

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61, 63, 65, 67 AND 69]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61, 63, 65, 67 and 69. 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 will establish a single, Statewide opening day for the regular season for trout.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2022.

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 §§ 63.3, 65.6, 65.12, 65.14, 65.15, 65.19 and 65.20 are published under the statutory authority of section 2102(a) of the code (relating to rules and regulations). The proposed amendments to §§ 61.1, 61.2 and 69.12a (relating to Commonwealth inland waters; Delaware River, West Branch Delaware River and River Estuary; and special regulations applicable to Lake Erie tributary streams) are published under the statutory authority of section 2102(b) of the code. The proposed amendment to § 67.2 (relating to refuge areas) is published under the statutory authority of section 2306(a) of the code (relating to refuge areas). The proposed 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). The proposed 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(a) of the code (relating to permits for the protection and management of particular fish). The proposed amendment to § 65.26 (relating to extended trout season) is published under the statutory authority of sections 2102(b) and 2307(a) of the code.

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*

Under § 61.1, the opening day of the regular season for trout begins at 8 a.m. on the first Saturday after April 11 and continues through midnight of Labor Day. This regulation was in place for all of this Commonwealth's inland waters for many years and is a well-known, much anticipated tradition. However, on January 1, 2007, a new regulation went into effect under § 65.12 (relating to regional opening day of trout season). This regulation created a separate opening day for southeastern and southcentral counties where trout season opens at 8 a.m. on the first Saturday after March 28 and continues through midnight of Labor Day.

In late winter 2020, the novel coronavirus (COVID-19) pandemic reached this Commonwealth and on March 16, 2020, the Commonwealth eliminated most activities that were not considered essential for health and safety. Subsequently, there was substantial concern within the Commission that traditional stocking practices with large numbers of volunteers in close contact and traditional opening day crowds could lead to increased risk of virus transmission. As such, the decision was made to greatly accelerate trout stocking, eliminate the use of volunteers, deploy Commission staff from throughout the agency to perform the stockings, and announce the opening day without warning at 8 a.m. on Tuesday April 7, 2020. This unheralded opening was designed to reduce crowding, and a single, Statewide opening day was employed to reduce cross-boundary travel between the Statewide and regional opening day zones. In addition, public travel restrictions required more anglers to fish closer to home than they would under normal circumstances.

Planning for the 2021 trout stocking season began in early fall of 2020 in anticipation that COVID-19 restrictions and concerns about virus transmission may still be in effect. At the January 2021 quarterly Commissioners meeting, a single, Statewide opening day was established for 2021.

After experiencing 2 consecutive years of a single, Statewide opening day, Commission staff identified an opportunity to further consider the efficacy of the current Commission regulations that provide for a regional opening day of trout season. An ad hoc committee with representatives from the Bureaus of Fisheries; Hatcheries; Law Enforcement; Outreach, Education and Marketing; Administration; Policy and Planning; the Field Operations Deputy Executive Director; and Office of Chief Counsel for review was formed. The committee reviewed the history and summary of opening day designations for trout season. Following that review, the committee recommended the elimination of the regional opening day of trout season and a return to the more traditional single Statewide opener. Commission staff believe that a single opening day simplifies regulations, reduces confusion among the angling public, lessens landowner issues in border counties, gives Statewide anglers at least an extra week of fishing opportunity and better allows businesses to plan for any sales surge.

The elimination of a regional opening day also requires minor amendments to various sections referencing trout season. As such, Commission staff recommend reformatting the dates in regulations relating to trout season for clarification and simplification. Finally, consistent with the act of July 10, 2020, (P.L. 604, No. 56) staff recommend that any reference in the regulations to the trout/salmon permit be changed to trout permit.

The Commission proposes that §§ 61.1, 61.2, 63.3, 63.20, 65.5, 65.6, 65.12, 65.14, 65.15, 65.19, 65.20, 65.24, 65.26, 67.2 and 69.12a 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-318. 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.

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(d) Except as otherwise provided in this subpart, the following seasons, sizes, and daily limits apply to inland waters of this Commonwealth and the Youghiogeny Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)	Regular Season: 8 a.m. first Saturday [after April 11] in April to midnight Labor Day	7 inches	5 (combined species) except areas with special regulations (see Chapter 65 (relating to special fishing regulations))
	Extended Season: Stocked trout waters and all waters downstream of stocked trout waters 12:01 a.m. day after Labor Day to midnight [last day of February] the third Monday in February of the following year.	7 inches	3 (combined species), except Class A wild trout streams, where the daily limit is 0, and areas with special regulations
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§ 61.2. Delaware River, West Branch Delaware River and River Estuary.

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(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:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
TROUT	8 a.m., [first Saturday after April 11] the opening day of the regular season for trout to midnight, October 15	North of I-84: 14 inches	North of I-84: 1 (combined species)
		South of I-84: no minimum	South of I-84: 5 (combined species)
		West Branch Delaware River:* 12 inches	West Branch Delaware River:* 2 (combined species)
* * * * *			

* A special no-kill artificial lures only season is in effect on the West Branch of the Delaware River from October [**1**] **16** to midnight on the Friday before the [**first Saturday after April 11**] **opening day of the regular season for trout**. See § 65.24. **It is unlawful for any person to possess a female crab bearing eggs from which the egg pouch or bunion has been removed.

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CHAPTER 63. GENERAL FISHING REGULATIONS**§ 63.3. Fishing in stocked trout waters.**

It is unlawful to fish in stocked trout waters regulated under § 61.1 (relating to Commonwealth inland waters) from 12:01 a.m. on [**March 1**] **the third Monday in February** to 8 a.m. on the [**first Saturday after April 11** and in stocked trout waters regulated under § 65.12 (relating to regional opening day of trout season) from 12:01 a.m. on **March 1** to 8 a.m. on the **first Saturday after March 28**] **opening day of the regular season for trout**. As used in this subpart, the term "stocked trout waters" means waters that are stocked with adult trout by the Commission. A listing of stocked trout waters is published in the Commission's "Summary of Fishing Regulations and Laws," which is available from the Commission at Post Office Box 67000, Harrisburg, Pennsylvania 17106-7000. The Executive Director or a designee may, from time to time, supplement or modify the list of stocked trout waters, and additions or deletions will be published in the *Pennsylvania Bulletin*.

