequate measures to prevent escape and to disinfect discharged water and equipment used in the transportation of the fish and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for testing or scientific purposes.

- (4) The fish are being transported to a slaughter facility, processing plant, or restaurant within this Commonwealth and the fish are accompanied in transit by documentation stating the point of origin of the fish and the destination to which they are to be delivered for slaughter, processing, or consumption.
- (5) The fish are dead, recreationally caught fish that are being transported solely for the purpose of human consumption.
- (d) *International movement.* - It is unlawful to import or cause the importation of VHS-susceptible species of fish into this Commonwealth from a VHS-affected or VHS-at risk region, except as follows: VHS-susceptible species of dead fish may be imported into the United States if the fish are recreationally caught and are for human consumption.

§ 71a.8. Stocking of designated waters. - 2102(a)

It is unlawful to introduce, place, or stock fish in waters that have been designated by the Commission as catch and release, wilderness trout, or wild trout management waters except with the express written consent of the Executive Director or his designee. This section does not prohibit a person from returning fish unharmed to the waters from which they were caught or taken.

§ 71a.9. Improper stocking of Commission fish. - 2102(a)

In stocking fish reared or salvaged by the Commission or a cooperative nursery recognized by the Commission, the following acts are prohibited:

- (1) Failure to stock fish in waters designated by Commission personnel.
- (2) Diversion of fish to be stocked to waters not open or accessible to free public fishing.
- (3) Mishandling or misuse of fish being stocked in a manner so as to damage or destroy the fish.

§ 71a.10. Triploid Grass Carp. - 2102(c), 2904(a)

- (a) *Policy.* - As a limited exception to the prohibition of Grass Carp (white amur) in this Commonwealth, it is the policy of the Commission to permit triploid Grass Carp, certified as such by the United States Fish and Wildlife Service (USFWS) and procured from a producer participating in the USFWS certification program, to be introduced into Commonwealth waters and imported and transported into this Commonwealth in accordance with this section.
- (b) *Status.* - The triploid Grass Carp (white amur) (*Ctenophryngodon idella*) is not a game fish.
- (c) *Permit required.*
 - (1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid Grass Carp (white amur) or introducing them into Commonwealth waters and for importing or transporting triploid Grass Carp into this Commonwealth

to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pond owner, landowner, or other person who wishes to possess triploid Grass Carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid Grass Carp in the waters, obtain from the Commission a triploid Grass Carp possession/introduction permit for a fee of \$85. A person who wishes to import triploid Grass Carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid Grass Carp importation/transportation permit for a fee of \$85. Permits shall be applied for on forms supplied by the Commission. Applications for permits may be obtained from the Triploid Grass Carp Manager, Bureau of Fisheries, 595 East Rolling Ridge Drive, Bellefonte, Pennsylvania 16823. All live triploid Grass Carp imported and intended for introduction into waters of this Commonwealth shall be in compliance with § 71a.6.

- (2) A person aggrieved by a Commission staff action on a permit application may appeal under Chapter 51, Subchapter E (relating to permit procedures) and 1 Pa. Code Part II (relating to the general rules of administrative practice and procedure).
- (d) *Dealers and importers.* - In addition to the triploid Grass Carp permit required by subsection (c), dealers and importers shall obtain and maintain all licenses, permits, and registrations required by the Department for the sale or transportation of fish.
- (e) *Restrictions on introduction of triploid Grass Carp.*
 - (1) The Commission will not approve the stocking or release of triploid Grass Carp into a water body wholly or partially in this Commonwealth that is currently known to be inhabited by a species of animal or plant currently listed as status endangered, threatened, candidate, or other special concern status, by a state or Federal agency with jurisdiction for the species, without prior written approval for the stocking or release by the agencies which classified the species as endangered, threatened, candidate, or of special concern.
 - (2) The Commission will not approve stocking or release of triploid Grass Carp into wetlands under Federal or state jurisdiction except in compliance with applicable Federal or state regulations including, when required, the written approval for the stocking or release by the involved agencies.
 - (3) The Commission will not approve stocking or release of triploid Grass Carp into a body of water more than 5 acres in surface area until the applicant submits an environmental inspection report prepared by a biologist or fisheries or environmental scientist acceptable to the Commission. The environmental inspection report shall include a certification that the preparer has personally inspected the pond or body of water and that the stocking of triploid Grass Carp will have no adverse environmental impacts on the waters where stocked or waters upstream or downstream of the waters. The report shall describe the measures taken by the applicant to prevent escape of the Grass Carp into waters upstream or downstream of the stocked waters. The environmental inspection report shall also include additional information as the Commission may require.
 - (4) The Commission may require an applicant for a permit to stock triploid Grass Carp in a pond or body of water of 5 or less acres in surface area to submit an environmental

inspection report in the format described in Paragraph (3) when the staff's review of the application indicates that further inspection or review of the proposed stocking is appropriate under the circumstances.

- (5) The issuance of permits under this section will be subject to the public notice and comment provisions of Chapter 51, Subchapter E.

(f) *Prohibited acts.*

- (1) It is unlawful to transport, import, possess, or introduce triploid Grass Carp in this Commonwealth unless the person possessing, transporting, importing, or introducing the Grass Carp obtains and maintains required permits, possesses a valid bill of sale or bill of origin from a producer participating in the USFWS triploid Grass Carp certification program, and the Grass Carp are certified by the USFWS to be triploid Grass Carp. Permits shall be displayed upon request to an officer authorized to enforce the code or this part. The certification of triploid status shall be obtained from the producer at the time of purchase.
- (2) Persons, organizations, or companies are prohibited from giving, trading, or exchanging triploid Grass Carp except to persons holding valid triploid Grass Carp possession/introduction permits.

- (g) *Revocation or suspension of permits.* - Failure to abide by regulations, permits, and permit conditions pertinent to triploid Grass Carp possession, transportation, and introduction may result in suspension or revocation of the applicable permits in accordance with Chapter 51, Subchapter C (relating to suspension, denial or revocation of licenses, permits, registrations or privileges). Revocation or suspension shall be in addition to other applicable penalties provided by law or regulation.

SUBCHAPTER D. PROHIBITED SPECIES, AQUATIC INVASIVE SPECIES, AND VECTOR PREVENTION

§ 71a.11. Prohibited species. - 2102(c)

- (a) It is unlawful to introduce, import, possess, or transport in or through this Commonwealth, or the waters of this Commonwealth, the following species:

- (1) Snakehead (all species).
- (2) Black Carp (*Mylopharyngodon piceus*).
- (3) Bighead Carp (*Hypophthalmichthys nobilis*).
- (4) Silver Carp (*Hypophthalmichthys molitrix*).
- (5) Zebra Mussel (*Dreissena polymorpha*).
- (6) Quagga Mussel (*Dreissena rostriformis bugensis*).
- (7) New Zealand Mud Snail (*Potamopyrgus antipodarum*).
- (8) Round Goby (*Neogobius melanostomus*).

- (9) Freshwater Tubenose Goby (*Proterorhinus semilunaris*).
- (10) European Rudd (*Scardinius erythrophthalmus*).
- (11) Crayfish (all live species).
 - (i) Except when they are either:
 - (A) Possessed and used as bait on, in or about the water from which taken.
 - (B) Possessed or imported for testing and scientific purposes or restaurant consumption, adequate measures have been taken to prevent their escape and they are accompanied by documentation stating the point of origin and the destination to which they are to be delivered.
 - (C) Dead with the head removed or salted and dried for angling purposes.
- (12) Ruffe (*Gymnocephalus cernua*).
- (13) Any aquatic plant or the seeds of such plant that have been designated by the Pennsylvania Department of Agriculture, Controlled Plant and Noxious Weed Committee, under the act related to Controlled Plants and Noxious Weeds (Act) (3 Pa.C.S.A. §§ 1501-1562), as a noxious weed or controlled plant, without the proper general or individual permit as required by sections 1512 (related to permits), 1513 (related to general permits), and 1514 (related to individual permits) of the Act.
- (b) *Exceptions.* Species in subsection (a) (1-4) may be possessed in the Commonwealth for the purposes of consumption or slaughter only. All other exceptions for species in subsection (a) shall require prior written approval from the Commission's Executive Director.

