

# RULES AND REGULATIONS

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 57, 61, 63, 65, 93 AND 97]

#### Water Quality; Fishing and Boating

The Fish and Boat Commission (Commission) by this order amends Chapters 57, 61, 63, 65, 93 and 97. The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments relate to general provisions, fishing and boating.

#### A. Effective Date

These amendments will go into effect immediately upon publication of this order in the *Pennsylvania Bulletin*.

#### B. Contact Person

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

#### C. Statutory Authority

The amendments are published under the statutory authority of section 10 of the Sunshine Act (65 P.S. § 280) and section 506 of The Administrative Code of 1929 (71 P.S. § 186). These amendments also are published in accordance with section 204 of the act of July 31, 1968 (P.L. 769, No. 240) (CDL) (45 P.S. § 1204), which provides that an agency may omit or modify the procedures specified in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) if the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 of the CDL are under the circumstances impracticable, unnecessary or contrary to the public interest.

#### D. Purpose and Background

Under § 51.5 (relating to correction of regulations), the Executive Director is authorized to take immediate corrective action on the Commission's behalf if the Executive Director or the Commission's staff discovers an error or omission in the text of a Commission regulation as published in the *Pennsylvania Code* or *Pennsylvania Bulletin*. It has been brought to the Commission's attention that there are errors in the text of several Commission regulations, as more particularly described in the following summary of changes. The purpose of the amendments is to correct these errors.

#### E. Summary of Changes

(1) *Section 57.3 (relating to policy on water quality designation)*. The Commission has amended this section to change the name of the "Department of Environmental Resources" to the "Department of Environmental Protection."

(2) *Section 61.3 (relating to Pymatuning Reservoir)*. The Commission has amended this section to delete the word "creel" from the heading "daily creel limit" so that the heading is consistent with the headings in other sections.

(3) *Section 63.10 (relating to ice fishing)*. The Commission has amended this section to change "§ 53.6 (relating to miscellaneous prohibitions)" to "§ 63.6 (relating to authorized devices for game fish, baitfish and fishbait)."

(4) *Section 65.23 (relating to special restrictions on polluted zones)*. The Commission has amended this section to change slightly the wording of the last sentence.

(5) *Section 65.24 (relating to miscellaneous special regulations)*. The Commission has amended this section to correct a typographical error.

(6) *Sections 93.3, 93.4 and 93.7 (relating to application for boat registration; certificate of registration; duplicate certificate of registration)*. The Commission has amended these sections to change "sticker" to "decal." The Commission has also amended § 93.3 to reflect the current name of the affidavit of purchase/ownership form.

(7) *Section 93.12 (relating to dealers, manufacturers and jobbers)*. The Commission has amended this section to reflect the current name of the Licensing and Registration Section.

(8) *Section 97.1 (relating to personal flotation devices)*. The Commission has amended this section to delete the erroneous reference to safety standards for boats.

#### F. Paperwork

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

#### G. Fiscal Impact

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

#### H. Public Involvement

Under section 204 of the CDL, an agency may omit the procedures specified in sections 201 and 202 of the CDL if the agency finds that these procedures are unnecessary. The Commission, therefore, did not publish these amendments as a notice of proposed rulemaking or solicit public comment.

#### Findings

The Commission finds that:

(1) Errors were discovered in the text of 58 Pa. Code §§ 57.3, 61.3, 63.10, 65.23, 65.24, 93.3, 93.4, 93.7, 93.12 and 97.1 as published in the *Pennsylvania Code*.

(2) Under 58 Pa. Code § 51.5, the Executive Director is authorized to take immediate corrective action on behalf of the Commission, including, if necessary, the issuance of an order to make the necessary correction, if the Executive Director or the Commission's staff discovers an error in the text of a Commission regulation as published in the *Pennsylvania Code*.

(3) Under the circumstances, the procedures of sections 201 and 202 of the CDL are unnecessary.

