

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61 AND 63]

Fishing

The Fish and Boat Commission (Commission) proposes to amend 58 Pa. Code Chapters 61 and 63 (relating to seasons, sizes and creel limits; and general 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 amendments modify and update the Commission's fishing regulations.

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2012.

B. *Contact Person*

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

C. *Statutory Authority*

The proposed amendments to §§ 61.1, 61.2, 61.4, 61.7 and 61.8 and proposed § 63.55 (relating to saltwater angler registration) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals.

E. *Summary of Proposals*

(1) Since the mid-1980s, the daily creel limit for river herring, a term applied collectively to blueback herring and alewife, in the Delaware River and Estuary was a total of 35 fish. There was no minimum size limit and the season was open year-round. Beginning in 2010, the Commission adopted an amendment in coordination with New Jersey and later coordinated with New York reducing the daily creel limit from the historic limit to a limit of ten river herring from the confluence of the East and West Branches downriver to the Commodore Barry Bridge. The remaining 2.9 river miles below the Commodore Barry Bridge remained at the historic daily limit of 35 herring, in cooperation with New Jersey's Marine Council. Delaware was already managing the fishery with a ten herring creel limit.

River herring are popular with striped bass anglers who use them either as live or cut bait. Principally, this fishery exists during the spring when river herring and striped bass are migrating into the Delaware River and estuarine waters. Traditionally, anglers jig for river herring at the onset of a trip but are often seen jigging with one rod while another is being passively fished for striped bass.

Amendment 2 to the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Shad and River Herring states that river herring

abundance has declined since the mid-1990s and currently remains at a depressed level along the Atlantic Coast. Amendment 2 calls for closure of river herring fisheries that cannot be demonstrated to be sustainable. Considering the coastwide declines in river herring and the lack of data to support that the fishery is sustainable, the Commonwealth is coordinating a proposed total closure for the Delaware River river herring fishery with the other three basin states (that is, New Jersey, New York and Delaware) through the Delaware River Fish and Wildlife Management Cooperative. This proposed amendment will apply to the entire Delaware River and Delaware Estuary inclusive of both tidal and nontidal reaches to the Pennsylvania/Delaware state line.

In light of this change, changes are also necessary to §§ 61.4 and 61.8 (relating to Conowingo Reservoir; and Lehigh River, Schuylkill River and tributaries). The Lehigh and Schuylkill Rivers flow into the Delaware River and are thus inhabited by a portion of the anadromous river herring populations that enter the Delaware River. The Conowingo Reservoir is the first portion of the Susquehanna River inhabitable by anadromous river herring that migrate up the Susquehanna River. Harvest of the anadromous populations of river herring is already prohibited in the portions of the Susquehanna River and its tributaries upstream of Conowingo Reservoir under § 61.7 (relating to Susquehanna River and tributaries). The more liberal regulations in § 61.1 (relating to Commonwealth inland waters) are acceptable in that these populations are landlocked and thus distinct from the anadromous populations addressed by ASMFC and intended to be addressed by the proposed amendments.

Finally, in addition to the changes previously mentioned, some housekeeping changes are needed to make the terminology for river herring consistent throughout Chapter 61.

The Commission therefore proposes that §§ 61.1, 61.2, 61.4, 61.7 and 61.8 be amended to read as set forth in Annex A.

(2) Under 50 CFR Part D (relating to marine recreational fisheries of the United States), anglers who target or catch shad, striped bass and river herring from the Delaware River below Trenton Falls or in the Delaware Estuary are required to register with the National Saltwater Angler Registry Program administered by the National Oceanic and Atmospheric Administration (NOAA). In 2010, the registration was free and a \$15 fee has been instituted for 2011. See <https://www.countmyfish.noaa.gov/>.

Anglers are not required to register with NOAA, however, if they hold a valid fishing license issued by an "exempted state." For NOAA to designate a state as an "exempted state," the state must agree to provide certain data to NOAA that can be used to assist in completing marine recreational fisheries statistical surveys or evaluating the effects of proposed conservation and management measures for marine recreational fisheries. To that end, the Commission already has entered into a Memorandum of Agreement (MOA) with NOAA that obligates the Commission to create a system for collecting and annually sharing angler data with NOAA. The MOA further exempts anglers in this Commonwealth from the National registration requirement and the associated fee. To meet the terms of the MOA, the Commission proposes

to add a regulation that requires applicable anglers to register either with the Commission or NOAA. The Commission proposes to add § 63.55 to read as set forth at Annex A.

If adopted on final-form rulemaking, the Commission will create a free online registration tool through which anglers may register and receive a registration number rather than registering with NOAA and incurring the Federal fee. The Commission has been awarded a grant from ASMFC to fund the development of the online tool. Under the proposed regulation, registered anglers shall still possess a valid State fishing license.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new costs on the private sector or the general public.

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.fishandboat.com/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. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-225. No fiscal impact; (8) recommends adoption.

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.