§ 63.20. Permits for the protection and management of trout [**and salmon**].

(a) *Finding*. The Commission finds under section 2904 of the code (relating to permits for the protection and management of particular fish) that it is necessary for the protection and management of trout [**and salmon**] in the waters of this Commonwealth that persons who fish for trout [**or salmon**] have a permit for that activity.

(b) *Permit required*. It is unlawful for a person required by Chapter 27 of the code (relating to fishing licenses) to procure a fishing license to fish for trout [**or salmon**] unless that person has first procured a valid [**trout/salmon**] **trout** permit or a combination [**trout/salmon**] **trout** permit and Lake Erie permit.

(c) *Exceptions*.

(1) The Commission will issue a [**trout/salmon**] **trout** permit without fee to disabled veterans who possess a free fishing license under section 2707 of the code (relating to disabled veterans).

(2) A person who is exempt from the fishing license requirements of Chapter 27 of the code or who is issued an institutional fishing license under section 2708 of the code (relating to institutional licenses) is exempt from this section.

(3) A person who purchased a senior resident lifetime fishing license and a [**trout/salmon**] **trout** permit or a combination [**trout/salmon**] **trout** permit and Lake Erie permit prior to January 1, 2015, shall be exempt from the requirements of this section.

(4) A [**trout/salmon**] **trout** permit is not required to fish for trout [**or salmon**] on free fishing days designated by the Commission under section 2709(d) of the code (relating to exemptions from license requirements).

(5) A [**trout/salmon**] **trout** permit is not required to fish for trout [**or salmon**] on Class A regulated fishing lakes. A [**trout/salmon**] **trout** permit is not required to fish for trout [**or salmon**] on designated Class B regulated fishing lakes that have the following characteristics:

(i) The lake is a natural pond or impoundment located wholly on private property and constructed and maintained wholly with private funds.

(ii) The lake is operated by a private club or organization.

(iii) The lake is not open for fishing by the general public [,] and fishing is restricted to members only.

(iv) The trout/salmon population of the lake is composed entirely of trout or salmon stocked from private resources and contains no trout or salmon stocked by the Commission, the United States Government or cooperative nurseries recognized by the Commission.

(d) *Fish for trout or salmon*. A person fishes for trout or salmon when one of the following applies:

(1) The person fishes in waters under special trout regulations designated under those sections of Chapter 65 (relating to special fishing regulations) that require a [**trout/salmon**] **trout** permit, wilderness trout streams or their tributaries or Class A wild trout waters or their tributaries.

(2) The person fishes in streams or rivers that are stocked trout waters as defined in § 63.3 (relating to fishing in stocked trout waters) or their tributaries during the period from 12:01 a.m. on [**March 1**] **the third Monday in February** until midnight May 31.

(3) The person takes, kills or possess, while in the act of fishing, a trout or salmon on or in waters of this Commonwealth or boundary waters.

CHAPTER 65. SPECIAL FISHING REGULATIONS**§ 65.5. Catch and release artificial lures only.**

(a) The Executive Director, with the approval of the Commission, may designate waters as catch and release. The designation of waters as catch and release 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 areas designated and posted catch and release except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only constructed of metal, plastic, rubber, or wood or with flies and streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Use or possession of any other lures or substances is prohibited.

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

(3) Open to fishing year-round.

(4) Wading is permitted unless otherwise posted.

(5) Taking of bait fish or fish bait is prohibited.

(6) A current [**trout/salmon**] **trout** 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 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 area.

§ 65.6. Delayed harvest artificial lures only areas.

(a) The Executive Director, with the approval of the Commission, may designate waters as delayed harvest,

artificial lures only areas. The designation of waters as delayed harvest, artificial lures only areas 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 designated and posted delayed harvest, artificial lures only areas except in compliance with the following requirements:

(1) Fishing may be done with artificial lures only constructed of metal, plastic, rubber, or wood or with flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear.

(2) The use or possession of any natural bait, bait fish, fish bait, bait paste and similar substances, fish eggs (natural or molded) or any other edible substance is prohibited.

(3) Minimum size is: 9 inches, caught on, or in possession on, the waters under regulation.

(4) The daily creel limit is: three combined species except during the period after Labor Day and before June 15 when the daily limit shall be zero trout combined species, caught on or in possession on the waters under regulation.

(5) Taking of bait fish or fish bait is prohibited.

(6) A current [trout/salmon] trout 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 delayed harvest artificial lures 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 delayed harvest artificial lures only area.

§ 65.12. Regional opening day of trout season.

[(a)] The Executive Director, with the approval of the Commission, may designate waters in certain regions as part of the regional opening day of trout season. The designation of waters as part of the regional opening day of trout season shall be effective upon publication of a notice of designation in the *Pennsylvania Bulletin*.

[(b) **It is unlawful to fish in waters designated as part of the regional opening day of trout season except in compliance with the following seasons, sizes and creel limits:**

SEASONS	MINIMUM SIZE	DAILY LIMIT
Regular Season: 8 a.m. first Saturday after March 28 to midnight Labor Day	7 inches	5 (combined species) except areas with special regulations (see Chapter 65 (relating to special fishing regulations))
Extended Season: Stocked trout waters and all waters downstream of stocked trout waters 12:01 a.m. day after Labor Day to midnight last day of February of the following year	7 inches	3 (combined species) except Class A wild trout streams where the daily limit is 0, and areas with special regulations (see Chapter 65)

(c) It is unlawful to take, catch, kill, or possess trout except during the seasons specified in this section. It is not a violation of this section if a trout caught out of season from waters where fishing for other species is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(d) It is unlawful to take, catch, kill, or possess trout of less than the minimum size specified in this section. It is not a violation of this section if an undersized trout taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

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

(1) A person may possess any number of lawfully caught trout at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may possess, while transporting trout from the place where caught to his residence, a number of trout equal to no more than two times the daily creel limit for trout. In prosecutions for violations of this section, it shall be a rebuttable presumption

that a person transporting trout from a fishing site caught all of the trout during 1 calendar day.

