

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CH. 93]

Corrective Amendment to 25 Pa. Code § 93.9j

The Department of Environmental Protection (Department) has discovered a discrepancy between the agency text of 25 Pa. Code § 93.9j (relating to Drainage List J) as deposited with the Legislative Reference Bureau (Bureau) and published at 32 Pa.B. 4695, 4699 (September 28, 2002) and the official text as published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 337, December 2002), and as currently appearing in the *Pennsylvania Code*. When the amendments made by the Department at 32 Pa.B. 4695 were codified, an entry for the Lackawanna River in Luzerne County and an unnamed tributary to it were never deleted as proposed.

Therefore, under 45 Pa.C.S. § 901: The Department has deposited with the Bureau a corrective amendment to 25 Pa. Code § 93.9j. The corrective amendment to 25 Pa. Code § 93.9j is effective as of December 7, 2002, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 93.9j appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9j. Drainage List J.

Susquehanna River Basin in Pennsylvania

Lackawanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
1—Susquehanna River				
2—Lackawanna River				
3—West Branch Lackawanna River	Basin, Source to Confluence with East Branch	Susquehanna	CWF	None
3—East Branch Lackawanna River	Basin, Source to Confluence with West Branch	Susquehanna	HQ-CWF	None
2—Lackawanna River	Main Stem, Confluence East and West Branches to SR 0347 Bridge at Dickson City	Lackawanna	HQ-CWF	None
3—Unnamed Tributaries to Lackawanna River	Basins, Confluence of East and West Branches to SR 0347 Bridge at Dickson City	Susquehanna- Wayne- Lackawanna	CWF	None
3—Brace Brook	Basin	Susquehanna	CWF	None
3—Wilson Creek	Basin	Lackawanna	CWF	None
3—Coal Brook	Basin	Lackawanna	CWF	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
3—Racket Brook	Basin	Lackawanna	CWF	None
3—Fall Brook	Basin	Lackawanna	CWF	None
3—Lees Creek	Basin	Lackawanna	CWF	None
3—Powderly Creek	Basin	Lackawanna	CWF	None
3—Rush Brook	Basin	Lackawanna	CWF	None
3—Aylesworth Creek	Basin	Lackawanna	CWF	None
3—White Oak Run	Basin	Lackawanna	CWF	None
3—Laurel Run	Basin	Lackawanna	CWF	None

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[Pa.B. Doc. No. 03-389. Filed for public inspection March 7, 2003, 9:00 a.m.]

DEPARTMENT OF ENVIRONMENTAL PROTECTION
[25 PA. CODE CH. 93]
Corrective Amendment to 25 Pa. Code § 93.9r

The Department of Environmental Protection (Department) has discovered a discrepancy between the agency text of 25 Pa. Code § 93.9r (relating to Drainage List R) as deposited with the Legislative Reference Bureau (Bureau) and the official text published at 30 Pa.B. 6059, 6101 (November 18, 2000) and codified in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 315), and as currently appearing in the *Pennsylvania Code*. The entry for Elk Creek in Elk County was inadvertently omitted.

Therefore, under 45 Pa.C.S. § 901: The Department has deposited with the Bureau a corrective amendment to 25 Pa. Code § 93.9r. The corrective amendment to 25 Pa. Code § 93.9r is effective as of November 18, 2000, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 93.9r appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES
CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9r. Drainage List R.

Ohio River Basin in Pennsylvania

Clarion River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
1—Ohio River				
2—Allegheny River				
3—Clarion River				
		* * * * *		
4—Riley Run	Basin	Elk	WWF	None
4—Little Mill Creek	Basin	Elk	HQ-CWF	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
4—Mason Creek	Basin	Elk	CWF	None
4—Elk Creek	Basin	Elk	CWF	None
4—Island Run	Basin	Elk	CWF	None
4—Big Mill Creek	Basin	Elk	HQ-CWF	None
4—Connerville Run	Basin	Elk	CWF	None
4—Dog Hollow Run	Basin	Elk	CWF	None
4—Gillis Run	Basin	Elk	CWF	None
4—Little Toby Creek	Main Stem	Elk	CWF	None
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[Pa.B. Doc. No. 03-390. Filed for public inspection March 7, 2003, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 53]

Commission Property

The Fish and Boat Commission (Commission) amends Chapter 53 (relating to Commission property). 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

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

B. Contact Person

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

C. Statutory Authority

The amendment to § 53.8 (relating to boats) is published under the statutory authority of section 741 of the code (relating to control of property).

