

# RULES AND REGULATIONS

## Title 58—RECREATION

### FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 65 ]

#### Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to 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). This final-form rulemaking modifies and updates the Commission's fishing regulations.

##### A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2014.

##### B. *Contact Person*

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

##### C. *Statutory Authority*

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

##### 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 amendment is described in more detail under the summary of change.

##### E. *Summary of Change*

Penns Creek, Section 03 (confluence of Elk Creek downstream to 600 meters downstream of Swift Run), was managed as a stocked trout fishery until 1992 when it was designated by the Commission as a Class A wild trout stream and the stocking of hatchery trout ceased. During 1993, landowner and angler surveys were conducted to help inform a management direction for this stream section. Based on the survey information gathered as well as biological data collected during 1991 and 1992, miscellaneous special regulations (later renamed all-tackle trophy trout under § 65.4a (relating to all-tackle trophy trout)) were developed for Section 03 and implemented on January 1, 1995. Section 03 has been managed as all-tackle trophy trout for the last 17 years (1995-2012). Commission fishery surveys conducted between 1995 and 2012 documented that the Penns Creek wild brown trout population responded positively since the stocking cessation and the implementation of all-tackle trophy trout regulations and has subsequently maintained itself at a high level over time in terms of both abundance and size structure.

During 2012, Commission staff conducted a review of the management of Penns Creek, Section 03. As a result of the assessment, there was internal support for evaluating whether the size structure of the wild brown trout population could be further enhanced by implementing a

more restrictive angling regulation that would provide increased protection to the largest fish in the population. To obtain public feedback on a potential regulation change, Commission staff contacted landowners with a letter and also conducted a public meeting on June 16, 2012, in Aaronsburg, PA.

To meet the Commission's objective of further improving the size structure of the wild brown trout population in Penns Creek, Section 03, so that the abundance of large fish in the population is maximized while also considering the public feedback received, the Commission has removed this stream section from the All-Tackle Trophy Trout Program under § 65.4a and established a new harvest slot limit on an experimental basis. The Commission established the regulation for a 7-year period from January 1, 2014, through December 31, 2020, during which time the trout population will be monitored to determine the effectiveness of the regulation at meeting biological and social objectives for the Penns Creek fishery. The new regulation will allow for the harvest of up to 2 trout per day that are at least 7 inches but less than 12 inches in length from the opening day of trout season through Labor Day and no harvest will be permitted for the remainder of the year. All tackle types will be permitted.

Penns Creek provides a unique opportunity to evaluate a new special regulation on a productive limestone stream. The productive nature of Penns Creek provides ideal conditions to allow for a favorable response of the wild brown trout population to trend toward larger sizes than may be occurring under the current all-tackle trophy trout regulations, which may be limiting the abundance of larger trout and population size structure.

The Commission has amended § 65.24 to read as set forth in the proposed rulemaking published at 43 Pa.B. 2034 (April 13, 2013).

##### F. *Paperwork*

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

##### G. *Fiscal Impact*

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

##### H. *Public Involvement*

Notice of proposed rulemaking was published at 43 Pa.B. 2034. During the public comment period, the Commission received one public comment opposing the proposed rulemaking. The Commission also received one comment prior to and one comment after the formal comment period opposing the proposed rulemaking. Copies of the public comments were provided to the Commissioners.

##### *Findings*

The Commission finds that:

(1) Public notice of intention to adopt the amendment 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 public comments 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 65, are amended by amending § 65.24 to read as set forth at 43 Pa.B. 2034.

(b) The Executive Director will submit this order and 43 Pa.B. 2034 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 43 Pa.B. 2034 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2014.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-240 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 13-1662. Filed for public inspection September 13, 2013, 9:00 a.m.]

## FISH AND BOAT COMMISSION [ 58 PA. CODE CH. 65 ] Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to 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). This final-form rulemaking modifies and updates the Commission's fishing regulations.

#### A. Effective Date

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

#### B. Contact Person

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

#### C. Statutory Authority

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

#### 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 change.

#### E. Summary of Change

At its October 2012 meeting, the Commission removed 45 waters from the Early Season Trout Stocked Waters program under former § 65.10 and redesignated them as approved trout waters open to year-round fishing under § 65.19 (relating to approved trout waters open to year-round fishing). Included in this action were the Shenango River (from the Shenango River Dam downstream 1.5 miles to SR 3025) and the Youghiogheny River (from the Youghiogheny Reservoir downstream to the confluence with the Casselman River). These two river sections are also currently regulated under miscellaneous special regulations under § 65.24. The language of these miscellaneous special regulations is consistent with former § 65.10. Therefore, to be consistent with the Commission's prior action, the miscellaneous special regulations on these waters should be removed. The Commission therefore has amended § 65.24 to read as set forth in the proposed rulemaking published at 43 Pa.B. 2035 (April 13, 2013).

