

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA FISH AND BOAT COMMISSION**

**MINUTES FOR
THE BOATING ADVISORY BOARD MEETING**

**September 8, 2003
9:00 a.m.
Harrisburg, Pennsylvania**

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**John F. Simmons
Director
Bureau of Boating and Education
Secretary of the Board**

**The twenty-sixth meeting of the
Pennsylvania Fish and Boat Commission's Boating Advisory Board
was held at the Commission's Headquarters
at 9:00 a.m. on Monday, September 8, 2003.**

Members

Rex Beers
Steven Ketterer
Michael Lentine
G. Edwin Matheny
Thaddeus Piotrowski

Members Ex Officio

Dennis Guise, Deputy Executive Director
John F. Simmons, Secretary
Gary Smith for Michael DiBerardinis, Secretary for the
Department of Conservation and Natural Resources

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I. Roll Call and Introduction of Guests

Vice-Chairman Ted Piotrowski called the meeting to order at 9:00 a.m. Roll was called and all members of the Board were in attendance. A quorum was present. The following guests were introduced: Commissioners Czop, Pflugfelder and Mahon; Nick Virgilio, U.S. Coast Guard Auxiliary; Louis Nagy, U.S. Coast Guard Auxiliary; and Bob Wecker, U.S. Coast Guard Auxiliary.

II. Approval of the April 7, 2003 Meeting Minutes

The minutes from the last meeting were approved.

III. Election of Officer

Vice-Chairman Piotrowski was elevated to the Chairman position by acclamation. He then asked for nominations for Vice Chairman. Steve Ketterer made a motion for Michael Lentine to be Vice Chairman and Gary Smith seconded it. There were no more nominations. Ed Methany made a motion to close nominations and Mr. Ketterer seconded it. All were in favor.

John Simmons passed through the Board a plaque of appreciation for Gary Miles for serving on the Board. An appropriate time will be scheduled in Erie, Pennsylvania to meet with Mr. Miles and present his plaque. Gary Miles served as a Board member for ten years. Mr. Piotrowski commented that the Board appreciates all of Gary's efforts, hard work, time, and travel that Gary put in for the past ten years on the Board.

IV. Commission Agenda Items - Boating Regulations (Final Rulemaking)

A. Housekeeping Adjustment to Section 93.9 (Surrender of Certificate of Registration)

Commentary:

Section 93.9 of the Commission's regulations sets forth the conditions under which an individual is required to surrender a certificate of registration. The condition in this regulation dealing with documented vessels is not valid. Documented vessels are exempt from the requirement to display the registration number but are required to be registered, in part to serve as proof of payment of sales tax. Since documented vessels are required to be registered, their owners must possess a certificate of registration and display a validation decal. Accordingly, the Commission has proposed amending this section to remove the requirement that the certificate of registration and validation decals be surrendered to the Commission when a boat becomes documented.

A Notice of Proposed Rulemaking will be published in the *Pennsylvania Bulletin*. As of the date of agenda preparation, the Commission had not received any comments concerning this proposal.

The Board should consider this item and make recommendations to the Commission, as it deems appropriate.

Briefer:

Wasył Polischuk, Director, Bureau of Administration

Action:

A motion was made by Steve Ketterer and seconded by Rex Beers to recommend that the Commission adopt the amendments as set forth in the Notice of Proposed Rulemaking. Motion carried.

B. Amendment to §93.102 (Application Procedure for Certificates of Title)

Commentary:

A question has arisen regarding whether it is appropriate for the Commission to issue a certificate of title for a boat that is currently registered in another state. For example, a North Carolina resident recently sought to obtain a Pennsylvania title for his boat that is currently registered in North Carolina. Although North Carolina does not have a mandatory titling program, it does allow individuals to voluntarily title their boats. The individual did not want to title his boat in North Carolina, but wished to keep his boat registered there.

Staff has discussed this issue and believes that as a matter of policy, the Commission should not issue certificates of title for boats that are currently registered in other states. Accordingly, the Commission has proposed adding a new subsection that provides that the Commission will not issue a certificate of title for a boat that is registered and/or titled in another state or that is documented by the United States Coast Guard unless the application for title is accompanied by the current certificates of registration and/or title for the boat or evidence that the marine document for the boat is no longer in effect.

