

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

### [58 PA. CODE CHS. 51 AND 63] General Provisions; Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 51 and 63 (relating to administrative provisions; and general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

#### B. *Contact Person*

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

#### C. *Statutory Authority*

The proposed amendments to § 51.9 (relating to release of documents and records) are published under the statutory authority of section 8(a) of the Right-to-Know Law (65 P. S. § 66.8(a)) and section 506 of The Administrative Code of 1929 (71 P. S. § 186). The proposed amendments to §§ 51.84 and 63.8 (relating to review of permit applications; and long bows, spears and gigs) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

#### D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to administrative provisions and fishing. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

#### E. *Summary of Proposal*

(1) *Section 51.9.* On December 26, 2002, amendments to the law went into effect. The amended law provides that agencies shall establish written policies and may promulgate regulations necessary to implement the law. The amended law also provides that written policies shall include the name of the office to which requests for access shall be addressed and a list of applicable fees. Although the Commission already has a regulation pertaining to the release of documents and records, the Commission proposes updating this regulation to read as set forth in Annex A.

(2) *Section 51.84.* A recent review of the Commission's regulations pertaining to permits to draw off impounded waters has revealed that a housekeeping change to this section is needed in that the Commission no longer has an environmental and technical liaison. Accordingly, the Commission proposes to amend this section to read as set forth in Annex A.

(3) *Section 63.8.* The Commission recently amended its Lake Erie regulations to prohibit spear fishing in or along

Lake Erie tributary streams. To be consistent, the Commission proposes to amend this section to read as set forth in Annex A.

#### F. *Paperwork*

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

#### G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public with the exception of the proposed amendments to § 51.9, which impose a charge for certified copies of \$1 per page up to \$5 per document. The impact of this charge will be nominal. All other charges remain unchanged.

#### H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking 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 to [ra-pfbcregs@state.pa.us](mailto:ra-pfbcregs@state.pa.us). A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. 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-145. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart A. GENERAL PROVISIONS

#### CHAPTER 51. ADMINISTRATIVE PROVISIONS

#### Subchapter A. PRELIMINARY PROVISIONS

#### § 51.9. Release of documents and records.

(a) Consistent with the act of June 21, 1957 (P. L. 390, No. 212), **as amended by the act of June 29, 2002 (P. L. 663, No. 100) and commonly known as Right-to-Know Law (65 P. S. §§ 66.1—[ 66.4. ] 66.9)**, and section 324 of the code (relating to Commission records), the Commission will make public records contained in its files available to **[ citizens of this Commonwealth ] requesters** for inspection and **[ examination at reasonable times and will allow requesters to make extracts and copies of the records subject to reasonable restrictions to safeguard the records and reasonable procedures on the time and place for making copies and extracts ] duplication during the Commission's regular business hours of 8:00 a.m. to 4 p.m., Monday through Friday (excluding Commonwealth holidays).**

(b) Requests for release of public records contained in Commission files shall be made in writing and submitted to: Executive Director, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. **Written requests for release of public records may be sent by mail or by means of facsimile, or they may be delivered in person during the Commission's regular business hours. The Commission will not accept anonymous, oral or e-mail requests.**

(c) If a photocopier or reproduction device under the control of the Commission is used to [ copy ] duplicate information released under this section, the requester will be charged 25¢ per letter or legal size page for the copies. If the Commission copies oversize pages (in excess of legal size), the charge [ shall ] will be \$1 per page or the actual cost of [ reproduction ] duplication, whichever is greater. If the Commission copies documents to electronic media (such as, computer diskette), the requester will be charged \$1 per document copied (if 1 megabyte or less in size) plus \$2 per diskette. For electronic documents of more than 1 megabyte in size, the requester will be charged \$3 per document plus \$10 or the cost of the media on which the document is stored, whichever is greater. **The Commission will charge \$1 per page up to \$5 per document for certified copies.** If the Commission mails copies of documents [ copied ] duplicated under this section to the requester, the requester will be charged [ \$2 for handling, plus ] the actual cost of postage or shipping. All charges shall be payable [ in advance ] by check or money order made payable to "Pennsylvania Fish and Boat Commission." **The Commission may require a requester to prepay fees if the fees are expected to exceed \$100.** The Commission may waive copy charges and mailing charges for good cause or in the public interest. When the total copying[, handling] and mailing charges for a request are \$10 or less, [ collection ordinarily will be waived ] the Commission ordinarily will waive collection.

