

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 63 AND 65]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 63 and 65 (relating to general fishing regulations; and 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 pertains to permits for the use of cast nets and throw nets (10 feet in radius or 20 feet in diameter) for the taking of gizzard shad 8 inches or less in length and alewife in waters to be determined by the Executive Director. The proposed rulemaking also eliminates two miscellaneous special regulations pertaining to this subject.

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, Chief Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The proposed addition of § 63.48 (relating to permit for the use of cast nets or throw nets) is published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendments to § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307 (relating to waters limited to specific purposes).

D. Purpose and Background

Currently, there are two miscellaneous special regulations that allow the issuance of permits for the use of cast nets or throw nets for taking live gizzard shad and alewife at Lake Arthur, Butler County, and Raystown Lake, Huntingdon County. The regulations limit the size of cast nets and throw nets to 10 feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inch. The Commission issues between approximately 700 and 800 permits each year at Raystown Lake. The Commission estimates that it will issue less than 100 permits each year on Lake Arthur.

The Commission's regulations pertaining to inland waters, such as Raystown Lake and Lake Arthur, permit an angler to take, catch, kill or possess 50 gizzard shad or alewife on a daily basis. The Commission recently was contacted by a fishing guide on Raystown Lake who has requested that he and other guides be allowed to possess a daily creel of 100 fish instead of 50. Upon review of this matter, the Commission determined that it is appropriate to allow all holders of cast net permits on Raystown Lake and Lake Arthur to take, catch, kill or possess 100 gizzard shad and alewife (combined species) on a daily basis. This allowance will not adversely impact the resource.

E. Summary of Proposals

Instead of amending the miscellaneous special regulations in § 65.24 for Raystown Lake and Lake Arthur to allow permit holders to take, catch, kill or possess 100 gizzard shad and alewife (combined species) on a daily basis, the Commission proposes a new regulation pertaining to cast nets and throw nets. Proposed § 63.48 will address the broader issue of the Commission's issuance of permits for these types of nets and will eliminate the need for the miscellaneous special regulations on Raystown Lake and Lake Arthur in § 65.24.

Proposed § 63.48 provides that the Executive Director or a designee may issue permits for the use of cast nets or throw nets for the taking of gizzard shad 8 inches or less in length and alewife only. The proposed rulemaking further provides that the Executive Director will issue these permits in waters to be determined by the Executive Director. The Commission intends to issue a separate permit for each individual body of water to allow better management of the affected resources. At this time, the Commission intends to issue permits for the use of cast nets and throw nets at Lake Arthur and Raystown Lake only. Additional waters could be added at a later date.

A holder of this permit will be allowed to use a cast net or throw net no greater than 10 feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inch. As previously stated, a holder also will be entitled to take, catch, kill or possess a daily creel limit of 100 gizzard shad and alewife (combined species). It will be unlawful to use cast nets or throw nets or to take, catch, kill or possess more than the daily creel limit of gizzard shad and alewife as set forth in § 61.1 (relating to Commonwealth inland waters) without the required permit.

The Commission proposes to add § 63.48 and to rescind portions of § 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 because proposed § 63.48 pertains to permits that the Commission currently issues under § 65.24.

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. Under section 2902 of the code (relating to net permits), the Commission has the authority to issue net permits for a fee of \$10.

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 proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. 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

(Editor's Note: Documents relating to the proposal in § 65.24 appear at 35 Pa.B. 5124 (September 17, 2005) and 35 Pa.B. 5261 (September 24, 2005).)

Fiscal Note: 48A-176. 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

§ 63.48. Permit for the use of cast nets or throw nets.

(a) The Executive Director or a designee may issue permits for the use of cast nets or throw nets for the taking of gizzard shad 8 inches or less in length and alewife only in waters to be determined by the Executive Director.

(b) In addition to other permit conditions that the Executive Director may require, the cast nets or throw nets shall be no greater than 10 feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inch.

(c) Notwithstanding the provisions of § 61.1 (relating to Commonwealth inland waters), holders of permits for the use of cast nets or throw nets may take, catch, kill or possess a daily creel limit of 100 gizzard shad and alewife (combined species).

(d) A person may apply for a permit for the use of cast nets or throw nets by completing the form prescribed by the Commission. The applicant shall submit the completed form to the Commission along with the fee specified in section 2902 of the code (relating to net permits).

(e) It is unlawful to use cast nets or throw nets for the taking of gizzard shad and alewife or to take, catch, kill or possess more than the daily creel limit of gizzard shad and alewife as set forth in § 61.1 without the required permit. A permit for the use of cast nets or throw nets shall be carried so that it can be presented to an officer authorized to enforce the code.

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>
[Butler]	[Lake Arthur]	[The Executive Director or a designee may issue permits for use of cast nets or throw nets for taking only gizzard shad and alewife. 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 10 feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inches.]
Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to confluence with 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 twenty 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 10 feet in radius (20 feet in diameter) with a mesh size of at least 3/8 inches.]

[Pa.B. Doc. No. 05-1774. Filed for public inspection September 23, 2005, 9:00 a.m.]