

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Board of Probation and Parole

The Executive Board approved a reorganization of the Board of Probation and Parole effective July 2, 2003.

The organization chart at 33 Pa.B. 3511 (July 19, 2003) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 03-1407. Filed for public inspection July 18, 2003, 9:00 a.m.]

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

Reorganization of the Department of Labor and Industry

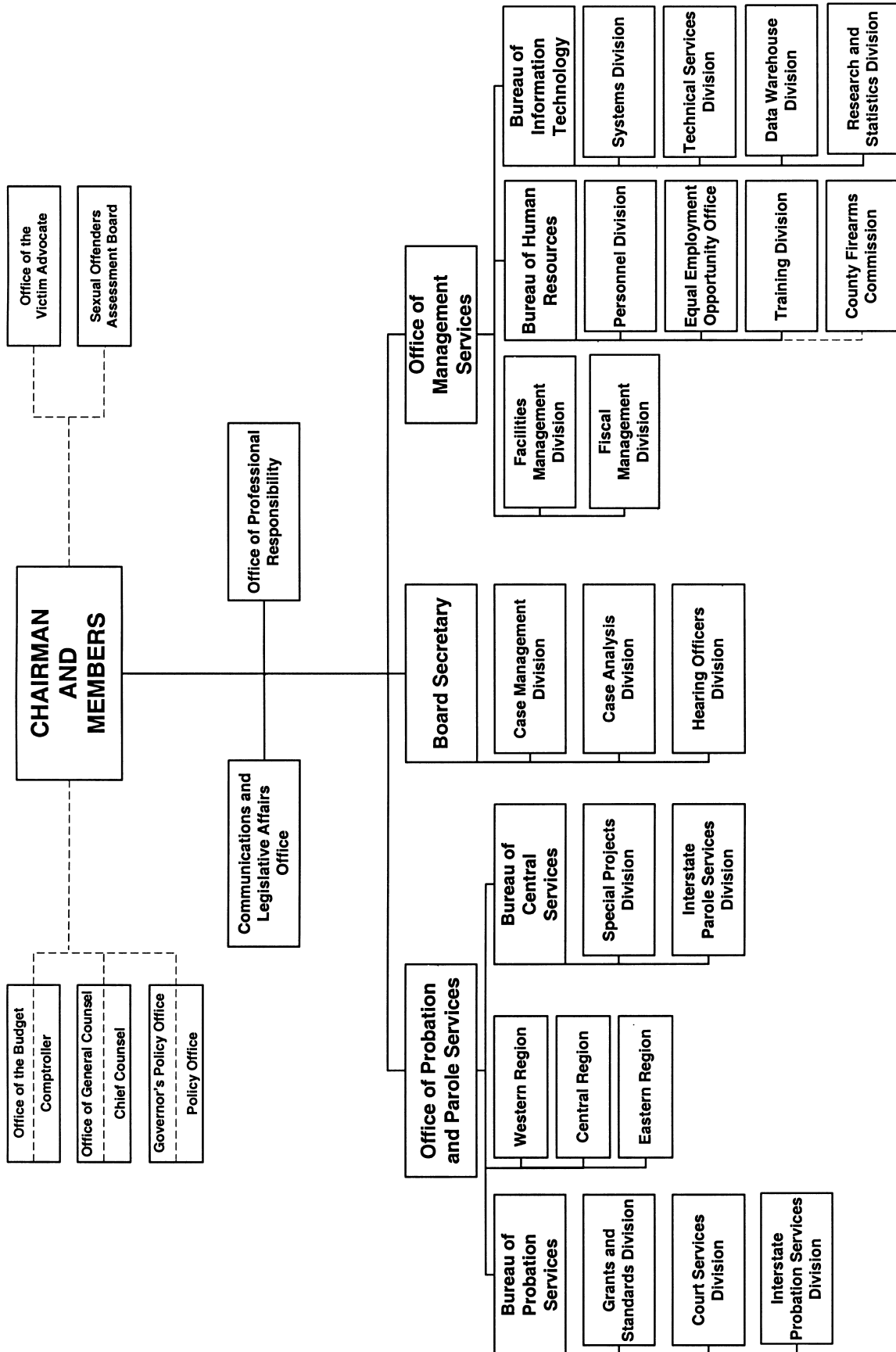
The Executive Board approved a reorganization of the Department of Labor and Industry effective July 3, 2003.

The organization chart at 33 Pa.B. 3512 (July 19, 2003) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of Code).

