

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51 AND 63]

Administration and Fishing

The Fish and Boat Commission (Commission) by this order amends Chapters 51 and 63 (relating to administrative provisions; and general fishing regulations). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments deal with administration and fishing.

A. *Effective Date*

These amendments will go into effect upon publication of this order adopting the amendments.

B. *Contact Person*

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site at <http://www.fish.state.pa.us>.

C. *Statutory Authority*

These amendments are published under the statutory authority of sections 2102 and 2711 of the code (relating to rules and regulations; and issuing agents).

D. *Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations pertaining to issuing agents and the display of fishing licenses and verification of license purchase. The specific purpose of the amendments is described in more detail under the summary of changes.

E. *Summary of Changes*

1) Sections 51.31, 51.34 and 51.35 (relating to responsibility of issuing agents; and stamps and permits; and operation of issuing agency). The Commission's staff recently undertook a review of the current licensing process, and beginning in 1998, the application form will no longer be used. The new process provides that the applicant will give the issuing agent the applicant's driver's license or other positive form of identification (as already required), and the agent will copy the information from the driver's license to the reverse side of the license. To address concerns about signatures being required on the display side of the license, staff were able to modify the reverse side of the license to include the signature of the applicant. This change, coupled with some other modifications to the reverse side of the form, will allow the Commission to eliminate the application form. Although the signature will still appear over the face of the trout stamp, this is hardly discernable except upon close inspection. The Commission has adopted changes to the issuing agent regulations set forth in Chapter 51, as proposed, to reflect the revised process for issuing licenses.

2) Section 63.2 (relating to display of fishing license). Current practice in the Bureau of Law Enforcement provides that when a resident is apprehended for fishing without a license in his possession and claims that he previously purchased a valid fishing license but left it

elsewhere, the apprehending officer will give the individual 7 days to produce the original license certificate. Current practice also provides that if it is inconvenient for the individual to produce the certificate in person, the officer may permit the individual to mail the original license certificate to the officer, and upon receipt, the officer will examine and verify it and return it to the individual. To codify this existing practice, the Commission has amended its regulations to add a new subsection (§ 63.2(c)), describing the process by which officers deal with claims that a person fishing without a license has left it elsewhere. The Commission adopted the amendment as proposed with a clarification suggested by the Bureau of Law Enforcement's staff, namely, that when the original license certificate is produced, it must show that it was purchased on a date and time prior to the date and time of apprehension.

F. *Paperwork*

The amendments will increase paperwork and create new paperwork requirements by virtue of the implementation of the new form for persons fishing without a license in possession.

G. *Fiscal Impact*

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions but will result in minor additional costs to the Commission as a result of the publication of the form to be given to persons caught fishing without a license in possession. The amendments will impose no new costs on the private sector or the general public in that the procedure relating to persons fishing without a license in possession codifies the Commission's existing practice.

H. *Public Involvement*

A notice of proposed rulemaking containing the proposed amendments was published at 27 Pa.B. 5784 (November 8, 1997). During the public comment period, the Commission did not receive any written comments. However, after the public comment period but prior to consideration by the Commission, the Commission received one written comment, favoring the new provision for persons caught fishing without a license in possession, and three written comments, opposing the proposal. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240)(45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder (1 Pa. Code §§ 7.1 and 7.2).

(2) A public comment period was provided and that all comments received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 51 and 63, are amended by amending §§ 51.31, 51.34 and 51.35 to read as set forth at 27 Pa.B. 5784 and by amending § 63.2 to read as set forth at Annex A.

(b) The Executive Director will submit this order, 27 Pa.B. 5784 and Annex A to the Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 27 Pa.B. 5784 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-72. (1) Fish Fund; (2) Implementing Year 1998-99 is \$2,000; (3) 1st Succeeding Year 1999-00 is \$0; 2nd Succeeding Year 2000-01 is \$0; 3rd Succeeding Year 2001-02 is \$0; 4th Succeeding Year 2002-03 is \$0; 5th Succeeding Year 2003-04 is \$0; (4) Fiscal Year 1997-98\$N/A; Fiscal Year 1996-97\$N/A; Fiscal Year 1995-96\$N/A; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.2. Display of fishing license and verification of license purchase.

(a) *Officers designated to check licenses.* A person fishing in waters of this Commonwealth or in boundary waters shall show his fishing license upon the request of a waterways conservation officer, deputy waterways conservation officer or other officer authorized to enforce the code or this title under section 903 of the code (relating to delegation of enforcement powers).

