

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

**MINUTES FOR
THE BOATING ADVISORY BOARD MEETING**

**March 28, 2006
9:00 a.m.
Harrisburg, Pennsylvania**

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

**The Thirty-First Meeting of the
Pennsylvania Fish and Boat Commission's Boating Advisory Board**

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
David Barrett for Michael DiBerardinis, Secretary for the
Department of Conservation and Natural Resources

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I. Roll Call and Introduction Guests

The meeting was called to order at 9:00 a.m. Roll was called and all members of the Board were in attendance. A quorum was present. Dave Barrett, a newly appointed Board member representing DCNR, was introduced. The following guests were present: Robert Wecker, USCG Auxiliary; Mr. and Mrs. Nagy, USCG Auxiliary; Charlie Johns, PA Boating Association/US Power Squadrons; Ted Onufrak, Pennsylvania Federation of Sportsmen's Clubs. Staff present included: WCO Cory Britcher, WCO Terrance Kane, WCO Kurt Tereschak; Sally Corl, North East Regional Law Enforcement Manager; Tom Kamerzel, Director of Law Enforcement; Jason Oyler, Assistant Chief Counsel, Dan Martin, Scott Bollinger and Kelly Sharp.

II. Approval of the August 22, 2005 Meeting Minutes

The minutes of the last meeting were approved.

III. Election of Officers

Mr. Mike Lentine nominated Rex Beers for Chairman; there were no other nominations, and all were in favor. A nomination was then made by Mr. Edwin Matheny for Ted Piotrowski for Vice Chairman. There were no other nominations and all were in favor.

IV. Boating Facility Grant Program Update

Scott Bollinger did a presentation on the Boating Facility Grant Program. Mr. Bollinger passed out handouts providing information on applicants and contract amounts. For 05-06, a total of 22 grants totaling \$1,826,000 in contracts were approved. Final contracts have been sent to most of the applicants. For 06-07, nine contracts were approved totaling \$1,013,000. Six of the nine contracts have been sent out. For 07-08, there are 16 potential applicants and site visits are currently being conducted. The deadline for filing for the next round is June 30, 2006. A summary list of the applicants for the next round of grants will be available in early July.

V. New Business

A. Unacceptable Boating Practices

The South Central Law Enforcement Region has requested a review of Section 105.3(1) of the Fishing and Boating Regulations. This regulation currently prohibits the operation of a boat at greater than slow no wake speed when any person is riding on the bow decking of a closed bow boat not equipped with railings or other safeguards. The current regulations do not define what makes a railing safe and they have observed boaters operating with persons on the deck of boats with short railings that would not keep someone from falling over them or railings of a height that a person could easily slip below them. While no accidents have recently been attributed to these conditions, the regulation should be reviewed by the Board for possible improvement.

One suggested revision to the current language is:

It is unlawful to operate a motorboat when the motorboat is underway at greater than slow no wake speed while a person is riding outside the passenger carrying area. The passenger carrying area is defined by continuous railings of enclosed spaces intended by the manufacturer for passenger use while the motorboat is underway. This prohibition does not apply when the operator of the motorboat is docking, mooring, anchoring, or rafting the motorboat.

Discussion:

Officer Cory Britcher from the Southcentral Regional Office spoke about what they have been observing on the Raystown Lake with people riding on decks with rails only meant for decoration. He said officers want to protect lives, and don't want to put a law into effect after only after someone dies or is seriously injured. Officer Britcher, along with other officers, is asking for a review of Section 105.3(1) based on regulations currently in place for pontoon boats. Officers would like to see a change in 105.3(1) where anyone on any type of boat would be required to be inside the passenger compartment when the speed of the boat is greater than no wake. Currently, the law allows them to be out front. Officers would like the Board to take this into consideration and make a recommendation that the Commission take a proactive approach that may someday save someone's life.

Mr. Ted Piotrowski commented that riding on the bow of a boat also obscures the vision of the operator and that alone would justify no riding up front. WCO Britcher suggested the incorporation of 105.3(1) and 105.3(9) into a single item. Item 9 deals with pontoon boats and it's very clear that everyone must stay within the passenger carrying area of these boats. The officers believe that Subsection 1 should be combined with Subsection 9, changing the wording from pontoon boat to motorboat and incorporate language about sitting within the passenger carrying compartment.

Mr. Czap commented that we need to be careful of the wording and how it affects larger vessels. Officer Britcher added that if a boat has seats up front, that is a different story. Officers only want to address passengers riding in boats that are not designed with upfront seating areas. He added that some of these boats have a front deck, have no seats in the front but have a railing. A lot of these railings are only decorative and not meant for support. Officer Britcher agreed that currently there are no statistics to back up the change, but added that this is a proactive request. It is something officers see and feel is a potential problem.

