

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

MINUTES

157th Meeting

Volume 75

**HARRISBURG, PENNSYLVANIA
January 22, 2024**

Table of Contents

Call to Order	1
Roll Call	1
Pledge of Allegiance	1
Public Comments to Commissioners and Staff.....	1
Staff and Volunteer Recognition	1
Review and Approval of Minutes from the October 23, 2023 Meeting	1
Executive Director's Report.....	1
Reports of Commissioner Committees	1
Announcement of Executive Session	1
Notice of Temporary Change to Fishing Regulations	1
A. Temporary change to fishing regulations (58 Pa. Code § 61.2) (Delaware River, West Branch Delaware River and Estuary) to address the striped bass fishery	1
B. Temporary change to fishing regulations (58 Pa. Code § 65.25) to Kahle Lake, Clarion and Venango counties, to lift all seasons, sizes, and creel limits for all species	2
BOATING	3
FINAL RULEMAKING	3
A. Amendment to 58 Pa. Code § 111.22 (Dauphin County)	3
B. Amendments to 58 Pa. Code § 97.1 (Personal flotation devices), § 111.3 (Armstrong County), § 111.20 (Crawford County), § 111.24 (Elk County), § 111.26 (Fayette County), § 111.27 (Forest County), § 111.32 (Indiana County), § 111.42 (McKean County), § 111.43 (Mercer County) § 111.56 (Somerset County), § 111.62 (Warren County), and § 111.65 (Westmoreland County).....	4
C. Amendments to § 107.1 (Horsepower restrictions) and § 107.2 (Electric motors)	5
FISHERIES	6
FINAL RULEMAKING	6
A. Amendment to 58 Pa. Code § 75.1 (Endangered species): Add digger crayfish; remove black bullhead and threespine stickleback; Amendment to 58 Pa. Code § 75.2 (Threatened species): Add the longsolid; and Amendment to 58 Pa. Code § 75.3 (Candidate species): Remove the least brook lamprey and brook stickleback	6
FISHERIES	7
DESIGNATIONS	7
A. Proposed changes to the list of Class A wild trout streams (58 Pa. Code § 57.8a)	7
B. Classification of wild trout streams (58 Pa. Code § 57.11): Proposed additions and revisions.....	8
FISHERIES	9
OTHER MATTERS	9
A. Proposed exemptions to 58 Pa. Code § 57.8a (Class A wild trout streams) to allow for the continued stocking of trout at Big Moores Run, Section 03, Potter County	9

HATCHERIES	10
OTHER MATTERS	10
A. Cooperative Nursery Grant Program: Grant to the Eldred Conservation Club, McKean County	10
Other New Business	11
Time and Place of April 2024 Commission Meeting	11
Adjournment.....	11

Commonwealth of Pennsylvania
Pennsylvania Fish and Boat Commission

Minutes¹

The 157th Meeting of the Pennsylvania Fish and Boat Commission was held on Monday, January 22, at the Pennsylvania Fish and Boat Commission headquarters, 1601 Elmerton Avenue, Harrisburg, PA 17110.

The public session for review of this agenda began on January 22, 2024, at approximately 10:05 a.m.

Call to Order

This meeting was called to order by the Commission President William Gibney. The roll was called by Chief Counsel Renae Kluk Kiehl and followed by the Pledge of Allegiance.

Roll Call

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

All Commissioners were present.

Public Comments to Commissioners and Staff

Mike Kriner from the Pennsylvania Federation of Sportsman and Conservationists thanked everyone with the Pennsylvania Fish and Boat Commission for the continued communication, flexibility, transparency, and support.

Staff and Volunteer Recognition

Executive Director, Timothy Schaeffer recognized Waterways Conservation Officers Rachel Turner Diaz and Kyle Robinson for winning the Celebrity Honey Bee Extraction contest at the Pennsylvania Farm Show.

Executive Director, Timothy Schaeffer announced that Director of Policy, Planning and Communications Robert Caccese was recently invited to give the annual George Tseo Memorial

¹All items that have been or will be published in the Pennsylvania Bulletin are formatted in accordance with the [*Pennsylvania Code & Bulletin Style Manual*](#).

Lecture at Penn State Hazleton and called attention to Aquatic Invasive Species Coordinator, Sean Hartzell's publication in a scientific journal.

Colonel Clyde Warner recognized Sergeant Ronald Evancho, Waterways Conservation Officer (WCO) Erin Czech, WCO Abigail Luteri, and WCO Michael Blair for their efforts in saving lives along Commonwealth waterways.

Review and Approval of Minutes from the October 23, 2023 Meeting

A motion was made by Commissioner Anderson and seconded by Commissioner Brock to approve the October 23, 2023 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 upon, including the acceptance of applications for the next class of Waterways Conservation Officers, the release of stocking schedules, implementation of the calendar year boat registration process, and the new notice of stocking process that began on January 1, 2024. Executive Director Schaeffer also thanked all Officers who were involved in the steelhead enforcement efforts in Erie.

Reports of Commissioner Committees

Boating Committee (Commissioner Mahn) –

The Boating Committee held a virtual meeting on January 17, 2024, where the Committee members received a preview of three final rulemaking items. The Committee members also discussed several updates from staff on a variety of topics, including the introduction of new boating bureau staff, an update on boating facility grants, a report on the progress of Senate Bill 976, a report about the 2023 recreational boating fatalities, a summary of the Commission's ongoing life jacket wear outreach efforts, and an introduction to the National Safe Boating Council Waves of Hope resources. Commissioner Mahn shared that the Boating Advisory Board is scheduled to meet on February 5, 2024, at 9:00 a.m. at the Harrisburg headquarters.

No other Committees have met since the October Board meeting.

Announcement of Executive Session

Commission President William Gibney announced that an executive session was held on January 22, 2024, at approximately 8:30 a.m. to discuss several potential property acquisitions and dispositions in the northwest, personnel issues related to incoming and departing of staff along with compensation issues, and progress in a legal action regarding natural resource damage.

Notice of Temporary Changes to Fishing Regulations

- A. Temporary change to fishing regulations to address the striped bass fishery. Please see Exhibit A. Kris Kuhn, Director of the Bureau of Fisheries provided details.
- B. Temporary change to fishing regulations at Kahle Lake, Clarion and Venango counties. Please see Exhibit B. Kris Kuhn, Director of the Bureau of Fisheries provided details.

**BOATING
FINAL RULEMAKING**

A. Amendment to 58 Pa. Code § 111.22 (Dauphin County).

Commentary:

A notice of proposed rulemaking was published at 53 Pa.B. 5507 (Saturday, September 2, 2023) (Exhibit C). Please review the “Summary of Proposal” in Exhibit C for further details. The Commission did not receive any public comments relating to this proposal.

Briefer:

Laurel L. Anders, Senior Executive Advisor

Recommendation:

Staff recommend that the Commission adopt the amendment as set forth in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Anderson to adopt the amendment as set forth in the notice of proposed rulemaking. Motion carried by unanimous vote.

BOATING
FINAL RULEMAKING

- B. Amendments to 58 Pa. Code § 97.1 (Personal flotation devices), § 111.3 (Armstrong County), § 111.20 (Crawford County), § 111.24 (Elk County), § 111.26 (Fayette County), § 111.27 (Forest County), § 111.32 (Indiana County), § 111.42 (McKean County), § 111.43 (Mercer County) § 111.56 (Somerset County), § 111.62 (Warren County), and § 111.65 (Westmoreland County).

Commentary:

A notice of proposed rulemaking was published at 53 Pa.B. 5505 (Saturday, September 2, 2023) (Exhibit D). Please see the “Summary of Proposal” in Exhibit D for additional details. The Commission did not receive any public comments relating to this proposal.

Briefer:

Laurel L. Anders, Senior Executive Advisor

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Anderson and seconded by Commissioner Mahn to adopt the amendments as set forth in the notice of proposed rulemaking. Motion carried by unanimous vote.

BOATING
FINAL RULEMAKING

C. Amendments to § 107.1 (Horsepower restrictions) and § 107.2 (Electric motors).

Commentary:

A notice of proposed rulemaking was published at 53 Pa.B. 7604 (Saturday, December 9, 2023) (Exhibit E). Please review the “Summary of Proposal” in Exhibit E for further details. The Commission received one comment in favor of this proposal.

Briefer:

Laurel L. Anders, Senior Executive Advisor

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Lewis and seconded by Commissioner Charlesworth to adopt the amendments as set forth in the notice of proposed rulemaking. As part of the discussion, Commissioner Pastore inquired about the process for conversion from gas motor horsepower to electric motors and Commission staff explained the chart that is provided to Waterways Conservation Officers. Motion carried by unanimous vote.

FISHERIES
FINAL RULEMAKING

- A. Amendment to 58 Pa. Code § 75.1 (Endangered species): Add digger crayfish; remove black bullhead and threespine stickleback; Amendment to 58 Pa. Code § 75.2 (Threatened species): Add the longsolid; and Amendment to 58 Pa. Code § 75.3 (Candidate species): Remove the least brook lamprey and brook stickleback.

Commentary:

A notice of proposed rulemaking was published at 53 Pa.B. 7601 (December 9, 2023) (Exhibit F). Please review the “Summary of Proposal” in Exhibit F for further details. The Commission did not receive any public comments regarding the proposal.

Briefer:

Christopher A. Urban, Chief, Natural Diversity Section

Recommendation:

Staff recommend that the Commission adopt the amendments as set forth in the notice of proposed rulemaking.

Action:

A motion was made by Commissioner Kauffman and seconded by Commissioner Hussar to adopt the amendments as set forth in the notice of proposed rulemaking. Motion carried by unanimous vote.

FISHERIES DESIGNATIONS

A. Proposed changes to the list of Class A wild trout streams (58 Pa. Code § 57.8a).

Commentary:

Staff recommend the addition of six 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 G provides information on the locations and a data summary for each of these waters.

A notice of proposed designations was published at 53 Pa.B. 7269 (November 18, 2023) (Exhibit H). Please review Exhibit H for further details. The Commission received a total of 91 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 six stream sections to its Class A wild trout streams list as set forth in the notice of proposed designations.