(3) A trout will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) Any trout caught that is not to be counted in the creel limit shall be immediately released unharmed to the waters from which taken. Except as otherwise provided in §§ 53.24 or 63.40 (relating to tournament and fishing derby permits; and fishing tournaments and fishing derbies), a trout placed on a stringer or confined by any type of container, structure or device or not returned immediately to the water will be considered as part of the daily creel or possession limits. Trout returned to the water shall be handled carefully and be returned unharmed to the waters from which taken.

(5) Trout may be given to another person, but the trout shall be counted in the donor's creel limit and neither donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.]

§ 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 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**] **trout** 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.

§ 65.15. Catch and release all-tackle.

(a) The Executive Director, with the approval of the Commission, may designate waters as catch and release

all-tackle. The designation of waters as catch and release all-tackle 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 catch and release all-tackle except in compliance with the following requirements:

(1) There are no tackle restrictions.

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

(3) Open to fishing year-round; there is no closed season.

(4) A current [**trout/salmon**] **trout** permit is required.

(c) Notwithstanding the requirements of this section, an angler in a boat may possess 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 all-tackle 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 all-tackle area

§ 65.19. Stocked trout waters open to year-round fishing.

(a) The Executive Director, with the approval of the Commission, may designate waters as stocked trout waters open to year-round fishing. The designation of waters as stocked trout waters open to year-round fishing shall be effective upon publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as stocked trout waters open to year-round fishing except in compliance with the following seasons and size and creel limits. It is not a violation of this section if a trout is immediately returned unharmed to the waters from which it is taken.

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
ALL SPECIES OF TROUT AND SALMON (except landlocked Atlantic salmon)	Regular Season: 8 a.m. [first Saturday after April 11 (or first Saturday after March 28 for waters designated as part of the regional opening day of trout season)] of the opening day of the regular season for trout to midnight Labor Day	7 inches	5 (combined species)
	Extended Season: 12:01 a.m. day after Labor Day to midnight [last day of February] the third Monday in February of the following year	7 inches	3 (combined species)
	12:01 [first day of March to first Saturday after April 11 (or first Saturday after March 28 for waters designated as part of the regional opening day of trout season.)] a.m. the third Monday in February to 8 a.m. the opening day of the regular season for trout	NO HARVEST—Catch and immediate release only	

(c) It is unlawful to fish in rivers and streams designated as stocked trout waters open to year-round fishing without a current [**trout/salmon**] **trout** permit. A

[**trout/salmon**] **trout** permit is not required to fish in lakes and ponds that have been designated as stocked trout waters open to year-round fishing unless the person

takes, kills or possesses, while in the act of fishing, a trout or salmon on or in these waters.

§ 65.20. Mentored Youth Fishing Day Program.

(a) The Executive Director may annually designate Mentored Youth Fishing Days. As part of the designation, the Executive Director will identify the species, waters, dates, creel and minimum size limits and other applicable limitations. The designation will be effective upon publication of a notice in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as part of the Mentored Youth Fishing Day Program except in compliance with the following requirements when participating in the Mentored Youth Fishing Day Program:

(1) Anglers shall adhere to the limitations as established by the Executive Director by notice in the *Pennsylvania Bulletin*.

(2) An angler 16 years of age or older shall be accompanied by a youth, less than 16 years of age, who has obtained a mentored youth permit or a voluntary youth fishing license from the Commission.

(3) A youth angler shall obtain a mentored youth permit or a voluntary youth fishing license from the Commission and be accompanied by an angler 16 years of age or older.

(4) A current [**trout/salmon**] **trout** permit is required for an angler 16 years of age or older when participating in a Mentored Youth Fishing Day Program that relates to trout.

(c) Notwithstanding the requirements of this section, an angler in a boat may possess 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 water designated as part of the Mentored Youth Fishing Day Program 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 water designated as part of the Mentored Youth Fishing Day Program.

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

County	Name of Water	Special Regulations
* * * * *		
Centre and Mifflin	Penns Creek, from the confluence of Elk Creek downstream 7 miles to 600 meters downstream of Swift Run	Open to fishing year-round. All tackle types are permitted. From 8 a.m. on the [first Saturday after April 11] opening day of the regular season for trout 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. From the day after Labor Day until 8 a.m. on the [first Saturday after April 11] opening day of the regular season for trout , no trout may be killed or possessed. Inland regulations apply to all other species. This miscellaneous special regulation will remain in effect until further notice.
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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] opening day of the regular season for trout until Labor Day—5 trout per day; day after Labor Day to [first Saturday after April 11] opening day of the regular season for trout 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.
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Luzerne	Harveys Lake	During the period from the [first Saturday after April 11 through midnight last day of] opening day of the regular season for trout through midnight the third Monday in February, the daily creel limit for trout (combined species) is 3, only one of

