

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Administrative Provisions

The Fish and Boat Commission (Commission) proposes to amend Chapter 51 (relating to administrative provisions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's regulations concerning royalty rates for sand and gravel permits.

A. Effective Date

This 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 this 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.fishandboat.com.

C. Statutory Authority

The proposed amendments to § 51.92 (relating to royalty rates) are published under the statutory authority of section 503(c) of the Conservation and Natural Resources Act (CNRA) (71 P.S. § 1340.503(c)).

D. Purpose and Background

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

E. Summary of Proposal

Under section 503(c) of the CNRA, the Commission, with the concurrence of the Department of Environmental Protection (Department), is authorized to adjust the amount of royalty payments per ton or cubic yard of usable or merchantable, or both, sand or gravel, or both, extracted from Commonwealth waters.

There are four companies currently maintaining permits which allow the dredging of material from navigable waters of this Commonwealth. Historically, royalty rates were set in 1970 and involved establishing a flat rate of \$0.10 per adjusted dry ton that was about 6% of the selling price. The rate was adjusted \$0.05 each year from 1998 to 2001 culminating in \$0.30 per dry ton. Between January 1, 2002, and December 31, 2010, a variable calculation using the change in the producer price index (PPI) for sand and gravel from the base year (2002) was used. This was an administratively burdensome process that required the carry forward calculations from 2002 with annual adjustments to make the Commission whole due to the timing of PPI rate releases.

In 2010, dredger representatives, the Department and the Commission simplified the process into its current configuration using a straightforward calculation with a fair rate that multiplied the immediately preceding year's published price, average value, dollars per metric ton (converted to U.S. ton) for the commodity sand and gravel in the *United States Geological Survey, Mineral Commodity Summary* per dry ton, provided that the rate per dry ton is not less than \$0.48. This straightforward approach

removed any ambiguity in the rate setting process and has been successful for the past decade.

As such, the current royalty rate schedule, which was adopted in 2011 and is set forth in the Commission's regulations at § 51.92, expires on December 31, 2020. The Commission and four representatives from the sand and gravel dredging industry have unanimously agreed to extend the previous fair and equitable process for setting royalty rates for the 10-year period of January 1, 2021, through December 31, 2030.

The Commission proposes that § 51.92 be amended to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this 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 notice 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.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-298. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 51. ADMINISTRATIVE PROVISIONS

Subchapter J. ROYALTIES FOR SAND AND GRAVEL PERMITS

§ 51.92. Royalty rates.

Persons holding permits granting them nonexclusive rights and privileges of dredging, excavating, removing and carrying away merchantable sand and gravel under agreements between the permittees and the Department of Environmental Protection shall pay royalties in accordance with the following schedule:

[(1) During the period, January 1 through December 31, 2011, the greater of \$1,000 or \$0.48 per dry ton.

(2) During the period, January 1, 2012 through December 31, 2015, the greater of \$1,000 or 6.75% of the immediately preceding year's published price, average value, dollars per metric ton (converted to U.S. ton) for the commodity sand and gravel in the *United States Geological Survey, Mineral Commodity*

ity Summary per dry ton, provided that the rate per dry ton is not less than \$0.48.

(3) During the period, January 1, 2016, through December 31, 2020, the greater of \$1,000 or 7.0% of the immediately preceding year's published price, average value, dollars per metric ton (converted to U.S. ton) for the commodity sand and gravel in the *United States Geological Survey, Mineral Commodity Summary per dry ton, provided that the rate per dry ton is not less than \$0.48.*]

(1) During the period, January 1, 2021, through December 31, 2030, the greater of \$1,000 or 7.0% of the immediately preceding year's published price, average value, dollars per metric ton (converted to U.S. ton) for the commodity sand and gravel in the United States Geological Survey, Mineral Commodity Summary per dry ton, provided that the rate per dry ton is not less than \$0.48.

