

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 53, 61, 63 AND 69]

### Fish Tournaments

The Fish and Boat Commission (Commission) proposes to amend Chapters 53, 61, 63 and 69 as set forth in Annex A. The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code of 1980) (code). The proposed amendments deal with fishing tournaments.

#### A. *Effective Date*

These proposed amendments will, if approved on final rulemaking, go into effect upon publication of an order adopting amendments.

#### B. *Contact Person*

For further information on the proposed amendments, contact Dennis Guise, Chief Counsel, (telephone 717-657-4525), P. O. Box 67000, Harrisburg, PA 17106-7000.

#### C. *Statutory Authority*

These amendments are published under the statutory authority of sections 741 and 2102 of the code (relating to control of property; and rules and regulations).

#### D. *Purpose and Background*

The proposed amendments update various Commission regulations relating to fishing tournaments.

#### E. *Summary of Proposal*

Under current regulations, fishing tournaments are subject to two permit requirements. Tournaments conducted using Commission access areas or property require a permit for special use of Commission property, and most other tournaments apply for and receive a special activities permit since they involve an unusual congregation of boats for a specific purpose.

In 1991, the Commission proposed to update its tournament regulations and published a notice of proposed rulemaking to seek comment on a comprehensive update. At the October 1991, meeting, the Commission, on an evenly divided vote, failed to approve the regulations as final rulemaking.

Based on input from interested sportsmen and the public, the staff was asked to revisit the subject of tournament regulations during 1994. Draft regulations were prepared and circulated to Commissioners and staff for comment. At the November joint meeting of the Commission's Committees on Fisheries and Law Enforcement, these draft regulations were discussed in considerable detail with representatives of various user groups, including groups that sponsor or participate in tournaments. In November, the Commission received a request from the American Bass Association of the Lake Erie Region to waive culling regulations for so-called catch-and-release tournaments. The Coalition of Concerned Pennsylvania Anglers has issued a position statement on fishing tournaments expressing alarm at the number of tournaments within this Commonwealth and the manner in which some tournaments are conducted.

In light of this interest and the need for updated tournament regulations, the Commission is publishing a

notice of proposed rulemaking and seeking public comment on the proposed updated tournament regulations set forth at Annex A. These proposed amendments are divided into two separate, but somewhat overlapping, sections. Section 53.24 (relating to tournament permit) relates to use of Commission property and § 63.40 (relating to fishing tournaments) relates to general tournament regulations. Both sections list some of the factors to be considered in reviewing applications for tournament permits and describe possible permit conditions. These factors provide expanded scrutiny of tournament applications focusing on fisheries impacts and impacts on fishing and boating opportunities of both tournament and non-tournament anglers and boaters. The proposed amendments encourage catch-measure-release tournaments in which the fish taken are not reduced to possession. The proposed amendments streamline permit procedures by providing for a single joint tournament permit for a tournament that applies to use Commission property. The proposed amendments also change the definition of a "fishing tournament" from a competitive event involving two or more anglers to one involving ten or more anglers.

Under the code, the entire control of Commission property is vested in the Commission, and the agency has broad discretion to regulate the use and protection of its property. The proposed amendments on use of Commission property include items that would not be applicable to general fishing regulations, such as regulation of parking and requirements to clean up and restore the site after the tournament.

The Commission recognizes that tournaments are an area of some controversy. Tournament anglers are vocal and organized. On the other hand, it is not uncommon for the Commission to receive complaints from anglers who have been unable to gain access to the water because of overcrowding or who are concerned about the impacts of increased fishing pressure caused by tournaments. The goal of the proposed regulations is to take a balanced approach to these divergent views. If adopted, the regulations would give the Commission more flexibility to deal with tournaments.

One of the more contentious issues related to tournament fishing relates to culling of fish. Under current regulations, culling is prohibited since a fish counts against the creel limit of the angler once it is reduced to possession by placing it in a livewell regardless of whether it is subsequently released. The tournament anglers insist that placing fish in carefully designed and operated aerated or recirculating livewells does not hurt the fish and that such fish may be returned to the waters from which taken without adverse impacts. Many other object to culling as a use of the resource for competitive purposes.

