

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61 AND 65]

Fishing; Musky Enhancement Program

The Fish and Boat Commission (Commission) amends Chapters 61 and 65 (relating to seasons, sizes and creel limits; and special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The final-form rulemaking modifies the seasons, sizes and creel limits for muskellunge, muskellunge hybrids and pickerel and modifies the season for northern pike. In addition, the final-form rulemaking creates the Musky Enhancement Program (Program).

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2007.

B. *Contact Person*

For further information on this final-form rulemaking, contact Laurie E. Shepler, Chief Counsel, 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 amendments to § 61.1 (relating to Commonwealth inland waters) and the addition of § 65.16 (relating to Musky Enhancement Program) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

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

E. *Summary of Changes*

(1) *Muskellunge and muskellunge hybrids.* The Commission solicited information from muskellunge and tiger muskellunge (musky) anglers to guide enhancement of fishing opportunities for these species in this Commonwealth. As part of its efforts, the Commission convened a musky workgroup that included representatives from the musky fishing community as well as the broader angling community, including black bass anglers. The Commission also solicited water-specific fishing quality information from musky anglers through a volunteer survey and examined and summarized available biological information describing muskellunge and tiger muskellunge in this Commonwealth.

Following a formal opinion gathering process, the workgroup formulated the following goal statement: "To enhance musky fishing through advanced fish culture methods, education and harvest management while considering habitat potential." The workgroup also formulated a number of draft objectives that identified specific prioritized needs, including enhancing muskellunge and tiger muskellunge density and size-structure through alternative harvest restrictions. The workgroup addressed a variety of topics, including recommending that the total

number of waters or water sections managed for muskellunge (currently 150) be reduced to provide opportunities for more intensive management on fewer waters.

The workgroup further proposed that density and size structure could be enhanced by further restricting harvest on waters Statewide following review of simulation results that examine alternative size limits. In addition, the workgroup proposed further restrictions on selected waters where biologists determined that density could be further enhanced. Under the workgroup's proposals, the Statewide minimum size limit would be 36 inches and the "enhanced" minimum size limit would be 45 inches. Another option discussed by the workgroup was a Statewide size limit of 40 inches in the event that an "enhanced" option was not adopted by the Commission.

As a result of the input gathered from the workgroup and the independent assessment of the Commission's biologists, the Commission proposed to increase the minimum size limit for muskellunge and muskellunge hybrids from 30 inches to 36 inches, to reduce the daily limit from two (combined species) to one and to allow for a year-round open season on Commonwealth inland waters. The Commission also proposed the Program to designate waters for more intensive development of musky populations. The Commission proposed that for waters regulated and managed under the Program, the season would be open year-round, the minimum size limit would be 45 inches and the daily limit would be one. In addition to this proposal, the Commission sought public comments on an alternative proposal. The alternative proposal set the Statewide limit for muskellunge and muskellunge hybrids at 40 inches and did not include the Program.

On final-form rulemaking, the Commission amended § 61.1 to provide for a year-round open season, a minimum size limit of 40 inches and a daily limit of one on Commonwealth inland waters. This section, as amended, will read as set forth in Annex A. The Commission also adopted § 65.16, as set forth in the proposed rulemaking, to provide for a Program that includes a year-round open season, a minimum size limit of 45 inches and a daily limit of one.

Muskellunge and tiger muskellunge are a long-lived, low-density species that, at maximum, occur at densities of one legal fish per surface acre in this Commonwealth's waterways. Diet studies carried out in this Commonwealth and elsewhere show that muskellunge and tiger muskellunge primarily prefer soft-rayed fishes and most studies show, including those in this Commonwealth, that catostomids (suckers) are the primary prey fish of large muskellunge. Consequently, impacts to other game fish and panfish species are expected to be limited. The increased size limit may facilitate greater levels of natural recruitment in the native range of muskellunge (western Pennsylvania) where rather dramatic improvements in water quality and species diversity have occurred in recent decades. Currently, natural recruitment Statewide is very low with Commission stocking programs accounting for an estimated 98% of angler trips. Although increased size limits, coupled with water quality improvements, may foster some additional natural recruitment, it is expected that Commission stocking programs will continue to provide the bulk of recreational fishing opportunities now and into the future.

(2) *Northern pike.* Northern pike fisheries occur in 59 waterways open to public fishing across this Common-

wealth. Most fisheries are sustained through natural reproduction and occur in the upper Allegheny drainage (northwest Pennsylvania). Angler catch rates are frequently high in the spring, often encompassing a portion of that period corresponding to the closed season. To provide the Commonwealth's anglers with expanded opportunities to catch and, if desired, harvest northern pike, the Commission proposed a year-round open season, a reduced minimum size limit of 18 inches, and an increased creel limit of four on Commonwealth inland waters.

Amur pike or Amur pike hybrids have not been sustained through a stocking program in this Commonwealth since the early 1970s and no longer occur in this Commonwealth. The Commission therefore proposed that they be removed from the species list in § 61.1.

On final-form rulemaking, the Commission amended § 61.1 to provide for a year-round open season while retaining the current minimum size limit of 24 inches and the current daily limit of two. This section, as amended, will read as set forth in Annex A.

