

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

**MINUTES FOR  
THE BOATING ADVISORY BOARD MEETING**

**March 29, 2004  
9:00 a.m.  
Harrisburg, Pennsylvania**

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

**The twenty-seventh 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, March 29, 2004.**

**Members**

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

**Members Ex Officio**

Dr. Douglas J. Austen, Executive Director  
John F. Simmons, Secretary  
John Wiediger for Michael DiBerardinis, Secretary for the  
Department of Conservation and Natural Resources

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**I. Roll Call and Introduction of Guests**

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: Commissioner Czop, Bob Wecker of the USCG Auxiliary, and Shelly Beers and Charlie Johns of the Pennsylvania Boaters Association. John Wiediger from State Parks, who replaced Gary Smith, was introduced.

**II. Approval of the September 8, 2003 Meeting Minutes**

The minutes from the last meeting were approved.

**III. Election of Officers**

Chairman Piotrowski asked for a nomination for the next Chairman of the Board. Steve Ketterer nominated Michael Lentine for Chairman and Rex Beers seconded the nomination and the motion was carried. Mr. Ketterer then nominated Rex Beers as Vice-Chairman; Mr. Lentine seconded the motion and all were in favor.

## V. Commission Agenda Items - Boating Regulations (Final Rulemaking)

### A. 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) (Appendix A). The Commission did not receive any comments concerning this proposal during the formal public comment period. After the public comment period, the Commission received one public comment opposing the creation of a minimum length for the tow rope (Appendix B).

At the September 8, 2003 meeting, the Board recommended that the Commission table this item until additional information could be obtained from NASBLA to incorporate in the proposed regulation. At its September 22, 2003 meeting, the Commission deferred action on the agenda item so that staff could seek input from NASBLA and other states.

At its September meeting, NASBLA adopted a model act for "Safe Towing Practices." A copy of the Model Act is included (Appendix C).

Staff proposes to amend the proposal upon final adoption to include a prohibition of operating a motorboat that is towing a water skier on a rope less than 20 feet in length as follows.

#### §105.3. Unacceptable boating practices

It is unlawful to:

##### (10) Operate a motorboat at any speed

- i) with a person or persons sitting, riding or hanging on a swim platform or swim ladder attached to the motorboat; or
- ii) when towing a person on waterskies or other devices using a tow rope of 20 feet or less.

The Boating Advisory Board should consider this item along with all public comment and make a recommendation to the Commission.

#### Briefer:

John F. Simmons, Bureau of Boating and Education Director

Recommendation:

Staff recommends that the Commission adopt the amendment as set forth in the Notice of Proposed Rulemaking with the change described in the Commentary.

Action:

Michael Lentine made a motion to bring this item to the floor and Rex Beers seconded it. Steve Ketterer raised a question on the language and if the wording could be changed to add launching or docking as an exception to i. under Section 105.3. Mr. Czop commented that he has to be on the swim platform to throw a line out. He said to take “riding” out of that sentence. Tom Kamerzel said to add “with the exception or launching or docking a larger vessel.”

Mr. Beers also commented that he has a problem with the way this sentence was written. With the proposed wording, if you’re on a 42-foot boat backing into a dock, you could be cited for standing on a swim platform. It’s hard to dock a boat of that size without standing on a platform. Sometimes it is necessary on a bigger boat to have someone on the swim platform to tie up to the dock when they are coming in. Right now the way it is worded a person could be cited for docking a boat. This should be reworded

Laurie Shepler said that section 105.3 (i) could be modified to state “it is unlawful to operate a motorboat at any speed with a person or persons sitting, riding or hanging on a swim platform or a swim ladder attached to the motorboat **except when docking, launching or anchoring.** Steve Ketterer made a motion to approve the proposal with the amendment and Rex Beers seconded it. All were in favor.

## **B. 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 have caused 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.

The Boating Advisory Board considered this item at its September 8, 2003 meeting and recommended that the Commission approve the publication of a Notice of Proposed Rulemaking. The Commission considered this proposal at its September 22, 2003 meeting and approved the publication of a Notice of Proposed Rulemaking. A Notice of Proposed Rulemaking was published at 33 Pa. B. 5929 (December 6, 2003) (Appendix D). The Commission did not receive any public comments concerning this proposal.

The Boating Advisory Board should consider this item and make a recommendation to the Commission.

### Briefer:

John F. Simmons, Bureau of Boating and Education Director

### Recommendation:

Staff recommends that the Commission adopt the amendment as set forth in the Notice of Proposed Rulemaking.

