

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations) to read as set forth in Annex A. 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, 2012.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 63.6 (relating to authorized devices for game fish, baitfish and fishbait) is 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 improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

Under § 63.6, no more than two lines may be used at one time when fishing, except while ice fishing under § 63.10 (relating to ice fishing). This restriction dates back to at least the 1930s. Recently, several anglers have expressed interest in having this regulation amended to allow for the use of three lines. Because harvest is primarily controlled through the use of season, size limit and creel limit regulations, a change in the number of devices from two to three should have little effect on managing the fisheries of this Commonwealth. Any concerns about this change are likely to be social. The Commission proposes that § 63.6 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose 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

60 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/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. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-224. 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

§ 63.6. Authorized devices for game fish, baitfish and fishbait.

(a) It is unlawful to fish for game fish with more than [**two**] **three** lines of any description, whether fished by rod or by hand, at one time except while ice fishing in accordance with § 63.10 (relating to ice fishing). No more than three hooks may be attached to line used in fishing for game fish. Rods, lines and hooks shall be under the immediate control of the person using them. A fishing device shall be deemed to be under the immediate control of the person using it if, when the terminal device (hook, bait or lure) is taken by a fish, the person using the device has direct control over it and it is not connected at that point to a casting or depth placement aid such as a casting boat or downrigger. Casting or depth placement aids such as downriggers or small remote controlled boats are not prohibited by this chapter.

(b) It is unlawful to fish for baitfish with more than [**two**] **three** lines of any description, whether fished by rod or by hand, at one time with not more than three hooks attached to each line; a dip-net or minnow seine not over 4 feet square or 4 feet in diameter, and a minnow trap, with not more than two openings, which may not exceed 1 inch in diameter. Rods, lines, hooks, nets and seines used in fishing for fishbait and baitfish shall be under the immediate control of the person using the same. For the purposes of this subpart, gizzard shad (*Dorosoma cepedianum*) 8 inches or less in length are considered baitfish.

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(d) It is unlawful to use more than [**two**] **three** lines at any time, except while ice fishing in accordance with § 63.10, when fishing for game fish, baitfish or both.

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[Pa.B. Doc. No. 10-2403. Filed for public inspection December 17, 2010, 9:00 a.m.]

[58 PA. CODE CH. 65]
Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations) to read as set forth in Annex A. 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 in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to § 65.24 (relating to miscellaneous special regulations) 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 improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

In recent years, annual Commission biological assessment catch rates of smallmouth bass in the lower Susquehanna River (below Sunbury, PA) and in the Juniata River have fallen below the catch rates of the middle to late 1990s. This has not been the case for other rivers or river reaches in this Commonwealth, including the West Branch of the Susquehanna River and the North Branch of the Susquehanna River. These decreases in catch rates have been attributed, in part, to decreases in young-of-year recruitment.

Historically, reductions in smallmouth bass young-of-year recruitment could be explained, in part, by late spring river discharge. High late spring discharges tend to lead to reduced densities of young smallmouth bass, whereas lower spring discharges tend to lead to higher densities of young in summer assessments. Since 2002, while this pattern continued on the North Branch of the Susquehanna River, recruitment on the mainstem has been consistently below average. Since 2005, the Commission has documented that low flows and relatively warm water temperatures have been associated with high incidences of *Columnaris* bacterial disease in young-of-year bass. *Columnaris* is a common soil bacterium that typically does not appear unless fish are under some type of stress. Studies conducted by the United States Geological Survey in 2008 and 2009 have documented that low stream flows and warmer water temperatures are associated with relatively low dissolved oxygen levels in near shore nursery habitat for young-of-year bass. These conditions are typically associated with relatively high plant growth and point to possible nutrient loading concerns. Work continues to identify the causes of low recruitment and disease, with immediate solutions challenging a broad spectrum of scientists from State and Federal resource management agencies.

Reduced densities of smallmouth bass are likely to continue until and unless survival of above average year classes persists through adulthood in the lower Susquehanna River and Juniata River. To preserve good quality fishing in the face of declining smallmouth bass abundance and provide for enhanced preservation of young fish recruiting to the population, the Commission proposes to amend § 65.24 to impose catch and release regulations on smallmouth and largemouth bass in portions of the Susquehanna River and Juniata River that are currently regulated under § 65.9 (relating to big bass special regulations). Tournaments will be prohibited during the bass spawning period in the spring. During the remainder of the year, catch-measure-immediate release tournaments only will be permitted. The proposed amendments will apply to all species of black bass residing in the Susquehanna and Juniata Rivers to remain consistent with the way that black bass historically have been managed in these rivers.