§ 71a.12. Watercraft requirements and prohibitions. - 2102(c)

- (a) *General.* - No person shall place or attempt to place a watercraft, trailer, or water-related equipment into waters of this Commonwealth, including aquatic plant harvesting or control equipment that has aquatic macrophytes, plants, or prohibited invasive species attached, in whole or in part, except as provided in this section.
- (b) *Removal and confinement.*
 - (1) A waterways conservation officer may order:
 - (i) The removal of aquatic macrophytes, plants, or prohibited invasive species listed in § 71a.11(a) from a watercraft, trailer, or water-related equipment before being transported or before it is placed into waters of this Commonwealth;
 - (ii) Confinement of the watercraft at a mooring, dock, or other location until the related equipment is removed from the water;

- (iii) Removal of watercraft from a water of this Commonwealth to remove prohibited invasive species if the water has not been listed by the Commission as being infected with that species;
 - (iv) A prohibition on placing a watercraft into a water of this Commonwealth when the watercraft has aquatic macrophytes, plants, or prohibited invasive species attached in violation of subsections (a) or when water has not been drained or the drain plug not removed in violation of subsection (c); or
 - (v) Decontamination of a watercraft, if possible, on site.
- (2) An order for removal of prohibited invasive species under Paragraph 1, clause (i) or decontamination of a watercraft under Paragraph 1, clause (v) may include issuing a notice that specifies a time frame for completing the removal or decontamination, and re-inspection of the watercraft.
- (c) *Persons transporting watercraft.*
 - (1) When leaving a water of this Commonwealth, a person must drain a watercraft holding water and live wells and bilges by removing the drain plug before transporting the watercraft. “Transporting” includes moving the watercraft over land between connected or unconnected waterbodies but does not include moving watercraft within the immediate area required for loading and preparing the watercraft for transport over land. A person transporting game fish as a result of a tournament for weigh-in purposes is not subject to this subsection.
 - (2) Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting watercraft.
 - (3) A person shall ensure the watercraft, trailer, motor, fishing supplies, fishing gear, and conveyance used to transport the watercraft and trailer are free of aquatic organisms, including vegetation.

§ 71a.13. Bait fish importation and use. - 2102(a); 2102(c)

- (a) A person shall not release (except baited on a hook for angling purposes) or dispose live bait fish into any water of this Commonwealth. A person may collect live bait fish for angling; however, a species of bait fish collected for use as bait may not be transferred from waters in this Commonwealth into another drainage of this Commonwealth where this particular species does not already exist. This subsection does not apply to the Commission or a propagation facility licensed by the Department under 3 Pa.C.S. §§ 4201-4223 for the purpose of releasing bait fish into waters of this Commonwealth as food for aquaculture or fisheries management purposes.

(b) All live bait fish imported and intended for introduction into waters of this Commonwealth shall be in compliance with § 71a.6.

(c) This subsection does not apply to dead bait fish (salted or frozen) sold for angling purposes outside the Lake Erie watershed. The provisions of § 71a.7 shall be adhered to for purposes of this section.

CHAPTER 73. TRANSPORTATION OF LIVE FISH INTO THE COMMONWEALTH.

It is proposed that Chapter 73 be removed in its entirety and reflected as [RESERVED].

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend 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 on January 1, 2023.

Action:

A motion was made by Commissioner Charlesworth and seconded by Commissioner Hussar to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, these amendments will go into effect on January 1, 2023. Motion carried by unanimous vote.

FISHERIES

PROPOSED RULEMAKING

B. Amendment to 58 Pa. Code § 61.2 (Delaware River, West Branch Delaware River, and River Estuary) to address the American Shad fishery.

Commentary:

American Shad are an anadromous species. Adults inhabit the marine waters of the Atlantic Ocean, annually returning to natal freshwater systems during spring for spawning. Young-of-the-year utilize freshwater systems as nurseries, before out-migrating during fall. American Shad fulfill a foundational ecological role as forage for many piscivores within oceanic, costal, and connected inland waters, in addition to supporting well-established recreational and commercial fishing opportunities throughout their range along the Atlantic Coast.

Multiple state, federal, and tribal jurisdictions jointly manage American Shad fisheries along the Atlantic Coast, including the Atlantic States Marine Fisheries Commission (ASMFC) and specifically within the Delaware River basin, the Delaware River Basin Fish and Wildlife Management Cooperative (Co-op). The Pennsylvania Fish and Boat Commission (Commission) is a member of both entities. ASMFC's Amendment 3 to the Interstate Fishery Management Plan for Shad and River Herring requires Delaware River basin states jointly submit a Sustainable Fisheries Management Plan for continuance of American Shad fisheries for all connected waters within the Delaware River basin.

In 2020, the ASMFC stock assessment workgroup developed the most current consensus population assessment for the Atlantic Coast. Findings specific to the Delaware River basin, indicated the Delaware River American Shad population is experiencing unsustainable mortality. Given the ASMFC stock assessment workgroup findings, Co-op members, including Pennsylvania, have agreed to reduce American Shad harvest by approximately 33% for both the recreational and commercial fisheries.

Pennsylvania does not have a commercial fishery for American Shad; however, a popular recreational fishery exists in the Delaware River basin. Given the agreed upon 33% reduction in American Shad harvest by Co-op member states, it is recommended that the Commission amend the daily creel of American Shad from three to two fish per day on waters managed under 58 Pa. Code § 61.2 (Delaware River, West Branch Delaware River, and River Estuary) regulations. New York, New Jersey, and Delaware are seeking similar reductions to the recreational daily creel limits within their respective jurisdictional waters in the Delaware River basin.

Staff propose that 58 Pa. Code § 61.2 be amended as follows:

§ 61.2. Delaware River, West Branch Delaware River, and River Estuary.

SPECIES	SEASONS	<i>MINIMUM</i> SIZE	DAILY LIMIT
* * * * *			
AMERICAN SHAD	Open year-round	No minimum	[3]2
* * * * *			

Briefer:

Kristopher M. Kuhn, Director, Bureau of Fisheries

Recommendation:

Staff recommend the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect on January 1, 2023.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Gibney 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 on January 1, 2023. Motion carried by unanimous vote.

FISHERIES DESIGNATIONS

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

Commentary:

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

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

A notice of proposed designations was published at 52 Pa. B. 1076 (February 12, 2022) (Exhibit C). The Commission received a total of 228 public comments regarding the proposed designations: all support the proposed designations. Copies of all public comments were provided to the Commissioners.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

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

Action:

A motion was made by Commissioner Charlesworth and seconded by Commissioner Brock to add seven 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*. Motion carried by unanimous vote.

FISHERIES DESIGNATIONS

B. 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 Pennsylvania Fish and Boat Commission (Commission) under 58 Pa. Code § 57.11 (relating to listing of wild trout streams)." This term has regulatory significance because wetlands that are located in or along the floodplain of the reach of a wild trout stream and the floodplain of streams tributary thereto are considered "exceptional value" and are thus entitled to the highest level of protection.

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

Staff recommend the addition of 23 new waters to the Commission's list of wild trout streams. These changes are the result of recent surveys conducted on these waters. Exhibit D 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 52 Pa.B. 1075 (February 12, 2022) (Exhibit E). The Commission received a total of 226 public comments regarding the proposed designations: 224 support the proposed designations and two do not pertain to the proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

Staff recommend that the Commission add 23 new waters to the Commission's list of wild trout streams as set forth in the notice of proposed designations. If approved, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Hussar and seconded by Commissioner Brock to add 23 new waters to the Commission's list of wild trout streams as set forth in the notice of proposed designations. If approved, these additions will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried by unanimous vote.

FISHERIES DESIGNATIONS

C. Removal of Dingmans Creek, Section 03, Pike County, from the Delayed Harvest Artificial Lures Only Areas program (58 Pa. Code § 65.6).

Commentary:

Dingmans Creek, a 10-mile-long tributary to the Delaware River in Pike County, provides a variety of recreational angling opportunities along its length. To diversify these opportunities, the Pennsylvania Fish and Boat Commission (Commission) added Dingmans Creek, Section 03, to the Delayed Harvest Artificial Lures only (DHALO) program in January 1992. Section 03 flows through the Delaware Water Gap National Recreation Area and extends 1.6 miles from Deer Leap Falls downstream to Dingmans Falls.

The DHALO program is designed to maintain a recreational trout fishery through stocking. Delayed harvest management provides for an extended period of catch-and-release angling, then, as angler interest for trout fishing declines and stream conditions become less favorable for survival of stocked trout due to decreased flows and elevated water temperatures, harvest is allowed utilizing a reduced creel limit so that emphasis remains on the angling experience rather than harvest. The harvest season has been set to allow for some harvest before hatchery trout are lost to natural mortality.

In December 2021, the Commission was notified by the National Park Service that Doodle Hollow Road would no longer be maintained. Doodle Hollow Road provides the only access along Section 03 and the road has deteriorated to a level that no longer provides safe access for Commission staff and vehicles. As such, there is no access to stock Section 03 with adult trout to provide angling opportunities in the context of delayed harvest management.

