

Order Adopting Amendments

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapters 51, 53, 63, 65, 69, 75, 101 and 113

General Provisions, Fishing and Boating

Preamble

The Fish and Boat Commission (Commission) amends 58 Pa. Code Chapters 51, 53, 63, 65, 69, 75, 101 and 113 (relating to administrative provisions; Commission property; general fishing regulations; special fishing regulations; fishing in Lake Erie and boundary lakes; endangered species; boating accidents; and aids to navigation and obstructions to navigation). The Commission is publishing this final-form rulemaking under the authority of 30 Pa. C.S. (relating to the Fish and Boat Code) (code) and other authorities described below.

A. *Effective date*

This final-form rulemaking will go into effect immediately upon publication of this order in the *Pennsylvania Bulletin*.

B. *Contact person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, Esq., (telephone 717-705-7810), P.O. Box 67000, Harrisburg, PA 17106-7000. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory authority*

These amendments are published under the statutory authority of section 506 of The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §186.

These amendment also are published in accordance with section 204 of the Commonwealth Documents Law (CDL), Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. §1204, which provides that an agency may omit or modify the procedures specified in sections 201 and 202 of the CDL if the administrative regulation or change relates to agency organization, management or personnel; agency procedure or practice; or Commonwealth property or if the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 of the CDL are under the circumstances impracticable, unnecessary or contrary to the public interest.

D. *Purpose and background*

Pursuant to 58 Pa. Code §51.5 (relating to correction of regulations), the Executive Director is authorized to take immediate corrective action on the Commission's behalf if the Executive Director or the Commission's staff discovers an error or omission in the text of a Commission regulation as published in the *Pennsylvania Code* or *Pennsylvania Bulletin*. A comprehensive review of the Commission's regulations has revealed that there are errors or inaccuracies in the text of several Commission regulations, as more particularly described in the summary of changes below. The purpose of this final-form rulemaking is to correct these errors and inaccuracies.

E. *Summary of changes*

(1) Section 51.105(c) (relating to amount of proposed civil penalty forfeiture) currently refers to the Department of Environmental Protection. It should refer to the Commission.

(2) Section 53.5 (relating to hunting and trapping), which regulates hunting and trapping on Commission property, refers to The Game Law, 34 P.S. §§ 1311.101-1311.1502. This section should reference current law, The Game and Wildlife Code, 34 Pa. C.S. §§ 101-2965.

(3) Section 53.8(h)(1)(iii)(relating to boats), which exempts from registration certain types of boats using Commission lakes or access areas, is not consistent with and does not track the code. The reference to public service boats should be limited to unpowered ones since motorboats owned by public service organizations are required to be registered (but exempt from fees) under section 5302(c) of the code (relating to exemptions from registration). Therefore, they cannot be exempt from registration under §53.8(h)(1)(iii). In addition, the reference to section 5302(a)(3) should be to 5302(c)(2).

(4) Section 63.9(b) (relating to snatch fishing, foul hooking and snag fishing) omits “crossbows” in its references to the provisions of §63.8 (relating to long bows, crossbows, spears and gigs).

(5) Section 65.24 (relating to miscellaneous special regulations) requires two corrections. The miscellaneous special regulation applicable to Pymatuning Reservoir in Crawford County should have “crossbows” inserted into the parenthetical description of §63.8. The miscellaneous special regulation applicable to the West Branch, Clarion River in Elk County should reflect the current name of the special trout regulation area. The reference should be to the catch and release, fly-fishing only area, not the Delayed Harvest, Fly-fishing Only area. The Commission, by notice published at 35 Pa. B. 6469 (November 26, 2005), re-designated this area as a catch and release, fly fishing only area, effective January 1, 2006.

(6) Sections 69.12, 69.31 and 69.33 (relating to season, sizes and creel limits—Lake Erie and Lake Erie tributaries; seasons; and use of trap nets) describes the season for walleye as January 1 to midnight March 15. These sections should be amended to read “January 1 to March 14” so that they are consistent with the description of the walleye season in §61.1 (relating to Commonwealth inland waters).

(7) Section 75.4 (relating to special permits) refers to the Non-Game and Endangered Species Unit, Bureau of Fisheries. The Bureau of Fisheries underwent a reorganization a few years ago, and this unit is currently known as the Natural Diversity Section, Division of Environmental Services. The reference in this section should reflect the current name.

(8) Section 101.6(c) (relating to investigation reports by Commission officers) references section 234 of the code when the correct reference is to section 324 (relating to Commission records).

(9) Section 113.3 (relating to operation of boats) references §103.3(d) (relating to restriction for special areas) when the correct reference is to §103.3(c).

F. *Paperwork*

This final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. *Public Involvement*

Under section 204 of the CDL, an agency may omit the procedures specified in sections 201 and 202 of the CDL if the agency finds that these procedures are unnecessary or if the administrative regulation or change relates to agency organization, management or personnel; agency procedure or practice; or Commonwealth property. The Commission, therefore, did not publish these amendments as a notice of proposed rulemaking or solicit public comment.

FINDINGS

The Commission finds:

(1) Errors and inaccuracies were discovered in the text of 58 Pa. Code §§51.105, 53.5, 53.8, 63.9, 65.24, 69.12, 69.31, 69.33, 75.4, 101.6 and 113.3 as published in the *Pennsylvania Code*.

(2) Under 58 Pa. Code §51.5, the Executive Director is authorized to take immediate corrective action on behalf of the Commission, including, if necessary, the issuance of an order to make the necessary correction, if the Executive Director or the Commission's staff discovers an error in the text of a Commission regulation as published in the *Pennsylvania Code*.

