

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). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment would implement miscellaneous special regulations in § 65.24 (relating to miscellaneous special regulations) on the 12 stream sections that would manage brown trout with catch and release regulations and maintain Commonwealth inland water regulations for all other species with all tackle types permitted, while continuing to stock these stream sections with rainbow trout at current rates and frequency.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect January 1, 2024.

B. *Contact Person*

For further information on this proposed rulemaking, contact Renae Kluk Kiehl, 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.

C. *Statutory Authority*

The proposed amendment to § 65.24 is published under the statutory authority of section 2307(a) of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

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

E. *Summary of Proposal*

In the mid-2000's, productive stream sections were identified that supported high densities of wild brown trout and were being stocked by the Commission. Angler counts documented very high angler use of these stream sections in the early part of trout season, particularly on the opening day of the regular season for trout. As part of the Commission's Strategic Plan for Management of Trout Fisheries in Pennsylvania 2010—2014, Commission staff identified the need to resurvey the stream sections to determine if they supported Class A wild trout populations and designate appropriately. Inaccurate designation leads to inadequate water quality protection and inconsistent application of fisheries management strategies.

Between 2011 and 2015, biologists resurveyed 13 stream sections, and all were determined to support robust wild brown trout populations that qualified for Class A wild trout streams designation. In 2014, the Commission updated its Class A wild trout streams policy in § 57.8a (relating to Class A wild trout streams) to allow for rare circumstances in which Commission stocking could be considered and the new policy became effective January 1, 2015. Following that policy change, the ten stream sections were designated by the Commission as Class A wild trout streams in 2015 and stocking of trout continued. Three additional stocked trout water (STW) stream sections were designated Class A wild trout

streams by the Commission through January 2017, bringing the total number of Class A wild trout streams stocked by the Commission to 13.

Twelve of the 13 stream sections are managed under Commonwealth inland waters regulations in § 61.1 (relating to Commonwealth inland waters) which allow for the harvest of five trout per day, greater than or equal to 7 inches in length (combined species) from 8 a.m. on the opening day of the regular season for trout through Labor Day, catch and release from the day after Labor Day through the third Sunday in February (extended trout season) the following year, and closed to all fishing from the third Monday in February until 8 a.m. on the opening day of the regular season for trout. Yellow Creek, Section 05, is the remaining stream section and is managed with catch and release fly-fishing only regulations in § 65.14 (relating to catch and release fly-fishing only). All 13 of the stream sections are stocked with adult rainbow trout only by the Commission during both pre-season and in-season stocking periods, and 4 of the stream sections are also stocked in-season with fingerling rainbow trout only.

As part of the Commission's Strategic Plan for the Management of Trout Fisheries in Pennsylvania 2020—2024, Commission staff identified the need to collect updated biological and social data on these fisheries to inform future management of these stream sections. Deliverable tasks included: 1) by 2022, resurvey the wild brown trout populations and conduct angler use, harvest and opinion surveys to inform fisheries management of the 13 Class A stream sections stocked with trout; and 2) between 2022 and 2024, consider options and make recommendations to the Board of Commissioners to adjust current management if the data support alternate management to optimize these fisheries.

Commission staff resurveyed the wild brown trout populations in all 13 of the stream sections during summer 2021. Wild brown trout biomass ranged from 10 kg/ha at Little Lehigh Creek, Section 07, to 175 kg/ha at Yellow Creek, Section 05. Except for the four stream sections in the Lehigh Valley, all others supported a similar biomass in 2021 compared to the Class A qualifying surveys that were conducted between 2011 to 2015.

In addition to the brown trout population assessments, angler surveys (that is, counts and interviews with effort focused on opening day) were conducted at 11 of the 13 stream sections during 2021. A more in-depth assessment from the opening day of the regular season for trout (April 17, 2021) through Labor Day (September 6, 2021) was conducted on Bald Eagle Creek, Section 06, to evaluate angler use, catch, harvest and opinions. Yellow Creek, Section 05, was not included in the angler survey given that it is managed as a catch and release fishery open to year-round angling.

The angler assessments provided valuable insight regarding opinions needed to inform future management of these waters. The only management option in which most (57%) anglers were opposed was a stocking cessation. This result was not unexpected given that most anglers caught stocked rainbow trout, particularly on opening day, and this perceived sentiment was a driving factor in the continuance of stocking following Class A designation in 2015 through 2017.