#### Order

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

(A) The regulations of the Commission, 58 Pa. Code Chapters 57, 61, 63, 65, 93 and 97, are amended by amending §§ 57.3, 61.3, 63.10, 65.23, 65.24, 93.3, 93.4,

93.7, 93.12 and 97.1 to read as set forth at Annex A, with ellipses referring to the existing text of the regulations.

(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:** 48A-101. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart A. GENERAL PROVISIONS**

**CHAPTER 57. STATEMENTS OF POLICY**

**§ 57.3. Policy on water quality designation.**

It is the policy of the Commission to advance and seek, when supported by the current data base, the highest Department of Environmental Protection water quality designation for waters of this Commonwealth in order to achieve the objectives of this chapter.

**Subpart B. FISHING**

**CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS**

**§ 61.3. Pymatuning Reservoir.**

\* \* \* \* \*

(c) Except as provided by special regulations the following sizes and creel limits apply to Pymatuning Reservoir; no closed season applies:

<i>SPECIES</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *		
MUSKELLUNGE AND MUSKELLUNGE HYBRIDS	30 inches	2

**CHAPTER 63. GENERAL FISHING REGULATIONS**

**§ 63.10. Ice fishing.**

\* \* \* \* \*

(b) It is unlawful while ice fishing to use more than five tip-ups or more than the quantity of other legal devices authorized by § 63.6 (relating to authorized devices for game fish, baitfish and fishbait) or to fish through holes that measure more than 10 inches between the farthest points as measured in any direction.

\* \* \* \* \*

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.23. Special restrictions on polluted zones.**

\* \* \* \* \*

(c) This section may not be construed to relieve the person or entity responsible for placing or allowing harmful substances to be present in fishing waters from criminal or civil liability for acts or omissions with regard to the substances. This section does not place liability or duty on the Commonwealth or the Commission or their employees, officers, agents or assigns, to locate, identify or post waters where harmful substances may be present; nor may the Commonwealth, the Commission or their officers, employees, agents or assigns be liable for the consequences of harmful substances being present in fishing waters. This section does not confer or convey ownership, control or jurisdiction, over these waters on the Commission except as may be otherwise provided by law or regulation.

**§ 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>
		* * * * *
Wayne	Duck Harbor Pond	* * *

County	Name of Water	Special Regulations
	West Branch Delaware River	Trout: From the Pennsylvania/New York border Delaware downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October 1 until midnight of the Friday before opening day of trout season. During the no-harvest artificial lures only season: 1. Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood, or flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Anything other than these items is prohibited. Specifically prohibited are the use of molded facsimiles or replicas of insects, earthworms, fish eggs, fish or any invertebrate or vertebrate either singly or in combination with other materials. 2. The use or possession of natural bait, baitfish and fishbait and the use of other devices, natural or synthetic, capable of catching fish other than artificial lures is prohibited. 3. The daily creel limit for trout is 0.
		* * * * *

**Subpart C. BOATING**

**CHAPTER 93. BOAT REGISTRATION AND NUMBERING**

**Subchapter A. REGISTRATION OF BOATS**

**§ 93.3. Application for boat registration.**

(a) *New registration.* Application for a boat registration for a new boat or a used boat that was not previously registered in this Commonwealth shall conform with the following:

\* \* \* \* \*

(2) *Required information.* The applicant shall provide the following information on the application (REV-336) for a boat registration:

\* \* \* \* \*

(xiii) *A certificate of ownership.* For initial registration in this Commonwealth this shall be supported by title, bill of sale, a complete Form PFBC-734 "Affidavit of Purchase/Ownership" or other positive proof of ownership.

\* \* \* \* \*

(d) *Transfer of registration to new boat.* The holder of a valid Pennsylvania registration certificate on a boat previously owned by the holder may transfer the registration certificate for the remainder of the original boat's registration period to a new boat upon payment of the transfer fee for multiyear registrations as set forth in the code and submission of a complete Form PFBC R-4. If the registration fee for the new boat is greater than the registration fee for the old boat based on the length of the boat, the applicant shall also pay the difference between the registration fees for the new and old boat. The applicant shall submit the certificate of registration for the old boat and certify that the validation decals have been removed from the old boat at the time of transfer. The old boat's number shall remain with the old boat, and the new boat shall be issued a new number unless it was previously numbered in this Commonwealth.

