

RULES AND REGULATIONS

Title 4—ADMINISTRATION

OFFICE OF ADMINISTRATION

PART XV. OFFICE OF ADMINISTRATION

[4 PA. CODE CHS. 602 AND 607]

Civil Service Reform

On March 16, 2019, the Office of Administration (OA), under the statutory authority of 71 Pa.C.S. §§ 2101—3304 (relating to civil service reform) (Civil Service Reform Act), added under the act of June 28, 2018, (P.L. 460, No. 71) published temporary regulations implementing the Civil Service Reform Act. For the sake of consistency, and to take into account the need for changes that have arisen since implementing the Civil Service Reform Act, the OA finds it necessary to amend the temporary regulations. Accordingly, the OA is publishing amended temporary regulations in Chapters 602 and 607 (relating to selection of employees for entrance to, or promotion in, the classified service; and notice and hearings), to read as set forth in Annex A.

These amended temporary regulations are promulgated under section 2203(b) of the Civil Service Reform Act, (71 Pa.C.S. § 2203(b) (relating to regulations)), which authorizes the OA to promulgate temporary regulations to facilitate prompt implementation of the Civil Service Reform Act. Temporary regulations adopted under this authority are not subject to sections 201—205 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201—1205) known as the Commonwealth Documents Law; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732-204(b)); or the requirements of the Regulatory Review Act (71 P.S. §§ 745.1—745.15).

The amendments clarify § 602.1(b) (relating to application requirements) to indicate information that an applicant should include on an application for employment and to advise applicants that the information on an applicant's application may be subject to audit by the OA. The amendments add the terms "gender" or "similar factors" to § 602.1(c)(2) and (3) to allow the OA to consider bona fide occupational qualifications where appropriate and necessary. Section 602.10 (relating to administration and scoring of examinations) is amended to indicate the process that will take place when an applicant fails to appear for an in-person examination. Section 602.19 (relating to review of eligibility or examination results) is amended to clarify the procedure for an applicant to request reconsideration of an examination score or eligibility determination. In addition, the amendment in § 607.4 (relating to signatory authority) indicates the persons in the appointing authority who have authority to sign a personnel action. Also, § 607.6 (relating to hearings before the Office of Administration) is amended to remove the requirement that the OA post all hearing notices on its web site in advance of a hearing.

These amended temporary regulations will take effect 30 days after publication in the *Pennsylvania Bulletin* and will expire on March 16, 2022.

For further information on these amended temporary regulations, contact Michael Sullivan, Director, Office of Administration, Bureau of Talent Acquisition, 506 Fi-

nance Building, 613 North Street, Harrisburg, PA 17120, (717) 710-2107.

MICHAEL NEWSOME,
Secretary

Fiscal Note: Fiscal Note 99-11 remains valid for the adoption of these subject regulations.

Annex A

TITLE 4. ADMINISTRATION

PART XV. OFFICE OF ADMINISTRATION

Subpart A. CIVIL SERVICE REFORM—TEMPORARY REGULATIONS

CHAPTER 602. SELECTION OF EMPLOYEES FOR ENTRANCE TO, OR PROMOTION IN, THE CLASSIFIED SERVICE

Subchapter A. EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION

§ 602.1. Application requirements.

* * * * *

(b) *Evidence of merit and fitness.*

(1) An applicant shall include on their application all information relevant for determining whether the applicant possesses the minimum qualifications for employment in the relevant job classification and, where applicable, the selective criteria required for appointment or promotion to the specific position to which the applicant applied.

(2) The Office of Administration may require an applicant to supply certificates and other appropriate documents as may be relevant in assessing the applicant's fitness and qualifications for appointment or promotion.

(3) The job specification shall be the primary basis and source of authority for the evaluation of the minimum qualifications of applicants for examinations.

