

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51 AND 53]

Boat and Fishing Guide Operations

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). The proposed amendments relate to charter boat/fishing guide operations.

A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2006.

B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Chief Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This proposal is available electronically through the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The Commission is adding Chapter 51, Subchapter L (relating to charter boat/fishing guide operations) under the statutory authority of section 2907.3(d) of the code (relating to fishing guide and charter boat permits, regulations). The proposed amendments to § 63.41 (relating to recognition of fishing guide operations) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

Under the act of November 29, 2004 (P. L. 1286, No. 159), persons operating charter boat or fishing guide operations on the waters of this Commonwealth are now required to obtain a charter boat/fishing guide permit from the Commission. The new law went into effect on January 1, 2005. However, the Commission has decided to defer implementation of the permit requirement pending the promulgation of rules and regulations for the new program.

The Executive Director established a workgroup consisting of Commission staff and 21 charter boat/fishing guides from across this Commonwealth and assigned them the task of developing draft regulations. The group formally met in January and March 2005 to discuss issues pertaining to this new program. With tremendous input from the charter boat/fishing guides, proposed regulations were drafted. The draft regulations address the majority, if not all, of the concerns raised by the workgroup.

E. *Summary of Proposals*

The Commission proposes new regulations to implement the charter boat/fishing guide permitting program. These proposed regulations define key terms and address the permit itself, including the application, the duration, renewals, suspension or revocation and display requirements. The proposal also includes a requirement that when a boat is involved, the operator demonstrate proficiency in boating safety by possessing a boating safety

education certificate acceptable to the Commission. The proposed regulations further include provisions pertaining to insurance, CPR and first aid, fishing licenses and permits and compliance with laws and regulations.

Under section 2907.3 of the code (relating to fishing guide and charter boat permits), holders of charter boat/fishing guide permits may be designated as special issuing agents for the purpose of selling to their customers One-Day Fishing Licenses, Three-Day Tourist Fishing Licenses, Seven-Day Tourist Fishing Licenses and applicable permits. The proposed regulations allow for interested permit holders to become special issuing agents by completing and submitting an application along with a bond or other security in a form acceptable to the Commission in an amount equal to the value of the licenses, stamps and permits being requested. The one-time, nonrefundable application fee required of other issuing agents is waived, and the reporting requirements are less stringent. The Commission proposes that the new regulations read as set forth in Annex A.

Last, the Commission proposes to delete § 63.41 (relating to recognition of fishing guide operations) that relates to the Commission's current voluntary recognition program. Under this program, fishing guide operators may pay a \$50 annual fee for which they receive official recognition of their businesses. This official recognition, among other things, entitles guides to advertise that they have been officially recognized by the Commission and gives them certain privileges with regard to the field dressing of fish. When the mandatory permitting program is in place, the voluntary program will no longer be needed. Thus, the Commission proposes to delete § 63.41 as set forth in Annex A.

F. *Paperwork*

The proposed rulemaking will increase paperwork and will create new paperwork requirements in that all persons wishing to operate charter boat or fishing guide operations on the waters of this Commonwealth will have to first apply for and obtain an annual permit from the Commission. The Commission estimates that there are approximately 250 charter boat/fishing guide operations in this Commonwealth. Under the voluntary program, the Commission officially recognized approximately 70 guides this year.

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. Under section 2715(a.1) of the code (relating to license, permit and issuing agent fees), the fee for a resident charter boat/fishing guide permit is \$100, and the fee for a nonresident charter boat/fishing guide permit is \$400.

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 by completing the form at www.state.pa.us/Fish/regcomments. If

an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

Fiscal Note: 48A-173. 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 L. CHARTER BOAT/FISHING GUIDE OPERATIONS

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§ 51.121. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Charter boat—A boat operated as a commercial enterprise which carries passengers for hire for the purpose of fishing on the waters of this Commonwealth.

Charter boat operator—A person who operates or is in actual physical control of the movement of a charter boat.

Commercial enterprise—An operation where a person provides fishing guide or charter boat services in exchange for any consideration, including money, goods or services.

Fishing guide—A person who operates a commercial enterprise whereby he guides or leads others persons for the purpose of fishing on the waters of this Commonwealth.

§ 51.122. Permits.

(a) *Application.* A person desiring to be a charter boat operator or a fishing guide on the waters of this Commonwealth shall first apply for a permit on the form provided by the Commission. The applicant shall submit the completed form to the Commission along with the fee specified in section 2715 of the code (relating to license, permit and issuing agent fees).