Due to loss of access, Section 03 was removed from the Stocked Trout Waters program for 2022. Staff recommend Section 03 also be removed from the DHALO program given that the provision of trout angling opportunities are supported through stocking in waters managed with DHALO regulations. Commission staff are currently working with the National Park Service to determine suitability of Dingmans Creek, Section 04, for inclusion into the DHALO program for 2023. Section 04, located immediately downstream from Section 03, extends 2.1 miles from Dingmans Falls downstream to the mouth and is not currently managed as a Stocked Trout Water by the Commission.

A notice of the proposed designation was published at 52 Pa.B. 1431 (March 5, 2022) (Exhibit F). The Commission did not receive any public comments regarding the proposed designation. Copies of all public comments were provided to the Commissioners.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

Staff recommend the Commission remove Dingmans Creek, Section 03, from the Delayed Harvest Artificial Lures Only Areas program (58 Pa. Code § 65.6). If approved, Dingmans Creek, Section 03, will revert to Commonwealth Inland Waters angling regulations (58 Pa. Code § 61.1) upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Gibney and seconded by Commissioner Anderson to remove Dingmans Creek, Section 03, from the Delayed Harvest Artificial Lures Only Areas program (58 Pa. Code § 65.6). If approved, Dingmans Creek, Section 03, will revert to Commonwealth Inland Waters angling regulations (58 Pa. Code § 61.1) upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried by unanimous vote.

FISHERIES OTHER MATTERS

A. Proposed exemptions to 58 Pa. Code § 57.8a (Class A wild trout streams) to allow for the continued stocking of trout at two Class A stream sections.

Commentary:

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

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

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

3. Stream sections stocked by the Commission, a cooperative nursery, and/or a private group or individual the year prior to Class A designation, have a history of more than one past occurrence, and meet the following sub-criteria.
 - a) The stream section was stocked with adult trout during the year immediately prior to its designation as a Class A wild trout stream.
 - b) Angler use (anglers/mile of stream) in the stream section equals or exceeds the statewide 50th percentile of angler use for the opening weekend of trout season as documented by Commission staff, or the stream section is a special regulation area under 58 Pa. Code Chapter 65 (relating to special fishing regulations) that was stocked by the Commission the year immediately prior to its designation as a Class A wild trout stream.
 - c) The trout species to be stocked are not the same species as the primary component of the wild trout population.
 - d) The stocking numbers and frequency will not exceed those of the year prior to the Class A designation.
 - e) Stream sections where a component of the wild trout population is comprised of wild Brook Trout will not be considered for stocking.
 - f) Prior to implementing a decision to stock a Class A wild trout stream, the Executive Director will obtain the approval of the Commission.
4. Previously received an exemption or a Special Activities Permit from the Commission between 2010 and the present to allow for continued stocking of a Class A wild trout stream section. If the exemption was time-limited and not renewed before expiration, it will be considered a new request and a determination will be made according to other exemption criteria.

Exemptions to the prohibition of stocking hatchery trout into Class A wild trout stream sections will be granted only under rare circumstances. Consideration is only given to requests for continued stocking in stream sections within one year of the section being designated as Class A and posted in the *Pennsylvania Bulletin*. However, entities that previously received an exemption or a Special Activities Permit from the Commission between 2010 and the effective date (April 3, 2021) of the amendment to the statement of policy at 58 Pa. Code § 57.8a (Class A wild trout streams) adopted at the January 2021 quarterly Commission meeting and published at 51 Pa.B. 1828 will be eligible for consideration. On January 25, 2021, the Executive Director obtained approval from the Commission to grant 13 exemptions to 58 Pa. Code § 57.8a (Class A wild trout streams) that met the criteria to consider the continuance of trout stocking at 12 Class A stream sections.

Should an exemption be granted, the Commission will determine the species of trout, number of trout, and frequency of stocking consistent with stocking strategies and historical stocking rates of the stream section to minimize impacts to the Class A wild trout population. All stocking provisions will be communicated in writing by the Commission to the entity receiving the exemption for continued stocking on Class A designated waters. Stocking exemptions will be valid for no more than five years at which time the need for continuance may be evaluated.

Commission staff have identified two potential exemptions to 58 Pa. Code § 57.8a (Class A wild trout streams) that meet the criteria to consider the continuance of trout stocking at two Class A stream sections. It should be noted that the Executive Director previously obtained approval from the Board to continue Commission stockings at these stream sections; however, this request is specific to the continuance of stocking by private entities and not the annual Commission stockings. The general exemption classification, stream name, stream section, county, and commissioner district are listed below.

General fishing derbies (adult and youth participants)

- Penns Creek (Section 02), Centre County, Commissioner District 3

Prior history of stocking and meets the sub-criteria outlined under criterion 3 above

- Pohopoco Creek (Section 04), Carbon County, Commissioner District 7

A notice of proposed exemptions was published at 52 Pa.B. 1550 (March 12, 2022) (Exhibit G). The Commission received a total of four public comments regarding the proposal: three oppose the proposal and one does not pertain to the proposal. Copies of all public comments were provided to the Commissioners.

Briefer:

David C. Nihart, Chief, Division of Fisheries Management

Recommendation:

Staff recommend the Commission approve two exemptions to 58 Pa. Code § 57.8a (Class A wild trout streams) to allow for the continued stocking of trout at two Class A stream section as described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Lewis to approve two exemptions to 58 Pa. Code § 57.8a (Class A wild trout streams) to allow for the continued stocking of trout at two Class A stream section as described in the Commentary. Motion carried with one opposition (Commissioner Charlesworth).

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

A. Flowage Easement Acquisitions at Belmont Lake, Mount Pleasant and Preston Townships, Wayne County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns a +/-404-acre property in Mount Pleasant and Preston Townships, Wayne County, containing a +/-172-acre lake, known as Belmont Lake. Belmont Lake is located approximately 30 miles northeast of Scranton, PA, as depicted on Exhibit H (Location Map). When the Commission acquired the property from the Wayne Storage Water Power Company in 1917, the conveyance also included the right to flow water to the top of the existing dam as originally constructed. This flowage right is known as a flowage easement, which is the right to periodically flow water on, inundate and flood an area without liability for damages resulting from such action.

Belmont Lake dam was originally constructed by the Delaware and Hudson Canal Company in 1830 and reconstructed by the Commission in 1958. The dam is currently classified as a high hazard, unsafe dam and does not meet Department of Environmental Protection standards for spillway capacity and embankment stability. Design to rehabilitate the dam to bring it into compliance with current regulatory dam safety standards is complete and construction is expected to begin in 2023.

When the dam was reconstructed in 1958, it was designed to allow for the utilization of the existing flowage rights as previously described, and to meet the design and regulatory standards in place at that time. Due to current changes in regulatory standards, the dam's rehabilitation will require raising the dam approximately 3 feet. Thus, there will be an area outside of the original flowage rights boundary that will be inundated. This area will need to be acquired as flowage easements.

The flowage easements 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 six acres and will include approximately two parcels, located in Preston Township, as depicted on Exhibit I (Site Map). There are two affected properties requiring flowage easements totaling 5.46-acres as 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:

Linda Adler, Chief, Division of Public Access and Property Services

Recommendation:

Staff recommend that the Commission authorize the acquisition of the flowage easements in Preston Township, Wayne County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Gibney and seconded by Commissioner Anderson to authorize the acquisition of the flowage easements in Preston Township, Wayne County, as more particularly described in the Commentary. Motion carried by unanimous vote.

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

B. Flowage Easement and Fee Simple Acquisitions at Miller Pond, Mount Pleasant Township, Wayne County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns a +/-104-acre property in Mount Pleasant Township, Wayne County, previously containing a +/-61-acre lake, known as Miller Pond. Miller Pond is located approximately 35 miles northeast of Scranton, PA, on Miller Pond Road, as depicted on Exhibit J (Location Map). When the Commission acquired the property from the Wayne Storage Water Power Company in 1917, the conveyance also included the right to flow water to the top of the existing dam as originally constructed. This flowage right is known as a flowage easement, which is the right to periodically flow water on, inundate and flood an area without liability for damages resulting from such action.

Miller Pond dam was constructed by the Delaware and Hudson Canal Company prior to 1860. The dam is currently classified as a high hazard, unsafe dam by the Pennsylvania Department of Environmental Protection (DEP). The lake was drained in June 2015 in advance of the anticipated rehabilitation of the dam, which is required to bring the dam into compliance with current regulatory dam safety standards. To bring the dam into compliance, the dam breast will be moved approximately 75 feet upstream from its original location, the top of dam will be lowered, and the dam breast widened. Design for the rehabilitation of the dam is complete and submitted to DEP for permitting review. Construction is expected to begin after the DEP permitting review process is complete.