The proposed amendments seek public comment on a possible change to culling regulations. Under the proposal, a tournament could ask that its permit include a special provision permitting limited culling under carefully controlled circumstances involving use of aerated or recirculating temperature-controlled livewells. Using wording similar to that used in New York regulations, a single, uninjured largemouth bass or smallmouth bass that an angler is landing, measuring or in the process of releasing from a recirculated or aerated livewell will not be considered as part of the daily creel limit if the fish is caught during a tournament that meets certain strict requirements.

F. *Paperwork*

The proposed amendments will not increase paperwork since nearly all fishing tournaments currently apply for one or more permits from the Commission. The proposed amendments do expand and clarify the criteria by which the Commission reviews applications for fishing tournaments.

G. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 60 days after publication of this notice in the *Pennsylvania Bulletin*. The Commission will conduct two public hearings with regard to the proposed tournament regulations. One of the hearings will be held in the Harrisburg area and the other in the Erie area.

PETER A. COLANGELO,  
*Executive Director*

*(Editor's Note: Proposals to amend the following sections, proposed to be amended in this document, remain outstanding as noted: § 61.2—25 Pa.B. 5738 (December 16, 1995); § 61.3—25 Pa.B. 4134 (September 30, 1995); § 69.12—25 Pa.B. 5738 (December 16, 1995); § 69.13—25 Pa.B. 5738 (December 16, 1995).)*

**Fiscal Note:** 48A-53. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.24. Tournament permit.

(a) [ *General.* The Commission finds that fishing tournaments that utilize Commission property constitute special uses of that property which place special demands on Commission facilities and may interfere with the opportunity of the general fishing and boating public to use the property for its intended purposes.

(b) *Special use permit required.*

(1) It is unlawful for a person to conduct a fishing tournament in which ten or more persons participate as anglers on a Commission lake or using a Commission access area without first obtaining a special use permit from the Executive Director or a designee.

(2) An applicant for a tournament permit shall apply at least 30 days before the date of the proposed tournament and indicate the following:

- (i) The date, time and place.
- (ii) The nature of the proposed tournament.
- (iii) The anticipated number of participants and water craft involved.
- (iv) The proposed disposition of fish caught.
- (v) The species and source of fish sought.
- (vi) The entry fees.
- (vii) The basis on which prizes may be awarded.

(3) It is unlawful to conduct a tournament on Commission-owned or -controlled property except in compliance with the permit conditions.

(4) Permit conditions may include cleanup requirements, such as a requirement for payment of a deposit to ensure the area is restored to its appearance before the event. ]

*Definition.* As used in this section, the term “fishing tournament” means an organized event in which ten or more individuals fish during a specified time period. An activity that involves one or more of the following factors is considered a fishing tournament:

(1) The event is sponsored or promoted by an individual or organization.

(2) The event involves the award of trophies, prizes or other recognition requirements for participants in the tournament.

(b) *General.* The Commission finds that fishing tournaments that use Commission property constitute special uses of that property which place special demands on Commission facilities and may affect the opportunity of the general fishing and boating public to use the property for its intended purposes.

(c) *Special use permit required.*

(1) *Special use permit.* It is unlawful for a person to conduct a fishing tournament on a Commission lake or using Commission access areas, without first obtaining a special use permit from the Executive Director or a designee.

(2) *Content of application.* An applicant for a special use permit for a fishing tournament shall apply at least 60 days before the date of the proposed tournament and indicate the following:

- (i) The date, time and place.
- (ii) The nature of the proposed tournament.
- (iii) The anticipated number of participants, watercraft and vehicles that will use Commission property.
- (iv) The proposed disposition of fish caught.
- (v) The species and source of fish sought.
- (vi) The entry fees.

(3) *Review of applications.*

(i) The Commission staff will review applications for special activity permits to conduct fishing tournaments on Commission property. The factors to be reviewed include:

(A) Whether the proposed tournament at the proposed time and location will have adverse impacts on the protection and management of fish in the waters to be fished in connection with the tournament. “Catch-and-release” tournaments will be given preference over tournaments that involve taking or killing fish.

