

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61 AND 65]

### Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61 and 65 (relating to seasons, sizes and creel limits; and special 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, will go into effect on January 1, 2004, or upon publication of an order 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 § 61.2 (relating to Delaware River and River Estuary) is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations). 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).

#### D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to fishing.

#### E. *Summary of Proposal*

(1) *Section 61.2.* The evolution of the Commission's Delaware River and Estuary striped bass regulations has been quite dynamic over the past 20 years. As a member of the Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Management Board, the Commission has worked in concert with other East Coast states and, in particular, neighboring jurisdictions regarding an agreed upon management plan for migratory striped bass. The Commission has amended its regulations to reflect changes to the ASMFC Interstate Fishery Management Plan for Atlantic Striped Bass. Currently, one striped bass between 24 and 28 inches and one striped bass 28 inches or longer may be taken per day.

Specific compliance criteria contained in Amendment 6 of the Atlantic Striped Bass Management Plan adopted in February 2003 includes a two-fish creel limit and a 28-inch minimum size limit for most recreational fisheries. Jurisdictions may implement other regulations provided conservation equivalency is maintained. Regulations differing from the two fish per day at the 28-inch minimum size must be approved first by the ASMFC striped bass technical committee and then the management board. The implementation schedule to meet Amendment 6 deadlines and the uncertainty with regard

to how "producer areas" will be handled regarding status quo have placed this Commonwealth in a dilemma with neighboring jurisdictions bordering the Delaware River and Estuary. To date, New York, Delaware, New Jersey and the Commonwealth have attempted to maintain consistent regulations for Delaware River striped bass.

With the implementation of Amendment 6, New York and Delaware are going to implement the two at 28 inches package. It is uncertain, however, what course of action New Jersey will take. Under the circumstances, the Commission believes that it would be prudent for the Commonwealth to take the same approach as New York and Delaware until the "producer area" issue is resolved. Accordingly, the Commission proposes to amend § 61.2 to impose a two fish creel limit and a 28-inch minimum size limit for striped bass taken during the current harvest seasons. The Commission proposes that this section be amended to read as set forth in Annex A.

(2) *Section 65.24.* The Raccoon State Park Upper Pond is an 8-acre impoundment in Hanover Township, Beaver County, which is maintained by the Department of Conservation and Natural Resources. This impoundment was inventoried by the area fisheries manager in 2002. According to the inventory, the fish community is primarily a warm water one with a fairly abundant largemouth bass population with a favorable size structure. Bluegills were available in moderate numbers and smaller sizes during the May 2002 survey. Raccoon State Park is one of the closest State parks to the Pittsburgh metropolitan area and is prone to heavy visitation. State park personnel expressed strong interest in maintaining if not improving the quality of the fishery at the Upper Pond and the educational experience of groups using this waterway. Trout stocking is not being considered due to the close proximity of trout stocked waters in nearby 101-acre Raccoon Lake and sections 2 and 3 of Traverse Creek. Also, the pond is in a somewhat remote setting, requiring a minimum of a 0.5-mile hike on a gate access road.

Accordingly, the Commission is proposing catch and release regulations for all species at Raccoon State Park Upper Pond to optimize use of this waterway. The Commission proposes to amend § 65.24 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.

#### H. *Public Comments*

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

DENNIS T. GUISE,  
Deputy Executive Director

**Fiscal Note:** 48A-148. No fiscal impact; (8) recommends adoption.

*(Editor's Note:* Amendments to § 65.24, adopted at 33 Pa.B. 3496 (July 19, 2003), will be codified in Master Transmittal Sheet 346 (September, 2003).)

**Annex A**  
**TITLE 58. RECREATION**  
**PART II. FISH AND BOAT COMMISSION**  
**Subpart B. FISHING**  
**CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS**

**§ 61.2. Delaware River and River Estuary.**

\* \* \* \* \*

(d) The following seasons, sizes and creel limits apply to the Delaware River and to Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
* * * * *			
STRIPED BASS and HYBRID STRIPED BASS	From Pennsylvania line upstream to Trenton Falls: March 1 until March 31, and June 1 until December 31.	<b>[ 24 inches to less than 28 inches ]</b>	<b>[ 1 ]</b>
	From Trenton Falls upstream: open year-round	<b>[ 28 inches or greater ] 28 inches</b>	<b>[ 1 ] 2</b>
* * * * *			

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.24. Miscellaneous special regulations.**

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

County	Name of Water	Special Regulations
* * * * *		
<b>Beaver</b>	<b>Raccoon State Park Upper Pond</b>	<b>This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught shall be immediately returned unharmed.</b>
* * * * *		

[Pa.B. Doc. No. 03-1592. Filed for public inspection August 15, 2003, 9:00 a.m.]

**[58 PA. CODE CH. 105]**  
**Boating**

The Fish and Boat Commission (Commission) proposes to amend Chapter 105 (relating to operational conditions). 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, will go into effect upon publication of an order 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 amendment to § 105.3 (relating to unacceptable boating practices) is 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 boating. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

*E. Summary of Proposal*

Carbon monoxide (CO) is a colorless, odorless, tasteless and highly toxic gas. It is produced when a carbon-based fuel, such as gasoline, propane, charcoal or oil, burns. CO is often emitted through a boat's engine or generator exhaust outlets. As a result, CO can accumulate almost anywhere in or around a boat. It can collect under swim platforms, around the stern and inside canvas enclosures. The results can be dangerous, even fatal.

A fad called "teak surfing" or "drag surfing" is one of the riskiest activities for CO poisoning. Teak surfing involves an individual holding onto the swim platform of a boat as it accelerates and then letting go to "surf" the wake. Teak surfers cannot avoid the risk of inhaling dangerous levels of CO because the propulsion engines produce a very high volume of exhaust gases, usually directed straight into the area behind the boat where the teak surfers are located. There is also an inherent danger of the individual losing grasp of the swim platform and being hit by a moving propeller. Accordingly, the Commission proposes to amend § 105.3 to read as set forth in Annex A to make this practice unlawful.

*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 rule-

making to the Deputy 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. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, 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.

DENNIS T. GUISE,  
*Deputy Executive Director*

**Fiscal Note:** 48A-147. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart C. BOATING**

**CHAPTER 105. OPERATIONAL CONDITIONS**

**§ 105.3. Unacceptable boating practices.**

It is unlawful to:

\* \* \* \* \*

**(10) Operate a motorboat at any speed with a person or persons sitting, riding or hanging on a swim platform or swim ladder attached to the motorboat.**

[Pa.B. Doc. No. 03-1593. Filed for public inspection August 15, 2003, 9:00 a.m.]