(b) *Duration.* Charter boat/fishing guide permits shall be valid for a calendar year and expire on December 31 of the year for which they were issued.

(c) *Renewal.* A holder of a charter boat/fishing guide permit shall apply to the Commission for renewal of the permit by completing the renewal application form provided by the Commission and by submitting it along with the appropriate fee to the Commission.

(d) *Suspension or revocation of permit.* The Commission may suspend or revoke a charter boat/fishing guide permit for noncompliance with the terms and conditions of this chapter or when the charter boat operator or fishing guide is convicted or acknowledges guilt of a violation of the code or this chapter. Suspension or

revocation procedures shall comply with Subchapter C (relating to suspension, denial or revocation of licenses, permits, registrations or privileges).

(e) *Prima facie evidence.* Advertising by any means, including websites, business cards, brochures, newspapers, periodicals or billboards, that a person provides fishing guide or charter boat services shall be prima facie evidence of a commercial enterprise.

§ 51.123. Display of permits.

(a) *Display of permit on outer garment.* While operating a charter boat or fishing guide operation, charter boat operators and fishing guides shall display their permits on a hat or an outer garment in plain view. The charter boat operator and fishing guide may carry and display the permit in the same holder containing a fishing license.

(b) *Officers designated to check permits.* Charter boat operators and fishing guides shall present their charter boat/fishing guide permits upon the request of an officer authorized to enforce the code.

(c) *Display of decal on charter boats.* When a boat is used in the charter boat/fishing guide operation, the charter boat operator shall display a decal supplied by the Commission on both sides of the boat hull above the waterline and below the gunwale near the stern of the boat or on each side window of the cockpit of the boat. While onboard a boat displaying a decal, the charter boat operator is exempt from the permit display requirements of this section provided the permit is onboard the boat. When, due to exigent circumstances, a charter boat operator must use a boat that does not display a charter boat/fishing guide decal, the charter boat operator shall display the permit on a hat or outer garment as required by this section.

§ 51.124. Boating safety education.

When a boat is used in the charter boat/fishing guide operation, the charter boat operator shall possess a boating safety education certificate issued by the Commission or by another state in accordance with criteria of the National Association of State Boating Law Administrators or a boat operator's license issued by the United States Coast Guard. Applicants and holders of charter boat/fishing guide permits shall provide proof of certification of boating safety education upon the request of the Commission.

§ 51.125. Insurance.

Charter boat operators and fishing guides shall possess and maintain in full force and effect general liability insurance for all periods during which they are operating a charter boat/fishing guide operation on the waters of this Commonwealth. The minimum amount of coverage is \$250,000 for each occurrence and \$500,000 in the aggregate. Applicants and holders of charter boat/fishing guide permits shall provide proof of insurance upon the request of the Commission.

§ 51.126. CPR and first aid.

Charter boat operators and fishing guides shall possess and maintain current certification in basic CPR and basic first aid skills. Applicants and holders of charter boat/fishing guide permits shall provide proof of CPR or basic first aid certification upon the request of the Commission.

§ 51.127. Fishing license and permits.

Charter boat operators and their crewmembers and fishing guides shall possess valid fishing licenses and the stamps and permits required for the waters in which they

fish. Charter boat operators and fishing guides are responsible for ensuring that their employees, passengers and customers possess a valid fishing license and the appropriate stamps and permits.

§ 51.128. Compliance with laws and regulations.

Charter boat operators and fishing guides shall comply with all Federal, State and local laws and regulations. Charter boat operators and fishing guides are responsible for ensuring that their employees, passengers and customers comply with all fishing and boating laws and regulations.

§ 51.129. Special issuing agents.

(a) The Commission may designate holders of charter boat/fishing guide permits as special issuing agents for the purpose of selling to their customers One-Day Fishing Licenses, Three-Day Tourist Fishing Licenses, Seven-Day Tourist Fishing Licenses and trout/salmon permits and special permits for fishing Lake Erie and tributaries.

(b) A holder of a charter boat/fishing guide permit may seek to become a special issuing agent by completing and submitting to the Commission an application on the form prescribed by the Commission. Applications to become a special issuing agent shall be accompanied by a bond or other security in a form satisfactory to the Commission in an amount equal to the value of the licenses, stamps and permits being requested by the applicant. The one-time, nonrefundable fee required by § 51.35 (relating to operation of the issuing agency) is waived.

(c) Special issuing agents shall file quarterly reports of all fishing licenses, stamps and permits sold during the quarter in the manner determined by the Commission. Special issuing agents may file reports more frequently at the discretion of the agent.