Action:

A motion was made by Commissioner Brock and seconded by Commissioner Charlesworth to add six stream sections to the Class A wild trout streams list as set forth in the notice of proposed designations. Motion carried by unanimous vote.

FISHERIES DESIGNATIONS

B. Classification of wild trout streams (58 Pa. Code § 57.11): Proposed additions and revisions.

Commentary:

Staff recommend the addition of two new waters to the Commission's list of wild trout streams and the revision of the section limits of four waters currently listed. These changes are the result of recent surveys conducted on these waters. Exhibit I 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 53 Pa.B. 7268 (November 18, 2023) (Exhibit J). Please review Exhibit J for further details. The Commission received a total of 91 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 two new waters to the Commission's list of wild trout streams and revise the section limits of four waters currently listed as set forth in the notice of proposed designations.

Action:

A motion was made by Commissioner Small and seconded by Commissioner Kauffman to add two new waters to the Commission's list of wild trout streams and revise the section limits of four waters currently listed as set forth in the notice of proposed designations. 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 Big Moores Run, Section 03, Potter County.

Commentary:

Commission staff have identified one potential exemption to 58 Pa. Code § 57.8a (Class A wild trout streams) that satisfy criteria to consider the continuance of trout stocking at one Class A stream section. The general exemption classification, stream name, stream section, and county:

Previously received a Special Activities Permit from the Commission between 2010 and present:

- Big Moores Run, Section 03, Potter County

A notice of the proposed exemption was published at 53 Pa.B. 8037 (December 23, 2023) (preliminary notice for purposes of a 30-day comment period commencement) and at 53 Pa.B. 8196 (December 30, 2023) (a more detailed notice of the proposed exemption) (Exhibit K). Please review Exhibit K for further details. The open public comment period for this proposal was ongoing when this agenda was finalized; therefore, a final comment summary is not provided here. A summary of all public comments will be communicated during the Commission meeting. 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 approve one exemption to 58 Pa. Code § 57.8a (Class A wild trout streams) to allow for the continued stocking of trout at Big Moores Run, Section 03, Potter County, as described in the Commentary.

Action:

A motion was made by Commissioner Brock and seconded by Commissioner Lewis to approve one exemption to 58 Pa. Code § 57.8a (Class A wild trout streams) to allow for the continued stocking of trout at Big Moores Run, Section 03, Potter County.

During the discussion, Commissioners requested further details about the section, its length and public access, the Special Activities Permits that were issued, the species stocked, and the applicant. Commission staff responded accordingly. Commissioners discussed the new Notice of Stocking that provides the Commission with more information about the location of stocking activities, which will help the Commission better manage these waters.

The motion was carried by a vote of eight to two. Commissioner Charlesworth and Commissioner Hussar opposed the motion.

HATCHERIES OTHER MATTERS

A. Cooperative Nursery Grant Program: Grant to Eldred Conservation Club, McKean County.

Commentary:

At the October 2021 meeting, the Pennsylvania Fish and Boat Commission (Commission) approved the removal of the annual funding limit for the Cooperative Nursery Grant Program and authorized the Executive Director to establish an annual funding level for the grant program that is based on the projected need of the program in conjunction with the annual budgeting process used to address all other agency priorities. The Commission authorized the Executive Director to approve individual grants of \$25,000 or less per cooperative nursery, per year. For grants in excess of \$25,000, staff will seek separate Commission approval.

The Eldred Conservation Club raises approximately 4,000 trout in a raceway constructed of poured concrete and cinder blocks. The nearly 60-year-old raceway needs to be replaced due to its age and current structural condition. The Eldred Conservation Club has a large-scale renovation of the nursery planned. These renovations include removing the current raceway and building a new poured concrete raceway surrounded by a sidewalk. Additionally, a roofed structure will be constructed to cover the raceway to provide protection to the trout raised in the raceway and to the nursery volunteers during inclement weather. A storage shed will be constructed next to the raceway to store feed and equipment used for raising and caring for the trout at the nursery. The total estimated cost of the project is \$41,848.29. The Eldred Conservation Club is requesting \$31,848.29 from the Commission to complete this project.

Briefer:

Brian C. Niewinski, Director, Bureau of Hatcheries

Recommendation:

Staff recommend that the Commission approve a grant not to exceed \$31,848.29 to the Eldred Conservation Club, McKean County, as detailed in the Commentary.

Action:

A motion was made by Commissioner Charlesworth and seconded by Commissioner Small to approve a grant not to exceed \$31,848.29 to the Eldred Conservation Club, McKean County.

During discussion the Commissioners inquired about the water source at the Club and the funds available for the grant program, to which they received responses. The Commissioners also noted the quality of the fish provided by the Commission's cooperative nurseries and the success of the program.

Motion carried by unanimous vote.

Other New Business

Commissioners Anderson and Charlesworth acknowledged Commission staff's efforts and requested an update on activities, such as stocking brook trout, and Commission staff responded.

Time and Place of April 2024 Commission Meeting

Announcement of the April 29, 2024, quarterly Commission Meeting in Harrisburg, Pennsylvania at the Pennsylvania Fish and Boat Commission headquarters, 1601 Elmerton Avenue, Harrisburg, PA 17110.

Adjournment

President Gibney asked for any other new business to be brought forth, and with no further business identified, the meeting adjourned.

NOTICES

FISH AND BOAT COMMISSION

Temporary Change to Fishing Regulations; 58 Pa. Code § 61.2. Delaware River, West Branch Delaware River and Estuary

[54 Pa.B. 69]

[Saturday, January 6, 2024]

The Executive Director of the Fish and Boat Commission (Commission), acting under the authority of 58 Pa. Code § 65.25 (relating to temporary changes to fishing regulations), has taken immediate action to amend 58 Pa. Code § 61.2 (relating to Delaware River, West Branch Delaware River and River Estuary). The Executive Director has amended this section to reduce the maximum legal harvestable length in the striped bass slot limit from less than 35 inches to less than 31 inches from the Commonwealth line upstream to Calhoun Street Bridge (Delaware Estuary) from January 1 through March 31 and June 1 through December 31 and from the Calhoun Street Bridge upstream (Delaware River) year-round. Daily limits, seasons and gear restrictions will remain the same. These actions are being taken to meet the requirements of the Atlantic States Marine Fisheries Commission (ASMFC).

At its May 2023 quarterly meeting, the ASMFC's Atlantic Striped Bass Management Board, which includes the Commonwealth as a member, approved an emergency action to implement a 31-inch maximum size limit for Atlantic striped bass recreational fisheries, effective immediately for no less than 180 days (October 28, 2023). The Executive Director, acting under the authority of 58 Pa. Code § 65.25, took immediate action to amend 58 Pa. Code § 61.2 to comply with this emergency action. These temporary modifications effected under this authority will expire on January 1, 2024. At its August 2023 quarterly meeting, the ASMFC's Atlantic Striped Bass Management Board extended the May emergency action through October 28, 2024, unless sooner replaced by Draft Addendum II to Amendment 7 to the Interstate Fishery Management Plan for Atlantic Striped Bass.

As outlined in the ASMFC's Interstate Fisheries Management Program Charter, a management board can take emergency action to address circumstances under which public health, the conservation of coastal fishery resources or attainment of fishery management objectives has been placed at substantial risk by unanticipated changes in the ecosystem, the stock or the fishery. These actions respond to the unprecedented magnitude of 2022 recreational harvest, which was nearly double that of 2021 and to new stock rebuilding projections which estimate the probability of the rebuilding the spawning stock to its biomass target by 2029 at less than 15% if the higher 2022 fishing mortality rate continues in subsequent years. Previous projections under the lower 2021 fishing mortality rate estimated the rebuilding probability at 97%. Additionally, the ASMFC implemented the emergency 31-inch maximum size limit through October 28, 2024, to reduce harvest of the strong 2015-year class. Jurisdictions are required to implement the measure so that continuity in regulations are maintained through this time period. The ASMFC may extend the emergency action for one more additional period of up to 1 year at a future meeting. The temporary change to 58 Pa. Code § 61.2 is designed to meet this objective.

To address the coast-wide regulation directed by the ASMFC, the Commission's Executive Director has taken immediate action to make the following modifications to fishing regulation:

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

* * * * *

(e) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
	* * * * *		
STRIPED BASS and HYBRID STRIPED BASS	From Pennsylvania line upstream to Calhoun Street Bridge: January 1 until March 31 and June 1 until December 31.	28 to less than [35] <u>31</u> inches	1
April 1 through May 31	21 to less than 24 inches	2	
From Calhoun Street Bridge upstream: open year-round	28 to less than [35] <u>31</u> inches	1	
	* * * * *		

The Executive Director will cause these temporary modifications to fishing regulations to be posted in the vicinity of the regulated waters, and the modified regulations will be fully effective and enforceable when so posted. These temporary modifications will remain in effect until January 1 of the following year or 6 months after they are effected, whichever comes later unless the Commission shall by then, by appropriate action, have approved the designation or redesignation of waters or shall have approved the revision to the regulation in question.

TIMOTHY D. SCHAEFFER,
Executive Director

[Pa.B. Doc. No. 24-18. Filed for public inspection January 5, 2024, 9:00 a.m.]

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NOTICES

FISH AND BOAT COMMISSION

Temporary Change to Fishing Regulations; Kahle Lake, Clarion and Venango Counties

[54 Pa.B. 219]
[Saturday, January 13, 2024]

The Executive Director of the Fish and Boat Commission (Commission), acting under the authority of 58 Pa. Code § 65.25 (relating to temporary changes to fishing regulations), has taken immediate action to modify temporary fishing regulations at Kahle Lake, Clarion and Venango Counties, in anticipation of a complete drawdown of the lake. The Executive Director is lifting all seasons, sizes and daily limits, as set forth in 58 Pa. Code § 61.1 (relating to Commonwealth inland waters) for all species, effective January 13, 2024. The Executive Director has found that this action is necessary and appropriate for the management of fish and to conserve and preserve fishing opportunities at this lake.

