

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

**MINUTES FOR
THE BOATING ADVISORY BOARD MEETING**

**October 21, 2008
10:30 a.m.
Harrisburg, Pennsylvania**

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**Daniel G. Martin
Director
Bureau of Boating and Access**

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

Members

Loren Lustig
Mary Liskow
Damian Zampogna
Andrew Talento
Michael LeMole

Members Ex Officio

Dr. Douglas J. Austen, Executive Director
Daniel G. Martin, Secretary
David Barrett for Michael DiBerardinis, Secretary for the
Department of Conservation and Natural Resources

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I. Roll Call

The meeting was called to order at 10:30 a.m. Roll was called and all Members of the Board were in attendance except Mr. Zampogna and Mr. Barrett. A quorum was present.

Staff present included Laurie Shepler, Chief Counsel; Jason Oyler, Assistant Council; Tom Kamerzel, Director of Law Enforcement; Donald L. Lauver, Southcentral Region Law Enforcement Manager; Tim Schaeffer, Director and Eric Levis, Communications Chief, from Policy, Planning & Communications; Jackie Kramer, Statewide Public Access & Conservation Lands Coordinator; Scott Bollinger, Boating Facilities Program Coordinator; Kelly Sharp, Administrative Officer/Waterways Programs Manager; and Ryan Walt, Southeast Region ARPS.

II. Introduction of Guests

Michael DeVoge of the Conneaut Lake Navigation Company

III. Awards

Dan Martin stated that awards were given to previous BAB members- Rex Beers and Michael Lentine, both of whom were not present at this meeting. Dan previously spoke with Mr. Lentine and was pleased to report that he has completely recovered from a considerably serious illness. He was unable to attend the meeting due to a doctor appointment.

IV Approval of the January 8, 2008 Meeting Minutes

The minutes of the last meeting were approved.

V. Elections

Andrew Talento nominated Lauren Lustig as Chair and Mary Liskow as the Vice-Chair. Dr. Austen seconded the motion and all were in favor.

VI. Chief Counsel Laurie Shepler Remarks

Using a Power Point presentation, Ms. Shepler gave a general overview of the Boating Advisory Board's functions, composition, qualifications of its members and its advisory powers in regards to the Commission, the parliamentary type procedures used, the proper process for making a motion, and the Sunshine Law.

Board members were informed that there is no compensation awarded to them while they are performing their functions on the board. When a BAB member is acting within their official scope of duties they are authorized to operate Commonwealth vehicles and watercraft. Also, if a member is involved in some type of accident whether it results in personal injury or property damage he/she would be treated as an employee for purposes of the Commonwealth's general and automotive liability insurance as well as the worker's compensation act.

The Board should meet at least once each year at which time the new Chair and Vice Chair is elected. Dan Martin, Director of Boating & Access, serves as the Secretary. Meetings must be held in the place and time designated by the Chairman and three members of the board or the Commission. In order to transact business the board must have a quorum (defined in the statute as 5 members of the board including three volunteer members). Under the Sunshine Act, the meeting must be advertised in advance to the general public and held in a place accessible to the public.

Discussion:

Questions were posed to the Chief Counsel by members of the Board regarding closed-door sessions. She explained that there is an exception to the Sunshine Law that deals with executive sessions. Certain listed topics for which executive sessions may be held would deal with potential litigation, real estate matters or employment matters. The apparatus and the regulations are in place so that, if necessary, a closed-door meeting could occur. Another exception would be briefings or conferences in which the governing body wouldn't necessarily be engaged in discussions regarding agency business. Board members also wanted to know what is meant by "scope of duties" in regards to being covered by Commonwealth insurance for injury or damages.

VII. Public Comment

No comments or questions were posed by the members of the public in attendance.

VIII. Boating Facilities Grant Program Update

Scott Bollinger, Bureau of Boating & Access, gave a presentation and update of the Boating Facilities Grant Program. To date, the Commission has reviewed and evaluated 88 applications for grants while 54 projects were recommended for approval. Out of the 54 projects there have been six cancellations; therefore, there are 48 active projects under the Boating Facilities Grant Program. All of these 48 projects have fully signed and executed contracts, and 36 applicants have submitted their final engineering designs and bid specs. Staff has reviewed applicants' engineering designs, made recommendations and provided notice to proceed with construction.

