

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

General Fishing Regulations; Commercial Landing of Finfish and Shellfish

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking relates to the commercial landing of finfish and shellfish in this Commonwealth.

A. *Effective Date*

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

B. *Contact Person*

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

C. *Statutory Authority*

The proposed addition of § 63.47 (relating to landing of finfish, shellfish, crustaceans and other marine seafood) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

Commercial harvest quotas and caps are powerful regulatory tools in managing marine shellfish and finfish stocks. Quotas and caps are used to prevent overharvest, to control the take of limited resources and to provide a means of distributing harvest among jurisdictions and individual users. Normally, the jurisdiction where the fishery is located or where the commercial boat is headquartered governs the harvest take. When a boat lands, the harvest is reported (credited) to that jurisdiction. When used in this context, a landing occurs when a boat comes to shore (dock, ramp, and the like) and offloads cargo, in this case, finfish, shellfish, crustaceans or other marine seafood. These landings are then reported to various State and Federal agencies and form the basis for adjusting harvest limits for the rest of the season and for planning limits for the next season. Landings of finfish, shellfish, crustaceans and other marine seafood are not the same as seafood trucked or flown into this Commonwealth for sale at retail and wholesale markets because generally that seafood is landed elsewhere and should be counted in the appropriate jurisdiction.

The issue of marine finfish and shellfish being landed or sold in this Commonwealth is not new. The Commission previously promulgated regulations specific to hard clams, weakfish and horseshoe crabs. Recently, however, commercial harvesters landed several thousand pounds of finfish and shellfish in the Philadelphia area because the quotas for these species had been filled in the home jurisdiction. There is concern that there may be a loophole in Commonwealth law that enables harvesters to circumvent harvest quotas or caps in home jurisdictions.

Because this Commonwealth has not been allocated a quota for harvest of any Atlantic coastal fish or crustacean stock, the landing of Atlantic caught fish and crustaceans should not be permitted.

E. *Summary of Proposal*

The Commission proposes to add a new section that places restrictions on the landing of finfish, shellfish, crustaceans and other marine seafood in this Commonwealth. Specifically, the Commission proposes to make it unlawful to land finfish, shellfish, crustaceans and other marine seafood when harvest quota allocations to this Commonwealth have been met or otherwise capped by action of the Executive Director under the fishery management plans and harvest allocations of the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. If quotas have been met or otherwise capped in this Commonwealth, the landing of finfish, shellfish, crustaceans and other marine seafood is permitted only if the species have been properly reported as part of an unmet quota of another jurisdiction. The provisions of the proposed section will not apply to the landing of fish at Lake Erie, which is already governed by Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission proposes to add § 63.47 to read as set forth in Annex A.

F. *Paperwork*

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

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. 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, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication 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.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-155. 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

§ 63.47. Landing of finfish, shellfish, crustaceans and other marine seafood.

(a) Except as otherwise provided in this section, it is unlawful to land finfish, shellfish, crustaceans or other

marine seafood in this Commonwealth when harvest quota allocations to this Commonwealth have been met or otherwise capped by action of the Executive Director pursuant to the fishery management plans and harvest allocations of the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. If quotas have been met or otherwise capped in this Commonwealth, the landing of finfish, shellfish, crustaceans and other marine seafood in this Commonwealth is permitted only if the species have been properly reported as part of an unmet quota of another jurisdiction.

(b) For purposes of this section, "land" or "landing" means to enter port with finfish, shellfish, crustaceans or other marine seafood on board any vessel to begin offloading or to offload finfish, shellfish, crustaceans or other marine seafood.

(c) This section does not apply to the landing of fish at Lake Erie that is governed by Chapter 69 (relating to fishing in Lake Erie and boundary lakes).

[Pa.B. Doc. No. 04-423. Filed for public inspection March 12, 2004, 9:00 a.m.]

[58 PA. CODE CH. 65]

Special Conservation Waters; Crawford County

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to terminating the Commission's Warmwater/Coolwater Species Special Conservation Waters Program (program) and imposing a new miscellaneous special regulation for muskellunge on Sugar Lake, Crawford County.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2005.

B. Contact Person

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

C. Statutory Authority

The proposed amendment to § 65.8 (relating to warmwater/coolwater species special conservation waters) is published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

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

E. Summary of Proposal

(1) *Section 65.8.* At its April 1986 meeting, the Commission adopted regulations for its new program. This

program began a major Commission initiative to provide enhanced management for warmwater/coolwater fisheries. Rationale for the more restrictive length and creel limits included the need for additional protection of new or reclaimed lake fisheries, rehabilitating fisheries significantly impacted by angling pressure and restructuring of fish populations where the sport fish communities are not of the composition desired to provide recreational angling closer to the capability of the individual water. Since implementation of the program, use has been expanded to major riverine habitat and to select reservoirs during major drawdowns.

