

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61, 63, 65 AND 79]

Fishing; Simplification and Consolidation

The Fish and Boat Commission (Commission) amends Chapters 61, 63, 65 and 79. 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, 2016, except for the amendments to § 65.24 (relating to miscellaneous special regulations) for Opossum Lake, Cumberland County, and Leaser Lake, Lehigh County, which will go into effect on June 18, 2016.

B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, 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, 61.2, 61.7, 61.8, 63.3, 63.8, 63.48, 65.4a, 65.5, 65.7, 65.9, 65.11—65.19, 65.26 and 79.2 are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendment to § 63.20 (relating to permits for the protection and management of trout and salmon) is published under the statutory authority of section 2904 of the code (relating to permits for protection and management of particular fish). The amendments to § 65.21 (relating to waters limited to specific purposes—exclusive use fishing areas) and § 65.24 are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

It has long been a concern that the complexity and number of the Commission's fishing regulations may be a deterrent to people fishing. In response to those concerns, several Commissioners expressed an interest in regulation simplification and consolidation, and Executive Director John A. Arway directed Commission staff to review existing fishing regulations. A workgroup comprised of staff across bureau and office lines was formed in 2013. Workgroup meetings were held and drafts were circulated throughout 2013 and 2014. At the September 2014 Commission meeting, a preliminary draft with proposed regulatory amendments was shared with the Law Enforcement Committee. The Commission, at its January 2015 meeting, approved the publication of a proposed rulemaking containing proposed amendments and seeking public comments for 60 days.

E. *Summary of Changes*

As part of the regulation simplification and consolidation process, the Commission adopts a number of housekeeping and substantive changes. The housekeeping changes are to §§ 61.2, 61.8, 65.4a, 65.5, 65.7, 65.9, 65.11, 65.12, 65.14—65.19 and 65.21. The substantive changes are as follows.

(1) Because note 3 in § 61.1 (relating to Commonwealth inland waters) is not applicable to gizzard shad, the Commission deletes the reference to it (three asterisks after gizzard shad). In addition, because § 65.10 is reserved, references to this section and the program in note 2 of § 61.1 are deleted.

(2) In § 61.7 (relating to Susquehanna River and tributaries), the Commission deletes the note because the harvest of baitfish in this note is applicable only to landlocked alewife harvested from inland lakes, ponds and reservoirs and does not apply to this section.

(3) In § 63.3 (relating to fishing in stocked trout waters), the former definition of "approved trout waters" was "designated waters that contain significant portions that are open to public fishing and are stocked with trout." The term, however, suggests a much broader category of trout waters, including both stocked and wild, and may cause confusion among the public. Therefore, the Commission uses the term "stocked trout waters" to more accurately describe the category of trout waters at issue and now defines the term as "waters that are stocked with adult trout by the Commission." The Commission also amends other sections in Chapters 61, 63, 65 and 79 using "approved trout waters" to say "stocked trout waters."

(4) In § 63.48 (relating to permit for the use of cast nets or throw nets), the Commission deletes the restriction limiting baitfish to 8 inches in length because there is not a biological reason for the restriction.

(5) In §§ 65.5 and 65.7 (relating to catch and release artificial lures only; and trophy trout artificial lures only), the Commission deletes the list of prohibited lures and substances in favor of naming the permitted items only to eliminate confusion and having to name or describe all prohibited lures and substances.

(6) In § 65.11 (relating to panfish enhancement), the Commission makes the language consistent with the Summary Book and the intent of the regulation when it went into effect.

(7) The Commission deletes § 65.13 because the Commission's staff determined based on peer reviewed and published scientific research on the waters within this program that this regulation is ineffective.

(8) In § 65.14 (relating to catch and release fly-fishing only), the Commission deletes the reference to single hooks to clarify that multiple hooks are permitted. The Commission, however, does not delete the reference to "fly line with a maximum of 18 feet in leader material or monofilament line attached" to allow center-pinning techniques. To eliminate confusion and having to name or describe all prohibited lures and substances, the Commission deletes the list of prohibited items in favor of naming the permitted lures and substances only.

(9) In § 65.24, the Commission adopts the following amendments:

(a) The Commission deletes the miscellaneous special regulation on Elk Creek (Big Elk Creek), Chester County, because the harvest of alewife and blueback herring is not allowed in the Susquehanna system.

(b) The Commission deletes the miscellaneous special regulation on Opossum Lake, Cumberland County, as of June 18, 2016, because it specifically provides that it will remain in effect until that date.

(c) The Commission deletes the miscellaneous special regulation on the West Branch, Clarion River, Elk County, because wading is now permitted.

