

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 63 (relating to general fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments update the Commission's regulations pertaining to authorized devices for ice fishing use.

A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The amendments to §§ 63.6 and 63.10 (relating to authorized devices for game fish, baitfish and fishbait; and ice fishing) are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

D. Purpose and Background

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

E. Summary of Changes

Over the past two ice fishing seasons, anglers have asked the Commission whether devices such as the JawJacker, Automatic Fisherman, Easy Set Hooksetter, Sure Shot Hooksetter and Bro Craft Ice Fishing Tip-up are legal devices for use upon Commonwealth waters. These devices consist of a rod holder which allows anglers to put a bend in the fishing rod and pre-load it with the aid of a triggering device. When a fish takes the lure or bait, tension on the fishing line causes the trigger mechanism to release the rod which, being pre-loaded, automatically sets the hook without additional assistance by the angler. The angler is then free to fight the fish with a normal fishing rod and reel. In addition to commercially made devices, there are many do-it-yourself versions of these devices which can be found online and fabricated at home. As the hookset is rapid, fish are typically hooked in the lip or jaw and not deeply, thereby improving fish survival if intended for release.

Current interpretation of "immediate control" under § 63.6 suggests that the angler must set the hook and that no mechanical device could be substituted. This interpretation has carried over to other regulations, unless specifically mentioned in those regulations. Thus, the regulations found in § 63.10 also make it unlawful to utilize such mechanical devices to set the hook.

Staff from the Bureaus of Law Enforcement and Fisheries have conferred and support a clarification of regulations which would permit these ice fishing hook setting devices to be legally used.

The Commission therefore amends §§ 63.6 and 63.10 to read as set forth in the proposed rulemaking published at 51 Pa.B. 3470 (June 26, 2021).

F. Paperwork

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

G. Fiscal Impact

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

H. Public Comments

A notice of proposed rulemaking was published at 51 Pa.B. 3470. The Commission received one public comment in support of the proposal.

Findings

The Commission finds that:

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

(2) A public comment period was provided, and one public comment was received in support of the proposal.

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

Order

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

(A) The regulations of the Commission, 58 Pa. Code Chapter 63, are amended in §§ 63.6 and 63.10 to read as set forth at 51 Pa.B. 3470.

(B) The Executive Director will submit this order and 51 Pa.B. 3470 to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 51 Pa.B. 3470 and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-314 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 21-1568. Filed for public inspection September 17, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The

Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments update the harvest requirements relating to all-tackle trophy trout and trophy trout artificial lures only regulations.

A. Effective Date

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

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The amendments to §§ 65.4a and 65.7 (relating to all-tackle trophy trout; and trophy trout artificial lures only) are published under the statutory authority of section 2102(a) of the code (relating to rules and regulations). Additionally, amendments to these sections are published under the statutory authority of section 506 of The Administrative Code of 1929 (71 P.S. § 186).

D. Purpose and Background

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

E. Summary of Changes

Per Issue 15 detailed in the *Strategic Plan for the Management of Trout Fisheries in Pennsylvania 2020—2024*, Commission staff evaluated the all-tackle trophy trout and trophy trout artificial lures only programs to determine if refinements were needed. Currently, both regulations allow for the harvest of two trout, per day, greater than or equal to 14 inches in length, from opening day of trout season through Labor Day, with catch-and-release angling for the remainder of the year. Trophy trout regulations are applied to some wild trout and fingerling-stocked waters and were established decades ago when a 14-inch trout was substantially larger than an average-sized hatchery fish, and perhaps was considered a “trophy” at that time. These regulations provide inadequate protection to the largest trout in the population, as harvest of trout greater than or equal to 14 inches in length is permitted in streams managed with these regulations. Given that a 14-inch trout no longer constitutes a “trophy” fish for most anglers, and these regulations focus harvest on the largest fish in the population which are most desired by anglers and are biologically important to maintaining in the population, the Commission proposes an adjustment to the minimum size and daily creel limit that will allow anglers to harvest a large trout if they so choose, but also provides increased protection to a majority of the larger trout in streams managed with trophy trout regulations.

The Commission recommends amending the all-tackle trophy trout and trophy trout artificial lures only regulations to allow the harvest of one trout per day, greater than or equal to 18 inches in length from opening day of trout season through Labor Day, with catch-and-release

angling for the remainder of the year. This size and creel limit were thoroughly researched by Commission staff through analysis of Commission data, review of trout regulations in other states, and discussions among fisheries managers in this Commonwealth and elsewhere. The proposed changes received strong support during previous wild trout workgroups, were supported by the results of a survey conducted at the 2017 Wild Trout Summit, and are supported biologically through Commission data. Implementation of a size restriction above 18 inches would essentially equate to catch-and-release regulations based on the size distribution of fish in these streams. A total of 11 waters are currently included in the trophy trout regulation program and most are destination waters that receive high angler use from resident and non-resident anglers.

Following the comment period, the Commission decided to simplify the text of § 65.4a(b)(4) and make it easier for anglers to remember by deleting the reference to a Saturday after a calendar date. The Commission amended § 65.4a(b)(4) in this final-form rulemaking by deleting “first Saturday after April 11” and replacing it with “opening day of the regular season for trout.” At the date of this publication, the opening day of the regular season for trout is the first Saturday after April 11. This amendment does not enlarge the original purpose of this final-form rulemaking.