County	Name of Water	Special Regulations
		which may exceed 18 inches in length. Warmwater/coolwater species, except as provided in this section—Inland regulations apply.
* * * * *		
Somerset, Fayette, Westmoreland and Allegheny	Youghiogheny River from confluence with Casselman River downstream to the confluence with Ramcat Run Youghiogheny River from the pipeline crossing at the confluence with Lick Run downstream to the mouth of the river.	Trout (all species)—no closed season. Daily limit: [First Saturday after April 11] opening day of the regular season for trout until Labor Day—5 trout per day; day after Labor Day to [first Saturday after April 11] opening day of the regular season for trout of the following year—3 trout per day. Inland regulations apply to warmwater/coolwater species.
Warren	Allegheny River—8.75 miles downstream from the outflow of the Allegheny Reservoir to the confluence with Conewago Creek	Trout—minimum size limit—14 inches; daily creel limit—2 trout per day (combined species) from 8 a.m. on the [first Saturday after April 11] opening day of the regular season for trout through midnight Labor Day, except during the period from the day after Labor Day to the [first Saturday after April 11] opening day of the regular season for trout of the following year, when no trout may be killed or had in possession. Other inland seasons, sizes and creel limits apply.
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Washington	Little Chartiers Creek from Canonsburg Lake Dam approximately 1/2 mile downstream to mouth of Chartiers Creek	Fishing is prohibited from 12:01 a.m. [March 1] the third Monday in February to 8 a.m. the [first Saturday after April 11] opening day of the regular season for trout .
Wayne	West Branch Delaware River	Trout: From the Pennsylvania/New York border downstream to the confluence with the East River Branch of the Delaware River: no-harvest artificial lures only season on trout from October 16 until midnight of the Friday before the [first Saturday after April 11] opening day of the regular season for trout . During the no-harvest artificial lures only season: 1. Fishing may be done with artificial lures only, constructed of metal, plastic, rubber or wood, or flies or streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly fishing gear. Use or possession of any other lures or substances is prohibited. 2. The daily creel limit for trout is 0.
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§ 65.26. Extended trout season.

(Editor's Note: The proposed amendments to § 65.26 incorporate the proposed amendments published at 51 Pa.B. 3140 (June 5, 2021).)

(a) *General rule.*—The extended trout season is in effect from the day after Labor Day until the [**last day of**] **third Monday in** February of the following year on stocked trout waters [**and all waters downstream of stocked 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**].

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CHAPTER 67. NURSERY WATERS

§ 67.2. Refuge areas.

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(b) Refuge areas are closed to public fishing except during the period from June 15 until the [**last day of third Monday in February**] of the following year.

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CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

§ 69.12a. Special regulations applicable to Lake Erie tributary streams.

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(c) From 12:01 a.m. on the day after Labor Day, until the [**first Saturday after April 11**] of the opening day of the regular season for trout of the following year, all Lake Erie tributary streams are closed to fishing from 10 p.m. until 5 a.m. on the following day except for Walnut Creek north of Manchester Road Bridge and Elk Creek north of Route 5.

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[Pa.B. Doc. No. 21-1463. Filed for public inspection September 3, 2021, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61, 63, 65 AND 69]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 61, 63, 65 and 69. 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 will simplify regulations pertaining to black bass, while improving their management and optimizing the fishery for this species group.

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2022.

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 §§ 61.1, 61.2 and 69.12 (relating to Commonwealth inland waters; Delaware River, West Branch Delaware River and River Estuary; and seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters) are published under the statutory authority of section 2102(b) (relating to rules and regulations) of the code. The proposed amendments to §§ 63.43 and 65.9 (relating to fishing for bass during spring season; and big bass) are published under the statutory authority of section 2102(a) of the code. The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307(a) (relating to waters limited to specific purposes) of the code.

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

Commission staff have identified an opportunity to simplify regulations pertaining to black bass (that is, largemouth bass, smallmouth bass and spotted bass) while improving upon black bass management and optimizing the fishery for that species group. A modification to black bass regulations pertaining to the start and end of seasons, creel and minimum size limits and uniformity among resources categories (that is, lakes, rivers and streams) would allow anglers to interpret regulations more easily. Amendments to Commonwealth inland waters in § 61.1, big bass in § 65.9, miscellaneous special regulations in § 65.24 and Lake Erie basin regulations in § 69.12 are warranted.

Current Commonwealth inland waters angling regulations require catch and immediate release of black bass from 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11. Black bass seasons defined in Commonwealth inland waters regulations are also incorporated in other special regulations or watershed-specific regulations, or both, requiring changes to multiple regulations specific to the management of black bass throughout the Commonwealth. Additionally, black bass daily creel and minimum size limits are not consistent among lakes, rivers and streams, which can lead to regulatory confusion by anglers.

For these reasons, Commission staff recommend amendments to Commonwealth inland waters regulations specific to black bass. In doing so, amendments to seasons as defined in big bass regulations, miscellaneous special regulations and Lake Erie basin regulations are warranted to establish regulatory consistency. This slight modification to seasons is expected to have minimal impact to both general angling for black bass as well as tournaments. Additionally, aligning black bass daily creel and minimum size limits for waters managed under Commonwealth inland waters regulations eliminates regulatory complexity, while continuing to provide adequate protection to the resource.

The Commission proposes that §§ 61.1, 61.2, 63.43, 65.9, 65.24 and 69.12 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 two 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-320. 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 Youghiogeny Reservoir:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
* * * * *			
AMERICAN EEL	Open year-round	9 inches	25
[BASS—Largemouth and Smallmouth and Spotted Lakes:]	[January 1 to midnight the day before first Saturday after April 11 and November 1 to midnight December 31**]	[15 inches]	[4 (combined species from all habitats)]
	[12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11]	[NO HARVEST—Catch and immediate release only (No Tournaments Permitted)]	
	[12:01 a.m. the first Saturday after June 11 to midnight October 31]	[12 inches]	[6 (combined species)]
BASS—Largemouth and Smallmouth and Spotted [Rivers and Streams*:]	January 1 to midnight the day before the [first Saturday after April 11] second Saturday in April and October 1 to midnight December 31 [**] *	15 inches	4 (combined species)
	12:01 a.m. the [first Saturday after April 11] second Saturday in April to 12:01 a.m. the [first Saturday after June 11] second Saturday in June	NO HARVEST—Catch and immediate release only (No Tournaments Permitted)	
	12:01 a.m. the [first Saturday after June 11] second Saturday in June to midnight September 30	12 inches	6 (combined species)
* * * * *			

[*For purposes of this subsection, power dam pools and recreational dam pools on the Susquehanna River and navigational pools in the Ohio drainage are “rivers.”]

[**] * Note: Stocked trout waters are closed to all fishing from [March 1 to the first Saturday after April 11 unless included in the Regional Opening Day of Trout Season Program (see § 65.12 (relating to regional opening day of trout season)). Waters included in the Regional Opening Day of Trout Season Program are closed to all fishing from March 1 to the first Saturday after March 28] the third Monday in February to the second Saturday in April.