**§ 93.4. Certificate of registration.**

(a) The owner shall sign the certificate of registration, Form PFBC-730b, in ink and place numbered, registration certificate validation decal on the reverse side of the certificate to validate the registration. A registration certificate is not valid unless a decal is applied.

\* \* \* \* \*

**§ 93.7. Duplicate certificate of registration.**

The Commission will issue a duplicate certificate of registration upon receipt of Form PFBC-730a or Form PFBC-732 from the registered owner and payment of the appropriate fee. The Commission will not issue the numbered registration certificate validation decal for duplicate registrations, but the lack of the decal will not affect the validity of a duplicate registration certificate.

**§ 93.12. Dealers, manufacturers and jobbers.**

\* \* \* \* \*

(g) Boat dealers, jobbers or manufacturers who take in trade a boat bearing previous Pennsylvania boat registration are required, within 15 days of obtaining the boat, to place the boat under the dealer/jobber/manufacturer's dealer registration. The dealer, jobber or manufacturer shall complete Form PFBC-336 and forward it to the Licensing and Registration Section. No fee is applicable to a transaction when dealers place boats taken in trade under their dealer registrations. It is unlawful for a boat dealer, jobber or manufacturer to operate or allow to be operated a boat received in trade bearing a Pennsylvania boat registration until the boat is placed under their dealer registration under this subsection.

**CHAPTER 97. OPERATOR PROVIDED EQUIPMENT**

**§ 97.1. Personal flotation devices.**

\* \* \* \* \*

(c) A Type V PFD may be carried in lieu of a PFD required under subsection (a) if:

\* \* \* \* \*

[Pa.B. Doc. No. 99-1867. Filed for public inspection November 5, 1999, 9:00 a.m.]

**FISH AND BOAT COMMISSION  
[58 PA. CODE CHS. 63 AND 65]  
Fishing Tournaments and Fishing Derbies**

The Fish and Boat Commission (Commission) by this order amends §§ 63.40 and 65.24 (relating to fishing tournaments and fishing derbies; and miscellaneous special regulations). The Commission is publishing these

amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments relate to fishing.

#### A. *Effective Date*

The amendments will go into effect on January 1, 2000.

#### B. *Contact Person*

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

#### C. *Statutory Authority*

The amendments are published under the statutory authority of sections 2102 and 2307 of the code (relating to rules and regulations; and waters limited to specific purposes).

#### D. *Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations relating to fishing. The specific purpose of each amendment is described in more detail under the summary of changes.

#### E. *Summary of Changes*

(1) *Section 63.40 (relating to fishing tournaments and fishing derbies).* The initial development of the Commission's tournament regulations considered the fact that fishing derbies encompassing just fishing activity were not required to apply for special activity permits. Therefore, § 63.40(c)(1) previously provided that it was unlawful to conduct a fishing derby on Commonwealth waters without first obtaining a special activity permit from the Commission if the derby involves an unusual congregation of boats. Section 63.40(c)(5), however, required all derby organizers to notify the Commission of the date, time and place of proposed fishing derbies. The easiest way for derby applicants to notify the Commission of a proposed derby was the use of the special activity permit application. Consequently, confusion existed in the Commission's regional offices as to when a fishing derby was actually required to apply for a special activity permit. The Commission eliminated this confusion by removing the phrase, "if the derby involves an unusual congregation of boats." The majority of fishing derbies previously applied for and received special activity permits. Thus, removing this language will have little impact on fishing derbies. The Commission also amended the paragraph to make it clear that the requirement does not apply to privately owned waters that are not open to the public.

In addition, the amendment to § 63.40(c)(1) makes Subsection (c)(5) no longer necessary. Therefore, the Commission removed this paragraph.