[Pa.B. Doc. No. 20-1031. Filed for public inspection July 31, 2020, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing; Seasons, Sizes and Creel Limits

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's regulations concerning Striped Bass fishing in the Delaware River and Estuary.

A. Effective Date

This 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 this 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.fishandboat.com.

C. Statutory Authority

The proposed amendments to § 61.2 (relating to Delaware River, West Branch Delaware River and River Estuary) are published under the statutory authority of 2102(b) of the code (relating to rules and regulations).

D. Purpose and Background

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

E. Summary of Proposal

The Atlantic States Marine Fisheries Commission's (ASMFC) management plan for Striped Bass calls for management actions when the coast-wide spawning stock biomass (SSB) or fishing mortality rates reach thresholds set within the management plan. The SSB threshold is 201 million pounds, and the current SSB is 151 million pounds. At the current fishing mortality rates, there is concern that the SSB will fall further below the threshold. Also, because catch and release practices contribute

substantially to overall fishing mortality, states are also required to implement mandatory circle hook requirements when fishing with bait to reduce release mortality in recreational Striped Bass fisheries. The ASMFC Striped Bass Management Board, which includes the Commonwealth as a member, has directed all coastal states to reduce fishing mortality rates by 18% beginning in 2020 and require circle hooks by 2021. This Commonwealth is taking proactive measures to implement circle hook requirements beginning in 2020 to inform anglers and facilitate compliance with this important conservation measure ahead of the ASMFC mandate for implementation beginning in 2021. The amendments to § 61.2 are designed to meet this objective.

The ASMFC has directed that the reduction in harvest be implemented no later than April 1, 2020. To meet this deadline, the Commission's Executive Director, acting under the authority of § 65.25 (relating to temporary changes to fishing regulations), has taken immediate action to amend § 61.2. Specifically, the Executive Director has amended this section to change the minimum size limit for Striped Bass to a 28 inches to less than 35 inches slot limit in the Delaware Estuary (from the Pennsylvania line upstream to Calhoun Street Bridge) and Delaware River (from the Calhoun Street Bridge upstream) during the periods January 1 through March 31 and June 1 through December 31 (one fish daily limit), and to change the slot limit during the period April 1 through May 31 to 21 inches to less than 24 inches (two fish daily limit). The Executive Director also has amended the section to require the use of non-offset (in-line) circle hooks when fishing with bait for any species of fish in the tidal Delaware Estuary, including tributaries from the mouths of the tributaries upstream to the limit of tidal influence. These actions were taken to meet the requirements of the ASMFC and a notice of a Temporary Change to Fishing Regulations appeared in the *Pennsylvania Bulletin* at 50 Pa.B. 1625 (March 14, 2020). The temporary changes went into effect on April 1, 2020, and will remain in effect until the Commission, by appropriate action, amends § 61.2.

The Commission proposes that § 61.2 be amended to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this 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 notice 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.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-299. 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

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

* * * * *

(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the following chart during 1 calendar day. It is unlawful to possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

* * * * *

(5) Fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither the

donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

(d) It is unlawful to fish with bait for any species of fish in the tidal Delaware Estuary, including tributaries from the mouths of the tributaries upstream to the limit of tidal influence using any hook type other than non-offset (in-line) circle hooks. The definition of a non-offset (in-line) circle hook is a non-offset hook where the point is pointed perpendicularly back towards the shank. The term "non-offset" means the point and the barb are in the same plane as the shank.

[(d)] (e) 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:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
	* * * * *		
STRIPED BASS and HYBRID STRIPED BASS	From Pennsylvania line upstream to Calhoun Street Bridge: January 1 until March 31 and June 1 until December 31.	28 to less than 35 inches	1
	April 1 through May 31	21 to [25] less than 24 inches	2
	From Calhoun Street Bridge upstream: open year-round	28 to less than 35 inches	1
	* * * * *		

[Pa.B. Doc. No. 20-1032. Filed for public inspection July 31, 2020, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's regulations for use of bait while angling at or on Lake Pleasant.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2021.

