

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130f]

Odor Management Certification

Corrective Amendment to 7 Pa. Code Chapter 130f and § 130f.21(c)(1)

The Department of Agriculture has discovered a discrepancy between the agency text of 7 Pa. Code Chapter 130f (relating to odor management certification) and additionally § 130f.21(c)(1) (relating to determination of competence) as deposited with the Legislative Reference Bureau and as published at 38 Pa.B. 5849 (October 25, 2008) and the official text currently appearing in the *Pennsylvania Code*. The addition of this chapter was inadvertently omitted from the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 410, January 2009). Additionally, the text of § 130f.21(c)(1) was printed incorrectly at 38 Pa.B. 5853.

Therefore, under 45 Pa.C.S. § 901: The Department of Agriculture has deposited with the Legislative Reference Bureau a corrective amendment to 7 Pa. Code Chapter 130f and § 130f.21(c)(1). The corrective amendment adding Chapter 130f is effective January 3, 2009, the date the defective Master Transmittal Sheet No. 410 was announced in the *Pennsylvania Bulletin*. The corrective amendment to 7 Pa. Code § 130f.21(c)(1) is effective October 25, 2008, the date the defective official text was printed in the *Pennsylvania Bulletin*.

The correct version of 7 Pa. Code § 130f(c)(1) appears in Annex A, with ellipses referring to the existing text of the regulation.

DWIGHT-JARED SMITH,
Assistant Counsel

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 130f. ODOR MANAGEMENT CERTIFICATION

Subchapter B. CERTIFICATION

INDIVIDUAL ODOR MANAGEMENT SPECIALIST

§ 130f.21. Determination of competence.

* * * * *

(c) The competency evaluation will be administered by the Department or its designee. The Department or its designee will administer the competency evaluation in association with the orientation training course on an as needed basis, which will be determined by the number of requests for the training. At a minimum, the successful completion of the competency evaluation will demonstrate an examinee's technical knowledge relating to odor management planning and OMP development in the following areas:

(1) Application of an odor evaluation methodology approved by the Commission which may include the Odor Site Index.

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[Pa.B. Doc. No. 09-669. Filed for public inspection April 10, 2009, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Corrective Amendment to 58 Pa. Code §§ 69.11 and 69.12(a)—(c)

The Fish and Boat Commission has discovered a discrepancy between the agency text of 58 Pa. Code §§ 69.11 and 69.12(a)—(c) (relating to applicability of fishing regulations; and seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries), as deposited with the Legislative Reference Bureau, and the official text which currently appears in the *Pennsylvania Code* (Master Transmittal Sheet No. 411, February 2009). The existing text of those sections was inadvertently omitted during the preparation of Master Transmittal Sheet No. 411.

Therefore, under 45 Pa.C.S. § 901: The Fish and Boat Commission has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code §§ 69.11 and 69.12(a)—(c). The corrective amendment to 58 Pa. Code §§ 69.11 and 69.12(a)—(c) is effective as of February 7, 2009, the date the defective text in Master Transmittal Sheet No. 411 was announced in the *Pennsylvania Bulletin*.

The correct version of 58 Pa. Code §§ 69.11 and 69.12(a)—(c) appears in Annex A, with ellipses referring to the existing text of the regulations.

LAURIE E. SHEPLER,
Chief Counsel

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

§ 69.11. Applicability of fishing regulations.

Except as otherwise provided in this subchapter, this subpart applies to fish and sport fishing in Lake Erie and its tributaries.

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

(a) It is unlawful to take, catch, kill or possess fish, except during the seasons specified in this section. It is not a violation of this section if a fish caught out of season from water where fishing for other species is lawful is immediately returned unharmed to the waters from which it was taken.

(b) It is unlawful to take, catch, kill or possess fish of less than the minimum size specified in this section. It is not a violation of this section if an undersized fish taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the following chart during 1-calendar day. It is unlawful to possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

(1) A person may possess any number of lawfully caught fish at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may, while transporting fish from the place where caught to his residence, possess a number of fish equal to no more than two times the daily creel limit for that species of fish. In prosecution for violation of this section, it shall be a rebuttable presumption that a person transporting fish from a fishing site caught all the fish during 1-calendar day.

(3) A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournament and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

(5) Fish may be given to another person, but the fish will be counted in the donor's creel limit and neither the donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

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[Pa.B. Doc. No. 09-670. Filed for public inspection April 10, 2009, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51, 53, 63, 65, 69, 75, 101 AND 113]

General Provisions, Fishing and Boating

The Fish and Boat Commission (Commission) amends 58 Pa. Code Chapters 51, 53, 63, 65, 69, 75, 101 and 113. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code) and other authorities described as follows.

