

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

General Provisions; Administrative Provisions

The Fish and Boat Commission (Commission) amends Chapter 51 (relating to administrative provisions). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code). The amendments modify and update the Commission's regulations pertaining to public comments at meetings.

A. Effective Date

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendments to § 51.7 (relating to public comments at Commission meetings) are published under the statutory authority of 65 Pa.C.S. § 710 (relating to rules and regulations for conduct of meetings) and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission's administrative regulations. The specific purpose of the amendments is described in more detail under the summary of changes.

E. Summary of Changes

In 1994, the Commission adopted the regulation pertaining to public comments at Commission meetings. Since that time, the way in which the Commission and its committees have handled public comments has changed and the regulation did not reflect current Commissioner thinking or practice. The Commission has always valued public input. Therefore, it is logical that the Commission and its committees follow a uniform method for soliciting and receiving public comments at meetings. It also is logical that the Board and committees receive and consider public comments prior to deliberating and voting.

The Commission therefore amends § 51.7 to read as set forth in the proposed rulemaking published at 41 Pa.B. 2977 (June 11, 2011).

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking containing the proposed amendments was published at 41 Pa.B. 2977. The Commission did not receive public comments concerning the proposed rulemaking.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (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 no public comments were received.

(3) The adoption of the amendments 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 51, are amended by amending § 51.7 to read as set forth at 41 Pa.B. 2977.

(b) The Executive Director shall submit this order and 41 Pa.B. 2977 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 41 Pa.B. 2977 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-227 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-2214. Filed for public inspection December 30, 2011, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53, 97 AND 111]

General Provisions; Boating

The Fish and Boat Commission (Commission) amends Chapters 53, 97 and 111 (relating to Commission property; operator provided equipment; and special regulations counties). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments modify and update the Commission's property and boating regulations.

A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 53.2 (relating to camping and cooking) is published under the statutory authority of section 741 of the code (relating to control of property). The amendments to §§ 97.3 and 97.5 (relating to sound producing devices; and visual distress signals) are published under the statutory authority of section 5123(a)(5) of the code (relating to general boating regulations). The amendments to §§ 111.31 and 111.43 (relating to Huntingdon County; and Mercer County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission's property and boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. The Commission solicited the advice and opinion of its Boating Advisory Board on the proposed amendments prior to final adoption.

E. Summary of Changes

(1) On October 4, 1976, the Commission established the Natural Access Area Program (Program) to make available public fishing and boating opportunities to some of the most scenic and inaccessible waterways within this Commonwealth. The Commission established rules and regulations for access areas designated under the Program and a special use permit for overnight camping at a cost of \$2 per boat. On July 29, 1977, the Commission entered into an agreement with the Department of Environmental Resources to establish the Allegheny River State Park in Venango County as the first primitive rest stop access under the Program.

The Commission has not entered into other agreements or established other properties under the Program nor has it collected permit fees from the Program. A variety of agencies and organizations currently offer primitive access opportunities across this Commonwealth with accompanying regulations, enforcement and management. The Commission will continue to provide assistance for the development of primitive access for public fishing and boating opportunities. However, the Commission has discontinued the Program and amends § 53.2 to read as set forth in the proposed rulemaking published at 41 Pa.B. 2978 (June 11, 2011).

(2) The Commission's current regulations are consistent with Inland Navigation Rule 32, Part D—Sound and Light Signals, regarding required sound equipment for boats. However, the Commission's use of "oral" in describing the requirement for unpowered boats may be misconstrued as meaning shouting or whistling as being an acceptable sound signal. The Commission has clarified the requirement by adding a statement indicating that an athletic coach's whistle is an acceptable sound producing device for unpowered boats. Additionally, the Commission has included a prohibition against the use of sound signals except in the case of an emergency. The Commission amends § 97.3 to read as set forth in the proposed rulemaking.

(3) The Commission's regulation for visual distress signals (VDS) is consistent with 33 CFR 175.125 (relating to serviceability) requiring that VDS must be in serviceable condition. However, there is not a definition for "serviceable" as it relates to inspecting VDS. The Commission therefore defines "serviceable" based on the standards used by the United States Coast Guard, Boating Safety Division. The Commission amends § 97.5 to read as set forth in the proposed rulemaking.