To date, 29 projects have been completed and inspected by staff and payment has been made to the applicants. Mr. Bollinger noted that those 29 projects appear in his status report handout. The report shows the location of the project, the work that was completed under the grant, the completion date and how much grant funding was used for the project. There are a number of projects that are ongoing and many of them are scheduled to be completed by December 2008. Among these, six applicants have asked for extensions and they will most likely be extended another six months.

For the current grant round, several key changes to the program have been made. Notably, the Commission opened up the grant program to non-profit entities such as land trust conservancies and watershed associations. Previously, grants were only available to local governmental entities.

Bollinger outlined grant eligibility requirements and noted that the grant round was extended to October 31st. To date 35 applications have been received, three of which from non-profit groups. The applications are currently under review for their completeness. After review the reviewing team's recommendations will be made to the executive director and Commission. The Board suggested that Mr. Bollinger make his grant program update available on the Commission's website for the public to review.

Discussion:

Discussion took place to clarify various aspects of the Boating Facility Grant Program including rating and selection processes, rules for funding, time frames, deadlines and what type of organizations are eligible. It was pointed out that a parcel of land must remain open to public use for 25 years if it should qualify for grant funding.

Dan Martin explained that the rules have changed which should increase the number of applicants in the future. Bollinger stated that the range of grant dollars requested is from \$3,000.00 to \$300,000.00 with no maximum dollar amount in answer to that question posed by Mr. Lustig. An average request is around \$85,000.00. He explained that there is a team of reviewers which includes staff from the Bureau of Boating & Access and the Bureau of Engineering who examine the grant applications to determine recommendations to the executive director and the Commission.

Ms. Liskow was interested in what type of organizations qualify for grants. Bollinger clarified that the grant program always encouraged non-profit entities like schools to apply but they had to apply through their local government. With the new changes, land trusts, conservancies and watershed associations can be direct applicants.

In conclusion, Mr. Lustig mentioned a meeting that he attended involving the Southcentral part of PA and stressed the fact that public access issues need to be addressed and pursued. He applauded the work of the Commission's grant organization and Mr. Bollinger's leadership in this program.

IX. Guest Speaker Mike DeVoge, Conneaut Lake Navigation Company

Mr. DeVoge gave an instructional and informative presentation on a relatively new water sport called "wake surfing." He personally demonstrated the proper use of a wake surfing board. He explained how enjoyable this sport can be, discussing the reasons for its growing popularity. There was a great deal of discussion by the Board about the ramifications of this new sport.

XI. New Business

Proposed Rulemaking

- A. Amendment to §111.17 (Clearfield County) - **This** is a special regulation in Clearfield County. The slow-no-wake area has been marked for years but it has never been part of the regulations. The U. S. Army Corps of Engineers has requested this be included in the regulations. Staff recommends that it be included in the regulations.

Discussion:

No comments, questions or any further clarification was necessary.

Action:

Andrew Talento moved to follow through with this slow-no-wake initiative. Mary Liskow seconded the motion. All were in favor to recommend this proposed change to the Commission.

- B. Amendment to §105.3 (Unacceptable boating practices) - Right now it is legal to ride outside the passenger carrying area of a pontoon boat at slow-no-wake speed. Staff considers this to be an unsafe practice. Staff proposed that the phrase stating that a passenger can ride outside the passenger carrying area of a pontoon boat when the pontoon boat is underway at slow minimum height swell speed or less be removed from the regulation. This does not apply when

the operator of the boat is docking, mooring, anchoring or rafting the pontoon boat. Staff proposed that the part “or when the pontoon boat is underway at slow minimum height swell speed or less,” be removed from the regulation for safety reasons.

Discussion:

Southcentral Region Law Enforcement Manager, Don Lauver, commented that there are similar issues with other types of motorboats. Mr. Lustig commented that he understands the concept of dealing specifically with pontoon boats and welcomed and appreciated Lauver’s comments. He expressed his wish to deal with this issue for other vessels at a future meeting.

Action:

Andrew Talento moved to accept staff recommendations in this regard. Michael LeMole seconded the motion. Dr. Austen interjected that he also agreed that Don’s comments were important and there is a need to get back to them, but it is a complicated issue which should be addressed at a later time. He stated that at this time something we know is an issue should be cleaned up first and deal with the other issue later. All present were in favor of the proposed change and the motion was carried.

