

Notice of Proposed Rulemaking

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapter 69 Fishing

Preamble

The Fish and Boat Commission (Commission) proposes to amend Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa. C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

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

C. *Statutory Authority*

The proposed amendment to §69.12a (relating to special regulations applicable to Lake Erie tributary streams) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Currently, from the day after Labor Day until the opening day of trout season in April, all Lake Erie tributary streams are closed to fishing from 10 p.m. to 5 a.m. except for Walnut Creek and Elk Creek north of Route 5. The portion of Walnut Creek from Route 5 north to Manchester Road flows through a residential area. All of the property owners historically have allowed public fishing in Walnut Creek in this area and tolerated the problems associated with night time fishing.

During this year's steelhead season, however, several of the property owners expressed concerns to the Commission's law enforcement staff regarding the problems they are facing associated with night time fishing. Anglers fishing in this area at night are causing the property owners' dogs to become alarmed and start barking. Property owners also indicate that they can hear anglers' loud voices and radios being played during the night time hours. Unfortunately, continued night time fishing in this section of Walnut Creek jeopardizes the privacy of the property owners and creates unnecessary disturbances to the entire neighborhood. The Commission also received two letters from property owners expressing similar concerns.

The Commission's law enforcement staff met with several of the property owners in an attempt to address their concerns. One potential solution that was discussed was to prohibit angling

during the night time hours in this area. The property owners agreed to continue to allow public fishing between 5 a.m. and 10 p.m. The Commission therefore proposes that §69.12a be amended to prohibit fishing in Walnut Creek from Route 5 north to Manchester Road Bridge between the hours of 10 p.m. and 5 a.m. The Commission proposes that §69.12a be amended to read as set forth in Annex A.

By separate notice published in the *Pennsylvania Bulletin*, the Executive Director, acting under the authority of §65.25 (relating to temporary changes to fishing regulations), already has taken immediate action to amend the Commission's regulation at §69.12a to prohibit fishing in Walnut Creek from Route 5 north to Manchester Road Bridge between the hours of 10 p.m. and 5 a.m. The temporary modification went into effect immediately upon posting in the vicinity of the area affected and will remain in effect until January 1, 2009, unless the Commission, by appropriate action, adopts the amendment.

F. *Paperwork*

The proposed rulemaking will slightly increase paperwork and will create new paperwork requirements in that the Commission will post signs notifying anglers of the regulatory change. The Commission's Bureau of Law Enforcement will post both sides of the stream from the Manchester Road Bridge south to Route 5 and will post signs at the Walnut Creek Marina. After the first year that the change goes into effect, the Commission does not expect to have to post the stream.

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The Commission's costs for signage will be modest. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Pennsylvania Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

For the Pennsylvania Fish and Boat Commission

Douglas J. Austen, Ph.D.
Executive Director

Annex A

Regulation No. 48A-201

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart B. Fishing

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

§ 69.12a. Special regulations applicable to Lake Erie tributary streams.

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(c) From 12:01 a.m. on the day after Labor Day, until the first Saturday after April 11 of the following year, all Lake Erie tributary streams are closed to fishing from 10:00 p.m. until 5 a.m. on the following day except for Walnut Creek **north of Manchester Road Bridge** and Elk Creek north of Route 5.

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