D. Purpose and Background

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

E. Summary of Changes

A Commission waterways conservation officer recently cited an individual for retrieving an unregistered and unpermitted canoe from the Commission's Upper Black Eddy access on the Delaware River. At the hearing before the district justice, the individual argued that he was not in violation of the Commission's regulations because the registration requirement of § 53.8(h) does not apply to noncommercial users of all accesses on the Delaware River. The district justice ruled in his favor. Accordingly, the Commission amended this section as proposed to avoid further misinterpretation.

F. Paperwork

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

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form 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 32 Pa.B. 6261 (December 21, 2002). The Commission did not receive public comments regarding the proposal.

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 no comments were received.

(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 53, are amended by amending § 53.8 to read as set forth at 32 Pa.B. 6261.

(b) The Executive Director will submit this order and 32 Pa.B. 6261 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 32 Pa.B. 6261 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-138 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 03-391. Filed for public inspection March 7, 2003, 9:00 a.m.]

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FISH AND BOAT COMMISSION
[58 PA. CODE CHS. 61 AND 65]
Fishing

The Fish and Boat Commission (Commission) amends Chapters 61 and 65 (relating to seasons, sizes and creel limits; and special fishing regulations). The Commission is publishing final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments pertain to fishing.

A. Effective Date

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

B. Contact Person

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

C. Statutory Authority

The amendment to § 61.2 (relating to Delaware River and River Estuary) is published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

This final-form rulemaking is designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of this final-form rulemaking is described in more detail under the summary of changes.

E. Summary of Changes

(1) *Section 61.2.* Management (including regulations) of Delaware River and Delaware Estuary fish stocks is somewhat complicated given that four state jurisdictions and Federal interests are involved. Over the years, major efforts have been made to promulgate consistent regulations across the four jurisdictions or at least those having the subject species. This was done not only for ease of enforcement but also to simplify matters for the angling public. As the status of fish populations changes so does the need to address regulations, which has been the case with striped bass in the past 20 years or so.

Currently, the harvest of river herring, which include alewife (*alosa pseudoharengus*) and blueback herring (*alosa aestivalis*), in the Delaware River is unregulated in this Commonwealth. There are no restrictions because quite simply there was little angling activity on these fish due to low abundance, other more sought after species, and the like. Efforts are presently underway to restore herring runs in select tributaries in Chester County. In addition, with the recent expansion of the striped bass

population and sport fishery on the New Jersey coast and in the Delaware River and Estuary, river herring have become a very popular live bait. The market for individual live herring has been reported as high as \$5 per fish. Even though New Jersey has a 50 herring daily limit, anglers are coming into this Commonwealth, purchasing a fishing license, catching herring and then returning to New Jersey to sell their catch. Biological and Law Enforcement staff in New Jersey and this Commonwealth believe that uniform regulations would be in the best interest of the angling public and management of herring stocks.

New Jersey is proposing to reclassify river herring as a bait fish, which would limit daily harvest to 35. The Commonwealth has been requested to consider imposing a similar daily creel limit. The Commonwealth and New Jersey historically have worked together to insure that harvest regulations accomplish common management goals and are consistent between states on our common border water.

Accordingly, the Commission amended § 61.2 to establish a daily limit of 35 for river herring (alewife and blueback herring) in the Delaware River, Delaware Estuary and Delaware River/Estuary tributaries from the mouths upstream to the limit of tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, PA. The Commission adopted the amendment as proposed.

(2) *Section 65.24.* Lake Winola (formerly Breeches Pond) is a natural lake in Overfield Township, Wyoming County. Years ago, a concrete and earth filled dam 13 feet high was constructed across the outlet resulting in the current 198 acre pool. Lake Winola has a maximum depth of 66 feet, a mean depth of 30 feet and a surface total alkalinity of 38 parts per million. The Commission manages the lake as a warm water/cool water fishery with seasonal trout fishing opportunities provided by the stocking of adult size trout. An important sportfish, largemouth bass, have received attention from the Commission's Area Fisheries Manager with regard to attempts to improve growth rates and overall size structure in the population. Previous efforts centered on efforts to establish other forage species, but those efforts had little impact on bass growth.

Based on three electrofishing samples (1991, 1995 and 2000), the Lake Winola largemouth bass population can be characterized as high density and slow growing. The growth rate, particularly for bass 2 years of age and older, was well below the State average. Anglers have reported high catch rates of bass with very few legal size individuals. Low relative weights of bass greater than 8 inches in length suggest that these fish are very vulnerable to angling. In addition, length frequency distribution indicates that the population size structure has been impacted by angler harvest.