Preliminary modeling has demonstrated anticipated increases in smallmouth bass density (4 years of age or older) in association with these regulations of 15% or less in the near term versus no regulatory change. Although these anticipated changes are relatively small, the Commission believes that action is necessary now since improvements in recruitment indices in the lower Susquehanna and lower Juniata Rivers have not been evident and are impossible to forecast in advance.

The Commission remains steadfast in its commitment to improving and sustaining high quality black bass fishing in the Susquehanna drainage and throughout this Commonwealth. Commission staff will continue monitoring the abundance of all sizes of smallmouth bass and continue indexing production of young. The Commission may revisit these regulations in the future depending on the condition of the fishery.

The Commission proposes that § 65.24 be amended to read as set forth in Annex A. If adopted on final-form rulemaking, these amendments will go into effect upon publication in the *Pennsylvania Bulletin*, which likely will not occur until late spring of 2011. In the interim, it is important to preserve good quality fishing and to provide for enhanced preservation of young fish recruiting to the population. Accordingly, the Executive Director has exercised his authority under § 65.25 (relating to temporary changes to fishing regulations) to make these changes effective on January 1, 2011, by publication of a notice at 40 Pa.B. 6366 (October 30, 2010). These temporary modifications will go into effect on January 1, 2011, and will remain in effect until the Commission, by appropriate action, amends § 65.24.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have direct adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new direct costs on the general public. Some members of the private sector and regulated community have asserted that the proposed rulemaking will have a negative financial impact on bass fishing tournament organizers and bait and tackle merchants.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rule-

making to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 90 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not re-

ceived by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-223. 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>
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Cumberland, Dauphin, Juniata, Lancaster, Northumberland, Perry, Snyder, York	Susquehanna River (98.0 miles) from the inflatable dam near Sunbury downstream to Holtwood Dam	Bass (smallmouth and largemouth)—No harvest year-round—catch and immediate release only; From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11—No tournaments; Remainder of the year—Catch-measure-immediate release tournaments only
Dauphin, Juniata, Perry	Juniata River (31.7 miles) from SR0075 bridge at Port Royal downstream to the mouth	Bass (smallmouth and largemouth)—No harvest year-round—catch and immediate release only; From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11—No tournaments; Remainder of the year—Catch-measure-immediate release tournaments only
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[Pa.B. Doc. No. 10-2404. Filed for public inspection December 17, 2010, 9:00 a.m.]

[58 PA. CODE CHS. 53, 95 AND 111]
General Provisions and Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 53, 95 and 111 (relating to Commission property; manufacturer installed equipment; and special regulations counties) to read as set forth in Annex A. 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 modify and update the Commission's boating regulations.

A. Effective Date

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

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 53.16 (relating to special use) is published under the statutory authority of section 741 of the code (relating to control of property). The proposed amendment to § 95.3 (relating to lights for boats) is published under the statutory authority of section 5123 of the code (relating to general boating regulations). The proposed addition of § 111.16 (relating to Clarion County) and the proposed amendment to § 111.20 (relating to Crawford County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's administrative and boating regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal. On June 15, 2010, the Commission's Boating Advisory Board considered each of the proposals and recommended that the Commission approve the publication of a notice of proposed rulemaking containing the amendments.

E. Summary of Proposal

(1) Section 53.16 currently restricts the number of watercraft that may be launched or retrieved by livery operators at a Commission access to eight watercraft or less in a 1-hour period except with the advance written approval of the Commission's Executive Director. Livery operators typically introduce new boaters to recreational boating and routinely provide new and existing boaters with safety instruction. The Commission therefore proposes that this section be amended to allow less restrictive use of its accesses by livery operators and their customers. The Commission does not anticipate that user conflicts will result from this change. The Commission therefore proposes that § 53.16 be amended to read as set forth in Annex A.

(2) Section 95.3 currently provides boaters with detailed information on the requirements for types, configurations and locations of navigation lights on boats. Section 95.3(a) states, in part, that "A boat from sunset to sunrise and during periods of restricted visibility shall carry and exhibit the lights prescribed by the Inland Navigation Rules. . . ." Inland Navigation Rule 20, Part C—Lights and Shapes states that "The rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules do not impair their visibility or distinctive character, or interfere with the keeping of a proper look-out."

Many boaters assume that docking lights may be used while a vessel is underway (when lights are required). Since docking lights can easily be mistaken for stern lights or all-round white lights, docking lights may not be displayed while a vessel is underway. However, it is clear that there is a need for boaters to use docking lights to safely approach a dock, a mooring buoy or even the shoreline. The Commission proposes that the existing section be modified to clarify when it is illegal to use docking lights. The Commission proposes that § 95.3 be amended to read as set forth in Annex A.