Considerable evaluation work, both biologically and angler demand wise, occurred on a number of waters involved in the program during the years following implementation. At the same time, development of other special regulation programs for managing warmwater/coolwater fisheries gave fisheries managers alternatives to the more inclusive and sometimes unnecessary regulations in the program. Results of biological and angler sampling provided the means for the Commission to shift waters in this program to other programs, including the Big Bass and more recently the Panfish Enhancement programs.

To consolidate the number of special regulations used in managing warmwater/coolwater fisheries, the Commission has redesignated the remaining three conservation lakes to other programs, effective January 1, 2005. Thus, there is no need to retain the regulations for warmwater/coolwater species special conservation waters. Accordingly, the Commission proposes to remove this section as set forth in Annex A.

(2) *Section 65.24.* Sugar Lake, a 90-acre productive natural lake in Crawford County, was added to the program in 1987. The new set of regulations involved increased minimum length limits and reduced possession limits as part of a major initiative for enhanced management of warmwater/coolwater species. Since program inception, management of warmwater/coolwater species has evolved considerably with the establishment of §§ 65.9 and 65.11 (relating to big bass special regulations; and panfish enhancement special regulation) and considerable study on response of fish populations to more restrictive regulations. Thus, the Commission has moved several conservation waters to other programs.

Sugar Lake contains an abundant bass population, a rather dense panfish population characterized by slow growing individuals (bluegill, black crappie and yellow perch) and a robust muskellunge population for the size of the lake. Sugar Lake serves as a brood lake in muskellunge propagation activities. To maintain and enhance fishing opportunities there, the Commission already has added Sugar Lake to the list of waters managed and regulated under § 65.9, effective January 1, 2005. The Commission also proposes that a miscellaneous special regulation for muskellunge be adopted that imposes a 36-inch minimum size limit and a one fish daily creel limit. Although Commission staff has not sampled intensively the muskellunge in Sugar Lake, the higher minimum size limit has led to improvements in size structure. For all other species, Commonwealth inland regulations will apply. The Commission proposes to amend § 65.24 to read as set forth in Annex A.

F. Paperwork

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

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. 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, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication 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.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-152. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.8. [Warmwater/coolwater species special conservation waters] (Reserved).

(a) The Executive Director, with the approval of the Commission, may designate waters as warmwater/coolwater special conservation waters. The designation of the waters shall be effective when the waters are posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish for the following species in designated and posted warmwater/coolwater special conservation waters except in compliance with the seasons established in § 61.1 (relating to the Commonwealth inland waters) and the following size and creel limits:

<i>Species</i>	<i>Size (in)</i>	<i>Creel Limit</i>
Walleye and hybrids	20	2
Muskellunge and Muskellunge hybrids	36	1
Chain pickerel	20	2
Northern pike	28	1
Sunfish		10
Crappie and White bass		10
Yellow perch		10
Catfish		50
Carp and suckers		50
White perch		50

Other species—Inland size and creel limits apply.

(c) It is unlawful to fish for bass (all species) in designated and posted warmwater/coolwater special conservation waters except in compliance with the following seasons and size and creel limits. It is not a violation of this subsection if the bass is immediately returned unharmed to the waters from which it is taken.

<i>Seasons</i>	<i>Size (in)</i>	<i>Creel Limit</i>
Lakes: January 1 to midnight the day before the opening day of trout season in April and 12:01 a.m. the first Saturday after June 11 to midnight December 31	15	4 (combined species)
12:01 a.m. the opening day of trout season in April to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
Rivers and Streams: January 1 to midnight the day before the opening day of trout season in April and October 1 to midnight December 31	15	4 (combined species)
12:01 a.m. the opening day of trout season in April to 12:01 a.m. the first Saturday after June 11	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
12:01 a.m. the first Saturday after June 11 to midnight September 30	15	4 (combined species)

Note: For purposes of this subsection, power dam pools and recreational dam pools on the Susquehanna River and navigational dam pools in the Ohio drainage are “rivers.”]

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
		* * * * *
Crawford	Sugar Lake	Muskellunge—36-inch minimum size limit and a one muskellunge daily creel limit. Other species—inland regulations apply.
		* * * * *

[Pa.B. Doc. No. 04-424. Filed for public inspection March 12, 2004, 9:00 a.m.]

[58 PA. CODE CH. 65]

Special Fishing Regulations; Delayed Harvest Artificial Lures Only

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking relates to permitting all tackle in Delayed Harvest Artificial Lures Only (DHALO) areas during the harvest season of June 15 through Labor Day.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2005.

B. Contact Person

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

C. Statutory Authority

The proposed amendment to § 65.6 (relating to delayed harvest artificial lures only areas) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

In this Commonwealth, there are two delayed harvest special regulation programs for trout: DHALO and Delayed Harvest Fly Fishing Only (DHFFO). Currently, the same tackle restrictions apply to the harvest period as the remainder of the year (that is, either fly fishing only or artificial lures only, depending on which program regulations apply to individual waters). The harvest period allows anglers to take trout that otherwise face less desirable habitat with the onset of warmer water and low flows typical of most seasonal trout stocked streams during the summer. The general concept behind delayed harvest regulations is to maximize total recreational fishing opportunities and to mix in both a harvest and a catch and release component. Using stocked trout and tailoring fishing regulations to take best advantage of changing stream conditions achieve this. As a result of extending the fishing opportunities for a longer period of time, streams in delayed harvest programs are among the most popular for all special regulation trout waters.

