

CHAPTER 57. STATEMENTS OF POLICY

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Subchapter A. FISHERIES POLICIES

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Source

The provisions of this Chapter 57 readopted January 6, 1984, effective January 7, 1984, 14 Pa.B. 46, unless otherwise noted. Immediately preceding text appears at serial pages (80317), (83607) to (83608), (82222) to (82223), (73325) to (73327) and (68796).

§ 57.1. Policy for the conservation and management of fishery resources.

It will be the policy of the Commission to protect, conserve and enhance the quality and diversity of the fishery resource of this Commonwealth including reptiles and amphibians and to provide continued and varied angling opportunity through scientific inventory, classification and management of that resource. To achieve the objectives of this policy, the Commission will do all of the following:

- (1) Establish and maintain a current data base on the quality and quantity of the aquatic and fishery resources of this Commonwealth for effective environmental protection and resource conservation.
- (2) Develop Statewide management programs to assure consistent treatment of all resources within given class. Similar waters will be managed to meet the same objectives under the same philosophy on a Statewide basis.
- (3) Manage self-sustaining fish populations as a renewable natural resource to conserve that resource and the angling it provides.
- (4) Use hatchery fish to provide recreation in those waters where fish populations are inadequate to sustain the fishery at desired levels.

(5) Develop appropriate regulations and operational strategies to replace policies that are not compatible with management through resource classification.

§ 57.2. Allocation and stocking of legal-size trout.

(a) The Commission will allocate trout, except fingerlings, to individual waters with the rate and frequency to be determined by the assignment of each water to a resource category

(b) The Commission will assign water areas to resource categories based on appropriately weighted biological and social factors, including the status of wild trout populations, stream width or lake area and recreational use potential as indicated by public access, parking spaces, ownership, proximity to roads, proximity to urban areas and activities of resource adoption organizations.

(c) The Division of Fisheries Management will maintain a current list of resource categories, trout allocation processes and trout allocations.

(d) This section supersedes other Commission policies or operating procedures to the extent inconsistent with this section.

Source

The provisions of this § 57.2 amended September 16, 2005, effective September 17, 2005, 35 Pa.B. 5133. Immediately preceding text appears at serial page (311340).

§ 57.3. Policy on water quality designation.

It is the policy of the Commission to advance and seek, when supported by the current data base, the highest Department of Environmental Protection water quality designation for waters of this Commonwealth in order to achieve the objectives of this chapter.

Authority

The provisions of this § 57.3 amended under section 10 of the Sunshine Act (65 P. S. § 280); and section 506 of The Administrative Code of 1929 (71 P. S. § 186).

Source

The provisions of this § 57.3 amended November 5, 1999, effective November 6, 1999, 29 Pa.B. 5717. Immediately preceding text appears at serial page (228628).

§ 57.4. Wilderness trout streams.

It is the policy of the Commission to maintain the wilderness trout streams program where stream remoteness and populations of naturally reproducing trout combine to offer sport fishing opportunity for the recreation of anglers in a wilderness setting away from roads or vehicular access. It is the Commission's intent 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.

Authority

The provisions of this § 57.4 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 322, 2102 and 2307.

Source

The provisions of this § 57.4 adopted November 8, 1985, effective January 1, 1986, 15 Pa.B. 4036; amended February 12, 1993, effective February 13, 1993, 23 Pa.B. 754. Immediately preceding text appears at serial page (108039).

§ 57.5. Special regulations policy.

It is the policy of the Commission to utilize regulations differing from those in application on a Statewide basis when deemed necessary or desirable to protect, conserve or enhance the quality, quantity and diversity of this Commonwealth's fisheries, to maintain public access or to provide for the safety of the users of the resource. It is the intention of the Commission to use the minimum necessary regulation to maintain the philosophy of its conservation policy and to minimize variations in regulations on similar waters having like management objectives.

Authority

The provisions of this § 57.5 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 322, 2102 and 2307.

Source

The provisions of this § 57.5 adopted November 8, 1985, effective January 1, 1986, 15 Pa.B. 4036.

§ 57.6. Restocking after fish kills.

(a) It is the policy of the Commission to investigate fish kills, seek restitution for damage from those responsible for causing or allowing fish kill and restore through stocking, if necessary, or natural means, those recreational fisheries affected by a significant kill.

(b) If stocking is deemed necessary as determined by fisheries management personnel, it will receive a higher priority than those stockings of a normal maintenance or introductory effort and will occur when conditions are deemed suitable for restocking. The species, size and numbers of fish to be stocked will be determined by fisheries management and will be governed by hatchery availability.