A Notice of Proposed Rulemaking will be published in the *Pennsylvania Bulletin*. As of the date of agenda preparation, the Commission had not received any public comments concerning the proposal.

The Board should consider this item and make recommendations to the Commission, as it deems appropriate.

Briefer:

Wasył Polischuk, Director, Bureau of Administration

Action:

A motion was made by Steve Ketterer and seconded by Edwin Methany to recommend that the Commission adopt the amendments as set forth in the Notice of Proposed Rulemaking. All were in favor except Rex Beers. Motion carried.

Mr. Beers commented that this item would cause people from New Jersey not to come to Pennsylvania to use our marinas if they can't register their boats here. Our state marinas require these boaters to have both a registration and title. Pennsylvania never had titles until recently and New Jersey has always had titling. It's easier to get a lien placed on a title. When Pennsylvania came up with titling, it was a lot easier for New Jersey boaters to get primary use for Pennsylvania, especially on the Delaware side. John Simmons commented that the major issue with that is that without this regulation, you could now have two documents you could use to transfer ownership of a boat, a New Jersey title or a Pennsylvania registration. It means someone could steal a boat and we are trying to avoid that. Mr. Polischuk reviewed the specific case that brought to light the need for this regulation and commented that in essence a person could title a boat in Pennsylvania and then go back to North Carolina and voluntarily title the boat again and have two titles to the boat. It may not be picked up in North Carolina that there is a title in Pennsylvania.

Mr. Beers asked if he could change his vote. A motion was made by Michael Lentine to reconsider the vote and Ed Methany seconded it. All were in favor.

C. Amendment to Section 97.2 (relating to Fire Extinguishers)

Commentary:

Staff has been reviewing the regulations relating to the requirements for fire extinguishers in boats. The current regulations require a fire extinguisher in all gasoline-powered boats that have the probability for entrapping gasoline vapors in closed compartments. This regulation is intended to reduce the incidence and severity of fires from ignition of gasoline vapors. The current regulations track the federal regulations on this subject with one exception. The federal regulations contain examples of boat construction or situations when fire extinguishers are or are not required.

Staff's original concept was to present a clarifying amendment to §97.2 to deal with situations with jon boats and similar craft with after-installed flooring installed in them. At its meeting on April 7, 2003, the Boating Advisory Board considered this item and recommended that the Commission approve the publication of a Notice of Proposed Rulemaking containing a broader amendment to require fire extinguishers on all boats with internal combustion motors. Although this proposal goes beyond federal requirements, it has the advantage of setting forth a clear line for requiring fire extinguishers. Accordingly, the Commission has proposed amending this section to require fire extinguishers on all boats equipped with internal combustion motors.

A notice of proposed rulemaking was published at 33 Pa. B. 3127 (July 5, 2003) (Exhibit A). The Commission received a total of 19 public comments – one prior to and 18 during the public comment period. Of the 18 received during the formal comment period, 9 support the proposed change and 9 oppose it. Copies of all public comments have been provided to the Commissioners.

When it published a Notice of Proposed Rulemaking, the Commission sought public comments on the most restrictive proposal. This proposal has the advantage of providing a “bright line” rule that is easy to understand and enforce. However, the proposal also has the disadvantage of requiring fire extinguishers on boats where they may not be necessary from a safety viewpoint. When considering this item, the Board should review the public comments received and make recommendations to the Commission, as it deems appropriate.

Briefer:

John F. Simmons, Director, Bureau of Boating and Education

Action:

Mr. Lentine made a motion to bring this item to the floor and Mr. Ketterer seconded it. Mr. Lentine commented that he thinks this proposed regulations is common sense and he supports this item and thinks it's important to have a fire extinguisher there for someone who needs it.

Assistant Supervisor George Giesler said this is a serious concern that the officers have and under the current provisions of Section 97.2 it is difficult for the officers and the public to understand. He feels that having a regulation that clearly states that fire extinguishers are

required on all boats with combustible engines would make this regulation very clear-cut and leaves no question.