Members of the Traditional Anglers of Pennsylvania (Traditional Anglers) approached the Commission requesting that regulations pertaining to the delayed harvest

programs be modified to permit all tackle during the mid-June through Labor Day harvest period. Fundamental to the interests of the Traditional Anglers is the belief that general license and trout stamp dollars pay for stocked trout and thus all anglers should have equal access to harvest. In addition to the equity issue, permitting all tackle during the harvest period might be beneficial in encouraging traditional anglers to the delayed harvest concept. Moreover, by mid-June, all tackle activity on these areas should be less intense because many anglers are less inclined to go trout angling.

The Commission has reviewed delayed harvest and similar regulations on seasonal trout stocked waters in neighboring jurisdictions as well as the results from studies on delayed harvest waters in this Commonwealth. During the summer “harvest” season, Virginia, West Virginia and Maryland have no tackle restrictions and in some cases no minimum length limits on waters that for most of the rest of the year have more restrictive regulations, including no-kill and artificial lures only.

The Commission believes that the concept of a no-tackle restriction during the harvest period for DHALO areas is worthy of further consideration. Because of the widespread angler interest in the DHALO program, the Commission will solicit public comments during an extended public comment period of 90 days and will hold at least two public meetings. The dates and locations for those meetings have not yet been determined. The Commission invites comments on a number of issues, including the impacts of the proposed amendments on those delayed areas located on waters that flow through private property.

E. Summary of Proposal

Both the DHALO and DHFFO programs allow for year-round fishing with no closed season (unlike most other stocked trout waters). Harvest is permitted from mid-June through Labor Day, with catch and release angling at all other times. The Commission proposes to allow the use of bait during the specified time frame only and only on waters in the “Artificial Lures Only” side of the delayed harvest program. The Commission proposes to amend § 65.6 to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. 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, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 90 days after publication 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.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-154. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.6. Delayed harvest artificial lures only areas.

* * * * *

(b) It is unlawful to fish in designated and posted delayed-harvest, artificial lures only areas except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only constructed of metal, plastic, rubber or wood or with flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Use of gear not described in this section is prohibited. Specifically prohibited are the use of molded facsimiles or replicas of insects, earthworms, fish eggs, fish or any invertebrate or vertebrate either singly or in combination with the other materials, except during the period, June 15 through Labor Day.

(2) The use or possession of a natural bait, baitfish or fishbait and the use of fishing devices other than artificial lures, flies or streamers is prohibited in these areas, except during the period, June 15 through Labor Day.

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[Pa.B. Doc. No. 04-425. Filed for public inspection March 12, 2004, 9:00 a.m.]

[58 PA. CODE CH. 65]

Special Fishing Regulations; Huntingdon County

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). 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 will go into effect upon final-form publication in the Pennsylvania Bulletin.

B. Contact Person

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

C. Statutory Authority

The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to the use of cast or throw nets at Raystown Lake, Huntingdon County. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

Several years ago, the Commission adopted a miscellaneous special regulation that enabled the Executive Director or a designee to issue permits for use of cast or throw nets at Raystown Lake, Huntingdon County. This special gear makes it possible for anglers to capture live gizzard shad and alewife, preferred striped bass bait. The permits limit cast or throw nets to no more than 6 feet in radius (12 feet in diameter) with a mesh size of at least 3/8 inch. Recently, the Commission was approached by Raystown Lake anglers seeking use of a larger cast net. It appears that gizzard shad and alewife can more easily evade capture with the smaller nets because of the time that it takes for weights to sink the net and the relatively small surface area involved, even when the net fully opens with the perfect cast. Anglers requested cast nets with a larger radius.

The Commission sees no problem with the use of a larger net. Any catch other than gizzard shad and alewife already has to be immediately returned to the water. Thus, the Commission proposes to amend § 65.24 to increase cast or throw net size to 10 feet in radius (20 feet in diameter). The Commission proposes to amend this miscellaneous special fishing regulation to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. 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, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication 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.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-153. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
		* * * * *
Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River).	Trout (all species)—no closed season. Creel limits: Regular inland season—5. Day after Labor Day to opening day of next regular inland season—3 (combined species). Size limits: Inland rules apply. Smelt may be taken from shore or by wading by means of dip nets not to exceed 20 inches in diameter or 20 inches square. The daily limit per person is the greater of 1 gallon of smelt by volume or 200 smelt by number. Executive Director or a designee may issue permits for use of cast nets or throw nets for taking only gizzard shad and alewife on Lake Raystown. In addition to other permit conditions that the Executive Director may require, the permits shall be limited to cast nets or throw nets of no greater than [6 feet in radius (12 feet in diameter)] 10 feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inches.
		* * * * *

[Pa.B. Doc. No. 04-426. Filed for public inspection March 12, 2004, 9:00 a.m.]