

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[ 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 Fish and Boat Code) (code). The proposed amendments update the Commission's list of waters subject to special fishing regulations.

*A. Effective Date*

This 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 this 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.fishandboat.com](http://www.fishandboat.com).

*C. Statutory Authority*

The proposed amendments to § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

*D. Purpose and Background*

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

*E. Summary of Proposal*

Minsi Lake, a 122-acre fertile impoundment owned by the Commonwealth and managed by the Commission, is located in Upper Mount Bethel Township in Northampton County, approximately 3.1 miles northeast of the Borough of Bangor. This reservoir was completely dewatered in June 2017 to complete dam and spillway repairs and modifications per Department of Environmental Protection dam safety standards. The earth-fill dam impounds the East Fork Martins Creek at river-mile 2.3 upstream from its confluence with the West Fork Martins Creek. Prior to the drawdown in 2017, the lake offered angling opportunities for multiple warm-water and cool-water fish species, as well as adult trout stocked by the Commission. Dam and spillway repairs are expected to be completed by early-winter 2019 with refilling initiated soon after.

The Commission plans to initiate stocking the lake beginning in spring 2020 or as soon as refilling conditions allow with fingerling plants of select fish species to establish a high quality warm-water and cool-water fishery. Immediately upon refilling of the lake, staff propose to open the lake to fishing under a miscellaneous special regulation that will allow for the harvest of trout under Commonwealth Inland Waters angling regulations but allow only catch and release fishing for all other fish species. Commission staff believe that this approach will allow for the most rapid development of a balanced warm-water and cool-water fish community, while offering acceptable levels of recreational angling opportunities. Fisheries Management staff will monitor the fish populations as needed while they develop and make necessary

modifications to the species stocked and recommend adjustments to the regulations governing fish harvest to the Board of Commissioners to continually provide high quality recreational angling opportunities at Minsi Lake. Once the warm-water fishery has been reestablished, the lake will be recommended for removal from the miscellaneous special regulation and inclusion in one of the Commission's existing warm-water regulation programs.

The Commission proposes that § 65.24 be amended to read as set forth in Annex A.

*F. Paperwork*

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

*G. Fiscal Impact*

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

*H. Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this 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.fishandboat.com/regcomments](http://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.

TIMOTHY D. SCHAEFFER,  
*Executive Director*

**Fiscal Note:** 48A-292. 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>
	* * *	* *
Monroe and Pike	Delaware Water Gap National Recreation Area	The use of eel chutes, eelpots and fyke nets is prohibited. The taking of the following fishbait is prohibited: crayfish or

County	Name of Water	Special Regulations
		crabs, mussels, clams and the nymphs, larva and pupae of all insects spending any part of their life cycle in the water. The taking, catching, killing and possession of any species of amphibians or reptiles within the boundaries of the Delaware Water Gap National Recreation Area is prohibited.
<b>Northampton</b>	<b>Minsi Lake</b>	<b>All species except trout—catch and release/no harvest; it is unlawful to take, kill or possess any fish except trout. All fish caught other than trout must be immediately returned unharmed. Trout—inland regulations apply. See § 61.1. This miscellaneous special regulation will remain in effect until further notice.</b>
Somerset, Fayette, Westmoreland and Allegheny	Youghiogheny River from confluence with Casselman River downstream to the confluence with Ramcat Run Youghiogheny River from the pipeline crossing at the confluence with Lick Run downstream to the mouth of the river.	Trout (all species)—no closed season. Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species.
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[Pa.B. Doc. No. 19-1362. Filed for public inspection September 6, 2019, 9:00 a.m.]

## FISH AND BOAT COMMISSION

[ 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 Fish and Boat Code) (code). The

proposed amendments update the Commission’s list of waters subject to special fishing regulations.

#### A. Effective Date

This 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 this 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.fishandboat.com](http://www.fishandboat.com).

#### C. Statutory Authority

The proposed amendments to § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

#### D. Purpose and Background

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

#### E. Summary of Proposal

Donegal Lake, a 90-acre impoundment owned by the Commonwealth and managed by the Commission, is located in Donegal Township, Westmoreland County, approximately 1.2 miles northeast of the Borough of Donegal. This reservoir was completely dewatered during fall 2016 to complete a control tower, dam and spillway repairs, and modifications per Department of Environmental Protection dam safety standards. The earth-fill dam, constructed in 1967, impounds Fourmile Run at river-mile 13.0 upstream from its confluence with Loyalhanna Creek at river-mile 32.7. Prior to the drawdown in 2016, the lake offered angling opportunities for multiple warm-water and cool-water fish species, as well as adult trout stocked by the Commission. Dam and spillway repairs are expected to be completed by early-winter 2019 with refilling initiated soon after.

The Commission plans to initiate stocking the lake beginning in spring 2020 or as soon as refilling conditions allow with fingerling plants of select fish species to establish a high quality warm-water fishery. Immediately upon refilling of the lake, staff propose to open the lake to fishing under a miscellaneous special regulation that will allow for the harvest of trout under Commonwealth Inland Waters angling regulations but allow only catch and release fishing for all other fish species. Commission staff believe that this approach will allow for the most rapid development of a balanced warm-water and cool-water fish community, while offering acceptable levels of recreational angling opportunities. Fisheries Management staff will monitor the fish populations as needed while they develop and make necessary modifications to the species stocked and recommend adjustments to the regulations governing fish harvest to the Board of Commissioners to continually provide high quality recreational angling opportunities at Donegal Lake. Once the warm-water fishery has been reestablished, the lake will be recommended for removal from the miscellaneous special regulation and inclusion in one of the Commission’s existing warm-water regulation programs.

