

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61, 65 AND 69]

### Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61, 65 and 69 (relating to seasons, sizes and creel limits; special fishing regulations; and fishing in Lake Erie and boundary lakes). 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 the season, size and creel limit for American shad in the Schuylkill River upstream of the I-95 Bridge and its tributaries; eliminating the phrase "molded facsimiles or replicas" as used in various special fishing regulations where terminal tackle is restricted to artificial lures; changing the name of the Select Trout Stocked Lake Program to the Early Season Trout Stocked Waters Program; and the seasons, sizes and creel limits for burbot and smelt in Lake Erie, its tributaries and Presque Isle Bay.

#### 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](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendments to §§ 61.1, 61.8 and 69.12 (relating to Commonwealth inland waters; Lehigh River and tributaries; and seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendments to §§ 65.1, 65.2, 65.3, 65.5—65.7, 65.10 and 65.24 are 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 fishing. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

#### E. *Summary of Proposal*

(1) *Section 61.8.* Major efforts to open or remove blockages to anadromous fish migration on the Schuylkill River are underway. Three dams are now or will be breached/removed. These dams are Plymouth Dam (River Mile (RM) 18), Vincent Dam (RM 42) and Felix Dam (RM 79). The Fairmount Dam (RM 9) has a vertical slot fishway that is to be rebuilt in 2005. On March 10, 2004, ground breaking occurred for a fishway at Flat Rock Dam (RM 15). Norristown Dam (RM 21) will have fish passage in place by 2006, and Black Rock Dam (RM 37) will have fish passage by 2007.

The Commission has been stocking fry shad in the Schuylkill River for several years, and sampling as recent as 2003 indicates that these fish are returning as adults. With the likelihood of more and more of the river being open to passage, there is a need to implement restrictive regulations to enhance restoration efforts while providing anglers with an opportunity to fish for and harvest this exciting sport fish. The Commission believes that a one shad creel limit, which currently is in place on the Lehigh River where similar restoration work is underway, is appropriate to maintain a fishery yet not degrade restoration efforts. As anglers are able to go out and catch American shad and possibly harvest one on occasion, they should be more inclined to actively support restoration activities.

The Commission prefers not to use the Fairmount Dam as the downstream limit on the Schuylkill River for this new regulation, unlike its current regulations on the Lehigh River where the Easton Dam (right at the confluence with the Delaware River) is the downstream limit of waters having the one fish creel limit. Although the several mile reach of the river from the Fairmount Dam downstream to the confluence with the Delaware River/Estuary is tidal, American shad tend to concentrate at the base of the Fairmount Dam. Thus, using the I-95 Bridge as a downstream limit for the one fish limit will provide additional protection to adult American shad having a definite interest in ascending the Schuylkill River. The Commission accordingly proposes establishing a one fish creel limit for American shad in the Schuylkill River basin upstream of the bridge on I-95 at Philadelphia. The Commission proposes to amend § 61.8 to read as set forth in Annex A.

(2) *Sections 65.1, 65.2, 65.3, 65.5—65.7 and 65.24.* Where terminal tackle is restricted to artificial lures, the Commission's regulations provide that fishing may be done with artificial lures only constructed of metal, plastic, rubber or wood or with flies and streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Use of other gear 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.

Generally, in these areas (that is, Selective Harvest, Delayed Harvest Fly-fishing Only; Heritage Trout Angling Program, Catch-and-Release, Delayed Harvest Artificial Lures Only, Trophy Trout Program and the West Branch of the Delaware River in Wayne County), the use or possession of fishbait, natural bait or baitfish and the use of a device, natural or synthetic, capable of catching fish other than artificial lures is prohibited. However, the wording varies slightly from regulation to regulation.

The phrase "molded facsimiles or replicas of insects," as used in the regulations, is difficult to apply when dealing with the vast array of processes used to create artificial fishing lures. In addition, the life forms that molded facsimiles or replicas are intended to represent further confound the interpretation of the regulations.

The Commission proposes to simplify these regulations by eliminating the specific prohibition against 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. The Commission also proposes to modify the regulations to state

uniformly that the use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substances and the use of any other lure, other than artificial lures, flies or streamers is prohibited in these areas. In § 65.5 (relating to catch-and-release areas), the prohibition against barbed hooks and the requirement that barbless hooks are used will remain. The Commission proposes to amend these sections to read as set forth in Annex A.