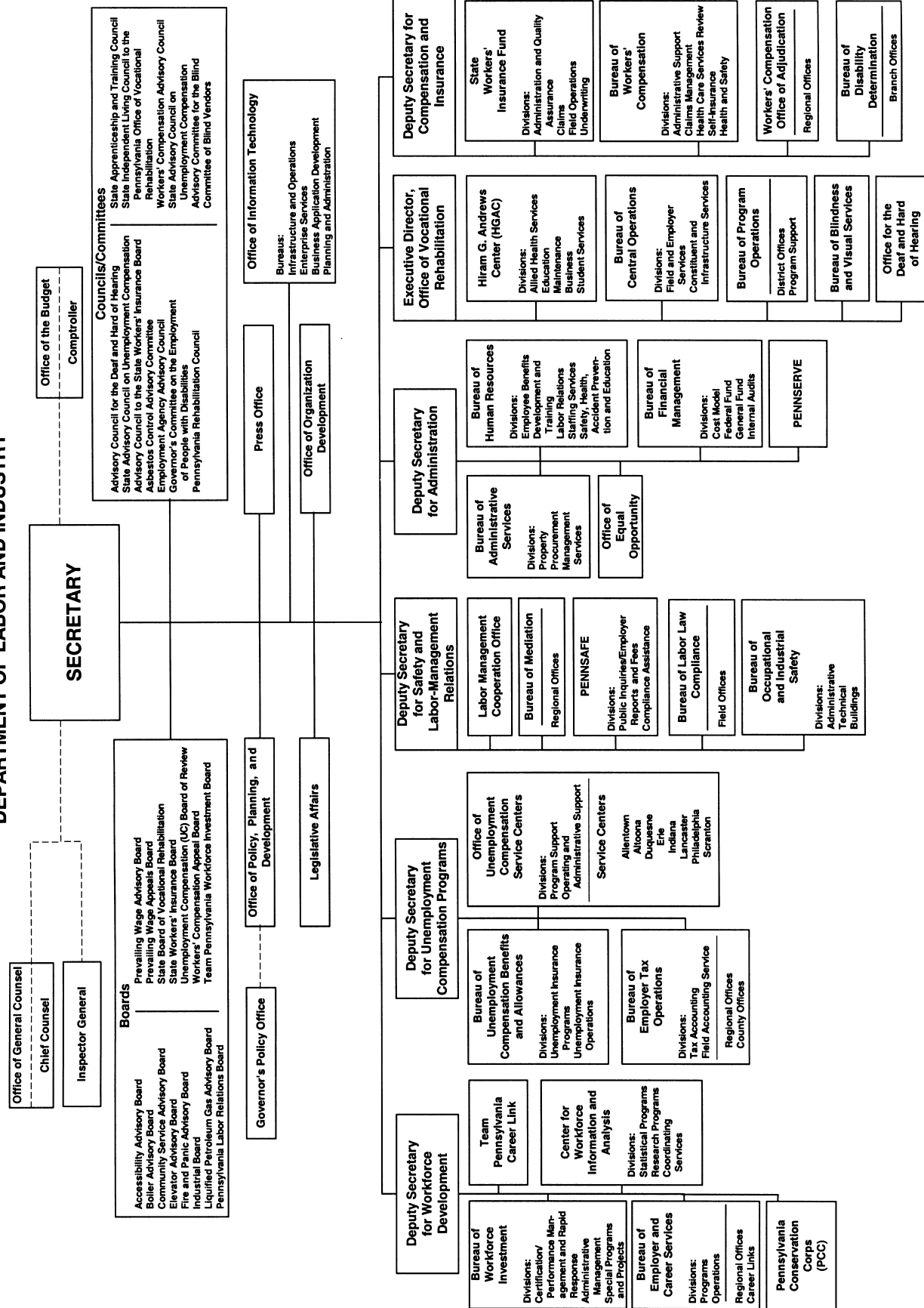
(Editor's Note: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the Pennsylvania Code.)

[Pa.B. Doc. No. 03-1408. Filed for public inspection July 18, 2003, 9:00 a.m.]

BOARD OF PROBATION AND PAROLE



DEPARTMENT OF LABOR AND INDUSTRY



Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 57]

Listing of Wild Trout Streams

The Fish and Boat Commission (Commission) adopts a statement of policy in Chapter 57 (relating to statements of policy). The statement of policy relates to the classification of wild trout streams. The Commission is publishing this statement of policy under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The statement of policy will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the statement of policy, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This order adopting the statement of policy is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The statement of policy is published under the statutory authority of section 321 of the code (relating to administration and enforcement) that provides that the Commission administer and enforce the code and other laws of the Commonwealth relating to the protection, propagation and distribution of fish.

D. Purpose and Background

Section 105.1 of 25 Pa. Code (relating to definitions) defines the term "wild trout stream" as "a stream classified as supporting naturally reproducing trout populations by the Fish Commission." The definition goes on to provide that the list of wild trout streams is available from the Commission's Fisheries Management Division.

In litigation before the Environmental Hearing Board and the Commonwealth Court, the meaning and effect of this regulatory definition was clarified. Under these precedents, it is clear that the Department of Environmental Protection (DEP) is to make an independent determination of how to use the Commission's classification of a water as a wild trout stream, as well the factual and expert information on which the classification is based, in making regulatory and permitting decisions. The precedents also indicate that the so-called "wild trout criteria" and the "wild trout list" have regulatory significance and should be published under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202). Although the identification of streams as wild trout streams essentially involves the exercise of professional judgment by fisheries managers and fisheries biologists, it is recognized that the public input may be a useful element in this process.