On opening day of the 2021 trout season, 1,442 anglers were counted on the 12 stream sections during the 8 a.m.

angler use assessments. Angler use ranged from 10 anglers per mile (25th percentile) to 91 anglers per mile (95th percentile) with 8 waters at or above the 75th percentile, 3 in the 50th percentile, and 1 in the 25th percentile compared to Statewide opening day angler use data at STWs. Additionally, 866 anglers were interviewed over the course of the surveys. About one quarter (25%) of anglers indicated they harvest trout at least half the time. Approximately 49% of anglers indicated they harvest both wild brown trout and stocked rainbow trout, 4% of anglers usually only harvest wild brown trout and 47% of anglers usually only harvest stocked rainbow trout.

Anglers caught and harvested more stocked rainbow trout than wild brown trout. The catch and harvest of rainbow trout on Bald Eagle Creek, Section 06, was high over the course of the survey with nearly three times more the amount of adult rainbow trout caught than were stocked and an estimated 57% of the rainbow trout stocked into this stream section harvested by anglers. The catch and harvest of wild brown trout on Bald Eagle Creek, Section 06, was also high during the survey. Anglers caught just over 1.5 times more wild brown trout greater than or equal to 7 inches than were estimated to be present. Additionally, anglers harvested an estimated 23% of the wild brown trout population greater than or equal to 7 inches, of which over 35% of the trout were large (≥ 14 inches). Anglers were estimated to harvest 212 wild brown trout per mile, of which 74 per mile were greater than or equal to 14 inches. This represents a relatively high harvest of the wild brown trout population, particularly the large trout (≥ 14 inches) and suggests that harvest may be limiting the abundance and the size structure of the wild brown trout population in Bald Eagle Creek, Section 06.

When trout stocking occurs, it attracts substantially more harvest-oriented anglers. In Statewide surveys of the Commonwealth's stocked and wild trout streams in 2004 and 2005, Commission staff documented that stocked trout streams had greater than five times higher harvest rates than streams managed for wild trout without stocking. Given the similarities of Bald Eagle Creek, Section 06, to the 11 other Class A stream sections stocked with trout and managed with Commonwealth inland waters regulations, it is likely that similar harvest rates are occurring, and harvest is also precluding those wild brown trout fisheries from reaching their full potential and negatively impacting population size structure.

Most (66%) anglers interviewed indicated support for an alternate management approach that would require catch and release of brown trout while allowing for the continued harvest of rainbow trout under Commonwealth inland waters regulations. This would eliminate harvest mortality and could provide an opportunity for the wild brown trout population to expand, including large (≥ 14 inches) wild brown trout that are most desirable to anglers, while continuing to provide an opportunity for anglers to harvest stocked rainbow trout.

Given the wild brown trout population characteristics and estimated angler use, harvest and opinions determined during the recent assessment of the 12 stream sections managed as both Class A wild trout stream sections and STWs, staff propose implementing a miscellaneous special regulation (See § 65.24) on the 12 stream sections that would manage brown trout with catch and release regulations and maintain Commonwealth inland waters regulations for all other species with all tackle types permitted, while continuing to stock these stream sections with rainbow trout at current rates and frequency.

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 to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-350. No fiscal impact; 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>
Beaver	Hopewell Township Park Lake	Bass—15-inch minimum size limit and a 2 bass daily creel limit. Panfish (combined species): 10 fish daily creel limit. Use of live fish for bait is prohibited.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
<u>Bedford</u>	<u>Yellow Creek, Section 04, from the confluence with Beaver Creek downstream to Red Bank Hill</u>	<p><u>All tackle types are permitted.</u> <u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u> <u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u> <u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u> <u>All species except trout—inland regulations apply. See § 61.1 (relating to Commonwealth inland waters).</u></p>
Blair, Huntingdon, Juniata, Mifflin and Perry	Juniata River and its tributaries	Rock bass—[Daily] daily creel limit is 10; open year-round; no minimum size limit.
Butler	Glade Run Lake	<p>All species except trout—[Catch] catch and release/no harvest; it is unlawful to take, kill or possess any fish except trout. All fish caught other than trout shall be immediately returned unharmed. Trout—[Inland] inland regulations apply. See § 61.1 [(relating to Commonwealth inland waters)].</p>
<u>Carbon</u>	<u>Pohopoco Creek, Section 04, from the outlet of Beltzville Lake downstream to Hideaway Hunting and Fishing Club cable across creek</u>	<p><u>All tackle types are permitted.</u> <u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u> <u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u> <u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u> <u>All species except trout—inland regulations apply. See § 61.1.</u></p>