### Action:

Steve Ketterer motioned to bring this item to the floor and Rex Beers seconded it. Mr. Matheny said he would like to see time constraints used to enable multiple uses. He said the boating club does have an investment and should be considered. Ted Piotrowski said if a fisherman parks his boat right in the middle of the river in front of the club, that would shut down skiing too because you have a slow no wake rule 100 ft. from an anchored boat. Mr. Simmons added that the skiing club has been there for 50 years and the opening of this launch ramp has caused a problem.

John Simmons commented that most people coming down past the ramp now are violating the 100 ft. from the shore rule line right now and that placing a Slow No Wake across the length will alert them to that. Mr. Piotrowski said if we do nothing people will still be launching boats and that skiers will still be going by the launch ramp creating a problem,

therefore, he says he is for this amendment. Mr. Ketterer said he doesn't know what the answer is but this club has been there for a long time and should be considered. Mr. Ketterer asked if the club is aware of this potential regulation change? Mr. Simmons said they are but they have not been recently contacted. They are aware that this has been ongoing though. No recent public comments have been received since 1997.

Mr. Ketterer said that he feels that the club needs to be contacted again to comment on this before a vote can be taken. Dr. Austen said that one of our staff will meet with them and see if they understand the impact of this and ask them if they would like to develop a solution on their own that would protect both the club and the launch ramp. They should also recognize that they are potentially violating current boating laws in general.

Michael Lentine motioned that the Board recommend that the Commission table this item until staff further looks into this area of concern and come up with a revised solution to the problem. Steve Ketterer seconded it and all were in agreement except John Simmons. Motion carried.

## **VI. Commission Agenda Items - Boating Regulations - Proposed Rulemaking**

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

#### Commentary:

The Commission adopted limitations on the age of operation to address a concern for the safety of young operators of larger boats and personal watercraft and those that boat around them. At the time the regulations were adopted, 10 horsepower was considered to be a satisfactory horsepower limitation. Youthful operators could operate larger boats after obtaining a Boating Safety Education Certificate or if they had an older operator on board. The recent law providing for mandatory education increased the minimum horsepower that the law came into play at to 25 horsepower. To be consistent with this new law and to eliminate some complexity in the regulations, staff was asked to review the age of operator and personal watercraft operation sections of the regulation and propose amendments.

Staff proposes to simplify the existing regulation and make them consistent with provisions of the mandatory education law. Staff is also proposing to blur the distinction between PWC and other motorboat operation by applying the same provision to each. The following are the substantial changes to the regulations:

1. Subsection (a) --- The law requires a Boating Safety Certificate for operators of boats powered by engines in excess of 25 horsepower. The current regulations prohibit operation of boats powered by more than 10 horsepower. Under the proposed changes, operators 11 years of age or younger would not be permitted to operate personal watercraft and other motorboats greater than 25 horsepower rather than the 10 horsepower as is included in the current regulations.
2. Subsection (b) --- Delete. The current regulation requires that a person 12 through 15 years of age possess a Boating Education Certificate or a person over the age of 16 is required to be onboard. Since all operators in this age group (12 through 15) are required by the law to possess a Boating Education Certificate, the first part of this provision is not necessary and may be eliminated from the regulations. Also, all such operators have earned a certificate by successfully completing a boating safety course, providing them with the training to operate small boats. The requirement to have someone on board over the age of 16 is not necessary for safety and complicates the regulation, making it difficult to understand and is also removed.
3. Old Subsection (c)/New Subsection (b) --- No change. However, after January 1, 2008, all operators would have to be a minimum of 16 years of age to operate and subsection (c) becomes moot if the Commission approves new Subsection (c).
4. Subsection (c) --- This proposal would prohibit the operation of PWC by anyone 15 years of age or younger after January 1, 2008.

Staff proposes that 58 Pa Code §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] 25** 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 and has in his possession a Boating Safety Education Certificate or at least one person 16 years of age or older is present onboard.]**

(c) ] 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.

**(c) Effective January 1, 2008, a person 15 years of age or younger may not operate a personal watercraft.**

The Board should consider this item and make a recommendation to the Commission.

