

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CHS. 61, 63, 69, 71 AND 73 ]

### Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61, 63, 69, 71 and 73. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

#### A. Effective Date

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

#### B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, 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](http://www.fish.state.pa.us).

#### C. Statutory Authority

The proposed amendments to §§ 61.1—61.4, 63.46, 69.12, 71.6 and 73.1 are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

#### D. Purpose and Background

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

#### E. Summary of Proposal

Crayfish are one of the most conspicuous and ecologically important components of aquatic communities in this Commonwealth and across the globe. They are an important forage item for fishes, mammals, birds, reptiles and amphibians and facilitate the transfer of nutrients up through the food chain to higher trophic levels. About half of North America's crayfish fauna is imperiled, and native crayfishes across the continent and in this Commonwealth are rapidly being replaced by introduced (exotic) crayfishes.

The replacement of native crayfish by introduced crayfish represents a significant threat to aquatic communities. Introduced crayfish attain densities that are exceedingly high (sometimes in excess of 200 individuals/m<sup>2</sup>), often eliminate aquatic macrophytes and suppress benthic invertebrate communities. They can have strong negative effects on amphibians, mussels and fishes.

Stopping the spread of introduced crayfish is difficult once they become widespread. Since the distributions of most introduced crayfishes in this Commonwealth are still limited, there is still time to stop the spread of exotic crayfishes and preserve the native stocks that remain.

Exotic crayfishes occur in a number of water bodies in this Commonwealth and are available from bait shops, biological warehouses, pet stores, live food vendors and aquaculture facilities. To help prevent additional introductions of crayfish in this Commonwealth, stringent regulations and their enforcement is warranted.

The invasive rusty crayfish (*Orconectes rusticus*) has been tightly regulated in this Commonwealth since 2005, and live individuals cannot be possessed, sold, transported or cultured within this Commonwealth. However, there are five other introduced crayfishes that occur in this Commonwealth that are currently unregulated. These exotic crayfishes can be purchased from commercial dealers or collected from invaded water bodies and released legally into the Commonwealth's waters with potentially devastating effects on native communities. Additionally, although the invasive red swamp crayfish (*Procambarus clarkii*) cannot be propagated in flow-through systems or introduced into Commonwealth waters, the species can be possessed, sold and transported legally within this Commonwealth.

Extending the *Orconectes rusticus* ban to other exotic crayfish species would be impossible to enforce because most natural resource managers and conservation officers have difficulty identifying crayfish species. For this reason, the Commission proposes restricting the sale, possession, introduction, transportation and culture of all live native and nonnative crayfishes in this Commonwealth. Similar restrictions have been passed elsewhere (for example, Wisconsin and parts of Maryland and Canada) with broad public support.

As part of the proposed rulemaking, licensed anglers will still be allowed to harvest up to 50 crayfish per day. However, the head must be immediately removed behind the eyes upon capture unless the crayfish are used as bait in the water from which they were taken. When crayfish are used as bait in the water from which they were taken, the head does not have to be removed. When crayfish are transported from the water from which they were collected, the head must be removed behind the eyes. The proposed rulemaking also restricts the sale of all live native and nonnative crayfishes in this Commonwealth except when they are sold for testing and scientific purposes or restaurant consumption, adequate measures have been taken to prevent their escape and they are accompanied by documentation stating the point of origin and the destination to which they are to be delivered. The proposed rulemaking restricts possession, introduction and transportation of all live native and nonnative crayfishes except when: (i) they are possessed and used as bait on, in or about the water from which taken; or (ii) they are possessed or imported for testing and scientific purposes or restaurant consumption, adequate measures have been taken to prevent their escape and they are accompanied by documentation stating the point of origin and the destination to which they are to be delivered. Except when they are used as bait as previously described, the introduction of any live crayfish into Commonwealth waters will be strictly prohibited.

Although propagation is not specifically addressed by this proposed rulemaking, Commission staff are working with the Department of Agriculture (Department) and registered propagators to address issues pertaining to crayfish culture. Section 71.2 (relating to fish species approved for artificial propagation and introduction) provides that the Bureau of Fisheries (Bureau) will maintain a list of species by watershed for which the Department may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The section further provides that the Bureau may update or modify the list of authorized species by adding species to or deleting species from the list as necessary to provide

for the protection and management of fish in this Commonwealth. Therefore, concurrent with this proposed rulemaking, the Commission is proposing to remove all crayfish species from the list of species approved for open-system propagation and introduction in this Commonwealth. The culture and propagation of crayfish will still be permitted in closed systems. Regulatory action is not required to accomplish this change. However, Commission staff already have shared the proposal with the Department and registered propagators, and a dialogue has started. The Commission will seek public comments regarding the restriction on crayfish propagation at the same time as it seeks public comments on the proposed amendments in this proposed rulemaking. The Commission will solicit those comments by notifying the Pennsylvania Aquaculture Advisory Committee and its Aquaculture Coordinator of this proposed rulemaking and publication in the *Pennsylvania Bulletin*.