When the dam was originally constructed, flowage rights were acquired as previously described. With the new design, additional flowage rights will not be required, but recent document research and surveys have revealed that a small area was previously missed during the original acquisition and is not covered by the existing flowage rights. A flowage easement will need to be acquire on that small area. Additionally, the relocation and widening of the dam breast will require the fee simple acquisition of a small portion of land from an adjacent property.

The flowage easement and fee simple acquisition 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 area is estimated to be approximately +/-0.1-acres, and the fee simple acquisition will require an approved subdivision and is estimated to be approximately +/- 0.7-acres, as depicted on Exhibit K (Site Map). The exact acreage and number of affected properties will be determined by document research and property/subdivision surveys.

Staff will pursue the acquisition of the flowage easement and fee simple area 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:

Linda Adler, Chief, Division of Public Access and Property Services

Recommendation:

Staff recommend that the Commission authorize the acquisition of the flowage easement and fee simple acquisition in Mount Pleasant Township, Wayne County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Mahn and seconded by Commissioner Hussar to authorize the acquisition of the flowage easement and fee simple acquisition in Mount Pleasant Township, Wayne County, as more particularly described in the Commentary. Motion carried by unanimous vote.

EXECUTIVE AND ADMINISTRATIVE PUBLIC ACCESS AND REAL ESTATE MATTERS

C. Lease of Conewago Creek – Zeigler Mill Road Access Property, Butler Township, Adams County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) acquired a +/-58-acre tract of land located along Conewago Creek along Russell Tavern Road and Zeigler Mill Road in Butler Township, Adams County from the Land Conservancy of Adams County, Inc. (Conservancy). The Adams County Chapter 323 Trout Unlimited (ACTU), the Northern Virginia Trout Unlimited Chapter, and the Pennsylvania Department of Conservation and Natural Resources (DCNR) partnered with the Conservancy to acquire the land from Knouse Foods Cooperative. The location is depicted on Exhibit L (Location Map). The lease area is depicted on Exhibit M (Site Map).

The property contains a portion of Conewago Creek that is designated as a Catch and Release Fly-Fishing Only section that provides significant trout fishing opportunities in the area. This section of Conewago Creek is stocked by the Commission, the McSherrystown and Knouse Foods (Orrtanna) cooperative fish hatcheries, and the Mummasburg Sportsman's Club. The fly-fishing catch and release section has been managed by the ACTU and the Northern Virginia Trout Unlimited Chapter for over 30 years.

The ACTU wishes to enter into a lease with the Commission to continue their conservation efforts. The lease will be for a 25-year term and the ACTU will be responsible for the routine maintenance, operation, repair, and supervision of the lease area. The lease will also require the site to remain open for public fishing and boating free of charge. Fishing and boating will take precedence over all other recreational activities. The leasing of the property is in the best interest of the Commission.

Briefer:

Linda Adler, Chief, Division of Public Access and Property Services

Recommendation:

Staff recommend that the Commission authorize the leasing of the Conewago Creek – Zeigler Mill Road Access Property to the ACTU, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Pastore to authorize the leasing of the Conewago Creek – Zeigler Mill Road Access Property to the ACTU, as more particularly described in the Commentary. Motion carried by unanimous vote.

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

D. Shaws Landing Property Disposition for a Bridge Rehabilitation Project on Wightman Road (T-620) over Conneaut Outlet in Union Township, Crawford County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns +/-4.605 acres known as Shaws Landing (Site) in Union Township of Crawford County. The Site was acquired using Project 70 Funding. It is located about 3 miles northwest of Cochranton, as depicted on Exhibit N (Location Map).

The Pennsylvania Department of Transportation (PennDOT) is proposing to address the Project 70 funding issue with a request for a non-conversion determination in the form of a waiver letter. A drawing of the Site as depicted on Exhibit O (Site Map).

The Wightman Road Bridge Rehabilitation project (Project) would rehabilitate a structurally deficient historic truss bridge over Conneaut Outlet. The proposed bridge would be constructed on the same horizontal alignment as it is today. Part of the bridge rehabilitation would include extending the wing walls and re-grading the roadway slope. A temporary construction easement would be required to facilitate construction of the project. This area is needed to construct a crane pad and to provide a lay down area to dismantle the structure once it is removed from the abutments and to reassemble it once it has been rehabilitated off site. The Project will need property rights from the Commission.

The Project requires +/-0.0165 acres of permanent slope right of way and +/- 0.3245 acres of temporary construction easement. These areas are shown on Exhibit O. The temporary construction easement will revert to the Commission at the end of construction and portions of it may be used by the Commission and public during construction for access.

Usually, legislation is required on Project 70 acquired property. However, since the take area is very small and the impact is not significant, the staff of both the Commission and PennDOT have agreed to pursue a waiver of the legislation requirement through an established waiver process. This process is designed to save the Commonwealth time and effort, in minor conveyances for the public good. The Commission's legal staff shall approve the process before there is any commitment to a conveyance.

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

Briefer:

Linda Adler, Chief, Division of Public Access and Property Services

Recommendation:

Staff recommends the Commission authorize the disposition of the property as described in the Commentary.

Action:

A motion was made by Commissioner Mahn and seconded by Commissioner Anderson to authorize the disposition of the property as described in the Commentary. Motion carried by unanimous vote.

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

E. Property Disposition, Lake Winola Access, Overfield Township, Wyoming County.

Commentary:

The Pennsylvania Fish and Boat Commission (Commission) owns a +/- 32-acre property containing a portion of Lake Winola and includes a public fishing and boating access area in Overfield Township, Wyoming County, known as Lake Winola Access. The Lake Winola Access is located on the south end of Lake Winola and is 15 miles northeast of Scranton, as depicted on Exhibit P (Location Map). This property was acquired in 1969.

In 2001, the Commission discovered that an adjacent commercial eating establishment (Café) was encroaching on a small portion of the Lake Winola Access property (Encroachment Area). The Café owner inadvertently developed additional gravel parking and constructed half of an open-air dining pavilion on the Lake Winola Access property. At that time, the encroachment was considered de minimis and it was decided that an agreement would be executed to address the use of the encroachment area by the Café owner, and to protect and indemnify the Commission. The agreement required the Café owner to pay the Commission a \$125 fee the first year, increasing annually 2% each year thereafter.

In 2021, the Café property was conveyed to Sterling Realty of New York, Inc. (Sterling Realty). Sterling Realty desires to acquire the Encroachment Area to resolve the property use issue. The proposed disposition area is +/- 0.1-acres, as depicted on Exhibit Q (Site Map). An approved subdivision plan will determine the final acreage and configuration. Sterling Realty has agreed to pay the Commission \$5,000 for the proposed disposition area. The property to be conveyed is not actively used by the Commission, and its disposition will not adversely impact the Commission, its operations, or future plans to utilize or further develop the property. Commission staff have evaluated the request and determined that it is in the best interest of both parties to bring these issues to a close.

Sterling Realty will be responsible for all costs associated with the conveyance, including subdivision and recording costs. In addition, any real estate and transfer taxes that are normally shared between the buyer and the seller will be paid by Sterling Realty. The Commission will retain all oil, gas, coal, and mineral rights on the property being conveyed. In addition, staff will adhere to the Commission's standard practices for property disposition, including meeting due diligence requirements.

Briefer:

Linda Adler, Chief, Property Services Section, Division of Public Access and Property Services

Recommendation:

Staff recommend that the Commission authorize the disposition of property at Lake Winola Access as described in the Commentary.

Action:

A motion was made by Commissioner Charlesworth and seconded by Commissioner Gibney to authorize the disposition of property at Lake Winola Access as described in the Commentary. Motion carried by unanimous vote.

EXECUTIVE AND ADMINISTRATIVE OTHER MATTERS

A. Erie Access Improvement Program: Grant to the Erie-Western PA Port Authority, Parade Street Public Access Rehabilitation, Presque Isle Bay, Erie County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The Statewide Public Access Grant Program was established by administratively combining the Commission's existing Boating Facility Grant (BFG) Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access. Specific program criteria for the Erie Access Improvement Program were established to be consistent with the legislative intent of 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 from the sale of the combination trout permits and Lake Erie permits are to be deposited into a restricted revenue account within the Fish Fund and that this restricted revenue 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 may also be used for other projects that support public fishing on or at Lake Erie, Presque Isle Bay and their tributaries." The funds generated through this program are deposited into the Lake Erie restricted revenue account, where they are restricted now and into the future for their legislatively intended purposes. Grant requests exceeding \$100,000 per grantee, per year require Commission approval.

The Erie-Western PA Port Authority is requesting grant funds for the reconstruction of a deteriorated fishing area on the Parade Street Dock along Presque Isle Bay in Erie County. The Erie-Western PA Port Authority is partnering with the S.O.N.S. (Save Our Native Species) of Lake Erie Fishing Club on this project to construct a new sheet pile retaining wall and approximately 135-foot concrete walkway and install safety ladders on this very popular public fishing area. The facility will be ADA accessible.