The Executive Director will cause these temporary modifications to fishing regulations to be posted in the vicinity of the lake, and the modified regulations will be fully effective and enforceable when so posted. These temporary modifications will remain in effect until further notice.

TIMOTHY D. SCHAEFFER,
Executive Director

[Pa.B. Doc. No. 24-52. Filed for public inspection January 12, 2024, 9:00 a.m.]

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Top

Bottom

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating; Special Regulations Counties

[53 Pa.B. 5507]

[Saturday, September 2, 2023]

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates the Commission's regulations pertaining to Susquehanna River, Lake Frederick, located in Dauphin County.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this proposed rulemaking, contact Renae Kluk Kiehl, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. *Statutory Authority*

The proposed amendment to § 111.22 (relating to Dauphin County) is published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

The specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

A slow, no wake zone currently exists on a channel of the Susquehanna River downstream of Goldsboro, between Bashore Island and the west shore of the river in Dauphin County. This area was established to protect private cabins that existed on the west side of the island at the time. The island is owned by York Haven Power and the cabins were demolished in 2018-2019, so there is no need for the special slow, no wake restriction on this channel. The channel is generally shallow and weedy, which limits boating activity and speed of operation. Boats must still comply with § 103.3(a) (relating to restrictions for special areas), which states that "[b]oats are limited to slow, no wake speed when within 100 feet of the shoreline; 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."

The Commission proposes that § 111.22 be amended to read as set forth in Annex A.

F. *Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-348. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 111. SPECIAL REGULATIONS COUNTIES

§ 111.22. [Dauphin County] [Reserved].

[*Susquehanna River, Lake Frederick. Boats are limited to slow, no wake speed between Bashore Island and the York County shoreline.*]

[Pa.B. Doc. No. 23-1177. Filed for public inspection September 1, 2023, 9:00 a.m.]

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PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 97 AND 111]

Boating; Operator Provided Equipment; Special Regulations Counties

[53 Pa.B. 5505]

[Saturday, September 2, 2023]

The Fish and Boat Commission (Commission) proposes to amend Chapters 97 and 111 (relating to operator provided equipment; and special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's regulations relating to personal flotation devices.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this proposed rulemaking, contact Renae Kluk Kiehl, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. *Statutory Authority*

The proposed amendment to § 97.1 (relating to personal flotation devices), is published under the statutory authority of section 5123 of the code (relating to general boating regulations). The proposed amendments to §§ 111.3, 111.20, 111.24, 111.26, 111.27, 111.32, 111.42, 111.43, 111.56, 111.62 and 111.65 are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

The specific purpose and background of the proposed amendments are described in more detail under the summary of proposal.

E. *Summary of Proposal*

Over the past decade, paddleboarding has been gaining popularity. Paddleboards are now widely available, affordable and relatively easy to transport. Paddleboards resemble oversized surfboards and models are designed for use on various waterways and conditions. They are primarily operated by a person standing on the board using a paddle in a manner similar to a canoe. Paddleboards are frequently used on lakes and rivers throughout this Commonwealth.

On October 3, 2008, the United States Coast Guard (USCG) issued a determination that, when beyond the narrow limits of a swimming, surfing or bathing area, the device known as a "paddleboard" is a vessel under 46 U.S.C. § 2101 (relating to general definitions). This classification means that no person may use a paddleboard unless in compliance with the Navigation Rules and applicable carriage requirements for this type of vessel. The Commission adopted the USCG's definition of paddleboard and associated life jacket carriage requirements in § 109.2 (relating to paddleboards and sailboards), effective January 1, 2015. This section states that a wearable life jacket must be carried on board for each person, "unless otherwise required to be worn in accordance with § 97.1 (relating to personal life jackets)." Commission staff recommend amendments to § 97.1 to provide clarification regarding life jacket wear requirements, since paddleboards are generally included with canoes and kayaks for recreational boating purposes. Commission staff also recommend amendments to incorporate paddleboards into Chapter 111 regulations for United States Army Corps of Engineers Pittsburgh District lakes where life jacket wear is required on boats less than 16 feet in length or any canoe, kayak or paddleboard.

The Commission proposes that §§ 97.1, 111.3, 111.20, 111.24, 111.26, 111.27, 111.32, 111.42, 111.43, 111.56, 111.62 and 111.65 be amended to read as set forth in Annex A.

F. Paperwork

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-349. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.1. Personal flotation devices.

* * * * *

(h) Children 12 years of age and younger shall wear an approved wearable PFD while underway on any boat 20 feet or less in length and all canoes **[and]**, kayaks **and paddleboards**. The operator of the watercraft violates this subsection if he does not cause a child 12 years of age or younger to wear a PFD as required by this subsection.

(i) Beginning November 1 until midnight April 30 of the following year, a person shall wear a Coast Guard approved wearable PFD while underway or at anchor on boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

CHAPTER 111. SPECIAL REGULATIONS COUNTIES

§ 111.3. Armstrong County.

(a) *Crooked Creek Lake.*

* * * * *

(5) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

* * * * *

(c) *Mahoning Creek Lake.*

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

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

§ 111.20. Crawford County.

* * * * *

(e) *Woodcock Creek Lake.*

* * * * *

(4) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

§ 111.24. Elk County.

East Branch Clarion River Lake—Elk State Park.

* * * * *

(3) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

§ 111.26. Fayette County.

Youghiogheny River Lake. Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

§ 111.27. Forest County.

Tionesta Lake.

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

(2) Boats are limited to slow, no wake speed upstream from the confluence of Little Piney Run.

§ 111.32. Indiana County.

(a) *Conemaugh River Lake.*

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

* * * * *

§ 111.42. McKean County.

Allegheny River Reservoir (Kinzua Dam).

* * * * *

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

§ 111.43. Mercer County.

(a) *Shenango River Lake.*

* * * * *

(5) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

* * * * *

§ 111.56. Somerset County.

Youghiogheny River Lake.

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

* * * * *

§ 111.62. Warren County.

Allegheny River Reservoir (Kinzua Dam).

* * * * *

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

§ 111.65. Westmoreland County.

(a) *Conemaugh River Lake.*

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

* * * * *

(b) *Loyalhanna River Lake.* All persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe **[or]**, kayak **or paddleboard**.

[Pa.B. Doc. No. 23-1176. Filed for public inspection September 1, 2023, 9:00 a.m.]

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Top

Bottom

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 107]

Boating; Boating Restrictions

[53 Pa.B. 7604]

[Saturday, December 9, 2023]

The Fish and Boat Commission (Commission) proposes to amend Chapter 107 (relating to boating restrictions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). These proposed amendments update the Commission's regulations pertaining to allowable electric motor speeds and clarify horsepower restrictions.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this proposed rulemaking, contact Renae Kluk Kiehl, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. *Statutory Authority*

These proposed amendments to §§ 107.1 and 107.2 (relating to horsepower restrictions; and electric motors) are published under the statutory authority of section 5124(a) of the code (relating to particular areas of water).

D. *Purpose and Background*

The specific purpose and background of the proposed amendments are described in more detail under the summary of proposal.

E. *Summary of Proposal*

Current regulations limit boat propulsion to electric motors only on Commission owned or controlled lakes, some state park lakes and water bodies specified in Chapter 111 (relating to special regulations counties). These regulations were originally intended to reduce noise, excessive wakes, shoreline erosion and property damage, and the risk of petroleum-based water pollution on certain water bodies. Boats powered by small electric motors (such as trolling motors) and unpowered boats are popular on Commonwealth bodies of water with electric motor only restrictions.

Some exceptions exist for state park lakes and certain other waters specified in Chapter 111 where internal combustion motors are permitted but with horsepower (HP) limitations. Boats propelled by

small gas outboard motors and unpowered boats are popular on these waterways.

Recent technological advancements with battery-powered electric boat motors have produced a variety of higher-powered options up to 180 HP and 60 miles per hour. While these new units are currently expensive and have limited battery capacity, it is anticipated they will become more affordable and widely available in the future. Boating stakeholders, partner organizations, other State agencies and Commission staff have expressed concern that high-powered electric motors could be legally operated on waters that are currently regulated as electric motor only waters, which is inconsistent with the original intent of this restriction. Additionally, Commission law enforcement staff have expressed concern about the complexity of enforcing HP limitations for electric motors to meet the original intent of current regulations.

Manufacturer and retailer specifications for electric motors frequently refer to kilowatt (kW) rather than HP, whereas Commission regulations refer only to HP. In enforcing HP limitations, Waterways Conservation Officers (WCO) typically rely on HP ratings that are marked on the boat's cowling (motor cover). If the HP rating is not marked on the cowling or the marking is not legible, WCOs may instead rely on documentation provided by the boat operator (such as an owner's manual), the results of an Internet search of motor make and model, or if the kW rating is known, use a conversion calculation to determine HP. The widely accepted conversion calculation is $\text{kW} \times 1.341 = \text{HP}$. For example, a 15 kW electric motor converts to approximately 20 HP, which is a common HP limitation across this Commonwealth.

To address these issues, Commission staff recommended amending Chapter 107 to limit the speed at which electric motors may be operated and clarify that horsepower restrictions apply to both electric and internal combustion motors.

On June 21, 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.

On July 26, 2022, the Commission approved the publication of a notice of proposed rulemaking containing these amendments. The notice was published at 52 Pa.B. 5651 (September 3, 2022). The Commission did not receive any public comments regarding the proposal; however, during the comment period, it was discovered that other complementary changes in Chapter 107 were necessary to effect the changes in the proposal.

These additional recommended changes were incorporated into a final-form rulemaking agenda item for Commission action. These changes were not published in the *Pennsylvania Bulletin* but were made public as part of the agenda for the October 24, 2022, Commission meeting. On October 24, 2022, the Commission voted to adopt the amendments as set forth in the notice of proposed rulemaking, which did not include the necessary additional changes presented at the meeting. The final-form rulemaking was published at 52 Pa.B. 7381 (December 3, 2022) and went into effect on January 1, 2023.