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Centre	Bald Eagle Creek, from 0.38 mile upstream of Steel Hollow Run to 0.48 mile downstream of Steel Hollow Run	Open to fishing year-round. All tackle types are permitted. From June 15 through Labor Day—the daily creel limit for trout is three (combined species). Trout must be 9 inches in length to be killed or possessed. From the day after Labor Day through June 14, no trout may be killed or possessed. Inland regulations apply to all other species. This miscellaneous special regulation will remain in effect until further notice.
<u>Centre</u>	<u>Bald Eagle Creek, Section 06, from the confluence with Spring Creek downstream to the inlet of Sayers Lake near Boggs/Howard Township line</u>	<u>All tackle types are permitted.</u> <u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u> <u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u> <u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u> <u>All species except trout—inland regulations apply. See § 61.1.</u>
Centre	Foster Joseph Sayers Lake	Crappie—10 fish daily creel limit of which no more than 5 fish may be greater than or equal to 9 inches in length.
<u>Centre</u>	<u>Penns Creek, Section 02, from the State Road 45 bridge in Spring Mills downstream to the confluence with Elk Creek</u>	<u>All tackle types are permitted.</u> <u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u> <u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u> <u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u> <u>All species except trout—inland regulations apply. See § 61.1.</u>

County	Name of Water	Special Regulations
Clarion	Beaver Creek Ponds	Closed to fishing from 12:01 a.m. January 1 to 12:01 a.m. the second Saturday in June of each year. Bass—15 inch minimum size limit and a 2 bass daily creel limit for the total project area. Panfish (combined species)—10 fish daily creel limit for the total project area. Other species [-]—inland regulations apply.
Clinton	<u>Fishing Creek, Sections 13 and 14, from the confluence with Cedar Run downstream to Country Club Road bridge in Mill Hall</u>	<p><u>All tackle types are permitted.</u></p> <p><u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1.</u></p>
Columbia and Northumberland	South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42	This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught shall be immediately returned unharmed.
* * * * *		
Huntingdon	Whipple Lake	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.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
<u>Lehigh</u>	<u>Little Lehigh Creek, Section 04, from the confluence with Spring Creek downstream to Wild Cherry Lane bridge</u>	<p>All tackle types are permitted.</p> <p><u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1.</u></p>
<u>Lehigh</u>	<u>Little Lehigh Creek, Section 07, from 0.25 mile upstream of Country Club Road bridge downstream to Fish Hatchery Road bridge</u>	<p>All tackle types are permitted.</p> <p><u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1.</u></p>
<u>Lehigh and Northampton</u>	<u>Monocacy Creek, Section 09, from Schoenersville Road bridge downstream to the confluence with Lehigh River</u>	<p>All tackle types are permitted.</p> <p><u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1.</u></p>

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Luzerne	Harveys Lake	During the period from the opening day of the regular season for trout through midnight the third Monday in February, the daily creel limit for trout (combined species) is 3, only one of which may exceed 18 inches in length. Warmwater/coolwater species, except as provided in this section—[Inland] inland regulations apply.
<u>Mifflin</u>	<u>Kishacoquillas Creek, Section 05, from 1.5 miles upstream of the confluence with Tea Creek downstream to the Penn Central Railroad bridge</u>	<u>All tackle types are permitted.</u> <u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u> <u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u> <u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u> <u>All species except trout—inland regulations apply. See § 61.1.</u>
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 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.
<u>Northampton</u>	<u>Martins Creek, Section 01, from the confluence of the East and West Branch of Martins Creek downstream to the outflow of the Bangor sewage treatment plant near unnamed tributary</u>	<u>All tackle types are permitted.</u> <u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u> <u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u> <u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u> <u>All species except trout—inland regulations apply. See § 61.1.</u>

County	Name of Water	Special Regulations
Northampton	Minsi Lake	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.
Northampton	<u>Monocacy Creek, Section 08, from Illicks Mill Dam downstream to Schoenersville Road bridge</u>	<p><u>All tackle types are permitted.</u></p> <p><u>Brown trout—catch and release/no harvest; it is unlawful to take, kill or possess brown trout at any time.</u></p> <p><u>All other trout species—7 inches minimum size limit—5 trout daily limit (combined species) from 8 a.m. on the opening day of the regular season for trout to midnight on Labor Day. Catch and release/no harvest—it is unlawful to take, kill or possess any trout from 12:01 a.m. the day after Labor Day to midnight the third Sunday in February the following year.</u></p> <p><u>Closed to all fishing from 12:01 a.m. the third Monday in February until 8 a.m. on the opening day of the regular season for trout.</u></p> <p><u>All species except trout—inland regulations apply. See § 61.1.</u></p>
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: opening day of the regular season for trout until Labor Day—5 trout per day; day after Labor Day to opening day of the regular season for trout of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species.
* * * * *		

[Pa.B. Doc. No. 23-1174. Filed for public inspection September 1, 2023, 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). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates and further clarifies language in § 65.26 (relating to extended trout season); specifically, proposed amendments apply to § 65.26(b).

