

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). 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 changes relate to the elimination of the Selective Harvest and All-Tackle Selective Harvest Programs.

A. *Effective Date*

The final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

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

C. *Statutory Authority*

The amendments to §§ 65.1 and 65.4b are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

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

E. *Summary of Changes*

(1) *Section 65.1.* At the July 1994 meeting, the Commission adopted regulations for the Selective Harvest Program. These regulations went into effect beginning with the 1995 season. The Selective Harvest Program was designed to enhance wild trout populations while providing an opportunity for limited harvest of some larger trout. Selective Harvest regulations provided an alternative to Trophy Trout management on wild trout waters where habitat limitations may preclude the stockpiling of older and larger trout as intended under the 14-inch minimum length limit that is applied to Trophy Trout waters. Selective Harvest regulations also were designed to reflect differences in longevity and growth rates, particularly between brown and brook trout. Under these regulations, species specific minimum length limits apply with a 12-inch minimum length limit for brown trout and a 9-inch minimum for other trout species. Angling is permitted on a year-round basis with a two trout per day creel limit (combined species) during the harvest season. On the waters managed under the Selective Harvest Program, gear is restricted to the use of artificial lures, flies and streamers.

Based on data collected from follow-up examinations, the trout populations did not always respond as the Commission intended on some of the waters managed under the Selective Harvest Program. Therefore, to consolidate the number of special regulations used in managing trout populations, the Commission moved the remain-

ing four waters in the program to other special regulations programs, effective January 1, 2005. Thus, there is no need to retain the regulations for the Selective Harvest Program. The Commission accordingly deleted § 65.1 to read as set forth in the notice of proposed rulemaking.

(2) *Section 65.4b.* At the January 1998 meeting, the Commission adopted regulations for the All-Tackle Selective Harvest Program. These regulations went into effect beginning with the 1999 season. All-Tackle Selective Harvest regulations were designed to enhance wild trout populations and provide the opportunity for limited harvest of some larger trout. As with the Selective Harvest Program, species specific minimum length limits apply with a 12-inch minimum for brown trout and a 9-inch minimum for all other trout species. Angling is permitted on a year-round basis with a two trout per day creel limit (combined species) during the harvest season. However, in contrast to the Selective Harvest Program where angling is restricted to the use of artificial lures, flies and streamers, the All-Tackle Selective Harvest Program was designed to appeal to a broader angling base by allowing the use of natural bait, baitfish and fishbait in addition to artificial lures, flies and streamers.

Based on information from follow-up inventories, the trout populations did not always respond as the Commission intended on the waters managed under the All-Tackle Selective Harvest Program. Therefore, to consolidate the number of special regulations programs used in managing trout populations, the Commission moved the remaining four waters in the program to other special regulations programs, effective January 1, 2005. Thus, there is no need to retain the regulations for the All Tackle Selective Harvest Program. The Commission accordingly deleted § 65.4b to read as set forth in the notice of proposed rulemaking.

(3) *Section 65.24.* As part of the proposed rulemaking package, the Commission also proposed imposing a catch and release/no harvest fishery for all species on waters located in the Wyoming State Forest, Columbia and Northumberland Counties. The Commission previously adopted this amendment at 34 Pa.B. 6418 (December 4, 2004).

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 34 Pa.B. 5162 (September 18, 2004). The Commission did not receive any public comments concerning the proposed amendments to §§ 65.1 and 65.4b.

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 65, are amended by deleting §§ 65.1 and 65.4b to read as set forth at 34 Pa. B. 5162.

(b) The Executive Director will submit this order and 34 Pa.B. 5162 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 34 Pa.B. 5162 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*.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-160a remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-760. Filed for public inspection April 22, 2005, 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). The final-form rulemaking creates a slow, no wake zone in the Kernsville Pool of the Schuylkill River, Berks County, converts the 8 mph zones on the McKean County portion of Willow and Sugar Bays, Allegheny River Reservoir, to slow, no wake and removes the 8 mph restriction on the Warren County portion of the bays.