The Commission has adopted a statement of policy that sets forth the basis for classification of streams supporting natural reproduction of trout. This wild trout list is not the same as the listing of Class A wild trout waters or wilderness trout streams. The wild trout stream list currently identifies about 1,500 stream sections that support naturally reproducing trout populations. Upon final consideration of the statement of policy, the Commission deleted the word "all" in § 57.11(b)(4) (relating to listing of wild trout streams) and adopted it to read as set forth in Annex A.

E. Paperwork

The statement of policy will not increase paperwork and will create no new paperwork requirements.

F. Fiscal Impact

The statement of policy will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The statement of policy will impose no new costs on the private sector or the general public.

G. Public Involvement

A notice of a proposed statement of policy was published at 33 Pa.B. 1487 (March 22, 2003). The Commission received two public comments concerning the proposed statement of policy. One comment, which was received prior to the formal public comment period, supported publication of the list. The other comment, which was submitted by DEP, suggested that instead of publishing the list from time-to-time, a firmer timeline be considered. DEP requested the Commission to update and publish the list at least once a year, publishing the revised version every June. DEP also suggested that the Commission maintain an updated, active list and post current updates on its website. DEP further recommended that the Commission not use the phrase "all tributaries" in § 57.11(b)(4) of the proposed statement of policy because there may be instances when conditions in the watershed preclude the inclusion of all tributaries.

Based upon the comments received from DEP, the Commission, upon final consideration of the statement of policy, deleted the word "all" in § 57.11(b)(4). The Commission also agreed to make regular postings of the list on its website.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the statement of policy adopted by this order has been given under 45 P. S. §§ 1201 and 1202 and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and the comments received were considered.

(3) The adoption of the statement of policy of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 57, are amended by adding § 57.11 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-141 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 57. STATEMENTS OF POLICY

Subchapter A. FISHERIES POLICIES

§ 57.11. Listing of wild trout streams.

(a) *Maintenance of list.* It is the policy of the Commission to accurately identify and classify streams supporting naturally reproducing populations of trout as wild trout streams. The Fisheries Management Division will maintain 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* and on the World Wide Web. Persons with comments, objections or suggestions about the classification of streams listed may submit them to the Commission for review.

(b) *Criteria for classifying wild trout streams.* The classification of a stream as a wild trout stream means that the trout found there have resulted from natural reproduction and that the habitat supports wild trout. Identification of streams for the presence of wild trout typically involves:

(1) *Location and habitat.* Classifications of wild trout streams will involve examination of one or more sites, which may vary in size, within the stream. The exercise of judgment by the investigator is essential in describing the extent of the stream continuum to which the examination applies. The investigator should find that the habitat is such as would support natural reproduction of trout.

(2) *Exclusion of stocked trout.* In classifying a wild trout stream, the investigator should find trout resulting from natural reproduction in the stream section or up-stream and downstream areas and their tributaries. In making this finding, the investigator will specifically exclude trout stocked as fingerlings or adults and trout that escape from a hatchery. The exercise of judgment is required in examining the trout for physical appearance such as coloration, fin condition and body configuration as indicators of the source of the trout. Direct evidence of natural reproduction of trout is a factor in making this classification, but it is not required if the other elements are present.

(3) *Biological criteria.* In identifying a wild trout stream, the investigator should find one or more of the following:

(i) Young of the year trout less than 150 mm occur at some time in the stream section.

(ii) Two or more ages of wild trout occur at some time within the stream section.

(4) *Tributary linkages.* Tributaries to wild trout streams are classified as wild trout streams for their function as habitat for segments of wild trout populations, including nurseries and refuges, and in sustaining water quality necessary for wild trout.

(c) *Existing list.* The streams identified as wild trout streams on or before January 1, 2002, and listed as such by the Fisheries Management Division will continue to be considered as wild streams by the Commission.

(d) *Requests for evaluation or reevaluation of streams.* The Commission staff will evaluate or reevaluate the classification of streams as wild trout streams at the request of the Department of Environmental Protection (DEP) in connection with permitting decisions. Requests for evaluation or reevaluation from persons or parties other than DEP will be considered for review consistent with available staff and resources and prioritized based on the status of DEP permitting decisions related to the sites. Requests that the Commission staff evaluate or reevaluate stream sections for inclusion on or removal from the list of streams supporting naturally reproducing populations of trout may be addressed to the Bureau of Fisheries, Pennsylvania Fish and Boat Commission, 450 Robinson Lane, Bellefonte, PA 16823-9616. In evaluating requests to remove streams from the list of wild trout streams, the Commission will take into account circumstances where human intervention or manmade changes have diminished the capacity of a stream to meet the criteria set forth in this section. Streams will not be removed from the list of wild trout streams in circumstances where the investigator finds evidence that their characteristics and trout populations have been changed solely or principally as a result human intervention.

(e) *Appeals.* A person aggrieved by the classification of a stream section as a wild trout stream section may appeal the agency action by filing a notice of appeal with the Executive Director, Pennsylvania Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 15 days after publication of the notice that the stream section had been so classified in the *Pennsylvania Bulletin*. Nothing in this subsection will be construed to enlarge or diminish the appeal rights of persons or parties in connection with permitting decisions and other actions of DEP.

[Pa.B. Doc. No. 03-1409. Filed for public inspection July 18, 2003, 9:00 a.m.]