(2) *Section 65.24 (relating to miscellaneous special regulations).* In 1989, the Commission formalized regulations regarding the taking of smelt in inland waters. This action was prompted by the establishment of a smelt population, particularly in Lake Raystown, and the popularity of this fishery. Kinzua Reservoir and its tributaries were included because efforts were underway to establish a smelt population in those waters. However, based on findings from various sampling efforts, it was determined that smelt never really took hold in Kinzua Reservoir. Thus, the Commission has removed the special regulations pertaining to the harvest of smelt in Kinzua Reservoir and its tributaries.

#### F. *Paperwork*

The amendment to § 65.24 will not increase paperwork and will create no new paperwork requirements. The amendments to § 63.40 will slightly increase paperwork in that it will require all derby organizers to apply for special activity permits, not just those involving an unusual congregation of boats. This change, however, will have little impact because historically the majority of fishing derbies applied for and received special activity permits.

#### G. *Fiscal Impact*

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The special activities permit is free of charge. Therefore, the amendments to § 63.40 will impose no new costs on the private sector or the general public.

#### H. *Public Involvement*

A notice of proposed rulemaking was published at 29 Pa.B. 4442 (August 21, 1999). The Commission did not receive any public comments regarding the proposal.

#### *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 at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no 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 Chapters 63 and 65, are amended by amending §§ 63.40 and 65.24 to read as set forth at 29 Pa.B. 4442.

(b) The Executive Director will submit this order and 29 Pa.B. 4442 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 29 Pa.B. 4442 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-100 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 99-1868. Filed for public inspection November 5, 1999, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### [58 PA. CODE CH. 65]

#### Panfish Enhancement Special Regulation

The Fish and Boat Commission (Commission) by this order amends Chapter 65 (relating to special fishing regulations). The Commission is publishing these amend-

ments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments relate to fishing.

A. *Effective Date*

The amendments will go into effect on January 1, 2000.

B. *Contact Person*

For further information on the amendments, contact Delano R. Graff, Director, Bureau of Fisheries, (814) 359-5154, 450 Robinson Lane, Bellefonte, PA 16823, or Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. *Statutory Authority*

The amendments are published under the statutory authority of sections 2102 and 2307 of the code (relating to rules and regulations; and waters limited to specific purposes).

D. *Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations relating to fishing. The specific purpose of each amendment is described in more detail under the summary of changes.

E. *Summary of Changes*

(1) *Section 65.11 (relating to panfish enhancement special regulation)*. When the Commission adopted this regulation last year, it opted to apply harvest restrictions to all species or species groups (sunfish, crappie and yellow perch) found in waters managed under the program. While this approach was straightforward, further reflection revealed that this approach was not the best fisheries management approach to the issue. Subsequently, the Commission substantially reduced the number of waters to which the regulation applies.

The Commission has now amended this regulation to allow the Commission to apply the designation to only those species groups where angling has been observed to negatively affect panfish density and size structure, not all species groups. Application of the panfish enhancement special regulation to selected species groups within a water will yield several important benefits. First, differences in biological characteristics among species groups inhabiting a particular water will be able to be accounted for in a management program. For example, in a lake, one particular panfish population may be comprised of small individuals for reasons not associated with angling (exhibited stunting) and in the same lake a different species may be comprised of small individuals due to angler removal of larger panfish. Improvements in size structure would be expected in association with greater harvest restrictions in one case but not the other. Indeed, there may be benefits to the less protected panfish species groups (without the panfish enhancement special regulation) if harvest shifted away from the protected species group (with panfish enhancement special regulation) to the less protected group. Here, thinning the population associated with harvest may improve growth and consequently improve the size structure of the less protected species, thereby enhancing the overall number of desirable size panfish available to anglers.