(d) The Commission deletes the miscellaneous special regulation on Lake Scranton, Lackawanna County, because the origin of this requirement was a lease agreement among Pennsylvania Gas and Water Company (now Pennsylvania American Water Company), Allied Services and the Commission, and the water company advised the Commission that it wishes to terminate the agreement. In addition, both Pennsylvania American Water Company and Allied Services requested that the miscellaneous special regulation be deleted.

(e) The Commission deletes the miscellaneous special regulation on Leaser Lake, Lehigh County, as of June 18, 2016, because it specifically provides that it will remain in effect until that date.

(f) The Commission changes the miscellaneous special regulation on the West Branch Delaware River, Wayne County, to be consistent with other changes throughout this chapter regarding to the use of prohibited lures and substances in artificial lures only areas.

(g) The Commission deletes the miscellaneous special regulation on Indian Lake, Westmoreland County, because the Commission has data to support designating this lake as big bass and panfish enhancement and the Commission has designated it accordingly.

(h) The Commission deletes the miscellaneous special regulation on Lake Winola, Wyoming County, because there is no biological support for this regulation.

The Commission amends these sections to read as set forth in the proposed rulemaking published at 45 Pa.B. 1619 (April 4, 2015) with the exception of § 65.14, which is amended 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 an 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 45 Pa.B. 1619 with a 60-day public comment period. The Commission received a total of 110 public comments—1 before, 107 during and 2 after the formal comment period. One comment generally supported and one comment generally opposed the proposed changes.

With regard to the proposed changes to § 65.11, the Commission received nine comments. One comment supported the proposed rulemaking and one comment suggested that the Commission expand the program and reduce the daily limit to 15 for each species with a total of no more than 45 combined species. The other comments seemingly misunderstand the proposed rulemaking

to mean that the Commission proposed to reduce the creel limit for carp (and other listed species), and those comments supported a reduction.

With regard to the proposal to rescind § 65.13, the Commission received 27 comments. Two comments supported elimination of the program, 5 comments were neutral and 20 comments opposed it.

With regard to the proposed amendments to § 65.14, the Commission received 1 comment supporting and 67 comments opposing center pinning in fly fishing only areas.

In addition, the Commission received two comments offering suggestions regarding other management options. Two comments (and several others addressing the rescission of § 65.13) urged the Commission to establish a valid Trout Management Plan prior to executing policy decisions on trout management matters. Of the 110 comments, 2 comments also suggested that the Commission increase the size limit for trout from 7 to 9 inches. 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 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 Chapters 61, 63, 65 and 79, are amended by deleting § 65.13 and amending §§ 61.1, 61.2, 61.7, 61.8, 63.3, 63.8, 63.20, 63.48, 65.4a, 65.5, 65.7, 65.9, 65.11, 65.12, 65.15—65.19, 65.21, 65.24, 65.26 and 79.2 to read as set forth in 45 Pa.B. 1619 and by amending § 65.14 to read as set forth in Annex A.

(b) The Executive Director will submit this order, Annex A and 45 Pa.B. 1619 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, Annex A and 45 Pa.B. 1619 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2016, except for the amendments to § 65.24 pertaining to Opossum Lake, Cumberland County, and Leaser Lake, Lehigh County, which will go into effect on June 18, 2016.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-264 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

§ 65.14. Catch and release fly-fishing only.

(a) The Executive Director, with the approval of the Commission, may designate waters as catch and release fly-fishing only. The designation of waters as catch and release fly-fishing only shall be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated and posted as catch and release fly-fishing only except in compliance with the following requirements:

(1) Fishing may be done with artificial flies and streamers constructed of natural or synthetic materials so long as all flies are constructed in a normal fashion with components wound on or about the hook or hooks. Use or possession of any other lures or substances is prohibited.

(2) Fishing shall be done with tackle which is limited to fly rods, fly reels and fly line with a maximum of 18 feet in leader material or monofilament line attached. Spinning, spincast and casting rods and reels are prohibited.

(3) No trout may be killed or had in possession.

(4) Open to fishing year-round.

(5) Taking of baitfish or fishbait is prohibited.

(6) Wading is permitted unless otherwise posted.

(7) A current trout/salmon permit is required.

(c) Notwithstanding the requirements of this section an angler in a boat may possess bait and fish caught in compliance with the seasons, sizes and creel limits in effect for the water from which taken, provided that the boat angler floats through the catch and release fly-fishing only area without stopping or engaging in the act of fishing or the boat angler puts in or takes out his boat at an access point within the catch and release fly-fishing only area.

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