Mr. Lentine thanked the officers for bringing this item to their attention and believes this issue needs to be corrected. Andy Talento, Tri-River Marine Trade Association, says it sounds like we are trying to regulate common sense. He said "There's a lot of big cruisers that have an actual mattress out front with a two-inch railing, and that maybe all that's needed is to have a general common sense ruling that it's just an unsafe practice." WCO Britcher responded that he understands the concerns. The Commission has professional officers interpreting these regulations and they understand the spirit of the regulations. WCO Tereschak said he has never issued a citation for unsafe boating practices; he stops them and tells them what they are doing is unsafe, they are educated, and they say they didn't realize it and thank him. Mr. Ketterer said he has also witnessed unsafe practices with

people riding upfront with inadequate railings, but fortunately he has not encountered any injuries in his area.

Action:

Mr. Ketterer stated that there is a lot to be done with this to clean it up and he would like to make a motion asking the Executive Director to direct staff to look into this issue and come back with some language that everyone is comfortable with. Mr. Lentine seconded the motion and all were in favor. Mr. Austen commented that he will work with Bureau Directors Kamerzel and Simmons, and will ask Law Enforcement to put together a state-wide evaluation of this Section by bringing in the other regions and taking a look at other states to see what they have for regulations to provide alternatives for this issue. Dr. Austen added that staff will come back with a white paper on this for the next meeting. Mr. Lentine added if staff comes up with something before the next meeting, he would appreciate a copy of it. Dr. Austen said copies will be sent to all Board members.

B. Unauthorized Use of a Motorboat

Field officers occasionally encounter a person operating a boat without the authorization of the owner. Although infrequent, the officer has little recourse in the Fishing and Boating Regulations to address this situation. Unauthorized use of a motorboat is covered in Title 18 Pa Crimes Code 39.28 as a misdemeanor of the second degree. Often, the circumstances surrounding this activity do not warrant this degree of penalty and a suggestion has been made to create a regulation prohibiting the unauthorized use of a watercraft in the Fishing and Boating Regulations with a penalty of summary of the first degree.

Discussion:

Mr. Matheny commented that something should be in the Boat Code dealing with motorboats specifically and let staff decide on the penalty. Ted Piotrowski added that non-motorized boats are affected too and all boats should be included.

Action:

Mr. Ketterer moved to have staff develop proposed language for consideration at a future meeting of the Board. Mr. Methany seconded it. All were in favor.

C. Lights on Unpowered Boats

During a previous meeting, the Board discussed the interpretation of lighting requirements for unpowered boats. This discussion was precipitated by an instance on July 4, 2005 where an individual in a canoe was escorted off the water during a fireworks display where the officer was concerned that motorboats in the area would not be able to see his flashlight creating a potential for a collision. The question presented was whether a flashlight met the requirements of the Rules of the Road and whether an all round light should or could be required for unpowered boats. Staff have subsequently researched this issue with the U.S. Coast Guard and have concluded that the flashlight would meet the requirements of the rules and that the state could not enact regulations more stringent than the federal rules. Staff will present their findings to the Board.

Discussion:

Mr. Methany asked if a small pen light would satisfy this requirement. Mr. Simmons added that there is no intensity or illumination requirements for this white light on an unpowered boat, therefore, it would. Mr. Simmons added that this is an international law and the Commission is unable to change it. Mr. Martin read the current law that “a vessel under oars may exhibit the lights as prescribed for sailing vessels, but if she does not, she shall have ready at hand, an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.” If in the officer’s opinion, the white light is too small or not bright enough to prevent a collision, they could stop that boat and say it is insufficient.

Mr. Simmons added that the Rules of the Road are not intended to be a violation in and of themselves. The Rules of the Road are to be applied in time to prevent a collision. The Rules of the Road do not come into play legally until after there is a collision, and then they are the justification for who is at fault at an accident. A person should not be cited for violating Rules of the Road; they are cited for having an accident and not following the Rules of the Road. If you have a collision, you did not display the white light soon enough to prevent a collision. Mr. Kamerzel added that his officers only stop boaters if there is not a light.

Action:

Mr. Ketterer made a motion to take Mr. Simmons’ recommendation that the Board is unable to change this federal regulation, Mr. Lentine so moved, and it was seconded by Steve Ketterer. All were in favor.

