

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 53, 65 AND 93]

Commission Property, Fishing and Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 53, 65 and 93 (relating to Commission property; special fishing regulations; and boat registration and numbering). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to Commission property, fishing and boating.

A. Effective Date

These proposed amendments will, if approved on final rulemaking, go into effect upon publication of an order adopting the regulations.

B. Contact Person

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

These proposed amendments are published under the statutory authority of sections 741, 2102 and 5122 of the code (relating to control of property; rules and regulations; and registrations, licenses, permits, plates and statistics).

D. Purpose and Background

The proposed amendments are designed to update, modify and improve Commission regulations pertaining to Commission property, fishing and boating. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

1) *Section 53.13 (relating to domestic water supply reservoirs)*. For many years, the Commission has pursued an active program of encouraging agreements from municipal water supplies to allow fishing in the waters of domestic water supply reservoirs. The Commission has entered into agreements with numerous municipal authorities to make these reservoirs subject to Commission property regulations and establish additional restrictions. This course of action is beneficial to the angling public since it provides important fishing opportunities. It is also beneficial to the operators of the water supply reservoirs since it makes Commission property regulations and additional restrictions applicable to these sites.

In reviewing the regulation applicable to this program (§ 53.13), it appears that it can be streamlined. The regulation currently provides that additional restrictions contained in agreements between municipal authorities and the Commission shall be fully enforceable when posted at the site. The regulation goes on to list some of the additional restrictions applicable to many of the water supply reservoirs with which the Commission has agreements. Including the specific list of additional restrictions in the regulation text appears unnecessary since the

regulation also provides that the additional restrictions are fully enforceable when approved by the Executive Director and posted at the site. Therefore, the Commission proposes to amend this section to read as set forth in Annex A.

2) *Section 65.24 (relating to miscellaneous special regulations)*. Angling at the Fairmount fishway on the Schuylkill River has reached the point where a change in regulations is necessary for the well being of users as well as fish, including migratory species such as American shad, gizzard and hickory shad and striped bass. Fairmount Dam (river mile 9.0) is the first barrier that migratory species encounter as they come up the Schuylkill River. A fish passage facility was open for use in the spring of 1979 and was successful in passing migratory species, including American shad, gizzard shad, river herring and a host of warmwater/coolwater species. Aside from problems in maintaining an operational facility due to debris clogging the facility, fish have utilized this facility annually. At the same time, anglers began to frequent the site because 1) it provides much needed shore access along the river; and 2) the dam provides excellent habitat for fish moving up the river. The Commission made an exception to the restriction prohibiting angling within 100 feet of a fishway so anglers could take advantage of the access at the fishway. Over the years, as water quality in the Schuylkill and Delaware continued to improve so did the density of fish congregating downstream of the dam and along the fishway wall. Angling interest did likewise, including those who opted to use snagging gear, particularly when schools of gizzard shad made snagging very easy. In addition, enterprising anglers with specialized nets would break through fences on the top of the fishway and place homemade gill nets in the vertical slots between individual pools. Despite herculean efforts by various waterways conservation officers and their deputies, illegal angling activities at the fishway continue to increase. Thus, the Commission proposes to amend this section to no longer permit fishing within 100 feet of the Fairmount fishway.

3) *Section 93.2 (relating to permanent and temporary registration)*. At its October 1997 meeting, the Senate Game and Fisheries Committee asked the Commission staff to look at regulatory actions to address concerns related to Senate Bill 686. This bill, introduced by Senator Leonard Bodack, would change the code so that when a person receives a new boat registration, it would be valid for 2 years from the date of issuance. Thereafter, it is presumed that renewals would be issued on the same 2-year cycle. Thus, if a person obtained a new registration in July 1997, it would expire in July 1999 and so on.

Under the current cycle, renewals are sent out in the winter, and the vast majority of renewals are issued by March 31. This enables Commission staff to complete action on most renewals before they are inundated with new registrations in the summer. The Commission is able to process hundreds of thousands of new and renewal boat registrations each year with a very small staff of five permanent and four seasonal employees because the current law is effective in its timing of renewals vis-a-vis the bulk of new registrations. If Senate Bill 686 becomes law in its present form, more and more renewals will need to be processed in the same summer months when staff are handling most new registrations. Eventually, over a pe-

riod of several years, it is likely that the majority of renewals and new registrations will be concentrated in the same months.

The Commission believes that its staff's efforts to provide the best possible service to boat registration customers depend, in part, on the ability to schedule the renewal cycle so that it does not conflict with the timing of the bulk new registrations. Changing over to a renewal cycle based on the month the boat is first registered would entail additional costs in terms of computer programming. The Commission fears that, if renewals become concentrated in the same months when most new registrations are issued, it may also face additional personnel costs.

Even though the Commission would like to maintain the current cycle whereby most renewals are handled in February and March, it agrees that some changes may be desirable to ensure that persons who obtain new boat registrations get fair value for their registration fees. The Commission recently approved changes to the boat registration regulations, effective January 1998, to permit the transfer of boat registrations so that persons who change boats in the middle of a registration cycle can keep on the same cycle at a cost of \$5. Prior to this change, which was instituted as a direct result of Senator Bodack's inquiry, a registrant had to pay for a new registration when he changed boats regardless of the timing or the circumstances.

The Commission is now proposing a further change in regulations to ensure that no matter when someone obtains a new registration, he will get to boat during two boating seasons on their initial registrations. Under current regulations, October 1 is the cutoff point for determining the duration of a new registration. Thus, a person who obtains a new registration in September 1997, will need to renew in March 1999, while a person who obtains a new registration in October 1997, will not need to renew until March 2000. Although it might seem the September registrant is being shortchanged, it is important to remember that, in most cases, the registrant had use of the boat for at least 60 days prior to September under the temporary registration sticker. Thus, even under the current regulations, a September registrant would be able to boat in July and August of one boating season and all of the following boating season under a single 2-year registration.

The Commission is proposing an amendment, to read as set forth in Annex A, to make it clear that the expiration date of a 2-year registration will cover at least two boating seasons.

F. *Paperwork*

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

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

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments 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 at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-79. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

Subchapter B. ADMINISTRATION OF LIMITED POLICE POWERS BY WATERWAYS CONSERVATION OFFICER

§ 53.13. Domestic water supply reservoirs.

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(b) When the agreement between the Commission and the owners of a domestic water supply reservoir specifies additional, alternative or different restrictions or conditions and the Executive Director, on behalf of the Commission, approves the conditions or restrictions for posting at the site and enforcement, the posted conditions or restrictions are [as] fully enforceable [as if they were set forth in this section] when posted at the site. It is unlawful to violate conditions, restrictions or prohibitions posted by the Commission at the site of a domestic water supply reservoir with which the Commission has an agreement.

[(c) Specific restrictions are contained in the following table:

	Electric Motors Only	All Boating Prohibited	Hand Powered Boating Only	Ice Fishing Prohibited	Ice Skating Prohibited	Wading Prohibited	Hunting Prohibited	Area Closed 9 p.m.—5 a.m.	Over night Mooring of Boats Prohibited
Birch Run Reservoir, Adams Co.		X		X	X	X			

	Electric Motors Only	All Boating Prohibited	Hand Powered Boating Only	Ice Fishing Prohibited	Ice Skating Prohibited	Wading Prohibited	Hunting Prohibited	Area Closed 9 p.m.—5 a.m.	Over night Mooring of Boats Prohibited
Long Pine Reservoir, Adams Co.	X				X	X		X	
Ebensburg Reservoir, Cambria Co.		X		X					
Middletown Reservoir, Dauphin Co.			X		X	X*			
Laurel Run Reservoir, Elk Co.		X							
Eaton Reservoir, Erie Co.	X					X			
Waynesboro Reservoir, Adams Co.		X						X	
Letterkenny Reservoir, Franklin Co.	X				X		X		
Laurel Cr. Reservoir, Mifflin Co.		X		X					
Union City Authority Reservoir, Erie Co.						X*			X
Wisecarver Reservoir, Greene Co.		X			X	X*			
Lawrence B. Sheppard Reservoir, York Co.	X				X	X			
Sheppard and Myers Reservoir, York Co.		X			X	X			

*NOTE: Wading with hip boots is permitted.]

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>
[Philadelphia]	[Schuylkill River Fairmont Fish Ladder]	[Fishing is permitted within 100 feet of downstream entrance as exception to § 63.16 (relating to fishing in the vicinity of fishways).]

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
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Subpart C. BOATING

CHAPTER 93. BOAT REGISTRATION AND NUMBERING

§ 93.2. Permanent and temporary registration

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(c) *Boat previously registered in this Commonwealth having current registration.*

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(2) The Commission will send the registrant biannual validation decals and a new biannual certificate of registration. The registrant shall display the new biannual validation decals in accordance with § 93.5 and shall carry the registration card onboard the boat while it is operating. **[In determining the expiration date of the new biannual registration, the Commission will use the following guidelines:**

(i) Application received on or before September 30 of the first year of the biannual registration cycle: New validation expires at the end of the current registration cycle.

(ii) Application received between October 1 of first year of the biannual registration cycle and September 30 of the second year of the cycle: New validation expires at the end of the next registration cycle.

(iii) Application received after October 1 of the second year of the biannual registration cycle: Validation expires after 2 years.]

(d) Expiration of new registration. In determining the expiration date of a new biannual registration, the Commission will ensure that the duration of temporary and permanent registrations issued to the registrant, taken together, allow the operation of the boat during at least two boating seasons. For purposes of this section, a boating season is the period between the Saturday before Memorial Day and Labor Day.

[(d)] (e) * * *

[Pa.B. Doc. No. 98-595. Filed for public inspection April 17, 1998, 9:00 a.m.]

[58 PA. CODE CH. 61]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to fishing.

A. Effective Date

These proposed amendments will, if approved on final rulemaking, go into effect on January 1, 1999, or upon publication of an order adopting the regulations, whichever occurs later.

B. Contact Person

For further information on the proposed changes, contact Laurie E. Shepler, Assistant Counsel (717) 657-4546), P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

These proposed amendments are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The proposed amendments are designed to update, modify and improve Commission regulations pertaining to fishing. The specific purpose of the various amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

Sections 61.1 and 61.2 (relating to Commonwealth inland waters; and Delaware River and River Estuary). Management of American shad, hickory shad, gizzard shad and river herring (alewife and blueback herring) stocks are a real challenge to today's fisheries managers. Restoration efforts to one extent or the other for one or more of these species are occurring in the Susquehanna River basin and the Delaware River drainage, specifically the Lehigh River and to a lesser extent the Schuylkill River.

Recently, the Commission amended its prohibition of harvest of American shad in the Susquehanna River to include hickory shad and river herring (alewife and blueback herring) and increased the coverage to include all tributaries. Hickory shad are listed as a candidate species in § 75.3 (relating to candidate species) and, as such, could achieve endangered or threatened status in the future. The Commission is concerned that existing regulations, particularly as applied to the Delaware River, Estuary and tributaries, are not in harmony with the candidate species listing or the intent of restoration efforts.

Also, river specific and Statewide regulations are not clear as to the harvest of gizzard shad, particularly those longer than 8 inches (those 8 inches or less are considered baitfish) taken by hook and line either for personal consumption or use as bait for larger gamefish, such as muskellunge or striped bass. Gizzard shad occur in various waters across this Commonwealth with many landlocked populations maintained through natural reproduction, while others are of a migratory nature congregating in large concentrations downstream of dams. Harvest of this species should pose no threat to the stock but needs to be regulated from the standpoint of natural resource conservation ethics. Therefore, the Commission proposes to amend § 61.1 by adding no open season for hickory shad, by adding gizzard shad with an open year-round season with a 50 fish possession limit, and by adding a 50 fish daily possession limit for herring. The Commission also proposes to amend § 61.2 by adding hickory shad with a no open season.

F. Paperwork

The proposed amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

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

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments 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*.

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2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

(*Editor's Note:* A proposal to amend § 61.1 remains outstanding at 28 Pa.B. 45 (January 3, 1998).)

Fiscal Note: 48A-80. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.1. Commonwealth inland waters.

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(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogeny Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *	* * * * *	* * * * *	* * * * *
[SHAD * * * *]	[Open year-round]	[No minimum]	[6]
AMERICAN SHAD * * * * *	Open year-round	No minimum	6
HICKORY SHAD * * * * *	Closed year-round		0
GIZZARD SHAD * * * * *	Open year-round	No minimum	50
HERRING	Open year-round	No minimum	[No daily limit] 50
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§ 61.2. Delaware River and River Estuary.

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(d) The following seasons, sizes and creel limits apply to the Delaware River and to Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *	* * * * *	* * * * *	* * * * *
[SHAD]	[Open year-round]	[No minimum]	[6]
AMERICAN SHAD	Open year-round	No minimum	6
HICKORY SHAD	Closed year-round		0

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