The second benefit is associated with maintaining appealing panfish fishing opportunities for anglers on a particular water. Application of harvest restrictions will constrain angler harvest of panfish that provide the basis for extremely popular fishing opportunities for anglers in this Commonwealth. In 1991, anglers spent at least

8,023,000 days fishing for panfish in this Commonwealth, by comparison 11,125,000 angler days were directed to trout, and 7,186,000 angler days were directed to black bass. (United States Department of the Interior, Fish and Wildlife Service and United States Department of Commerce, Bureau of the Census. 1991 National Survey of Fishing, Hunting, and Wildlife Associated Recreation, Pennsylvania. United States Government Printing Office, Washington D.C. 1993). The Commission does not want to constrain panfish harvest opportunities on a particular water so that angler participation is reduced if harvest regulations for a particular species is not expected to yield any improvement in number of desirable size fish in an angler's catch. In some cases, harvest of some panfish species is simply not great enough to substantially affect the species size structure. The principal intent of special panfish regulations is to enhance fishing opportunities. Constricting harvest of species groups affected by intense angling and maintaining harvest of species groups not affected by angling will maximize fishing opportunities. Simply stated, it is the Commission's goal to improve size structure when possible and not restrict angling opportunities unnecessarily for species groups where no benefit is expected. Therefore, the Commission has amended § 65.11 so that harvest restrictions on a particular water may apply to one, two or all three panfish species groups as approved by the Commission.

(2) *Section 65.24 (relating to miscellaneous special regulations)*. Spring Creek, Centre County, supports an excellent Class A wild brown trout population and provides a very popular year round trout fishery for anglers in central Pennsylvania. Currently, no harvest is permitted on this water from SR 3010 in Oak Hall downstream to the mouth due to a fish consumption advisory. In recognition of the outstanding wild trout fishery provided by this water, the Commission believed that it was necessary to adopt special trout angling regulations for Spring Creek. The Commission therefore has adopted special trout management regulations for the 16.6 miles of Spring Creek extending from the SR 3010 bridge in Oak Hall downstream to the mouth (excluding the established Heritage Trout Angling project at Fisherman's Paradise and the exhibition area in Bellefonte). The regulations will involve no change from the current management, as angling will be permitted year round (no closed season) under no-harvest regulations with no tackle restrictions.

F. *Paperwork*

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

G. *Fiscal Impact*

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

H. *Public Involvement*

A notice of proposed rulemaking was published at 29 Pa.B. 3631 (July 10, 1999). The Commission did not receive any public comments regarding the changes to either section during the formal public comment period. After the public comment period, the Commission received four comments regarding the special trout management regulations for Spring Creek. Three commentators supported the change; one opposed it but mistakenly believed that the Commission intended to make this

section of Spring Creek open to harvest. Copies of all public comments have been 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 at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and the comments that were 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 Chapter 65, are amended by amending §§ 65.11 and 65.24 to read as set forth at 29 Pa.B. 3631.

(b) The Executive Director will submit this order and 29 Pa.B. 3631 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 29 Pa.B. 3631 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-99 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 99-1869. Filed for public inspection November 5, 1999, 9:00 a.m.]

## FISH AND BOAT COMMISSION

### [58 PA. CODE CH. 69]

#### Lake Erie Fishing Permit

The Fish and Boat Commission (Commission) by this order amends Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this rulemaking under the authority of 30 Pa. C.S. (relating to Fish and Boat Code) (code). The rulemaking relates to fishing.

#### *A. Effective Date*

The rulemaking will go into effect upon publication of this order adopting the rulemaking in the *Pennsylvania Bulletin*.

#### *B. Contact Person*

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

#### *C. Statutory Authority*

The rulemaking is published under the statutory authority of section 2907.2(d) of the code (relating to Lake Erie fishing permits).

#### *D. Purpose and Background*

The rulemaking is designed to update, modify and improve Commission regulations relating to fishing. The specific purpose of the rulemaking is described in more detail under the summary of changes.

#### *E. Summary of Changes*

The Commission has reached its financial goal of recompensing the holders of gill net licenses for boundary lakes as provided in section 2903(h) of the code (relating to boats and net licenses for boundary lakes, gill nets). As a result, anglers are no longer required to purchase a Lake Erie fishing permit effective January 1, 1999. Therefore, there is no need for the existing regulation relating to the Lake Erie fishing permit.

