

Order Adopting Statement of Policy

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapter 57 Statement of Policy

Preamble

The Fish and Boat Commission (Commission) amends §57.8a (relating to Class A wild trout streams). The Commission publishes this statement of policy under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The amendments to §57.8a will go into effect on January 1, 2015.

B. Contact Person

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

C. Statutory Authority

The amendments to §57.8a are published under the statutory authority of section 321 of the code (relating to administration and enforcement) that provides that the Commission shall administer and enforce the code and other laws of the Commonwealth relating to the protection, propagation and distribution of fish.

D. Purpose and Background

In October 2009, the Commission approved the Strategic Plan for Management of Trout Fisheries in Pennsylvania 2010-2014 (plan). The plan was developed based on input provided by a work group that consisted of Commission staff, anglers affiliated with a variety of sportsmen's organizations, and independent trout anglers that are not affiliated with an organized group. This plan has guided the direction of trout management for the Commission since that time.

The plan identifies opportunities for improvement of trout management in this Commonwealth, issues that affected such improvements, and strategies for addressing those issues. One of the key issues addressed in the plan is the protection of Class A wild trout waters. Issue 2 of the plan states, "There are a number of streams that may hold Class A biomass trout populations that have not been officially designated as Class A streams by the [Commission]. This leads to inadequate water quality protection for these waters and inconsistent application of fisheries management strategies." The identified strategy to address this specific issue is "By 2014, sample waters identified by [Commission] staff as likely to support a Class A wild trout biomass and designate appropriately." It should be noted that this issue is separate from the identification of unassessed Class A waters, which the Commission has been addressing since adoption of the plan. The waters to which Issue 2 of the plan refers are waters for which historical data was present but which have not been officially designated as Class A.

To date, the Commission has identified 10 potential high biomass waters per Issue 2 of the plan. These waters include Fishing Creek, Clinton County; Little Lehigh Creek, Section 4, Lehigh County; Little Lehigh Creek, Section 7, Lehigh County; Martins Creek, Northampton County; Monocacy Creek, Section 8, Northampton County; Monocacy Creek, Section 9, Lehigh/Northampton Counties; Penns Creek, Centre County; Pohopoco Creek, Carbon County; Yellow Creek, Section 4, Bedford County; and Yellow Creek, Section 5, Bedford County. The

Commission has completed new inventories on these waters, and each has been sampled twice since 2010. Based on the results of the second examination, each of these waters supports Class A populations.

Currently, each of these waters is stocked. Most of them support heavy angler use for the stocked trout component of the fishery. A recent analysis of all stocked trout waters in this Commonwealth resulted in the development of three stocked trout “efficiency classes.” These classes of streams were differentiated statistically relative to the angler use resulting from the numbers of trout stocked (efficiency). High human population density and/or high accessibility (number of parking places per mile of stream) were two of the variables that resulted in waters being classified into the highest efficiency classes. Others with high use were “so called” destination waters, which may have been more rural in nature but which traditionally have supported high angler use. The lowest efficiency class (Class 3) was primarily comprised of rural waters, but there are statistical outliers in this class that also have high angler use.

Of the 10 stream sections identified, eight fall into the top 75th percentile of angler use for all the stocked stream sections that have been evaluated by the Commission. Opening Day angler counts on Martins Creek in 2014 documented higher use levels than those previously seen, now falling into the 67th percentile of Opening Day angler use statewide. No counts have been made on the special regulation section on Yellow Creek, where use levels on Opening Day are not likely to reflect use on this section year-round.

To address the high angler use levels for stocked trout on certain Class A waters, the Commission proposed amendments to the Class A policy that would permit fingerling stocking and preseason-only stocking of adult trout to continue on Class A waters designated after December 31, 2013 provided that certain conditions were met. Exceptions were limited to those waters (1) that had been stocked the year preceding the Class A designation and (2) where angler use is greater than or equal to the 75th percentile of angler use (number of anglers/mile on Opening Day) for stocked trout

waters in Pennsylvania. Other conditions were that the trout species to be stocked may not be the same species as the primary component of the wild trout population; a stream section designated as a Class A wild brook trout, a Class A mixed wild brook and brown trout or a Class A mixed wild brook and rainbow trout stream would not be considered for stocking; and prior to implementing a decision to stock a Class A wild trout stream, the Executive Director would obtain Board approval.

