

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Marking Fish

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this regulation as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed regulation relates to tagging, branding, marking or finclipping fish.

A. *Effective Date*

The proposed regulation, if approved on final-form rulemaking, will go into effect on January 1, 2002, or upon publication of an order adopting the regulation in the *Pennsylvania Bulletin*, whichever occurs later.

B. *Contact Person*

For further information on the proposed regulation, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. *Statutory Authority*

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

D. *Purpose and Background*

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

E. *Summary of Proposal*

Tagging, branding, marking and finclipping have been used to identify fish for a variety of reasons by fisheries scientists, angling organizations, commercial establishments and even individual anglers for years. Reasons for "marking" fish have been equally diverse from well designed studies aimed at answering a specific question to a means of dispersing awards or simply identifying repeat catches at an angler's favorite fishing spots. Devices for "marking" fish go from sophisticated radio transmitters to crude home-made creations, sometimes as plain as a bent paperclip inserted through the dorsal fin of a trout. Tags are readily available from a variety of commercial sources, not only those in the fisheries supply business but poultry and livestock suppliers as well. In addition, tags and tagging kits can be purchased through popular fishing tackle catalogs. Each year, Commission staff encounter anglers who have caught fish with tags often with no labels as to who applied the tag or a means to learn about the tagging.

Generally speaking, marked fish, particularly those with a skin piercing tag, are not better off from the activity. Commission biologists in conducting field studies requiring the marking of fish resort to tagging and fin clipping only as a last resort. These studies also must take into account mortality due to marking and behavior responses that may impact study results. Tagging efforts

by anglers often are at the worst time of the year for fish as warming water temperatures increase the likelihood that tagged fish may become infected due to the placement of tags and entry wounds.

When asked by the general public about tagging fish, Commission staff can only attempt to persuade the requestor to not do any, due not only to the limited information that might come from the effort, but the likelihood of damage and even death to tagged fish. Given the Commission's stewardship role in regard to fish and other aquatic life, the Commission is proposing a new regulation that prohibits tagging and other forms of marking except under certain conditions. The Commission proposes that the new regulation read as set forth in Annex A.

F. *Paperwork*

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

G. *Fiscal Impact*

The proposed regulation will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed regulation 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 regulation 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 to ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. 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-120. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following section is new. It has been printed in regular type to enhance readability.)

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.45. Tagging, branding, marking and finclipping of fish.

(a) It is unlawful for a person to implant tracking devices in or to tag, brand, mark or fin clip any fish taken from the waters of this Commonwealth, unless the fish are purchased from an authorized commercial aquaculture facility, are part of a Commission-recognized and sanctioned stocking by a cooperative nursery, are authorized by a scientific collector's permit issued by the

Commission or are part of a tagged fish contest in a boundary lake for which the Commission has issued a permit.

(b) There shall be a rebuttable presumption that a person implanting a tracking device in or tagging, branding, marking or fin clipping a fish is in violation of this section if the person does not have in his possession proof that the fish was purchased from an authorized commercial aquaculture facility, is part of a Commission-recognized and sanctioned stocking by a cooperative nursery, is authorized by a scientific collector's permit or is part of a tagged fish contest in a boundary lake for which the Commission has issued a permit.

[Pa.B. Doc. No. 01-1166. Filed for public inspection June 29, 2001, 9:00 a.m.]

[58 PA. CODE CHS. 71 AND 73]

Propagation of Fish

The Fish and Boat Commission (Commission) proposes to amend Chapters 71 and 73 (relating to propagation and introduction of fish into Commonwealth waters; and transportation of live fish into this Commonwealth). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to fishing.

A. Effective Date

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

B. Contact Person

For further information on the proposed amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The proposed amendments to §§ 71.1 and 73.2 (relating to general; and authorized list) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendments to § 71.2 and 71.3 (relating to live bait dealer's licenses; and propagation) are published under the statutory authority of section 2102 of the code and 3 Pa.C.S. § 4219 (relating to permissible propagation). The proposed amendment to § 71.7 (relating to triploid grass carp) is published under the statutory authority of section 2102 and section 2904 of the code (relating to permits for protection and management of particular fish).

D. Purpose and Background

The proposed amendments are designed to update, modify and improve the Commission's regulations pertaining to fishing. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

On October 16, 1998, the General Assembly amended the Commonwealth's agriculture laws to designate aquaculture as a normal farming activity. These amendments transfer most administrative functions related to

commercial artificial propagation from the Commission to the Department of Agriculture (Department). On December 16, 1998, the Department began registering commercial propagators of fish and dealers in live aquatic animals. The Commission no longer issues artificial propagation licenses, live fish, fishbait and baitfish dealer licenses and resident and nonresident fish transportation licenses. Accordingly, Commission's regulations pertaining to the issuance of these licenses should be removed.

In addition, 3 Pa.C.S. 4219 (relating to permissible propagation) provides that the Commission will determine which species of fish are allowed to be propagated in each watershed and will provide the Department with the list. This section also provides that special regulations shall be promulgated regarding closed system propagation. Therefore, the Commission proposes the amendments to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments 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 amendments 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 to ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. 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-117. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 71. PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS

§ 71.1. General.

[(a) Species of fish for which "Propagation," "Live Bait Dealers" and "Transportation" permits will be issued are listed by the Commission. Lists will be made available upon request. Permits or

licenses will not be issued for propagation or introduction of fish into the waters of this Commonwealth other than those listed as approved by the Commission. Upon action of the Bureau of Fisheries, species of fish may be added to or deleted from these lists.