Authority

The provisions of this § 57.6 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 322, 2102 and 2307.

Source

The provisions of this § 57.6 adopted November 8, 1985, effective January 1, 1986, 15 Pa.B. 4036.

§ 57.7. Policy on acid precipitation.

It is the policy of the Commission to urge:

(1) The Congress and President to take prompt and decisive action to reduce emissions of sulfur dioxide and nitrogen oxides in the eastern half of the United States by the year 1993, as recommended by the National Academy of Science.

(2) The Federal government to vigorously enforce existing Clean Air Act limitations on emissions of sulfur and nitrogen oxides until appropriate new legislation is enacted.

(3) The Commonwealth, as the keystone State in this national issue, to take a leading role by enacting a unilateral 50% reduction in sulfur dioxide and nitrogen oxides emissions from Commonwealth sources.

Source

The provisions of this § 57.7 adopted April 11, 1986, effective April 12, 1986, 16 Pa.B. 1278.

§ 57.8. [Reserved].

§ 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. With rare exceptions, these stream sections are managed solely for the perpetuation of the wild trout fishery with no stocking. 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.

- (1) Criteria developed for Class A Wild Trout fisheries are species specific.
- (2) Wild Trout Biomass Class Criteria include provisions for:
 - (i) *Wild brook trout fisheries.*
 - (A) Total brook trout biomass of at least 30 kg/ha (26.7 lbs/acre).
 - (B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).
 - (C) Brook trout biomass must comprise at least 75% of the total trout biomass.
 - (ii) *Wild brown trout fisheries.*
 - (A) Total brown trout biomass of at least 40 kg/ha (35.6 lbs/acre).
 - (B) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).
 - (C) Brown trout biomass shall comprise at least 75% of the total trout biomass.
 - (iii) *Mixed wild brook and brown trout fisheries.*
 - (A) Combined brook and brown trout biomass of at least 40 kg/ha (35.6 lbs/acre).

- (B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).
 - (C) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).
 - (D) Brook trout biomass shall comprise less than 75% of the total trout biomass.
 - (E) Brown trout biomass shall comprise less than 75% of the total trout biomass.
 - (iv) *Wild rainbow trout fisheries.* Total biomass of rainbow trout less than 15 cm (5.9 inches) in total length of at least 2.0 kg/ha (1.78 lbs/acre).
 - (v) *Mixed wild brook and rainbow trout fisheries.*
 - (A) Combined brook and rainbow trout biomass of at least 40 kg/ha (35.6 lbs/acre).
 - (B) Total biomass of brook trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).
 - (C) Total biomass of rainbow trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).
 - (D) Brook trout biomass shall comprise less than 75% of the total trout biomass.
 - (E) Rainbow trout biomass shall comprise less than 75% of the total trout biomass.
 - (vi) *Mixed wild brown and rainbow trout fisheries.*
 - (A) Combined brown and rainbow trout biomass of at least 40 kg/ha (35.6 lbs/acre).
 - (B) Total biomass of brown trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).
 - (C) Total biomass of rainbow trout less than 15 cm (5.9 inches) in total length of at least 0.1 kg/ha (0.089 lbs/acre).
 - (D) Brown trout biomass shall comprise less than 75% of the total trout biomass.
 - (E) Rainbow trout biomass shall comprise less than 75% of the total trout biomass.
- (3) A water will not be removed from the Class A Wild Trout Streams designation unless the cause leading to the reduction in the wild trout population has been clearly identified and it has been determined that the water is beyond remediation to re-establish the Class A wild trout population. Possible reasons include the following:
- (i) Human caused conditions or sources of pollution prevent the attainment of a Class A wild trout fishery and cannot be remedied or will cause more environmental damage to correct than to leave in place.
 - (ii) Dams, diversions or other types of hydrologic modifications preclude the attainment of a Class A wild trout fishery, and it is not feasible to restore the water body to its original condition or to operate the modification in a way that will result in the attainment of a Class A wild trout fishery.

Source

The provisions of this § 57.8a adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1944; amended March 21, 2014, effective March 22, 2014, 44 Pa.B. 1772; amended December 5, 2014, effective January 1, 2015, 44 Pa.B. 7561. Immediately preceding text appears at serial pages (228630) and (371357) to (371358).