(4) Information included on an applicant's application may be subject to audit by the Office of Administration, including audit after the applicant's appointment or promotion. Audits performed under this subsection are separate and distinct from any verification or background check performed by an appointing authority or human resources staff supporting an appointing authority. Where the Office of Administration cannot confirm information included on an applicant's application, the applicant may be deemed ineligible for appointment or promotion to the relevant position or otherwise removed from the position.

(c) *Limitations on inquiry.* Limitations shall be as follows:

* * * * *

(2) The Office of Administration may make inquiries of an applicant's age, race, national origin, gender or similar factors as is necessary to comply with Federal and State laws and regulations and this subpart.

(3) The Office of Administration may make inquiries of an applicant's age, race, national origin, gender or similar factors as is necessary to conduct research required to validate selection procedures or to otherwise comply with Federal and State laws and regulations on equal opportunity. Applicants shall be informed that responses to these questions are not mandatory.

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Subchapter C. ADMINISTRATION OF EXAMINATIONS

§ 602.10. Administration and scoring of examinations.

(a) *Notice of admittance to examination.* An applicant will be notified of admittance or non-admittance to an examination.

(1) *Failure to appear for in-person examination.* An applicant, who fails to appear for an in-person examination due to an act or omission of the Office of Administration or another appropriate reason, as determined by the Office of Administration, shall be given a delayed in-person examination in place of the one for which the applicant failed to appear. If an applicant's failure to appear for an in-person examination was not caused by an act or omission of the Office of Administration or another appropriate reason, as determined by the Office of Administration, the applicant shall be prohibited from taking any in-person examinations for a period of 6 months from the scheduled date of the in-person examination. Repeated failures to appear for an in-person examination on the part of the applicant may result in the applicant being prohibited from taking any in-person examinations for a period of time determined by the Office of Administration, but not to exceed 2 years.

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Subchapter E. RATINGS OF COMPETITORS

§ 602.19. Reconsideration of examination score or eligibility determination.

An applicant may request the Office of Administration reconsider the applicant's examination score, or an eligibility determination finding that the applicant lacks the minimum qualifications or selective criteria required for employment in a job classification or position, by submitting a written request for reconsideration to the Office of Administration within 5 business days of the date that the notice of examination score or eligibility determination was sent to the applicant by the Office of Administration. The written request for reconsideration shall state the grounds for the request, specifically explaining why the applicant's examination score is incorrect based on the examination answers provided by the applicant, or why the applicant's eligibility determination was incorrect based on the information provided by the applicant on their application. The Office of Administration will review the applicant's examination or application and provide the applicant with a further explanation or revised result.

(1) Appointing authorities may continue the hiring process while an applicant's request for reconsideration is pending review by the Office of Administration.

(i) Where the Office of Administration determines that, due to an administrative error, an applicant received an incorrect examination score, the Office of Administration will revise the applicant's examination score and instruct the appointing authority to consider the applicant for appointment or promotion to the vacancy in accordance with the act and this subpart.

(ii) Where the Office of Administration determines that, due to an administrative error, an applicant was improperly determined to lack the minimum qualifications or selective criteria required for employment in a job classification or position, the Office of Administration will score the applicant's examination and, if the applicant obtains a passing examination score, certify the applicant's name to the appropriate eligible list or other-

wise refer the applicant's name to the appointing authority with instructions that the appointing authority must consider the applicant for appointment or promotion to the vacancy in accordance with the act and this subpart.

CHAPTER 607. NOTICE AND HEARINGS

Subchapter A. NOTICE

§ 607.4. Signatory authority.

(a) *General.* A notice of personnel action shall be signed by the head of the appointing authority or an authorized designee thereof.

(b) *Authorized designee.* An authorized designee of the head of an appointing authority includes a deputy secretary, a bureau director, an office director, a superintendent, a deputy superintendent, or an equivalent position employed by the appointing authority; a human resources director or an equivalent position supporting the appointing authority; or an individual who is delegated signatory authority on behalf of the head of the appointing authority in the manner prescribed by the Office of Administration.