(1) Special issuing agents shall include in their quarterly report detailed sales information and remittance for all licenses, stamps and permits sold during the reporting period.

(2) Special issuing agents shall file their reports so that they are received in the Harrisburg office by the 15th of the month following the reportable quarter.

(3) Special issuing agents shall file a report even if there is no sales activity to report for the quarter. Failure to file a report places the agency in a delinquent status.

(4) Special issuing agents shall indicate their agent number on the report, as well as the remittance.

(d) Special issuing agents shall maintain a bond or other security in a form satisfactory to the Commission in an amount equal to the value of all licenses, stamps and permits they wish to possess at each location where they issue licenses, stamps and permits.

(e) Except as otherwise provided by this section, Chapter 51, Subchapter D (relating to issuing agents) applies to special issuing agents under this section.

§ 51.130. Boundary waters.

(a) Residents of this Commonwealth who operate charter boats or fishing guide operations on boundary waters under the jurisdiction of the Commonwealth shall possess a resident charter boat/fishing guide permit.

(b) Nonresidents of this Commonwealth who operate charter boats or fishing guide operations on boundary waters under the jurisdiction of the Commonwealth shall possess a nonresident charter boat/fishing guide permit.

(c) For purposes of this section, there shall be a rebuttable presumption that a person operating a charter boat or fishing guide operation is operating on the waters of this Commonwealth if the person uses a boat launch in this Commonwealth.

Subpart B. Fishing

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.41. [Recognition of fishing guide operations] (Reserved).

[(a) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Charter boat—A boat operated as part of a fishing guide operation on the waters of this Commonwealth.

Concurrent jurisdiction waters—Those waters of this Commonwealth over which the Commonwealth and the United States Coast Guard exercise concurrent jurisdiction, including Lake Erie and the Ohio, Monongahela, Allegheny, Delaware and North Branch, Susquehanna and West Branch, Susquehanna (below Williamsport) Rivers.

Fishing guide operation—A commercial enterprise operated for the purpose of guiding or leading persons fishing on the waters of this Commonwealth by boat or otherwise.

(b) Voluntary official recognition. The Executive Director may upon application grant official recognition of fishing guide operations. Applications for recognition shall be made on forms provided by the Commission and contain information the Executive Director may require. Denial of official recognition may be appealed in accordance with Chapter 51, Subchapter E (relating to permit procedures).

(c) Charter boats. When charter boats are used, applicants for official recognition shall submit the following evidence along with their applications:

(1) For charter boats carrying six or fewer passengers for hire on concurrent jurisdiction waters:

(i) A copy of a valid boat registration certificate, showing the boat use classification as “commercial passenger.”

(ii) A copy of the Federal documentation certificate if the boat is required to be documented for commercial service by the United States Coast Guard.

(iii) A copy of the operator’s license issued by the United States Coast Guard appropriate for the waters on which the boat will operate.

(2) For charter boats carrying seven or more passengers for hire on concurrent jurisdiction waters:

(i) A copy of a valid boat registration certificate, showing the boat use classification as “commercial passenger.”

(ii) A copy of the Federal documentation certificate if the boat is required to be documented for commercial service by the United States Coast Guard.

(iii) A copy of the operator’s license issued by the United States Coast Guard appropriate for the waters on which the boat will operate.

(iv) A copy of the most recent inspection report for the vessel.

(3) For charter boats carrying six or fewer passengers for hire on waters other than concurrent jurisdiction waters:

(i) A copy of a valid boat registration certificate, showing the boat use classification as "commercial passenger."

(ii) A copy of a boating safety education certificate for all operators.

(4) For charter boats carrying seven or more passengers for hire on waters other than concurrent jurisdiction waters:

(i) A copy of a valid boat registration certificate, showing the boat use classification as "commercial passenger."

(ii) A copy of a boating safety education certificate for all operators.

(iii) A certificate of inspection issued under Chapter 115 (relating to boats carrying passengers for hire).

(d) *Duration and fee.* Official recognition of fishing guide operations shall be valid for a calendar year and shall expire on December 31 of the year of issuance. The annual fee for official recognition is \$50.

(e) *Use of official recognition.* Fishing guide operations recognized under this section may indicate that they have been "Officially Recognized by the Pennsylvania Fish and Boat Commission" in advertisements and by other means.

(f) *Compliance with regulations.* Persons who receive official recognition for fishing guide operations are responsible for ensuring that their employees, passengers and customers comply with fishing and boating regulations. The individual who submits and signs the application shall be the fishing guide or the owner/lessee/captain of the charter boat, and the individual shall be considered the individual party responsible for compliance with regulations. An application for official recognition shall include a provision whereby applicants agree that they will be responsible and are subject to prosecution for any violation of this part that occurs in connection with their operations.