F. *Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-347. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 107. BOATING RESTRICTIONS

§ 107.1. Horsepower restrictions.

On waters where horsepower limitations are prescribed, as set forth in Chapter 111 (relating to special regulations counties), **[the use of internal combustion motors in excess of the prescribed horsepower limitation is prohibited] horsepower limitations apply to both internal combustion motors and electric motors. Boats with motors larger than the maximum horsepower shall be permitted but the motors may not be used.**

§ 107.2. Electric motors.

Except as otherwise specified in Chapter 111 (relating to special regulations counties):

(1) Electric motors are permitted on Commission owned or controlled lakes and on State Park lakes where boating is permitted. **On waters where horsepower limitations are prescribed in Chapter 111, electric motors in excess of maximum horsepower limitations or equivalent kilowatt ratings shall not be used.**

(1.1) Boats propelled by electric motors on Commission owned or controlled lakes, State Park lakes and water bodies in Chapter 111 shall not be operated at greater than slow, no-wake speed.

(2) On Commission and State Park owned or controlled lakes, internal combustion motors attached to or installed in boats need not be removed, but the operation of engines is specifically prohibited.

(3) Officers authorized to enforce the code and this part and, in the case of State Park lakes, officers and officials of the Bureau of State Parks and operators of emergency vessels may operate boats powered by internal combustion motors in the performance of their official duties on waters otherwise restricted to electric motors only.

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Bottom

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 75]

Fishing; Special Fishing Regulations

[53 Pa.B. 7601]

[Saturday, December 9, 2023]

The Fish and Boat Commission (Commission) proposes to amend Chapter 75 (relating to endangered species). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment would update and further clarify language in §§ 75.1, 75.2 and 75.3 (relating to endangered species; threatened species; and candidate species). Commission staff recommend deleting the least brook lamprey and brook stickleback.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this proposed rulemaking, contact Renae Kluk Kiehl, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. *Statutory Authority*

The proposed amendments to §§ 75.1, 75.2 and 75.3 are published under the statutory authority of section 2305(b) of the code (relating to threatened and endangered species).

D. *Purpose and Background*

The specific purpose and background of the proposed amendment are described in more detail under the summary of proposal.

E. *Summary of Proposal*

The digger crayfish *Creaserinus fodiens* is a primary burrowing crayfish that spends the majority of its time underground in burrows. Burrowing crayfish, including *C. fodiens*, usually occur within or adjacent to forested ephemeral (vernal) pools, bottomland forested floodplains, roadside ditches, small streams, seeps, reservoir shores, wet meadows and prairies, forested swamps and ponds, agricultural ditches, and other wet areas where they dig burrows through moist soils to reach the underlying ground water.

Burrowing crayfish are important components of the ecosystems where they reside. They are ecosystem engineers that mix and disturb large volumes of soil, which is important in maintaining

plant diversity. Burrowing crayfish provide critical habitat for the eastern massasauga rattlesnake *Sistrurus catenatus* and Kirtland's snake *Clonophis kirtlandii*, both endangered in this Commonwealth. These two species brumate (that is, hibernate) in crayfish burrows. Studies in locations elsewhere indicate that crayfish burrows also provide critical habitat for rare and endangered odonates (that is, dragonflies and damselflies), especially during summer when surface conditions are dry.

The digger crayfish is a highly variable species with a distribution covering substantial portions of the eastern United States, including Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia, as well as Ontario, Canada. In 2014, the digger crayfish was first discovered in northwest Pennsylvania (Crawford County). Additional intensive sampling conducted in 2020 at numerous locations in northwestern Pennsylvania also detected the species in southern Erie County.

The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. The range of the species (extent of occurrence) in this Commonwealth is small (7.7 square miles) and well under the less than 40 square mile criterion (B1) for endangered status in this Commonwealth. Within this range, which includes unsuitable, unoccupied habitats, the digger crayfish only occurs in a 3.5 square mile area (area of occupancy), which is under the less than 4 square mile criterion (B2) for endangered status in this Commonwealth. The digger crayfish is only known to occur in nine locations in this Commonwealth. Two of the locations are disconnected from the other seven, and all locations are disconnected from populations in other states, limiting dispersal and gene flow, which will likely negatively impact the species over the long-term.

In addition, the digger crayfish was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S1, meaning it is critically imperiled in this Commonwealth with a high risk of extirpation due to its restricted range and/or populations or occurrences. The Invertebrate Technical Committee of the Pennsylvania Biological Survey (PABS) concurred with this documentation and rank assignment. Enough information is available to make the determination that it is endangered within this Commonwealth at present. Therefore, based on extent of occurrence and area of occupancy, Commission staff propose that the digger crayfish be added to this Commonwealth's list of endangered species.

The black bullhead *Ameiurus melas* is a small catfish, reaching 6.5 to 9 inches in length as an adult. It can be distinguished from similar bullhead species by the presence of black pigmented membranes on its fins. It inhabits backwaters, oxbows, impoundments, lakes, ponds and sluggish streams. Large populations are known to occur in turbid and silty waterways.

The black bullhead was listed as a Commonwealth endangered species in 1999. It is native from southern Canada and Montana, south to northern Mexico and east to the Saint Lawrence River, the Appalachian Mountains and Alabama. It has been introduced elsewhere. In this Commonwealth, there are historic records from the Kiskiminitas River and the Lake Erie basin, as well as from Lawrence, Mercer and Westmoreland Counties. There have been no verified reports or collections of this species since 1985. From approximately the year 2000 to the present, the rivers of the Ohio River drainage in western Pennsylvania have been intensively surveyed with electrofishing and trawling gears at hundreds of sites. Efforts have also specifically targeted the black bullhead at historic collection localities in Erie, Lawrence, Mercer and Westmoreland Counties. Despite these efforts, no black bullheads have been detected.

Since the black bullhead has not been detected in this Commonwealth in 38 years, the Commission's objective listing/delisting process could not be applied. It was, however, evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of SX, meaning it is considered extirpated in this Commonwealth. The Fishes

Technical Committee of the PABS concurred with this documentation and rank assignment. As such, Commission staff recommend that it be deleted from the list of endangered species.

The threespine stickleback *Gasterosteus aculeatus* is a small fish with three distinct dorsal spines. The fourspine stickleback *Apeltes quadracus* also occurs within the same general historic range but can be distinguished by the additional dorsal spine and the distance between the spines. Adults are usually 1.5 to 3 inches in length.

The threespine stickleback inhabits shallow, vegetated areas of tidal pools, creeks, marshes, estuaries and inshore waters, usually in or near marine or brackish waters. It occurs widely in the Arctic and Atlantic drainages south to the Chesapeake Bay. In the Pacific drainages it occurs from Alaska to Baja, California, and has been widely introduced elsewhere. In this Commonwealth, it is confined to the tidal Delaware River and a few tributaries.

The threespine stickleback was listed as a Commonwealth endangered species in 1999. There are very few records for this species in this Commonwealth, and it has not been collected or verified in this Commonwealth since 1997. Despite repeated surveys during the past 15 to 20 years of waterways where this species has previously been documented, and surveys of other tidal tributaries to the Delaware River, no threespine sticklebacks have been detected. In addition, there have been no reports of this species from the Pennsylvania Scientific Collectors Permit reporting system during this period.

Due to a lack of recent records, the Commission's objective listing/delisting process could not be applied. Commission staff conclude that the threespine stickleback no longer regularly occurs in this Commonwealth. Based on Commission surveys and the historical record, Commission staff conclude that this species is an estuarine form in this Commonwealth that utilizes our inland waters on an irregular, occasional basis. As such, practically no efforts can be advanced to enhance its status in this Commonwealth. As such, Commission staff recommend that it be deleted from the list of endangered species.

The longsolid *Fusconaia subrotunda* is a freshwater mussel species currently known to occur in Alabama, Kentucky, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia. It is considered extirpated from Georgia, Indiana and Illinois. Historically, longsolid have been reported from the following Commonwealth streams and rivers: Ohio River, Beaver River, Slippery Rock Creek, Mahoning River, Shenango River, Pymatuning Creek, Allegheny River, French Creek, Muddy Creek, Monongahela River and Cheat River. The longsolid still occurs in the following Commonwealth streams and rivers: Shenango River, Allegheny River, French Creek and Muddy Creek. Generally, the longsolid co-occurs with other Federal and state and listed mussel species.

On March 9, 2023, the United States Department of the Interior, Fish and Wildlife Service, designated longsolid as Federally threatened throughout its entire ranges. Section 102 of the code (relating to definitions) defines "endangered species" as "[a]ll species and subspecies of fish which: (1) have been declared by the Secretary of the United States Department of the Interior to be threatened with extinction and appear on the Endangered Species List or the Native Endangered Species List published in the *Federal Register*; or (2) have been declared by the Executive Director to be threatened with extinction and appear on the Pennsylvania Endangered Species List published in the *Pennsylvania Bulletin*." Because longsolid has been designated as Federally threatened throughout its range, which includes this Commonwealth, Commission staff propose that it be added to the Commonwealth's list of threatened species.

The least brook lamprey *Lampetra aepyptera* is a small, non-parasitic lamprey. Adults are usually 3.5 to 6 inches in length. A similar species, the American brook lamprey *Lethenteron appendix*, also occurs in western Pennsylvania, but these two species have never been collected from the same stream.

The least brook lamprey inhabits generally clean, clear streams and brooks of moderate gradient. It is often found in stocked trout waters. Larvae, known as ammocoetes, generally prefer sluggish areas with deposits of mud, muck, silt, sand, detritus and coarse woody debris. This species occurs on Atlantic Slope from southeastern Pennsylvania to North Carolina, and the Mississippi River basin from western Pennsylvania to Missouri and Arkansas and south to Mississippi. It is also found in Gulf Coast drainages from Georgia to Mississippi. In western Pennsylvania, this lamprey has been reported from Allegheny, Armstrong, Beaver, Butler, Fayette, Indiana and Westmoreland Counties. It also occurs in a small area of the Susquehanna River drainage in southern Chester County.