- C. Amendment to §91.5 (Parental and boat owner responsibility)- The Commission’s current regulations do not include a provision to make it unlawful for a boat owner to knowingly allow someone to operate a boat without a boating safety education certificate on board when the individual is required to have one. Law enforcement staff requested that this requirement be added. The first recommended change would be to Part A where the word watercraft would be changed to boat and a new part C making it unlawful for the owner of a boat knowingly to allow an individual who is required to have a boating safety education certificate to operate the boat without having it onboard. This is another clean up of the regulations which would give the WCOs the ability to deal with this scenario.

Discussion:

Mr. Lustig felt that this was a straightforward subject and that these kinds of things should be cleaned up.

Action:

Mary Liskow moved to adopt this proposal. Andrew Talento seconded the motion. All were in favor and the motion carried.

- D. Amendment §109 (Specialty boats and waterskiing activities) - The next section involved the cleanup of the regulation concerning the construction of air boats. No one on staff could find out why there is such a long section in the regulations discussing the construction of air boats. Staff was not even sure if the regulation is accurate and couldn’t find out from the manufacturers if what is in the regulations is accurate. The proposal is that it be removed, especially since there is no other section like this in the regulations describing how to build any other boat.

Discussion:

Mr. Lusting felt that this was an interesting regulation. He commented that he personally has seen and heard of air boats in FL and he ran into a small contingent of air boaters on the Susquehanna River above Millersburg.

Action:

Mary Liskow moved to accept staff's recommendation. Andrew Talento seconded the motion. All were in favor and the motion was carried.

- E. Addition of §111.68 (All Counties) - This is a new section in the regulations which would give our officers the authority to enforce a certain rule on PGC lakes. Right now information on violations is turned over to the PGC. In the past, motors of any type were illegal on PGC lakes. PGC regulations now allow electric motors on some lakes. The proposal would give our officers the authority to routinely enforce boating regulations on Game Commission lakes.

Discussion:

Mr. Lustig summarized that there are Game Commission lakes which do not allow motors at all, some allow electric motors, and none allow gas motors. The Commission's proposal is to add a section to the regulations that operation of boats powered by internal combustion motors be prohibited on all Game Commission lakes, unless posted otherwise.

Action:

Mr. Talento moved to accept this proposal. Mr. LeMole seconded the motion. The motion was carried.

- F. Amendment to §95.3 (Lights for boats)- Currently Commission regulations state that while a paddle boat is underway the operator must display a hand-held or permanent all-around white light, ready to be displayed in time to prevent a collision. This requirement is very hard for the public to understand. Rule 25 of Federal Navigation Rules refers to lights for unpowered boats. This type of vessel may exhibit the lights prescribed in this rule for sailing vessels and if she does not, it must have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent a collision. The Commission's proposal is to add this to Section 95.3(b) (4) of the regulations. Adding "any other unpowered boat" to that section simplifies the lighting regulations and makes it clear that small sailboats less than 7 meters and all other unpowered boats may display the lights described in appendix A. (Mr. Martin provided a hand out showing Appendix A- lighting configuration). This would make it clear that a single white light on board such as a flashlight or an anchor light is sufficient to meet the legal requirements for all unpowered boat.

Discussion:

The handout was discussed and it was pointed out that some corrections must be made to it. Staff assured the Board that corrections will be made after the regulation is approved.

Mr. Talento reiterated that a flashlight would be acceptable to have on board in keeping with regulations.

Mr. Lustig pointed out that this regulation must be made clear and understandable to the public otherwise the Board is partially at fault when the public doesn't comply.

Action:

Mr. Talento moved to approve the Commission's recommendation. Mary Liskow seconded the motion. The proposal was approved pending necessary revisions to the lighting configuration diagrams.

- G. Amendment to §101.5 (Confidentiality of boating accident reports) - A written request has always been required by the Fish & Boat Commission to supply a certified abstract of a boating accident. This amendment simply adds this requirement to the existing regulation.

Discussion:

Mr. Lustig commented that he reads boating accident reports from a learning standpoint and to inform him of what is happening in the Commonwealth and how we can take steps to improve the overall safety of our boaters. He voiced his appreciation to Mr. Martin for his fine work in this program and thanked the Commission that he is able to review this valuable information.

Action:

Mr. Talento moved to accept staff's recommendation. Mr. LeMole seconded the motion. All were in favor and the motion was carried.