Dan Martin, Boating Safety Officer, commented that he did a boating accident review from 1996 to present on all accidents with explosions on board. There were 17 accidents with a fire or explosion onboard, five had outboard motors and all were carrying fire extinguishers. There was not a single accident where the boat that was aflame did not already have a fire extinguisher. There were no reports of canoes or small open motorboats that caught fire in the last seven years.

Commissioner Plugfelder said he appreciates the safety issue but can you imagine a canoeist or a 10 ft. Jon boat having to have a fire extinguisher in his boat. If a fire extinguisher is so important, why has PennDot not required them in a car? He believes this is serious burden that is being placed on the boaters and that statistics prove this is not needed. Commission Czop has yet to receive as many negative e-mail and letters regarding a single issue. Many of these negative comments are coming from Senators and Representatives and their constituents. He was surprised by the number of negative comments coming in on this proposed requirement and regarding over regulation.

Dan Martin added that this regulation would require upwards of 100,000 vessels to add fire extinguishers at a cost of \$20 to \$30 each.. According to his reports, there is no problem that is being solved by this regulation.

John Simmons commented that Boat US Insurance has just completed a study of boat fires. Of those reported, nearly 50% were caused by electrical malfunctions, not fuel fires. Only 8% were fuel related fires on a boat. Mr. Simmons added that he keeps hearing that you can use the fire extinguisher to help someone else. That's fine, but he does not want to be fined for not having a fire extinguisher to help someone else out on their boat because they did not maintain something properly. He's hearing that this is a safety issue, but you're telling me that I'm responsible for everyone else's safety on the water and that is not fair.

Dan Martin commented that you are going to have 100,000 trout fisherman that go out three times a year on a 2.5 hp boat and go out and buy a fire extinguisher for no good reason. He has boated on a small Jon boat all his life and has never seen a boat fire like that and has never has a reason to buy one. Mr. Martin believes we should follow the federal regulations. Mr. Smith added that this is a good idea, but we should promote it, not have it as a regulation.

Dennis Guise said staff did not make a recommendation because they are considering the many comments received. This is going to have to be rewritten to some extent and a firm staff recommendation be made with the text prior to the Commission meeting. Staff wanted to get input from the Board as to what would be the better approach to this regulation, which is controversial and has two sides. Mr. Guise said the board could vote on what was in the proposed rulemaking. A vote was taken and Steve Ketterer, Michael Lentine, and Ed Methany were in favor, Rex Beers, Ted Piotrowski and Gary Smith were opposed, and John Simmons and Dennis Guise abstained. The motion failed due to evenly divided vote.

D. Amendment to Section 105.3 (Unacceptable Boating Practices)

Commentary:

Carbon Monoxide is a colorless, odorless, tasteless and highly toxic gas. It is produced when a carbon-based fuel, such as gasoline, propane, charcoal or oil, burns. CO is often emitted through a boat's engine or generator exhaust outlets. As a result, CO can accumulate almost anywhere in or around a boat. It can collect under swim platforms, around the stern and inside canvas enclosures. The results can be dangerous, even fatal.

A fad called "teak surfing" is one of the riskiest activities for CO poisoning. Teak surfing involves an individual holding onto the swim platform of a boat as it accelerates and then letting go to "surf" the wake. Teak surfers cannot avoid the risk of inhaling dangerous levels of CO because the propulsion engines produce a very high volume of exhaust gases, usually directed straight into the area behind the boat where the teak surfers are located. There is also an inherent danger of the individual losing his or her grasp of the swim platform and being hit by a moving propeller. Accordingly, the Commission has proposed amending §105.3 to make it unlawful to operate a motorboat at any speed with a person or persons sitting, riding or hanging on a swim platform or swim ladder attached to the motorboat.

A Notice of Proposed Rulemaking was published at 33 Pa. B. 4077 (August 16, 2003) (Exhibit B). As of the date of agenda preparation, the Commission had not received any public comments concerning the proposal.

The Board should consider this item and make recommendations to the Commission, as it deems appropriate.