The least brook lamprey was listed as a candidate species in 1999. Lamprey-specific field work conducted during 1996 and 2002 to 2009 confirmed that nearly all historic (pre-1995) waterways remained occupied and additional populations were reported. The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.2 (population reduction) in that there has been no reduction in historic distribution. Since the least brook lamprey occupies more than 150 linear miles of waterway and occurs at more than 20 locations with no known decline, it exceeds Criteria B.3 (area of occupation) and B.5 (distribution and trends). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4, meaning it is secure in this Commonwealth with a very low risk of extirpation due to its extensive range or many populations or occurrences. The Fishes Technical Committee of the PABS concurred with this documentation and rank assignment. Enough information exists to determine that this species is currently secure in this Commonwealth and to justify its removal from the Commonwealth's list of threatened fishes. Therefore, the Commission proposes that the least brook lamprey be deleted from the Commonwealth's list of candidate species.

The brook stickleback *Culaea inconstans* is a small fish with 4 to 6 dorsal spines. Adults are generally 1.5 to 2.5 inches long. No other stickleback is known to occur within its native range in this Commonwealth. It inhabits cool, calm waters of lakes, ponds, sluggish streams, wetlands and bogs. It prefers areas of heavy vegetation or woody debris over muck, detritus and sand. It occurs in the Arctic and Atlantic drainages in Canada, and in the Great Lakes and Mississippi drainages from Montana to New York and Pennsylvania. It occurs in the Lake Erie and Ohio River drainages in northwestern Pennsylvania, roughly from Lawrence and Butler Counties to Potter County, as well as a few locations elsewhere in the Ohio River basin. It has been introduced into the Susquehanna River drainage.

The brook stickleback was listed as a Commonwealth candidate species in 1999. From 1990 to the present, it was determined to be rather widely distributed in northwestern Pennsylvania. It is currently known to occur in Cambria, Clarion, Crawford, Elk, Erie, McKean, Mercer, Potter, Venango and Warren Counties.

The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criteria B.3 (extent of occupancy) and B.5 (distribution and trends) and is known to occur in excess of 20 locations. In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator and received a State Conservation Rank of S4, meaning it is secure in this Commonwealth with a very low risk of extirpation due to its extensive range or many populations or occurrences. The Fishes Technical Committee of the PABS concurred with this documentation and rank assignment. Enough information exists to determine that it is currently secure in this Commonwealth. Therefore, Commission staff propose that the Brook stickleback be deleted from the Commonwealth's list of candidate species. The Commission proposes that §§ 75.1, 75.2 and 75.3 be amended to read as set forth in Annex A.

F. Paperwork

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-352. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 75. ENDANGERED SPECIES

§ 75.1. Endangered species.

(a) *General.* The species of fish, amphibians and reptiles and invertebrates listed in subsections (b)—(d) are classified endangered. The catching, taking, killing, possessing, importing to or exporting from this Commonwealth, selling, offering for sale or purchasing of any individual of these species, alive or dead, or any part thereof, without a special permit from the Executive Director is prohibited.

(b) *Fish.* The following species are endangered:

- (1) Northern brook lamprey, *Ichthyomyzon fossor*.
- (2) Shortnose sturgeon, *Acipenser brevirostrum*.
- (3) Lake sturgeon, *Acipenser fulvescens*.
- (4) Atlantic sturgeon, *Acipenser oxyrinchus*.
- (5) Spotted gar, *Lepisosteus oculatus*.
- (6) Hickory shad, *Alosa mediocris*.

- (7) Cisco, *Coregonus artedi*.
- (8) Northern redbelly dace, *Chrosomus eos*.
- (9) Blacknose Shiner (*Notropis heterolepis*).
- (10) Bridle shiner, *Notropis bifrenatus*.
- (11) River shiner, *Notropis blenni*.
- (12) Ghost shiner, *Notropis buechanani*.
- (13) Ironcolor shiner, *Notropis chalybaeus*.
- (14) Blackchin shiner, *Notropis heterodon*.
- (15) Redfin shiner, *Lythrurus umbratilis*.
- (16) Longnose sucker, *Catostomus catostomus*.
- (17) Bigmouth buffalo, *Ictiobus cyprinellus*.
- (18) **[Black bullhead, *Amerius melas*] [Reserved]**.
- (19) Mountain madtom, *Noturus eleutherus*.
- (20) Tadpole madtom, *Noturus gyrinus*.
- (21) Northern madtom, *Noturus stigmosus*.
- (22) Burbot, *Lota lota* (inland populations only).
- (23) **[Threespine stickleback, *Gasterosteus aculeatus*] [Reserved]**.
- (24) Pugnose Minnow (*Opsopoeodus emiliae*).
- (25) Warmouth, *Lepomis gulosus*.
- (26) Longear sunfish, *Lepomis megalotis*.
- (27) Iowa darter, *Etheostoma exile*.
- (28) Eastern sand darter, *Ammocrypta pellucida*.
- (29) Hornyhead chub, *Nocomis biguttatus*.

* * * * *

(d) *Invertebrates*. The following species are endangered:

- (1) Northern riffleshell mussel, *Epioblasma rangiana*.
- (2) Clubshell mussel, *Pleurobema clava*.
- (3) Dwarf wedgemussel, *Alasmidonta heterodon*.
- (4) Eastern pearlshell mussel, *Margaritifera margaritifera*.

- (5) Rabbitsfoot mussel, *Theliderma cylindrica*.
- (6) Snuffbox mussel, *Epioblasma triquetra*.
- (7) Salamander mussel, *impsonaias ambigua*.
- (8) Round hickorynut mussel, *Obovaria subrotunda*.
- (9) Pistolgrip mussel, *Tritogonia verrucosa*.
- (10) Rayed bean mussel, *Villosa fabalis*.

(11) Digger crayfish, *Creaserinus fodiens*.

§ 75.2. Threatened species.

(a) *General*. The species of fish, amphibians, reptiles and invertebrates listed in subsections (b)—(d) are classified as threatened. The catching, taking, killing, possessing, importing to or exporting from this Commonwealth, selling, offering for sale or purchasing, of any individual of these species, alive or dead, or any part thereof, without a special permit from the Executive Director is prohibited.

(b) *Fish*. The following species are threatened:

- (1) Bigmouth shiner, *Notropis dorsalis*.
- (2) Southern redbelly dace, *Chrosomus erythrogaster*.
- (3) Spotted sucker, *Minytrema melanops*.
- (4) Brindled madtom, *Noturus miurus*.
- (5) Chesapeake Logperch, *Percina immaculate*.

(c) *Amphibians and reptiles*. The following species are threatened:

- (1) Green Salamander, *Aneides aeneus*.
- (2) Northern Red-bellied Cooter, *Pseudemys rubriventris*.
- (3) Eastern Spadefoot Toad, *Scaphiopus holbrookii*.

(d) *Invertebrates*. The following species are threatened:

- (1) Sheepnose mussel, *Plethobasus cyphus*.

(2) Longsolid, *Fusconaia subrotunda*.

§ 75.3. Candidate species.

(a) *General*. The species listed in subsections (b) and (c) are considered candidate species which could achieve endangered or threatened status in the future. They are subject to seasons, size, creel—bag—and possession limits specified in this subpart. A person who catches these species is encouraged to release them immediately and unharmed to the waters or other area from which they were taken.

(b) [*Fish*] [**Reserved**].

[(1) Least brook lamprey, *Lampetra aepyptera*.

(2) Brook stickleback, *Culaea inconstans*.]

(c) *Amphibians and reptiles*.

(1) Blandings Turtle, *Emydoidea blandingii*.

(2) Broad-headed Skink, *Plestiodon laticeps*.

[Pa.B. Doc. No. 23-1690. Filed for public inspection December 8, 2023, 9:00 a.m.]

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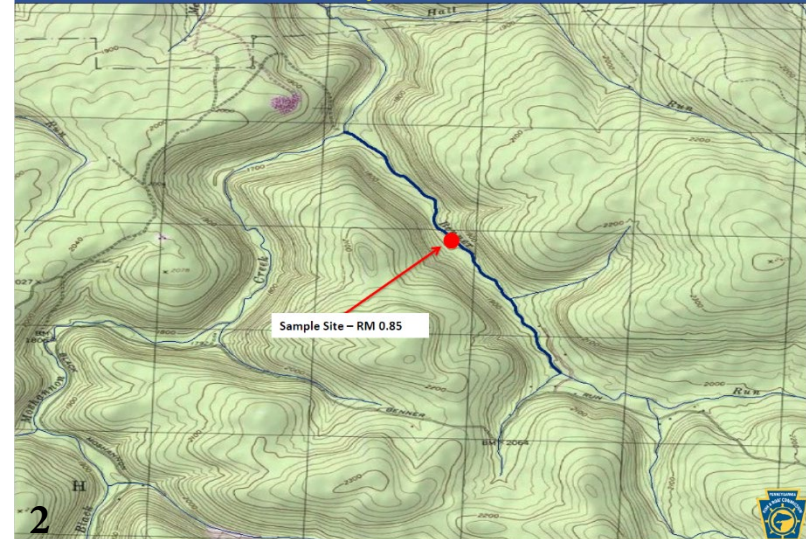
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Bottom

Class A Additions

- Slides 2-16

Benner Run, Centre County



Benner Run, Centre County

Brook Trout RM - 0.85
Site Length - 300 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	11	0.29	37
3	6	0.37	20
4	8	1.16	27
5	7	1.81	23
6	1	0.44	3
7	4	2.71	13
8	4	3.93	13
9	1	1.40	3
Total	42	12.11	139