A. Effective date

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

B. Contact person

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

C. Statutory authority

These amendments are published under the statutory authority of section 506 of The Administrative Code of 1929 (71 P. S. § 186). These amendments also are published in accordance with section 204 of the act of July 31, 1968 (P. L. 769, No. 240) known as Commonwealth Documents Law (CDL), which provides that an agency may omit or modify the procedures specified in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) if the administrative regulation or change relates to agency organization, management or personnel; agency procedure or practice; or Commonwealth property or if the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 of the CDL are under the circumstances impracticable, unnecessary or contrary to the public interest.

D. Purpose and background

Under 58 Pa. Code § 51.5 (relating to correction of regulations), the Executive Director is authorized to take immediate corrective action on the Commission's behalf if the Executive Director or the Commission's staff discovers an error or omission in the text of a Commission regulation as published in the *Pennsylvania Code* or *Pennsylvania Bulletin*. A comprehensive review of the Commission's regulations has revealed that there are errors or inaccuracies in the text of several Commission regulations, as more particularly described in the summary of changes as follows. The purpose of this final-form rulemaking is to correct these errors and inaccuracies.

E. Summary of changes

(1) Section 51.105(c) (relating to amount of proposed civil penalty forfeiture) currently refers to the Department of Environmental Protection. It should refer to the Commission.

(2) Section 53.5 (relating to hunting and trapping), which regulates hunting and trapping on Commission property, refers to The Game Law, 34 P. S. §§ 1311.101—1311.1502. This section should reference current law, the Game and Wildlife Code, 34 Pa.C.S. §§ 101—2965.

(3) Section 53.8(h)(1)(iii) (relating to boats), which exempts from registration certain types of boats using Commission lakes or access areas, is not consistent with and does not track the code. The reference to public service boats should be limited to unpowered boats since motorboats owned by public service organizations are required to be registered (but exempt from fees) under section 5302(c) of the code (relating to exemptions). Therefore, they cannot be exempt from registration under § 53.8(h)(1)(iii). In addition, the reference to section 5302(a)(3) should be to 5302(c)(2).

(4) Section 63.9(b) (relating to snatch fishing, foul hooking and snag fishing) omits "crossbows" in its references to the provisions of § 63.8 (relating to long bows, crossbows, spears and gigs).

(5) Section 65.24 (relating to miscellaneous special regulations) requires two corrections. The miscellaneous special regulation applicable to Pymatuning Reservoir in Crawford County should have "crossbows" inserted into

the parenthetical description of § 63.8. The miscellaneous special regulation applicable to the West Branch, Clarion River in Elk County should reflect the current name of the special trout regulation area. The reference should be to the catch and release, fly-fishing only area, not the Delayed Harvest, Fly-fishing Only area. The Commission, by notice published at 35 Pa.B. 6469 (November 26, 2005), redesignated this area as a catch and release, fly fishing only area, effective January 1, 2006.

(6) Sections 69.12, 69.31 and 69.33 (relating to seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries; seasons; and use of trap nets) describes the season for walleye as January 1 to midnight March 15. These sections should be amended to read “January 1 to March 14” so that they are consistent with the description of the walleye season in § 61.1 (relating to Commonwealth inland waters).

(7) Section 75.4 (relating to special permits) refers to the Non-Game and Endangered Species Unit, Bureau of Fisheries. The Bureau of Fisheries underwent a reorganization a few years ago, and this unit is currently known as the Natural Diversity Section, Division of Environmental Services. The reference in this section should reflect the current name.

(8) Section 101.6(c) (relating to investigation reports by Commission officers) references section 234 of the code when the correct reference is to section 324 (relating to Commission records).

(9) Section 113.3 (relating to operation of boats) references § 103.3(d) (relating to restriction for special areas) when the correct reference is to § 103.3(c).

F. Paperwork

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

G. Fiscal Impact

This 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

Under section 204 of the CDL, an agency may omit the procedures specified in sections 201 and 202 of the CDL if the agency finds that these procedures are unnecessary or if the administrative regulation or change relates to agency organization, management or personnel; agency procedure or practice; or Commonwealth property. The Commission, therefore, did not publish these amendments as a notice of proposed rulemaking or solicit public comment.

Findings

The Commission finds:

(1) Errors and inaccuracies were discovered in the text of 58 Pa. Code §§ 51.105, 53.5, 53.8, 63.9, 65.24, 69.12, 69.31, 69.33, 75.4, 101.6 and 113.3 as published in the *Pennsylvania Code*.

(2) Under § 51.5, the Executive Director is authorized to take immediate corrective action on behalf of the Commission, including, if necessary, the issuance of an order to make the necessary correction, if the Executive Director or the Commission's staff discovers an error in the text of a Commission regulation as published in the *Pennsylvania Code*.

(3) Because the nature of the amendments is minor and designed to correct errors and inaccuracies and

because certain of the changes relate to agency organization, agency procedure or Commonwealth property, the Commission finds that the procedures of sections 201 and 202 of the CDL are unnecessary.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 51, 53, 63, 65, 69, 75, 101 and 113, are amended by amending §§ 51.105, 53.5, 53.8, 63.9, 65.24, 69.12, 69.31, 69.33, 75.4, 101.6 and 113.3 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Attorney General for approval as to legality as required by law.