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 Renae Kluk Kiehl, Esq., P.O. Box 67000, Harris-

burg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The proposed amendment to § 65.26 is 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 specific purpose and background of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

During a comprehensive review of permits associated with the Commission's Bureau of Fisheries programs and regulations, Commission staff identified an opportunity to update and further clarify language in § 65.26; specifically, the proposed amendments apply to § 65.26(b). The

intent is to align the permit for the application of extended season trout regulations to waters that are not stocked trout waters and the beginning of the extended closure period (third Monday in February), and to place the application review responsibility more appropriately on the bureau directly responsible for consideration, the Bureau of Fisheries. As the section is currently written, permits are valid into the extended season closure period, which is inconsistent with current seasons, sizes and creel limits applied to waters included in the Commission's Stocked Trout Waters Program.

The Commission proposes that § 65.26 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 to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-351. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ **65.26. Extended trout season.**

* * * * *

(b) *Waters not stocked trout waters.* The Executive Director **or designee** may grant a permit to apply extended trout regulations to waters that are not stocked trout waters upon written application of the owner or lessee of the lands on which the waters are located. **Applications must be made on forms provided by the Commission.** Applications will be reviewed to ensure that applying extended trout season regulations to the waters in question is consistent with the best appropriate fisheries management of the waters in question, and to ensure that approval of the application will have no adverse effect on the preservation and expansion of public fishing opportunities within this Commonwealth. Approval or disapproval of applications shall be subject to review under Chapter 51, Subchapter E (relating to

permit procedures). Permits for extended trout season on waters other than stocked trout waters will be valid until the last day of [**February**] **the extended trout season** of the 6th year after the year in which they are issued. [**For example, a permit issued in June 1984 will expire on February 28, 1990.**]

[Pa.B. Doc. No. 23-1175. Filed for public inspection September 1, 2023, 9:00 a.m.]

FISH AND BOAT COMMISSION

[**58 PA. CODE CHS. 97 AND 111**]

Boating; Operator Provided Equipment; Special Regulations Counties

The Fish and Boat Commission (Commission) proposes to amend Chapters 97 and 111 (relating to operator provided equipment; and special regulations counties). 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 regulations relating to personal floatation devices.

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 Renae Kluk Kiehl, 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.

C. *Statutory Authority*

The proposed amendment to § 97.1 (relating to personal flotation devices), is published under the statutory authority of section 5123 of the code (relating to general boating regulations). The proposed amendments to §§ 111.3, 111.20, 111.24, 111.26, 111.27, 111.32, 111.42, 111.43, 111.56, 111.62 and 111.65 are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

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

E. *Summary of Proposal*

Over the past decade, paddleboarding has been gaining popularity. Paddleboards are now widely available, affordable and relatively easy to transport. Paddleboards resemble oversized surfboards and models are designed for use on various waterways and conditions. They are primarily operated by a person standing on the board using a paddle in a manner similar to a canoe. Paddleboards are frequently used on lakes and rivers throughout this Commonwealth.

On October 3, 2008, the United States Coast Guard (USCG) issued a determination that, when beyond the narrow limits of a swimming, surfing or bathing area, the

device known as a "paddleboard" is a vessel under 46 U.S.C. § 2101 (relating to general definitions). This classification means that no person may use a paddleboard unless in compliance with the Navigation Rules and applicable carriage requirements for this type of vessel. The Commission adopted the USCG's definition of paddleboard and associated life jacket carriage requirements in § 109.2 (relating to paddleboards and sailboards), effective January 1, 2015. This section states that a wearable life jacket must be carried on board for each person, "unless otherwise required to be worn in accordance with § 97.1 (relating to personal life jackets)." Commission staff recommend amendments to § 97.1 to provide clarification regarding life jacket wear requirements, since paddleboards are generally included with canoes and kayaks for recreational boating purposes. Commission staff also recommend amendments to incorporate paddleboards into Chapter 111 regulations for United States Army Corps of Engineers Pittsburgh District lakes where life jacket wear is required on boats less than 16 feet in length or any canoe, kayak or paddleboard.