The project area is near the Intermodal Transportation Center, which provides access to the site via bus for urban anglers. A free public parking lot is immediately adjacent to the site for anglers traveling by car. The area is also adjacent to bayfront bike and pedestrian paths. The Erie-Western PA Port Authority will provide matching funds in the amount of \$94,000.

Total Project Cost: \$342,700

Recommended Grant: \$248,700

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$248,700 to the Erie-Western PA Port Authority, Erie County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Small to approve a grant not to exceed \$248,700 to the Erie-Western PA Port Authority, Erie County, as more particularly described in the Commentary. Motion carried by unanimous vote.

BOATING OTHER MATTERS

A. Boating Facility Grant Program: Grant to Greene County Commissioners, Wisecarver Boat Launch and Access Improvements Phase 2, Wisecarver Reservoir, Greene County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The goal of the program is to ensure Pennsylvania's recreational anglers and boaters, today and in the future, are provided with access to the highest quality facilities on the Commonwealth's waterways. The Statewide Public Access Grant Program was established by administratively combining the Commission's existing Boating Facility Grant (BFG) Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access.

Prior to the Statewide Public Access Grant Program, the Commission's BFG Program became well known as the primary mechanism for awarding funds for boating-related access improvements from 2005 through 2010. As such, and in keeping with the goals outlined in the Commission's current Strategic Plan, funding for the BFG Program was reallocated in 2019 to continue to improve boating opportunities and convenience in the Commonwealth through partnerships that update and maintain public boating access.

Funds for the BFG program are derived primarily from boat registration fees, state motorboat fuels tax, restricted revenue accounts and, when available, through various Federal assistance or grant awards. Grant requests exceeding \$100,000 per grantee, per year require Commission approval.

The Greene County Commissioners are requesting grant funds to develop boating facilities at the Wisecarver Reservoir near Waynesburg, PA. In 2016, Greene County entered into a 99-year lease with the Southwestern Pennsylvania Water Authority with the intent of redeveloping the property into a popular community destination. As part of the lease, the County is responsible for operations and maintenance of the facility.

In the 2021 round of the BFG Program, the Commission awarded funding in the amount of \$85,845 to Greene County to design and construct Phase 1 of the Wisecarver Boat Launch and Access Improvements. Phase 1 consists of the construction of a geo-cell canoe/kayak ramp, paved access road, drop off area for boaters, gravel path from the boat launch, and a storage area. This access area is located near the dam.

Greene County is now requesting grant funds in the amount of \$154,388 to conduct Phase 2 of the planned Wisecarver Boat Launch and Access Improvements. Phase 2 includes the design and construction of a second boat launch at an additional access point on the lake that includes a 15-foot-wide concrete launch ramp, gravel access road and

drop-off area for boaters, and an ADA accessible canoe/kayak dock system. Matching funds in the amount of \$154,388 will be provided by Greene County. The Phase 1 and Phase 2 projects provide the only public boat launch facilities on Wisecarver Reservoir.

Total Project Cost: \$308,776

Recommended Grant Award: \$154,388

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$154,388 to the Greene County Commissioners, Greene County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Mahn and seconded by Commissioner Anderson to approve a grant not to exceed \$154,388 to the Greene County Commissioners, Greene County, as more particularly described in the Commentary. Motion carried by unanimous vote.

BOATING OTHER MATTERS

B. Boating Facility Grant Program: Grant to the Township of Neville, Boat Launch Facility, Ohio River, Allegheny County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The goal of the program is to ensure Pennsylvania's recreational anglers and boaters, today and in the future, are provided with access to the highest quality facilities on the Commonwealth's waterways. The Statewide Public Access Grant Program was established by administratively combining the Commission's existing Boating Facility Grant (BFG) Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access.

Prior to the Statewide Public Access Grant Program, the Commission's BFG Program became well known as the primary mechanism for awarding funds for boating-related access improvements from 2005 through 2010. As such, and in keeping with the goals outlined in the Commission's current Strategic Plan, funding for the BFG Program was reallocated in 2019 to continue to improve boating opportunities and convenience in the Commonwealth through partnerships that update and maintain public boating access.

Funds for the BFG program are derived primarily from boat registration fees, state motorboat fuels tax, restricted revenue accounts and, when available, through various Federal assistance or grant awards. Grant requests exceeding \$100,000 per grantee, per year, require Commission approval.

The Township of Neville is requesting grant funds to design and construct a new boat launch facility on their undeveloped property on Neville Island on the north side of Pittsburgh, PA. The new facility will be on the backchannel of the Ohio River and will offer access for powered and unpowered boats. The Township plans to construct a motorboat ramp, canoe/kayak launch, docks, access road, parking area, restroom, and signage. The project will provide ADA accessible curb ramps for entry and exit at the site.

The Township of Neville will provide matching funds in the amount of \$250,000 for the project. Currently, there are no public boat launch facilities on Neville Island. The Commission's Kilbuck access is located on the main channel on the north shore of the river across from Neville Island. The next closest boat launch facilities are located 5.78 miles upstream at the Westhall Street access and 2.78 miles downstream at the Sewickley Borough access.

Total Project Cost: \$500,000

Recommended Grant Award: \$250,000

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$250,000 to the Township of Neville, Allegheny County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Mahn and seconded by Commissioner Anderson to approve a grant not to exceed \$250,000 to the Township of Neville, Allegheny County, as more particularly described in the Commentary. Motion carried by unanimous vote.

BOATING OTHER MATTERS

C. Boating Facility Grant Program: Grant to South Middleton Township, Childrens Lake Boat Launch Parking Improvements, Childrens Lake, Cumberland County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The goal of the program is to ensure Pennsylvania's recreational anglers and boaters, today and in the future, are provided with access to the highest quality facilities on the Commonwealth's waterways. The Statewide Public Access Grant Program was established by administratively combining the Commission's existing Boating Facility Grant (BFG) Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access.

Prior to the Statewide Public Access Grant Program, the Commission's BFG Program became well known as the primary mechanism for awarding funds for boating-related access improvements from 2005 through 2010. As such, and in keeping with the goals outlined in the Commission's current Strategic Plan, funding for the BFG Program was reallocated in 2019 to continue to improve boating opportunities and convenience in the Commonwealth through partnerships that update and maintain public boating access.

Funds for the BFG program are derived primarily from boat registration fees, state motorboat fuels tax, restricted revenue accounts and, when available, through various Federal assistance or grant awards. Grant requests exceeding \$100,000 per grantee, per year require Commission approval.

South Middleton Township is requesting grant funds to make improvements to the boat launch facility at Childrens Lake in Boiling Springs, PA. The Commission owns and maintains Childrens Lake and worked to establish a lease agreement with the township for maintenance and operation of the property, including the area encompassing the existing boat launch facility. The lease agreement is currently in place.

The current boat launch facility consists of a gravel parking area and a boat launch ramp. There is no delineated trail or sidewalk from the parking area to the existing sidewalk or boat launch ramp. In addition, the facility is not ADA accessible. The township's plans include the design and construction of trailways, sidewalks, pervious paving of the parking area, ADA accessible improvements, lighting, and signage which will improve fishing and boating access at Childrens Lake and provide an ADA accessible boat launch facility.

Matching funds in the amount of \$219,907 will be provided by South Middleton Township. This is the only boat launch facility on the lake.

Total Project Cost: \$369,907

Recommended Grant: \$150,000

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$150,000 to South Middleton Township, Cumberland County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Lewis to approve a grant not to exceed \$150,000 to South Middleton Township, Cumberland County, as more particularly described in the Commentary. Motion carried by unanimous vote.

BOATING OTHER MATTERS

D. Boating Facility Grant Program: Grant to the Partnership for Economic Development of York County, Foundry Park Boat Basin, Codorus Creek, York County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The goal of the program is to ensure Pennsylvania's recreational anglers and boaters, today and in the future, are provided with access to the highest quality facilities on the Commonwealth's waterways. The Statewide Public Access Grant Program was established by administratively combining the Commission's existing Boating Facility Grant (BFG) Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access.

Prior to the Statewide Public Access Grant Program, the Commission's BFG Program became well known as the primary mechanism for awarding funds for boating-related access improvements from 2005 through 2010. As such, and in keeping with the goals outlined in the Commission's current Strategic Plan, funding for the BFG Program was reallocated in 2019 to continue to improve boating opportunities and convenience in the Commonwealth through partnerships that update and maintain public boating access.