(B) Whether the proposed tournament at the proposed time and location will impede or reduce fishing and boating opportunities for members of the angling and boating public who are not participants in the tournament.

(C) Whether the proposed tournament is scheduled on the opening weekend of the season for any species of game fish.

(D) Whether the proposed tournament at the proposed time and location competes with another tournament already permitted for the same time and place.

(E) Whether the proposed tournament at the proposed time and location may result in congestion of vehicles on Commission property or watercraft on the waters of this Commonwealth.

(F) Whether the sponsors of the proposed tournament have demonstrated their ability to conduct the tournament in accordance with the rules and regulations of the Commission and the conditions of the permit.

(ii) If the Bureau of Law Enforcement determines to deny the application for the special use permit for a fishing tournament, it will notify the applicant in writing of the denial and the reasons therefor. The applicant may, within 10 days of notification, request the Executive Director to reconsider the denial of the permit. If the Executive Director denies the permit after reconsideration, the applicant may appeal to the Commission in accordance with 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

(4) *Permit conditions.* The Bureau of Law Enforcement may impose conditions in connection with the issuance of a permit under this section. The conditions may include:

- (i) Requirements for offsite parking.
- (ii) Limitations on the numbers of boats or participants in the tournament.
- (iii) Limitations on the time or duration of the tournament.
- (iv) Limitations on taking, catching, possessing and killing fish, including, when appropriate for the protection and management of fish, requiring that the tournament be conducted as a catch-measure-and-release tournament.
- (v) Requirements for the proper disposal of fish taken in the tournament.
- (vi) Clean-up requirements, including a requirement for the posting of a bond or security to guarantee that Commission property is restored to its prior condition.
- (vii) Requirements for filing of catch reports within 10 days after completion of the tournament.
- (viii) Requirements for locating weigh-in stations and prize awarding events at locations that will not interfere with normal public use of Commission facilities.
- (ix) Upon request of an applicant for a tournament permit, the Commission may include a condition providing that a single, uninjured largemouth bass or smallmouth bass that an angler is landing, measuring or in the process of releasing from a recirculated or aerated livewell will not be considered as part of the daily creel limit if the fish is caught during a tournament that as part of its rules forbids the return of dead or distressed bass to the water, establishes a daily limit of less than the Statewide creel limit, requires use of recirculating or aerated temperature-controlled livewells, distributes to contestants instructions on the proper maintenance and use of livewells and limits the fishing hours to no more than 8 hours per day. This

permit condition will be included only in circumstances when the Commission finds that permitting limited culling will have no substantial adverse impacts on the protection and management of fish. The permit condition will provide that livewells used in the tournaments will be equipped with:

- (A) A direct water supply line to recirculate main lake water through the livewell.
- (B) Either a properly functioning timer set to run aeration at intervals of 5 minutes or less or constant running of the aerator from the time the first fish enters the livewell until the fish are removed.
- (C) Mandatory systems to ensure addition of oxygen to the livewell.
- (D) Mandatory cooling during summer months.

(d) *Prohibited acts.* It is unlawful to conduct a tournament on Commission-owned or -controlled property except in compliance with permit conditions. It is unlawful to conduct a tournament on Commission-owned or -controlled property on the opening weekend for any species of game fish unless the applicant has made an extraordinary showing that the proposed tournament will not interfere with normal fishing and boating activities and the Commission issues a special use permit containing a specific finding, based upon the applicant's showing, that the permitted activity will not constitute interference.

(e) *Joint permit.* An application for a special use permit under this section also constitutes an application for a special activity permit for a fishing tournament under § 63.40 (relating to fishing tournaments), and a permit issued under this section constitutes a joint permit for use of Commission property and for a fishing tournament under § 63.40.

**Subpart B. FISHING**

**CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS**

**§ 61.1. Commonwealth inland waters.**

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(c) It is unlawful to take, catch or kill more than 1 day's limit of a species of fish as specified in the following chart during 1 calendar day. It is unlawful to possess more than 1 day's limit of a species of fish as specified in the [ following ] chart in subsection (d) except under the following circumstances:

\* \* \* \* \*

(3) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament permit; and fish tournaments), fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

(4) Game fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither donor nor recipient may kill or possess, while in the act of fishing, more than the limit allowed.

