

Rulemaking Process

The Pennsylvania Fish and Boat Commission has statutory authority to promulgate rules and regulations regarding a variety of fishing and boating related topics. The extent of the Commission's authority is specifically outlined in the Fish and Boat Code.

Generally, the rulemaking process is initiated in one of three ways: a Commissioner, the Commission staff, or the public proposes a regulatory change. If initiated by Commission staff, the proposed regulatory change is submitted through the appropriate channels to the bureau level, and the Bureau Director submits the proposal to the Office of Chief Counsel for possible inclusion in the agenda for a future Commission meeting. All agenda items initiated by staff are approved by the Executive Director.

When initiated by a member of the public, petitions or requests for regulations must be submitted to the Commission in the format required by the General Rules of Administrative Practice and Procedure. Commission staff review every petition for regulations to ensure that it is complete as required by the administrative rules; that it requests an action within the authority or jurisdiction of the Commission; and that it does not conflict with applicable Commonwealth or federal law. If staff determines that the petition is appropriate for further consideration, the petitioner will be given an opportunity to make up to a 5-minute oral presentation on the petition at the next Commission meeting. The Board of Commissioners will decide whether or not to accept the petition for further review after the oral presentation. If the Board of Commissioners accepts the petition, staff has 180 days to prepare a report evaluating the petition and containing staff's recommendations. Staff then provides the report to the petitioner who has 30 days to submit written comments, objections or suggestions concerning the staff report. The petition, the report and the written comments are submitted to the Office of Chief Counsel for inclusion in the agenda for a future Commission meeting.

The Board of Commissioners has also established a set of Commissioner committees to review and provide guidance on Commission actions. Prior to formal action by the Commission, these committees review all agenda items and make recommendations to the full Commission. Occasionally, the Commission also establishes special workgroups of citizens to analyze and make recommendations to staff regarding regulatory issues. These workgroups do not have any formal rulemaking authority but act to enhance public involvement and input into the rulemaking process.

All boating rules and regulations must conform to federal laws and regulations on the same subject. In addition, the Commission must seek the advice of the Boating Advisory Board (BAB) prior to their final adoption. Boating regulation changes ordinarily go to the BAB at both the proposed and final rulemaking stages.

The decision to move forward with a proposed regulatory change takes place at a public meeting. If the Commission decides to move forward, it will approve the publication of a notice of proposed rulemaking containing the proposal. When adopting regulations, the Commission must follow the Commonwealth Documents Law. The Commonwealth Documents Law requires an agency to give public notice of its intention to promulgate, amend or repeal a regulation by

publication in the *Pennsylvania Bulletin* of a notice of proposed rulemaking. The Office of Chief Counsel prepares the notice of proposed rulemaking, which must include the text of the proposed regulatory change. It must also contain: (1) a statement of the statutory or other authority under which the change is proposed to be promulgated; (2) a brief explanation of the proposed change; (3) a request for written comments by any interested person concerning the proposed change; (4) a statement as to the time, place, and nature of the public rulemaking proceedings; and (5) any other statement required by law.

After the Office of Chief Counsel prepares and approves the notice of proposed rulemaking, the notice is sent to the Legal Review Section of the Office of Attorney General, and to the Bureau of Legislative and Regulatory Analysis in the Office of Budget for their review. All proposed rules and regulations of Commonwealth agencies must be reviewed for form and legality by the Attorney General.

After review by the Office of Attorney General and the Office of Budget, the notice of proposed rulemaking is forwarded to the Legislative Reference Bureau. The Legislative Reference Bureau then publishes the notice in the *Pennsylvania Bulletin*.