**Subchapter I. PERMITS TO DRAW OFF IMPOUNDED WATERS**

**§ 51.84. Review of permit applications.**

A permit application will be reviewed by the [ Fish and Boat Commission Environmental and Technical Liaison ] Commission's Division of Environmental Services and by the Department of Environmental Protection, Bureau of Dams and Waterways Management. The [ Environmental and Technical Liaison ] Division of Environmental Services will issue permits for the Commission.

**Subpart B. FISHING**

**CHAPTER 63. GENERAL FISHING REGULATIONS**

**§ 63.8. Long bows, spears and gigs.**

(a) *General.* Except as otherwise provided in this part, carp, gar, suckers and eels may be taken with a long bow, including compound, and arrow; a spear; or gig any hour of the day or night aided by a light at night if so desired,

in Commonwealth waters and waters bounding and adjacent thereto[ ; **except that there may be no spearing in the tributaries of Lake Erie from 7 p.m. to 7 a.m. daily** ].

\* \* \* \* \*

[Pa.B. Doc. No. 03-1308. Filed for public inspection July 3, 2003, 9:00 a.m.]

**[58 PA. CODE CHS. 65, 69 AND 97]  
Fishing; Boating**

The Fish and Boat Commission (Commission) proposes to amend Chapters 65, 69 and 97 (relating to special fishing regulations; fishing in Lake Erie and boundary lakes; and operator provided equipment). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

*A. Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2004, or upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*, whichever occurs later.

*B. Contact Person*

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

*C. Statutory Authority*

The proposed 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). The proposed amendments to § 69.12 (relating to seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendments to § 69.33 (relating to use of trap nets) are published under the statutory authority of section 2903 of the code (relating to boats and net licenses for boundary lakes). The proposed amendments to § 97.2 (relating to fire extinguisher) are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

*D. Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to fishing and boating. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal. The Commission's Boating Advisory Board (BAB) considered the proposed amendments to Chapter 97 and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendments.

*E. Summary of Proposal*

(1) *Section 65.24.* In the mid-1990s, miscellaneous special regulations were established on 228-acre Duck Harbor Pond to enhance management for larger trout. A 14-inch minimum length limit and two trout per day creel limit were imposed to enable hatchery fingerling and adult trout to attain a larger size given suitable habitat

and forage for year around trout survival and growth. Results of sampling efforts have not given Commission staff reason to continue with the more restrictive regulations. In addition, it is suspected that the more restrictive regulations have discouraged trout anglers from fishing the lake as spring stocked trout averaging 10 inches or so in length are smaller than the legal size. Commission staff would like to continue stocking trout in Duck Harbor Pond but with Statewide regulations to encourage greater use at the lake. Accordingly, the Commission proposes deleting the miscellaneous special regulation on Duck Harbor Pond as set forth in Annex A. By removing the miscellaneous special regulation, Duck Harbor Pond will be considered approved trout waters open to year-round fishing. Trout may be harvested during the regular and extended trout seasons in accordance with Statewide regulations.

(2) *Sections 69.12 and 69.33.* Under § 69.12, walleye in Lake Erie and Presque Isle Bay are currently regulated by a season (January 1 to March 15, and first Saturday in May to December 31), a minimum length of 15 inches and a creel limit of six per day. The commercial trap net fishery is regulated by the same season in § 69.31, an annual total allowable catch (set annually) and a 15-inch minimum length limit in § 69.33.

Walleye abundance in Lake Erie has continued to decline since population levels reached historic highs in the late 1980s. The reasons for the decline are not fully known but include repeated years of poor recruitment due in part to weather patterns and temperature variations, a shift in lake productivity due to zebra mussels and increased fishing rates. Sampling by Commission biologists and fisheries managers from the other Lake Erie jurisdictions has revealed that poor to almost nonexistent year classes of walleyes have been produced during 2000 and 2002. The 1999 and 2001 year classes have been stronger and represent the future spawning stock of Lake Erie walleye. Lakewide, the 1999 year class is the strongest since 1986. Thus, steps must be taken to protect these stronger year classes until they have the opportunity to grow and become a part of the adult spawning population.