#### *F. Paperwork*

The rulemaking will not increase paperwork and will create no new paperwork requirements.

#### *G. Fiscal Impact*

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

#### *H. Public Involvement*

A notice of proposed rulemaking was published at 29 Pa.B. 3369 (July 3, 1999). The Commission did not receive any public comments regarding the proposal.

#### *Findings*

The Commission finds that:

(1) Public notice of intention to adopt the rulemaking 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 at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no comments were received.

(3) The adoption of the rulemaking 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 69, are amended by deleting § 69.18 to read as set forth at 29 Pa.B. 3369.

(b) The Executive Director will submit this order and 29 Pa.B. 3369 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 29 Pa.B. 3369 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-98 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 99-1870. Filed for public inspection November 5, 1999, 9:00 a.m.]

**FISH AND BOAT COMMISSION**  
**[58 PA. CODE CHS. 111 AND 115]**

**Special Regulations Counties and Boats Carrying Passengers for Hire**

The Fish and Boat Commission (Commission) by this order amends Chapters 111 and 115 (relating to special regulations counties; and boats carrying passengers for hire). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments relate to boating.

*A. Effective Date*

The amendments will go into effect on January 1, 2000.

*B. Contact Person*

For further information on the amendments, contact John F. Simmons, Director, Bureau of Boating and Education, (717) 657-4538, or Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

*C. Statutory Authority*

The amendments are published under the statutory authority of sections 5122(a)(6) and 5124 of the code (relating to registration, licenses, permits, plates and statistics; and particular areas of water).

*D. Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations pertaining to boating. The specific purpose of the amendments is described in more detail under the summary of changes. Prior to consideration by the Commission on proposed rulemaking, the Commission's Boating Advisory Board reviewed each proposal and made recommendations to the Commission.

*E. Summary of Changes*

(1) *Section 111.9 (relating to Bucks County)*. In 1995, the Commission approved the adoption of slow, minimum height swell speed zones under certain bridge spans over the Delaware River in Bucks County. That regulation change made the Commonwealth's regulations consistent with Statewide regulations concerning the operation of boats under bridge spans in New Jersey. The Commission has now amended its regulations to include additional bridge spans between this Commonwealth and New Jersey.

(2) *Section 111.36 (relating to Lancaster County)*. In June 1997, the Lancaster Bird Club petitioned the Commission for further regulation of boating on the Susquehanna River in the area between the Washington Boro Islands (Conejohola Flats) and the Lancaster County shoreline. The primary purpose of this request was to

protect the shorebird and other migratory bird populations that frequent this area, as well as to provide a safe haven for unpowered boat users. The area affected is approximately 1/2 mile long and 300 yards wide. It is shallow over much of its length and contains numerous snags and other underwater obstructions. The area is also used routinely by personal watercraft operators.

On final rulemaking, the Commission has adopted the amendments as proposed with the addition of a minor change for the purposes of clarity.

(3) *Section 111.46 (relating to Montgomery County)*. As part of its proposed rulemaking package, the Commission proposed changes to this section. However, the Commission has voted to defer consideration of the proposal on final rulemaking until its January 2000 meeting.

(4) *Sections 111.52 and 111.64 (relating to Pike County; and Wayne County)*. The National Park Service (NPS) has broad authority to establish regulations on lands and waters within its jurisdiction. 36 CFR 1.1 (relating to purpose) states that units of the NPS may use their regulatory authority to fulfill the statutory purposes of units of the National Park System to conserve scenery, natural and historic objects, and wildlife and to provide for the enjoyment of those resources in a manner that will leave them unimpaired for the enjoyment of future generations. Using this authority and that in the specific enabling legislation that created the Upper Delaware National Recreational and Scenic River, the Superintendent promulgated several regulations in 1991 restricting the operation of boats on the Delaware River. Because enforcement is a joint effort between the Commission and the NPS, the Commission believes that the regulations should be consistent. The Commission therefore has amended these sections.