(3) *Section 65.10 (relating to Select Trout Stocked Lake Program).* At the July 1994 meeting, the Commission approved the creation of what later became known as the Select Trout Stocked Lake Program (program). Through the stocking of a portion of the preseason trout allocation during the January through early March period in select lakes, reservoirs and stream sections, the Commission provides opportunities for trout angling (and harvest of three trout per day) in waters that normally would be closed to fishing during March as part of the traditional preseason stocking period. As stream sections are included in the program, a name change is warranted, particularly for use in publications, website coverage and correspondence to the angling public. Thus, without changing the intent of the program, the Commission proposes to change the name of § 65.10 from "Select Trout Stocked Lake Program" to "Early Season Trout Stocked Waters Program." The Commission also proposes amending § 61.1 to reflect the new name of the program, which is referenced in that section.

(4) *Section 65.24 (relating to miscellaneous special regulations).* Lower Burrell Park Pond (also locally known as Holtzhauer Lake) is a 4-acre impoundment located in northwestern Westmoreland County and owned by the City of Lower Burrell (city). The impoundment was built on an unnamed tributary to Little Pucketa Creek and is very assessable to a public road (68% within 110 yards). The entire shoreline is open to public angling, but ice fishing and boating are not permitted on the impoundment. The impoundment is located in a city park that has a walking trail around the lake, a handicap access fishing pier, several parking areas, picnic pavilions and recreational facilities. A May 2002 fish population sampling by the Commission's area fisheries manager found largemouth bass to be the dominant warmwater game fish and bluegill to be the dominant panfish. The bass and bluegill fish population size structure and density are of relatively high quality.

Informal catch and release regulations have been imposed by the city at the impoundment since September 2000. The city would like to continue with the catch and release regulations and to have them enforced by the Commission. The Commission concurs with the city's request and has not heard of any complaints about the current but "informal" regulations. Because the pond is a publicly owned, highly accessible impoundment in an urban population area, it has great appeal for the trout stocking program. Commission staff will continue to work with the city on this aspect of a management plan.

The Commission proposes to amend § 65.24 to impose catch-and-release only regulations for all species at Lower Burrell Park Pond to optimize use of this waterway. Specifically, the Commission proposes to amend this section to read as set forth in Annex A.

(5) *Section 69.12.* Anglers occasionally catch burbot by hook and line in Lake Erie and Presque Isle Bay. However, burbot may only be legally taken by SCUBA divers by use of nonmechanical spears or gigs at a depth of at least 60 feet during the period, June 1 to September

30, with a daily limit of five. Although inland populations of burbot are endangered and therefore harvest is not allowed, burbot in Lake Erie are abundant enough to support commercial and sport harvest. The Commission's Bureau of Law Enforcement personnel indicate that anglers who catch burbot during the winter months rarely catch more than a couple per day. Thus, the Commission proposes an amendment that would allow burbot to be taken by hook and line with a limit of five per day and no closed season. Commission staff anticipate no adverse impacts to burbot populations as a result of this proposed change. The Commission proposes to amend this section to read as set forth in Annex A.

As with burbot, anglers occasionally catch smelt through the ice in Presque Isle Bay. Under the Commission's current regulations, smelt are not specifically listed and have been considered baitfish. Baitfish may be taken year around with no minimum size requirement and a daily limit of 50 (combined species). To clarify the existing regulations, the Commission proposes that smelt be listed separately with no closed season, no minimum length and no creel limit. Commission staff do not anticipate any adverse impacts to the smelt population as a result of this proposed amendment. The Commission proposes to amend this section 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 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.

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

**Fiscal Note:** 48A-156. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

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

**§ 61.1. Commonwealth inland waters.**

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\*\*Note: Approved trout waters are closed to fishing from March 1 to opening day of regular trout season in

April unless included in the [ Select Trout Stocked Lake ] Early Season Trout Stocked Waters Program. See § 65.10 (relating to [ Select Trout Stocked Lake ] Early Season Trout Stocked Waters Program).

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§ 61.8. Lehigh River, Schuylkill River and tributaries.

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(d) The following seasons, sizes and creel limits apply to the Lehigh River and its tributaries and the Schuylkill River upstream of the I-95 Bridge and its tributaries:

\* \* \* \* \*

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.1. Selective Harvest Program.

\* \* \* \* \*

(b) It is unlawful to fish in designated and posted selective harvest 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. [Anything other than these items 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.]