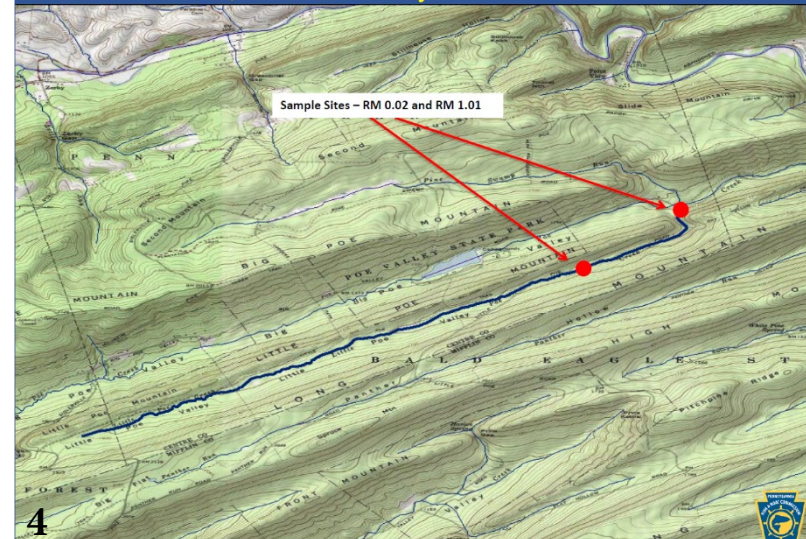
Brown Trout RM - 0.85
Site Length - 300 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	12	0.32	40
3	5	0.34	17
4	9	1.37	30
5	2	0.56	7
6	4	1.86	13
7	11	7.84	37
8	5	5.15	17
9	8	11.47	27
10	2	3.87	7
11	1	2.52	3
Total	59	35.30	198

3



Little Poe Creek, Centre County



4



Little Poe Creek, Centre County

Brook Trout RM – 0.02
Site Length – 375 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
1	3	0.04	8
2	126	4.40	336
3	26	2.16	69
4	59	11.36	157
5	34	11.70	91
6	17	9.84	45
7	4	3.60	11
8	1	1.31	3
Total	270	44.41	720

Brown Trout RM – 0.02
Site Length – 375 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	8	0.29	21
3	9	0.81	24
4	32	6.47	85
5	3	1.11	8
12	1	4.28	3
Total	53	12.96	141

5



Little Poe Creek, Centre County

Brook Trout RM – 1.01
Site Length – 380 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	61	2.10	161
3	18	1.48	47
4	88	16.73	232
5	28	9.52	74
6	30	17.15	79
7	10	8.90	26
8	1	1.29	3
Total	236	57.17	622

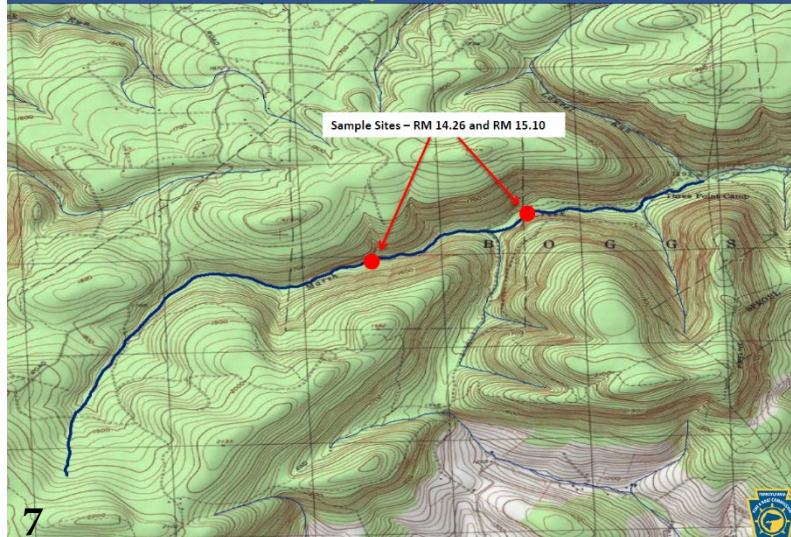
Brown Trout RM – 1.01
Site Length – 380 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	1	0.04	3
3	9	0.80	24
4	12	2.40	32
Total	22	3.24	59

6



Marsh Creek, Centre County



7



Marsh Creek, Centre County

Brook Trout RM – 14.26
Site Length – 400 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	16	0.54	40
3	13	1.05	33
4	25	4.69	63
5	21	7.04	53
6	6	3.38	15
7	3	2.63	8
8	3	3.81	8
9	2	3.62	5
Total	89	26.76	225

Brown Trout RM – 14.26
Site Length – 400 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	6	0.21	15
3	1	0.09	3
4	10	1.97	25
5	5	1.80	13
6	1	0.60	3
7	2	1.84	5
8	2	2.67	5
9	3	5.57	8
10	2	5.01	5
11	1	3.25	3
Total	33	23.01	85

8



Marsh Creek, Centre County

Brook Trout RM – 15.10
Site Length – 400 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	14	0.44	35
3	14	1.05	35
4	37	6.41	93
5	15	4.65	38
6	12	6.25	30
7	5	4.05	13
8	5	5.87	13
9	1	1.67	3
Total	103	30.39	260

Brown Trout RM – 15.10
Site Length – 400 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	9	0.29	23
3	1	0.08	3
4	13	2.36	33
5	6	2.00	15
6	3	1.67	8
7	1	0.85	3
8	1	1.23	3
9	3	5.14	8
10	1	2.31	3
12	1	3.85	3
Total	39	19.78	102

9



Middle Branch Big Run, Clinton County



10



Middle Branch Big Run, Clinton County

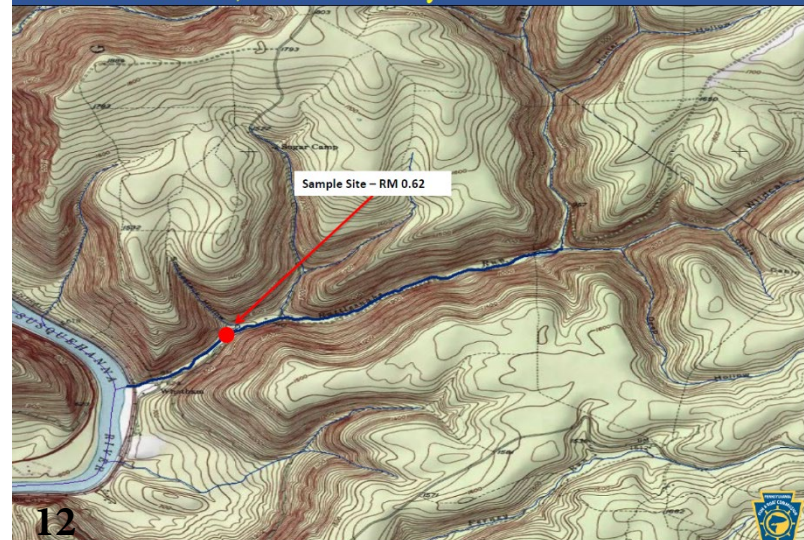
Brook Trout RM – 3.78
Site Length – 500 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	128	3.54	256
3	65	4.27	130
4	42	6.41	84
5	44	12.00	88
6	11	5.05	22
7	2	1.43	4
8	1	1.03	2
Total	293	33.73	586

11



Rattlesnake Run, Clinton County



12



Rattlesnake Run, Clinton County

Brook Trout RM – 0.62
Site Length – 380 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	65	4.23	547
3	38	3.10	168
4	16	1.80	42
5	36	9.83	129
6	8	2.70	21
7	7	3.68	18
8	8	6.85	24
9	7	8.66	21
10	2	2.98	5
Total	187	43.83	975

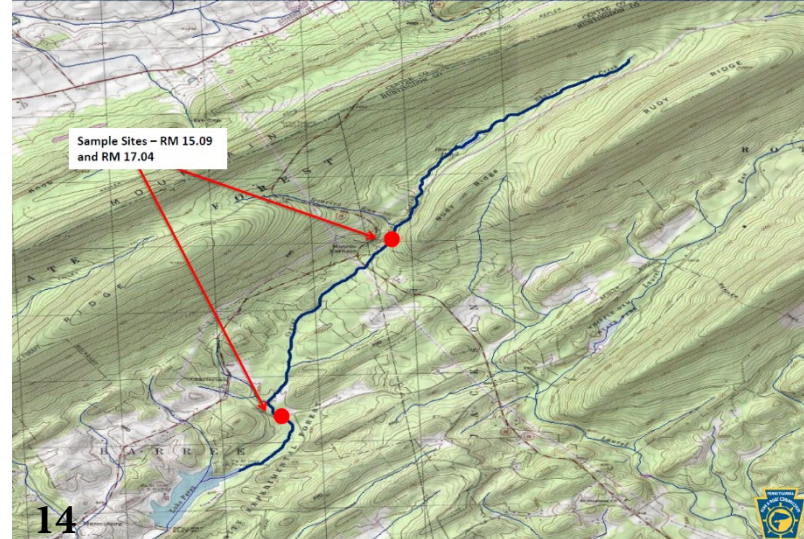
Brown Trout RM – 0.62
Site Length – 380 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	8	0.17	21
4	7	0.83	18
5	3	0.65	8
6	1	0.36	3
7	1	0.55	3
8	2	1.60	5
9	1	1.11	3
12	1	2.50	3
Total	24	7.77	64

13



Shaver Creek, Huntingdon County



14



Shaver Creek, Huntingdon County

Brook Trout RM – 15.09
Site Length – 425 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	12	0.26	31
3	13	0.84	42
5	7	1.75	21
6	12	5.87	42
7	2	1.02	5
8	2	1.47	5
9	1	1.05	2
Total	49	12.26	148

Brown Trout RM – 15.09
Site Length – 425 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	23	0.73	85
3	6	0.30	14
4	5	0.57	12
5	24	7.09	80
6	9	3.48	24
7	8	4.80	21
8	9	6.95	21
9	7	9.67	21
10	7	10.14	16
11	1	1.88	2
12	2	4.83	5
15	1	4.59	2
Total	102	55.03	303

15



Shaver Creek, Huntingdon County

Brook Trout RM – 17.04
Site Length – 424 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
2	73	2.77	292
3	34	2.34	104
4	87	12.70	243
5	17	4.19	45
6	6	2.97	19
7	10	6.35	26
8	1	0.84	2
Total	228	32.16	731

Brown Trout RM – 17.04
Site Length – 424 meters

Length Group (inches)	Catch	Estimated Kg/Ha	Estimated Number/Km
6	1	0.40	2
Total	1	0.40	2

16



NOTICES

FISH AND BOAT COMMISSION

Proposed Changes to List of Class A Wild Trout Waters; January 2024

[53 Pa.B. 7269]

[Saturday, November 18, 2023]

The Fish and Boat Commission (Commission) is considering changes to its list of Class A wild trout streams. Under 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 this Commonwealth's naturally reproducing trout fisheries. With rare exceptions, the Commission manages these stream sections solely for the perpetuation of the wild trout fishery with no stocking.