The Executive Director exercised his authority under § 65.25 (relating to temporary changes to fishing regulations) to remove these miscellaneous special regulations. See 42 Pa.B. 7788 (December 22, 2012). These temporary modifications became effective on January 1, 2013, and will remain in effect until publication of this final-form rulemaking in the *Pennsylvania Bulletin*.

#### F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

#### G. Fiscal Impact

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

#### H. Public Involvement

Notice of proposed rulemaking was published at 43 Pa.B. 2035. The Commission did not receive public comments concerning the proposed rulemaking.

#### Findings

The Commission finds that:

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

(2) A public comment period was provided. The Commission did not receive public comments concerning this rulemaking.

(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 65, are amended by amending § 65.24 to read as set forth at 43 Pa.B. 2035.

(b) The Executive Director will submit this order and 43 Pa.B. 2035 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 43 Pa.B. 2035 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** Fiscal Note 48A-241 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 13-1663. Filed for public inspection September 13, 2013, 9:00 a.m.]

FISH AND BOAT COMMISSION  
[ 58 PA. CODE CH. 75 ]  
Fishing; Endangered Species

The Fish and Boat Commission (Commission) amends Chapter 75 (relating to endangered species). 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, 2014.

*B. Contact Person*

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

*C. Statutory Authority*

The addition of § 75.5 (relating to qualified surveyors for endangered and threatened species and their habitat) is published under the statutory authority of sections 2102 and 2305 of the code (relating to rules and regulations; and threatened and endangered species).

*D. Purpose and Background*

The final-form rulemaking is designed to improve, enhance and update the Commission's protection of endangered and threatened species and their habitat. The specific purpose of the final-form rulemaking is described in more detail under the summary of change.

*E. Summary of Change*

The Natural Diversity Section (NDS) within the Commission's Bureau of Fisheries, Division of Environmental Services, routinely comments on development projects that may adversely impact endangered and threatened species during the permit review process. The NDS provides technical assistance to project proponents by reviewing projects in or near waterways or other areas that may be occupied by these rare species. Site-specific surveys are a component of the project review phase when a project activity potentially conflicts with an endangered or threatened species and its habitat.

It is essential that individuals who conduct surveys for endangered and threatened species in connection with these projects be qualified to search for, successfully find and correctly identify these species and their habitats. To

ensure that individuals conducting these surveys are qualified, the Commission now requires that surveyors demonstrate to its satisfaction that they meet general and, when applicable, taxonomic-specific surveyor requirements. Under the new requirements, to be deemed qualified by the Commission, surveyors will have to document and demonstrate their education and experience surveying an endangered or threatened species and its habitat and their knowledge and experience in species survey protocol implementation. The NDS staff will review applications and may accompany applicants in the field to evaluate their knowledge of the target species, species identification skills and familiarity with target species habitat. If an applicant meets the requirements, the Commission will deem him to be qualified and will place his name on the Commission's qualified surveyor list for the species described in the application.

Requirements are general as to endangered and threatened species and specific as to the taxa to be surveyed. These requirements will be approved by the Executive Director and published in the *Pennsylvania Bulletin*. The Commission has developed qualified surveyor requirements for all endangered and threatened species.

On final-form rulemaking, the Commission made the following changes. In subsection (b), individuals on existing Commission lists as of January 5, 2013, will be deemed qualified for purposes of § 75.5 but will be required to submit a completed application on the form provided by the Commission. This change will allow individuals on current Commission lists to be "grandfathered." In subsection (c), the Commission will make its lists of qualified surveyors available to the public on its web site. The Commission adopted § 75.5 to read as set forth in Annex A.

As a result of the public comments, the Commission also revised the requirements. The revised requirements will be published as a notice in the *Pennsylvania Bulletin* concurrently with this final-form rulemaking.