(g) *Reports.* Officially-recognized fishing guide operations shall provide periodic reports to the Commission on the number of passengers or customers, number and species of fish caught and their disposition and other matters the Executive Director may require. Reports shall be submitted on forms approved by the Commission in numbers and at intervals determined by the Executive Director. Not more than four nor less than one report will be required per calendar year.

(h) *Field dressing of fish.*

(1) Notwithstanding § 63.15 (relating to field dressing of fish), fish caught pursuant to officially-recognized fishing guide operations may be filleted and have the head and tail removed before arrival at the place of consumption. The skin shall remain attached to the fillet for species subject to a minimum size limit. The minimum fillet size shall be 75% of the minimum size limit of the fish being filleted.

(2) The fishing guide operation shall give the person who receives the field dressed fish a signed, dated receipt indicating the species and number of fish on a form acceptable to the Commission. A person in possession of the field dressed fish shall carry the receipt with him and display it upon request to an officer authorized to enforce this title until the fish have arrived at the place of consumption. It is the responsibility of the officially-recognized fishing guide operation to ensure that a fish field dressed pursuant to the authority of this subsection complies with applicable season, size and creel limits.

(i) *Holder of official recognition.* Official recognition for a fishing guide operation that does not involve operation of a charter boat will be issued to an individual fishing guide. Each individual fishing guide shall apply for and receive official recognition. Official recognition for charter boats will be issued to the owner/lessee/captain of the boat. Individuals employed as crew members for a charter boat may, but need not necessarily, apply for and receive individual recognition as fishing guides. The operators of charter boats and the crew members shall comply with the licensing and training requirements in subsection (c).

(j) *Suspension or revocation of official recognition.* The Commission may suspend or revoke the official recognition of a fishing guide operation for noncompliance with the terms and conditions of this section or when the guide operation, the individual fishing guide, charter boat owner/lessee/captain or employee or crew member of the guide operation is convicted or acknowledges guilt of a violation of the code or this part related to the fishing guide operation. Suspension or revocation procedures shall comply with Chapter 51, Subchapter C (relating to suspension, denial or revocation of licenses, permits, registration or privileges).]

[Pa.B. Doc. No. 05-1172. Filed for public inspection June 17, 2005, 9:00 a.m.]

[58 PA. CODE CHS. 51, 53, 63 AND 65]
 General Provisions; Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 51, 53, 63 and 65. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments include housekeeping changes to the regulations and eliminate the requirement that tournaments, as a condition for culling, establish a daily limit of one fish less than the Statewide creel limit.

A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2006.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This proposal is available electronically through the Commission's website www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendments to §§ 51.32, 51.33, 53.24 and 63.40 are published under the statutory authority of sections 322 and 2102 of the code (relating to rules and regulations; and rules and regulations). The proposed amendments to § 51.35 (relating to operation of issuing agency) are published under the statutory authority of section 2711 of the code (relating to issuing agents). The proposed amendments to § 63.20 (relating to permits for the protection and management of trout and salmon) are published under the statutory authority of section 2904 of the code (relating to permits for the protection and management of particular fish). The proposed amendments to § 65.13 (relating to wild brook trout enhancement) 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 proposed rulemaking is designed to improve, make consistent and update the Commission's regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals.

E. *Summary of Proposals*

(1) *Sections 51.32, 51.33, 51.35, 63.20 and 65.13.* Upon review of existing regulations relating to the sale and issuance of licenses and permits, the Commission has identified the need to make a few housekeeping changes to update these regulations and to keep them consistent with the act of November 29, 2004 (P. L. 1286, No. 159). The Commission has also identified the need for other housekeeping changes. For example, § 51.32(b) (relating to resident and nonresident licenses) refers to the Soldiers' and Sailors' Civil Relief Act of 1940, which needs to be updated as the Servicemembers Civil Relief Act. The Commission further proposes amending § 51.35 to allow other forms of security for issuing agents, in addition to bonds, to make this section consistent with the code.

In addition, § 63.20(f) provides that persons fishing in waters under special trout regulations designated under §§ 65.1—65.3 and 65.5—65.7 are required to have a trout/salmon permit. However, since that provision was first adopted, the Commission has added new special regulation programs for managing trout, including the wild brook trout enhancement program, and has ended others. The Commission proposes removing the references to specific programs in § 63.20(f) and instead including the requirement for a trout/salmon permit in the regulations pertaining to the individual programs, as in § 65.13.