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§ 61.2. Delaware River and River Estuary.

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(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the [ following ] chart in subsection (d) during 1 calendar day. A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken. It is unlawful to possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

\* \* \* \* \*

(3) A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament permit; and fishing tournaments), fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned to the water by hand or basket and not thrown or dropped.

(5) Game fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither donor nor recipient may kill or possess, while in the act of fishing, more than the limit allowed.

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§ 61.3. Pymatuning Reservoir.

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(b) It is unlawful to take, catch or kill more than 1 day's limit of a species of fish as specified in the chart in subsection (c) during 1-calendar day. It is unlawful to possess more than 1 day's limit of a species of fish as specified in the chart in subsection (c) except under the following circumstances:

\* \* \* \* \*

(3) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament permit; and fishing tournaments), fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned to the water unharmed.

(4) Game fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither donor nor recipient may kill or possess, while in the act of fishing, more than the limit allowed.

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§ 61.4. Conowingo Reservoir.

\* \* \* \* \*

(c) It is unlawful to take, catch or kill more than 1 day's limit of a species of fish as specified in the chart in subsection (d) during 1 calendar day. It is unlawful to possess more than 1 day's limit of a species of fish as specified in the chart in subsection (d) except under the following circumstances:

\* \* \* \* \*

(3) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament permit; and fishing tournaments), fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned to the water unharmed.

(4) Game fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither donor nor recipient may kill or possess, while in the act of fishing, more than the limit allowed.

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§ 61.7. Susquehanna River and tributaries.

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(c) It is unlawful to take, catch or kill more than 1 day's limit of a species of fish as specified in the [ following ] chart in subsection (d) during 1 calendar day. It is unlawful to possess more than 1 day's limit of a species of fish as specified in the chart in subsection (d) except under the following circumstances:

\* \* \* \* \*

(3) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to fishing tournament; or fishing tournaments), fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned to the water unharmed.

(4) Game fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither donor nor recipient may kill or possess, while in the act of fishing, more than the limit allowed.

\* \* \* \* \*

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.40. [ Seasons for fishing ] Fishing tournaments.

(a) Definition. As used in this [ chapter ] section, the term "fishing tournament" means an organized event where [ two ] ten or more individuals fish during a specified time period. An activity that involves one or more of the following factors is considered a fishing tournament:

\* \* \* \* \*

(b) [ *Prohibition.* It is unlawful to conduct or participate in a fishing tournament involving the catch or attempted catch of a particular species of fish during the closed season for that species. ]

*Permits.* It is unlawful to conduct a fishing tournament on Commonwealth waters without obtaining a Special Activity Permit under this section.

(1) *Content of application.* An applicant for a special use permit for a fishing tournament shall apply at least 60 days before the date of the proposed tournament and indicate the following:

- (i) The date, time and place.
- (ii) The nature of the proposed tournament.
- (iii) The anticipated number of participants, watercraft and vehicles that will be involved in the tournament.
- (iv) The proposed disposition of fish caught.
- (v) The species and source of fish sought.
- (vi) The entry fees.

(2) *Review of applications.*

(i) The Commission staff will review applications for special activity permits to conduct fishing tournaments. The factors to be reviewed include:

(A) Whether the proposed tournament at the proposed time and location will have adverse impacts on the protection and management of fish in the waters to be fished in connection with the tournament. "Catch-and-release" tournaments will be given preference over tournaments that involve taking or killing fish.

(B) Whether the proposed tournament at the proposed time and location will impede or reduce fishing and boating opportunities for members of the angling and boating public who are not participants in the tournament.

(C) Whether the proposed tournament is scheduled on the opening weekend of the season for any species of game fish.

(D) Whether the proposed tournament at the proposed time and location competes with another tournament already permitted for the same time and place.

(E) Whether the proposed tournament at the proposed time and location may result in the congestion of watercraft on the waters of this Commonwealth.