§ 57.9. [Reserved].**§ 57.9a. Publicizing stocking of fish.**

- (a) All stockings will be publicly announced.
- (b) The Executive Director, in his discretion, may announce the date, time, location, number or weight of all stockings and may withhold announcements based on certain factors, including but not limited to, safety.

Source

The provisions of this § 57.9a adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1944; amended April 22, 2005, effective April 23, 2005, 35 Pa.B. 2416. Immediately preceding text appears at serial page (297629).

§ 57.10. Riparian buffer policy.

It is the policy of the Commission to pursue establishment and preservation of a stable, vegetated riparian buffer zone between waters of this Commonwealth and other land uses on Commonwealth property under the management and control of the Commission. It is the Commission's intent to improve streambank and shoreline stabilization and water quality and to enhance fish and wildlife habitats in these areas, consistent with available fiscal and personnel resources. It is the policy of the Commission to encourage partnerships with other agencies, conservation organizations, and the private sector to providing funding and volunteer assistance to establish and preserve riparian buffer zones under this policy.

Source

The provisions of this § 57.10 adopted December 1, 2000, effective December 2, 2000, 30 Pa.B. 6219.

§ 57.11. Listing of wild trout streams.

(a) *Maintenance of list.* It is the policy of the Commission to accurately identify and classify streams supporting naturally reproducing populations of trout as wild trout streams. The Fisheries Management Division will maintain the list of wild trout streams. The Executive Director, with the approval of the Commission, will from time-to-time publish the list of wild trout streams in the *Pennsylvania Bulletin* and on the World Wide Web. Persons with comments, objections or suggestions about the classification of streams listed may submit them to the Commission for review.

(b) *Criteria for classifying wild trout streams.* The classification of a stream as a wild trout stream means that the trout found there have resulted from natural

reproduction and that the habitat supports wild trout. Identification of streams for the presence of wild trout typically involves:

(1) *Location and habitat.* Classifications of wild trout streams will involve examination of one or more sites, which may vary in size, within the stream. The exercise of judgment by the investigator is essential in describing the extent of the stream continuum to which the examination applies. The investigator should find that the habitat is such as would support natural reproduction of trout.

(2) *Exclusion of stocked trout.* In classifying a wild trout stream, the investigator should find trout resulting from natural reproduction in the stream section or upstream and downstream areas and their tributaries. In making this finding, the investigator will specifically exclude trout stocked as fingerlings or adults and trout that escape from a hatchery. The exercise of judgment is required in examining the trout for physical appearance such as coloration, fin condition and body configuration as indicators of the source of the trout. Direct evidence of natural reproduction of trout is a factor in making this classification, but it is not required if the other elements are present.

(3) *Biological criteria.* In identifying a wild trout stream, the investigator should find one or more of the following:

(i) Young of the year trout less than 150 mm occur at some time in the stream section.

(ii) Two or more ages of wild trout occur at some time within the stream section.

(4) *Tributary linkages.* Tributaries to wild trout streams are classified as wild trout streams for their function as habitat for segments of wild trout populations, including nurseries and refuges, and in sustaining water quality necessary for wild trout.

(c) *Existing list.* The streams identified as wild trout streams on or before January 1, 2002, and listed as such by the Fisheries Management Division will continue to be considered as wild streams by the Commission.

(d) *Requests for evaluation or reevaluation of streams.* The Commission staff will evaluate or reevaluate the classification of streams as wild trout streams at the request of the Department of Environmental Protection (DEP) in connection with permitting decisions. Requests for evaluation or reevaluation from persons or parties other than DEP will be considered for review consistent with available staff and resources and prioritized based on the status of DEP permitting decisions related to the sites. Requests that the Commission staff evaluate or reevaluate stream sections for inclusion on or removal from the list of streams supporting naturally reproducing populations of trout may be addressed to the Bureau of Fisheries, Pennsylvania Fish and Boat Commission, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616. In evaluating requests to remove streams from the list of wild trout streams, the Commission will take into account circumstances where human intervention or manmade changes have diminished the

capacity of a stream to meet the criteria set forth in this section. Streams will not be removed from the list of wild trout streams in circumstances where the investigator finds evidence that their characteristics and trout populations have been changed solely or principally as a result human intervention.

(e) *Appeals.* A person aggrieved by the classification of a stream section as a wild trout stream section may appeal the agency action by filing a notice of appeal with the Executive Director, Pennsylvania Fish and Boat Commission, Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000 within 15 days after publication of the notice that the stream section had been so classified in the *Pennsylvania Bulletin*. Nothing in this subsection will be construed to enlarge or diminish the appeal rights of persons or parties in connection with permitting decisions and other actions of DEP.