The Lake Erie Committee (Committee), a subcommittee of the Great Lakes Fishery Commission, which includes representatives of Lake Erie's various jurisdictions, has recognized that walleye populations have dramatically declined. At its annual meeting in March 2003, the Committee held the lakewide total allowable catch (TAC) of walleye, which includes sport and commercial harvest, at a level equal to the last 2 years. The Committee also stated that based on current population and harvest information, a reduction in the TAC is warranted and should be expected in 2004. Additional discussion occurs at the Committee's June 2003 meeting. Jurisdictions are expected to take measures to reduce the harvest of walleye accordingly.

Fishery data collected by Commission biologists indicate that an increased minimum length limit is the most appropriate method for this Commonwealth to reduce the harvest of walleye beginning in 2004. A creel limit reduction will not effectively conserve enough fish to meet the goals. When walleye populations are low, catch rates are down and few people catch their limit of six walleyes. On the other hand, length limits have been shown to be an effective tool in protecting specific segments of a fish population. Creel survey data collected by the Commission from 1993–2002 show that a 20-inch minimum length limit would protect, on average, 31% of walleyes

caught from harvest, including the important 1999 and 2001 year classes. This protection should result in an increased abundance of walleyes less than 20 inches and improve the stability of future spawning stocks. The Commonwealth currently has one licensed commercial fisherman. The proposed length limit would also apply to his activities.

The Commission proposes to amend these sections to read as set forth in Annex A.

(3) *Section 97.2.* This section currently requires a fire extinguisher in all gasoline-powered boats that have the probability for entrapping gasoline vapors in closed compartments. This section is intended to reduce the incidence and severity of fires from ignition of gasoline vapors. The section tracks the Federal regulations on this subject with one exception. The Federal regulations contain examples of boat construction or situations when fire extinguishers are or are not required.

Commission staff's original concept was to present a clarifying amendment to § 97.2 to deal with situations with jon boats and similar craft with after-installed flooring in them. When the Commission's BAB considered this item, it recommended that the Commission approve the publication of a notice of proposed rulemaking containing a broader amendment to require fire extinguishers on all boats with internal combustion motors. Although this proposed rulemaking goes beyond Federal requirements, it has the advantage of setting forth a clear line for requiring fire extinguishers. Accordingly, the Commission proposes to amend § 97.2 to require fire extinguishers on all boats equipped with internal combustion motors.

#### F. Paperwork

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

#### G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking 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 rulemaking 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.

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PETER A. COLANGELO,  
*Executive Director*

**Fiscal Note:** 48A-146. No fiscal impact; (8) recommends adoption.

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

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.24. Miscellaneous special regulations.**

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
* * * * *		
[ Wayne ]	[ Duck Harbor Pond ]	[ Trout—minimum size limit—14 inches; daily creel limit—2 trout per day (combined species) from opening day of trout season to the last day of February. Other inland seasons, size and creel limits apply. ]
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**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**Subchapter B. SPORT FISHING AND ANGLING**

**§ 69.12. Seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries.**

\* \* \* \* \*

(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *			
WALLEYE	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31	[ 15 ] 20 inches	6
* * * * *			

**Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS**

**§ 69.33. Use of trap nets.**

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(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
* * * * *		
Walleye ( <i>Stizostedion vitreum</i> )	[ 15 ] 20 inches	January 1 to midnight March 15 and 12:01 a.m. the first Saturday in May to December 31. This season will close when the total allowable catch for walleye is taken.
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**Subpart C. BOATING**

**CHAPTER 97. OPERATOR PROVIDED EQUIPMENT**

**§ 97.2. Fire [ extinguisher ] extinguishers.**

(a) Motorboats shall carry at least the minimum number of Coast Guard approved hand portable fire extinguishers required for their class as specified in Appendix A. Fire extinguishers shall be carried on **all boats [ that meet one or more of the following conditions. The boats:**

- (1) **Have closed compartments under thwarts and seats where portable fuel tanks may be stored.**
- (2) **Have double bottoms not sealed to the hulls or which are not completely filled with flotation material.**

- (3) Have closed living spaces.**
- (4) Have closed stowage compartments in which combustible or flammable materials are stowed.**
- (5) Have permanently installed fuel tanks.**
- (6) Are carrying passengers for hire. ] equipped with internal combustion motors.**

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[Pa.B. Doc. No. 03-1309. Filed for public inspection July 3, 2003, 9:00 a.m.]

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