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

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

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

Fiscal Note: 48A-211. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter K. CIVIL PENALTY FORFEITURE PROCESS

§ 51.105. Amount of proposed civil penalty forfeiture.

(a) *Amount.* The amount of the proposed civil penalty forfeiture will be set forth in the order to show cause for civil penalty forfeiture. In determining the amount of the proposed forfeiture, the Executive Director or a designee will consider:

(1) *Health and safety of public.* The hazards posed to the health or safety of the public. The minimum proposed civil penalty forfeiture will be \$2,500 if the Executive Director or a designee determines, based on the uses of the waters, that the unmarked dam poses substantial danger to the angling, boating and wading public.

(2) *Negligence, recklessness or intentional failure.* Whether the violation was caused by a negligent, reckless or intentional failure to comply. A civil penalty of at least \$500 should be proposed in cases of negligent failure to comply. A civil penalty of at least \$2,000 should be proposed where there is probable cause to believe that the lack of compliance was based on reckless misconduct. A civil penalty of at least \$3,000 should be proposed when there is probable cause to believe that the lack of compliance was based on wilful or intentional misconduct.

(3) *Speed of compliance.* A credit will be given of up to \$1,000 based on the attempt of the owner or permittee to achieve rapid compliance after the owner or permittee knew or should have known of the violation. The credit will be available to offset only civil penalties assessed for the specific violation at issue.

(4) *Cost to the Commonwealth.* In proposing the amount of a civil penalty forfeiture, the costs to the Commonwealth will be considered. The costs may include:

- (i) Administrative costs.
- (ii) Costs of inspection.
- (iii) Costs of preventive or restorative measures taken by the Commission or the Department of Environmental Protection to prevent or lessen the threat of damage to persons or property.

(5) *Savings to the dam owner/permittee.* If the owner or permittee of the dam who fails to comply gains economic benefit as a result of the noncompliance, the proposed civil penalty may include an amount equal to the savings up to the statutory maximum for each violation.

(6) *History of previous violations.* In determining a proposed civil penalty for a violation, the Executive Director or a designee will consider previous noncompliance with the requirements of section 3510 of the code (relating to marking of dams) for which the same owner or permittee has been found to have been responsible in a prior adjudicated proceeding, agreement, consent order or decree that became final within the previous 3-year period. The penalty otherwise assessable for noncompliance shall be increased by a factor of 25% for each previous violation. The total increase in assessment based on the history of the previous violation will not exceed \$1,000.

(i) A previous instance of noncompliance will not be counted if it is the subject of pending administrative or judicial review, or if the time to request the review or to appeal the administrative or judicial decision determining the previous violation has not expired.

(ii) Each previous instance of noncompliance will be counted without regard to whether it led to a civil penalty assessment.

(b) *Maximum penalty.* If consideration of the factors described in this section yields a penalty in excess of the statutory maximum, the maximum civil penalty will be proposed for that violation.

(c) *Revision of proposed civil penalty.* The Executive Director, upon his own initiative or upon written request received within 15 days of issuance of an order to show cause, may revise a proposed civil penalty calculated in accordance with the dollar limits in subsection (a). If the Executive Director revises the civil penalty, the Commission will use the general criteria in subsection (a) to determine the appropriate civil penalty. When the Executive Director has elected to revise a civil penalty, he will give a written explanation of the basis for the revised civil penalty to the dam owner or permittee to whom the order to show cause was issued.

CHAPTER 53. COMMISSION PROPERTY

§ 53.5. Hunting and trapping.

Legal hunting and trapping are permitted on property owned or controlled by the Commission in conformance with 34 Pa.C.S. (relating to Game and Wildlife Code) and Part III (relating to Game Commission) unless otherwise posted.

§ 53.8. Boats.

(a) An internal combustion engine may not be used to propel a boat or to provide energy to the motor on Commission lakes. Boats propelled by battery-powered electric motors and nonmechanically propelled boats, subject to restrictions on sailboats and inflatables, may be used either with or without internal combustion engines attached. Notwithstanding this subsection, internal com-

bustion engines may be used in the performance of official duties by persons authorized by the Commission.

(b) Occupants of sculls, shells and racing kayaks are required to carry or wear Coast Guard approved personal flotation devices.

(c) Overnight mooring of boats is permitted at designated mooring areas from April 1 to November 30. A boat utilizing mooring areas shall be registered and display the official registration number and current validation stickers described under Subpart C (relating to boating) and Part III of the code (relating to boats and boating). The mooring is at the sole risk of the owner.

(d) The Commission may refuse to permit the mooring of a boat considered unseaworthy. Boats may not be rented or offered for hire at Commission lakes except for boats owned and moored by authorized concessionaires.