(4) During the summer of 2010, the United States Army Corps of Engineers (Corps) jointly developed a plan that recommends changes to enhance recreation on the lake. The Corps' goals for Lake Raystown are to reduce the costs of the buoy program by transferring costs to parties who benefit, eliminate buoys that are redundant to Commission regulations, replace buoys with signage and analyze existing lake zoning versus observed usage patterns. As a result, the plan recommends eliminating the "slow, no wake speed" designation in the areas of Hawns Run Cove and Anderson Bay.

The narrow geography of Hawns Run Cove already restricts a portion of the cove to slow, no wake according to Commission regulations and Anderson Bay is more frequently used by trolling anglers rather than recreational boaters. Therefore, the Commission has removed the slow, no wake designation from both areas. The Commission amends § 111.31 to read as set forth in the proposed rulemaking.

(5) State Game Lands 270 contains approximately 300 acres of Lake Wilhelm. In 2006, electric motors were permitted on a sizeable part of Lake Wilhelm that runs through State Game Lands 270 from the old log boom to the State Propagation Area above the Sheakleyville Bridge. Currently, the area is posted with "Electric Motors Only" posters at the boat launches, Sheakleyville Bridge and the old boom which is now just a line of buoys. There was no Commission regulation prohibiting the operation of boats powered by internal combustion motors in this area. Therefore, the Commission has adopted an amendment prohibiting the operation of boats powered by internal combustion motors. The remainder of the lake is owned by the Department of Conservation and Natural Resources, Bureau of State Parks, and has a 20 horsepower restriction on it. The Commission amends § 111.43 to read as set forth in the proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking containing the proposed amendments was published at 41 Pa.B. 2978. The Commission received one public comment generally supporting the proposed amendment to § 97.3. The Commission did not receive public comments concerning the other proposed amendments. Copies of the public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (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 public comments received were considered.

(3) The adoption of the amendments 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 Chapters 53, 97 and 111, are amended by amending §§ 53.2, 97.3, 97.5, 111.31 and 111.43 to read as set forth at 41 Pa.B. 2978.

(b) The Executive Director shall submit this order and 41 Pa.B. 2978 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 41 Pa.B. 2978 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-229 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 11-2215. Filed for public inspection December 30, 2011, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CHS. 63 AND 65]

Fishing; General and Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapters 63 and 65 (relating to general fishing regulations; and special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

This final-form rulemaking will go into effect on January 1, 2012.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendments to §§ 63.43 and 65.24 (relating to fishing for bass during spring season; and miscellaneous special regulations) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

In recent years, annual Commission biological assessment of catch rates of smallmouth bass in the lower Susquehanna River (below Sunbury) and in the lower Juniata River (below Newport) have fallen below reference catch rates of the middle to late 1990s. This has not been the case for other rivers or river reaches in this Commonwealth, including the West Branch of the Susquehanna River and the North Branch of the Susquehanna River. These decreases in catch rates have been attributed, in part, to decreases in production and survival of young.

Historically, reductions in smallmouth bass young-of-year indices could be explained, in part, by late spring river discharge. High late spring discharges tend to lead to reduced densities of young smallmouth bass, whereas lower spring discharges tend to lead to higher densities of young in summer assessments. Since 2002, while this pattern continued on the North Branch of the Susquehanna River, recruitment on the mainstem has been consistently below average. Since 2005, the Commission has documented that low flows and relatively warm water temperatures have been associated with high incidences of Columnaris bacterial disease in young-of-year bass. Columnaris is a common soil bacterium that typically does not appear unless fish are under some type of stress. Studies conducted by the United States Geological Survey in 2008 and 2009 have documented that low stream flows and warmer water temperatures are associated with relatively low dissolved oxygen levels in near shore nursery habitat for young-of-year bass. These conditions are typically associated with relatively high plant growth and point to possible nutrient loading concerns. Work continues to identify the causes of low recruitment and disease, with immediate solutions challenging a broad spectrum of scientists from state and Federal resource management agencies.