The Commission proposes that these sections be amended to read as set forth in Annex A.

(2) *Sections 53.24 and 63.40 (relating to tournament and fishing derby permits; and fishing tournaments and fishing derbies).* As an outgrowth of recent discussions with tournament anglers and sponsors, there is interest in amending the Commission's current regulations dealing with culling. It is proposed that the Commission eliminate the requirement that tournament rules establish a daily limit of at least one fish less than the Statewide creel limit. This change will not have a negative fisheries impact, and the Bureau of Law Enforcement does not anticipate any problems.

The Commission proposes that these sections be amended 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 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 by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

Fiscal Note: 48A-171. 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 D. ISSUING AGENTS

§ 51.32. Resident and nonresident licenses.

* * *

(b) Military personnel who are stationed in this Commonwealth under permanent change of station orders (PCS) for a duration of 6 months or more may qualify as bona fide residents for the purpose of obtaining resident fishing licenses regardless of the fact they may maintain a legal domicile in another state as authorized by the [**Soldiers' and Sailors' Civil Relief Act of 1940**] **Servicemembers Civil Relief Act** (50 U.S.C.A. App. §§ 501—[**591**] **596**). Military personnel who are domiciled in this Commonwealth but who are stationed in another state or country qualify as bona fide residents of this Commonwealth for fishing license purposes so long as they do not become domiciles of another state.

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§ 51.33. Effective dates of licenses and [**trout/salmon**] permits.

(a) Fishing licenses and **related permits**[, **such as trout/salmon permits**] are valid for the year printed on the license certificate or permit, and the month of December of the preceding year, except for **1-day and** tourist licenses that are valid for the dates specified on the license certificate.

[**(b) Annual licenses and permits for 2005 are valid for the 2005 year and any part of December 2004 commencing on the date of sale.**]

§ 51.35. Operation of the issuing agency.

(a) A person, sole proprietorship, partnership or corporation may apply to become an issuing agent of the Commission for the purpose of selling fishing licenses. An applicant seeking to become an issuing agent shall complete and submit to the Commission an application on the form prescribed by the Commission and shall pay a one-time, nonrefundable fee of \$100. Applications shall be accompanied by a bond in favor of the Commission, or other security in a form satisfactory to the Commission, in a minimum amount specified by the Executive Director or designee.

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CHAPTER 53. FISH AND BOAT COMMISSION PROPERTY

§ 53.24. Tournament and fishing derby permits.

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(c) Special activity permit for fishing tournaments.

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(5) Permit conditions. The Bureau of Law Enforcement may impose conditions in connection with the issuance of a permit under this section. The conditions may include:

* * * * *

(ix) Upon request of an applicant for a tournament permit, the Commission may include a condition providing that one or more uninjured largemouth bass, smallmouth bass or spotted bass that an angler is landing, measuring or in the process of releasing from a recirculated or aerated livewell will not be considered as part of the daily creel limit if the fish is caught during a tournament that as part of its rules penalizes the return of any dead or distressed bass to the water, [establishes a daily limit of at least one fish less than the Statewide creel limit,] requires use of recirculating or aerated temperature-controlled livewells, distributes to the contestants instructions on the proper maintenance and use of livewells and limits the fishing hours to no more than 9 hours per day. This permit condition will be included only in circumstances when the Commission finds that permitting culling will have no substantial adverse impacts on the protection and management of fish.

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Subpart B. Fishing

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.20. Permits for the protection and management of trout and salmon.

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(c) Form. Trout/salmon permits issued under this section shall be in the form of a stamp which shall be affixed to the person's fishing license and signed over the face of the stamp. The stamp shall bear a design, as may be approved by the Commission, together with the year for which it is valid. [Trout/salmon permits shall be valid from January 1—December 31 of the year in which they are issued.

(d) Fee. Trout/salmon permits shall be issued by the Commission or an issuing agent approved by the Commission upon payment of a fee of \$5.

(e)] (d) Exceptions.

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[(f)](e) Fish for trout or salmon. A person fishes for trout or salmon when one of the following applies:

(1) The person fishes in [waters under special trout regulations designated under §§ 65.1—65.3 and 65.5—65.7,] wilderness trout streams or their tributaries or Class A wild trout waters or their tributaries.

* * * * *

§ 63.40. Fishing tournaments and fishing derbies.

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(b) Permits. It is unlawful to conduct a fishing tournament on Commonwealth waters without obtaining a special activity permit under this section.