(e) Boats abandoned, sunken, obviously unseaworthy or unidentifiable will be impounded. The district waterways conservation officer will notify the owner, if known, of the impoundment and require the removal of the vessel within 10 days. Impounded vessels will be sold or destroyed if not claimed by the owner within 3 months.

(f) Boats may not remain at boarding piers on Commission lakes or controlled property longer than the time necessary for loading and unloading.

(g) Inflatable boats used on Commission lakes shall be at least 7 feet in length, made of durable reinforced fabric and have at least two separate buoyancy chambers exclusive of any inflatable floor or bottom.

(h) A boat using a Commission lake or access area must be registered and display the official registration number and current validation stickers described under Subpart C and Part III of the code.

(1) This subsection does not apply to:

(i) Unpowered boats that display an official and valid use permit issued by the Commission under § 53.27 (relating to use permits for unpowered boats) or that display an official and valid watercraft launch or mooring permit issued by the Department of Conservation and Natural Resources for use of launch or mooring facilities at this Commonwealth's State parks and forests.

(ii) Noncommercial users of access areas on the West Branch of the Delaware River and the portion of the Delaware River upstream of the Interstate 84 Bridge.

(iii) Unpowered public service boats as defined under section 5302(c)(2) of the code (relating to exemptions from registration).

(iv) Unpowered boats participating in events authorized under § 109.6 (relating to special marine events).

(2) Registered unpowered kayaks, sculls, sailboards and other low volume boats of similar design are exempt from displaying registration numbers but shall display a current validation sticker.

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.9. Snatch fishing, foul hooking and snag fishing.

(a) It is unlawful to take or attempt to take fish by the methods known as snatch fishing, foul hooking or snag fishing or to take or attempt to take fish with a snagging hook or device which may be used to capture the fish by engaging the device in, to, with, or around any part of the body of the fish. In addition, it is unlawful to possess a

snagging hook while in the act of fishing. A snagging hook is a fishing device that is designed or modified to facilitate the snagging of fish. It is either of the following:

(1) A hook with other than a single barb which is weighted on the shank at any point below the eye of the hook and above the barbs thereof.

(2) A hook that is otherwise designed or modified so as to make the snagging of fish more likely when it is used than if a normal hook or fishing device were used.

(b) Nothing in subsection (a) may be construed to prohibit the use of long bow, crossbow, spear and gigs as provided in § 63.8 (relating to long bows, crossbows, spears and gigs) or other net or devices specifically authorized by law or this subpart.