Reduced densities of smallmouth bass are likely to continue until survival of above average year classes persists through adulthood in the lower Susquehanna River and Juniata River. To preserve good quality fishing in the face of declining smallmouth bass abundance and provide for enhanced preservation of young fish recruiting to the population, the Commission amended § 65.24 to impose catch and release regulations on smallmouth and largemouth bass in portions of the Susquehanna River and Juniata River that were previously regulated under § 65.9 (relating to big bass special regulations). Currently, tournaments are prohibited during the bass spawning period in the spring, and during the remainder of the year only catch-measure-immediate release tournaments are permitted. The new regulations, which went into effect on June 11, 2011, apply to all species of black bass residing in the Susquehanna and Juniata Rivers to remain consistent with the way that black bass historically have been managed in these rivers.

For the previous reasons and as a result of the public comments received in response to the Commission's original notice of proposed rulemaking, the Commission proposed further changes to its regulations to address declining smallmouth bass populations. The proposed changes, which were published at 41 Pa.B. 2976 (June 11, 2011), included imposing a closed season for bass during the spawning period and extending the catch and release and closed season regulations into the tributaries to these rivers.

Specifically, the Commission proposed instituting a closed season from mid-April (12:01 a.m. the first Saturday after April 11) to mid-June (12:01 a.m. the first Saturday after June 11) on the lower Susquehanna and lower Juniata Rivers to reduce angling related stress during the spawning period which will provide additional protection to the bass populations of the main rivers. The Commission also proposed extending the catch and release and closed season regulations into the tributaries to further protect the mainstem fisheries as staff have documented that some bass do move into the tributaries from the rivers from time to time. This proposed action was also intended to simplify enforcement of the regulations for anglers fishing near the tributary mouths. The Commission proposed that the regulations extend to a point 1/2 river-mile upstream from the mouth of all tributaries to the affected reaches of the Susquehanna and Juniata Rivers.

The Commission considered the public comments and sought input from several guides who operate their businesses in the portion of the rivers affected by the proposed rulemaking. These discussions revealed that the major concern of the guides was the length of the proposed closed season. The Commission therefore made modifications to the proposed amendments upon final adoption.

E. Summary of Changes

On final adoption, the Commission amended § 65.24 to read as set forth in Annex A. Specifically, the Commission adopted the amendments as proposed except that it shortened the closed season. Instead of beginning at 12:01 a.m. the first Saturday after April 11, the closed season begins on May 1. For consistent application of seasonal restrictions, the Commission prohibited tournaments during the same period. The Commission also amended § 63.43 to read as set forth in the proposed rulemaking to clarify that it does not apply to portions of the Susquehanna and Juniata Rivers and their tributaries that are regulated under § 65.24.

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have direct adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the general public. Some members of the private sector have asserted that the closed season during the spring spawning period will have negative financial implications for bass fishing tournament organizers, fishing guides and other fishing-related businesses.

H. Public Involvement

Notice of proposed rulemaking was published at 41 Pa.B. 2976. The Commission received over 50 public comments regarding the proposed rulemaking prior to the

formal public comment period. No comments were received during the formal comment period. The nature of the comments ranged widely. Most commentators were opposed to the closed season portion of the proposed rulemaking. Concerns were expressed by a number of businesses and guides regarding the economic impact of a closed season. Many commentators stated that the main problem with the rivers' fisheries is water quality rather than impacts from fishing. Another commented that the proposed amendments would be difficult to enforce. Some questioned whether the data and science are adequate to support the regulation. A number of commentators expressed their concerns with the impacts of guided fishing in the spring. Commentators expressed little concern with extending both the catch and release regulation and the closed season into the mouths of tributaries. Copies of the public comments were provided to the Commissioners. Additionally, on July 6, 2011, Commission staff met with several guides that operate their businesses in the portion of the Susquehanna and Juniata Rivers affected by the proposed rulemaking.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (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 all public comments received were considered.