The Commission proposes that § 65.24 be amended to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

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

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this 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.fishandboat.com/regcomments](http://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.

TIMOTHY D. SCHAEFFER,  
*Executive Director*

**Fiscal Note:** 48A-293. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**CHAPTER 65. SPECIAL FISHING REGULATIONS**

**§ 65.24. Miscellaneous Special Regulations.**

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
* * *	* *	
Wayne	West Branch Delaware River	Trout: From the Pennsylvania/New York border downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October 16 until midnight of the Friday before the first Saturday after April 11. During the no-harvest artificial lures only season: 1. Fishing may be done with artificial lures only, constructed of metal, plastic, rubber

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
		or wood, or flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Use or possession of any other lures or substances is prohibited. 2. The daily creel limit for trout is 0.
<b>Westmoreland</b>	<b>Donegal Lake</b>	<b>All species except trout—catch and release/no harvest; it is unlawful to take, kill or possess any fish except trout. All fish caught other than trout must be immediately returned unharmed. Trout—inland regulations apply. See § 61.1. This miscellaneous special regulation will remain in effect until further notice.</b>

[Pa.B. Doc. No. 19-1363. Filed for public inspection September 6, 2019, 9:00 a.m.]

**FISH AND BOAT COMMISSION**

[ 58 PA. CODE CH. 119 ]

**Motorboat Noise Control**

The Fish and Boat Commission (Commission) proposes to amend Chapter 119 (relating to motorboat noise control) 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 Fish and Boat Code) (code). The proposed amendments update the Commission's methods for enforcement of motorboat noise control.

A. *Effective Date*

This 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 this 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.fishandboat.com](http://www.fishandboat.com).

C. *Statutory Authority*

The proposed amendments to §§ 119.3, 119.6 and 119.8 (relating to prohibited acts; pass-by test; and enforcement) are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

#### D. Purpose and Background

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

#### E. Summary of Proposal

Over the last several boating seasons the Commission has received multiple complaints about motorboat noise levels and a request for more enforcement. Under 58 Pa. Code Chapter 119, regulations requiring mufflers and various noise levels for motorboats were established in June 1994. This proposed rulemaking package was based on a model act provided by the National Association of State Boating Law Administrators (NASBLA). Even though the Commission adopted most of the recommendations from NASBLA, determining if a boat is in violation of the regulation is very subjective. Additionally, standards adopted have never truly been enforceable due to the lack of training and device guidelines.

Starting in 2018, the Commission staff began exploring the standards used and regulations in place in other states. It is believed with a few minor language adjustments the Commission will be able to establish a training program utilizing recognized devices and be able to better address the complaints from around the waterways in this Commonwealth. This amendment was vetted and approved by the Boating Advisory Board on June 27, 2019.

The Commission proposes that §§ 119.3, 119.6 and 119.8 be amended to read as set forth in Annex A.

#### F. Paperwork

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

#### G. Fiscal Impact

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

#### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

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TIMOTHY D. SCHAEFFER,  
*Executive Director*

**Fiscal Note:** 48A-291. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart C. BOATING

#### CHAPTER 119. MOTORBOAT NOISE CONTROL

#### § 119.3. Prohibited acts—**5123(a)3 and 5.**

(a) A person may not operate and an owner may not give permission for the operation of a motorboat upon the waters of this Commonwealth that is equipped with an altered muffler or a muffler cutout, bypass or other device designed or so installed so that it can be used continually or intermittently to bypass or otherwise reduce or eliminate the effectiveness of a muffler or muffler system installed under this chapter.

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#### § 119.6. Pass-by test—**5123(a)3.**

A person may not operate a motorboat on the waters of this Commonwealth that exceeds a noise level of 82dB(a) measured as specified in SAE [ **J34** ] **J1970**. The measurement may not preclude a stationary sound level test as prescribed in § 119.5 (relating to stationary test) if an officer has reason to believe that the motorboat is being operated in excess of the noise levels established in § 119.5.

#### § 119.8. Enforcement.

(a.) An officer authorized to enforce this chapter who has reason to believe that a [ **vessel** ] **motorboat** is being operated in excess of the noise levels established in this chapter may direct the operator of the [ **vessel** ] **motorboat** to submit the [ **vessel** ] **motorboat** to an onsite test to measure noise levels. If the [ **vessel** ] **motorboat** exceeds the decibel levels established by this chapter, the officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the [ **vessel** ] **motorboat** to a mooring and keeping the [ **vessel** ] **motorboat** at the mooring until the violation is corrected or ceases.

**(b.) Any law enforcement officer who conducts motorboat noise level tests as provided in this chapter shall be qualified in motorboat noise testing by the Commission. These qualifications shall include but are not limited to the selection of the measurement site, and the calibration and use of noise testing equipment.**

**(c.) Measurements for either a Stationary or Pass-by Test will be made by a sound level meter which satisfies ANSI-S 1.4-1983, Type 2 or equivalent.**

[Pa.B. Doc. No. 19-1364. Filed for public inspection September 6, 2019, 9:00 a.m.]