Funds for the BFG program are derived primarily from boat registration fees, state motorboat fuels tax, restricted revenue accounts and, when available, through various Federal assistance or grant awards. Grant requests exceeding \$100,000 per grantee, per year require Commission approval.

The Partnership for Economic Development of York County is requesting grant funds to design and construct a new canoe/kayak launch at Foundry Park Boat Basin along Codorus Creek. The City of York is collaborating with the Partnership for Economic Development of York County on this project as part of Phase 1 of a larger Codorus Creek Greenway Project, which will revitalize the stream in the City of York. As part of the larger project, Bascule Dam, which is located just downstream of the Foundry Park Boat Basin, will be removed. This dam removal will alter the water level and make the existing boat basin unusable.

The new boat launch coupled with the removal of the Bascule Dam will create a new boat access and open up miles of the Codorus Creek for use. The new boat launch facility will be ADA accessible. This project is part of a larger effort to establish Codorus Creek as a designed water trail.

Matching funds in the amount of \$140,000 have been secured from the Powder Mill Foundation for this project. This will be the only public boat launch facility on Codorus

Creek, and it will provide additional public boating access opportunities in an urban environment.

Total Project Cost: \$280,000

Recommended Grant: \$140,000

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$140,000 to the Partnership for Economic Development of York County, York County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Charlesworth and seconded by Commissioner Brock to approve a grant not to exceed \$140,000 to the Partnership for Economic Development of York County, York County, as more particularly described in the Commentary. Motion carried by unanimous vote.

BOATING OTHER MATTERS

E. Boating Facility Grant Program: Grant to Wayne County, Indian Orchard River Access, Lackawaxen River, Wayne County.

Commentary:

At its October 2012 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the creation of the Statewide Public Access Grant Program to fund eligible projects for the planning, acquisition, development, and expansion of public fishing and boating access facilities. The goal of the program is to ensure Pennsylvania's recreational anglers and boaters, today and in the future, are provided with access to the highest quality facilities on the Commonwealth's waterways. The Statewide Public Access Grant Program was established by administratively combining the Commission's existing Boating Facility Grant (BFG) Program and Erie Access Improvement Program into a single grant program to provide a consistent approach for identifying, evaluating, and funding opportunities to enhance public access.

Prior to the Statewide Public Access Grant Program, the Commission's BFG Program became well known as the primary mechanism for awarding funds for boating-related access improvements from 2005 through 2010. As such, and in keeping with the goals outlined in the Commission's current Strategic Plan, funding for the BFG Program was reallocated in 2019 to continue to improve boating opportunities and convenience in the Commonwealth through partnerships that update and maintain public boating access.

Funds for the BFG program are derived primarily from boat registration fees, state motorboat fuels tax, restricted revenue accounts and, when available, through various Federal assistance or grant awards. Projects in the Pennsylvania portion of the Delaware River Watershed are eligible for Federal funding through the National Fish and Wildlife Foundation's grant to the Commission for improving boating and fishing access. Grant requests exceeding \$100,000 per grantee, per year require Commission approval.

Wayne County, in partnership with the Wayne Pike Trails and Waterways Alliance (WPTWA), is requesting grant funds to design and construct a new canoe/kayak access on the Lackawaxen River near Indian Orchard, PA. In the 2021 round of the BFG Program, the Commission awarded funding for two projects along the Lackawaxen River in Honesdale and White Mills. The Indian Orchard River Access project will serve as the midpoint between those two projects and will consist of a paved access road and parking area, canoe/kayak ramp, restroom, trail for anglers, and signage. Access development along the Lackawaxen River is part of an effort to establish a new water trail as indicated by a trail feasibility study conducted by the county in May of 2020.

The properties to be developed for the Indian Orchard River Access are currently owned by the Pennsylvania Department of Transportation and the Dime Bank. Wayne County and the WPTWA are working with these entities to either acquire the properties, receive the properties as donations, or sign a 26-year lease or easement for access. Matching

funds for the project will come from the Alliance Foundation (\$30,000), Wayne County Act 13 (\$15,000), Human Resources Foundation (\$10,000), Chatlos Foundation (\$10,000), and a Lion's Club donation of \$10,000. The closest public boat launch facilities, once completed, will be located 3.58 upstream at Honesdale and 2.49 miles downstream at White Mills.

Total Project Cost: \$320,700

Recommended Grant: \$245,700

Briefer:

Scott Bollinger, Statewide Public Access Program Manager

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$245,700 to Wayne County, as more particularly described in the Commentary.

Action:

A motion was made by Commissioner Gibney and seconded by Commissioner Charlesworth to approve a grant not to exceed \$245,700 to Wayne County, as more particularly described in the Commentary. Motion carried by unanimous vote.

BOATING PROPOSED RULEMAKING

A. Amendment to 58 Pa. Code § 97.2 (Fire extinguishers).

Commentary:

In October 2021, the U.S. Coast Guard (USCG) published a final rule amending the fire extinguishing equipment regulations for recreational vessels propelled or controlled by propulsion machinery (33 CFR Parts 1 and 175, and 46 CFR Part 25). This rule relieves owners of these recreational vessels from certain inspection, maintenance, and recordkeeping requirements that are more suited for commercial vessels and establishes that portable fire extinguishers on recreational vessels shall be maintained in “good and serviceable” condition. The “good and serviceable” standard of this rule maintains the substantive requirements of the National Fire Protection Association’s standard 10 without extra burdens and requirements for recreational boaters. The new standard will continue to ensure that portable fire extinguishers are in good working order and ready for immediate use without imposing unnecessary burdens on the public. Staff would like to update our regulations to match the new USCG final rule.

Staff propose that § 97.2 be amended as follows:

§ 97.2. Fire extinguishers.

* * * * *

(c) Fire extinguishers carried in compliance with this section shall be maintained in [a usable condition] **“good and serviceable” working condition** and [shall be charged] in compliance with the specifications on the manufacturer’s certification label, **meaning:** **[Gauges shall be operable and nozzles shall be free of obstruction. In prosecutions for violations of this section, there shall be a rebuttable presumption that a fire extinguisher is not usable if its gauge shows that the extinguisher is discharged.]**

- (i) It shall not be expired;**
- (ii) It has a pressure gauge reading or indicator in the operable range or position, if there is one;**
- (iii) The lock pin is firmly in place;**
- (iv) The discharge nozzle is clean and free of obstruction; and**
- (v) The extinguisher does not show visible signs of significant corrosion or damage.**

In prosecutions for violations of this section, there shall be a rebuttable presumption that a fire extinguisher is not usable if its gauge shows that the extinguisher is discharged.

* * * * *

On February 7, 2022, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

Briefer:

Laurel L. Anders, Director, Bureau of Boating

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect January 1, 2023.

Action:

A motion was made by Commissioner Charlesworth 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, this amendment will go into effect January 1, 2023. Motion carried by unanimous vote.

BOATING PROPOSED RULEMAKING

B. Amendment to 58 Pa. Code § 111.20 (Crawford County).

Commentary:

Woodcock Creek Lake is a 333-acre flood control project managed by the U.S. Army Corps of Engineers (USACOE) in Crawford County. Recently, the USACOE Project Manager submitted a request through their Pittsburgh District Office to change the local policy to a 20-horsepower limitation on this impoundment. They are requesting this horsepower change to allow increased boating opportunities in response to recent upward trends in boating activity. Staff at the project have requested the Pennsylvania Fish and Boat Commission (Commission) adopt the same regulatory amendment in Title 58 of the Pennsylvania Code so that Waterways Conservation Officers can continue to assist in enforcement of this boating regulation.

Staff propose that § 111.20 be amended as follows:

§ 111.20. Crawford County.

* * * * *

(e) *Woodcock Creek Lake.*

(1) The use of motors in excess of ~~10~~20 horsepower is prohibited.

* * * * *

On February 7, 2022, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

Briefer:

Laurel L. Anders, Director, Bureau of Boating

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect January 1, 2023.

Action:

A motion was made by Commissioner Mahn and seconded by Commissioner Pastore to approve the publication of a notice of proposed rulemaking containing the proposed amendment described in the Commentary. If adopted on final rulemaking, this amendment will go into effect January 1, 2023. Motion carried by unanimous vote.

BOATING PROPOSED RULEMAKING

C. Amendments to 58 Pa. Code § 103.3 (Restrictions for special areas), § 105.1 (Conditions requiring immediate corrective action), § 105.3 (Unacceptable boating practices), § 109.4 (Waterskiing, aquaplaning, kiteskiing and similar activities), § 111.2 (Allegheny County), § 111.3 (Armstrong County), § 111.6 (Berks County), § 111.13 (Carbon County), § 111.58 (Susquehanna County), § 111.64 (Wayne County), and § 111.66 (Wyoming County).