(1) *Performance evaluations.* For purposes of performance evaluations, an employee's immediate supervisor shall be deemed the authorized designee of the head of the appointing authority without the need for delegation of signatory authority.

(c) *No further delegation.* An authorized designee of the head of an appointing authority may not further delegate signatory authority.

Subchapter B. PRACTICE AND PROCEEDINGS BEFORE THE OFFICE OF ADMINISTRATION

§ 607.6. Hearings before the Office of Administration.

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(e) *Notice of hearing.* The Office of Administration shall provide advance notice of a scheduled hearing to interested individuals and appointing authorities. The notice will contain a statement of the matters to be addressed at the hearing, as well as specific instructions regarding the date, time and place of hearing.

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[Pa.B. Doc. No. 21-106. Filed for public inspection January 22, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

General Provisions; Administrative Provisions

The Fish and Boat Commission (Commission) amends Chapter 51 (relating to administrative provisions). 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 concerning royalty rates for sand and gravel permits.

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

D. Purpose and Background

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

E. Summary of Changes

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

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

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

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

The Commission therefore amends § 51.92 to read as set forth in the proposed rulemaking published at 50 Pa.B. 3894 (August 1, 2020).

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 50 Pa.B. 3894. The Commission did not receive any public comments regarding 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 no comments were received.

(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 51, are amended by amending § 51.92 to read as set forth at 50 Pa.B. 3894.

(B) The Executive Director will submit this order and 50 Pa.B. 3894 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 50 Pa.B. 3894 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-298 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-107. Filed for public inspection January 22, 2021, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

General Provisions; Administrative Provisions

The Fish and Boat Commission (Commission) amends Chapter 51 (relating to administrative provisions). 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 for display of permits.

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 §§ 51.123 and 51.127 (relating to display of permits; and fishing license and permits) are published under the statutory authority of section 2907.3 of the code (relating to fishing guide and charter boat permits).

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

As the Commission continues to modernize its business practices, several permit application procedures have been evaluated. An internal review of the Charter Boat/Fishing Guide permit application process revealed that the customer and the Commission would benefit greatly by handling the permitting process online.

Currently, to secure or purchase a permit, a written application, payment and numerous other supporting documents must be provided to the Commission for review, approval and processing. Once received by the Commission, it generally takes about 30 days to issue a permit, which is then mailed to the permittee.

The proposed plan moving forward is to allow application for and issuance of the permit online, exclusively through the Outdoor Shop. Waterways Conservations Officers would verify applicant provided information during standard field checks. As part of this transition, the requirement to display a guide sticker on the boat would be removed. Permits would be fulfilled at the point of purchase. The 30-day wait time for a permit and the time and expense associated with preparing a paper application would be eliminated. Through the automation process, the Commission would substantially lower the cost to review and issue a permit and would eliminate the cost of producing and mailing permits, identification decals, patches and other informational materials.

An additional change to § 51.127 would require an individual guiding on Commonwealth waters to have Commission issued fishing licenses and permits. Under the current language, a loophole was created that allows some nonresidents to guide on Commonwealth waters utilizing their out-of-State license with a Pennsylvania nonresident guide permit.

The Commission therefore amends §§ 51.123 and 51.127 to read as set forth in the proposed rulemaking published at 50 Pa.B. 5269 (September 26, 2020).

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 50 Pa.B. 5269. The Commission did not receive any public comments regarding 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 no comments were received.

(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 51, are amended by amending §§ 51.123 and 51.127 to read as set forth at 50 Pa.B. 5269.

(B) The Executive Director will submit this order and 50 Pa.B. 5269 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 50 Pa.B. 5269 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-302 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 21-108. Filed for public inspection January 22, 2021, 9:00 a.m.]

Title 58—RECREATION**FISH AND BOAT COMMISSION****[58 PA. CODE CH. 61]****Fishing; Seasons, Sizes and Creel Limits**

The Fish and Boat Commission (Commission) amends Chapter 61 (relating to seasons, sizes and creel limits). 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 concerning Striped Bass fishing in the Delaware River and Estuary.