(1) Criteria developed for Class A Wild Trout fisheries are species specific.

(2) Wild trout Biomass Class Criteria include provisions for:

(i) *Wild brook trout fisheries*

(A) Total brook trout biomass of at least 30 kg/ha (26.7 lbs/acre).

(B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(C) Brook trout biomass must comprise at least 75% of the total trout biomass.

(ii) *Wild brown trout fisheries*

(A) Total brown trout biomass of at least 40 kg/ha (35.6 lbs/acre).

(B) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(C) Brown trout biomass must comprise at least 75% of the total trout biomass.

(iii) *Mixed wild brook and brown trout fisheries*

(A) Combined brook and brown trout biomass of at least 40 kg/ha (35.6 lbs/acre).

(B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(C) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(D) Brook trout biomass must comprise less than 75% of the total trout biomass.

(E) Brown trout biomass must comprise less than 75% of the total trout biomass.

(iv) *Wild rainbow trout fisheries*

Total biomass of rainbow trout less than 15 cm (5.9 inches) in total length of at least 2.0 kg/ha (1.78 lbs/acre).

(v) *Mixed wild brook and rainbow trout fisheries*

(A) Combined brook and rainbow trout biomass of at least 40 kg/ha (35.6 lbs/acre).

(B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(C) Total biomass of rainbow trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(D) Brook trout biomass shall comprise less than 75% of the total trout biomass.

(E) Rainbow trout biomass shall comprise less than 75% of the total trout biomass.

(vi) *Mixed wild brown and rainbow trout fisheries*

(A) Combined brown and rainbow trout biomass of at least 40 kg/ha (35.6 lbs/acre).

(B) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(C) Total biomass of rainbow trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).

(D) Brown trout biomass shall comprise less than 75% of the total trout biomass.

(E) Rainbow trout biomass shall comprise less than 75% of the total trout biomass.

During recent surveys, Commission staff documented the following stream sections to have Class A wild trout populations. The Commission intends to consider adding these waters to its list of Class A wild trout streams at its meeting on January 22, 2024.

County	Stream	Section Limits	Tributary to	Mouth Lat/Lon	Brook Trout (kg/ha)	Brown Trout (kg/ha)	Rainbow Trout (kg/ha)	Length (miles)	Survey Year
Centre	Benner Run	2	Second tributary upstream of the mouth to Mouth	Black Moshannon Creek 40.956389 78.039722	12.11	35.30	—	1.70	2023
Centre	Little Poe Creek	1	Headwaters to Mouth	Big Poe Creek 40.829556 77.444595	50.79	8.10	—	4.66	2023
Centre	Marsh Creek	1	Headwaters to Laurel Run	Bald Eagle Creek 41.058529 77.596419	28.58	21.40	—	4.96	2023
Clinton	Middle Branch Big Run	1	Headwaters to Sproul State Forest boundary	Big Run 41.150833 77.768611	33.73	—	—	2.78	2023
Clinton	Rattlesnake Run	2	Wildcat Hollow	West Branch Susquehanna River 41.268889 77.593889	43.83	7.77	—	2.26	2023

Huntingdon Shaver Creek	1	Run to Mouth Headwaters Juniata to Lake River Perez	40.565556 22.21 27.72 — 5.21 2023 78.047778
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Persons with comments, objections or suggestions concerning the classification of the streams listed may submit them in writing to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments, objections or suggestions may also be submitted electronically to RA-pfbcregulations@pa.gov.

TIMOTHY D. SCHAEFFER,
Executive Director

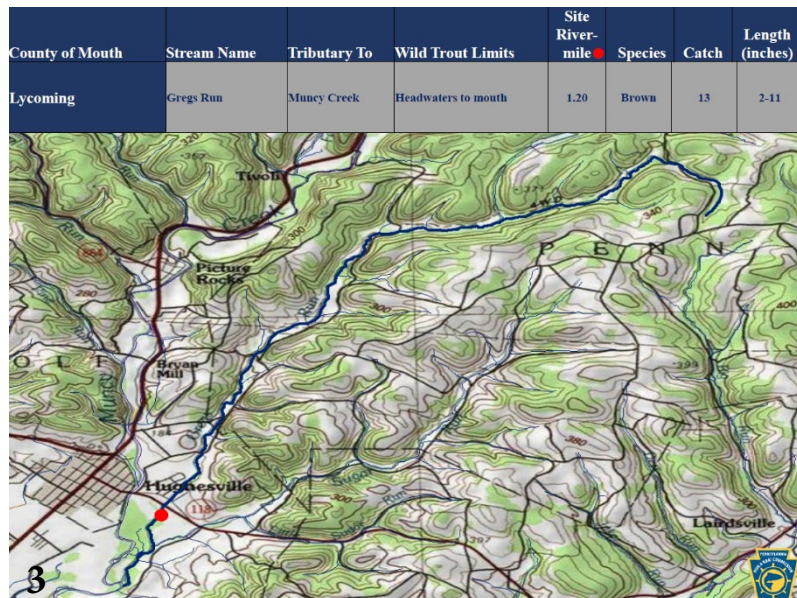
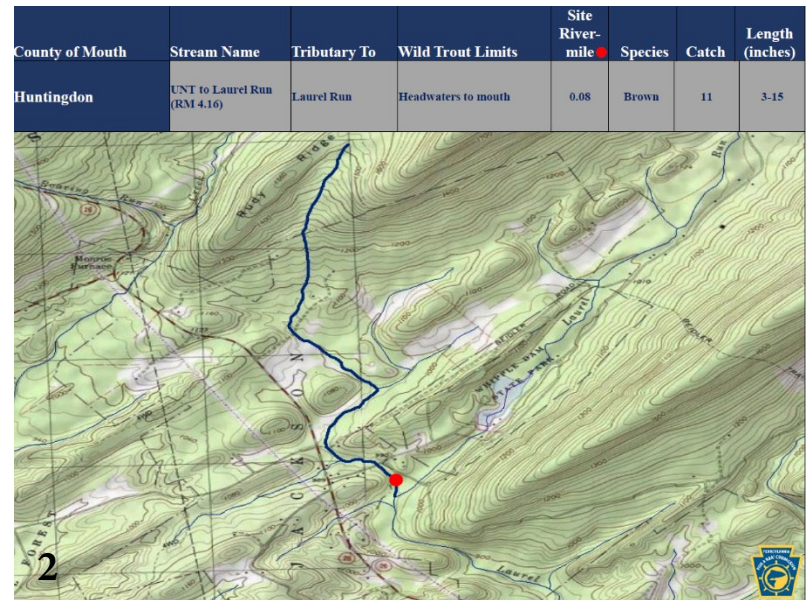
[Pa.B. Doc. No. 23-1617. Filed for public inspection November 17, 2023, 9:00 a.m.]