(b) *Display on outer garment.* It is unlawful for a person required by Chapter 27 of the code (relating to fishing licenses) to purchase a fishing license to fish in the waters of this Commonwealth or in boundary waters unless the person displays the license certificate on a hat or outer garment while fishing. A warning will be issued for a first violation of this section if the person has a valid fishing license in his possession and about his person and shows it upon request. An institutional license issued under section 2708 of the code (relating to institutional licenses) may be displayed or maintained by the person fishing or by the person attending the person who is fishing.

(c) *Fishing without a license in possession.*

(1) When a resident of this Commonwealth is apprehended for fishing without a license in his possession and claims that he previously purchased a valid fishing license for that year, the officer apprehending the individual shall give the individual 7 days to produce the original of the license certificate, if the individual provides to the officer's satisfaction, at the time of apprehension, positive proof of identity and a residence address within this Commonwealth. The original license certificate shall show all required permits and a purchase date and time prior to the date and time of apprehension.

(2) If it is inconvenient for the individual to produce the certificate in person, the officer may permit the individual to mail the original license certificate to the

officer together with a stamped, self-addressed return envelope. If the officer permits the individual to mail the original license certificate to the officer, the officer shall provide the individual with a receipt or other documentation allowing the individual to fish during the period that the original license certificate is not in his possession.

(3) Upon receipt of the original license certificate, the officer shall examine and verify it and return it to the licensee.

(4) If the person apprehended fails to send the original license certificate and required permits to the officer within the time allotted, the officer shall institute summary proceedings against the individual in the manner prescribed by law.

[Pa.B. Doc. No. 98-566. Filed for public inspection April 10, 1998, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing

The Fish and Boat Commission (Commission) by this order amends Chapter 65 (relating to special fishing regulations). The Commission is adopting this regulation under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The regulation deals with fishing.

A. *Effective Date*

This regulation will go into effect on January 1, 1999.

B. *Contact Person*

For further information on the regulation, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. *Statutory Authority*

This regulation is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

The regulation is designed to update, modify and improve Commission regulations pertaining to fishing. The specific purpose of the regulation is described in more detail under the summary in Part E of this Preamble.

E. *Summary*

Angler opinions from the 1991 Trout Angler Telephone Survey resulted in strong support for the creation of more limited kill areas on wild trout fisheries. The same general theme was supported by the participants of the recent Wild Trout Workgroup. In keeping with this concept, the Commission adopted a new All Tackle Selective Harvest Program. This regulation is designed to enhance wild trout fisheries, while providing anglers with an opportunity for limited harvest of larger individuals.

The All Tackle Selective Harvest Program provides an alternative to the current Selective Harvest Program, where angling is limited to the use of artificial lures only (including flies and streamers). The regulation appeals to a broad spectrum of anglers, as fishing is permitted with the use of artificial lures, flies, streamers, natural bait, baitfish or fishbait. Both spinning and fly fishing gear is

permitted in these areas. This regulation provides for year-round angling (no closed season) with a 12-inch minimum length limit on brown trout and a 9-inch minimum length limit for all other salmonid species. The daily creel limit is two trout (combined species) from 8 a.m. on the opening day of regular trout season to midnight Labor Day. No harvest is permitted from mid-

night Labor Day to 8 a.m. on the opening day of regular trout season of the following year.

Waters for the All Tackle Selective Harvest Program include the following. In addition, the Commission's staff expect to have several new waters to add to this Program. However, time did not permit staff to complete all of the necessary landowner contacts.

County	Water	Description
Westmoreland	Camp Run	Currently managed as a Class A wild brook trout fishery and unstocked. From the headwaters downstream to the mouth, a distance of 4.1 miles.
Cameron	Hunts Run	Currently managed as a Class A wild brown trout fishery and unstocked. From the confluence with McNuff Branch downstream to the mouth, a distance of 4.7 miles.
Potter	Sinnemahoning Creek East Fork	Currently managed as a Class A wild brown trout fishery and unstocked. From the confluence with Wild Boy Run downstream to the confluence with Camp Run, a distance of 2.9 miles.
Union	Cherry Run	Currently managed as a Class A wild brown trout fishery and unstocked. From a point 2.7 miles upstream from the mouth downstream to the mouth, a distance of 2.7 miles.