Source

The provisions of this § 57.11 adopted July 18, 2003, effective July 19, 2003, 33 Pa.B. 3513.

Cross References

This section cited in 25 Pa. Code § 105.1 (relating to definitions).

§ 57.12. Policy on wind power projects.

It is the policy of the Commission to have its staff fully coordinate agency concerns in the review of wind power development projects with all involved local, State and Federal regulatory agencies to avoid, minimize and mitigate harmful impacts to fish, other aquatic life, reptiles, amphibians and their habitats. Commission staff will seek the collection of adequate data for risk analysis when necessary in the environmental review process, the avoidance of threatened and endangered species and their habitats, the avoidance of ecologically sensitive areas when siting projects, the reduction of habitat fragmentation, and the development of mitigation strategies for unavoidable impacts.

Source

The provisions of this § 57.12 adopted September 12, 2008, effective September 13, 2008, 38 Pa.B. 5033.

Subchapter B. POLICY ON DEVELOPMENT OF HYDROPOWER AT EXISTING OR PROPOSED DAMS IN THE COMMONWEALTH

Sec.	
57.21.	General.
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57.23.	Adequate stream flows.
57.24.	Water quality protection.
57.25.	Turbine operation practices.
57.26.	Public recreational access.

57-6.2

§ 57.21. General.

It is the policy of the Commission that hydroelectric development on existing or planned dams on Commonwealth waters must not adversely affect the existing or potential fisheries at the location of the dam.

§ 57.22. Fish passages facilities.

(a) *General.* Persons, corporations or other legal entities who erect or maintain dams on the waters of this Commonwealth are required, upon order of the Commission, to provide the fish passage facilities as the Commission may deem necessary to enable fish to ascend and descend the waters at all seasons of the year.

(b) *Migratory waters.* The Commission finds that it is in the public interest for fish passage facilities to be included in all dams on waters that historically provided habitat for migratory fish, and it is the policy of the Commission to promote early installation of fish passage facilities at the dams.

(1) The Commission will endeavor to identify existing dams where upstream and downstream fish passage facilities for migrating fish are required and will provide appropriate notice to the owners. The Commission may defer the requirement for actual construction until developments downstream from the dam site indicate construction of fish passage facilities for migratory fish is advisable.

(2) The Commission will additionally review existing and proposed dams as candidates for installation of fish passage facilities when hydroelectric facilities are proposed. If the Commission agrees to defer immediate construction of fish passage facilities pending the implementation of a plan for availability of fish passage facilities at downstream obstructions to fish migration, the developer shall insure that hydropower development at the site will not impede the installation of fish passage facilities when required. Hydropower development at dams in this Commonwealth shall be compatible with ultimate installation and operation of fish passage facilities.

(3) When the Commission determines that installation of fish passage facilities at a dam site is required to promote restoration of migratory fish to their historic range but further determines that immediate installation is not

practicable or desirable, the Commission may seek to enter into an agreement with the owner, lessee or operator of the dam or associated hydroelectric development for the payment of so-called “in lieu of payments” under 30 Pa.C.S. § 3501(b) (relating to devices in dams to permit fish migration).

(c) *Other waters.* On waters where restoration of migratory fish to their historic habitat is not a consideration, the Commission will require installation of fish passage facilities on existing or planned dams upon a written order and finding that the installation will have an appreciable beneficial impact on the indigenous fishery. The Commission may defer installation of fish passage facilities at dams where the Commission orders installation of facilities after finding of an appreciable beneficial impact to existing or potential indigenous fishery. In these cases the Commission may seek to enter into an agreement for the payment of “in lieu of payments” under 30 Pa.C.S. § 3501(b). However, in all cases, the developer of hydropower installations at these dams shall insure that the development will not impede the installation of fish passage facilities as may ultimately be required.

§ 57.23. Adequate stream flows.

Operators of dams and hydropower installations shall maintain adequate continuous stream flows over the dam to protect fisheries resources and habitat located between the toe of the dam and the tailrace of the hydrounits. The habitat which is necessary for any portion of the life cycle of existing or potential fisheries must receive adequate flow to maintain habitat in a usable condition. The Commission will determine the minimum flow requirements and provide them to the developer early in the consultation process.

§ 57.24. Water quality protection.