Briefer:

Thomas J. Kamerzel, Director, Bureau of Law Enforcement

Action:

Steve Ketterer made a motion to bring this item to the floor for discussion and Michael Lentine seconded it. Ted Piotrowski asked for clarification on the terminology in the second paragraph and last sentence, where it states "to make it unlawful to operate a motorboat at any speed with a person or persons sitting riding or hanging on a swim platform or swim ladder attached to the motorboat." He stated that there was nothing about standing and there are situations from pushing off to swimming where you are standing on the deck when the boat is not anchored. Mr. Piotrowski thought there was too much being worked into this paragraph. He added that when you are swimming and drifting, technically drifting is underway, that this law would not allow this activity. Mr. Piotrowski thought this amendment was confusing and asked for other comments. George Geisler commented that the carbon monoxide in the back of the boat is a danger and there is no doubt that this has to be addressed whether the wording needs changed or not. Mr. Geisler was asked if this were to pass, how would he handle the situation where someone was standing on the swim platform and pushing off. Mr. Geisler commented that is not the intent of the law and he thinks everyone looks at the intent.

Dennis Guise added that wording could be added such as “that any person engaged in drag or teak surfing” and then the explanation of that activity. Also, add while the boat is underway and the motor is operating at high speed and generating lots of carbon monoxide. This wording will be worked on.

John Simmons said that he would like to make a motion that the Boating Advisory Board recommend to the Commission that they table this issue and not consider it until NASBLA makes their recommendation to the Commission. It would be good to get this in the regulations correct the first time instead of having to later make amendments. Michael Lentine seconded it and all were in favor.

V. Commission Agenda Items - Boating Regulations - Proposed Rulemaking

A. Amendment to Section 91.4 (a) Age of Operator

Commentary:

Staff recently reviewed the Commission’s regulations and those of other states relating to the age of operators for personal watercraft (PWC). The Commission’s current regulations require a personal watercraft operator to be 12 years of age or older.

The National Association of State Boating Law Administrators (NASBLA) has a model act for personal watercraft. In that model, the recommendation states in part: “No person under the age of 16 shall operate a personal watercraft on the waters of this state.”

Although the laws and regulations vary greatly among NASBLA members on this issue, our most recent information indicates that many members are adopting the minimum 16 years of age recommendation. (See table below). Our neighboring states’ requirements are also listed in the table.

PWC Minimum Age Requirement	Number of NASBLA Members
16 years of age or greater	16
15 years of age	3
14 years of age	8
13 years of age	5
12 years of age	15
Based on education	4
No requirement	6
Neighboring States	PWC Minimum Age Requirement
Maryland	16
Delaware	14
New Jersey	16
New York	10 w/ed 14 without/ed
Ohio	16
West Virginia	15

The Personal Watercraft Industry Association (PWIA) is the voice of PWC manufacturers. PWIA was created to bring together companies that manufacture PWC in order to promote safe and responsible operation of personal watercraft and work with federal, state and local agencies that have regulatory responsibilities for recreational boating. PWIA represents all five U.S. PWC manufacturers: American Honda Motor Co., Inc.; Bombardier Recreational Products; Kawasaki Motors Corp., U.S.A.; Polaris Industries Inc.; and Yamaha Motor Corp., U.S.A. PWIA’s recommendation for minimum age of operation is very similar to the NASBLA model. The PWIA recommends that: “No person under the age of sixteen (16) shall operate a personal watercraft on the waters of this state.”

The current Commission regulations for PWC are very much a model for thoughtful regulation of PWCs and have resulted in great improvements in safety and harmony on the waters of the Commonwealth. There have been a few accidents on PWCs with operators younger than 16 years of age, but it has not been a major problem to date. Staff, however, believe that we have been fortunate thus far. Today's new models of PWC are faster than ever. All manufacturers produce models that will reach speeds of 60 miles per hour. These boats, as with all high performance craft, are safe when operated properly.

Thus, the question that must be considered for the safe operation of these craft is whether a person 12 through 15 years of age has the upper body strength and judgment to operate safely such high performance craft. In many cases, the answer is yes. It is very possible that a well-trained and educated youth is a safe PWC operator. However, staff believes that this may be the exception rather than the rule. PWC operators must make quick, nearly instantaneous decisions and have the strength to handle the acceleration and course changes that are a routine part of PWC operation.