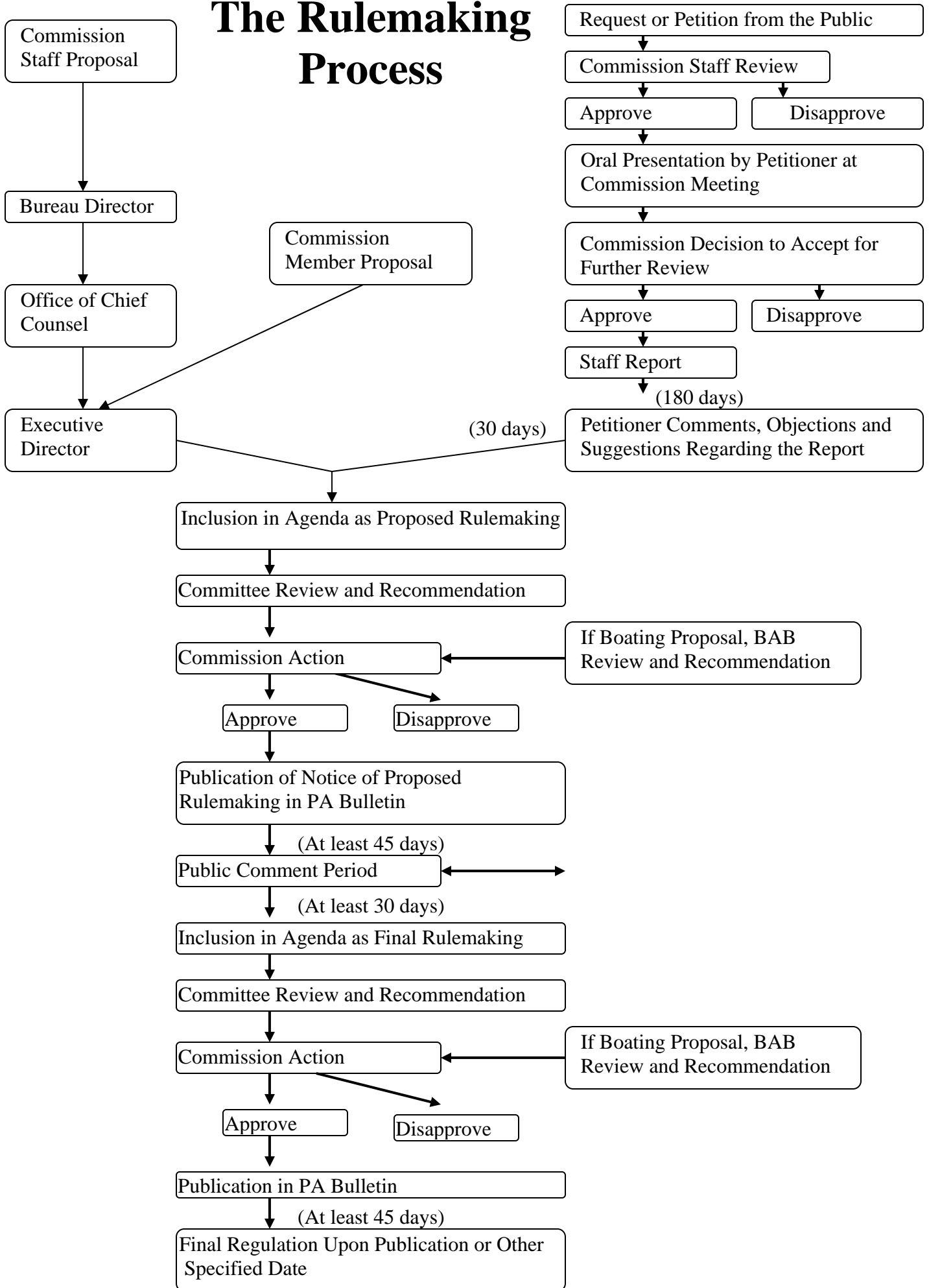
Before acting on any proposed regulatory change, the Commission must review and consider any written comments submitted in response to the notice of proposed rulemaking. The public must be given at least 30 days after publication in the *Pennsylvania Bulletin* to submit comments. The Commission also publicizes the opportunity for submitting public comments in Commission news releases and on its web page. Public hearings may be held on items of exceptional public interest or concern. The public comment process is important because it protects against unwise or improper exercise of administrative discretion and provides affected persons with an opportunity for public participation in the formulation of standards governing their conduct, thereby increasing the likelihood of the Commission's responsiveness to their needs and concerns. In addition, it enables the Commission to obtain information relevant to the proposed rule and facilitates the consideration of alternatives, detrimental effects, criticism, and advice. All of these factors contribute to the soundness of the proposed regulatory change.