- H. Amendment to §53.8 (Boats) and §97.1 (Personal flotation devices) - 53.8 involves property regulations and 97.1 personal flotation devices. 97.1 follows the federal code. It excludes racing shells, rowing skulls and racing kayaks, from the requirement for PFDs. This section provides that the exemption does not apply to Commission and State Parks owned and controlled waters. Section 53.8 of the regulations similarly requires occupants of such watercraft to carry or wear coast guard approved life jackets while on Commission property. Of note, this kind of boating is somewhat exclusive due to its nature. Most often racing shells, skulls and kayaks are used by school groups or special clubs, and with little exception, are very safe boaters. The accident record for such boats does not point to the need for requiring PFDs on any waters and at this time they are only required on Commission-owned waters. In addition, there is no support to require occupants of such boats to wear PFDs on small Commission-owned lakes when they are not required to carry them on larger waters. For example, you don't need them on Lake Erie. Section 97.1(f) also provides detailed information on what type of PFD must be carried by the safety boat following this watercraft. This section does not, and

may not (because of the federal regulation) require that there even be a safety boat present. The section also states that safety boats should carry a sufficient amount of wearable life jackets for occupants of the racing boats they accompany. This also doesn't make sense since any PFDs required to be carried should be throwable PFDs so they can be easily thrown to an individual. Staff proposes that Section 53.8(b) and 97.1(f) be amended to remove the property regulations requirement to carry or wear PFDs on Commission-owned lakes. Also under 97.1 Personal flotation devices- staff recommends the removal of the section regarding safety boats to carry a sufficient number of readily accessible/wearable PFDs for the occupants of those boats.

Discussion:

Mr. Martin felt that the Commission will get comments if this becomes proposed rulemaking. Mr. Lustig wanted to know if those comments would be an endorsement of this proposal. Mr. Martin felt that there would be a positive endorsement.

Mr. Talento commented about the three rivers area where there is a lot of commercial traffic, recreational traffic and large boats as well as rowers. There have been instances where it was good that there were safety boats on the scene with life jackets onboard. There have been major wake issues where these boats get overturned. Last year for the three rivers Regatta fireworks, there was a dragon boat with 20 people onboard and it capsized on the way back. It was a near catastrophe. This is a concern.

Mr. Martin stated that since the federal regulations don't require PFDs to be carried and they are specifically excluded, we cannot require them on Commonwealth waters. He stated that cleaning up this regulation would clear up a lot of questions and confusion about these regulations.

Action:

Mary Liskow moved to approve this proposal. Michael LeMole seconded the motion. All were in favor of staff recommendations and the motion carried.

- I. Amendment to §111.20 (Crawford County) - Pymatuning Lake is a DCNR lake, and part of Pymatuning State Park. State Parks just changed the regulation for the lake to a maximum of 20 horsepower. The commission took all the DCNR lakes out of the regulations. We are proposing that horsepower references on this lake be taken out of the PFBC regulations as well, especially since it is no longer accurate at 10 horsepower.

Discussion:

Mr. Lustig mentioned that Pymatuning is an interesting body of water which straddles the Ohio/Pennsylvania border and being halfway between Pittsburgh and Erie. It is a very shallow body of water.

Mr. Martin made the comment that there are a lot of pontoon boats that cruise this body of water and the 10 horsepower motors were not big enough to efficiently push them around. It wasn't a very good idea. This was one of the reasons this was included in the 20 horsepower.

Mr. Lustig asked if there was an issue that would relate to regulations promulgated from Ohio's standpoint. Dr. Austen stated that it was a major project to match Ohio's and PA's regs. This project was passed on to the new legislature which did a very good job of getting this project finished. PA worked very closely with Ohio's DNR and our Senator there was very supportive of this and did a very good job. It was an accomplishment that had taken years to come together. There was a group of sail boaters there who were intractable in their opposition to this, just a small group. So this is a good thing to help everyone to move on.

Action:

Mr. Talento moved to follow staff's recommendations. Mary Liskow seconded the motion. All were in favor and the motion carried.

- J. Amendment §109.6 (Special marine events)- PFBC regulations provide that the Commission will not issue a Special Activity Permit for a marine event in a state park unless the applicant first attains written permission from the Bureau of State Parks, Department of Conservation and Natural Resources for the event. The Commission issues permits for events occurring in state forests not just state parks. Moreover, the regulation states that for marine events held on waters under the ownership or control of other federal or state agencies the Commission will require evidence that the applicant has permission from the controlling agency. To simplify, staff recommends that the regulation requires the permission of the entity that owns or controls the waters in which the marine event will occur.

Discussion:

Mr. Lustig asked if this written permission would be expected on an annual basis. Mr. Martin explained that they are specific to each event and date.

Action:

Mr. Talento moved to follow staff's recommendation. Mr. LeMole seconded the motion. All were in favor and the motion was carried.