(b) Licenses and permits will state the common and scientific names of the species covered by the permit or license. The Commission reserves the right to revoke or refuse to issue permits or licenses that would result in the introduction of diseased fish or a particular species of fish into a watershed where it is not now present.

(c)] The introduction of grass carp or white amur into Commonwealth waters is prohibited except that triploid grass carp may be introduced into Commonwealth waters as provided in § 71.7 (relating to triploid grass carp). It is unlawful to propagate grass carp (diploid or triploid) in this Commonwealth.

§ 71.2. [Live bait dealer's licenses] Fish species approved for artificial propagation and introduction.

[The Bureau of Fisheries will maintain a list of species for which issuance of live bait dealers' licenses is authorized.] The Bureau of Fisheries will maintain a list of species by watershed for which the Department of Agriculture may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The Director of the Bureau of Fisheries may update or modify the list of authorized species by adding species to, or deleting species from, the list as necessary to provide for the protection and management of fish and fishing in this Commonwealth. The Commission will provide the list to the Department of Agriculture on or before January 31 each year and whenever the Commission updates or modifies the list. Copies of the list of authorized species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, Pennsylvania 16823.

§ 71.3. [Propagation] Closed system propagation.

(a) [The Bureau of Fisheries will maintain a list of species for which issuance of propagation licenses is authorized. The Director of the Bureau of Fisheries may update or modify the list of authorized species by adding species to, or deleting species from, the list as necessary to provide for the protection and management of fish and fishing in this Commonwealth. Copies of the list of authorized species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, Pennsylvania 16823.

(b) *Limited propagation licenses.* The Commission may issue an artificial propagation license for a species of fish not listed in subsection (a) if the applicant demonstrates to the satisfaction of the Executive Director, or a designee, that the propagation will occur in a closed system with essentially no chance of escapement of the fish into the waters of this Commonwealth. An artificial propagation

license issued for species of fish not listed in subsection (a) will be subject to additional restrictions the Executive Director, or a designee, may impose. The limited propagation license shall be considered experimental and is subject to suspension if fish escape into the waters of this Commonwealth or a license condition or restriction is violated. It is unlawful for a person issued a limited propagation license under this subsection to permit fish to escape into the waters of this Commonwealth, to violate a term, restriction or condition of the license or to continue to operate if the license is suspended.]

(a) *Closed (no discharge) system.* A propagating system may be designated as a closed system only if the following criteria are met:

(1) There will be 100% recycling water as normal operations.

(2) Closed systems will be housed indoors in a structure enclosed by solid walls, floor and roof.

(3) Water can be added to the system only for making up evaporative loss, cleaning and fish harvesting or to reduce toxic ammonia/nitrates by diluting.

(4) The system does not discharge water into waters of this Commonwealth.

(5) No live fish or live fish eggs will be allowed to escape with water discharges. Accidental spillage of live fish or live fish eggs (including truck loading, and the like) will be contained within the facility in a manner that will prevent fish and fish eggs from escaping into the waters of this Commonwealth.

(6) The system operator is registered with and the system has been inspected and approved by the Department of Agriculture (Department).

(b) *Systems with discharges rendered incapable of containing living organisms.* A system whose discharge of water is rendered incapable of containing self-perpetuating living organisms shall be registered with and inspected and approved by the Department to ensure that no living organisms are contained in the discharge. The registration of this system may include any species of fish with the approval of the Department

(c) *Escape of fish into waters of this Commonwealth.* It is unlawful for an operator of any system registered under subsection (a) or (b) to allow fish to escape into the waters of this Commonwealth.

(d) *Written plans for discharge.* An operator of any system registered under subsection (a) or (b) shall develop, maintain and make available for immediate inspection by the Commission and the Department upon request a written plan for containing or treating discharge in the event of a discharge system failure.

(e) *Satisfaction in event of discharge.* An operator of any system registered under subsection (a) or (b) shall notify both the Commission's Director of the

Bureau of Fisheries and the Department's Aquaculture Coordinator immediately in the event of a discharge system failure that is likely to contain viable living organisms.

§ 71.7. Triploid grass carp.

* * * * *

(d) *Dealers and importers.* In addition to the triploid grass carp permit required by subsection (c), [a license is required under section 3309 of the code (relating to live bait fish, live fish bait and live fish dealers licenses) to sell live triploid grass carp in this Commonwealth or to transport these fish into this Commonwealth. The following licenses are required by section 3309 of the code:

- (1) Resident live fish dealer license—\$25 per year.
- (2) Resident dealer's transportation license—\$10 per license.
- (3) Nonresident dealer's license—\$100 per year.] dealers and importers shall obtain and maintain all licenses, permits and registrations required by the Department of Agriculture for the sale or transportation of fish.

* * * * *

CHAPTER 73. TRANSPORTATION OF LIVE FISH INTO THIS COMMONWEALTH

§ 73.2. [Authorized list] (Reserved).

[The Bureau of Fisheries will maintain a list of species for which issuance of transportation permits is authorized. The Director of the Bureau of Fisheries may update or modify the list of authorized species by adding species to, or deleting species from, the list as necessary to provide for the protection and management of fish and fishing in this Commonwealth. Copies of the list of authorized species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, Pennsylvania 16823.]

[Pa.B. Doc. No. 01-1167. Filed for public inspection June 29, 2001, 9:00 a.m.]