Since current regulations allow operation of PWC by people 12 years of age and older, staff believe that a phased approach would find the most acceptance among the boating public. Therefore, staff proposes that §91.4 be amended as follows:

§91.4. Age of operator.

(a) A person 11 years of age or younger may not operate **[a personal watercraft or]** a boat propelled by a motor greater than 10 horsepower.

(b) A person 12 through 15 years of age may not operate a boat propelled by a motor greater than 10 horsepower unless the person has obtained had has in his possession a Boating Safety Education Certificate or at least one person 16 years of age or older is present onboard.

(c) **Personal watercraft.**

(1) A person 11 years of age or younger may not operate a personal watercraft.

(2) Effective January 1, 2004, a person 12 years of age or younger may not operate a personal watercraft.

(3) Effective January 1, 2005, a person 13 years of age or younger may not operate a personal watercraft.

(4) Effective January 1, 2006, a person 14 years of age or younger may not operate a personal watercraft.

(5) Effective January 1, 2007, a person 15 years of age or younger may not operate a personal watercraft.

(6) A person 12 through 15 years of age may not operate a personal watercraft if there are any passengers onboard 15 years of age or younger.

The Board should consider this item and make recommendations to the Commission, as it deems appropriate.

Briefer:

John F. Simmons, Director, Bureau of Boating and Education

Action:

A motion was made by Michael Lentine to bring this item to the floor for discussion and Ed Matheny seconded it. Dan Martin was asked to provide statistics. Mr. Martin said that there have been accidents with people in this age group. Part of this issue is not just the age, but also the upper body strength of the individual, especially when you get down to the 12 year olds. Too much acceleration really pulls on you. Our personal Watercraft regulation is the model for the other states, except for the age. Staff feels it would be best not to make this an overnight change to 16. There are a lot of good operators right now with boats that were purchased for them. Therefore, a phased-in approach will get the results in safety without causing anyone to lose the recreational activity they are already doing.

Dennis Guise commented that the phase-in approach is not the entire staff's view. This will be looked out prior to going in the Commission's agenda. There is a sound argument to be made that it be put out for proposed rulemaking with something about the phased-in approach being an option, but state that it could go into effect in a single step. Dennis said when it goes out for proposed rulemaking that it goes under the most restrictive manner and then, if there are public comments, you would look at alternatives.

Steve Ketterer asked what would happen to those in that age bracket between 12 and 16, would they not be able to operate now even if they have a certificate and a boat was bought for them. Mr. Piotrowski added that we made a contract with those kids that took a boating safety course that they would be able to operate between the ages of 12 and 16, and therefore we should hold up our end of the bargain and not cut them off. Dennis Guise said there might be a way of grandfathering them in, but we do not want more people this age coming into this sport.

Mr. Ketterer would like staff to supply the board with statistics of the number of 12 to 16 year olds that have been involved in accidents. Also, Mr. Beers asked how many 12 to 15 years old have taken the safety courses and passed. Mr. Martin said he would provide this information. Mr. Beers commented that he has a problem lowering the age in that how are we going to bring the younger kids back into boating again. If you don't get kids at a younger age they move on to other activities.

John Simmons said that another issue is that we allow people to do is to permit children between 12 and 16 to operate by themselves with a certificate. He said there is another alternative that the Board may want to consider that they can continue to operate but only with adult supervision on the boat during the interim period. Mr. Lentine commented that in Section 91.4 (b) where it states, "boating education certificates or at least one person 16 years of age or older is present onboard" that the "or" be replaced with "and." John said that a new section would be added.

Mr. Lentine said he would like to see the Board leave it stand the way it is until members get more input about the changes and then review it again. A motion was made to go back to the original recommendation and Mr. Ketterer seconded it. All in favor of the amendment as presented.