A. Effective Date

The final-form rulemaking will go into effect immediately upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

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

C. Statutory Authority

The amendments to §§ 111.6, 111.42 and 111.62 (relating to Berks County; McKean County; and Warren 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 boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. The Commission's Boating Advisory Board considered the proposed amendments and recommended that the Commission finally adopt them as set forth in the notice of proposed rulemaking.

E. Summary of Changes

(1) *Section 111.6.* The Commission received a petition from Blue Mountain Wildlife, Inc. (BMW) to amend this section to prohibit the operation of internal combustion motors on boats using the Schuylkill River behind the Kernsville Dam to encourage the preservation of the peacefulness and beauty of the impoundment. The Kernsville Dam is located in Berks County, near Hamburg, PA. The dam is owned by the Commonwealth and is managed by the Department of Environmental Protection (Department). BMW holds a lease to manage and develop the area around the impoundment for passive recreational use. The Department maintains an access area at the impoundment that has been closed because it falls within a 200-foot restricted area near this dam. Only hand-carry access is currently available.

Commission staff reviewed BMW's petition to ensure that it met the requirements of § 51.6 (relating to petitions or requests for regulations) and determined that it was appropriate for further consideration. In accordance with the Commission's regulations, BMW was afforded an opportunity to make a presentation at a Commission meeting. The Commission accepted the petition for further review and directed staff to prepare a report and recommendations.

The staff completed its report and based upon the recommendations contained in the report, the Commission created a slow, no wake zone in the Kernsville Pool. The Commission adopted the amendment to § 111.6 to read as set forth in the notice of proposed rulemaking.

(2) *Sections 111.42 and 111.62.* In 1980, the Commission adopted regulations to control the speed of boats on the various bays of the Kinzua Reservoir. All of the larger bays were restricted to 8 mph while the smaller ones were made slow, no wake. These regulations were subsequently modified in 1989 and 1994. Boat speed was restricted to slow, no wake in most of the coves, but in Willow Bay and Sugar Bay, an 8 mph speed limit was retained. This speed was selected because the size of the bays was too large for slow, no wake but not large enough for unrestricted operation.

The Commission reviewed these restrictions and determined that the regulations could be further improved and provide additional boating opportunities by converting the 8 mph zones on the McKean County portion of Willow and Sugar Bays to slow, no wake and by removing the 8 mph restriction on the Warren County portion of these bays. The Commission adopted the amendments to §§ 111.42 and 111.62 to read as set forth in the notice of proposed rulemaking.

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 34 Pa.B. 6546 (December 11, 2004). Prior to the formal public comment period, the Commission received two public comments, one supporting the proposed amendment to § 111.6 and the other opposing it. The Commission did not receive any public comments pertaining to the proposed amendment to this section during the formal public comment period.

Prior to the formal public comment period, the Commission received 17 public comments concerning the proposed amendments to §§ 111.42 and 111.62. Eleven supported the proposal and six opposed it. The Commission received two comments concerning the proposed rulemaking during the formal public comment period. Both comments supported the proposed rulemaking. After the formal public comment period, the Commission received one comment favoring the proposed rulemaking. Copies of all public comments 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 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 111, are amended by amending §§ 111.6, 111.42 and 111.62 to read as set forth at 34 Pa.B. 6546.

(b) The Executive Director will submit this order and 34 Pa.B. 6546 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 34 Pa.B. 6546 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*.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-163 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-761. Filed for public inspection April 22, 2005, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 141]

[Correction]

Use of Cable Restraints for Taking Certain Furbearers

The Fiscal Note notation was missing from a document which appeared at 35 Pa.B. 2304 (April 16, 2005).

The correct version of the Fiscal Note is as follows:

Fiscal Note: Fiscal Note 48-196 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 05-705. Filed for public inspection April 15, 2005, 9:00 a.m.]