* * * * *

(4) Permit conditions. The Bureau of Law Enforcement may impose conditions in connection with the issuance of a permit under this section. The conditions may include:

* * * * *

(vi) Upon request of an applicant for a tournament permit, the Commission may include a condition providing that one or more uninjured largemouth bass, smallmouth bass or spotted bass that an angler is landing, measuring or in the process of releasing from a recirculated or aerated livewell will not be considered as part of the daily creel limit if the fish is caught during a tournament that as part of its rules penalizes the return of any dead or distressed bass to the water, [establishes a daily limit of at least one fish less than the Statewide creel limit,] requires use of recirculating or aerated temperature-controlled livewells, distributes to the contestants instructions on the proper maintenance and use of livewells and limits the fishing hours to no more than 9 hours per day. This permit condition will be included only in circumstances when the Commission finds that permitting culling will have no substantial adverse impacts on the protection and management of fish.

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CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.13. Wild brook trout enhancement.

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(b) It is unlawful to fish in designated "Wild Brook Trout Enhancement Regulations" waters except in compliance with the following requirements:

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(5) A current trout/salmon permit is required.

[Pa.B. Doc. No. 05-1173. Filed for public inspection June 17, 2005, 9:00 a.m.]

[58 PA. CODE CHS. 63 AND 69]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 63 and 69 (relating to general fishing regulations; and fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments clarify the definition of approved trout waters. They also eliminate the minimum size limit for recreationally caught yellow perch in Lake Erie and its tributaries during the period, April 1 through November 30, and for

commercially caught yellow perch and increase the recreational creel limit to 30.

A. *Effective Date*

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2006.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This proposal is available electronically through the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendments to §§ 63.3 and 69.12 (relating to fishing in approved trout waters; and 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).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance, clarify and update the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals.

E. *Summary of Proposals*

(1) *Section 63.3.* This section provides that the term "approved trout waters" means "designated waters open to public fishing that are stocked with trout." Prior to late 2002, the Commission's regulations defined the list of approved trout waters as the list contained in the "Summary Book." That definition did not allow the Commission much flexibility in adding and removing waters from the list. Accordingly, the current definition was added.

This definition is not entirely consistent with the way that the Commission historically has designated waters as approved trout waters. Specifically, the Commission historically has designated entire waters or sections of waters as being approved trout waters even though they may contain parts that are closed to public fishing and therefore are not stocked with trout. These waters or sections, however, are primarily open to the public. To remove the portions that are closed to the public from the list of approved trout waters would create a complicated patchwork of waters that are approved trout waters and those that are not. It would create difficulty in enforcement and would cause confusion among anglers.

To make the definition of approved trout waters consistent with the Commission's historical approach, the Commission proposes that § 63.3 be amended to read as set forth in Annex A.

(2) *Sections 69.12 and 69.33.* Dramatic declines in Lake Erie yellow perch in waters of this Commonwealth during the 1990s required conservative harvest regulations for the fisheries. In 1996, the daily creel limit was reduced to 20 perch and an 8 inch minimum size limit was implemented to reduce exploitation and enhance spawning stock size. In 2002, the Commission amended its regulations to reduce the minimum size limit from 8 inches to 7 inches during the period, December 1 through March 31, while maintaining the 8 inch minimum size limit during the period, April 1 through November 30. An 8.5 inch minimum size limit is in effect for commercially caught yellow perch in this Commonwealth.

Other jurisdictions have implemented yellow perch conservation measures, but none continue to be as conservative as the Commonwealth. None of the jurisdictions have a recreational minimum size limit. Ohio has a creel limit of 30. Other jurisdictions have creel limits of 50.

By 2004, the Lake Erie perch had recovered to levels of abundance seen in the late 1980s with a 350% increase since the early 1990s. Even more dramatic, the 2004 population will more than double in 2005 due to the very large 2003 year-class. The 2004 boat angler survey estimated Commonwealth anglers harvested over 500,000 perch of the 750,000 perch that were caught. Thus, about 198,000 yellow perch were released because they were undersize. Catch and release mortality can be high because of hydraulic decompressing when there are large numbers of undersize yellow perch. With the very strong 2003 year class growing into the population as 3 year olds in 2006, losses could far exceed those seen in previous years.

The opportunity exists to reduce these losses and allow this Commonwealth's yellow perch anglers to benefit from the large yellow perch populations with an increase in harvest with large yellow perch populations. Appropriate regulatory changes include eliminating the minimum size limit for recreationally caught yellow perch during the period, April 1 through November 30, and for commercially caught yellow perch and increasing the recreational creel limit to 30. These actions will reduce the release rate and any associated mortality. The commercial catch will continue to be controlled with a quota set at 30,000 pounds for this Commonwealth for 2005.