F. Paperwork

The regulation will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The regulation will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The regulation will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking containing the proposed regulation was published at 27 Pa.B. 6333 (December 6, 1997). After the public comment period, the Commission received one comment, opposing the new program. A copy of this public comment was provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the regulation adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240)(45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder (1 Pa. Code §§ 7.1 and 7.2).

(2) A public comment period was provided and all comments received were considered.

(3) The adoption of the regulation of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by adding § 65.4b to read as set forth at 27 Pa.B. 6333 (December 6, 1997).

(b) The Executive Director will submit this order and 27 Pa.B. 6333 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 27 Pa.B. 6333 and deposit the same with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-74 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 98-567. Filed for public inspection April 10, 1998, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CH. 65]
Fishing

The Fish and Boat Commission (Commission) by this order amends Chapter 65 (relating to special fishing regulations) to read as set forth in Annex A. The Commission is publishing this regulation under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The regulation deals with fishing.

A. Effective Date

The regulation will go into effect on January 1, 1999.

B. Contact Person

For further information on the regulation, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

This regulation is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The regulation is designed to update, modify and improve Commission regulations pertaining to fishing. The specific purpose of the regulation is described in more detail under the summary of changes.

E. Summary of Changes

Fishing for panfish in this Commonwealth represents one of the most popular forms of recreational angling. Panfish may include sunfish, yellow perch, crappies, catfish, rock bass, suckers, eels, carp and white bass. The popularity of this broad array of species has been documented in United States Fish and Wildlife surveys which show that, in this Commonwealth, with the exception of trout, anglers spend more time fishing for these species than any other. In 1991, anglers spent at least 8,023,000 days fishing for panfish in this Commonwealth. By comparison, 11,125,000 angler days were directed towards trout and 7,186,000 angler days were directed towards black bass.

In most inland waters in this Commonwealth, harvest of panfish is regulated with a 50 fish combined species creel limit. Size restrictions and seasonal harvest restrictions do not apply. As might be expected, those individual species that comprise the panfish group exhibit different levels of popularity among anglers and different levels of vulnerability to capture by anglers. This regulation is specifically directed to lake populations of bluegill, pumpkinseed and redear sunfish referred to as sunfish; black crappie and white crappie referred to as crappie; and yellow perch.

Lake angler surveys conducted by the Commission (1978—1990) show that 47% of all fishing time is spent in pursuit of sunfish, crappie and yellow perch, as defined above. The ease with which these species are caught, as described by their high catch rate in creel surveys, contributes to their broad popularity and provides an ideal means by which to introduce youth and others to fishing. Their ease of capture, however, particularly in waters containing more robust populations, may in certain cases, contribute to reduced availability of desirable size fish. Desirable size panfish represent the size most anglers like to catch. Carefully crafted harvest restrictions have increased the abundance of larger individuals of various other species within this Commonwealth. For example, black bass populations have improved through the Conservation Lake and Big Bass programs. Examination of sunfish, crappie and yellow perch size structure data revealed that many panfish populations across the State yield good numbers of desirable size fish; however, some waters were identified where angler harvest was suspected to reduce the abundance of desirable size fish.

The Commission's goals for a small group of panfish study lakes are to 1) increase the number of desirable size panfish available to anglers; and 2) increase the number of satisfied anglers targeting panfish. To meet these goals, the Commission has identified the following objectives that will serve to gauge progress toward goal achievement and ultimately provide a benchmark by which to judge success of this initiative:

- 1) Increase the number of sunfish over 7 inches and number of crappie and yellow perch over 9 inches available for harvest, as measured in biological assessment catches (example: net catch, electrofishing catch);
- 2) Increase the number of satisfied anglers targeting sunfish, crappie and yellow perch as measured through angler contact surveys; and

- 3) Increase the number of desirable size panfish harvested, as measured by creel surveys on selected waters.

Minimum length limits and creel limits represent some of the best tools available to reduce angler harvest and increase the number of larger panfish. Minimum length limits have the most utility in fostering an increase in abundance of desirable size panfish sufficient to reach objectives. A reduced creel limit may have less utility initially, but as populations of desirable size fish increase, they will play a more important role.

