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Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes

The 123rd Meeting of the Pennsylvania Fish and Boat Commission was held on Monday and Tuesday, April 24 and 25, 2017 at the Pennsylvania Fish and Boat Commission headquarters, Harrisburg, PA 17110.

Commission committees met on April 24 beginning at approximately 10:45 a.m. and on April 25 beginning at approximately 8:30 a.m. The public session for review of this agenda began on or about 9:50 a.m. on April 25.

Call to Order

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

Roll Call

Members Present

Rocco S. Ali, President
Eric C. Hussar, Vice-President
Steven M. Ketterer
Leonard L. Lichvar
Edward P. Mascharka III
William J. Sabatose

Members Not Present

G. Warren Elliott
Norman R. Gavlick

Review and Approval of Minutes from the January 24, 2017 Meeting

A motion was made by Commissioner Sabatose and seconded by Commissioner Ketterer to approve the January 24, 2017 minutes as written. Motion carried.

Awards and Presentations

The North East Conservation Law Enforcement Chiefs Association (NECLECA) Officer of the Year Award for 2016 was presented to Waterways Conservation Officer (WCO) Corey Girt. Each year the Bureau of Law Enforcement teams up with the NECLECA to recognize one

officer from every jurisdiction as that state's officer of the year. To be considered for this prestigious award an officer must be nominated by their region command staff and then selected by a committee from the Harrisburg headquarters. Officers are selected based on their overall performance in their assigned patrol area to include law enforcement functions in fisheries, boating and environmental issues, education and outreach, and in other areas pertinent to the position of a WCO. For 2016, WCO Girt has been selected as the Commission's NECLECA officer of the year. WCO Girt currently serves in the 6063, Mifflin/Northern Huntingdon County, District. During 2016, WCO Girt conducted five special enforcement details focused on after hours protection of spawning walleye within nursery waters, the spawning run of striped bass, protection of Commission property and inseason trout stocking endeavors. He committed 50 patrol shifts to on the water boat patrol focusing on Raystown Lake and the Juniata River, during which time he conducted 488 vessel boardings. He also conducted six boating enforcement details and apprehended six Boating Under the Influence (BUI) suspects. In all aspects of the job, WCO Girt went above and beyond. Because of his efforts and many more not mentioned, WCO Girt was the perfect selection for the 2016 Officer of the Year.

The 2016 Top Gun Award was presented to WCO Emmett Kyler. The Bureau of Law Enforcement's Top Gun Award is presented annually to that WCO who detects and apprehends impaired operators as well as having a well-rounded BUI program within their assigned district. For 2016, WCO Kyler from the Northcentral Region has been chosen for his BUI efforts in the 5053, Lycoming County, District. For the 2016 boating season, WCO Kyler apprehended 10 BUI's in three different counties. He also was responsible for successfully prosecuting the first non-powered BUI case in Clearfield County. WCO Kyler stays on top of his skills by being a Standardized Field Sobriety Test instructor for the Bureau. He successfully used those skills not only on the water but also on the Commonwealth's highways by apprehending two individuals for Driving Under the Influence. For these reasons, WCO Kyler is our 2016 Top Gun.

Executive Director's Report

The "January – March 2017 Quarterly Report" (Exhibit A) was provided to Commissioners. Executive Director Arway spoke on current events and ways to get more people outdoors. Video presentations entitled "The Fishin' Hole" and "Mike Iaconelli Bass Fishing" followed.

Announcement of Executive Session

Commissioner Ali announced that an executive session was held on April 24 at 8:00 a.m. to discuss potential real estate acquisitions and threatened litigation.

Reports of Commissioner Committees

Executive and Administrative (Commissioner Ali) –

The Executive and Administrative Committee met on Monday, April 24, at approximately 10:45 a.m. Executive Director Arway provided an update on the Penn State University marketing and business plan. Brian Barner gave a report on the Commission's vehicle reduction initiative and on the Pennsylvania Automated License System (PALS) Request for Proposal (RFP). Bernie Matscavage provided a license sales and boat registration sales update. Paul Urbanik gave an engineering update.