The last step in the regulatory process is the final rulemaking stage. The Commission must take final action on a regulatory change at a public meeting. If the Commission approves the regulatory change, the Office of Chief Counsel prepares an order adopting the change, and the Executive Director signs the order. Both the AG's office and the Office of Budget perform their final review. After the final review process, the order adopting the regulation is sent to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Regulations are effective upon publication in the *Pennsylvania Bulletin* or such other date as specified by the Commission.

From start to finish (see flow chart), the whole rulemaking process takes approximately six months to one year, and once a regulation has been promulgated, it has the force and effect of law. It is binding on the agency, the courts and the public. The regulation also enjoys a presumption of reasonableness.

There are instances when the Executive Director may take immediate action to temporarily modify fishing regulations without formal Commission action. Those instances include when he finds that such modifications are necessary and appropriate for the protection, preservation and management of fish or fish habitat, to conserve and preserve fishing opportunities or to provide for the health and safety of persons who fish such waters. The Executive Director also may take immediate action to post and mark waters, establish speed zones or otherwise when he determines that a hazard exists that may threaten the safety of persons or property, or both. When the Executive Director takes action under these circumstances, he must follow up by notifying the Commissioners of the action.

The Rulemaking Process



Public Participation

Written Public Comments Regarding Proposed Regulations and Amendments

Under the Commonwealth Documents Law (45 P.S. §1201), the Fish and Boat Commission is required to give public notice of its intention to promulgate, amend or repeal any administrative regulation. The form of that notice is the publication of a notice of proposed rulemaking in the *Pennsylvania Bulletin*. The Commonwealth Documents Law further provides that the notice must include a request for written comments by any interested person concerning the proposed administrative regulation or change therein. In addition to publishing its notices of proposed rulemaking in the *Bulletin*, the Commission also posts them and solicits public comments on its web page. The Commission, by law, must solicit written comments for a period of at least 30 days. Where there is exceptional public interest concerning a proposed regulation or amendment, the Commission, in its discretion, may seek written comments for a period exceeding 30 days.

With respect to accepting written comments from the public concerning proposed regulations or amendments, the Commission's past practice has been extremely lenient. The Commission historically has accepted, made part of its record and considered all written comments regardless of whether they were received before, during or after the formal public comment period and regardless of whether they were submitted in accordance with the Commission's instructions. The Commission will continue to follow a relaxed policy, and the Commission will continue to accept and make part of its record written comments that are received prior, during and after the formal comment period with the following exceptions.

In cases where the formal comment period has expired, the Commission will not accept written comments that are received less than two weeks prior to the meeting at which the proposed regulation or amendment is to be considered for final adoption. The Commissioners will consider all written comments received during the formal comment period, and the Commissioners, in their discretion, may consider written comments received before and after the formal comment period.

In addition, the Commission will accept only those written comments that are submitted in accordance with the Commission's published instructions – that is, comments that are addressed to the Public Comment Coordinator at the Commission's Harrisburg headquarters or comments that are submitted electronically by completing the form at <http://www.state.pa.us/Fish/regcomments>. The following types of written comments will not be accepted and will not be made part of the record: comments addressed to individuals other than the Public Comment Coordinator, comments submitted electronically in a manner other than that described above and comments submitted by facsimile. The Commissioners, in their discretion, may consider written comments that are not properly submitted.