- K. Amendment to §97.3 (Sound producing devices) - Under this section sound producing devices are required on all boats including unpowered boats. Any means of making a sound is acceptable. The term "some means" is not defined. Staff recommends that any requirement for sound producing devices for unpowered boats be removed from the regulations.

Discussion:

Mr. Lustig added that this would include all hand powered boats and sailboats.

Mr. LeMole asked if this would be contrary to the Code of Federal Regulations.

Mr. Martin suggested that this matter be tabled to a later date instead of acting on it now. Mr. Lustig feels this is an interesting subject to grapple with and would entertain a motion to either table it, awaiting further investigation of staff, or the motion to accept the proposal with the caveat that further

regulations and discussions be forthcoming to bring it into compliance with CFR.

Action:

Ms. Liskow moved that we recommend that unpowered boat operators not be required to have on board any type of sound producing devices with the caveat that if this runs contrary to CFR in regards to sailboats that this be addressed as a provision. She added that she welcomes this regulation as a livery operator who deals with many unpowered boats on a daily basis. Mr. Talento seconded the motion, all were in favor.

Discussion Items

- A. Wake surfing and boat tow rope length- Mr. Martin pointed out that the NASBLA Model Act and the Commission's regulation is the same regarding different types of recreational water skiing and feels wake surfing would also fall into this category. It was stated that teak surfing is a prohibited sport on Commonwealth waters. The Board briefly discussed the length of the tow line. Martin said that if performed responsibly, wake surfing is a relatively safe water sport. He would like a more lengthy discussion to take place specifying the safe length of the tow line and other aspects of wake surfing, so the regulations can be clear and concise regarding this sport.
- B. Fire extinguishers- PFBC regulations model the CFR. Some Commission staff recommend that the regulations be changed so all boats with any kind of internal combustion engine must have fire extinguishers on board. This would clean up the regulation and make it very simple to understand. Section 97.2 is complicated and can be confusing to the public. We now have about 340,000 registered boats; approximately 200,000 of those would not be required to have fire extinguishers at this time. We have had three fire explosion accidents reported to us this year. One was on a PWC and one on a cabin motorboat, both of which are required to have fire extinguishers. The suggested change would require a lot of boaters to purchase fire extinguishers, but would greatly simplify the regulation. Most other states follow the federal CFR.
- C. Type IV throwable PFDs - PFBC regulations for throwable PFDs basically follow the federal CFR. Throwable PFDs are required on boats 16 ft in length or greater. Unpowered boats are excluded. Mr. Martin advised that some WCOs believe that throwable PFDs should be required on some types of unpowered boats (not kayaks). It might be something to consider for canoes. However, in many scenarios if a canoe capsizes, the PFDs onboard that were not being worn would be trapped under the canoe anyway.
- D. Commercial use of boat access - In PFBC's property regulations 51.16(d) place restrictions on commercial liveries for using Commission boat access. The regulations do allow an exception (an administrative policy is in place) where a commercial enterprise can apply to the executive director to launch more than the boats listed in the regulations at Commission access areas. The policy looks like a regulation. It was suggested that the Board look at the administrative policy and the regulation to become familiar with them and suggest to staff any changes they feel would be fair. It was felt that a panel of livery owners could

be organized to address their wishes and suggestions with the Fish & Boat Commission to come to some conclusion regarding liveries and this regulation.

- E. Boat motor serial numbers and model plates- There is nothing in our regulations that makes it illegal to change the serial number or model plates on motors. We do have some issues that deal with the ability to steal motors. There is nothing to prohibit a person from removing a model or serial number from an outboard motor. People will change the model plate on their motor so they can operate a 15 horsepower motor on a lake that has a 10 horsepower restriction.

Staff would like a regulation making this practice illegal. Further discussion is certainly necessary in this case and the Board's thoughts on where we should go with this are greatly needed.

Additional Comment-

Mary Liskow commented that there is an on-line certification course for non-powered paddlers now, which is www.ipaddleonline.com, through the American Canoe Assn in conjunction with the Sport Fish Restoration and Boating Trust Fund. The course is administered by the U.S. Coast Guard. She felt that this would be something we should make available to boaters.

Mr. Martin was aware of this and thought it was a good course. He will see that a link is added to our website to access this course.

Mr. Talento made the motion that the meeting be adjourned. Mr. LeMole seconded the motion. All were in favor of adjournment.

Meeting adjourned at approximately 1:00 pm.