Largemouth bass populations are typically managed using minimum length limits. As the minimum length limit increases, there is a tendency to stockpile increasing numbers of sublegal bass. Stockpiling is not a problem in a fast growing population, but is undesirable in a slow growing high-density situation. For this reason, big bass special regulations as well as the current Statewide regulation are inappropriate for Lake Winola. Slot lengthlimits are an option to improve the size structure of

high density, slowing growing largemouth bass populations. The success of a slot limit depends on anglers willing to harvest subslot fish. The Commission adopted a protected slot limit of 12 to 18 inches at Lake Winola. Harvest of smaller more numerous bass should improve growth of older bass once they enter the 12 to 18 inch window. Also, opportunity will exist to harvest the occasional trophy size bass. The Commission adopted the amendment to this section as proposed.

F. Paperwork

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

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form 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 32 Pa. B. 4869 (October 5, 2002). The Commission did not receive any public comments regarding the proposals during the public comment period. Prior to the formal comment period, the Commission received one public comment opposing the imposition of a protected slot limit for bass on Lake Winola. Copies of the public comment 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 no comments were received during that period.

(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 61 and 65, are amended by amending §§ 61.2 and 65.24 to read as set forth at 32 Pa.B. 4869.

(b) The Executive Director will submit this order and 32 Pa.B. 4869 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 32 Pa.B. 4869 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-133 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 03-392. Filed for public inspection March 7, 2003, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Fishing in Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) amends Chapter 69 (relating to fishing in Lake Erie and boundary lakes). 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 concern fishing.

A. Effective Date

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

B. Contact Person

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

C. Statutory Authority

The amendments to §§ 69.12—69.15 are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The final-form rulemaking is designed to update, modify and improve the Commission's regulations pertaining to fishing in Lake Erie and its tributaries. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes.

E. Summary of Changes

Commission staff recently identified the need to update and improve the current regulations applicable to recreational fishing in Lake Erie and its tributaries. The immediate impetus for the changes was the need to clarify the prohibition on fishing in the Lake Erie tributaries during a brief period before the opening day of trout season in April. Section 69.13 prohibited fishing for trout and salmon in tributary streams during a 32-hour period before opening day of trout or salmon. The wording of this prohibition differs to some degree from the general prohibition on fishing in approved trout waters during the closed season, and this difference has caused staff to identify the need for clarification. Under this final-form rulemaking, the provisions will clearly provide that fishing (for all species) is prohibited during this 32-hour period on Lake Erie tributaries and a portion of Presque Isle State Park. In addition, possession of trout or salmon will be prohibited on these streams during the same period.

The review by the Commission's staff of the Lake Erie and tributary regulations showed that it should be possible to simplify and consolidate these regulations. Currently, these regulations are spread across several sections of the fishing regulations. The Commission's staff believes that § 69.12 (relating to seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries) and § 69.13 can be consolidated into a single provision. The main substantive change from this consolidation relates to the creel limit for trout and salmon during the period from opening day in April until Labor Day in September. Currently, both Lake Erie and the tributaries have an eight trout per day creel limit. On the lake and the bay, only five of these fish may exceed 15 inches in length, while on the tributaries, only three of these fish may

exceed 15 inches in length. From an enforcement perspective, having different limits for the same species on waters in close proximity raises issues. The Commission's fisheries managers also report that there would be no negative consequences from simplifying the trout/salmon creel limit. Accordingly, as part of the consolidation of these provisions, the Commission proposed that during the period from opening day until Labor Day, a creel limit of five trout/salmon (only two of which may be lake trout) should apply to the lake, the bay and the tributaries. This would bring the trout/salmon creel limit on these waters into line with the Statewide limits, and it would eliminate the sometimes confusing limitations on taking trout in excess of 15 inches in length.

Commission staff also identified an opportunity to simplify the special regulations that apply to particular tributaries during the steelhead season and the miscellaneous special regulations. The Commission proposed elimination of the somewhat confusing table of special prohibitions applicable to specific streams during steelhead season (Labor Day to opening day in the following year) and clarification of the miscellaneous special regulation provisions. The Commission has deleted §§ 69.14 and 69.15.

The Commission believes that the simplification and consolidation of these regulations will improve their enforceability and make them easier to understand. The only major substantive change relates to the clarification of the fishing prohibition during the 32-hour period before opening day of trout season and the proposed change to the creel limit on trout/salmon during the regular season. The Commission adopted the amendments as proposed. A typographical error in § 69.12a (relating to special regulations applicable to Lake Erie tributary streams) has been corrected.

F. Paperwork

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

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form 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 32 Pa.B. 4724 (September 28, 2002). 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, 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 Chapter 69, are amended by amending § 69.12; by deleting §§ 69.13–69.15; and by adding § 69.12a to read as set forth at 32 Pa. B. 4724.