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 § 61.2 (relating to Delaware River, West Branch Delaware River and River Estuary) 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*

The Atlantic States Marine Fisheries Commission's (ASMFC) management plan for Striped Bass calls for management actions when the coast-wide spawning stock biomass (SSB) or fishing mortality rates reach thresholds set within the management plan. The SSB threshold is 201 million pounds and the current SSB is 151 million pounds. At the current fishing mortality rates, there is concern that the SSB will fall further below the threshold. Also, because catch and release practices contribute substantially to overall fishing mortality, states are also required to implement mandatory circle hook requirements when fishing with bait to reduce release mortality in recreational Striped Bass fisheries. The ASFMC Striped Bass Management Board, which includes the Commonwealth as a member, has directed all coastal states to reduce fishing mortality rates by 18% beginning in 2020 and require circle hooks by 2021. This Commonwealth is taking proactive measures to implement circle hook requirements beginning in 2020 to inform anglers and facilitate compliance with this important conservation measure ahead of the ASMFC mandate for implementation beginning in 2021. The amendments to § 61.2 are designed to meet this objective.

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

The Commission therefore amends § 61.2 to read as set forth in the proposed rulemaking published at 50 Pa.B. 3895 (August 1, 2020).

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 50 Pa.B. 3895. The Commission received a total of two public comments regarding the proposal: one supports the proposal and one comment does 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 two comments were received: one supports the proposal and one comment does 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 61, are amended by amending § 61.2 to read as set forth at 50 Pa.B. 3895.

(B) The Executive Director will submit this order and 50 Pa.B. 3895 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 50 Pa.B. 3895 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-299 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-109. Filed for public inspection January 22, 2021, 9:00 a.m.]

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 for the sale and purchase of fish.

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 § 63.19(d) (relating to sale and purchase of fish) are published under the statutory authority of section 2102(c) 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

The Commission regulates both commercial and private fish cleaning stations under § 63.15a (relating to officially-recognized fish cleaning stations). This regulation allows anglers in certain circumstances to clean fish and dispose of the remains without transporting the intact catch to their home. This is important for many anglers, especially those on extended trips or visiting specific waters such as Lake Erie. Official cleaning stations also assist anglers in complying with regulations which prevent disposing of fish parts into Commonwealth waters. Fish processed at an official cleaning station allow anglers to be exempt from regulations requiring a fish to remain intact until reaching the place of consumption so it can be identified and measured for compliance with seasons, sizes and creel limits.

As technologies for cleaning stations change, various methods of carcass disposal are utilized. In several states, fish cleaning byproducts may be sold to other entities for further beneficial use, such as fertilizer in agriculture. In this Commonwealth, cleaning stations are forced to grind the carcasses and place the byproduct into wastewater treatment or landfills.

To allow fish cleaning stations to provide a better service to Commonwealth anglers and facilitate better use of fish cleaning byproducts, the Commission amends § 63.19(d) of its regulations to read as set forth in the proposed rulemaking published at 50 Pa.B. 5270 (September 26, 2020).

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 50 Pa.B. 5270. The Commission did not receive any public comments regarding 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 no comments were received.

(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 by amending § 63.19(d) to read as set forth at 50 Pa.B. 5270.

(B) The Executive Director will submit this order and 50 Pa.B. 5270 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 50 Pa.B. 5270 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-301 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-110. Filed for public inspection January 22, 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 amendment adds Bald Eagle Creek to the Commission's list of waters under miscellaneous special regulations.

A. Effective Date

This final-form rulemaking will go into effect January 1, 2021.

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 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).

D. Purpose and Background

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

E. Summary of Changes

Bald Eagle Creek is a 52.25-mile long stream that originates near the Borough of Port Matilda and flows northeast to its confluence with the West Branch Susquehanna River near the City of Lock Haven. The stream is currently managed as six stream sections for fisheries management purposes. Sections 02, 03 and 04, which total 28.5 miles in length, are currently included in the Stocked Trout Waters Program.