[*]** Note: Unlawful to take, catch or kill American shad, hickory shad and river herring (alewife and blueback herring) in Susquehanna River and its tributaries. See §§ 61.4 and 61.7 (relating to Conowingo Reservoir; and Susquehanna River and tributaries).

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

* * * * *

(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:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
BASS Largemouth Smallmouth	January 1 to midnight the day before the [first Saturday after April 11] second Saturday in April and 12:01 a.m. the [first Saturday after June 11] second Saturday in June to midnight December 31	12 inches	5 (combined species)
	12:01 a.m. the [first Saturday after April 11] second Saturday in April to 12:01 a.m. the [first Saturday after June 11] second Saturday in June	NO HARVEST—Catch and immediate release only	
* * * * *			

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.43. Fishing for bass during spring season.

(a) During the period from 12:01 a.m. on the [**first Saturday after April 11**] **second Saturday in April** until 12:01 a.m. on the [**first Saturday after June 11**] **second Saturday in June**:

* * * * *

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.9. Big bass.

* * * * *

(b) It is unlawful to take, catch, kill or possess a largemouth, smallmouth or spotted bass on or in designated “big bass” waters except in compliance with the following seasons and size and creel limits. It is not a violation of this section if the bass is immediately returned unharmed to the waters from which it is taken.

<i>Seasons</i>	<i>Size (in)</i>	<i>Creel Limit</i>
<i>Lakes:</i> January 1 to midnight the day before the [first Saturday after April 11] second Saturday in April and 12:01 a.m. the [first Saturday after June 11] second Saturday in June to midnight December 31	15	4 (combined species)
12:01 a.m. the [first Saturday after April 11] second Saturday in April to 12:01 a.m. the [first Saturday after June 11] second Saturday in June	NO HARVEST—Catch and immediate release only	
<i>Rivers and Streams:</i> January 1 to midnight the day before the [first Saturday after April 11] second Saturday in April and October 1 to midnight December 31	18	2 (combined species)
12:01 a.m. the [first Saturday after April 11] second Saturday in April to 12:01 a.m. the [first Saturday after June 11] second Saturday in June	NO HARVEST—Catch and immediate release only	
12:01 a.m. the [first Saturday after June 11] second Saturday in June to midnight September 30	15	4 (combined species)

* * * * *

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

County	Name of Water	Special Regulations
* * * * *		
Clarion	Beaver Creek Ponds	<p>Closed to fishing from 12:01 a.m. January 1 to 12:01 a.m. the [first Saturday after June 11] second Saturday in June of each year.</p> <p>Bass—15 inch minimum size limit and a 2 bass daily creel limit for the total project area. Panfish (combined species) 10 fish daily creel limit for the total project area. Other species-inland regulations apply.</p>
* * * * *		
Cumberland, Dauphin, Juniata, Lancaster, Northumberland, Perry, Snyder, York	Susquehanna river (98.0 miles) from the inflatable dam near Sunbury downstream to Holtwood Dam, including all tributaries to a point 1/2 mile upstream from the confluence	<p>Bass (Smallmouth and Largemouth)—No harvest year-round—catch and immediate release only.</p> <p>From 12:01 a.m. the [first Saturday after April 11] second Saturday in April to 12:01 a.m. the [first Saturday after June 11] second Saturday in June—No Bass tournaments.</p> <p>Remainder of the year—Catch-measure—immediate release tournaments only.</p> <p>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.</p>
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	<p>Bass (Smallmouth and Largemouth)—No harvest year-round—catch and immediate release only.</p> <p>From 12:01 a.m. the [first Saturday after April 11] second Saturday in April to 12:01 a.m. the [first Saturday after June 11] second Saturday in June—No Bass tournaments.</p> <p>Remainder of the year—Catch-measure—immediate release tournaments only.</p> <p>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.</p>
* * * * *		

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) Except as otherwise provided in subsections (d) and (e) and this subpart, the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
	* * * * *		
BASS Largemouth Smallmouth	January 1 to [first Saturday after April 11] second Saturday in April and [first Saturday after June 11] second Saturday in June until December 31.	15 inches	4 (combined species)
	[First Saturday after April 11] Second Saturday in April until [first Saturday after June 11] second Saturday in June .*	20 inches	1
	* * * * *		

* It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to fishing tournaments and fishing derbies)) for bass on Lake Erie, Lake Erie tributaries or Presque Isle Bay during the period from the [**first Saturday after 11 until the first Saturday after June 11**] **second Saturday in April until the second Saturday in June**.

* * * * *

[Pa.B. Doc. No. 21-1464. Filed for public inspection September 3, 2021, 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 additions update the harvest requirements relating to all-tackle trophy trout slot limit and artificial lures only trout slot limit regulations.

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 addition of §§ 65.4c and 65.4d (relating to all-tackle trout slot limit; and artificial lures only trout

slot limit) are published under the statutory authority of section 2102(a) 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*

To address landowner and angler feedback, increase the abundance of large wild brown trout in the population, and provide the opportunity to use all tackle types and harvest some trout, a new miscellaneous special regulation for slot limit was added to § 65.24 (relating to miscellaneous special regulations) was established on Penns Creek, Section 03, beginning January 1, 2014. 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.

Penns Creek, Section 03, provided a unique opportunity to evaluate a new special regulation on a productive limestone stream. The Penns Creek trout population was monitored before and after implementation of the slot limit regulation. Results of the monitoring revealed a substantial increase in the electrofishing catch rates of larger brown trout (greater than or equal to 16 inches in length) during the slot limit regulation implementation

period (2014—2019). These results suggest that the slot limit regulation likely played an important role in the increased electrofishing catch of large brown trout in Section 03. In addition to fishery independent monitoring, Commission staff conducted an angler use, harvest and opinion survey to evaluate the social aspects of the regulation change and estimate angler harvest in 2019. Results documented low harvest of trout during the survey and high angler support for continuance of the slot limit regulation. Despite low angler harvest under the current slot limit regulation, this regulation provides the opportunity for anglers to harvest intermediate-sized trout if desired, which was an important social consideration when the regulation was originally implemented.

Given the success of the experimental slot limit regulation program on Penns Creek, Section 03, and potential opportunities to utilize this regulation at other suitable wild trout waters in the future, Commission staff recommend that the Commission establish a new special regulation program to be known as trout slot limit. The trout slot limit program will have two subprograms: all-tackle trout slot limit and artificial lures only trout slot limit. These subprograms will provide the Commission with the ability to select the most appropriate tackle option to achieve biological and social objectives for each water considered for inclusion in the program and provide an opportunity to evaluate the effects of different terminal tackle types.

The Commission proposes that §§ 65.4c and 65.4d be added 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-317. 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

(Editor's Note: The following sections are proposed to be added and are printed in regular type to enhance readability.)

§ 65.4c. All-tackle trout slot limit.

(a) The Executive Director, with the approval of the Commission, may designate waters as all-tackle trout slot limit. The designation of waters as all-tackle trout slot limit shall be effective when the waters are so posted after publication of a notice of such designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted all-tackle trout slot limit areas except in compliance with the following requirements.

- (1) Open to fishing year-round.
- (2) All tackle types are permitted.

(3) From 8 a.m. on the opening day of the regular season for trout through Labor Day, the daily creel limit of trout is two (combined species). Trout must be at least 7 inches but less than 12 inches in length to be killed or possessed.

(4) From the day after Labor Day until 8 a.m. on the opening day of the regular season for trout, no trout may be killed or possessed.

- (5) A current trout permit is required.

(c) This section applies to trout only. Inland regulations apply to all other species.

§ 65.4d. Artificial lures only trout slot limit.

(a) The Executive Director, with the approval of the Commission, may designate waters as artificial lures only trout slot limit. The designation of waters as artificial lures only trout slot limit shall be effective when the waters are so posted after publication of a notice of the designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in designated and posted artificial lures only trout slot limit areas except in compliance with the following requirements.

- (1) Open to fishing year-round.

(2) Fishing may be done with artificial lures only; constructed of metal, plastic, rubber or wood; or with flies and streamers constructed of natural or synthetic materials. Lures may be used with spinning or fly-fishing gear. Use or possession of other lures or substances is prohibited.

(3) From 8 a.m. on the opening day of the regular season for trout through Labor Day, the daily creel limit of trout is two (combined species). Trout must be at least 7 inches but less than 12 inches in length to be killed or possessed.

(4) From the day after Labor Day until 8 a.m. on the opening day of the regular season for trout, no trout may be killed or possessed.

- (5) Taking of baitfish or fishbait is prohibited.
- (6) A current trout 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 artificial lures only trout slot limit 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 artificial lures only trout slot limit area.

[Pa.B. Doc. No. 21-1465. Filed for public inspection September 3, 2021, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Fishing; Sport Fishing and Angling

The Fish and Boat Commission (Commission) proposes to amend Chapter 69 (relating to fishing in Lake Erie and boundary lakes). 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 will simplify regulations pertaining to the Lake Erie basin while improving salmonid management and improving the fishery for that species group.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2022.

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 § 69.12 (relating to seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters) are published under the statutory authority of section 2102(b) (relating to rules and regulations) of the code.

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*

The Commission has identified an opportunity to simplify regulations pertaining to the Lake Erie basin while improving upon salmonid management and optimizing the fishery for that species group. A modification to regulations applied to trout and salmon to align with a proposed amendment to Commonwealth inland waters regulations in § 61.1 (relating to Commonwealth inland waters) pertaining to the start of the trout season would allow anglers to more easily identify when fishing and harvest are permitted. Current regulations prohibit fishing and possession of trout and salmon from 12:01 a.m. on the Friday before the first Saturday after April 11 until 8 a.m. on the first Saturday after April 11. If the proposed amendments to Commonwealth inland waters regulations were to be adopted, it would result in one Statewide opening day of regular season for trout on the first Saturday in April. To better align these regulations to those of the Lake Erie basin, § 69.12 could be amended to prohibit fishing and possession of trout and salmon from 12:01 a.m. on the Friday before the first Saturday in April until 8 a.m. on the opening day of regular season for trout (that is, first Saturday in April).

In addition to regulation simplification and alignment, a modification to the daily creel and minimum size limits for both rainbow trout (steelhead) and lake trout would

potentially enhance angling opportunities for those species. Current daily creel limits allow for the harvest of five fish (only two of which may be lake trout) greater than or equal to 9 inches in total length from 8 a.m. on the first Saturday after April 11 through Labor Day. Lake Erie and its tributaries generate hundreds of thousands of angler trips for steelhead resulting in millions of dollars of economic benefit to local economies around Lake Erie. Lower daily creel and increased minimum size limits would reduce the potential for overharvest and prohibit harvest of intermediate-sized rainbow trout and lake trout while further promoting the trophy component of the fishery.

Lake trout are an important component of the Lake Erie ecosystem and recreational fishery. Through representation on the Lake Erie Committee, the Commission cooperatively manages lake trout with other member jurisdictions to advance restoration and optimize the recreational fishery. A reduction in the daily creel to one fish per day during the open season could potentially improve lake trout rehabilitation efforts by minimizing the number of spawning stock harvested. Additionally, a daily creel limit of one fish per day would align regulations pertaining to lake trout in Commonwealth waters of Lake Erie with New York.

In summary, Commission staff recommend amendments to the Lake Erie basin angling regulations pertaining to salmonids for regulatory consistency and simplicity by aligning the trout and salmon seasons with the proposed amendment to Commonwealth inland waters regulations, and modifying the daily creel and minimum size limits for rainbow trout and lake trout to optimize those fisheries. It should be noted that amending the daily creel limit of rainbow trout from five to three and minimum size limit from 9 inches to 15 inches from 8 a.m. on the opening day of the regular season for trout and salmon through Labor Day will not impact the creel or size limit for brown trout, a popular put-and-take fishery during the months of April and May. Additionally, a reduction to the daily creel limit of lake trout from two to one and increase in the minimum size from 9 inches to 15 inches provides further protection to the population which is consistent with ongoing multijurisdictional rehabilitation efforts in Lake Erie.