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>
Beaver	Hopewell Township Park Lake	Bass—15-inch minimum size limit and a 2 bass daily creel limit. Panfish (combined species): 10 fish daily creel limit. Use of live fish for bait is prohibited.
Blair, Huntingdon, Juniata, Mifflin and Perry	Juniata River and its tributaries	Rock bass—Daily creel limit is 10; open year-round; no minimum size limit.
Chester	Elk Creek (Big Elk Creek)	The maximum size limit for alewife and blueback herring is 8 inches. It is unlawful to take, catch, kill or possess, while in the act of fishing, blueback herring or alewife 8 inches or more in length.
Clarion	Beaver Creek Ponds	Closed to fishing from 12:01 a.m. January 1 to 12:01 a.m. the first Saturday after June 11 of each year. Bass—15-inch minimum size limit and a 2 bass daily creel limit for the total project area. Panfish (combined species) 10 fish daily creel limit for the total project area. Other species-inland regulations apply.
Columbia and Northumberland	South Branch of Roaring Creek from the bridge on State Route 3008 at Bear Gap upstream to the bridge on State Route 42	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 shall be immediately returned unharmed.
Crawford and Erie	Conneaut Creek E. Branch Conneaut Creek M. Branch Conneaut Creek W. Branch Conneaut Creek Mud Run Stone Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
Crawford	Crazy Run	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
Crawford	Pymatuning Reservoir	Only carp and suckers may be taken by means of spearing or archery in compliance otherwise with § 63.8 (relating to long bows, crossbows, spears and gigs). Minnow seines and dip nets are restricted to no more than 4 feet in size, and the mesh of the nets shall measure no less than 1/8 nor more than 1/2-inch on a side. Float line fishing is prohibited.
Elk	West Branch, Clarion River	The following additional restrictions apply to the “Catch and Release, Fly-Fishing Only” area located on a 1/2-mile stream section from the intersection of S. R. 219 and S. R. 4003, upstream to the Texas Gulf Sulphur Property: Wading prohibited. Fishing permitted from east shore only.
Erie	E. Branch Conneaut Creek Marsh Run Temple Run Turkey Creek	Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River).	Trout (all species)-no closed season. Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Size limits: Inland rules apply. Smelt may be taken from shore or by wading by means of dip nets not to exceed 20 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.
Lackawanna	Lake Scranton	It is unlawful for a person to fish from the fishing pier designated for use by persons with disabilities unless the person is: totally blind; or so severely disabled that the person is unable to cast or retrieve a line or bait hooks or remove fish without assistance; or deprived of the use of both legs; or participating in a special fishing event for persons with disabilities under conditions approved by the owner of the lake. The person may fish with only one legal device and shall be within 10 feet of the device being used. A person authorized to fish from the fishing pier under this section may be attended by another individual who may assist the person with the disability in using the fishing device.
Luzerne	Harveys Lake	During the period from the first Saturday after April 11 through midnight March 31, the daily creel limit for trout (combined species) is 3, only one of which may exceed 18 inches in length. Fishing is prohibited from April 1 through 8 a.m. of the first Saturday after April 11. Warmwater/coolwater species, except as provided in this section-Inland regulations apply.
Mercer	Shenango River from the dam downstream to SR 3025, a distance of 1.5 miles.	Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—First Saturday after April 11 until Labor Day: 5 trout per day; day after Labor Day to midnight, March 31 of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species.
Monroe and Pike	Delaware Water Gap National Recreation Area	The use of eel chutes, eelpots and fyke nets is prohibited. The taking of the following fishbait is prohibited: crayfish or crabs, mussels, clams and the nymphs, larva and pupae of all insects spending any part of their life cycle in the water. The taking, catching, killing and possession of any species of amphibians or reptiles within the boundaries of the Delaware Water Gap National Recreation Area is prohibited.
Somerset, Fayette, Westmoreland and Allegheny	Youghiogheny River from confluence with Casselman River downstream to the confluence with Ramcat Run Youghiogheny River from the pipeline crossing at the confluence with Lick Run downstream to the mouth of the river. Youghiogheny River from Reservoir downstream to confluence with Casselman River.	Trout (all species)—no closed season. Daily limit: First Saturday after April 11 until Labor Day-5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species. Closed season on trout: April 1 until 8 a.m., first Saturday after April 11. Daily limit—First Saturday after April 11 until Labor Day—5 trout per day; day after Labor day to midnight, March 31 of following year: 3 trout per day. Inland regulations apply to warmwater/coolwater species.
Warren	Allegheny River—8.75 miles downstream from the outflow of the Allegheny Reservoir to the confluence with Conewago Creek	Trout—minimum size limit—14 inches; daily creel limit—2 trout per day (combined species) from 8 a.m. on the first Saturday after April 11 through midnight Labor Day, except during the period from the day after Labor Day to the first Saturday after April 11 of the following year, when no trout may be killed or had in possession. Other inland seasons, sizes and creel limits apply.
Washington	Little Chartiers Creek from Canonsburg Lake Dam approximately 1/2 mile downstream to mouth of Chartiers Creek	Fishing is prohibited from 12:01 a.m. March 1 to 8 a.m. the first Saturday after April 11.

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
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 16 until midnight of the Friday before the first Saturday after April 11. 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. 2. 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	Indian Lake	The following size and creel limits apply: Bass—15 inch minimum size limit; 2 bass per day creel limit (combined species). Panfish: 10 fish per day creel limit (combined species). Other species—Inland regulations apply.
Wyoming	Lake Winola	Bass—It is unlawful to take, catch, kill or possess bass that are 12 to 18 inches in length. The daily creel limit for bass less than 12 inches in length and greater than 18 inches in length is 6, only one of which may exceed 18 inches in length. Closed to all fishing from 12:01 a.m. March 1 to 8 a.m. the first Saturday after April 11.

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

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

(a) It is unlawful to take, catch, kill or possess fish, except during the seasons specified in this section. It is not a violation of this section if a fish caught out of season from water where fishing for other species is lawful is immediately returned unharmed to the waters from which it was taken.

(b) It is unlawful to take, catch, kill or possess fish of less than the minimum size specified in this section. It is not a violation of this section if an undersized fish taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the following chart during 1-calendar day. It is unlawful to possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

(1) A person may possess any number of lawfully caught fish at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may, while transporting fish from the place where caught to his residence, possess a number of fish equal to no more than two times the daily creel limit for that species of fish. In prosecution for violation of this section, it shall be a rebuttable presumption that a person transporting fish from a fishing site caught all the fish during 1-calendar day.

(3) A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournament and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

(5) Fish may be given to another person, but the fish will be counted in the donor's creel limit and neither the donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

(d) It is unlawful to fish in or along any Lake Erie tributary stream or the Water Works Ponds at Presque Isle State Park from 12:01 a.m. on the Friday before the first Saturday after April 11 until 8 a.m. on the first Saturday after April 11.

(e) It is unlawful to possess trout or salmon in or along any Lake Erie tributary stream or the Water Works Ponds at Presque Isle State Park from 12:01 a.m. on the Friday before the first Saturday after April 11 until 8 a.m. on the first Saturday after April 11.