(3) The Commission proposes creating a slow, no-wake zone for just over 2 miles at the very uppermost limit to power boating and skiing activities created by the Piney Dam on the Clarion River. The Commission received input from anglers that boats have been traveling at high speeds through the indicated section of the Clarion River causing problems with angling on this narrow section. Parts of the Clarion River in this stretch are less than 200 feet across and, therefore, in essence, are already slow, no-wake. The Commission's Northwest Region Manager reports that the proposed area is upstream of the very uppermost limit to where unlimited horse power boating is appropriate. Proposed § 111.16 makes it clear to the boating public that this section is in fact slow, no-wake and makes enforcement of the restriction feasible by Commission law enforcement personnel. The Commission proposes that § 111.16 be added to read as set forth in Annex A.

(4) Section 111.20 currently prohibits the anchoring of boats in the area along the western shoreline of Conneaut Lake commonly referred to as the "sand bar" and further provides that the no anchor zone will extend along the shoreline to a line of buoys approximately 75 feet out from the end of the steel cribs at either end of the zone. Over the years there have been changes to the shoreline on Conneaut Lake. Waterways conservation officers are concerned about enforcing the existing regulation because the contours of the shoreline vary in the designated area

and the end parameters (steel cribs) referred to in the regulation are no longer visible or present. The Commission proposes that § 111.20 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose 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 proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/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. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-222. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.16. Special use.

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(d) Commission-owned and -controlled access areas are for the use of the fishing and boating public and may not be converted to a commercial use that impairs free public use of the areas. [**The Commission finds that the commercial practice of renting or loaning large numbers of watercraft, including boats, canoes, kayaks and other devices, for launching and retrieval at Commission access areas does impair general free public use of the public facilities. It is unlawful for a commercial enterprise to use Commission-owned or -controlled access areas for the launch or retrieval of more than eight watercraft rented, loaned or supplied from one source within a 1 hour period except with the advance written approval of the Executive Director. The commercial enterprise that rents, loans or otherwise provides watercraft for launch or retrieval at Commission-owned or -controlled access areas shall be responsible to ensure that the watercraft are not used in violation of this subsection. This subsection does not apply to persons who operate an authorized concession at Commission-owned or -controlled access areas. As used in this subsection, the term "commercial enterprise" means a business that rents or loans watercraft for consideration.]**

Limited commercial use relating to fishing and boating that does not interfere with free public use of the access will be permitted subject to the following conditions:

(1) Boats launched or retrieved from Commission-owned and -controlled access areas must be currently registered or display current launch permit decals.

(2) The commercial enterprise may not interfere in any way with the free public use of the ramp, parking or other facilities at the access area.

(i) For Commission-owned and -controlled access areas with eight parking spaces or less, no more than one of the available parking spaces may be used by the commercial enterprise.

(ii) For Commission-owned and -controlled access areas with nine to 20 parking spaces, no more than three of the available parking spaces may be used by the commercial enterprise.

(iii) For Commission-owned and -controlled access areas of 21 parking spaces or more, no more than five of the available parking spaces may be used by the commercial enterprise.

(iv) Pretrip instructions provided by the commercial enterprise to its customers shall be conducted in an area at the access area away from the launch ramp so as to not interfere with other parties launching boats.

(3) The commercial enterprise shall yield at all times to other public users of the boat ramp when launching or retrieving boats.

(4) The use of a Commission-owned and -controlled access area shall be based on the facility in its current condition. The Commission will not add amenities or make improvements at the access based on increased commercial use of the access.

(5) This subsection does not apply to persons who operate an authorized concession at Commission-owned or -controlled access areas.

(6) This subsection does not apply to accesses on the upper Delaware River where Commercial Use Authorization Provisions for Guides are in force by the National Park Service.

(7) As used in this subsection, the term "commercial enterprise" means a business that rents or loans boats for consideration.

Subpart C. BOATING

CHAPTER 95. MANUFACTURER INSTALLED EQUIPMENT

§ 95.3. Lights for boats.

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(g) *Docking lights.* It is unlawful for a boat operator to use docking lights while underway except when docking and the boat is traveling at slow, no wake speed and is within 100 feet of approaching a dock, a mooring buoy or the shoreline. For purposes of this subsection, a docking light is a flood or spotlight type of light permanently installed or permanently mounted on a motorboat that is used to illuminate a boat's forward course of travel.

CHAPTER 111. SPECIAL REGULATIONS COUNTIES

§ 111.16. Clarion County.

Clarion River. Boats are limited to slow, no-wake speed from the mouth of McGourvey Run to the mouth of Blyson Run.

§ 111.20. Crawford County.

* * * * *

(b) *Conneaut Lake.* The anchoring of boats is prohibited in the area along the western shoreline of the lake commonly referred to as the "sand bar." The no anchor zone will extend along the shoreline to a line of buoys [approximately 75 feet out from the end of the steel cribs at either end of the zone].

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[Pa.B. Doc. No. 10-2405. Filed for public inspection December 17, 2010, 9:00 a.m.]