*F. Paperwork*

The final-form rulemaking will increase paperwork and create new paperwork requirements in that persons who wish to conduct surveys for endangered and threatened species in connection with development projects as of January 1, 2014, will be required to complete an application to document and demonstrate their education and experience surveying endangered or threatened species and their habitat. In the application, persons also will have to document and demonstrate their knowledge and experience in survey protocol implementation. If approved, the Commission will place the individual's name on the Commission's qualified surveyor list for the species described in the application. Presently, persons who wish to conduct surveys for endangered and threatened species in connection with development projects may voluntarily apply for placement on the list but are not required to do so.

*G. Fiscal Impact*

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The Commission's costs to develop, review and process applications will be nominal. The Commission estimates that it will receive and review approximately 100 applications during 2014, the first year that § 75.5 will be in effect. After the first year, the Commission expects that



applications will level off to 25 per year for the next 8 years. Since the Commission's qualification of a surveyor will be valid for 10 calendar years and will expire on December 31 of the 10th year for which it was granted, the Commission expects an increase in applications in year 10 as the 2014 applicants reapply. The Commission estimates the cost of the initial development and printing of the application to be approximately \$2,500. The Commission estimates that it will incur approximately \$200 in staff time for each application it reviews. The Commission estimates its total cost at about \$20,000 to review 100 applications in 2014 and about \$5,000 per year to review 25 applications in each of the following 8 years.

The final-form rulemaking will not impose new costs on the private sector or the general public. There is not an application fee to become a qualified surveyor.

#### H. Public Involvement

Notice of proposed rulemaking was published at 43 Pa.B. 15 (January 5, 2013). The draft requirements were published at 43 Pa.B. 107 (January 5, 2013). The Commission received 27 public comments (16 during and 11 after the formal comment period) concerning proposed § 75.5 and the draft requirements. Commission staff addressed these comments in a Comment and Response Document. Copies of the public comments and the Comment and Response Document 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 public comments received were considered.

(3) The adoption of the amendment 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 75, are amended by adding § 75.5 to read as set forth in Annex A.

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

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

(d) This order shall take effect on January 1, 2014.

JOHN A. ARWAY,  
Executive Director

**Fiscal Note:** Fiscal Note 48A-238 remains valid for the final adoption of the subject regulation.

(Editor's Note: For a notice relating to this final-form rulemaking, see 43 Pa.B. 5567 (September 14, 2013).)

### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart B. FISHING

#### CHAPTER 75. ENDANGERED SPECIES

#### § 75.5. Qualified surveyors for endangered and threatened species and their habitat.

(a) *Requirement.* To conduct surveys for endangered or threatened species or their habitat in connection with an application for a proposed or planned development activity, a surveyor shall be deemed qualified by the Commission.

(b) *Qualification.* An individual who wishes to be qualified by the Commission to conduct surveys for endangered or threatened species shall demonstrate to the Commission's satisfaction that he meets the qualified surveyor requirements as approved by the Executive Director and published in the *Pennsylvania Bulletin*. The individual shall demonstrate his qualifications by submitting the completed application provided by the Commission. Individuals on existing Commission lists as of January 5, 2013, will be deemed qualified for purposes of this section provided they submit the completed application provided by the Commission.

(c) *List.* Upon qualification, the Commission will place the names of the individuals meeting these requirements on its qualified surveyor list for the species described in the application. The Commission will make these lists available to the public on its web site at [www.fishandboat.com](http://www.fishandboat.com).

(d) *Duration.* The Commission's qualification of a surveyor is valid for 10 calendar years and expires on December 31 of the 10th year for which it was granted.

(e) *Renewal.* A qualified surveyor shall apply for renewal of the Commission's qualification every 10 years by submitting the completed renewal application provided by the Commission within 90 days prior to the qualification's expiration.

(f) *Denial and revocation.* The Commission may deny qualification of a surveyor who does not meet the requirements of this section. The Commission may revoke the qualification of a surveyor when the surveyor no longer meets the requirements of this section. A person aggrieved under this subsection may appeal to the Executive Director in accordance with 1 Pa. Code § 35.20 (relating to appeals from actions of the staff). Part II of 1 Pa. Code (relating to General Rules of Administrative Practice and Procedure) applies.

(g) *Other requirements.* When applicable, a qualified surveyor shall meet the requirements of §§ 51.71 and 75.4 (relating to scientific collectors' permits; and special permits).

[Pa.B. Doc. No. 13-1664. Filed for public inspection September 13, 2013, 9:00 a.m.]