(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 peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
MUSKELLUNGE and MUSKELLUNGE HYBRIDS PIKE Northern	Inland seasons apply: See § 61.1.	40 inches 24 inches	1
WALLEYE	January 1 to March 14 and 12:01 a.m. the first Saturday in May to December 31	15 inches	6
BASS Largemouth Smallmouth	January 1 to first Saturday after April 11 and first Saturday after June 11 until December 31 First Saturday after April 11 until first Saturday after June 11.*	15 inches	4 (combined species).
TROUT and SALMON	First Saturday after April 11 until midnight Labor Day. 12:01 a.m. the day after Labor Day until midnight on the Friday before the first Saturday after April 11	9 inches 15 inches	5 (combined species only 2 of which may be lake trout). 3 (combined species only 2 of which may be lake trout).
STURGEON	No open season	ENDANGERED SPECIES	
SUNFISH, CRAPPIES, CATFISH, ROCK BASS, SUCKERS, EELS, CARP, WHITE BASS	Open year round	None	50 (combined species)
YELLOW PERCH	From December 1 through March 31 From April 1 through November 30	7 inches None	30 30
BAIT FISH FISH BAIT	Open year round	None	50 (combined species)
BURBOT (when taken by hook and line or when taken by SCUBA divers by use of nonmechanical spears or gigs at a depth of at least 60 feet)	Open year-round	None	5
SMELT (when taken by hook and line)	Open year-round	None	None
ALL OTHER SPECIES	Inland regulations apply: See § 61.1		

* It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to seasons for fishing tournaments)) for bass on Lake Erie, Lake Erie tributaries or Presque Isle Bay during the period from the first Saturday after April 11 until the first Saturday after June 11.

Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS

§ 69.31. Seasons.

(a) Commercial fishing in Pennsylvania waters of Lake Erie is permitted throughout the year. After December 31 and before June 1, commercial fishing may be limited by the Executive Director to fishing days as he deems necessary and appropriate to provide for the better protection and management of fish. It is unlawful to fish commercially or with a device subject to licensing under this chapter and section 2903 of the code (relating to boat and net licenses for boundary lakes) in the Pennsylvania waters of Lake Erie—including setting and lifting of nets or other activities—on days when the Executive Director restricts such fishing after December 31 and before June 1.

(b) The commercial fishing season for walleye is January 1 to March 14 and 12:01 a.m. the first Saturday in May to December 31. This season will close on the date established by the Executive Director as marking the probable attainment of the total allowable catch for walleye for that year. The total allowable catch for walleye for any year will be determined by the Executive Director and announced annually on or before March 1. After the announcement, the Executive Director may, from time to time, revise the total allowable catch for that year if he determines that conditions so warrant. The Executive Director or a designee will monitor monthly, weekly and daily reports of catch of walleye and will declare the season to be closed on a date the Director determines will probably mark attainment of the total allowable catch. It is unlawful for a person fishing under a commercial fishing license or with a device subject to

licensing under section 2902 of the code (relating to net permits) to take, catch or attempt to catch walleye except during the walleye season established under this subsection. Walleye accidentally caught out of season shall be immediately returned to the waters from which it was taken regardless of its condition and reported within 2 business days to the Commission at the address where commercial catch reports are filed.

(c) The commercial fishing season for yellow perch is January 1 until the date established by the Executive Director as marking the probable attainment of the total allowable catch for yellow perch for that year. The total allowable catch for yellow perch for any year will be determined by the Executive Director and announced on or before March 1. After the announcement, the Executive Director may revise the total allowable catch for that year if he determines that conditions so warrant. The Executive Director or his designee will monitor the monthly, weekly and daily reports of catch of yellow perch and will declare the season to be closed on the date the Director determines will probably mark attainment of the total allowable catch. It is unlawful for any person fishing under a commercial fishing license or with a device subject to licensing under section 2902 of the code (relating to net permits), to take, catch, or attempt to catch yellow perch except during the yellow perch season established under this subsection. Yellow perch accidentally caught out of season shall be immediately returned to the waters from which it was taken regardless of its condition and reported within 2 business days to the Commission at the address where commercial catch reports are filed.

§ 69.33. Use of trap nets.

(a) *Size.* Trap nets, cribs and associated leads shall be constructed of twine not lighter than number 12 thread/cord. A trap net lead or lifting crib with a mesh in violation of this section, whether being fished or held in possession, shall be subject to confiscation by the Commission.