D. Proposal to Ban Rafting behind Cairn’s Cove on Lake Wallenpaupack

BAB member Lentine has requested that the Board consider further restriction on rafting of boats in the cove behind Cairn’s Island on Lake Wallenpaupack. Since this cove was made slow no wake a number of years ago, this cove has become a popular place for boats to anchor and raft together. The Commission has addressed the issue a number of times and has established a no anchor zone approximately 100 feet from the shoreline docks to keep an open channel for dock owners and others to traverse through the area. The popularity of the rafting has created increased conflict with property owners who are offended by the noise and activity. The Board will discuss possible solutions to the problem and make recommendations to staff for further development.

Discussion:

Mr. Lentine made a presentation and commented that he’s been boating at Cairns Cove for five years. He said the problem arises on the weekends when large crowds start rafting and partying in the Cove. He said that the officers are patrolling, but they do not have the time to be patrolling the Cove all the time; and the noise and littering are getting unbearable for the residents that live there. Mr. Lentine has contacted the state police, but the boaters quiet down when they are present.

Mr. Beers asked if the township would have any authority to regulate overnight rafting. WCO Tereschak commented that the township ordinance is for preventing sleeping in the boats overnight with no bathroom facilities, but it does not cover loud noise. He added that

WCOs do not have any authority to enforce local ordinances. Mr. Lentine said that Lake Wallenpaupack is owned by PPL, and that any recommendations will have to be approved by PPL. He complained to PPL but they are waiting for the Commission to take a position and action. Mr. Beers asked if there are any safety issues. Mr. Lentine said if you have that many boats together drinking beer, there are bound to be problems and the littering is a real problem. NERO Manager Corl commented that the Cove is slow no wake. She added that PPL really has a non-position, and that they are under the impression that nothing needs to be changed at the present time. If the Fish and Boat Commission decides to move this item to the Commission for consideration, then PPL would then like the opportunity to comment. Right now they remain neutral.

WCO Tereschak said the existing SNW zone in the Cove was done for the people that live there; there was an exception already for the people on the lake. He added that the proposed restriction is requested to make rafting illegal not because rafting is bad, but the activities they do while rafting are objectionable. This may not be within the Commission's regulatory purview. Littering is already illegal. Mr. Kamerzel asked if it is the Commission's position to regulate activities that are not related to boating. He said State Police have authority over the Crimes Code and officers sometimes work with state police to enforce these laws. "Is this a boating safety or boating access concern?" If it is not, Mr. Kamerzel stated that he believes the Commission is here to serve the boating and fishing public and should not be imposing limitations because other people have a personal issue.

Mr. Beers asked for the Board's recommendation. Mr. Methany asked if the homeowners met with the personnel of PPL. He recommends that they go to them first and then come back to the Board with recommendations. Mr. Simmons recommended that staff contact PPL to set up a meeting with PFBC attendance. He added that he believes that the Commission should not be holding a public meeting on this issue. This is a non-boating safety issue, but we can encourage PPL to have a meeting. Mr. Simmons asked if there is lake association, what their position was, and would they organize a meeting?

Action:

Mr. Beers said that the Board recommends that a call be made to the lake association to encourage them to organize a meeting and to report back to the Board on what transpires. The motion was moved by Mr. Lentine and seconded by Mr. Ketterer. All were in favor.

E. Mandatory Wear of Lifejackets in Cold Weather Months

This past January, two accidents in Pennsylvania and one on the joint waters of the upper Delaware River resulted in the loss of three lives. Over the past 10 years, 48 persons have lost their lives in boating accidents between October and May. These lives could possibly have been saved had the individuals worn a lifejacket. The Board will review the statistics and discuss the pros and cons of a mandatory wear requirement and make recommendation to the Commission for possible action.

Discussion:

Mr. Dan Martin did a brief presentation and commented that the Board has reviewed this issue in the past and have recommended it for consideration by the Commission. Staff on request by a Boating Advisory Board member is bringing it up again. Basically, the

statistics have not changed. There were 18 fatalities where there were legal PFDS on board the boat but not worn.

WCO Cory Britcher commented that hunters do not realize they are boaters. To them, traveling by boat is just a way to transport hunters or a platform. Very few hunters wear lifejackets. WCOs try to educate hunters that they are boating and should be wearing lifejackets. Mr. Martin said he would not be promoting another regulation unless he felt strongly about it. He added that what kills these people is not hypothermia, but sudden cold water immersion shock. Mr. Martin said when you are unexpectedly plunged in cold water between 35 and 50 degrees, the torso reflex is something no one can control and ruins the ability to swim because the person hyperventilates. A lot of this information is only now becoming public knowledge. Mr. Piotrowski added that there are a lot of resources that can be saved too with this proposed regulation, along with lives. Mr. Martin said that if we had good compliance with a regulation like this we could save 1 to 2 lives a year.