The Commission proposes that § 69.12 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-319. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING
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.

* * * * *

(d) It is unlawful to fish in or along any Lake Erie tributary stream from 12:01 a.m. on the Friday before the **[first Saturday after April 11 until 8 a.m. on the first Saturday after April 11] opening day of the regular season for trout until 8 a.m. on the opening day of the regular season for trout.**

(e) It is unlawful to possess trout or salmon in or along any Lake Erie tributary stream from 12:01 a.m. on the Friday before the **[first Saturday after April 11 until 8 a.m. on the first Saturday after April 11] opening day of the regular season for trout until 8 a.m. on the opening day of the regular season for trout.**

(f) Except as otherwise provided in subsections (d) and (e) and this subpart, the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
	* * * * *		
BASS Largemouth Smallmouth	January 1 to first Saturday after April 11 and first Saturday after June 11 until December 31.	15 inches	4 (combined species)
	First Saturday after April 11 until first Saturday after June 11.*	20 inches	1
BROOK and BROWN TROUT [and SALMON]	8 a.m. [first Saturday after April 11] the opening day of the regular season for trout until midnight Labor Day.	9 inches	5 (combined species [only 2 of which may be lake trout]).
	12:01 a.m. the day after Labor Day until 12:01 a.m. on the Friday before the [first Saturday after April 11] opening day of the regular season for trout.	15 inches	3 (combined species [only 2 of which may be lake trout]).
RAINBOW TROUT and SALMON	8 a.m. the opening day of the regular season for trout until 12:01 a.m. the Friday before the opening day of the regular season for trout the following year.	15 inches	3
LAKE TROUT	8 a.m. the opening day of the regular season for trout until 12:01 a.m. the Friday before the opening day of the regular season for trout the following year.	15 inches	1
STURGEON	No open season	ENDANGERED SPECIES	
	* * * * *		

[Pa.B. Doc. No. 21-1466. Filed for public inspection September 3, 2021, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 111]

Boating; Special Regulations Counties

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulation counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment updates the Commission’s regulations pertaining to Blue Marsh Lake, located in Berks County.

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 amendment to § 111.6 (relating to Berks County) is published under the statutory authority of section 5124(a) of the code (relating to particular areas of water).

D. Purpose and Background

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

E. Summary of Proposal

Blue Marsh Lake is a 1,148-acre flood control project managed by the United States Army Corps of Engineers (USACOE) in Berks County. Section 111.6 states that a boat may not tow more than one water-skier (that is, person) on Blue Marsh Lake. This regulation was promulgated shortly after the Blue Marsh Recreation Area was established to address a perceived safety issue relating to boats with multiple towlines. According to definitions contained in § 109.4 (relating to waterskiing, aquaplaning, kiteskiing and similar activities), the term “waterski” is defined as “a device used by a person to be towed through or on water behind a boat. The term includes conventional water skis, aquaplanes, kneeboards, inner tubes, inflatable hot dogs, air mattresses, parasails, kite skis and similar devices.” Some of these devices are designed to carry more than one person.

In the fall of 2019, the USACOE requested a change to § 111.6 citing that it does not serve the intended purpose, causes confusion among boaters and unnecessarily limits recreational boating opportunities. The USACOE recently requested the Boating Advisory Board reconsider their request to amend § 111.6 with the intent to limit the number of devices towed by a boat—rather than the number of persons—to no more than one. The USACOE stated that with the popularity of inflatable towed devices designed to carry more than one person, this amendment will eliminate confusion among the boating public and increase recreational boating opportunities. It is also anticipated that the amendment will result in more effective and efficient law enforcement efforts on the lake. The number of persons being towed on a device is limited by the boat’s persons capacity.

The Commission proposes that § 111.6 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-315. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

**CHAPTER 111. SPECIAL REGULATIONS
COUNTIES**

§ 111.6. Berks County.

(a) *Blue Marsh Lake.*

* * * * *

(3) A boat may not tow more than one [**water-skier**] **water ski device.**

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[Pa.B. Doc. No. 21-1467. Filed for public inspection September 3, 2021, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 131]

**Preliminary Provisions; Replacement Costs for
Wildlife Killed**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its July 24, 2021, meeting to amend § 131.8 (relating to replacement costs for wildlife killed) to increase replacement costs for peregrine falcons from \$200 to \$2,500.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the July 24, 2021, meeting of the Commission. Comments can be sent until September 8, 2021, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

The population of nesting peregrine falcons (*Falco peregrinus*) in this Commonwealth has continued to increase since the Commission's upgrade of the species from endangered to threatened. This action follows the Commission's Peregrine Falcon Management Plan (dated 2013) in which objectives for delisting the species were established. Section 925(i) of the code (relating to jurisdiction and penalties) states that "[i]n addition to the fines and costs imposed for violations pursuant to subsection (b), the costs incurred by the commission for the replacement of the species involved in the violation shall be assessed by the magisterial district judge in such amount as is fixed by regulation of the commission." Upon the peregrine falcon's delisting, replacement costs for this species will be reduced from \$5,000 to a default of \$200. Notwithstanding its efforts to delist the peregrine falcon, the Commission has determined that the species necessitates further protection from unlawful takings in the form of increased replacement costs upon its effective delisting date. The Commission is proposing to amend § 131.8 to increase replacement costs for peregrine falcons from \$200 to \$2,500.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 131.8 are proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will amend § 131.8 to increase replacement costs for Peregrine Falcons from \$200 to \$2,500.

3. *Persons Affected*

Persons interested or affected by the classification status of the peregrine falcon (*Falco peregrinus*) will be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

This proposed rulemaking should not result in any additional cost or paperwork.