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
Yellow perch (<i>Perca flavescens</i>)	None	No closed season until the total allowable catch is taken
Walleye (<i>Stizostedion vitreum</i>)	15 inches	January 1 to March 14 and 12:01 a.m. the first Saturday in May to December 31. This season will close when the total allowable catch for walleye is taken.
White fish (<i>Coregonus spp.</i>)	17 inches	No closed season
White perch (<i>Morone americana</i>)	No size limit	No closed season
Cisco (<i>Coregonus spp.</i> except <i>C. artedii</i>)	No size limit	No closed season

<i>Species</i>	<i>Size Limit</i>	<i>Season</i>
White bass (<i>Morone chrysops</i>)	No size limit	No closed season
Burbot (<i>Lota lota</i>)	No size limit	No closed season
Sheepshead (<i>Aplodinotus grunniens</i>)	No size limit	No closed season
Gizzard shad (<i>Dorosoma cepedianum</i>)	No size limit	No closed season
Goldfish (<i>Carassius auratus</i>)	No size limit	No closed season
Lake whitefish (<i>Coregonus clupeaformis</i>)	No size limit	No closed season
Brown bullhead (<i>Ictalurus nebulosus</i>)	No size limit	No closed season
Yellow bullhead (<i>Ictalurus natalis</i>)	No size limit	No closed season
Rainbow smelt (<i>Osmerus mordax</i>)	No size limit	No closed season
Channel catfish (<i>Ictalurus punctatus</i>)	No size limit	No closed season
Suckers (<i>Carpides sp.</i> , <i>Catostomus sp.</i> , <i>Ictiobus sp.</i> and <i>Moxmostoma sp.</i>)	No size limit	No closed season
Carp (<i>Cyprinus carpio</i>)	No size limit	No closed season

(c) *Buoys/tags.* Marker buoys shall be attached to the beginning of each lead and to the back of the crib. A staff extending 8 feet above the water with a minimum size flag of 18 inches by 18 inches secured near the top shall be attached to the anchor for the beginning of the lead and a staff extending 8 feet above the water with 2 minimum size flags of 18 inches by 18 inches (double flags) shall be attached to the anchor for the crib. The licensee shall affix a metal, numbered tag provided by the Commission to each of the required staffs showing the name and address of the owner or the lessee. Licensees shall report a seal that is lost, misplaced or stolen orally within 24 hours of discovery and in writing to the Commission at Northwest Law Enforcement Region within 2 business days. Improperly marked or tagged nets shall be subject to confiscation by the Commission. Officers authorized to enforce the code and this part may mark trap nets for the purpose of determining the number of trap nets being used by a particular licensee.

(d) *Restricted period.* From January 1 through June 15, no part of a trap net may be set within 0.5 miles of Lake Erie shoreline, except between longitudes 80°00" and 80°10" where no part of a trap net may be set within 1.5 miles of the Lake Erie shoreline. From June 16 through December 31, no part of a trap net may be set within 1.5 miles of the Lake Erie shoreline.

(e) *Time.* Trap nets may be fished 24 hours a day, but it is unlawful to set or lift them during the period from 30 minutes after sunset to 30 minutes before sunrise. Trap nets may be set or fished, or both, from March 1 to November 30.

(f) *Description of trap net.*

(1) In the most general sense, a trap net is a compartmentalized trap, consisting of a lead, heart, tunnel and crib with wings and funnels. Fish are entrapped in the crib by swimming along a lead which directs the animal progressively through the heart, tunnel and into the crib. The netting and webbing which make up the crib shall be a single sheet external panel, subject to mesh size regulation to allow small, young fish a means of escape.

(2) A trap net fishing device is designed to catch fish by impoundment, as opposed to catching fish by entanglement, which is the action by which gill nets capture fish. Fish caught by impoundment remain alive and swimming for an extended period while confined within the trap net crib. Fish caught by entanglement are unable to free themselves of the net, cannot swim freely and cannot be expected to live while entangled in the gear. The elements of netting, webbing and twine (thread) size (diameter) used in the construction of a trap net shall be of design and dimension that will discourage, prohibit and preclude the enmeshing and entanglement of fish in the netting of any part of the trap net device. The netting of the crib shall be constructed as a single panel or sheet of webbing. Lawful trap nets may not have liners or covers which would make the external crib webbing two or more sheets in thickness.

(3) As used in this chapter, the term "trap net" includes hoop nets and fyke nets.

(g) *Setting or tending trap nets.* A boat engaged in the setting or tending of trap nets shall comply with Navigation Rule 26 (United States Coast Guard) from the time the boat leaves the dock until it arrives back at the dock.

CHAPTER 75. ENDANGERED SPECIES**§ 75.4. Special permits.**

The Executive Director, or a designee, may issue special permits under section 2305 of the code (relating to threatened and endangered species) to take, catch, kill or possess threatened or endangered species upon written application on forms provided by the Commission.

(1) Special permits will be issued only upon a showing of unique or extraordinary circumstances justifying the permit and the applicant shows that the permitted action does one of the following:

(i) Has no demonstrable adverse impacts on the population of the species in this Commonwealth.

(ii) Is in the best interest of the protection, conservation and management of the species.

(iii) Is necessary and appropriate in the interests of public health and safety or promotes essential research or public education and information.

(2) Persons and institutions requesting special permits shall apply before taking, catching, killing, possessing or acquiring the threatened or endangered species. Application forms and information are available from the Natural Diversity Section, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616.