(3) *Pickereel*. Pickerel fisheries occur in 73 waterways open to public fishing across this Commonwealth. These populations are largely confined to the central and eastern end of this Commonwealth with the highest number of waters (27) in northeastern Pennsylvania. Virtually all populations are sustained through natural reproduction. Angler catch rates are frequently high in the spring, often encompassing a portion of the closed season. To provide this Commonwealth's anglers with expanded opportunities to catch and, if desired, harvest chain pickerel in the spring, the Commission proposed a Statewide year-round open season on Commonwealth inland waters. The Commission also proposed that the minimum size limit be increased from 15 inches to 18 inches. Analytical predictions indicate that populations with average growth rates will increase in density in conjunction with this change. Additionally, the minimum size limit of 18 inches provides necessary protections in the spring and other times of the year to sustain populations through natural reproduction. The Commission further proposed that the daily limit be reduced to four.

On final-form rulemaking, the Commission adopted the amendment to § 61.1 as set forth in the proposed rulemaking. This section, as amended, will read as set forth in Annex A.

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

The proposed rulemaking was published at 36 Pa.B. 1656 (April 8, 2006). Regarding the proposed amendments pertaining to muskellunge and muskellunge hybrids, the Commission received a total of 116 comments—74 prior to the official comment period, 40 during and 2 after. With respect to the specifics of the proposed rulemaking, the comments were as follows: 16 commentators support the year-round open season, while 7 oppose it; 23 commentators support the 36-inch minimum size limit, while 9 oppose it; 48 commentators support the reduction in the creel limit to 1 per day, while 6 oppose it; 59 commenta-

tors support the enhanced management program, while 2 oppose it; and 71 commentators support the 40-inch minimum size limit, while 2 oppose it.

Several commentators support a minimum size limit greater than 40-inches: four support a 45-inch minimum, four support a 50-inch minimum and one supports a larger than 50-inch minimum. Eight commentators support a year-round catch and release regulation for muskies. Four commentators support a catch and release regulation during the spawning season, while one opposes this approach.

Fifteen commentators support a minimum size limit on the enhanced management waters greater than the proposed 45 inches. Of those commentators, 2 support a 48-inch minimum and 13 support a 50-inch minimum.

Regarding the proposed amendments pertaining to northern pike, the Commission received a total of 12 comments—10 before the start of the official comment period and 2 after. The Commission did not receive comments during the official comment period. Five commentators oppose the open season, while four support it. Commentators opposed to the year-round open season want protection for spawning periods. Seven commentators oppose the 18-inch minimum size limit, while two support it and one commentator wants to lower the size limit even further. Five commentators want the Commission to increase the minimum size limit from its current 24 inches. Three of those commentators propose 30 inches, one proposes 36 inches and one proposes 40 inches. Four commentators oppose increasing the creel limit to four, while one supports it.

Regarding the proposed amendments pertaining to pickerel, the Commission received a total of six comments—five before the start of the official comment period and one after. The Commission did not receive comments during the official comment period. One commentator supports decreasing the creel limit to four, while one supports decreasing it to five. Two commentators oppose the open season for pickerel, while three support it. Four commentators support the 18-inch minimum size limit, while one opposes it. Copies of all public comments were provided to the Commissioners.

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 the comments were received were considered.

(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 61 and 65, are amended by adding § 65.16 to read as set forth in 36 Pa.B. 1656 and by amending § 61.1 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Executive Director will submit this order, 36 Pa.B. 1656 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 36 Pa.B. 1656 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2007.

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

Fiscal Note: Fiscal Note 48A-181 remains valid for the final adoption of the subject regulations.

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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(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogheny Reservoir:

| <i>SPECIES</i> | <i>SEASONS</i> | <i>MINIMUM SIZE</i> | <i>DAILY LIMIT</i> |
|-------------------------------------|---|---------------------|--------------------|
| | * * * * * | | |
| MUSKELLUNGE and MUSKELLUNGE HYBRIDS | Open year-round | 40 inches | 1 |
| PICKEREL | | 18 inches | 4 |
| NORTHERN PIKE | | 24 inches | 2 |
| WALLEYE and hybrids (Saugeye) | January 1—March 14; and 12:01 a.m. first Saturday in May to midnight, December 31 | 15 inches | 6 |
| SAUGER | | 12 inches | 6 |
| AMERICAN SHAD*** | Open year-round | No minimum | 6 |
| HICKORY SHAD*** | Closed year-round | | 0 |
| GIZZARD SHAD *** | Open year-round | No minimum | 50 |
| HERRING*** | Open year-round | No minimum | 50 |
| | * * * * * | | |

*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."

**Note: Approved trout waters are closed to fishing from March 1 to opening day of regular trout season in April unless included in the Early Season Trout Stocked Waters Program. See § 65.10 (relating to Early Season Trout Stocked Waters Program).

***Note: Unlawful to take, catch or kill American shad, hickory shad and alewife and blueback herring (collectively known as river herring) in Susquehanna River and its tributaries. See §§ 61.4 and 61.7.

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