The Commission proposes to amend §§ 61.1—61.4, 63.46, 69.12, 71.6 and 73.1 to restrict the sale, possession, introduction and transportation of all crayfish species in this Commonwealth to read as set forth in Annex A.

**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. Any fiscal impact to the private sector is expected to be nominal. Some

businesses sell crayfish as pets or bait, but the revenue generated is typically a very minor component of total sales. Other commercial uses include testing and scientific purposes and restaurant consumption. However, under the proposed rulemaking, the sale, possession and transportation of live crayfish is permitted for those purposes when adequate measures have been taken to prevent their escape and they are accompanied by documentation stating the point of origin and the destination to which they are to be delivered. Therefore, laboratories, research facilities and restaurants will not be significantly affected by the proposed rulemaking.

**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 60 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](http://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-256. 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:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
	* * * * *		
BAIT FISH FISH BAIT except mud bugs [ and ], mussels/clams and crayfish	Open year-round	No minimum	50 (combined species)
	* * * * *		
PADDLEFISH	Closed year-round	—	0
<b>CRAYFISH (ALL SPECIES)</b>	<b>Open year-round</b>		<b>50. The head must be immediately removed behind the eyes upon capture unless used as bait in the water from which taken.</b>

**§ 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>
* * * * *			
BAIT FISH FISH BAIT, except mussels/clams and crayfish	Open year-round	No minimum	50 (combined species)
* * * * *			
OTHER SPECIES	Inland seasons, size and creel limits apply except for waters under special regulations (See Chapter 65). See § 61.1 (relating to Commonwealth inland waters).		
<b>CRAYFISH (ALL SPECIES)</b>	<b>Open year-round</b>		<b>50. The head must be immediately removed behind the eyes upon capture unless used as bait in the water from which taken.</b>

§ 61.3. Pymatuning Reservoir.

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(c) Except as provided by special regulations, the following sizes and creel limits apply to Pymatuning Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
* * * * *			
MUSSELS/CLAMS	Closed year-round		0
<b>CRAYFISH (ALL SPECIES)</b>	<b>Open year-round</b>		<b>50. The head must be immediately removed behind the eyes upon capture unless used as bait in the water from which taken.</b>

§ 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>
* * * * *			
BAIT FISH FISH BAIT, <b>except</b> <b>mussels/clams and crayfish</b>	Open year-round	No minimum	35
* * * * *			
BIVALVES/SHELLFISH (Mussels/Clams)	Closed (no open season)	Closed	0
<b>CRAYFISH (ALL SPECIES)</b>	<b>Open year-round</b>		<b>50. The head must be immediately removed behind the eyes upon capture unless used as bait in the water from which taken.</b>

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.46. Sale, purchase or barter of injurious, nonnative species.

It is unlawful for a person to sell, purchase, offer for sale or barter the following live species in this Commonwealth:

\* \* \* \* \*

(10) [ **Rusty crayfish (*Orconectes rusticus*).** ] Crayfish (all species) except when:

(i) They are sold, purchased, offered for sale or bartered for testing and scientific purposes or restaurant consumption.

(ii) Adequate measures have been taken to prevent their escape.

(iii) They are accompanied by documentation stating the point of origin and the destination to which they are to be delivered.

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CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

§ 69.12. Seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters.

\* \* \* \* \*

(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>
* * * * *			
BAIT FISH FISH BAIT, except mussels/clams and crayfish	Open year-round	None	50 (combined species)
CRAYFISH (ALL SPECIES)	Open year-round		<b>50. The head must be immediately removed behind the eyes upon capture unless used as bait in the water from which taken.</b>
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CHAPTER 71. PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS

§ 71.6. Prohibited acts.

\* \* \* \* \*

(d) It is unlawful to possess the following live species in this Commonwealth. It is unlawful to introduce or import the following live species into the waters of this Commonwealth:

\* \* \* \* \*

(10) [ Rusty crayfish (*Orconectes rusticus*) ] Crayfish (all species).

(i) Except when they are either:

(A) Possessed and used as bait on, in or about the water from which taken.

(B) Possessed or imported for testing and scientific purposes or restaurant consumption, adequate measures have been taken to prevent their escape and they are accompanied by documentation stating the point of origin and the destination to which they are to be delivered.

(ii) Except when used as bait as provided in this section, introduction of live crayfish (all species) into the waters of the Commonwealth is prohibited.

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CHAPTER 73. TRANSPORTATION OF LIVE FISH INTO THIS COMMONWEALTH

§ 73.1. Transportation.

\* \* \* \* \*

(d) Transportation of the following live species in or through this Commonwealth is prohibited.

\* \* \* \* \*

(10) [ Rusty crayfish (*Orconectes rusticus*). ] Crayfish (all species) except when they are either transported:

(i) As bait on, in or about the water from which taken.

(ii) For testing and scientific purposes or restaurant consumption, adequate measures have been taken to prevent their escape and they are accompanied by documentation stating the point of origin and the destination to which they are to be delivered.

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