B. Contact Person

For further information on this 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.fishandboat.com.

C. Statutory Authority

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

E. Summary of Proposal

Lake Pleasant, a 61-acre natural lake owned by the Commonwealth and managed by the Commission, is located in Greene, Venango and Waterford Townships in Erie County, approximately 10.5 miles southeast of the City of Erie. The lake's cold-water and warm-water fish populations are managed with Commonwealth Inland Waters angling regulations. The lake supports high-quality panfish and Largemouth Bass populations that are sustained through natural reproduction. To maintain a high-quality fishery for stocked trout, the lake receives annual plants of adult trout during the pre-season, in-season and winter stocking periods which coincide with the peak periods of angler use and interest in trout angling. Recreational boating is permitted but is restricted to un-powered boats only. The Commission does not own or lease property adjacent to the lake and approximately 80% of the lake's shoreline is owned and maintained by the Western Pennsylvania Conservancy (WPC) with the remainder owned privately.

Lake Pleasant is one of the least impacted glacial lakes in the region and its natural flora and fauna are arguably the most intact among this category of waterbodies. The shoreline is nearly undeveloped, with much of the surrounding wetlands undisturbed. The WPC owns 350 acres around the lake, and the Pennsylvania Game Commission owns State Game Lands (SGL) 161 to the west and SGL 155 to the east. These collectively managed tracts of land act as a buffer for the lake. The lake is spring fed, relatively pristine and clear. The fish community that resides in Lake Pleasant is a result of unique historic glacial events and contains at least three of the Common-

wealth’s list of species (Blackchin Shiner, Warmouth and Iowa Darter). Two of these species, the Blackchin Shiner and Iowa Darter, are rare throughout the region due to extensive habitat degradation. The lake is difficult to survey for nongame fishes and thus has not received an intensive inventory to date; hence, it is possible that other rare species requiring pristine glacial lake habitats exist here and have yet to be documented.

Many of the lakes in northwestern Pennsylvania have experienced the release of undesirable fishes, presumably in the process of being used as bait fish. White Perch have inexplicably appeared in multiple lakes within the region. The Round Goby was recently discovered in Lake LeBeouf (French Creek watershed) and now threatens the receiving waters with ecological modification from a well-documented, aggressive and prolific aquatic invasive species. Given the acknowledged value and history of preservation of Lake Pleasant, additional protection in the form of a new miscellaneous special regulation is warranted and herein proposed. The new regulation would prohibit the use of live or dead fish as bait (that is, “minnows”) on Lake Pleasant; however, would allow for the use of “salted minnows” and terrestrial invertebrates as bait (that is, worms) for angling purposes. Additionally, the regulation would prohibit the release of fish in the lake, except for those caught while angling. This prohibition aims to preserve the existing ecosystem characteristics of Lake Pleasant and protect native and at-risk species from harmful impacts that may be associated with non-native species.

The Commission proposes that § 65.24 be amended to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this 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 notice 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.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-297. 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:

County	Name of Water	Special Regulations
		* * * * *
Dauphin, Juniata, Perry	Juniata River (31.7 miles) from SR0075 bridge at Port Royal downstream to the mouth, including all tributaries to a point 1/2 mile upstream from the confluence	Bass (Smallmouth and Largemouth)—No harvest year-round—catch and immediate release only. From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11—No Bass tournaments. Remainder of the year—Catch-measure-immediate release tournaments only. It is unlawful for an angler to repeatedly cast into a clearly visible bass spawning nest or bed in an effort to catch or take bass. A bass caught and immediately returned unharmed to the waters from which taken will not be considered a violation of this section.
<u>Erie</u>	<u>Lake Pleasant</u>	<u>It is unlawful to use any fish, live or dead, as bait while angling at Lake Pleasant, except for “salted minnows.” Further, it is unlawful to release any fish into Lake Pleasant, except for those caught while angling.</u>
Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River).	Trout (all species)—no closed season. Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Size limits: Inland rules apply. Smelt may be taken from shore or by wading by means of dip nets not to exceed 20 inches in diameter or 20 inches square. The daily limit per person is the greater of 1 gallon of smelt by volume or 200 smelt by number.
		* * * * *

[Pa.B. Doc. No. 20-1033. Filed for public inspection July 31, 2020, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Special Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's regulations for angling on Penns Creek.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2021.

