

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing; Delaware River and River Estuary and the Conowingo Reservoir

The Fish and Boat Commission (Commission) amends Chapter 61 (relating to seasons, sizes and creel limits). 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*

The final-form rulemaking will go into effect on January 1, 2008.

B. *Contact Person*

For further information on the final-form rulemaking, contact Jason E. Oyler, 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 amendments to §§ 61.2 and 61.4 (relating to Delaware River and River Estuary; and Conowingo Reservoir) are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

D. *Purpose and Background*

The final-form rulemaking is designed to improve, enhance and update 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 61.2.* Three jurisdictions, New York, New Jersey and the Commonwealth, work in cooperative fashion in setting regulations for the Delaware River and the West Branch Delaware River because both are border waters. Differences in the rulemaking processes, license years and fisheries within different reaches may result in regulations being out of synchrony for a year or more. Jurisdictions attempt to provide consistency for anglers by minimizing regulatory differences among states. The Commission proposed the following changes to reconcile the differences among the jurisdictions.

Black bass regulations were adopted in 2006 on the Delaware River downstream of I-84 in New Jersey and this Commonwealth that include a 12-inch minimum length limit, 5 bass per day creel limit and a no-harvest, catch-and-immediate-release season that begins on the first Saturday after April 11 and extends through 12:01 a.m. on the first Saturday after June 11. These regulations provide an opportunity for competitive anglers to conduct "paper" or catch-measure-immediate release tournaments during the catch-and-release season. In 2006, New York adopted similar regulations on the section of the Delaware River upstream of I-84. The Commission currently manages this Commonwealth's section of the Delaware as a year-round season. Thus, New York and the Commonwealth have different black bass regulations in the upper part of the Delaware. Following the Commission's adoption of the more conservative regulations up-

stream of I-84, consistent harvest rules for black bass will apply throughout the entire Delaware River and West Branch Delaware River in this Commonwealth and all border jurisdictions.

In 2006, the Commission adopted new Statewide regulations for muskellunge and tiger muskellunge. These regulations, which went into effect on January 1, 2007, provide for a year-round season, a 40-inch minimum size limit, and a one-fish creel limit on Commonwealth inland waters. Currently, the regulations on the Delaware River consist of a year-round season, a 30-inch minimum size limit and a two-fish creel limit. On December 28, 2006, the Commission's Division of Fisheries Management staff discussed amending the regulations to provide for a 40-inch minimum size limit and a one-fish creel limit with staff from the New Jersey Division of Fish, Game and Wildlife and the New York Department of Environmental Conservation. Staff from both agencies stated their support for the changes in muskellunge and muskellunge hybrid regulations for the Delaware River. In New Jersey, the earliest the regulation changes would take effect is January 2008; in New York, the earliest the regulation changes would take effect is October 2008. Those agencies will initiate the process to make their regulations consistent upon action by the Commission to amend the minimum size limit to 40 inches and the daily limit to one.

Currently, there are a number of species that are not identified in § 61.2. For example, no panfish are listed in this section. The regulations in New Jersey and New York are inconsistent with each other and also are inconsistent with the Commonwealth's inland regulations. The Commission does not believe that it will be feasible to attempt to reconcile New York and New Jersey regulations with the Commission's regulations in the near future for those species not already listed under this section. Therefore, the Commission proposed that § 61.2 be amended to clarify that for all species not listed, the Commonwealth's inland regulations apply.

Finally, the Commission proposed that the introductory paragraph to § 61.2(d) be amended to make it clear that the regulations apply to the West Branch Delaware River as well as the main stem and other tributaries.

On final-form rulemaking, the Commission adopted the proposed amendments as set forth in the notice of proposed rulemaking.

(2) *Section 61.4.* The Commission currently manages two reservoirs that it shares as boundary waters with the state of Maryland: Youghiogheny Reservoir and Conowingo Reservoir. By agreement with Maryland, the Commission's regulations are applied to both states' portions of the Youghiogheny Reservoir and Maryland's regulations are applied to both states' portions of Conowingo Reservoir. Portions of the regulations currently in place for certain species on Conowingo Reservoir under § 61.4 are not consistent with the current Maryland regulations. Specifically, the harvest limit for trout is two per day in Maryland, as opposed to five per day as listed in § 61.4. There is a baitfish daily limit of 35 in Maryland, as opposed to no limit in § 61.4. The harvest of mussels and clams is prohibited in Maryland, and § 61.4 is silent. In Maryland, river herring (alewife and blueback herring) have an open season and no size or daily creel limits while § 61.4 disallows fishing for these

species. Maryland's regulations provide that there are no seasons, size or creel limits for those species not specifically listed in the regulations for Conowingo Reservoir. The Commission's regulations do not currently address this matter. Accordingly, the Commission proposed amendments to § 61.4.

On final-form rulemaking, the Commission adopted the proposed amendments as set forth in the notice of 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 not have an 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 37 Pa.B. 2692 (June 16, 2007). The Commission received a total of 21 public comments supporting the proposed amendments to § 61.2. Six of the comments supported a greater size limit on muskellunge with two specifically recommending a 50-inch minimum size limit. One comment supported the establishment of a no-kill fishery for muskellunge on the Delaware River. One comment supported more restrictive rules for trout and smallmouth bass on the Delaware River. The Commission received one public comment generally supporting the proposed amendments to § 61.4. 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 that 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 Chapter 61, are amended by amending §§ 61.2 and 61.4 to read as set forth in 37 Pa.B. 2692.

(b) The Executive Director will submit this order and 37 Pa.B. 2692 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 37 Pa.B. 2692 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2008.

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

Fiscal Note: Fiscal Note 48A-193 remains valid for the final adoption of the subject regulations.

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