Briefer:

John F. Simmons, Bureau of Boating and Education Director

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 Rex Beers to bring this item to the floor and Ed Matheny seconded it. It was asked if the Governor's Council on Youth was contacted on changing this age limit for operating boats. John Simmons said no contact was made with the Council. Mr. Beers said that he had talked with Janet Nyce from the Council and that she was unaware that this was coming before the Board and that she would like to get involved with it. She was unable to make this meeting, but Mr. Beers felt that since this is affecting the youth of Pennsylvania that the Council should have a chance to comment on this part of the regulation. Mr. Beers told her he would push to get this open for public comment. Mr. Piotrowski called for the question and all were in favor. John commented that he would make sure that the Council gets this regulation for review. Dr. Austen said he would also like their position on the Youth License. They made a statement on it without having the chance for us to visit and talk with them and Dr. Austen wants to make sure we can meet with them to talk about the issues prior to making any recommendations. Mr. Simmons said that Laurel Garlicki is a Staff Liaison to that Council and she attends all the meetings and he will have her contact the Counsel.

## B. Amendment to Section 103.2. Definition of Slow, Minimum Height Swell Speed

### Commentary:

Historically, the Commission regulations have used the term “slow, minimum height swell speed,” as opposed to the more common term, “slow, no wake speed.” Section 103.2 of the Commission’s regulations define “slow, minimum height swell speed” as the “lowest engagement speed for the engine and that the wake or wash creates a minimum disturbance.” The section also provides that “Buoys and signs marked ‘slow, no wake’ shall mean operation at slow, minimum height swell speed.”

The current definition does not adequately describe what the Commission means by “slow, no wake speed.” There have been misunderstandings by the boating public and problems when citations by Commission officers for wake violations have been challenged in court. Staff has reviewed the definitions for “slow, no wake speed” in other states and by the National Park Service. Other states and the federal government do not use the term “slow, minimum height swell speed.”

Staff therefore recommends that the term “slow, minimum height swell speed” be replaced with “slow, no wake speed” so the public better understands the term. In addition, staff recommends that the body of the definition be changed to better reflect the accepted standards in other states. The Commission’s regulations have several references to slow, minimum height swell speed. If the Commission approves the publication of a Notice of Proposed Rulemaking containing this change, all references to “slow, minimum height swell speed” also will have to be changed to reflect the new term.

Staff proposes to amend §103.2 as follows:

§103.2. Definitions.

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

*Motorboat*—A boat being operated by motor, including a sailboat with sails if the motor is running.

*Sailboat*—A boat being propelled with only sails; if a motor is attached it is not engaged.

**[*Slow, minimum height swell speed* – The lowest engagement speed for the engine and that the wake or wash creates a minimum disturbance.**

**(b) Buoys and signs marked “slow, no wake” shall mean operation at slow, minimum height swell speed.]**

***Slow, no wake speed* – The slowest possible speed of a motorboat required to maintain maneuverability so that the wake or wash created by the motorboat on the surface of the water is minimal.**

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

### 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 to bring this item to the floor by Ed Matheny and Rex Beers seconded it. Mr. Beers asked why this was challenged in the courts? Mr. Tom Kamerzel commented that this was part of a BUI case and it started out that the plaintiff exceeded the minimum height swell speed and the defense attorney argued that the officer testified to a slow no wake speed in the trial and that the buoys and signs say slow no wake and asked what does minimum height swell speed mean? The court was then confused and this clouded the issue. The case was then void for vagueness. It was decided that the current definition was not sufficient. Mr. Kamerzel added that this is an important violation that leads to probable cause to stopping a boater that may be impaired; and that Law Enforcement needs a good basis for that slow no wake violation stop. Ted Piotrowski called for the question and all were in favor.

## C. Amendment to Section 111.56 Somerset County part (b) Youghiogheny River Lake

### Commentary:

The U.S. Army Corps of Engineers, Pittsburgh District, has requested that part of Section 111.56(b)(1) be removed from the regulations (Appendix E). Corps staff at Youghiogheny Lake states that the regulation is not necessary because the usage in the Horseshoe Curve part of the lake, even during peak usage periods, does not warrant the retention of a slow-no-wake zone. A chart showing this area is attached (Appendix F).

In addition, subsection (b) of this regulation combines PFD requirements in the same subsection as the slow, minimum height swell speed areas. Separating these subjects into different paragraphs increases the clarity of the regulation.

Staff proposes that 58 Pa. Code §111.56(b) be amended as follows:

§111.56. Somerset County.

(a) \* \* \*

(b) *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. Boats are limited to slow, minimum height swell speed within the following areas:

(1) *Wilkins Hollow Cove/Horseshoe Curve*. Starting at a point at the west bank approaching Wilkins Hollow Cove, within a line which follows the curve about 600-800 feet off the shore to a point about 1,000 feet east of the point where the shoreline turns abruptly northward.]