(5) *Sections 115.9 and 115.10 (relating to licenses for operators; and renewal of operator's license)*. Section 115.9 (f) provides that operator certificates issued under this section expire on December 31 of the year for which they are issued, and § 115.10 (a) requires operators to renew their licenses by April 1. Over the past years, it has become apparent that owners of passenger for hire vessels have difficulty getting renewal applications with two photos required by § 115.9 (e) for all their prospective employees and still meet the April 1 deadline. This is mostly due to the owner hiring students and other part-time employees that are employed beginning mid-June or later. Commission staff also have experienced difficulty in processing an average of 100 certificates (each year) back to the employer in a reasonable time. Again, this is due to late submissions, placing photos on both the certificates and applications, obtaining appropriate signatures and available staff time. The Commission believes that the 5-year certificate will reduce processing time and the employer will have less difficulty staffing his operations prior to the start of the season. Currently, operators renew licenses annually with no more than their signature. No additional requirements are required by the Commission for renewal. The Commission believes that the annual renewal is an unnecessary paperwork burden on this small business and that a 5-year certificate will meet the Commission's needs. Accordingly, the Commission has adopted the amendments, as proposed, to provide for a 5-year certificate. The Commission also has corrected a spelling error in § 115.10.

*F. Paperwork*

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

*G. Fiscal Impact*

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

*H. Public Involvement*

A notice of proposed rulemaking was published at 29 Pa.B. 3370 (July 3, 1999). The Commission did not receive public comments regarding the proposals except with regard to § 111.36. Prior to the public comment period, the Commission received numerous comments regarding the amendments to § 111.36. The majority of those comments completely rejected the idea of a slow, no wake zone. During the formal public comment period, the Commission received just one comment. That comment opposed the amendment. The Commission also received several comments after the formal public comment period. Copies of all comments have been 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 at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and the comments that were 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 111 and 115, are amended by amending §§ 111.19, 111.52, 111.64 and 115.9 to read as set forth at 29 Pa.B. 3370 (July 3, 1999) and by amending §§ 111.36 and 115.10 to read as set forth in Annex A.

(b) The Executive Director will submit this order, 29 Pa.B. 3370 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, 29 Pa.B. 3370 and Annex A and deposit the same 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-97 remains valid for the final adoption of the subject regulations.

**Annex A****TITLE 58. RECREATION****PART II. FISH AND BOAT COMMISSION****Subpart C. BOATING****CHAPTER 111. SPECIAL REGULATIONS  
COUNTIES****§ 111.36. Lancaster County.**

(a) *Lake Aldred—Susquehanna River.* Boats are limited to slow, minimum height swell speed from the York County shoreline to the northern point of Urey Islands to the southern tip of Blair Island, and back to the York County shoreline. The area is about 1 mile in length.

(b) *Speedwell Forge Lake.* The operation of boats powered by internal combustion motors is prohibited.

(c) *Susquehanna River.* Boats are limited to slow, minimum height swell speed for both of the following:

(1) From the Lancaster County shoreline to the northern point of Shad Island south to the southern point of Green Island and back to the Lancaster County shoreline from January 1 to October 1.

(2) In all areas between and within 200 feet of the islands comprising the Conejohola Flats.

**CHAPTER 115. BOATS CARRYING PASSENGERS  
FOR HIRE****§ 115.10. Renewal of operator's license.**

(a) Operators may apply for a renewal of their license 60 days prior to its expiration. Applications shall be made on the form provided by the Commission and accompanied by the appropriate fees.

(b) Applicants for renewal of licenses shall disclose changes in their physical condition or operational capabilities that might affect their ability to operate a boat carrying passengers for hire.

(c) If there are no changes to the limitations imposed by the original license, a practical or written examination is not required. An oral examination may be required if there have been significant changes to regulations concerning safe operation of boats, carriage requirements for safety equipment or carrying passengers for hire.

(d) A licensed operator who does not renew a license as required by subsection (a) shall reapply in accordance with § 115.9 (relating to licenses for operators).

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