B. Amendments to Sections 93.2 (Permanent and Temporary Registration) and 93.13 (Issuing Agents)

Commentary:

The Pennsylvania Department of Transportation currently allows most customers to renew their vehicle registrations online. The customer is then allowed to print a Temporary Internet Vehicle Registration on his or her computer. This temporary registration is valid for 15 days.

In the near future, the Commission may offer online renewals for its boat registration customers. Customers will be able to renew their boat registrations online and print a temporary Internet registration that will be valid for 15 days. Customers who renew their boat registrations online will pay the Commission a \$2 issuing agent fee.

Staff proposes the following amendments to implement the online boat registration renewals:

§93.2. Permanent and temporary registration.

* * *

(f) Temporary Internet registrations. Temporary Internet registrations shall be valid for 15 days from the date of issuance. A temporary Internet registration shall be available at all times for inspection on the boat for which it was issued whenever the boat is in operation and shall be carried in such a manner that it can be presented to an authorized officer upon request.

§93.13. Issuing agents.

* * *

(m) Commission *offices*. The Commission will collect and deposit in the Boat Fund the \$2 issuing agent fee for all temporary boat registrations issued by Commission offices **and all boat registration renewals issued online.**

* * *

The Board should consider this item and make recommendations to the Commission, as it deems appropriate.

Briefer:

Wasył Polischuk, Director, Bureau of Administration

Action:

Edwin Matheny made a motion to bring this item to the floor and Rex Beers seconded it. Gary Smith asked if both registrations and registration renewals could be done over the Internet? Members commented that only renewals could be done. Mr. Smith then suggested that paragraph (f) under Section 93.2 be modified to read “temporary Internet registration renewals so that people understand it’s only renewals. Also, Mr. Geisler suggested that also in paragraph (f) where it states “an authorized officer” be changed to “an officer authorized to enforce this title” as written in other sections. There was no other discussion and all were in favor.

(d) Amendment to Section 111.48 (Northampton County)

Commentary:

The new Route 33 Access launch area in Northampton County on the Lehigh River is now open. The District Waterways Conservation Officer reports that wakes from boat traffic could potentially cause difficulties for boaters using the ramp. There are currently three slow-no-wake buoys at the access ramp placed approximately 100 feet from the shoreline. According to the district officer, this provides only limited protection to the ramp, boaters launching and retrieving watercraft and shoreline anglers. He reports that boaters passing through this area outside of the buoys still create large enough wakes to impact the shoreline with sufficient force to do damage. He has suggested that an expanded “slow-no-wake” zone be established on the river immediately in front of the Commission ramp.

Staff is suggesting that the slow-no-wake zone extend across the main channel of the river to the shoreline of Turkey Island directly opposite the ramp. The zone is proposed to extend 150 feet upstream and 150 feet downstream from the boat ramp. Such a zone would have little impact on the unlimited horsepower boating in the area and should do much to protect boaters and anglers at the access area.

Staff proposes to amend §111.48 as follows:

§111.48. Northampton County.

- A. **Lehigh River. Boats are limited to slow, minimum height swell speed in the main channel 150 feet upstream and 150 feet downstream from the Route 33 access ramp.**

Briefer:

John F. Simmons, Director, Bureau of Boating and Education

Recommendation:

Staff recommends that the Commission approve the publication of a notice of proposed rulemaking containing the amendment described in the Commentary.

Action:

A motion was made by Steve Ketterer and seconded by Rex Beers to bring this item to the floor for discussion. Dan Martin commented that there is a fishing pier there and this SNW zone would help to protect and make the fishing better. All were in favor except for Rex Beers.

VI. Discussion Items

- A. Boating Recap. Dan Martin discussed the Boating Accident Recap, which is preliminary information and not for public distribution. He said that there have been 70 accidents reported to date, which is very low, but this is weather related. It is disturbing that all the fatal accidents involved unpowered boaters and we need to find a way to reach them.
- B. George Geisler wanted to share a number of noteworthy accomplishments by Law Enforcement. One is the WCO career brochure and some recognition in the FBI Law Enforcement Bulletin where we were able to gain some publicity on BUI.
- C. Gary Smith mentioned that State Parks ended their pilot program for six lakes. A 20 hp limit was adopted and became effective last month.