Written Public Comments Regarding Proposed Designations of Streams as Wilderness Trout Streams, Class A Wild Trout Streams and Wild Trout Streams

Under 58 Pa. Code §57.4 (relating to wilderness trout streams), it is the Commission's policy to manage the wilderness trout streams program where the stream remoteness and populations of naturally reproducing trout combine to offer a sport fishing opportunity for the recreation of anglers in a wilderness setting away from roads or vehicular access. The Commission intends to advocate proper watershed management to maintain the wilderness setting and to advance and seek the highest water quality standards through the Department of Environmental Protection.

Under 58 Pa. Code §57.8a (relating to Class A wild trout streams), it is the Commission's policy 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 Pennsylvania's naturally reproducing trout fisheries. The Commission manages these stream sections solely for the perpetuation of the wild trout fishery with no stocking.

Under 58 Pa. Code §57.11 (relating to listing of wild trout streams), it is the Commission's policy to accurately identify and classify stream sections supporting naturally reproducing populations of trout as wild trout stream sections. The list of a stream section as a wild trout stream section is a biological designation that does not determine how it is managed. The Commission uses many factors in determining the appropriate management of streams.

Prior to taking formal action to designate waters as wilderness trout streams, Class A wild trout streams or wild trout streams under §57.11, the Commission will solicit public comments by publishing a notice of proposed designation in the *Pennsylvania Bulletin* for a period of at least 30 days. Where there is exceptional public interest concerning a proposed designation, the Commission, in its discretion, may seek written comments for a period exceeding 30 days. The Commission will accept, make part of its record and consider written public comments regarding proposed designations in accordance with the above policy for written public comments regarding proposed regulations and amendments.

Public Participation in Designation of Waters for Special Regulations

Under 58 Pa. Code Chapter 65 (relating to special fishing regulations), the Commission may designate certain streams, stream sections and lakes as being subject to special fishing regulations. The majority of these regulations have a common feature: to place waters into the special regulation programs and to take waters out, the "Executive Director, with the approval of the Commission," may designate waters into or out of the established programs. In most cases, this means that the Commission reviews a proposed designation at a single public meeting. The designation is published as a notice in the *Pennsylvania Bulletin*, and the special regulations are in effect when posted at the site after publication of the notice.

In order to allow for greater public participation in the designation process, the Commission will use the following protocol in seeking public input on proposed special regulation designations:

1. Before taking any action to seek landowner or public input concerning a proposed special regulation designation, staff should ensure that the Commissioner in whose district the waters are located is informed of the proposal.
2. Staff should seek input from landowners whose lands abut waters proposed for special regulation designation by personal contact, telephone, mail or public notice.
3. Staff should seek angler input into proposed special regulation designations through sportsmen's clubs, public notice and other informal contacts.
4. Except in unusual circumstances, staff should publish a notice in the *Pennsylvania Bulletin* not less than 30 days before the Commission meeting when the proposed special regulation will be considered to give notice of the proposed designation and seek public comments. The Commission will accept, make part of its record and consider written public comments regarding proposed designations in accordance with the above policy for written public comments regarding proposed regulations and amendments.
5. In cases where there is exceptional public interest in a proposed designation, staff, in coordination with the Commissioner in whose district the waters are located, should conduct at least one public information meeting before the Commission acts on the special regulation designation.
6. Except in special circumstances where prompt action is required to maintain or expand public fishing opportunities or to provide for better protection and management of fish or fish habitat, all special regulations designations should be completed by the July meeting of the year before they are to take effect to insure that they can be published in the *Summary of Fishing Regulations and Laws* given to anglers.

Public Comments at Meetings

Prior to adopting a proposed regulation or amendment of exceptional public interest, the Commission, in its discretion, may hold a public meeting or hearing. The Commission also may accept public comments at its regularly scheduled or special meetings that are held for the transaction of Commission business. The comments may relate to proposed regulations or amendments, proposed designations under Chapter 65, designations of streams as wilderness trout streams, Class A wild trout streams or wild trout streams, and other matters relating to fishing and boating. At Commission meetings, the Commission will follow its regulations at 58 Pa. Code §51.7 (relating to public comments at Commission meetings).