

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 63, 65, 71 AND 73]

Fishing

The Fish and Boat Commission (Commission) amends Chapters 63, 65, 71 and 73. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Laurie E. Shepler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 63.20 (relating to permits for the protection and management of trout and salmon) is published under the statutory authority of section 2904 of the code (relating to permits for protection and management of particular fish). The amendments to §§ 63.46, 71.6 and 73.1 (relating to sale, purchase or barter of injurious, nonnative species; prohibited acts; and transportation) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendment to § 65.24 is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

The final-form rulemaking is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the amendments is described in more detail under the summary of changes.

E. Summary of Changes

(1) *Section 63.20*. The requirements for when and where an angler needs a trout/salmon permit are, and historically have been, in § 63.20. With the recent simplification of the specially regulated trout programs in Chapter 65 (relating to special fishing regulations), the special trout regulations were amended to expressly provide, among other things, that a trout/salmon permit is required in those waters and the requirement in § 63.20 was deleted.

Upon a closer review of the amendments, the Commission has determined that as a result of the amendment to § 63.20, the Commission's law enforcement officers may no longer cite someone under section 2908 of the code (relating to penalties) for fishing in a specially regulated trout water without the required trout/salmon permit. They may only issue a citation under section 2102 of the code. Section 2908 of the code allows imposition of an additional penalty for not having the required permits.

To allow the Bureau of Law Enforcement to initiate an enforcement action under section 2908 of the code for failing to possess a trout/salmon permit while fishing in a specially regulated trout water, an amendment restoring this provision to § 63.20 was required. Accordingly, the Commission amended § 63.20 to read as set forth in the proposed rulemaking.

(2) *Sections 63.46, 71.6 and 73.1*. From time to time, the Commission has found it desirable to specifically prohibit the sale, purchase or barter, possession, introduction, importation and transportation of certain injurious, nonnative species. There are currently nine species listed. They are snakehead (all species), black carp (*Mylopharyngodon piceus*), bighead carp (*Hypophthalmichthys nobilis*), silver carp (*Hypophthalmichthys molitrix*), zebra mussel (*Dreissena polymorpha*), quagga mussel (*Dreissena bugensis*), round goby (*Neogobius melanostomus*), tubenose goby (*Proterothinus marmoratus*) and European rudd (*Scardinius erythrophthalmus*).

The Commission proposed adding the rusty crayfish (*Orconectes rusticus*) and ruffe (*Gymnocephalus cernuus*) to this list. Rusty crayfish have been introduced into this Commonwealth and have expanded their range primarily in the Susquehanna River basin. They are an aggressive riverine species, and the Commission should provide regulatory disincentives to relocating rusty crayfish from one water body to another. Ruffe is an invasive species in the Great Lakes. However, it has not yet been captured in the Pennsylvania waters of Lake Erie. This species has the potential to compete with yellow perch and should be prevented from being introduced into this Commonwealth. Accordingly, the Commission amended §§ 63.46, 71.6 and 73.1 to read as set forth in the proposed rulemaking.

(3) *Section 65.24*. Since 1999, Cross Creek Lake has been regulated and managed under § 65.9 (relating to big bass special regulations). The lake also is regulated and managed under § 65.11 (relating to panfish enhancement special regulation). When Cross Creek Lake was added to these special regulations programs, the Commission intended that it be removed from the miscellaneous special regulations under § 65.24. However, due to an oversight, the change did not occur at that time. The Commission accordingly proposed to amend § 65.24 to delete the miscellaneous special regulation. The Commission adopted the deletion as set forth in the proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Involvement

A notice of proposed rulemaking was published at 36 Pa.B. 1655 (April 8, 2006). The Commission did not receive public comments concerning the proposed rulemaking.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 63, 65, 71 and 73, are amended by amending §§ 63.20, 63.46, 65.24, 71.6 and 73.1 to read as set forth in 36 Pa.B. 1655.

(b) The Executive Director will submit this order and 36 Pa.B. 1655 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 36 Pa.B. 1655 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

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

Fiscal Note: Fiscal Note 48A-182 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 06-1681. Filed for public inspection August 25, 2006, 9:00 a.m.]