

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61 AND 65]

Fishing; Seasons, Sizes and Creel Limits; Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapters 61 and 65 (relating to seasons, sizes and creel limits; and special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. Effective Date

The final-form rulemaking will go into effect on January 1, 2015.

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.

C. Statutory Authority

The amendments to §§ 61.1 and 65.26 (relating to Commonwealth inland waters; and extended trout season) are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations). The amendments to § 65.12 (relating to Regional Opening Day of Trout Season Program) are published under the statutory authority of section 2102(a) of the code.

D. Purpose and Background

The specific purpose and background of the amendments are described in more detail under the summary of changes.

E. Summary of Changes

The Commission determined that Class A wild trout streams should be treated the same as other wild trout streams with respect to harvest during the extended season. Specifically, wild trout streams are closed to harvest beginning 12:01 a.m. the day after Labor Day to midnight the last day of February of the following year. Under §§ 61.1 and 65.12, approved trout waters and all waters downstream of approved trout waters are open to harvest with a three fish limit. There are currently at least 22 streams comprising 29 stream sections designated as Class A and that occur downstream of an approved trout water section. These amendments will result in all Class A streams being regulated the same relative to harvest and consistent with other wild trout streams that are not approved trout waters. This additional level of protection is consistent with treating the best wild trout waters in this Commonwealth with a greater level of protection than streams whose trout fisheries are partially or totally provided by stocking, where put-and-take is the preferred management approach.

On final-form rulemaking, the Commission also determined that § 65.26 must be revised to maintain consistency among regulations. The Commission therefore amends §§ 61.1 and 65.12 to read as set forth in the

proposed rulemaking published at 43 Pa.B. 7097 (December 7, 2013) and § 65.26 to read as set forth in Annex A.

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. 7097. The Commission did not receive public comments regarding 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 and no public comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

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

(a) The regulations of the Commission, 58 Pa. Code Chapters 61 and 65, are amended by amending §§ 61.1 and 65.12 to read as set forth at 43 Pa.B. 7097 and § 65.26 to read as set forth in Annex A.

(Editor's Note: Section 65.26 was not included in the proposed rulemaking published at 43 Pa.B. 7097.)

(b) The Executive Director will submit this order, 43 Pa.B. 7097 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, 43 Pa.B. 7097 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2015.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-253 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.26. Extended trout season.

(a) *General rule.* The extended trout season is in effect from the day after Labor Day until the last day of February of the following year on approved trout waters

and all waters downstream of approved trout waters. A creel limit of three trout per day and a minimum size limit of 7 inches apply during this season, except Class A wild trout streams where the creel limit is 0 and areas with special regulations.

(b) *Waters not approved trout waters.* The Executive Director may grant a permit to apply extended trout regulations to waters that are not approved trout waters upon written application of the owner or lessee of the lands on which the waters are located. Applications will be reviewed to ensure that applying extended trout season regulations to the waters in question is consistent with the best appropriate fisheries management of the waters in question, and to ensure that approval of the application will have no adverse effect on the preservation and expansion of public fishing opportunities within this Commonwealth. Approval or disapproval of applications shall be subject to review under Chapter 51, Subchapter E (relating to permit procedures). Permits for extended trout season on waters other than approved trout waters will be valid until the last day of February of the 6th year after the year in which they are issued. For example, a permit issued in June 1984 will expire on February 28, 1990.

[Pa.B. Doc. No. 14-1957. Filed for public inspection September 19, 2014, 9:00 a.m.]

FISH AND BOAT COMMISSION [58 PA. CODE CH. 63]

Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 63 (relating to general fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

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.

C. *Statutory Authority*

The amendment to § 63.2 (relating to display of fishing license and verification of license purchase) is published under the statutory authority of section 2703 of the code (relating to possession and display of licenses). The amendments to § 63.20 (relating to permits for the protection and management of trout and salmon) are published under the statutory authority of section 2904 of the code (relating to permits for protection and management of particular fish).

D. *Purpose and Background*

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

E. *Summary of Changes*

Under § 63.2(b), anglers required under Chapter 27 of the code (relating to fishing licenses) to purchase a license to fish in the waters of this Commonwealth or boundary waters shall display the actual fishing license certificate on a hat or outer garment while fishing. In March 2014, the Commission made license buttons available for sale. The Commission therefore amends § 63.2 to allow for the display of license buttons as an alternative to the current display requirement. As amended, a license holder will be required to carry the license certificate on his person if a license button is displayed instead of the license certificate.

Under § 63.20(c)(3), a person who purchases a senior resident lifetime fishing license and who wishes to fish for trout or salmon is required to purchase one trout/salmon permit and is then exempt from the requirement to purchase a trout/salmon permit for subsequent years. This effectively means that those licensees may purchase one trout/salmon permit that is valid for the licensee's lifetime. About 70% of seniors purchase a trout/salmon permit, which mirrors the rate for other anglers.