The Commission proposes that §§ 97.1, 111.3, 111.20, 111.24, 111.26, 111.27, 111.32, 111.42, 111.43, 111.56, 111.62 and 111.65 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 to RA-pfbc regulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER, Executive Director

Fiscal Note: 48A-349. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 97. OPERATOR PROVIDED EQUIPMENT

§ 97.1. Personal flotation devices.

* * * * *

(h) Children 12 years of age and younger shall wear an approved wearable PFD while underway on any boat 20 feet or less in length and all canoes [and], kayaks and paddleboards. The operator of the watercraft violates this subsection if he does not cause a child 12 years of

age or younger to wear a PFD as required by this subsection.

(i) Beginning November 1 until midnight April 30 of the following year, a person shall wear a Coast Guard approved wearable PFD while underway or at anchor on boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

CHAPTER 111. SPECIAL REGULATIONS COUNTIES

§ 111.3. Armstrong County.

(a) Crooked Creek Lake.

* * * * *

(5) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

* * * * *

(c) Mahoning Creek Lake.

(1) The use of motors in excess of 10 horsepower is prohibited.

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

§ 111.20. Crawford County.

* * * * *

(e) Woodcock Creek Lake.

* * * * *

(4) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

§ 111.24. Elk County.

East Branch Clarion River Lake—Elk State Park.

* * * * *

(3) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

§ 111.26. Fayette County.

Youghiogheny River Lake. Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

§ 111.27. Forest County.

Tionesta Lake.

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

(2) Boats are limited to slow, no wake speed upstream from the confluence of Little Piney Run.

§ 111.32. Indiana County.

(a) Conemaugh River Lake.

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats

less than 16 feet in length or any canoe [or], kayak or paddleboard.

* * * * *

§ 111.42. McKean County.

Allegheny River Reservoir (Kinzua Dam).

* * * * *

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

§ 111.43. Mercer County.

(a) *Shenango River Lake.*

* * * * *

(5) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

* * * * *

§ 111.56. Somerset County.

Youghiogheny River Lake.

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

* * * * *

§ 111.62. Warren County.

Allegheny River Reservoir (Kinzua Dam).

* * * * *

(2) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

§ 111.65. Westmoreland County.

(a) *Conemaugh River Lake.*

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

* * * * *

(b) *Loyalhanna River Lake.* All persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe [or], kayak or paddleboard.

[Pa.B. Doc. No. 23-1176. Filed for public inspection September 1, 2023, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating; Special Regulations Counties

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties). The Commission is publishing this proposed

rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates the Commission’s regulations pertaining to Susquehanna River, Lake Frederick, located in Dauphin County.

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 Renae Kluk Kiehl, 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.

C. *Statutory Authority*

The proposed amendment to § 111.22 (relating to Dauphin County) is published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

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

E. *Summary of Proposal*

A slow, no wake zone currently exists on a channel of the Susquehanna River downstream of Goldsboro, between Bashore Island and the west shore of the river in Dauphin County. This area was established to protect private cabins that existed on the west side of the island at the time. The island is owned by York Haven Power and the cabins were demolished in 2018-2019, so there is no need for the special slow, no wake restriction on this channel. The channel is generally shallow and weedy, which limits boating activity and speed of operation. Boats must still comply with § 103.3(a) (relating to restrictions for special areas), which states that “[b]oats are limited to slow, no wake speed when within 100 feet of the shoreline; docks; launching ramps; swimmers or downed skiers or other boat-towed watersports participants; persons wading in the water; anchored, moored, or drifting boats; floats, except for ski jumps and ski landing floats; or other areas so marked. This subsection does not apply in a zoned ski area or authorized ski return areas when those areas are found within the areas described in this subsection.”

The Commission proposes that § 111.22 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 to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-348. No fiscal impact; recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart C. BOATING
CHAPTER 111. SPECIAL REGULATIONS
COUNTIES

§ 111.22. [Dauphin County] [Reserved].

[*Susquehanna River, Lake Frederick. Boats are limited to slow, no wake speed between Bashore Island and the York County shoreline.*]

[Pa.B. Doc. No. 23-1177. Filed for public inspection September 1, 2023, 9:00 a.m.]