(F) Whether the sponsors of the proposed tournament have demonstrated their ability to conduct the tournament in accordance with the rules and regulations of the Commission and the conditions of the permit.

(ii) If the Bureau of Law Enforcement determines to deny the application for the special activity permit for a fishing tournament, it will notify the applicant in writing of the denial and the reasons therefor. The applicant may, within 10 days of notification, request the Executive Director to reconsider the denial of the permit. If the Executive Director denies the permit after reconsideration, the applicant may appeal to the Commission in accordance with 1 Pa. Code § 35.20 (relating to appeals from actions of the staff).

(3) *Permit conditions.* The Bureau of Law Enforcement may impose conditions in connection with the issuance of a permit under this section. The conditions may include:

(i) Limitations on the numbers of boats or participants in the tournament.

(ii) Limitations on the time or duration of the tournament.

(iii) Limitations on taking, catching and killing fish, including, when appropriate for the protection and management of fish, requiring that the tournament be conducted as a catch-measure-and-release tournament.

(iv) Requirements for the proper disposal of fish taken in the tournament.

(v) Requirements for filing of catch reports within 10 days after completion of the tournament.

(vi) Upon request of an applicant for a tournament permit, the Commission may include a condition providing that a single, uninjured largemouth bass or smallmouth bass that an angler is landing, measuring or in the process of releasing from a recirculated or aerated livewell will not be considered as part of the daily creel limit if the fish is caught during a tournament that as part of its rules forbids the return of dead or distressed bass to the water, establishes a daily limit of less than the Statewide creel limit, requires use of recirculating or aerated temperature-controlled livewells, distributes to contestants instructions on the proper maintenance and use of livewells and limits the fishing hours to no more than 8 hours per day. This permit condition will be included only in circumstances when the Commission finds that permitting limited culling will have no substantial adverse impacts on the protection and management of fish. The permit condition will provide that livewells used in the tournaments will be equipped with:

(A) A direct water supply line to recirculate main lake water through the livewell.

(B) Either a properly functioning timer set to run aeration at intervals of 5 minutes or less or constant running of the aerator from the time the first fish enters the livewell until the fish are removed.

(C) Mandatory systems to ensure addition of oxygen to the livewell.

(D) Mandatory cooling during summer months.

(c) *Prohibited acts.* It is unlawful to conduct a tournament on Commonwealth waters except in compliance with permit conditions. It is unlawful to conduct a tournament on Commonwealth waters on the opening weekend for any species of game fish unless the applicant has made an extraordinary showing that the proposed tournament will not interfere with other fishing and boating activities and the Commission issues a special activity permit containing a specific finding, based upon the applicant's showing, that the permitted activity will not constitute interference. It is unlawful to conduct or participate in a fishing tournament involving the catch or attempted catch of a particular species of fish during the closed season for that species.

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**Subchapter B. SPORT FISHING AND ANGLING**

**§ 69.12. Seasons, sizes and creel limits—Lake Erie.**

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(c) It is unlawful to take, catch or kill more than 1 day's limit of a species of fish as specified in the chart in subsection (d) during 1 calendar day. It is unlawful to possess more than 1 day's limit of a species of fish as specified in the chart in subsection (d) except under the following circumstances:

\* \* \* \* \*

(3) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament permit; and fishing tournaments), fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned to the water unharmed.

(4) Game fish shall be given to another person, but the fish shall be counted in the donor's creel limit and neither donor nor recipient may kill or possess, while in the act of fishing, more than the limit allowed.

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**§ 69.13. Seasons, sizes and creel limits—Lake Erie tributaries.**

\* \* \* \* \*

(c) It is unlawful to take, catch or kill more than 1 day's limit of a species of fish as specified in the chart in subsection (d) during 1 calendar day. It is unlawful to possess more than 1 day's limit of a species of fish as specified in the chart in subsection (d) except under the following circumstances:

\* \* \* \* \*

(3) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned to the water unharmed.

(4) Game fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither donor nor recipient may kill or possess, while in the act of fishing, more than the limit allowed.

\* \* \* \* \*

[Pa.B. Doc. No. 96-39. Filed for public inspection January 12, 1996, 9:00 a.m.]