**(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.**

**(2) Boats are limited to slow, no wake speed within the following areas:**

**(i) Wilkins Hollow Cove.**

[2] **(ii) Tub Run Cove.** From a line extending in a southwesterly direction between the outermost points of land on each side of the cove as marked.

[3] **(iii) Somerfield Recreation Area.** As marked in the vicinity of the boat launch ramp and marina.

[4] **(iv) Fall Run Cove.**

[5] **(v) Hall Run Cove.**

[6] **(vi) Braddocks Run Cove.**

[7] **(vii) Reason Run Cove.**

[8] **(viii) Off Somerfield Hill.**

(c) \* \* \*

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

### Recommendation:

Staff recommends that the Commission approve the publication of a Notice of Proposed Rulemaking amending Section 111.56 as set forth in the Commentary.

### Action:

There were no comments from the Board. All were in favor and the motion carried.

## D. Amendment to Section 111.2 (Allegheny County)

### Commentary:

In September of 2003, staff received a letter and petition to designate a slow, no wake zone, approximately 9/10 of a mile in length, in the back channel of the Ohio River at Neville Island on the Ohio River at Coraopolis (Appendix G).

There are four marinas and a restaurant in the section being requested as slow, no wake. Two of the marinas are fairly new and have approximately eighty boats moored. The back channel is rather narrow with several shoals (Appendix H). The area dead-ends at the Emsworth Dam. The letter states that wakes from careless boaters caused more than \$1,000 damage to one docked vessel during the 2003 boating season. Other undocumented reports have also been received. Regional law enforcement personnel also report an increase in boat traffic in this area resulting in increased complaints, and they recommend that the area be restricted. The Commission staff last reviewed this matter in 1992. At that time, sufficient justification did not exist to restrict this area. However, as previously stated, there has been an increase in the number of marinas and the addition of a popular restaurant.

Staff recommends that §111.2 be amended as follows:

§111.2. Allegheny County.

\* \* \*

**(e) Ohio River. Boats are limited to slow, no wake speed in the back channel of Neville Island from the Coraopolis Bridge upstream to the Interstate 79 bridge from May 1 through October 1.**

### Briefer:

John F. Simmons, Bureau of Boating and Education Director

### 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 Michael Lentine to bring this item to the floor and Rex Beers seconded it. Ted Piotrowski called for the question and all were in favor to recommend that the Commission adopt the amendment as set forth in the Notice of Proposed Rulemaking. Motion carried.

## **VI. Discussion Items**

### **A. Review of Pending Special Boating Regulation Petitions.**

#### **1. Harvey's Lake Speed limits (Appendix I)**

The Commission has received a petition from the Harvey's Lake Protective Association to amend the regulations to establish a 45-mile per hour speed limit from sunrise to sunset on weekends and holidays from the Saturday before Memorial Day through Labor Day. Staff has reviewed the petition and has determined that it is appropriate for further consideration. In accordance with the regulations, the petitioners have been invited to attend the April 2004 Commission meeting to present their petition. After the oral presentation, the Commission will determine whether or not to accept the petition for further review. Mr. Tom Kamerzel commented that this regulation should be reviewed carefully due to the sometimes-difficult nature of using radar. Dan Martin added that there has not been any accident problems on the lake and doesn't know what prompted this proposed regulation. Mr. Simmons added that this is an official petition that meets all the requirements; therefore, staff will have to do a study and prepare a report.

#### **2. Schuylkill River – Kernsville Dam. Request for horsepower restrictions (Appendix J)**

Mr. Simmons talked with the group after they presented their petition and they are willing to accept a horsepower limit. They would like this area not operated at unlimited horsepower. This dam is owned and operated by DEP. Blue Mountain Wildlife, Inc. has a contract with DEP to manage the park side area surrounding this water area. This petition met all the requirements and the Commission accepted it and turned it over to staff to prepare a report. Staff will conduct a study this summer and prepare a report for the fall Boating Advisory Board meeting and the September Commission meeting.

### **B. Review of proposed Boating Under the Influence legislation (Appendix K)**

Tom Kamerzel commented that the federal legislation enforced all states to adopt a .08 BAC alcohol limit for motor vehicles. Up to this time, the DUI and the BUI laws were identical and there was uniformity and it worked well in the court system. Now that the DUI law has been changed, the BUI stands out again as something different. The Commission has legislative support to create a similar law again. The details of Appendix K were then discussed. Mr. Kamerzel added that the actual language is identical to the Vehicle code and that is what Law Enforcement would like to see.

The meeting adjourned at 11:30 a.m.