Mr. Simmons commented that lifejackets save lives, but people also die wearing lifejackets. It can't be assumed that all of the 18 people that didn't wear lifejackets would be alive today. There are other situations that cause their death such as dams, alcohol, etc. Mr. Simmons expressed his concern about having another major requirement on recreational boating. It might have an impact, but the people not wearing lifejackets are the ones that wouldn't wear them even if it was a regulation.

Mr. Methany asked if it would be wise for a press release to go out to see what public opinion is on mandatory lifejacket wear during winter months from October 1 to May 1. Dr. Austin said people not wearing lifejackets are not going to read press releases. Mr. Barrett said this is common sense and people will not adhere to it even when its law. Mr. Martin said the hidden danger is cold water and most people don't realize this danger. He thinks this will save enough people to have this regulation considered.

Action:

Mr. Ketterer made a motion that the Board recommend to the Commission that they publish a notice of proposed rulemaking that would require the wearing of life jackets by all boater occupants during the cold weather months; Mr. Lentine seconded it, and all were in favor.

F. Fine Tuning Life Jacket Requirements

Current boating regulations establish requirements for the carriage and/or use of lifejackets on boats and for specific activities. These requirements are general in nature and simply require that the person carry or use U.S. Coast Guard approved Type I, II, III or V devices. In recent years the Coast Guard has begun to approve devices for specific activities. For instance, a Type III may be approved for whitewater or sailing; a Type III inflatable may be approved for general use, but specifically prohibited for use on personal watercraft. Pennsylvania also does not have specific requirements for speed rated devices for use by water skiers, thus allowing someone to water ski using a Type II horse collar device which probably should not be the device of choice for this activity. The Board should consider whether there is a need for additional clarification of this regulation.

Discussion:

Mr. Martin said that this issue is extremely complicated. There are so many different types of PFDs and most of them are rated for specific activities. Mr. Martin referred the Board to the PFD Manufacturing Association which is part of the National Marine Manufacturing Association. He said they have an excellent website and they have a common sense approach explanation of PFD types. Mr. Martin also commented that we don't have sufficient information of serviceability requirements, especially for inflatable PFDs. Mr. Simmons added that this is not a major issue and there has been no fatalities directly attributed to the use of an improper lifejacket. But he further stated that these regulations are hard to understand. Even staff and WCOs don't understand how PFDs are being rated anymore. Mr. Martin said its best to read the PFD labels due to the fast-paced changes.

G. 2005 Boating Accident Summary

Discussion:

Dan Martin provided handouts and a summary of boating accidents for 2005. He said it was an unusual year due to the type of accidents that occurred. Most of the accidents involved powerboats. For the first year since he has been the Boating Accident Officer, we have not had any fatalities in canoes or kayaks. During the previous two years, most accidents involved unpowered boats. In 2004, 82% of the fatalities were in unpowered boats. He said 2005 was not a typical year except in the numbers. Mr. Martin provided charts indicating the number of fatalities and in what months from 1996 until present. Mr. Beers asked how we compare with other states in accidents. Mr. Martin said we are one of the safest states in the country; one of the top six states in the nation. Mr. Beers asked if we can get a list of where we rank in the nation. Mr. Simmons said the USCG has the information for 2004 and Mr. Martin will email that information to the Board.

H. Mandatory Education for New Jersey.

Mr. Beers said this item was added because there is a new law in New Jersey for mandatory boating education. This law was supposed to be phased in, but they cut down the timeframes. Mr. Martin commented that New Jersey staff doesn't know how they are going to implement this new law within such a short time period, with no staff, and no budget for the certificates that are to be distributed by July 1. Mr. Beers asked if New Jersey is going to honor our boating safety certificates. Mr. Martin said if you are a PA resident, they will take any certificate issued by the PA Fish and Boat Commission. If you are a New Jersey resident using a boat registered in New Jersey, you must have a New Jersey certificate. For the main part of the Delaware River, if you are a PA boat, they are not going to require a certificate. If you go back into one of the New Jersey bays, rivers, or outlets, now you are away from the main river and NJ police will require a certificate.

I. Review New Travel Reimbursement Form

A new electronic travel reimbursement form has been created in an Excel Spreadsheet. A presentation was made to Board members on how to use this spreadsheet. This new form can easily be emailed or printed out and mailed to the Harrisburg office for entry into the SAP system.

J. Review of Boating Advisory Board Guidebook

During the mid-1990s, staff prepared a compilation of policies and guidelines to assist the Board in the performance of their duties. The Board did a cursory review this document and discussed several items. It was decided that the Board will further review the Guidebook and identify any topics that need included or additional clarification by the Commission, the Comptroller's office or others.

Meeting was adjourned at 3:00 p.m.