The yellow perch population is strong in Lake Erie and this Commonwealth's portion of Lake Erie. The Commission's evaluations suggest that the exceptional fishing should be sustained for several years. Beyond that, fishing quality would depend on yellow perch reproductive success in the coming years. The Commission will continue to be diligent in its assessment of Lake Erie fish stocks and increase the agency's agility in responding to changes in population status.

The Commission proposes to amend §§ 69.12 and 69.33 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 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 by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

Fiscal Note: 48A-174. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

Part II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.3. Fishing in approved trout waters.

It is unlawful to fish in approved trout waters from 12:01 a.m. March 1 to 8 a.m. on the opening day of trout

season in April. As used in this subpart, the term "approved trout waters" means designated waters **that contain significant portions that are** open to public fishing [**that**] **and** are stocked with trout. A listing of approved trout waters is published in the Commission's "Summary of Fishing Regulations and Laws," which is available from the Commission at Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. The Executive Director or a designee may, from time to time, supplement or modify the list of approved trout waters, and additions or deletions will be published in the *Pennsylvania Bulletin*.

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>
	* * * * *		
YELLOW PERCH	From December 1 through March 31	7 inches	[20] 30
	From April 1 through November 30	[8 inches] None	[20] 30
	* * * * *		

Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS

§ 69.33. Use of trap nets.

* * * * *

(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>
Yellow perch (<i>Perca flavescens</i>)	[8 1/2 inches] None	No closed season until the total allowable catch is taken
	* * * * *	

[Pa.B. Doc. No. 05-1174. Filed for public inspection June 17, 2005, 9:00 a.m.]

[58 PA. CODE CHS. 103 AND 111]

Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 103 and 111 (relating to rules of the road; and special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments remove the requirement that all boat traffic operate in a counterclockwise fashion and limit the number of water ski devices on certain Commonwealth lakes.

A. Effective Date

The proposed amendments, if approved on final-form, will go into effect on January 1, 2006.

B. Contact Person

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7827. This proposal is available electronically through the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 103.3 (relating to restriction for special areas) is published under the statutory authority of section 5123 of the code (relating to general boating regulations). The proposed amendments to §§ 111.3, 111.6, 111.13, 111.58, 111.64 and 111.66 are published under the statutory authority of sections 322 and 5124 of the code (relating to rules and regulations; and particular areas of water).

D. Purpose and Background

The proposed rulemaking is designed to improve and update the Commission's boating regulations to enhance the recreational boating experience. The specific purpose of the proposed amendments is described in more detail under the summary of proposals. The Commission's Boating Advisory Board (BAB) considered the proposed changes and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendments.

E. Summary of Proposals

(1) *Section 103.3.* This section, which requires motorboats to operate in a counterclockwise fashion insofar as

reasonably possible, has been in place for many years and was promulgated in an attempt to regulate boating traffic patterns on our inland waters. While the regulation has been successful in establishing an operational pattern, its language is ambiguous in that it allows for operation "insofar as reasonably possible." This caveat was included to allow deviation from the rule in some (or most) circumstances. It establishes an operational pattern but makes strict enforcement problematic.

The regulation presents several issues or questions for enforcement purposes. For example, if someone wants to go directly across a lake, rather than follow the shoreline in a counterclockwise direction, is that legal? On some lakes, counterclockwise operation is impossible because of obstructions. On large lakes, strict compliance with the regulation forces boaters to travel miles out of their way. If every boat were to operate under this counterclockwise operation rule, other rules concerning crossing situations and head-on passing would be unnecessary since no one would ever cross or meet another boat head on. The Navigation Rules are in place to enhance safety in crossing and passing situations.

A survey of other states' boating regulatory agencies reveals that they do not believe this type of regulation should be universally applied as it is here in this Commonwealth. If they have a similar regulation at all, it is only for specific waterways or for water skiing in specific areas.

The Navigation Rules in the Inland Steering and Sailing Rules, Rule 9, Narrow Channels state (in part): "(a)(i) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable." The Rules are silent concerning the operation of boats in other than narrow channels. The Rules assume that the rules with regard to crossing, overtaking and passing are sufficient to control operation on these waters.

Accordingly, the Commission proposes that § 103.3(a) be deleted as shown in Annex A.