(3) Because the nature of the amendments is minor and designed to correct errors and inaccuracies and because certain of the changes relate to agency organization, agency procedure or Commonwealth property, the Commission finds that the procedures of sections 201 and 202 of the CDL are unnecessary.

ORDER

The Commission, acting under the authorizing statutes, orders that:

(A) The regulations of the Commission, 58 Pa. Code Chapters 51, 53, 63, 65, 69, 75, 101 and 113, are amended by amending §§51.105, 53.5, 53.8, 63.9, 65.24, 69.12, 69.31, 69.33, 75.4, 101.6 and 113.3 to read as set forth at Annex A.

(B) The Executive Director will submit this order and Annex A to the Attorney General for approval as to legality as required by law.

(C) The Executive Director shall certify this order and Annex A and deposit the same with the Legislative Reference Bureau as required by law.

(D) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

For the Pennsylvania Fish and Boat Commission

Douglas J. Austen, Ph.D.
Executive Director

Annex A

Regulation No. 48A-211

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart A. General Provisions

CHAPTER 51. ADMINISTRATIVE PROVISIONS

§ 51.105. Amount of proposed civil penalty forfeiture.

* * *

(c) *Revision of proposed civil penalty.* The Executive Director, upon his own initiative or upon written request received within 15 days of issuance of an order to show cause, may revise a proposed civil penalty calculated in accordance with the dollar limits in subsection

(a). If the Executive Director revises the civil penalty, the **[Department of Environmental Protection] Commission** will use the general criteria in subsection (a) to determine the appropriate civil penalty. * * *

CHAPTER 53. COMMISSION PROPERTY

§ 53.5. Hunting and trapping.

Legal hunting and trapping are permitted on property owned or controlled by the Commission in conformance with The Game **[Law] and Wildlife Code [(34 P.S. §§ 1311.101-1311.1502) (Repealed)] (34 Pa. C.S. §§ 101-2965)** and Part III (relating to Game Commission) unless otherwise posted.

§ 53.8. Boats.

* * *

(h) A boat using a Commission lake or access area shall be registered and display the official registration number and current validation stickers described under Subpart C and Part III of the code.

(1) This subsection does not apply to:

* * *

(iii) **[Public] Unpowered public** service boats as defined under section 5302[(a)(3)](c)(2) of the code (relating to exemptions from registration).

* * *

Subpart B. Fishing

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.9. Snatch fishing, foul hooking and snag fishing.

* * *

(b) Nothing in subsection (a) may be construed to prohibit the use of long bow, **crossbow**, spear and gigs as provided in § 63.8 (relating to long bows, **crossbows**, spears and gigs) or other net or devices specifically authorized by law or this subpart.

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

County	Name of Water	Special Regulations
* * *	* * *	* * *

Crawford	Pymatuning Reservoir	Only carp and suckers may be taken by means of spearing or archery in compliance otherwise with § 63.8 (relating to long bows, crossbows , spears and gigs). * * *
* * *	* * *	* * *
Elk	West Branch, Clarion River	The following additional restrictions apply to the [“Delayed-Harvest, Fly-Fishing Only”] “Catch and release, fly-fishing only” area located on a 1/2-mile stream section from the intersection of S. R. 219 and S. R. 4003, upstream to the Texas Gulf Sulphur Property: Wading Prohibited. Fishing permitted from east shore only.
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CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

§ 69.12. Season, sizes and creel limits—Lake Erie and Lake Erie tributaries.

* * *

(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

Species	Season	Minimum Size	Daily Limit
* * *	* * *	* * *	* * *
Walleye	January 1 to [midnight] March [15] 14 and 12:01 a.m. the first Saturday in May to December 31	15 inches	6
* * *	* * *	* * *	* * *

§ 69.31. Seasons.

* * *

(b) The commercial fishing season for walleye is January 1 to [**midnight**] March [**15**] **14** and 12:01 a.m. the first Saturday in May to December 31. * * *

§69.33. Use of trap nets.

* * *

(b) *Species.* * * *

Species	Size Limit	Season
* * *	* * *	* * *
Walleye (<i>Stizostedion vitreum</i>)	15 inches	January 1 to [midnight] March [15] 14 and 12:01 a.m. the first Saturday in May to December 31. This season will close when the total allowable catch for walleye is taken.
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CHAPTER 75. ENDANGERED SPECIES

§ 75.4. Special Permits.

* * *

(2) Persons and institutions requesting special permits shall apply before taking, catching, killing, possessing or acquiring the threatened or endangered species. Application forms and information are available from [**: NonGame and Endangered Species Unit, Bureau of Fisheries] the Natural Diversity Section, Division of Environmental Services,** 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616.

Subpart C. Boating.

CHAPTER 101. BOATING ACCIDENTS

§101.6. Investigation reports by Commission officers.

* * *

(c) Under section [234] 324 of the code (relating to Commission records), boating accident investigation reports are not considered public records and they will not be released except for the following:

- (1) Pursuant to a valid subpoena.
- (2) When 234 Pa. Code (relating to Rules of Criminal Procedure) requires production of the documents.
- (3) To other government agencies for official purposes.

CHAPTER 113. AIDS TO NAVIGATION AND OBSTRUCTIONS TO NAVIGATION

§113.3. Operation of boats.

The Commission or the Executive Director acting under §103.3[(d)] (c) (relating to restriction for special areas), may establish or authorize establishment of control zones.

Established control zones will be indicated by regulatory markers at the beginning, at the end and at appropriate intermediate points. It is unlawful for operators to operate a boat contrary to the restrictions of the controlled area.