Boating (Commissioner Ketterer) –

The Boating Committee met on Tuesday, April 25, at approximately 8:55 a.m. One agenda item was discussed. Colonel Britcher provided a review of the National Association of State Boating Law Administrators (NASBLA) workshop held in March in Lexington, Kentucky.

Fisheries (Commissioner Mascharka) –

The Fisheries Committee met on Monday, April 24, at approximately 3:25 p.m. Agenda items were discussed. Robert Carline, retired professor from Pennsylvania State University, provided a presentation on the Bald Eagle Trout Tournament Bait Fishing Mortality Study. Jason Detar and Mark Sausser gave a presentation on the Upper West Branch Susquehanna River wild trout recovery efforts, and Brian Ensign provided an update on the Musky Management Plan.

Habitat and Environmental (Commissioner Lichvar) –

The Habitat and Environmental Committee met on Monday, April 24, at approximately 1:25 p.m. Chris Urban provided the Annual Timber Rattlesnake Status Report, and Doug Fischer gave a presentation on *The Fishes of Pennsylvania* book that he coauthored. Commissioner Lichvar indicated that he is taking the lead to ensure that the Commission follows through with the Association of Fish and Wildlife Agencies on the national level on the proposed federal budget cuts that, if enacted, will jeopardize our water and land resources in Pennsylvania.

Hatcheries (Commissioner Ali) –

The Hatcheries Committee met on Monday, April 24, at approximately 2:15 p.m. Presentations were provided on 10 years of larger trout, New Zealand mud snails, the Linesville State Fish Hatchery and brown trout, and steelhead and brown trout stocking for Lake Erie.

Law Enforcement (Commissioner Sabatose) –

The Law Enforcement Committee met on Tuesday, April 25, at approximately 8:30 a.m. An update was given on the Fishkil hotline, and a recap was provided regarding the Mentored Youth Trout Days and the Opening Day of Trout Season.

The Committee also acted upon proposed revocations. The Committee revoked the fishing privileges of one individual for a period of two years and two individuals for five years. The Committee also revoked the boating privileges of one individual for five years and directed him to successfully complete a classroom boating safety education course. In addition, the Committee revoked the venomous snake permit of two individuals for five years.

Legislation and Public Outreach (Commissioner Mascharka) –

The Legislation and Public Outreach Committee met on Monday, April 24, at approximately 11:45 a.m. Tim Schaeffer provided a legislative update on the license fee delegation authority and increase bills, the therapeutic recreation exemption, and the public safety and customer service amendments. Public outreach items covered presentations on the First Fishing Center and 2017 marketing efforts. Amidea Daniel gave an update on the youth and women's program activities, and Carl Richardson provided a presentation on the catfish pilot program.

Public Comment to Commissioners and Staff

There were no comments or questions from the public.

BOATING PROPOSED RULEMAKING

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

Commentary:

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

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

Staff accordingly propose the following amendment to §105.3:

§105.3. Unacceptable boating practices.

It is unlawful to:

* * *

(12) Operate a motorboat propelled by an outboard motor, inboard/outboard motor or water jet while a person is wake surfing in or on the wake of the motorboat, **unless the propulsion system is specifically designed by the manufacturer for that activity.**

On February 23, 2017, 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:

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

Recommendation:

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

Action:

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

FISHERIES DESIGNATIONS

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

Commentary:

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

Staff recommend the addition of 41 stream sections to the Commission's list of Class A wild trout streams. These changes are the result of recent surveys conducted on these waters. Exhibit B provides information on the locations and a data summary for each of these waters.

A notice of proposed designations was published at 47 Pa. B. 1104 (February 18, 2017) (Exhibit C). The Commission received a total of 60 public comments regarding the proposed designations – one comment was received prior to the formal comment, 55 during and four after. Of the 60 comments, 59 support all of the proposed designations and one supports the designation of a specific water. Copies of all public comments have been provided to the Commissioners.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission add 41 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 Sabatose and seconded by Commissioner Mascharka to add 41 stream sections to the Commission's Class A wild trout streams list as described in the Commentary. These additions will go into effect upon publication of a second notice in the *Pennsylvania* Bulletin. Motion carried.