Water quality must not be adversely affected by the hydrodevelopment. Water leaving the hydrodevelopment tailrace must have oxygen levels comparable to the oxygen levels in the free flowing streams just above the tailrace. This may require the developer to monitor the stream oxygen levels and provide aeration equipment to increase the tailrace oxygen level to approximate that found in the upstream waters. Other water quality parameters shall also be protected.

§ 57.25. Turbine operation practices.

Hydroelectric units must operate strictly as run-of-the-river operations without peaking or pulsing modes of operation. Run-of-the-river operation prevents undesirable lake level fluctuations and rapid changes in stream flows below the facility and protects boating and fishing recreational interests. Flashboards not exceeding 6 inches in height will not be considered a peaking or pulsing mode of operation; but, when flashboards are placed in use, specified minimum flows

must be continuously maintained. Debris removal plans shall be implemented when flashboard installations are breached by high waters, ice or any other influence.

§ 57.26. Public recreational access.

The developer should plan to provide safe access for recreational purposes adjacent to the completed installations. Streams and tailraces below the dams are heavily utilized for fishing purposes, and the fisherman's ability to utilize these areas shall not be decreased by the hydro development.

Subchapter C. LAW ENFORCEMENT POLICIES

Sec.	
57.41.	Deputy waterways conservation officers.
57.42.	[Reserved].
57.43.	[Reserved].
57.44.	Honorary deputy waterways conservation officer.
57.45.	Suspension of licenses and privileges under the Accelerated Rehabilitative Disposition Program.

Authority

The provisions of this Subchapter C issued under the Fish and Boat Code, 30 Pa.C.S. §§ 305, 322, 741, 928, 2102, 2307, 2711 and 5122—5124, unless otherwise noted.

Source

The provisions of this Subchapter C adopted December 28, 1984, effective December 29, 1984, 14 Pa.B. 4691, unless otherwise noted.

§ 57.41. Deputy waterways conservation officers.

(a) The Commission's Bureau of Law Enforcement will establish and implement policies as necessary to administer a volunteer deputy waterways conservation officer program. The policies, at a minimum, shall address the following:

- (1) Eligibility and procedure for appointment.
- (2) Training, law enforcement procedures and firearms and other qualifications.
- (3) Wearing of uniforms.

(b) Commissions for deputy waterways conservation officers expire on December 31 of the year in which they were issued. No person has a right, title or interest in being commissioned as a deputy waterways conservation officer nor an expectation that his commission will be reissued for a subsequent year. Commissions are issued until December 31 and no longer.

(c) The district waterways conservation officer or region manager may temporarily suspend the commission of a deputy waterways conservation officer for failure to comply with the policies established by the Bureau of Law Enforcement.

ment. The Executive Director or a designee may permanently revoke the commission of a deputy waterways conservation officer when revocation is deemed to be in the best interests of the Commission.

Source

The provisions of this § 57.41 adopted December 28, 1984, effective December 29, 1984, 14 Pa.B. 4691; amended June 23, 1989, effective June 24, 1989, 19 Pa.B. 2690; amended June 29, 2001, effective June 30, 2001, 31 Pa.B. 3415. Immediately preceding text appears at serial page (228634).

§ 57.42. [Reserved].

Source

The provisions of this § 57.42 adopted December 28, 1984, effective December 29, 1984, 14 Pa.B. 4691; amended June 23, 1989, effective June 24, 1989, 19 Pa.B. 2690; amended December 14, 1990, effective December 15, 1990, 20 Pa.B. 6179; reserved June 29, 2001, effective June 30, 2001, 31 Pa.B. 3415. Immediately preceding text appears at serial pages (228635) to (228636).

§ 57.43. [Reserved].

Source

The provisions of this § 57.43 adopted December 28, 1984, effective December 29, 1984, 14 Pa.B. 4691; reserved June 23, 1989, effective June 24, 1989, 19 Pa.B. 2690. Immediately preceding text appears at serial page (108046).

§ 57.44. Honorary deputy waterways conservation officer.

(a) *Former members of the Commission.* Former members of the Commission are designated special honorary deputy waterways conservation officers unless they apply for and are appointed as active deputies.

(b) *Others.* Other responsible individuals recommended by the members of the Commission or the Executive Director may be designated as honorary deputy waterways conservation officers.

(c) *Status.* Honorary deputy waterways conservation officers shall receive no badge or commission and are not authorized to perform law enforcement duties. They will receive a suitable certificate attesting to their status and recognizing their contributions to the Commonwealth and the Commission.

Source

The provisions of this § 57.44 adopted December 28, 1984, effective December 29, 1984, 14 Pa.B. 4691.

§ 57.45. Suspensions of licenses and privileges under the Accelerated Rehabilitative Disposition Program.

(a) Upon receipt of an order of court directing the suspension or revocation of fishing or boating privileges of a person placed in the Accelerated Rehabilitative

tive Disposition (ARD) program, the Executive Director or a designee will issue a written notice of suspension or revocation as provided in the order.

(b) If the period of suspension or revocation provided in the ARD order is less than 1 year, the notice of suspension or revocation issued under subsection (a) shall provide that the suspension or revocation shall be effective during the period from April 15 until September 15, if the order provides for suspension or revocation for 120 days or more, or during part of the period from April 15 until September 15 that the Executive Director deems appropriate if the order provides for a suspension or revocation for less than 120 days.

(c) It is the policy of the Commission that when a suspension or revocation of a license or privilege is ordered under the ARD program for an offense that carries a mandatory period of suspension or revocation under the Code, the ARD-ordered period of suspension or revocation may be no less than the mandatory minimum period for suspensions/revocations upon conviction of the charged offense.

Authority

The provisions of this § 57.45 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 741, 928 and 2102.

Source

The provisions of this § 57.45 adopted July 18, 1986, effective July 19, 1986, 16 Pa.B. 2644.

Subchapter D. ADMINISTRATIVE POLICIES

Sec.

- 57.61. Designation of areas for the exclusive use of children and special populations.
57.62. Access for special populations.

Authority

The provisions of this Subchapter D issued under the Fish and Boat Code, 30 Pa.C.S. §§ 322, 2102 and 2307, unless otherwise noted.

Source

The provisions of this Subchapter D adopted November 8, 1985, effective January 1, 1986, 15 Pa.B. 4036, unless otherwise noted.

§ 57.61. Designation of areas for the exclusive use of children and special populations.

It is the policy of the Commission to ordinarily limit designation of waters for the exclusive use of children and special populations as defined in § 65.21 (relating to waters limited to specific purposes—exclusive use areas) to specific events for limited periods of time. Sponsors who apply for new designations of exclu-

sive use areas on a full-time or year-round basis should be advised that they bear the burden of showing why the designation is in the best interests of the fishery and the angling public.

§ 57.62. Access for special populations.

It is the policy of the Commission to identify areas with access for special populations—as defined in § 65.21 (relating to waters limited to specific purposes—exclusive use areas)—and to encourage use of waters by special populations on a nonexclusive basis.

Subchapter E. BOATING POLICIES

Sec.

57.81. Policy on special boating regulations on waters with no public access.

§ 57.81. Policy on special boating regulations on waters with no public access.

(a) As used in this subchapter, the phrase “waters with no public access” means lakes, ponds, impoundments or other waters on which there is located no public access area, launch ramp or other launch facility owned, controlled or operated by Federal, State or local government agencies.

(b) The Commission has statutory authority to make and enforce special boating regulations for particular areas of water “limiting, restricting or prohibiting the operation or navigation of boats thereon to promote the interests of the public or to preserve aquatic life.” See section 5124 of the code (relating to particular areas of water). The Commission’s statutory authority to make general and special boating regulations preempts local regulation of boating—based on exercise of police powers—on the waters of this Commonwealth.

(c) It is the policy of the Commission to encourage local interests—residents, property owners and other users—to resolve issues relating to special boating restrictions on waters with no public access by means of agreement, deed, deed restriction or contract without resort to special boating regulations.

(d) It is the policy of the Commission to exercise its discretion to promulgate special boating regulations on waters of this Commonwealth with no public access only in circumstances when:

(1) The public interest and the interests of the boating public clearly show the need for the special regulations as evidenced by a formal resolution requesting the regulations approved by the governing body (for example, township supervisors, borough council, county commissioners) of the political subdivision in which the waters are located. The resolution also should include evidence of the political subdivision’s willingness to enforce the additional restric-

tions under to the reciprocal enforcement provisions of section 903 of the code (relating to delegation of enforcement powers).

(2) The Bureau of Law Enforcement determines that the proposed special boating regulations are readily enforceable without unduly diverting officers from enforcement activities on waters with public access.

(3) The proponent of the special regulations makes a clear and convincing showing that the proposed regulations are necessary in the particular circumstances to provide for the health and safety of persons on, in and along the waters in question, including persons who boat on those waters, or to protect aquatic life in those waters or both.

Source

The provisions of this § 57.81 adopted January 17, 1997, effective January 18, 1997, 27 Pa.B. 317.

[Next page is 59-1.]