(2) Sections 111.3, 111.6, 111.13, 111.58, 111.64 and 111.66. The BAB requested a review of the existing water skiing regulations that limit the number of water skiers or water skiing devices that may be towed behind a boat to identify those special regulations targeting single skier restrictions and recommend changes to these regulations to improve recreational opportunities. The original intention of most of these special regulations was to limit the number of water ski ropes rather than the number of persons on the skis. (In some cases, such as at Blue Marsh Lake, there was an intention to limit the number of persons.) A review of the regulations revealed inconsistency in language across the regulations that should be corrected. Additionally, since towed inflatables are regulated the same as water skis, the number of persons that can be towed on an inflatable is also limited to one. This creates problems for people whose device is manufactured to carry multiple persons and who wish to ride on the inflatable with younger children.

The Commission finds little justification in not allowing more than one skier if the number of water ski devices is limited. Also, since these regulations were put in place for safety on crowded lakes, the current restrictions do not seem appropriate for nonweekend and nonholidays or during the early or late season for most waterways. The Commission recommends that where the number of skiers needs to be restricted because of safety concerns, the

number of tow lines should be restricted rather than the number of persons on the ski device. The Commission also recommends that the restriction be placed only on weekends and holidays during the primary boating season.

Accordingly, the Commission proposes to amend these various sections 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 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 by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

Fiscal Note: 48A-172. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 103. RULES OF THE ROAD

§ 103.3. Restriction for special areas.

(a) [To provide for an orderly flow of boat traffic, motorboats shall operate in a counterclockwise fashion insofar as reasonably possible on all waters of this Commonwealth.

(b)] * * *

[(c)] (b) * * *

[(d)] (c) * * *

**CHAPTER 111. SPECIAL REGULATIONS
COUNTIES**

§ 111.3. Armstrong County.

(a) *Crooked Creek Lake.*

(1) [A boat may not tow more than one water skier.] A boat may not tow more than one water ski device on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

* * * * *

§ 111.6. Berks County.

(a) *Blue Marsh Lake.* [The following special regulations apply to Blue Marsh Lake:]

(3) [No more than one water skier may be towed behind a boat.] A boat may not tow more than one water ski device.

§ 111.13. Carbon County.

(a) *Beltzville Lake—Beltzville State Park.* [The following regulations apply to Beltzville Lake:]

(2) Waterskiing is prohibited except between sunrise and sunset in the designated ski zone. Boats in this zoned area shall operate in a counter-clockwise direction. Boats not engaged in waterskiing shall remain outside the ski zone area while waterskiing is in progress. [On weekdays, it is unlawful for a boat to tow more than two water-skiers at a time. On weekends—Saturdays and Sundays—and Federal holidays, it is unlawful for a boat to tow more than one water-skier at a time.] A boat may not tow more than one water ski device on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

§ 111.58. Susquehanna County.

(d) *Laurel Lake.*

(1) *Internal combustion motors are prohibited.* [After April 1, 1997, the operation of boats powered by internal combustion motors is prohibited] Internal combustion motors are prohibited except as otherwise provided in this subsection.

(3) *Restrictions on operation of boats powered by internal combustion motors.* Operation of boats powered by internal combustion motors is subject to the following restrictions:

(i) *Ski devices.* [No more than one water ski device with a maximum of one skier may be towed by a boat.] A boat may not tow more than one water ski device.

§ 111.64. Wayne County.

(b) *Duck Harbor Pond.*

(1) [A boat may tow only one water skier at a time.] A boat may not tow more than one water ski device on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

(c) *Long Pond.*

(2) [The operation of boats using more than one water ski tow rope or towing more than two skiers is prohibited.] A boat may not tow more than one water ski device on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

§ 111.66. Wyoming County.

(b) *Lake Winola.*

(1) [No more than two waterskiers may be towed behind a boat.] A boat may not tow more than one water ski device on weekends and holidays from the Saturday preceding Memorial Day through Labor Day.

[Pa.B. Doc. No. 05-1175. Filed for public inspection June 17, 2005, 9:00 a.m.]

[58 PA. CODE CH. 75]

[Correction]

Fishing; Endangered Species

The Fish and Boat Commission (Commission) published a notice of proposed rulemaking at 35 Pa.B. 2398 (April 23, 2005) seeking public comments regarding proposed amendments to 58 Pa. Code Chapter 75 (relating to endangered species) that, among other things, adds the eastern spadefoot toad to the list of State endangered species. The preamble of the notice of proposed rulemaking erroneously states that two extant breeding populations of eastern spadefoot toads are currently reported in this Commonwealth in Northumberland and Berks Counties. The correct counties are Northumberland and Berks Counties.

In light of this error, the Commission is seeking public comments for an additional 30-day period. 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 by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

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

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