Subpart C. BOATING**CHAPTER 101. BOATING ACCIDENTS****§ 101.6. Investigation reports by Commission officers.**

(a) The Commission may assign a waterways conservation officer or other employe to complete an accident investigation report when an accident involves loss of life,

disappearance, medical treatment given beyond first aid or in other circumstances in which the Executive Director, or a designee, directs an investigation.

(b) A boating accident investigation report will be completed without referring to the boating accident report submitted by the owner or operator of the boat.

(c) Under section 324 of the code (relating to Commission records), boating accident investigation reports are not considered public records and they will not be released except for the following:

(1) Pursuant to a valid subpoena.

(2) When 234 Pa. Code (relating to Rules of Criminal Procedure) requires production of the documents.

(3) To other government agencies for official purposes.

CHAPTER 113. AIDS TO NAVIGATION AND OBSTRUCTIONS TO NAVIGATION**§ 113.3. Operation of boats.**

The Commission or the Executive Director acting under § 103.3(c) (relating to restriction for special areas), may establish or authorize establishment of control zones. Established control zones will be indicated by regulatory markers at the beginning, at the end and at appropriate intermediate points. It is unlawful for operators to operate a boat contrary to the restrictions of the controlled area.

[Pa.B. Doc. No. 09-671. Filed for public inspection April 10, 2009, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD**[58 PA. CODE CHS. 439a AND 465a]****Corrective Amendment to 58 Pa. Code Chapters 439a and 465a**

The Pennsylvania Gaming Control Board has discovered a discrepancy between the agency text of 58 Pa. Code §§ 439a.7(b), 465a.12(c)(3) and 465a.20(b)(6), and (f) (relating to junket schedules; access badges and temporary access credentials; and personal check cashing), as deposited with the Legislative Reference Bureau and published at 38 Pa.B. 5652 (October 11, 2008) and the official text currently appearing in the *Pennsylvania Code*. The codification of the amendments set forth at 38 Pa.B. 5652 were inadvertently omitted from the *Pennsylvania Code Reporter* (Master Transmittal Sheet 409, December 2008).

Therefore, under 45 Pa.C.S. § 901: The Pennsylvania Gaming Control Board has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code §§ 439a.7(b), 465a.12(c)(3) and 465a.20(b)(6). The corrective amendment to §§ 439a.7(b), 465a.12(c)(3) and 465a.20(b)(6), is effective as of December 6, 2008, the date the defective text of Master Transmittal Sheet—409 was announced in the *Pennsylvania Bulletin*.

The correct version of §§ 439a.7(b), 465a.12(c)(3) and 465a.20(b)(6) appears in Annex A, with ellipses referring to the existing text of the sections.

TROY L. BEAVERSON,
Assistant Chief Counsel
Pennsylvania Gaming Control Board

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION

CHAPTER 439a. JUNKET ENTERPRISES

§ 439a.7. Junket schedules.

* * * * *

(b) A junket schedule shall be filed with the Office of Gaming Operations by a slot machine licensee by the 15th day of the month preceding the month in which the junket is scheduled. If a junket is arranged after the 15th day of the month preceding the arrival of the junket, an amended junket schedule shall be filed with the Office of Gaming Operations by the slot machine licensee by the close of the next business day.

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Subpart E. SLOT MACHINES AND ASSOCIATED EQUIPMENT

CHAPTER 465A. ACCOUNTING AND INTERNAL CONTROLS

§ 465a.12. Access badges and temporary access credentials.

* * * * *

(c) Slot machine licensees shall also establish procedures, in writing, for readily identifying each person permitted, under temporary or emergency circumstances, to have access to one or more restricted areas within the licensed facility.

* * * * *

(3) The procedures must further include provisions expressly addressing temporary or emergency access by

licensed manufacturers, licensed manufacturer designees, licensed suppliers and registered and certified vendors.

* * * * *

§ 465a.20. Personal check cashing.

* * * * *

(b) Personal checks accepted under subsection (a) shall be presented by the patron directly to a slot cashier who shall:

* * * * *

(6) Immediately exchange the personal check for cash in an amount equal to the amount for which the check is drawn or place the amount in a customer deposit account under § 465a.23 (relating to customer deposits) for subsequent use at the licensed facility. A slot machine licensee may not accept a check or multiple checks which in the aggregate exceed \$2,500 per patron per gaming day.

* * * * *

(f) A slot machine licensee that charges a fee for cashing checks shall comply with the Check Casher Licensing Act (63 P. S. §§ 2301—2334).

(g) Prior to accepting personal checks, each slot machine licensee shall establish a comprehensive system of internal controls applicable to the acceptance of personal checks. The internal controls shall be submitted to and approved by the Board under § 465a.2 (relating to internal control systems and audit protocols). The internal controls submitted by the slot machine licensee must address procedures for complying with this section including the dollar limitation per gaming day contained in subsection (b)(6).

[Pa.B. Doc. No. 09-672. Filed for public inspection April 3, 2009, 9:00 a.m.]