(3) The adoption of the amendments 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 Chapters 63 and 65, are amended by amending § 63.43 to read as set forth at 41 Pa. B. 2976 and § 65.24 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Executive Director shall submit this order, 41 Pa.B. 2976 and Annex A to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order, 41 Pa.B. 2976 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon January 1, 2012.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-230 remains valid for the final adoption of the subject regulations.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
* * * * *		
Cumberland, Dauphin, Juniata, Lancaster, Northumberland, Perry, Snyder, York	Susquehanna River (98.0 miles) from the inflatable dam near Sunbury downstream to Holtwood Dam, including all tributaries to a point 1/2 mile upstream from the confluence	Bass (smallmouth and largemouth)—From May 1 to 12:01 a.m. the first Saturday after June 11—Closed season; no tournaments. During the closed season, it is unlawful to target or attempt to catch a bass. A bass that is accidentally caught during the closed season must be immediately released unharmed without being removed from the water. It is unlawful to possess bass in, on or along these waters. Remainder of the year—No harvest—Catch and immediate release only; catch-measure-immediate release tournaments only.
Dauphin, Juniata, Perry	Juniata River (31.7 miles) from SR0075 bridge at Port Royal downstream to the mouth, including all tributaries to a point 1/2 mile upstream from the confluence	Bass (smallmouth and largemouth)—From May 1 to 12:01 a.m. the first Saturday after June 11—Closed season; no tournaments. During the closed season, it is unlawful to target or attempt to catch a bass. A bass that is accidentally caught during the closed season must be immediately released unharmed without being removed from the water. It is unlawful to possess bass in, on or along these waters. Remainder of the year—No harvest—Catch and immediate release only; catch-measure-immediate release tournaments only.
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[Pa.B. Doc. No. 11-2216. Filed for public inspection December 30, 2011, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CH. 97]

Boating; Operator Provided Equipment

The Fish and Boat Commission (Commission) amends Chapter 97 (relating to operator provided equipment). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendment modifies and updates the Commission's boating regulations.

A. Effective Date

This amendment will go into effect on November 1, 2012, to allow adequate time to notify the public of the new requirement.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 97.1 (relating to personal flotation devices) is published under the statutory authority of

section 5123(a)(5) of the code (relating to general boating regulations).

D. Purpose and Background

The final-form rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the amendment is described in more detail under the summary of change.

E. Summary of Change

In the past 15 years, a disproportionate number of recreational boating fatalities occurred in this Commonwealth from November through April primarily due to the effects of coldwater immersion. When water temperatures are less than 70° F, cold water shock is a major factor in boating fatalities. Cold water shock causes an involuntary gasp (often resulting in aspiration of water), hyperventilation, breathlessness and a reduced ability to control breathing and swim. Victims who wear personal flotation devices when exposed to cold water have potentially life-saving advantages such as insulation from the cold, buoyancy for victims who are unable to tread water and reduced risk of aspiration of water. In an effort to reduce the number of fatalities related to coldwater immersion, the Commission amends § 97.1, as set forth in the proposed rulemaking published at 41 Pa.B. 2975 (June 11, 2011), to require life jackets to be worn on small and

unstable boats during the period most noted for cold water temperatures, that is November 1 through April 30.

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose nominal costs on the private sector and the general public. The cost of personal flotation devices range from \$10 to \$150.

H. Public Involvement

Notice of proposed rulemaking soliciting public comments for a period of 60 days was published at 41 Pa.B. 2975. The Commission received a total of 42 comments—8 prior to, 28 during and 6 after the formal comment period. The majority of the comments oppose the proposed rulemaking with the primary reasons being unnecessary government regulation and intrusion on personal decision. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (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 all public comments received were considered.

(3) The adoption of the amendment 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 97, are amended by amending § 97.1 to read as set forth at 41 Pa.B. 2975.

(b) The Executive Director shall submit this order and 41 Pa.B. 2975 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 41 Pa.B. 2975 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on November 1, 2012.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-228 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 11-2217. Filed for public inspection December 30, 2011, 9:00 a.m.]