The Commission therefore amends §§ 65.4a and 65.7 to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

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

H. Public Comments

A notice of proposed rulemaking was published at 51 Pa.B. 1822 (April 3, 2021). The Commission received a total of 13 public comments regarding the proposal: 10 comments support the proposal, 1 comment opposes the proposal and 2 comments did not pertain to the proposal.

Findings

The Commission finds that:

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

(2) A public comment period was provided, and a total of 13 comments were received: 10 comments supported the proposal, 1 comment opposed the proposal and 2 comments did not pertain to the proposal.

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

Order

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

(A) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending §§ 65.4a and 65.7 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(B) The Executive Director will submit this order and Annex A to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on January 1, 2022.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-311 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.4a. All-tackle trophy trout.

* * * * *

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

- (1) Open to fishing year-round.
(2) There are no tackle restrictions.
(3) Minimum size is 18 inches, caught on, or in possession on, the waters under regulation.
(4) The daily creel limit is one trout except for the period from the day after Labor Day to 8 a.m. of the opening day of the regular season for trout of the following year, when trout may not be killed or had in possession.
(5) A current trout permit is required.

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§ 65.7. Trophy trout artificial lures only.

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(b) It is unlawful to fish in areas designated and posted trophy trout artificial lures only 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. Use or possession of other lures or substances is prohibited.
(2) Open to fishing year-round.
(3) The minimum size is 18 inches, caught on or in possession on the waters under regulation.
(4) The daily creel limit is one trout except during the period from the day after Labor Day to 8 a.m. of the opening day of the regular season for trout of the following year, when no trout may be killed or had in possession on the waters under regulation.

- (5) Taking of baitfish or fishbait is prohibited.
(6) A current trout permit is required.

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[Pa.B. Doc. No. 21-1569. Filed for public inspection September 17, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments will improve trout stream angling opportunities and experiences for anglers while providing additional protection to wild trout during the extended season.

A. Effective Date

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

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fishandboat.com.

C. Statutory Authority

The amendments to § 65.26 (relating to extended trout season) are published under the statutory authority of sections 2102(b) and 2307(a) of the code (relating to rules and regulations; and waters limited to specific purposes).

D. Purpose and Background

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

E. Summary of Changes

In the Commission's Strategic Plan for the Management of Trout Fisheries in Pennsylvania 2020—2024, Commission staff identified the stocked trout waters (STW) program as one of the Commission's most popular programs. As such, the Commission must work to improve stocked trout stream angling opportunities and experiences to best meet the preferences of anglers. Most stocked trout streams are not stocked throughout their entire length and many of these streams also have sections that are managed for wild trout. Adding the section limits for stocked trout streams to the Commission's Fishing Summary/Boating Handbook (Handbook) will: 1) clearly identify where stocking occurs to increase angler participation, especially for anglers unfamiliar with a stream; 2) provide increased protection to the stream sections managed for wild trout during the extended season; 3) increase angling opportunities for wild trout in sections that are open to year-round fishing; 4) increase angling opportunities downstream of STW sections; and 5) simplify regulations.

Section 63.3 (relating to fishing in stocked trout waters) states that waters stocked with adult trout by the

Commission must be published in the Handbook. However, most STWs listed in the Handbook do not detail the specific stream section that is stocked, but rather list only the stream name. This lack of detail provides inadequate information to anglers fishing these waters. Additionally, STW limits are defined on the Commission's web site and the FishBoatPA mobile application. Defining the limits in the Handbook would provide consistent STW information for anglers who use various sources to identify where to fish for stocked trout.

In addition to defining the stocked stream section limits in the Handbook, an amendment to § 65.26 is necessary to improve trout stream angling opportunities and experiences to best meet the preferences of anglers while providing additional protection to wild trout during the extended season. An amendment to the extended trout season regulation would provide increased protection and additional angling opportunities in stream sections managed for wild trout that are downstream from STWs. Currently, STWs and all waters downstream from STWs have a creel limit of three trout per day from the day after Labor Day until the last day of February, and are closed to fishing from March 1st until 8 a.m. on the opening day of trout season. By amending the extended trout season regulation to exclude all waters downstream of a STW, thousands of additional stream miles would be opened to fishing on a year-round basis during the current closed season and harvest of trout would be prohibited during the extended season downstream from STWs.

The Commission therefore amends § 65.26 to read as set forth in the proposed rulemaking published at 51 Pa.B. 3140 (June 5, 2021).

F. Paperwork

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

G. Fiscal Impact

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

H. Public Comments

A notice of proposed rulemaking was published at 51 Pa.B. 3140. The Commission received a total of three

public comments regarding the proposal: two support the proposal and one opposes the proposal.

Findings

The Commission finds that:

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

(2) A public comment period was provided, and a total of three comments were received: two supported the proposal and one opposed the proposal.

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

Order

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

(A) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended in § 65.26 to read as set forth at 51 Pa.B. 3140.

(B) The Executive Director will submit this order and 51 Pa.B. 3140 to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 51 Pa.B. 3140 and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on January 1, 2022.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-313 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-1570. Filed for public inspection September 17, 2021, 9:00 a.m.]