5. *Effective Date*

This proposed rulemaking will be effective upon final form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding this proposed rulemaking, contact Jason L. DeCoskey, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-475. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 131. PRELIMINARY PROVISIONS

§ 131.8. Replacement costs for wildlife killed.

Under section 925(i) of the act (relating to jurisdiction and penalties), in addition to any fines and costs imposed for violations of the act and this title, any person who unlawfully kills or possesses wildlife may be assessed replacement costs according to the following minimum cost scale:

(1) *General class.*

(i) Each threatened or endangered bird or mammal, \$5,000.

(ii) Each bald eagle, golden eagle [**or**], osprey **or peregrine falcon**, \$2,500.

(iii) Each elk or black bear, \$1,500.

(iv) Each white-tailed deer, \$800.

(v) Each bobcat or otter, \$500.

(vi) Each wild turkey or beaver, \$300.

(vii) Any other wildlife, \$200.

(2) *Trophy class.*

(i) Each elk with a Boone and Crockett green score of 200 [**points**] **inches** or more, \$5,000.

(ii) Each white-tailed deer with a Boone and Crockett green score of 115 [**points**] **inches** or more, \$5,000.

(iii) Each black bear with a field dressed weight of 350 pounds or more, \$5,000.

[Pa.B. Doc. No. 21-1468. Filed for public inspection 2314-55, 2021, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 133]

Wildlife Classification; Birds

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its July 24, 2021, meeting to amend § 133.21 (relating to classification of birds) to add the northern goshawk (*Accipiter gentilis*) to the Commonwealth's list of endangered birds and also to delete the peregrine falcon (*Falco peregrinus*) from the Commonwealth's list of threatened birds.

This proposed rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

The authority for this proposed rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposed rulemaking was made public at the July 24, 2021, meeting of the Commission. Comments can be sent until September 8, 2021, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

The Commission is proposing two changes to the Commonwealth's lists of threatened and endangered birds based on current monitoring data. First, the Commission

is proposing to amend § 133.21 to add the northern goshawk (*Accipiter gentilis*) to the Commonwealth's list of endangered birds. A large secretive raptor of mature, mixed forests, the northern goshawk is found in the northern tier and high elevations across this Commonwealth and has experienced both range contraction and breeding population decline over the past 20 years. Primary threats to goshawks include forest fragmentation and degradation, nest site disturbance, disease and predation. This Commonwealth lies at the southern limits of the range of the Northeastern population of northern goshawk, which makes this population more susceptible to the previous effects. Several recent agency-supported efforts to better understand this species have documented a dramatic decline in the State's population. The agency's advisory Ornithological Technical Committee has recommended a change to endangered status. This proposed change would tailor protections for the species, including, but not limited to, limiting or delaying certain activities within known breeding northern goshawk habitat during courtship and nesting seasons.

Second, the Commission is also proposing to amend § 133.21 to delete the peregrine falcon (*Falco peregrinus*) from the Commonwealth's list of threatened birds. This Commonwealth's population of nesting peregrine falcons has continued to increase since the Commission's upgrade of the species from endangered to threatened in 2019, and the objectives established in the Commission's 2013—2022 Peregrine Falcon Management Plan have been achieved. This current status revision comes after more than 40 years of conservation recovery action in this Commonwealth and Nationally, in which the Commission has taken an active role. This proposed status change accomplishes a significant victory for the Commission as the third high-profile raptor recovery, following bald eagle and osprey and demonstrating that an endangered or threatened species listing is not a permanent designation, and recovery is an achievable goal.

Section 322(c)(8) of the code (relating to powers and duties of commission) specifically empowers the Commission to "Add to or change the classification of any wild bird or wild animal." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 133.21 are proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will amend § 133.21 to add the northern goshawk (*Accipiter gentilis*) to the Commonwealth's list of endangered birds and also to delete the peregrine falcon (*Falco peregrinus*) from the Commonwealth's list of threatened birds.

3. *Persons Affected*

Persons interested or affected by the classification status of the northern goshawk (*Accipiter gentilis*) or the peregrine falcon (*Falco peregrinus*) will be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

This proposed rulemaking should not result in any additional cost or paperwork.

5. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

6. *Contact Person*

For further information regarding this proposed rulemaking, contact Jason L. DeCoskey, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: 48-473. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 133. WILDLIFE CLASSIFICATION

Subchapter B. BIRDS

§ 133.21. Classification of birds.

The following birds are classified:

(1) *Endangered.*

- (i) King Rail (*Rallus elegans*)
- (ii) Short-eared Owl (*Asio flammeus*)
- (iii) Black Tern (*Chlidonias niger*)
- (iv) Least Bittern (*Ixobrychus exilis*)
- (v) Piping Plover (*Charadrius melodus*)
- (vi) Loggerhead Shrike (*Lanius ludovicianus*)
- (vii) American Bittern (*Botaurus lentiginosus*)
- (viii) Great Egret (*Ardea alba*)
- (ix) Yellow-crowned Night Heron (*Nycticorax violaceus*)
- (x) Common Tern (*Sterna hirundo*)
- (xi) Blackpoll Warbler (*Setophaga striata*)
- (xii) Black-crowned Night-Heron (*Nycticorax nycticorax*)
- (xiii) Dickcissel (*Spiza americana*)
- (xiv) Sedge Wren (*Cistothorus platensis*)
- (xv) Yellow-bellied Flycatcher (*Empidonax flavi-ventris*)
- (xvi) Upland Sandpiper (*Batramia longicauda*)
- (xvii) Northern Goshawk (*Accipiter gentilis*)**

(2) *Threatened.*

- (i) Northern Harrier (*Circus cyaneus*)
- (ii) Long-eared Owl (*Asio otus*)
- (iii) [**Peregrine Falcon (*Falco peregrinus anatum*)**] (**Reserved.**)
- (iv) Red Knot (*Calidris canutus rufa*)

[Pa.B. Doc. No. 21-1469. Filed for public inspection September 3, 2021, 9:00 a.m.]