Since it was instituted in 1979, the Commission has sold 463,714 senior resident lifetime fishing licenses through the end of 2013. In 1979, that category of license sales accounted for 1.31% of total license sales (13,179 out of 1,004,003). When license sales peaked in 1990, the sale of senior resident lifetime fishing licenses also reached an all-time high of 18,645. As this Commonwealth's population has aged, so too has the percentage of senior resident lifetime fishing licenses compared to total license sales, with that category accounting for 1.97% of total sales in 2013 (17,004 out of 860,672).

Even more significantly, senior resident lifetime fishing licenses have grown to comprise nearly 50% of all senior licenses sold. Residents 65 years of age and older may purchase either a senior resident lifetime fishing license for \$50 or a senior resident annual fishing license for \$10. In 1979, senior resident lifetime licenses and senior resident annual licenses totaled 87,247, but the lifetime category only accounted for 15.11% of that total. In 2013, of the 34,790 combined senior resident lifetime and senior resident annual licenses, 48.9% were for the lifetime license. As this Commonwealth's seniors continue to account for a larger percentage of the total population (and of anglers), the relative number of anglers buying the lifetime license is expected to continue to rise.

According to the Commission's Stocked Trout Program: Cost Report (March 2009), the Commission's trout program accounts for 36% of the Fish Fund annual expenditures, and the cost of trout production continues to rise. The Commission can no longer afford to allow anyone required to purchase a senior resident lifetime fishing license to fish for trout without paying for the privilege to do so annually.

One thing that the Commission can do by regulation is to require senior resident lifetime license holders to purchase a trout/salmon permit each year that the license holder desires to fish for trout. At the same time, the Commission can establish that a senior resident lifetime license holder who purchased a trout/salmon permit before a certain date will remain exempt from the requirement to purchase a permit annually. To use a common term, those individuals will be grandfathered.

With the grandfathering clause, there will not be additional revenues generated in the first year of the amendment since the licensees who purchase a permit

under the regulation will presumably buy it anyway. Assuming senior resident lifetime license holders continue to make up about 50% of all senior license buyers, an estimated 8% drop in sales and associated Federal funds due to the new annual requirement, and 70% of seniors will continue to purchase a trout/salmon permit, staff estimate the generation of about \$300,000 in additional annual revenues by the fifth year that the change is in place.

Similar to § 63.20(c)(3), a person who purchases a senior resident lifetime license and fishes in Lake Erie or its tributaries is only required to purchase one special permit which is valid for the licensee's lifetime under section 2907.2(c) of the code (relating to Lake Erie fishing permits). However, requiring those anglers to annually purchase a special permit to fish in Lake Erie and its tributaries will require an act of the General Assembly.

The Commission also noted the need for a number of housekeeping changes to § 63.20. In § 63.20(b), eliminating the list of licenses to which the requirement applies makes it clear that any license holder must possess a trout/salmon permit or a combination trout/salmon permit and Lake Erie permit to fish for trout. While section 2907.2(c) of the code already requires all anglers to have a special permit to fish in Lake Erie and its tributaries or a combination trout/salmon permit and Lake Erie permit to fish in those parts of the Lake Erie watershed, adding the combination trout/salmon permit and Lake Erie permit makes it clear that the license holder shall have a valid permit to fish for trout in other parts of the Lake Erie watershed (for example, lakes stocked with trout). Since license holders no longer need to affix a stamp to their licenses, that requirement in § 63.20(b) is deleted. In addition, because the Commission no longer issues trout stamps, § 63.20(c) is no longer necessary and is deleted.

The Commission amends §§ 63.2 and 63.20 to read as set forth in proposed rulemaking published at 44 Pa.B. 1769 (March 22, 2014).

F. Paperwork

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

G. Fiscal Impact

The amendment to § 63.2 will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment to § 63.2 will not impose new costs on the private sector or the general public because the license button is purely voluntary.

The amendments to § 63.20 will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments to § 63.20 will not impose new costs on the private sector or the general public except that future purchasers of a senior resident lifetime fishing license

will be required to purchase a trout/salmon permit annually. The fee for a trout/salmon permit is set at \$8 by section 2715(a.1)(1) of the code (relating to license, permit and issuing agent fees).

H. Public Involvement

Notice of proposed rulemaking was published at 44 Pa.B. 1769. The Commission did not receive public comment regarding the proposal to amend § 63.2. The Commission received one comment from Representative Haluska and Representative Gergely during the formal comment period and one public comment after the comment period, both opposing the proposal to amend § 63.20. The Commission also received one public comment before the comment period and one public comment after the comment period, both supporting the proposal to amend § 63.20. Copies of the public comments were provided to the Commissioners.

Findings

The Commission finds that:

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

(2) A public comment period was provided and all 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 63, are amended by amending §§ 63.2 and 63.20 to read as set forth at 44 Pa.B. 1769.

(b) The Executive Director will submit this order and 44 Pa.B. 1769 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 44 Pa.B. 1769 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-257 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 14-1958. Filed for public inspection September 19, 2014, 9:00 a.m.]