Commentary:

On September 28, 2021, the National Association of State Boating Law Administrators (NASBLA) membership adopted a model act for safe boating practices for boat-towed watersports. This act was originally adopted in 2003, then modified in 2004, 2005, and 2007 to reflect safety issues and current trends in recreational boating activity. In February 2020, the NASBLA Enforcement and Training Committee accepted a charge to examine and update an earlier version of the act, based on new equipment and technologies in towed watersports activities. The revised model act was presented to the NASBLA membership and voted upon at the 2021 annual conference in Pittsburgh, PA. Pennsylvania Fish and Boat Commission (Commission) staff have reviewed and selected relevant portions of the act to incorporate and modernize its regulations in 58 Pa. Code § 109.4 (Waterskiing, aquaplaning, kiteskiing and similar activities), § 103.3 (Restrictions for special areas), § 105.1 (Conditions requiring immediate corrective action), § 105.3 (Unacceptable boating practices), § 111.2 (Allegheny County), § 111.3 (Armstrong County), § 111.6 (Berks County), § 111.13 (Carbon County), § 111.58 (Susquehanna County), § 111.64 (Wayne County), and § 111.66 (Wyoming County). The proposed amendments also include corrections to inconsistent wording relating to these changes. The proposed amendments are intended to clarify the regulations but not modify currently prohibited or allowable activities.

Staff propose the following amendments:

§ 103.3. Restrictions for special areas.

(a) Boats are limited to slow, no wake speed when within 100 feet of the shore line; docks; launching ramps; swimmers or downed skiers **or other boat-towed watersports participants**; persons wading in the water; anchored, moored, or drifting boats; floats, except for ski jumps and ski landing floats; or other areas so marked. This subsection does not apply in a zoned ski area or authorized ski return areas when those areas are found within the areas described in this subsection.

* * * * *

§ 105.1. Conditions requiring immediate corrective action.

A condition requiring immediate corrective actions shall exist when a boat:

* * * * *

(8) Is pulling a [water skier] water-skier or other boat-towed watersports participant without the required observer aboard.

* * * * *

§ 105.3. Unacceptable boating practices.

It is unlawful to:

* * * * *

(8) Operate within 100 feet of a water-skier or other boat-towed watersports participant being towed by another boat.

* * * * *

(11) Operate a motorboat at any speed when towing a person on waterskis or other boat-towed devices using a tow rope of 20 feet or less as measured from the transom of the boat. This prohibition does not apply to wake surfing as defined in § 109.4 (relating to waterskiing[, aquaplaning, kiteskiing and similar activities] and other boat-towed watersports).

* * * * *

Chapter 109. SPECIALTY BOATS AND [WATERSKIING ACTIVITIES] BOAT-TOWED WATERSPORTS

* * * * *

§ 109.4. Waterskiing [, aquaplaning, kiteskiing, and similar activities] and other boat-towed watersports.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Boat-towed device—An inflatable tube or other device designed to be sat, stood, kneeled, or laid upon while being towed through or on water behind a boat. The term includes water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattress, parasails, kite skis, and similar devices.

Boat-towed watersports—Activities that involve being towed by a boat or riding in or on the wake of a boat such as, but not limited to, waterskiing, wake surfing, and tubing.

Competent observer—A person who has the ability to assess when a [skier] person being towed behind a boat is in trouble, knows and understands the waterskiing hand

signals, and is capable of helping **[a skier] a person being towed.**

PFD—Personal Flotation Device **as defined in § 97.1.**

* * * * *

Water ski—A **[device] single or pair of long flat runners designed to be** used by a person **[to be towed through or on] for planing over** water **while being towed** behind a boat. **[The term includes conventional water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattress, parasails, kite skis and similar devices.]**

Waterskiing—A competitive or recreational water sport in which a person is towed across the water's surface behind a boat in any fashion on a water ski as defined in this subsection or on **[his] their** bare feet.

(b) *[Skiing hours] Hours. [Ski activities] Waterskiing and other boat-towed watersports* are prohibited between the hours of sunset and sunrise.

(c) *Observer required.* The following conditions apply:

(1) *General rule.* Except as otherwise provided in this subsection, it is unlawful for a person to operate a boat towing or otherwise assisting a person on water skis **or other boat-towed watersports** unless there is at least one competent observer in the boat in addition to the operator of the boat. The observer shall be positioned in the boat to observe the progress of the person being towed. It is unlawful for a person to water ski **or ride a towed device** being towed by a watercraft or device not containing an operator and observer as required by this subsection.

(2) *Special conditions.* The Executive Director, or a designee, may issue a permit to allow a limited exception to paragraph (1). A permit issued under this paragraph will permit operation of a boat towing a **[water skier] water-skier** without an observer, in addition to the operator, on board the boat. These operations will be permitted only under the following conditions:

(i) Both the operator of the boat and the **[water skier] water-skier** meet safety training requirements as evidenced by documented completion of a safe boating course and active membership in a State or National waterskiing organization, which provides members with information on waterskiing safety.

* * * * *

(vii) The waterskiing takes place before the hour of 10 a.m. on a day other than a weekend or holiday. The Executive Director, for good cause shown, may permit waterskiing under this section on a Saturday or Sunday before the hour of 10 a.m. if the Executive Director finds that other boating activities on the waters at the same time will not interfere with the **[water-skiing] waterskiing.**

(viii) The waterskiing takes place on waters described and approved for the operations in the permit.

(ix) The waterskiing takes place when the Executive Director or a designee indicates in the permit.

(x) The boat towing the **[water skier] water-skier** displays a special water ski flag of a size and design approved by the Commission.

(xi) The permittee carries the permit onboard while operating the boat towing a **[water skier] water-skier** without an observer.

(d) *Umbilical or remote controls.* A person may not operate a device which is controlled by a person connected to the power source by means of an umbilical or remote control, or both, which tows the person on or through the water.

(e) **[Ski tow] Tow ropes.** **[Ski tow] Tow** ropes may not exceed the following lengths:

* * * * *

(f) *PFDs.* It is unlawful for a person to operate a boat on the waters of this Commonwealth for:

(1) Waterskiing **and other boat-towed watersports (except wake surfing)** unless each person being towed is wearing a United States Coast Guard approved wearable PFD in accordance with § 97.1 (relating to personal flotation devices). Inflatable PFDs may not be used to meet this requirement.

* * * * *

(g) *Water ski wetsuits.* A person engaged in slalom skiing on a marked course or a person engaged in barefoot, jump or trick skiing, or wake surfing may elect to wear a wetsuit designed specifically for the activity in lieu of the United States Coast Guard approved wearable PFD required in § 97.1. A United States Coast Guard approved wearable **[PDF] PFD** described in § 97.1 shall be carried in the tow boat for each skier electing to wear a water ski wetsuit. The nonapproved water ski wetsuit device shall meet the following criteria:

* * * * *

(h) *Starting and returning from shore or dock.* Notwithstanding the slow, no wake restrictions contained in § 103.3(b) (relating to restriction for special areas), skiers are permitted to start from the shore or dock if the traffic situation permits this to be done safely and in accordance with other water ski regulations. A **[water skier] water-skier** is not permitted to be returned to dock or shore under power. The skier shall release outside the 100-foot limit. The skier may then coast or glide toward the shore or dock, if

the skier does not endanger life and property in so doing and steers clear of swimmers, docks and boats.

* * * * *

§ 111.2. Allegheny County.

(a) *Allegheny River*. The following special regulations apply to the Allegheny River:

* * * * *

(2) The area behind Nine Mile Island, Mile 10.0 to Mile 10.4 is a designated ski zone. Boats not actively engaged in towing **[water skiers] water-skiers or other boat-towed watersport participants** are limited to slow, no wake speed.

(b) *Monongahela River*. Waterskiing **[is] and other boat-towed watersports are** prohibited from the Glassport Bridge (Mile 19.4) to the Union Railroad Bridge (Mile 21.1) at Clairton.

* * * * *

§ 111.3. Armstrong County.

(a) *Crooked Creek Lake*.

(1) A boat may not tow more than one **[water-skier] boat-towed device** on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

* * * * *

§ 111.6. Berks County.

(a) *Blue Marsh Lake*.

* * * * *

(3) A boat may not tow more than one **[water ski] boat-towed** device.

* * * * *

§ 111.13. Carbon County.

(a) *Beltzville Lake—Beltzville State Park*.

* * * * *

(3) Waterskiing **[is] and other boat-towed watersports are** prohibited except between sunrise and sunset in the designated ski zone. Boats in this zoned area shall operate in a counter-clockwise direction. Boats not engaged in waterskiing **and other boat-towed watersports** shall remain outside the ski zone area while waterskiing **[is] and other boat-towed watersports are** in progress. A boat may not tow more than one **[water ski] boat-towed device** on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

* * * * *

§ 111.58. Susquehanna County.