(2) [The use or possession of fishbait, natural bait or baitfish and the use of a device, natural or synthetic, capable of catching fish other than artificial lures is prohibited.] The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

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§ 65.2. Delayed harvest fly-fishing only areas.

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

(1) Fishing may be done with artificial flies and streamers constructed of natural or synthetic materials so long as all flies are constructed in a normal fashion on a single hook with components wound on or about the hook. [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. Likewise prohibited are other lures commonly described as spinners, spoons or plugs made of metal, plastic, wood, rubber or like substances or a combination thereof.] Anything other than these items is prohibited.

\* \* \* \* \*

(3) [The use or possession of natural bait, baitfish or fishbait, and the use of another device, natural or synthetic, capable of catching fish, other than artificial flies and streamers, is prohibited.] The use or possession of any natural bait, baitfish,

fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

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§ 65.3. Heritage Trout Angling Program.

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(b) It is unlawful to fish in designated and posted Heritage Trout Angling Program areas except in compliance with the following requirements:

(1) Fishing may be done with artificial flies and streamers constructed of natural or synthetic materials so long as all flies are constructed in a normal fashion on a single barbless hook with components wound on or about the hook. [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. Likewise prohibited are other lures commonly described as spinners, spoons or plugs made of metal, plastic, wood, rubber or like substances or a combination thereof.] Anything other than these items is prohibited.

\* \* \* \* \*

(3) [The use or possession of a natural bait, baitfish or fishbait and the use of barbed hooks or other fishing devices, other than barbless hook, artificial flies or streamers is prohibited in these areas.] The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

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§ 65.5. Catch-and-release areas.

\* \* \* \* \*

(b) It is unlawful to fish in designated and posted catch-and-release 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.] Barbed hooks are prohibited; fishing may be done with barbless hooks only.

(2) [The use or possession of a natural bait, baitfish or fishbait and the use of barbed hooks or fishing devices, other than barbless hook, artificial lures, flies or streamers is prohibited in these areas.] The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

\* \* \* \* \*

§ 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. ]**

(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. ]** The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

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**§ 65.7. Trophy Trout Program.**

\* \* \* \* \*

(b) It is unlawful to fish in designated and posted trophy trout 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. **[ Anything other than these items 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. ]**

(2) **[ The use or possession of fishbait, natural bait or baitfish and the use of a device, natural or synthetic, capable of catching fish other than artificial lures is prohibited. ]** The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

\* \* \* \* \*

**§ 65.10. [ Select Trout Stocked Lake ] Early Season Trout Stocked Waters Program.**

(a) The Executive Director, with the approval of the Commission, may designate lakes as part of the **[ Select Trout Stocked Lake ] Early Season Trout Stocked Waters Program**. The designation of waters as part of the **[ Select Trout Stocked Lake ] Early Season Trout Stocked Waters Program** shall be effective upon publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as part of the **[ Select Trout Stocked Lake ] Early Season Trout Stocked Waters Program** except in compliance with the following requirements:

\* \* \* \* \*

(3) Except as otherwise provided in this section, State-wide regulations (including size and creel limits) apply to waters in the **[ Select Trout Stocked Lake ] Early Season Trout Stocked Waters Program**.

**§ 65.24. Miscellaneous special regulations.**

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

County	Name of Water	Special Regulations
		* * * * *
Wayne	West Branch Delaware River	Trout: From the Pennsylvania/New York border downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October 1 until midnight of the Friday before opening day of trout season. During the no-harvest artificial lures only season: 1. Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood, or flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. <b>[ Anything other than these items 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 other materials. ]</b> 2. <b>[ The use or possession of natural bait, baitfish and fishbait and the use of other devices, natural or synthetic, capable of catching fish other than artificial lures is prohibited. ]</b> The use or possession of any natural bait, baitfish, fishbait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited. 3. The daily creel limit for trout is 0.
		* * * * *
Westmoreland	Lower Burrell Park Pond	<b>This is a catch and release/no harvest fishery for all species. It is unlawful to take, kill or possess any fish. All fish caught must be immediately returned unharmed.</b>

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

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

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(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsular waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *			
<b>BURBOT (when taken by hook and line)</b>	<b>Open year-round</b>	<b>None</b>	<b>5</b>
BURBOT (when taken by scuba divers by use of nonmechanical spears or gigs at a depth of at least 60 feet)	June 1 to September 30	None	5
<b>Smelt (when taken by hook and line)</b>	<b>Open year-round</b>	<b>None</b>	<b>None</b>
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