B. *Contact Person*

For further information on this 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.fishandboat.com.

C. *Statutory Authority*

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

E. *Summary of Proposal*

Penns Creek is a large, limestone-influenced stream that supports one of the most popular and renowned wild Brown Trout fisheries in this Commonwealth and the eastern United States. Its excellent insect hatches, large size, and scenic setting in the mountains of Central Pennsylvania draws anglers from across the United States. Penns Creek is delineated into eight stream sections for fisheries management purposes, with sections 01—07 managed for trout. Penns Creek, Section 03, extends for 7 miles from the confluence with Elk Creek in Coburn, PA downstream to 600 meters downstream of the confluence with Swift Run. Section 03 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 was discontinued in favor of wild trout management.

During 1993, landowner and angler surveys were conducted on Section 03 to inform management decisions. Based on this information and 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 was managed with all-tackle trophy trout regulations for 19 years from 1995 to 2013.

During 2012, Commission staff conducted a review of the management of Penns Creek, Section 03. Staff solicited feedback regarding a potential regulation change from landowners and anglers by means of letters and a public meeting. Additionally, staff conducted an angler use, harvest and opinion survey to help inform a regulation change. To address landowner and angler feedback,

to further increase the abundance of large wild brown trout, and provide the opportunity to use all tackle types and harvest some trout, a new miscellaneous special regulation (slot limit) was established for a 7-year period from January 1, 2014, through December 31, 2020. The slot limit regulation allows for year-round fishing, use of all tackle types, and the harvest of two 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, with no harvest permitted the remainder of the year.

The trout population was monitored before and after implementation of the slot limit regulation in Section 03. Results of the monitoring showed a significant increase in the electrofishing catch rates of larger (≥ 16 inches) brown trout during the post-slot limit regulation implementation period (2014—2019). These results suggest that the slot limit regulations likely played an important role in the increased electrofishing catch of large brown trout in Section 03.

In 2019, staff conducted an angler use, harvest and opinion survey to evaluate the social aspects of the regulation change and estimate angler harvest. Results showed low harvest of trout occurred and high angler support for continuing the slot limit regulations on Penns Creek, Section 03. Despite low angler harvest under the slot limit rule, these regulations provide the opportunity for anglers to harvest a trout if they desire, which was an important social consideration when the regulations were implemented.

Given the success of the experimental slot limit regulation program on Penns Creek, Section 03, staff recommended that the Commission continue this regulatory approach until further notice. The regulation would allow for the use of all tackle types and harvest of up to two 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. No harvest would be permitted for the remainder of the year.

The Commission proposes that § 65.24 be amended to read as set forth in Annex A.

F. *Paperwork*

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

G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this 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 notice 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.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-300. 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>
* * * * *		
Centre and Mifflin	Penns Creek, from the confluence of Elk Creek downstream 7 miles to 600 meters downstream of Swift Run	<p>Open to fishing year-round. All tackle types are permitted. From 8 a.m. on the first Saturday after April 11 through Labor Day—the daily creel limit for trout is 2 (combined species). Trout must be at least 7 inches but less than 12 inches in length to be killed or possessed.</p> <p>From the day after Labor Day until 8 a.m. on the first Saturday after April 11, no trout may be killed or possessed.</p> <p>Inland regulations apply to all other species.</p> <p>This miscellaneous special regulation will remain in effect until [December 31, 2020] further notice.</p>
* * * * *		

[Pa.B. Doc. No. 20-1034. Filed for public inspection July 31, 2020, 9:00 a.m.]