* * * * *

(d) *Laurel Lake.*

* * * * *

(3) *Restrictions on operation of boats powered by internal combustion motors.* Operation of boats powered by internal combustion motors is subject to the following restrictions:

(i) **[Ski] Towed devices.** A boat may not tow more than one **[water ski] boat-towed device**.

(ii) *Upper Lake.* Boat speed is limited to slow, no wake speed except that, during the period from noon until 6 p.m., no more than two boats powered by internal combustion motors may, at any one time, operate at speeds greater than slow, no wake speed in the marked boat operating zone. Boats operating in the marked zone shall circle in a counter-clockwise direction and shall be subject to the restrictions in this subsection and the code and this subpart. It is unlawful to water ski **or tow any other boat-towed device** or to operate a boat at greater than slow, no wake speed at any location on the upper lake from 6 p.m. until noon of the following day.

(iii) *Lower Lake.* It is unlawful to water ski **or tow any other boat-towed device** or to operate a boat at greater than slow, no wake speed at any time at any location on the lower lake.

* * * * *

§ 111.64. Wayne County.

(a) *Duck Harbor Pond.*

* * * * *

(2) A boat may not tow more than one **[water ski] boat-towed device** on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

* * * * *

(b) *Long Pond.*

* * * * *

(2) Waterskiing **[is] and other boat-towed watersports are** permitted from 10 a.m. until 5 p.m. on weekends and holidays and from 10 a.m. until sunset on weekdays other than holidays.

(3) A boat may not tow more than one **[water ski] boat-towed device** on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

* * * * *

§ 111.66. Wyoming County.

Lake Winola.

* * * * *

(2) A boat may not tow more than one **[water ski] boat-towed** device on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

* * * * *

On February 7, 2022, the Boating Advisory Board considered this proposal and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendments.

Briefer:

Laurel L. Anders, Director, Bureau of Boating

Recommendation:

Staff recommend that the Commission approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. If adopted on final rulemaking, these amendments will go into effect January 1, 2023.

Action:

A motion was made by Commissioner Hussar and seconded by Commissioner Gibney to approve the publication of a notice of proposed rulemaking containing the proposed amendments described in the Commentary. If adopted on final rulemaking, these amendments will go into effect January 1, 2023. Motion carried by unanimous vote (with the removal of the comma on Page 52, under § 103.3. Restrictions for special areas. (a).

LAW ENFORCEMENT FINAL RULEMAKING

A. Amendments to 58 Pa. Code § 63.8 (Long bows, crossbows, spears, and gigs).

Commentary:

The Pennsylvania Fish and Boat Commission (Commission), specifically the Bureau of Law Enforcement (Bureau), has received an increasing number of complaints regarding bowfishing. Most of these complaints revolve around the intense bright lighting used to locate fish along the shoreline. In addition to the lighting, the noise created by the internal combustion, gas-powered generators used by some to operate the lighting has also generated complaints to the Bureau and created conflicts with property owners along Commonwealth waterways.

After receiving feedback from agency staff, property owners, anglers, fishing guides, and legislators, staff have conferred and support a clarification of the regulation as listed below.

The Law Enforcement Committee considered this proposal on December 15, 2021, and recommended the Commission approve the publication of a notice of proposed rulemaking containing the amendment.

A notice of proposed rulemaking was published at 52 Pa.B. 1494 (March 12, 2022) (Exhibit R). The Commission received a total of 34 public comments regarding the proposed rulemaking: one supports the proposal, 29 oppose the proposal, and four do not pertain to the proposed rulemaking. Copies of all public comments were provided to the Commissioners.

§ 63.8. Long bows, crossbows, spears, and gigs. – 2102(b)

* * * * *

(d) Exceptions:

(1) It is unlawful to use bow and arrow (including compound bows and crossbows), spears and gigs in any special regulation trout waters.

(2) It is unlawful to cast direct rays of a spotlight, mounted headlight, or any other artificial light of any kind from any watercraft, upon any occupied building, or another watercraft.

(3) It is unlawful to use generators on board a watercraft engaged in bowfishing with a noise level that exceeds 90 dB(a). The noise emission test measurement will be made with the sound level meter at a distance of at least 4 feet above the water at a point where the transom gunwale and the port or starboard gunwale intersects.

Briefer:

Colonel Clyde N. Warner, Jr., Director, Bureau of Law Enforcement

Recommendation:

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

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Lewis to table this item until the July 25, 2022 quarterly Commission Meeting. Motion to table carried by unanimous vote.

LAW ENFORCEMENT PROPOSED RULEMAKING

A. Amendment to 58 Pa. Code § 63.5 (Methods of fishing).

Commentary:

Over the last several seasons, Waterways Conservation Officers (WCOs) of the Pennsylvania Fish and Boat Commission (Commission) have asked to update § 63.5 (Methods of Fishing) to include the attempt to take fish by unlawful methods. Officers have noticed an increase in individuals using nets to attempt to take fish. This request is primarily in response to issues during the Steelhead Run in the Lake Erie tributaries but would have application in other areas of the state. For consistency, similar language exists in § 63.9 (Snatch fishing, foul hooking, and snag fishing).

Staff from the Commission's Bureau of Law Enforcement have conferred and support a change to the regulation that would prohibit the attempt to take fish by unlawful methods.

Staff propose that § 63.5 be amended as follows:

§ 63.5. Methods of fishing.

It is unlawful to use a method for taking fish **or attempt to take fish** from the waters of the Commonwealth, including boundary lakes and rivers, unless the use of the method is specifically authorized by law or regulations set forth in this part.

Briefer:

Colonel Clyde Warner, Director, Bureau of Law Enforcement

Recommendation:

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

Action:

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

LAW ENFORCEMENT PROPOSED RULEMAKING

B. Amendment to 58 Pa. Code § 63.9 (Snatch fishing, foul hooking and snag fishing).

Commentary:

Over the last several years, anglers have asked the Pennsylvania Fish and Boat Commission (Commission) whether devices such as trout beads are a legal device for use in Commonwealth waters. These devices consist of a small bead that sits several inches above the hook and generally hook a fish on the outside of the mouth. Under the current regulations, any fish not hooked inside the mouth must be released unharmed to the waters it was taken from.

Staff from the Bureaus of Law Enforcement and Fisheries have conferred and support a clarification of the regulations which would permit these devices.

Staff propose that § 63.9 be amended as follows:

§ 63.9. Snatch fishing, foul hooking, and snag fishing.

* * * * *

(c) Nothing in this section will prohibit the use of a device so long as the hook is no more than 2 inches below the device.

Briefer:

Colonel Clyde Warner, Director, Bureau of Law Enforcement

Recommendation:

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

Action:

A motion was made by Commissioner Brock and seconded by Commissioner Small to approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary. If approved on final rulemaking, the amendment will go into effect upon publication in the *Pennsylvania Bulletin*. Motion carried with one abstention (Commissioner Hussar).

LAW ENFORCEMENT PROPOSED RULEMAKING

C. Amendment to 58 Pa. Code § 63.15a (Officially-recognized fish cleaning stations).

Commentary:

Waterways Conservation Officers of the Pennsylvania Fish and Boat Commission (Commission) are requesting that a 2 inch by 2 inch piece of skin remain on fish fillets and the chunking of the fillets be prohibited. This will assist in the identification of fish that are harvested and processed at noncommercial officially recognized fish cleaning stations throughout the Commonwealth. Without the skin, it is difficult for officers to identify the species of fish from the fillet. Chunking makes it difficult for officers to identify the number of fish filleted.

Staff from the Commission's Bureau of Law Enforcement have conferred and support a change to the regulation which would prohibit the removal of skin from fish fillets at noncommercial officially recognized fish cleaning stations. This will simplify the identification of the fish that are harvested or processed at these locations.

Staff propose that § 63.15a be amended as follows:

§ 63.15a. Officially-recognized fish cleaning stations.

* * * * *

(e) Identification. Officially-Recognized Fish Cleaning Station users shall leave at least a 2 inch by 2 inch piece of skin on processed fillets for identification purposes. Cutting the fillets into pieces (also known as chunking) is prohibited.

Briefer:

Colonel Clyde Warner, Director, Bureau of Law Enforcement

Recommendation:

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

Other New Business

There was no other new business discussed.

Time and Place of July 2022 Commission Meeting

Announcement of the July 25-26, 2022 quarterly Commission Meeting in Harrisburg, PA at 10:00 a.m.

Adjournment

A motion was made by Commissioner Hussar and seconded by Commissioner Small to adjourn the meeting at 3:49 p.m. Motion carried by unanimous vote.