* * * * *

(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>
	* * *	* *	
RIVER HERRING (alewife and blueback herring) ***	Open year-round	No minimum	50
	* * *	* *	

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

§ 61.2. Delaware River, West Branch Delaware River and River Estuary.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and Delaware River tributaries, from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * *	* *	
RIVER HERRING (alewife and blueback herring)	[Open year-round] Closed (no open season)	[No minimum] Closed	[From Pennsylvania line upstream to the Commodore Barry Bridge: 35 From the Commodore Barry Bridge upstream: 10] 0

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<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * *	* *	

§ 61.4. Conowingo Reservoir.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Conowingo Reservoir, which includes the Susquehanna River from the Maryland State Line upstream to Holtwood Dam:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * *	* *	
[ALEWIFE and BLUEBACK HERRING (collectively known as river herring)] RIVER HERRING (alewife and blueback herring)	[January 1 through June 15] Closed (no open season)	[No minimum] Closed	[No daily limit] 0
	* * *	* *	

§ 61.7. Susquehanna River and tributaries.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Susquehanna River and its tributaries, including the Juniata River, the West Branch, “North Branch” and other tributaries within the Susquehanna River Basin except the Conowingo Reservoir—see § 61.4 (relating to Conowingo Reservoir) and except for waters subject to special regulations (see Chapter 65 (relating to special fishing regulations)):

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
AMERICAN and HICKORY SHAD and [ALEWIFE and BLUEBACK HERRING (collectively known as river herring)] RIVER HERRING (alewife and blueback herring)*	Closed [year-round] (no open season)	Closed	0
	* * *	* *	

§ 61.8. Lehigh River, Schuylkill River and tributaries.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Lehigh River upstream of the first dam in Easton, Pennsylvania and its tributaries and the Schuylkill River upstream of the I-95 Bridge and its tributaries:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * *	* *	
RIVER HERRING (alewife and blueback herring)	[Open year-round] Closed (no open season)	[No minimum] Closed	[10] 0
	* * *	* *	

CHAPTER 63. GENERAL FISHING REGULATIONS

(Editor's Note: The following section is new and printed in regular type to enhance readability.)

§ 63.55. Saltwater angler registration.

It is unlawful for a person required under 30 Pa.C.S. Chapter 27 (relating to fishing licenses) to procure a resident fishing license, a nonresident fishing license, a senior resident lifetime fishing license or an annual senior resident fishing license to fish for shad, striped bass or river herring in the Delaware River below Trenton Falls or the Delaware Estuary unless that person has obtained a saltwater angler registration from the Commission or registered with the National Saltwater Angler Registry Program administered by the National Oceanic and Atmospheric Administration.

[Pa.B. Doc. No. 11-800. Filed for public inspection May 13, 2011, 9:00 a.m.]

[58 PA. CODE CH. 65]**Fishing; Special Fishing Regulations**

The Fish and Boat Commission (Commission) proposes to amend 58 Pa. Code Chapter 65 (relating to 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 amendments modify and update the Commission's fishing regulations.

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

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

C. Statutory Authority

The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

Leaser Lake is a 117-acre Commission-owned impoundment located in the rural northwestern corner of Lehigh County in the Ontelaunee/Maiden Creek drainage basin situated approximately 20 miles directly northwest of center city Allentown. Leaser Lake was subjected to a complete drawdown in fall 2008 following a partial drawdown to a safe level of 40 acres that was maintained for a number of years. The final drawdown was necessary to carry out extensive repairs to the leaking dam. Leaser Lake provided fishing for resident warm/coolwater fish populations as well as a seasonal catchable trout fishery with many individuals traveling from the Lehigh Valley

metropolitan area (Allentown-Bethlehem-Easton) to fish in Leaser Lake's scenic setting.

The Commission's Division of Fisheries Management will propose a stocking plan for Leaser Lake that will be directed at establishing a high quality warm/coolwater fish population based on fingerling stockings. Adult trout stockings will follow after the warm/coolwater fishery is opened. Past experiences with another Leaser Lake drawdown and the creation of other warm/coolwater fisheries in new southeastern Pennsylvania impoundments have been that to develop high quality fish populations and fisheries in reclaimed or new lakes, which is something the public has expected when a "new" lake is opened, the lakes need to be closed to fishing for an extended period of time. This allows fish populations and individual fish to grow to desirable sizes that satisfy anglers when the lakes are opened. Based upon past growth rates in Leaser Lake, the lake will need to be closed to fishing until the opening day of bass season in June 2016. The Commission therefore proposes to amend § 65.24 to read as set forth in Annex A.

The positive aspect of the proposed rulemaking is the offering of an exceptional warm/coolwater fishing opportunity in an urban area when Leaser Lake is opened. The negative aspect is the loss of recreational angling for several years, including a catchable trout program. The Commission believes that the benefits outweigh the short-term loss of recreation. The Commission will monitor the fish populations and, if all goes as anticipated, recommend appropriate special regulations prior to 2016. The lake was formerly regulated under § 65.11 (relating to panfish enhancement special regulation).

With respect to the catchable trout program, there are numerous alternative stream fishing locations throughout the Lehigh Valley, northwestern Lehigh County and nearby northeastern Berks County. These locations include 14 miles of nearby Ontelaunee and Maiden Creeks.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new costs on the private sector or the general public.

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.fishandboat.com/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. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-226. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

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>
	* * *	* *
Lehigh	Leaser Lake	Closed to all fishing until June 18, 2016.
	* * *	* *

[Pa.B. Doc. No. 11-801. Filed for public inspection May 13, 2011, 9:00 a.m.]