(b) The Executive Director will submit this order and 32 Pa. B. 4724 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 32 Pa. B. 4724 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-134 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 03-393. Filed for public inspection March 7, 2003, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating

The Fish and Boat Commission (Commission) amends Chapter 111 (relating to 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).

A. Effective Date

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

B. Contact Person

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

C. Statutory Authority

The final-form amendments to §§ 111.32, 111.59 and 111.65 (relating to Indiana County; Tioga County; and Westmoreland 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 update, modify and improve the Commission's regulations pertaining to boating. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes. The Commission's Boating Advisory Board considered the proposed rulemaking and recommended that the Commission adopt them on final-form rulemaking.

E. Summary of Changes

(1) *Sections 111.32 and 111.65.* The Commission received a letter from the U.S. Army Corps of Engineers (Corps), Pittsburgh District, dated April 22, 2002, requesting that the Conemaugh River Lake be restricted to electric and manual powered boats. The Conemaugh River Lake was created in 1953 as a part of the flood

control system for the Allegheny and Ohio Rivers. The project purposes include flood control, water quality, hydropower generation and recreation. Of these purposes, only flood control has storage allocated for its operation. Other purposes are accommodated to the extent feasible. The summer pool is approximately 800 acres.

Due to historic acid mine drainage pollution, the quality of the water has been highly degraded and water recreational facilities have not been developed. During the past 10 years, agencies have observed a significant improvement in water quality to the point where water recreation is becoming a possibility and demand for shoreline fishing and hand carried boat launching is increasing.

In 1995, the Corps initiated an analysis of various proposed boating alternatives. An interagency meeting was convened to gather input from State and Federal agencies and a consensus electric/manual boat policy was reached. Because there was no significant access at that time, no action was taken to formalize this restriction beyond the Operations Management Plan. However, access is improving with two hand-carry boat launch sites having been developed by local municipalities and two more in the planning stage for development in the next 2 years. Current Corps' policy for boating limits on this lake should be formalized in the Commission's regulations. Accordingly, the Commission amended these sections as proposed.

(2) *Section 111.59.* The Commission received a letter from the Corps, Baltimore District, dated August 6, 2002, requesting changes to the boating regulations on Tioga, Hammond and Cowanesque Lakes. These lakes were built in the late 1970s as a part of the flood control system for the Susquehanna River. As the lakes were opened, the Commission and the Corps developed a management plan for boating. This plan was modified in 1991 when the level of the water at Cowanesque Lake was raised. Since that time, the lakes have increased in popularity, becoming a destination for many people from the northern tiers of this Commonwealth and southern New York. After evaluating the current use of the facilities, the Corps is proposing loosening the restrictions on certain activities in order to expand boating opportunities.

The Corps proposes to:

- Remove the "slow no wake" regulation at Cooks Creek Cove—the area is no more than 200 feet across and is therefore regulated by the general no wake regulations.
- Remove the restriction from boating at the dam—no trespassing signs keep people off the dam structure and there is no need to restrict boats in this area.
- Eliminate the "boats keep out" restriction above the Route 49 Bridge—the original purpose of this restriction was to keep boaters away from Nelson Falls. The Route 49 Bridge provided an easy place to mark this restriction. The Corps has since been able to mark this area by other means and would like to open this area to boats.
- Eliminate the two water skier rules—The original restriction was intended to restrict conventional skiers. The more common use today is inflatable tubes and similar devices many of which are designed for more than two people. Eliminating this rule will allow families greater freedom to use and enjoy the sport.

- Eliminate the over the transom exhaust restriction—the Corps believe there is no further need for this rule. The original concern was for noise, and the Commission has other regulations to control the production of excessive noise by boats of this type.

- Add a new "slow no wake" zone in the vicinity of two heavily used launch ramps—this area is on a narrow part of the lake and is very congested because of the launch ramp use.

The Commission has reviewed the proposed rulemaking and agrees that the changes will be beneficial to the overall use of the three lakes. Accordingly, the Commission amended this section as proposed.

F. Paperwork

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

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form 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 32 Pa.B. 6132 (December 14, 2002). Prior to the formal public comment period, the Commission received a letter on behalf of the Conemaugh Valley Conservancy and the Kiski-Conemaugh River Basin Alliance supporting the change on the Conemaugh River Lake. The Commission did not receive public comments regarding the proposed rulemaking during the formal comment period.

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 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 111, are amended by amending §§ 111.32, 111.59 and 111.65 to read as set forth at 32 Pa.B. 6132.

(b) The Executive Director will submit this order and 32 Pa.B. 6132 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 32 Pa.B. 6132 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-137 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 03-394. Filed for public inspection March 7, 2003, 9:00 a.m.]