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Wild Trout Additions

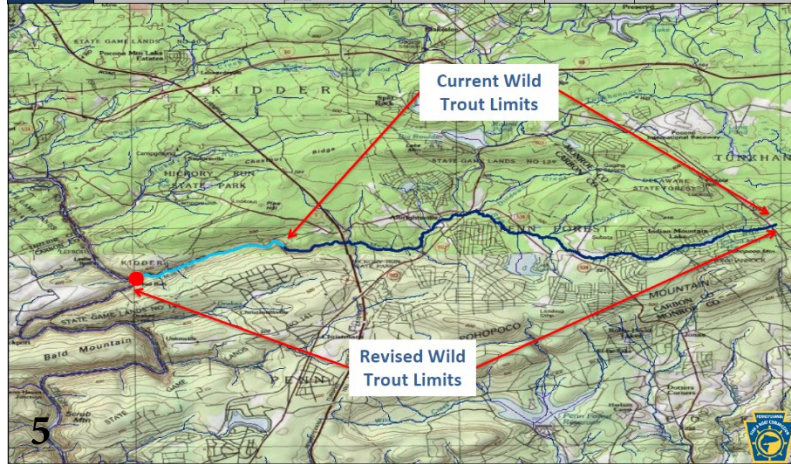
- Slides 2-3



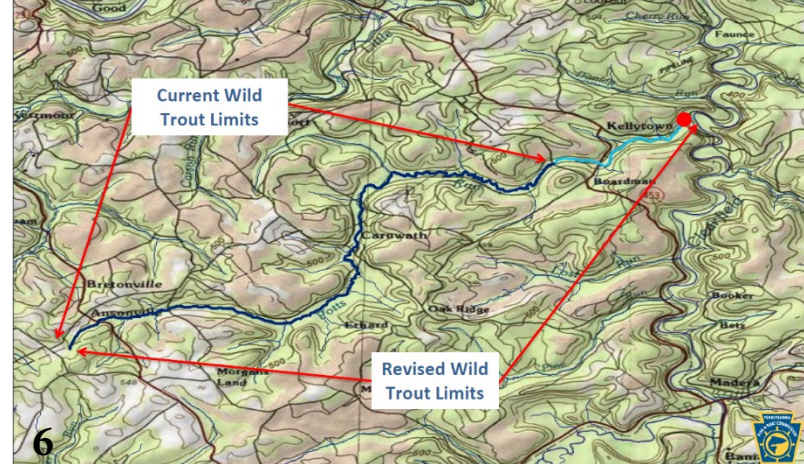
Wild Trout Revisions

- Slides 5-8

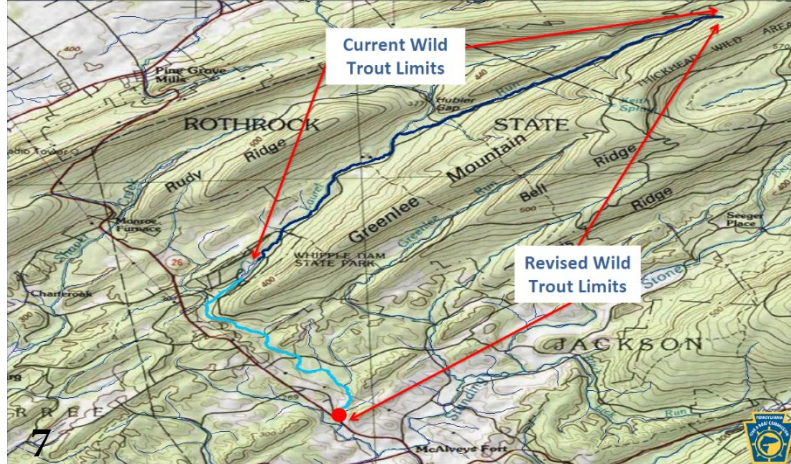
County of Mouth	Stream Name	Tributary To	Current Wild Trout Limits	Revised Wild Trout Limits	Site River-mile	Species	Catch	Length (inches)
Carbon	Mud Run	Lehigh River	Headwaters to lower boundary of Hickory Run State Park	Headwaters to mouth	0.00	Brook Brown	1 13	3 2-18



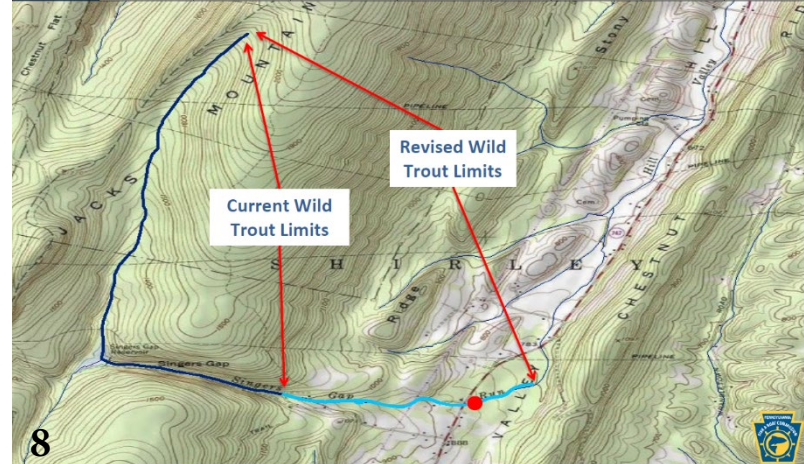
County of Mouth	Stream Name	Tributary To	Current Wild Trout Limits	Revised Wild Trout Limits	Site River-mile	Species	Catch	Length (inches)
Clearfield	Potts Run	Clearfield Creek	Headwaters to Clark Road bridge	Headwaters to mouth	0.08	Brook	7	3-5



County of Mouth	Stream Name	Tributary To	Current Wild Trout Limits	Revised Wild Trout Limits	Site River-mile	Species	Catch	Length (inches)
Huntingdon	Laurel Run	Standing Stone Creek	Headwaters to Whipple Lake	Headwaters to SR 26 bridge	0.90	Brown	3	6-14



County of Mouth	Stream Name	Tributary To	Current Wild Trout Limits	Revised Wild Trout Limits	Site River-mile	Species	Catch	Length (inches)
Huntingdon	Singers Gap Run	Hill Valley Creek	Headwaters to private road ford at RM 2.23	Headwaters to sink at RM 1.16	1.50	Brook	16	2-7



NOTICES

FISH AND BOAT COMMISSION

Classification of Wild Trout Streams; Proposed Additions and Revisions; January 2024

[53 Pa.B. 7268]
[Saturday, November 18, 2023]

Under 58 Pa. Code § 57.11 (relating to listing of wild trout streams), it is the policy of the Fish and Boat Commission (Commission) to accurately identify and classify stream sections supporting naturally reproducing populations of trout as wild trout streams. The Commission's Fisheries Management Division maintains the list of wild trout streams. The Executive Director, with the approval of the Commission, will from time-to-time publish the list of wild trout streams in the *Pennsylvania Bulletin*. The listing of a stream section as a wild trout stream is a biological designation that does not determine how it is managed. The Commission relies upon many factors in determining the appropriate management of streams.

At the next Commission meeting on January 22, 2024, the Commission will consider changes to its list of wild trout streams. Specifically, the Commission will consider the addition of the following streams or portions of streams to the list:

County of Mouth	Stream Name	Section Limits	Tributary to	Mouth Lat/Lon
Huntingdon	Unknown Tributary to Laurel Run (RM 4.16)	Headwaters to Mouth	Laurel Run	40.676934 77.872626
Lycoming	Gregs Run	Headwaters to Mouth	Muncy Creek	41.221542 76.719383

The Commission also will consider the following revisions to the section limits of streams on the list:

County of Mouth	Stream Name	Current Limits	Revised Limits	Tributary to	Mouth Lat/Lon
Carbon	Mud Run	Headwaters to Hickory Run State Park lower boundary	Headwaters to Mouth	Lehigh River	40.988609 75.712502
Clearfield	Potts Run	Headwaters to Clark Road Bridge	Headwaters to Mouth	Clearfield Creek	40.891945 78.441391
Huntingdon	Laurel Run	Headwaters to Whipple Lake	Headwaters to SR 26 bridge	Standing Stone Creek	40.638889 77.837222
Huntingdon	Singers Gap Run	Headwaters to Private Road Ford at RM 2.23	Headwaters to Sink at RM 1.16	Hill Valley Creek	40.336098 77.906794

Persons with comments, objections or suggestions concerning the classification of the streams listed may submit them in writing to the Executive Director, Fish and Boat Commission, P.O. Box

67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments, objections or suggestions may also be submitted electronically to RA-pfbcregulations@pa.gov.

TIMOTHY D. SCHAEFFER,
Executive Director

[Pa.B. Doc. No. 23-1616. Filed for public inspection November 17, 2023, 9:00 a.m.]

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[Top](#)

[Bottom](#)

NOTICES

FISH AND BOAT COMMISSION

Proposed Exemptions to Allow for the Continued Stocking of Class A Stream Sections

[53 Pa.B. 8037]
[Saturday, December 23, 2023]

The Fish and Boat Commission (Commission) intends to consider at its meeting on January 22, 2024, whether to allow trout stocking to continue on the Class A wild trout stream, at Big Moores Run, Section 03, Potter County. Under 58 Pa. Code § 57.8a (relating to Class A wild trout streams), the Executive Director will obtain approval of the Commission prior to granting permission to stock a Class A wild trout stream under 58 Pa. Code § 71.4 (relating to stocking of designated waters) which will be replaced by § 71a.8 (relating to stocking of designated waters) effective January 1, 2024. See 53 Pa.B. 5914 (September 23, 2023).

A detailed notice will be published in the *Pennsylvania Bulletin* on December 30, 2023.

Persons with comments, objections or suggestions concerning the classification of the stream listed may submit them in writing to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, prior to the January 22, 2024, Commission meeting. Comments submitted by facsimile will not be accepted.

Comments may also be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

[Pa.B. Doc. No. 23-1777. Filed for public inspection December 22, 2023, 9:00 a.m.]

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NOTICES

FISH AND BOAT COMMISSION

Proposed Exemptions to Allow for the Continued Stocking of Class A Stream Sections

[53 Pa.B. 8196]
[Saturday, December 30, 2023]

The Fish and Boat Commission (Commission) intends to consider at its meeting on January 22, 2024, whether to allow trout stocking to continue on the Class A wild trout stream listed as follows. Under 58 Pa. Code § 57.8a (relating to Class A wild trout streams), the Executive Director will obtain approval of the Commission prior to granting permission to stock a Class A wild trout stream under 58 Pa. Code § 71.4 (relating to stocking of designated waters) which will be replaced by § 71a.8 (relating to stocking of designated waters) effective January 1, 2024. See 53 Pa.B. 5914 (September 23, 2023).

On September 30, 2014 (effective January 1, 2015), the Statement of Policy at 58 Pa. Code § 57.8a was amended to require the Executive Director to obtain approval from the Commission prior to granting permission to stock a Class A wild trout stream section. Following the update to 58 Pa. Code § 57.8a, Commission 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. 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, Commission 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 Commission 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 as follows, are detailed in the *Operational Guidelines for the Management of Trout Fisheries in Pennsylvania Waters, 5th Edition* available at www.fishandboat.com.

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 (that is, within 1 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, or a private group, or both, or individual the year prior to Class A designation, have a history of more than one past occurrence, and meet the following subcriteria.

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 1 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 adopted at the January 2021 quarterly Commission meeting and published at 51 Pa.B. 1828 (April 3, 2021) will be eligible for consideration.

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. 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 5 years at which time the need for continuance may be evaluated.

Commission staff have identified one potential exemption to 58 Pa. Code § 57.8a that meets the criteria to consider the continuance of trout stocking at one Class A stream section. The general exemption classification, stream name, stream section and county are listed as follows.

Other matters

- Proposed exemptions to 58 Pa. Code § 57.8a to allow for the continued stocking of trout at Big Moores Run, Section 03, Potter County.

Persons with comments, objections or suggestions concerning the classification of the stream listed may submit them in writing to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, prior to the January 22, 2024, Commission meeting. Comments submitted by facsimile will not be accepted.

Comments may also be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Editor's Note: See 53 Pa.B. 8037 (December 23, 2023) for a notice referencing this notice.

[Pa.B. Doc. No. 23-1809. Filed for public inspection December 29, 2023, 9:00 a.m.]

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