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

Commentary:

The Department of Environmental Protection's regulations at 25 Pa. Code § 105.1 define the term "wild trout stream" as "a stream identified as supporting naturally reproducing trout populations by the Fish and Boat Commission under 58 Pa. Code § 57.11 (relating to listing of wild trout streams)." This term has regulatory significance because wetlands that are located in or along the floodplain of the reach of a wild trout stream and the floodplain of streams tributary thereto are considered "exceptional value" and are thus entitled to the highest level of protection.

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

Staff recommend the addition of 99 new waters to the Commission's list of wild trout streams, revisions to the section limits of six waters, and the removal of one water from the list. 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 47 Pa. B. 1099 (February 18, 2017) (Exhibit E). The Commission received a total of 44 public comments regarding the proposed designations – 39 comments were received during the formal comment, and five were received after. Of the 44 comments, 43 support all of the proposed designations and one supports the designation of a specific water. One comment urges the Commission to refrain from removing a stream from the list to the extent that the stream's characteristics and trout populations have been changed principally as a result of human intervention. Copies of all public comments have been provided to the Commissioners.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

Staff recommend that the Commission add 99 new waters to the Commission's list of wild trout streams, revise the section limits of six waters, and remove one water from the

list as described in the Commentary. If approved, these additions, revisions, and removal will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*.

Action:

A motion was made by Commissioner Sabatose and seconded by Commissioner Hussar to add 99 new waters to the Commission's list of wild trout streams, revise the section limits of six waters, and remove one water from the list as described in the Commentary. These additions, revisions, and removal will go into effect upon publication of a second notice in the *Pennsylvania Bulletin*. Motion carried.

C. Brood Stock Lakes Program: Designation Changes under Section 65.18.

Commentary:

Lakes managed under section 65.18 (relating to brood stock lakes) are used by Commission fish production staff to collect brood stock for Muskellunge, Tiger Muskellunge, Northern Pike, and/or Chain Pickerel culture. This regulation is intended to restrict harvest and fish consumption from designated lakes during the FDA-mandated withdrawal period. During this period, fish anesthetics are used during esocid culture operations. From April 1 through May 31, fishing for these species is permitted on a catch and release/no harvest basis. It is unlawful to take or possess any Muskellunge, Tiger Muskellunge, Northern Pike and Pickerel from these lakes during this period. When caught, these fish species must be immediately returned unharmed.

As culture practices have evolved, four lakes (Duck Harbor Pond, Wayne County; Lake Wallenpaupack, Pike County; Miller Pond, Wayne County; and Union City Reservoir, Erie County) are no longer used for esocid culture. Staff therefore recommend their removal from the Brood Stock Lakes Program. Lake Wilhelm, Mercer County, will be used for esocid culture in the future. Therefore, staff recommend adding this lake to the Brood Stock Lakes Program.

A notice of proposed designations was published at 47 Pa. B. 1715 (March 18, 2017) (Exhibit F). The Commission did not receive any public comments regarding the proposed designations.

Briefer:

Andrew L. Shiels, Director, Bureau of Fisheries

Recommendation:

Staff recommend removing Duck Harbor Pond, Wayne County; Lake Wallenpaupack, Pike County; Miller Pond, Wayne County; and Union City Reservoir, Erie County, from the Brood Stock Lakes Program and adding Lake Wilhelm, Mercer County, to the Brood Stock Lakes Program. If approved, these designations/re-designations will go into effect on January 1, 2018.

Action:

A motion was made by Commissioner Mascharka and seconded by Commissioner Lichvar to remove Duck Harbor Pond, Wayne County; Lake Wallenpaupack, Pike County; Miller Pond, Wayne County; and Union City Reservoir, Erie County, from the Brood Stock Lakes Program and add Lake Wilhelm, Mercer County, to the Brood Stock Lakes Program. These designations/re-designations will go into effect on January 1, 2018. Motion carried.

Other New Business

None.

Time and Place of July 2017 Commission Meeting

The next meeting will be held on July 10-11, 2017 in Harrisburg.

Adjournment

A motion was made by Commissioner Sabatose and seconded by Commissioner Lichvar to adjourn the meeting at approximately 10:20 a.m. Motion carried.