A proposed statement of policy, containing these changes and seeking public comments for a period of 90 days, was published at 43 Pa. B. 7107 (December 7, 2013). The Commission received a total of 135 public comments – 19 prior to, 106 during, and ten after the formal comment period. Copies of all public comments were provided to the Commissioners. Only two comments supported the proposal as written. There were 95 comments in opposition to any reduction in stocking. Martins Creek was specifically mentioned in 63 comments, but other streams that were named in comments opposed to preseason only stocking were Little Lehigh Creek, Monocacy Creek, Pohopoco Creek, Fishing Creek and Penns Creek. There were 23 comments in opposition to designating the waters described in the proposal as Class A. There were 22 comments in opposition to stocking in Class A waters. One commenter recommended reducing stocking gradually over a three year period.

At the July 2014 Commission meeting, staff recommended that several changes be made to address public comments. Specifically, staff recommended that the Class A policy permit Class A waters that meet the aforementioned specific criteria to be eligible for stocking at a number and frequency not to exceed the level prior to the year the water was designated as Class A and remove the reference to pre-season only stocking. In addition, due to the numerous public comments specific to Martins Creek, staff recommended that the angler use criteria to allow stocking be set at the 50th rather than the 75th percentile. This would bring Martins Creek within the criteria to allow stocking, as angler use there on the 2014 Opening Day was documented to be in the 67th percentile of use statewide but would not affect the other nine stream sections. Because Yellow Creek is a special

regulation area contiguous to the high use section just upstream, staff recommended that the policy allow stocking on previously stocked special regulation areas that meet all other criteria in the policy.

When presented at the July 2014 meeting, a primary concern raised by some of the Commissioners was the change from the 75th to the 50th percentile of angler use statewide as a criterion that would permit stocking. Other Commissioners stated that they had concerns with stocking any Class A waters. The Commission ultimately “tabled” the agenda item and deferred consideration until the fall 2014 Commission meeting.

E. Summary of Revisions

Upon further consideration at its fall 2014 meeting, the Commission determined that the current policy should remain largely unchanged with two exceptions. First, the Commission added language requiring the Executive Director to obtain the Board’s approval prior to granting permission to stock any Class A wild trout stream. Because Board approval will be necessary regardless of whether a water meets all of the previously proposed criteria for stocking, it is unnecessary to include these criteria in the statement of policy. Second, the Commission changed the reference to “Wild Trout Abundance Class Criteria” to “Biomass Class Criteria” since all of the classes described in the policy are actually biomass class criteria.

The Commission adopts these changes to § 57.8a as set forth in Annex A.

F. Paperwork

This final-form statement of policy will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form statement of policy will not have an adverse fiscal impact on the Commonwealth or its political subdivisions. This final-form statement of policy will impose no new costs on the private sector or the general public.

H. *Public Involvement*

Although not required to publish a proposed statement of policy to adopt amendments to a statement of policy, the Commission published the proposed amendments at 43 Pa. B. 7107 and sought public comments because of the heightened public interest in this issue. The Commission received numerous public comments concerning the proposed changes to the statement of policy as described above.

FINDING

The Commission finds that the adoption of the amendments to §57.8a is necessary and appropriate for administration and enforcement of the authorizing statutes.

ORDER

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

(A) The Commission's statements of policy, 58 Pa. Code Chapter 57, are amended by amending § 57.8a to read as set forth in Annex A.

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

(C) This order shall take effect on January 1, 2015.

For the Pennsylvania Fish and Boat Commission

John A. Arway
Executive Director

Annex A

Regulation No. 48A-255

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart A. General Provisions

CHAPTER 57. STATEMENTS OF POLICY

§ 57.8a. Class A wild trout streams.

It is the policy of the Commission to manage self-sustaining Class A wild trout populations as a renewable natural resource to conserve that resource and the angling it provides. Class A wild trout populations represent the best of this Commonwealth's naturally reproducing trout fisheries.

[These] **With rare exceptions, these** stream sections are managed solely for the perpetuation of the wild trout fishery with no stocking. **However, there may be circumstances that justify stocking a Class A wild trout stream. Prior to granting permission to stock a Class A wild trout stream under §71.4 (relating to stocking of designated waters), the Executive Director will obtain the approval of the Commission.**

* * *

(2) Wild Trout [**Abundance**] **Biomass** Class Criteria include provisions for:

* * *