The Commission therefore has adopted § 65.11 (relating to panfish enhancement special regulations). This special regulation imposes a 7-inch length limit for sunfish (principally bluegill, pumpkinseed and redear sunfish), a 9-inch length limit for crappie (black and white crappie) and a 9-inch length limit for yellow perch. Any one or all three length regulations might apply to any given lake. The Commission also has adopted the following daily creel limits for the waters to be subject to the regulation: 20 for each species group with a length limit and a total creel limit of 20 (combined species). The Commission adopted this regulation as proposed with one change: a total creel limit of 20 (combined species) instead of the proposed 50.

The Commission has some concerns that anglers may view the regulation as the "answer to all problems" when it comes to panfish. Thus, some commentary on fisheries biology and angler expectations seems to be in order. Numerous biological and physical elements combine to shape the abundance and size structure of panfish populations, in addition to angler harvest. For example, density of predators, density of other competing species, quantity of aquatic vegetation (that affords necessary nursery and food producing habitat for panfish), quantity of forage organisms and water quality are a few elements that affect the abundance of desirable size panfish. All of these elements combine to influence the number of young produced, their growth rate and the rate at which they survive to adulthood or desirable size. Survival is influenced by natural loss (predation, for example) and by loss due to angler harvest. This illustrates that angler removals represent just one component that could influence the abundance of desirable size panfish.

Biologists will propose for Commission consideration study waters for inclusion in the program based upon their understanding of these elements and based upon a review of panfish population data throughout the State. In addition, measurable guidelines have been developed to indicate when a panfish population might be reduced in quality due to angler harvest, and where the special regulations might be expected to attain target objectives. It should be known that biologists use other management tools, in addition to special regulations, to enhance panfish abundance every day (for example, predator-prey balance is frequently adjusted by stocking a predator fish, and manipulation of over-winter lake water levels is frequently carried out to adjust the quantity of macrophyte habitat available for some panfish).

Using measurements of vital rates such as growth and mortality, coupled with assumptions relative to production of young, Commission biologists predict that the special regulation applied to selected lakes will, over time, yield an approximate 50% increase in abundance of sunfish age 3 and older as well as crappie and yellow perch age 4 and older (all desirable size fish). However, it has also been determined that immediately after imposition of the regulation, there will be a reduction in angler harvest, simply because it will take several years for fish

to increase in number below the newly established minimum size limit and before the increase will yield measurable quantities of fish above the length limit. An overall measurable increase is expected in about 5 years based upon model computations and past experience with other warmwater species. Increases will only be realized in waters where fishing intensity reduces the abundance of desirable size panfish. That is, the special regulation should not be considered to yield similar effects where abundance of desirable size individuals is below expectations for other biological or physical reasons. For example, restricting harvest at a lake with a stunted panfish population might increase the stunting problem, so care will be used in selecting experimental lakes for inclusion in the program.

The Commission believes that the panfish special regulation in selected lakes will: (1) meet objectives, since computations using measured vital rates indicate that substantive increases in abundance of larger fish will be attained after a number of years; and (2) be well received by anglers since angler opinion surveys demonstrate that those anglers polled favored panfish harvest restrictions similar to those as adopted.

F. Paperwork

The regulation will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The regulation will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The regulation will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking containing the proposed regulation was published at 27 Pa.B. 5614 (November 1, 1997). Instead of the usual 30-day public comment period, the notice provided for a 60-day public comment period. During the public comment period, the Commission received three written comments. One favored the proposal as written, one generally supported a creel limit for panfish but thought that it should be set at 15 (not 20) and one opposed the proposed creel limit. The Commission also received one comment after the public comment period opposing the proposed regulation. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

<i>Species</i>	<i>Seasons</i>	<i>Minimum Size</i>	<i>Daily Limit</i>
Sunfish (bluegill, pumpkinseed and redear)	Open year-round	7 inches	20 (combined species)
Crappie (black and white)		9 inches	
Yellow perch		9 inches	
Other species—inland seasons and size and creel limits apply.			

[Pa.B. Doc. No. 98-568. Filed for public inspection April 10, 1998, 9:00 a.m.]

(1) Public notice of intention to adopt the regulation adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder (1 Pa. Code §§ 7.1 and 7.2).

(2) A public comment period was provided and that all comments received were considered.

(3) The adoption of the regulation of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by adding § 65.11 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality as required by law.

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

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-73 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.11. Panfish enhancement special regulation.

(a) The Executive Director, with the approval of the Commission, may designate waters as "Panfish Enhancement Special Regulation" waters. The designation shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted "Panfish Enhancement Special Regulation" waters except in compliance with the following seasons and size and creel limits: