

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Sale and Purchase of Fish

The Fish and Boat Commission (Commission) proposes to amend § 63.19 (relating to sale and purchase of fish). The Commission is publishing this amendment as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendment relates to the sale and purchase of fish.

A. *Effective Date*

The proposed amendment, if approved on final rulemaking, will go into effect upon publication of an order adopting the amendment in the *Pennsylvania Bulletin*.

B. *Contact Person*

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

C. *Statutory Authority*

The proposed amendment is published under the statutory authority of section 2102(c) of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed amendment is designed to update, modify and improve Commission regulations relating to the sale and purchase of fish. The specific purpose is described in more detail under the summary of proposal.

E. *Summary of Proposal*

The act of October 16, 1998 (Act 94) amended the Commonwealth's agriculture laws to designate aquaculture as a normal farming activity. This amendment transferred most administrative functions related to commercial artificial propagation from the Commission to the Department of Agriculture. Effective December 16, 1998, the Department of Agriculture will register commercial propagators of fish as well as dealers in live aquatic animals. The Commission will no longer issue artificial propagation licenses, live fish, fishbait and baitfish dealer licenses and resident and nonresident fish transportation licenses.

The Commission has been working with the Department of Agriculture to ensure smooth implementation of this amendment. In addition, the Commission has been reviewing the amendment to determine whether it has left any holes in the Commission's authority. Act 94 repeals Chapter 33 of the code (relating to propagation and sale of fish). In general, this repeal does not diminish the Commission's authority to protect this Commonwealth's waters and the fish in those waters. The Commission retains regulatory jurisdiction under section 2102(c) of the code over transportation or introduction of

fish into this Commonwealth's waters, exporting of fish, sale, offering for sale or purchase of fish and the disturbing of fish in their natural habitat. Violations are summary offenses of the second degree. The Commission will retain authority to license use of nets and regulated fishing lakes. The Commission's general statutory authority to make regulations for the protection, preservation and management of fish and fish habitat gives it regulatory authority over stocking of fish.

The Commission's enforcement officers have clear authority to enforce the prohibitions in the amendment since it is a Commonwealth law related to fish. While the Department of Agriculture will have primary authority to enforce the new provisions, it is certainly possible that the Commission's officers could become involved in enforcement if an unregistered propagator or dealer unlawfully sells fish. The wording of the new provisions on sale of fish defines prohibited and permitted acts with regard to sale of fish, 3 Pa.C.S. §§ 4221 and 4223. It is clear that only registered artificial propagators and dealers may sell fish and that they may not sell fish except those taken from the specified facility or facilities. Registered propagators are not authorized to take fish out of natural streams on their property or from any other waters of this Commonwealth for the purpose of sale.

The Commission believes that it is necessary to take prompt action to propose an amendment on sale of fish that is clearly applicable to all Commonwealth waters and all persons taking fish from those waters.

F. *Paperwork*

The proposed amendment will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The proposed amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendment 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 amendment to the Executive Director, 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 at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-89. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.19. Sale and purchase of [mounted] fish.

[The prohibition against sale of certain fish in section 3311 of the code (relating to sale of certain fish prohibited) does not apply to the sale of mounted fish that are unclaimed or purchased from a licensed propagator.]

(a) Except as otherwise provided in subsection (d), it is unlawful for a person to sell, purchase, offer for sale or exchange or export for consideration, trade or barter any fish, whether dead or live, in whole or in part, including eggs and any lifestage of the fish caught or taken from the waters of this Commonwealth.

(b) Except as otherwise provided in subsection (d), it is unlawful for a person to take, catch, kill or possess any fish, whether dead or live, in whole or in part, including eggs and any lifestage of the fish, for the purpose of selling the fish or offering it for sale.

(c) In prosecutions for violation of this section, there shall be a rebuttable presumption that a

species of fish that occurs within the waters of this Commonwealth was taken or caught from Commonwealth waters. A receipt or other document showing the lawful origin of the fish from waters in a state other than this Commonwealth or from an artificial propagator or dealer in live aquatic organisms registered in this Commonwealth, shall be sufficient to rebut the presumption created in this subsection.

(d) This section does not prohibit the sale, purchase, offer for sale, trade or barter of any fish propagated by or from a propagator or dealer of live aquatic animals registered under 3 Pa.C.S. Chapter 42 (relating to aquacultural development), if the fish are lawfully propagated or acquired by means other than fishing from the waters of this Commonwealth in accordance with the requirements of applicable laws and regulations. This section does not prohibit the sale, purchase, offer for sale, trade or barter of any fish by or from the holder of a commercial fishing license issued under Chapter 29 of the code (relating to special licenses and permits), if the fish are lawfully caught or taken in accordance with the requirements of applicable laws and regulations. This section does not prohibit the sale of mounted fish.

[Pa.B. Doc. No. 99-44. Filed for public inspection January 8, 1999, 9:00 a.m.]