

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

**MINUTES FOR
THE BOATING ADVISORY BOARD MEETING**

**Monday, June 5, 2023
9:00 a.m.
Harrisburg, Pennsylvania**

Members

Chair Scott Ballantyne
Vice Chair Rocco Ali
Steven Ketterer
Loren Lustig
Elizabeth Winand

Members Ex Officio

Timothy D. Schaeffer, Executive Director
Laurel L. Anders, Director of Boating, Secretary to the Board
Ryan Dysinger for Cindy Adams Dunn, Secretary for the
Department of Conservation and Natural Resources

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I. Call to Order, Welcome, and Roll Call

The meeting was called to order by Chair Scott Ballantyne at 9:00 a.m. at the Pennsylvania Fish and Boat Commission's (Commission) Harrisburg Headquarters. Board members in attendance included Chair Scott Ballantyne, Vice Chair Rocco Ali, Steven Ketterer, Loren Lustig, Elizabeth Winand, Timothy Schaeffer, Laurel Anders, and Ryan Dysinger. A quorum was present.

In addition to the members of the Board, Commission President B.J. Small; Commissioner Richard Lewis (Boating At-Large); and Commissioner Donald Anderson were present, along with the following Commission staff: Rachael Thurner-Diaz, Waterways Conservation Officer; Caleb Cramer, Waterways Conservation Officer Cadet; Mark McLaughlin, Chief of Waterways and Marina Management; Mike Parker, Director of Communications; Adam Spangler, Boating Safety Education Specialist; Tanyan Carnes, Administrative Officer; Janelle Howard, Digital Director; Tom Edwards, Lieutenant Colonel for Bureau of Law Enforcement; Renae Kluk Kiehl, Chief Counsel; Katie Brashear, Director of Administration; Ryan Walt, Boating and Watercraft Safety Manager; Carl Maiese, Waterways Conservation Officer; and Brian Barner, Deputy Executive Director.

II. Introduction of Guests

Guests included: Rick Taylor, U.S. Coast Guard (USCG) Auxiliary State Liaison Officer; Paul Scott, PA House of Representatives, Game and Fisheries Committee; State Representative Anita Kulik, Chair of House Game and Fisheries Committee; Nicholas Herigan, private citizen; Nick Long, Board Member for the Pennsylvania Chapter of Backcountry Hunters and Anglers; Derek Eberly, Governor's Advisor for Hunting, Fishing, and Conservation; Mary Gibson, Blue Mountain Outfitters; and Louise Lustig, private citizen.

III. Review and Approval of Minutes from the February 2023 Meeting

A motion was made to approve meeting minutes by Steven Ketterer and seconded by Loren Lustig. The motion carried.

IV. Awards and Recognition

Nicholas Herigan was awarded the Lifesaving Award by the Commission for his swift and selfless actions in saving a life and preventing further tragedy on the fateful day of April 13, 2023, where a boat capsized over the Dock Street Dam in Harrisburg, PA. Risking his own safety, Mr. Herigan maneuvered his boat closer to the incident. He and his passenger threw their anchor for the victim to grab it and be pulled to safety. Unfortunately, the other victim was unable to be located until a few hours later when his body was recovered downstream.

Nick Long, Board Member for the Pennsylvania Chapter of Backcountry Hunters and Anglers (BHA), accepted an award recognizing BHA's involvement in the Commission's Adopt an Access Program. BHA is a non-partisan group of sportsmen and women whose mission is to ensure North America's outdoor heritage of hunting and fishing in a natural setting, through education and work on behalf of wild public lands, waters, and wildlife. They are strong

advocates for public lands and access. BHA has adopted 29 Commission access sites this year for litter pick up. The Commission appreciates their volunteerism.

V. Public Comment

Rick Taylor, USCG Auxiliary State Liaison Officer reminded everyone the York Haven Power Company plans to lower Lake Fredrick to 14 inches below sea level. This is something they did last year to repair the dam as well, and it's expected to last eight weeks starting as early as June 12, 2023. Be aware, careful, and ready to assist people due to the changing complexion of the lake.

VI. Old Business

A. Amendment to 58 Pa. Code § 111.22 (Dauphin County).

Commentary:

A slow, no wake zone currently exists on a channel of the Susquehanna River between Bashore Island and the west shore of the river in Dauphin County, downstream of Goldsboro, Pennsylvania. This area was established to protect private cabins that existed on the west side of the island at the time. The island is owned by York Haven Power and the cabins were demolished in 2018-2019, so there is no need for the special slow, no wake restriction on this channel. The channel is generally shallow and weedy, which limits boating activity and speed of operation. Boats must still comply with 58 Pa. Code § 103.3(a), which states that “boats are limited to slow, no wake speed when within 100 feet of the shore line; docks; launching ramps; swimmers or downed skiers or other boat-towed watersports participants; persons wading in the water; anchored, moored, or drifting boats; floats, except for ski jumps and ski landing floats; or other areas so marked. This subsection does not apply in a zoned ski area or authorized ski return areas when those areas are found within the areas described in this subsection.”

Staff propose the following change to § 111.22:

§ 111.22. [Dauphin County] **Reserved.**

[(1) *Susquehanna River, Lake Frederick.* Boats are limited to slow, no wake speed between Bashore Island and the York County shoreline.]

This item was considered by the Boating Advisory Board at their February 6, 2023, meeting and was tabled to allow staff to contact landowners in the area. Staff shared information relating to this proposal with the landowners and have not received any opposition.

Briefer:

Laurel L. Anders, Director, Bureau of Boating

Action:

A motion was made by Rocco Ali and seconded by Elizabeth Winand to recommend this amendment to the Commission. The motion carried.

VII. New Business

A. Amendment to 58 Pa. Code § 97.1 (Personal flotation devices), § 111.3 (Armstrong County), § 111.20 (Crawford County), § 111.24 (Elk County), § 111.26 (Fayette County), § 111.27 (Forest County), § 111.32 (Indiana County), § 111.42 (McKean County), § 111.43 (Mercer County) § 111.56 (Somerset County), § 111.62 (Warren County), and § 111.65 (Westmoreland County).

Commentary:

Over the past decade, paddleboarding has been gaining popularity. Paddleboards are now widely available, affordable, and relatively easy to transport. Paddleboards resemble oversized surfboards and models are designed for use on various waterways and conditions. They are primarily operated by a person standing on the board using a paddle in a manner similar to a canoe. Paddleboards are frequently used on lakes and rivers throughout Pennsylvania.

On October 3, 2008, the U.S. Coast Guard (USCG) issued a determination that, when beyond the narrow limits of a swimming, surfing, or bathing area, the device known as a “paddleboard” is a vessel under 46 U.S.C. § 2101 (relating to general definitions). This classification means that no person may use a paddleboard unless in compliance with the Navigation Rules and applicable carriage requirements for this type of vessel. The Pennsylvania Fish and Boat Commission adopted the USCG’s definition of paddleboard and associated life jacket carriage requirements in 58 Pa. Code § 109.2 (relating to paddleboards and sailboards), effective January 1, 2015. This section states that a wearable life jacket must be carried on board for each person, “unless otherwise required to be worn in accordance with § 97.1 (relating to personal life jackets).” Staff recommend amendments to § 97.1 to provide clarification regarding life jacket wear requirements, since paddleboards are generally included with canoes and kayaks for recreational boating purposes. Staff also recommend amendments to incorporate paddleboards into Chapter 111 regulations for U.S. Army Corps of Engineers Pittsburgh District lakes where life jacket wear is required on boats less than 16 feet in length or any canoe, kayak or paddleboard.

Staff propose the following changes:

§ 97.1. Personal flotation devices.

* * * * *

(h) Children 12 years of age and younger shall wear an approved wearable PFD while underway on any boat 20 feet or less in length and all canoes, **[and] kayaks and paddleboards**. The operator of the watercraft violates this subsection if he does not cause a child 12 years of age or younger to wear a PFD as required by this subsection.

(i) Beginning November 1 until midnight April 30 of the following year, a person shall wear a Coast Guard approved wearable PFD while underway or at anchor on boats less than 16 feet in length or any canoe, **[or] kayak or paddleboard.**

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§ 111.3. Armstrong County.

(a) *Crooked Creek Lake.*

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(5) 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 or paddleboard.**

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(c) *Mahoning Creek Lake.*

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(2) 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 or paddleboard.**

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§ 111.20. Crawford County.

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(e) *Woodcock Creek Lake.*

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(4) 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 or paddleboard.**

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§ 111.24. Elk County.

East Branch Clarion River Lake—Elk State Park.

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(3) 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 or paddleboard.**

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§ 111.26. Fayette County.

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 **or paddleboard.**

§ 111.27. Forest County.

Tionesta Lake.

(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 **or paddleboard.**

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§ 111.32. Indiana County.

(a) *Conemaugh River Lake.*

(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 **or paddleboard.**

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§ 111.42. McKean County.

Allegheny River Reservoir (Kinzua Dam).

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(2) 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 **or paddleboard.**

§ 111.43. Mercer County.

(a) *Shenango River Lake.*

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(5) 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 **or paddleboard.**

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§ 111.56. Somerset County.

Youghiogheny River Lake.

(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 or paddleboard.**

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§ 111.62. Warren County.

Allegheny River Reservoir (Kinzua Dam).

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(2) 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 or paddleboard.**

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§ 111.65. Westmoreland County.

(a) *Conemaugh River Lake.*

(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 or paddleboard.**

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(b) *Loyalhanna River Lake.* All 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 or paddleboard.**

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Briefer:

Laurel L. Anders, Director, Bureau of Boating

Action:

A motion was made by Steven Ketterer and seconded by Rocco Ali to recommend this amendment to the Commission. The motion carried.

VIII. Other Business

No other business.

IX. Discussion Items

A. Adopt an Access Program Overview

Mark McLaughlin provided an overview of the Commission's Adopt an Access Program. It was first launched in 2002 and had limited success due to the volunteer tasks varying from group to group. Volunteer activities included everything from mowing, to clearing brush, to trail maintenance. The program was revamped and re-launched as a pilot in 2022, mimicking PennDOT's very successful Adopt a Highway Program. The new program strictly focuses on litter pick-up which leads to a safer, less burdensome and equipment-intensive experience for the volunteers. The program is designed to improve delivery of service by ensuring litter is picked up more frequently. Organized volunteer groups may include scout troops, civic organizations, sportsmen and women organizations, neighborhood associations, etc. These groups sign an agreement with the Commission and are provided with safety guidelines, trash bags, and gloves. The Commission's recently redeveloped webpage allows potential volunteers to search for adoptable access areas by county. These groups are a great help in keeping our access areas free of litter.

B. Enhancing Boat Rental Business Operations and Improving Rental Boat Safety

Laurel Anders provided an overview of boat rental businesses, also known as liveries, and discussed the steps the Livery Workgroup has taken to move towards improving rental boat safety. Liveries provide introductory experiences for newcomers to boating, convenient adventures for outdoor recreationists, and opportunities to participate in boating without the commitment of boat ownership. They also provide unique experiences such as whitewater rafting, overnight stays in houseboats, and opportunities to try the latest trends in boating technology. Boat rental operations in Pennsylvania have increased in number and expanded available opportunities in recent years. Because these businesses provide a wide variety of services to a broad diversity of people and are often a gateway to boat ownership, boat rental businesses play an important role in boating safety.

Pennsylvania law ([PA C.S. Title 30 § 5122\(a\)\(2\)](#)) authorizes the Commission to promulgate rules and regulations relating to boat rental business operators. The Commission's regulations relating to boat rental businesses were originally adopted in 1994 and last amended in 2000. These regulations authorize the Executive Director to publish guidance relating to boat rental educational requirements and safety orientations. An update to these guidelines was last published in the *Pennsylvania Bulletin* in 2012.

In recent years, Waterways Conservation Officers (WCOs) have identified challenges, including a lack of clarity, with current boat rental regulations and guidelines. Additionally, technological advances have created specific challenges and opportunities regarding boat rental business operations. Commission staff launched a Livery Workgroup in February 2022 and initiated livery visits to identify challenges, gather information, and recommend updates to the Commission's boat rental business regulations and requirements to enhance communications and compliance, increase boating safety, and reduce conflicts on the water.

The Livery Workgroup consists of staff from all six regions of the Commission and headquarters with members ranging from 8-36 years of experience and interactions with a wide diversity of livery operations. The Workgroup has discussed what is working well, along with not so well

with the current boat rental business regulation and requirements by: reviewing existing regulations; gathering input from other WCOs, liveries, and states; identifying opportunities for improvements to the Commission's regulations and guidelines; reviewing new safety orientation materials; and consulting with PA Department of Conservation and National Resources (DCNR) staff who oversee boat rental concession agreements in State Parks. The Workgroup discovered challenges relating to the increase in number and type (in addition to brick and mortar, there are pop-up rentals, roadside rentals, etc.) of livery operations, the lack of a mechanism for the Commission to know who the businesses are or how to contact them, some rental businesses aren't aware of the regulations and guidelines that relate to their operations, some boat rental businesses are renting boats without proper markings and/or boat registration or launch permits, an increased number of new boat operators may not be receiving adequate safety orientations or overview of boat operations and water conditions, and some of the Commission's rental regulations lack clarity or are outdated.

Commission staff visited a variety of different liveries to date and are planning to visit more. Staff asked a series of questions to gather the liveries' daily operation experiences: how many boats do you rent and the distance they travel, what are your hours of operation, how busy is your business, how familiar are you with the Commission's regulations and safety orientation guidelines, what's your feedback on current safety orientation materials, what are your greatest challenges, do you have ideas on how to enhance customer safety and rental experience, are you interested in pre-season WCO visits, are you willing to provide basic business and operations information to the Commission, and are you willing to review and provide feedback on proposed regulatory changes and updates to safety orientation guidelines? The livery operators' reactions to the staff visits and responses to the questions was very positive.

WCO Rachael Thurner-Diaz participated in the Livery Workgroup and shared her experiences with the Board. She provided examples of in-the-field operations, elaborated on some of the challenges and stressed the importance of moving forward with solutions.

Laurel Anders went on to describe the three mechanisms that exist for the Commission to enhance boat rental business operations and improve rental boat safety: regulatory amendments, updates to the Executive Director's guidance, and proactive interactions between staff and boat rental business operators.

Staff have drafted some immediate and timely regulatory amendments to provide clarity and consistency for rental boat operations. These amendments are consistent with [*The Strategic Plan of the National Recreational Boating Safety Program 2022-2026*](#), developed by the U.S. Coast Guard (USCG) in collaboration with the National Boating Safety Advisory Committee. This plan contains an action item to "create a safety culture among livery operators" and other related initiatives to prevent deaths and injuries of recreational boaters. Commission staff will stay in tune with and, when possible, become engaged with this action item at the national level to ensure that the Commission's regulations and safety orientation guidelines are in alignment with recommendations and best practices from this effort.

Secondly, staff have identified updates to the Executive Director's guidance for rental boat educational requirements and safety orientation guidelines which would need to be published in the *Pennsylvania Bulletin* and communicated to boat rental businesses. These proposed updates

streamline the rental process by providing specific instructions and resources that boat rental businesses must follow to conduct safety orientations.

Finally, the Commission's Livery Workgroup will continue to identify improvements to the Commission's interactions and ongoing communications with boat rental businesses.

Commission staff are continuing to meet with liveries and get in-person feedback on draft changes to the livery program. Also, a questionnaire will be rolled out to collect information from liveries including contact information. These efforts will help to ensure that proposed changes to the livery program will meet the intended purpose of enhancing boat rental business operations and improving rental boat safety.

C. Clarifying Boating Safety Education Requirements -- PA C.S Title 30 § 5103 (Boating education) and the amendment to 58 Pa. Code § 109.3 (Personal watercraft)

Laurel Anders explained why this proposed rulemaking to 58 Pa. Code § 109.3 (Personal watercraft), which was voted to recommend to the Commissioners during the Boating Advisory Board (BAB) meeting on February 6, 2023, will not be on the next Commission meeting agenda. Adopting the federal definition of personal watercraft (PWC) into Commission regulations will allow for the inclusion of electric-powered PWCs, e-foils, and jetboards. Current regulations for PWCs restrict their operation between sunset and sunrise, require operators to wear a life jacket at all times, require operators to wear an engine cut-off safety lanyard (if equipped), and require operators to possess a boating safety education certificate. Pennsylvania law (PA C.S. Title 30 § 5103) exempts operators of electric-powered motors from boating safety education certificate requirements. The inconsistency between the proposed regulation and the provisions of the Commission's Code can be resolved by a legislative change. Staff are currently discussing potential solutions with the General Assembly.

D. Extending the Seasonal Life Jacket Wear Requirement

At the April 2023 Commission meeting, Commission President B.J. Small requested that staff investigate a potential extension of the current cold water life jacket wear requirement. Currently, the requirement exists from November 1st through April 30th on boats less than 16 feet in length and all canoes and kayaks. Staff were asked to investigate extending it to June 1st. Laurel Anders provided data on the total number of accidents and fatalities per year since 1988 and then focused on the past 10 years of data for this analysis, which is when the cold water life jacket wear requirement went into effect. From 2012-2022, staff found there were 86 accidents in May that resulted in 20 deaths (23%), or two deaths per year. Life jackets were not worn in 12 of those fatal incidents (60%). Six deaths were in powered boats and 14 deaths were in unpowered boats. During the timeframe November 1st through April 30th, there were 67 accidents resulting in 23 deaths (34%), or 2.3 deaths per year. In five of those fatal accidents, life jackets were worn, however in 18 of those deaths (78%), life jackets were not worn. Four deaths were in powered boats and 19 deaths were in unpowered boats. In these 23 deaths, victims either weren't aware of the life jacket wear requirement or chose not to comply. Looking at this data, there appears to be an opportunity to impact the number of deaths by increasing compliance during the current mandatory wear time frame as opposed to including May in the required wear timeframe. It's important to realize with the data, every death is unique in its narrative, and the

circumstances surrounding the incident have their own story. When we look at the individual narratives around these incidents, we see that some of the people that go out onto the water may not be identifying themselves as a boater at the time they go on the water. In their minds, there was no plan to be on the water however decisions were made that lead them there. In many cases, there was no thought to make sure they had a life jacket and other required equipment.

Commissioner B.J. Small commented that it's clear that wearing life jackets saves lives and we see that reflected in the November through April timeframe data. He doesn't feel the data indicates a need to extend the current timeframe. Rather, he concurred with the opportunity to increase compliance by spending our time and energy on increasing awareness. Scott Ballantyne agrees to focus on the 78% would be more productive. Steven Ketterer agrees it's an educational issue at this time and getting the word out is needed. Rocco Ali pointed out that the month of May still shows 86 lost lives. He would like to see the extension through May. Commissioner Richard Lewis was asked by Commissioner John Mahn to relay the message that he would like to see a life jacket requirement for the whole year thinking of the lives that could be saved. Neither Commissioner Lewis or Mahn think that would be achievable but recommended at least extending the timeframe for a month. Loren Lustig asked if staff investigated other surrounding states and what they have done regarding this issue. He is interested in if our regulations line up with other states who have similar waters. Elizabeth Winand would still like to consider extending the timeframe to June 1st, giving the example of paddlers going out for the first time all year. The waters are still cold, and boaters are not prepared. Scott Ballantyne brought up the concern of Memorial Day weekend being the end of May and asked if there would be consideration of extending only part of the month of May. Looking at it being a compliance issue and the WCOs may be overwhelmed, Ryan Dysinger agreed that it was his concern as well with extending through Memorial Day. Commissioner Donald Anderson asked staff to present the data for the month of October. Laurel Anders shared that from 2012 to 2022, in the month of October, there were 16 accidents resulting in 9 deaths. From 2002 to 2011, in the month of October, there were 16 accidents resulting in 2 deaths. Loren Lustig suggested October 15 to May 15 for a life jacket wear requirement. Rachel Thurner-Diaz suggested looking at actual dates of fatalities to determine how many happen at the beginning of the month of May as opposed to the last couple weeks of May. Tim Schaeffer commented staff will take a deeper look and bring those statistics back for the next BAB meeting.

X. Adjourn

A motion to adjourn was made by Steven Ketterer and seconded by Rocco Ali. The motion carried and the meeting was adjourned at 11:23 a.m.