To provide new and diverse angling opportunities for stocked trout, Commission staff identified a portion of Bald Eagle Creek, Section 03, to implement an experimental miscellaneous special regulation designed to enhance stocked trout management. This regulation will be identical to § 65.6 (relating to delayed harvest artificial lures only areas); however, all tackle types will be permitted. As such, the regulation allows for year-round angling with all tackle types and harvest of up to three trout per day at least 9 inches in length from June 15 through Labor Day, with no harvest permitted the remainder of the year. The regulation is designed to provide an extended period of catch and release angling with all tackle types for stocked trout; then, as stream conditions become less favorable for trout survival due to decreased flow and elevated water temperatures, harvest is permitted under a reduced creel limit. The objectives are to reduce fishing mortality during the catch and release period, maintain high trout population densities to provide for high angler catch rates, recycle stocked trout to optimize their recreational benefit, provide high-quality angling opportunity for stocked trout in the absence of tackle restrictions and evaluate the use of bait in a delayed harvest regulatory setting.

An 0.86-mile long section of stream located in the vicinity of Julian at the Soaring Eagle Wetland, which is owned and maintained by the Wildlife for Everyone Foundation (Foundation), provides the ideal location to implement an experimental regulation as the Foundation plans to construct an ADA-compliant boardwalk, fishing platform and other amenities that make this reach of stream accessible to all anglers. Additionally, the recent habitat improvement projects enhanced instream habitat to provide suitable conditions to retain stocked trout in this reach throughout the spring and early summer.

The experimental regulation section will also be included in the Keystone Select Stocked Trout Waters Program (Program). In 2016, the Commission launched the Program with eight stream sections. Due to its extreme popularity among trout anglers, the Program was expanded to include 23 stream sections. Under the Program, large trout, 14 inches to 20 inches in length, are stocked at a rate up to 250 trout per mile, which is comparable to the abundance of similar-sized fish residing in this Commonwealth's best wild trout waters. By including this section of Bald Eagle Creek in the Program, it will allow Commission staff to compare angler use, catch and preferences to other waters in the Program that are managed with the traditional artificial lures only restrictions.

The Commission therefore amends § 65.24 to read as set forth in the proposed rulemaking published at 50 Pa.B. 4648 (September 12, 2020).

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 50 Pa.B. 4648. The Commission received a total of two public comments regarding the proposal and both comments support 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 two comments were received: both supporting 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 § 65.24 to read as set forth at 50 Pa.B. 4648.

(B) The Executive Director will submit this order and 50 Pa.B. 4648 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 50 Pa.B. 4648 and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on January 1, 2021.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-303 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-111. Filed for public inspection January 22, 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 Commission's regulations for angling on Penns Creek.

A. *Effective Date*

This final-form rulemaking will go into effect January 1, 2021.

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 § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307(a) of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

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

E. *Summary of Changes*

Penns Creek is a large, limestone-influenced stream that supports one of the most popular and renowned wild Brown Trout fisheries in this Commonwealth and the eastern United States. Its excellent insect hatches, large size and scenic setting in the mountains of Central Pennsylvania draws anglers from across the United States. Penns Creek is delineated into eight stream sections for fisheries management purposes, with Sections 01—07 managed for trout. Penns Creek, Section 03, extends for 7 miles from the confluence with Elk Creek in Coburn, PA downstream to 600 meters downstream of the confluence with Swift Run. Section 03 was managed as a stocked trout fishery until 1992 when it was designated by the Commission as a Class A wild trout stream and the stocking of hatchery trout was discontinued in favor of wild trout management.

During 1993, landowner and angler surveys were conducted on Section 03 to inform management decisions. Based on this information and biological data collected during 1991 and 1992, miscellaneous special regulations (later renamed all-tackle trophy trout under § 65.4a (relating to all-tackle trophy trout)) were developed for Section 03 and implemented on January 1, 1995. Section 03 was managed with all-tackle trophy trout regulations for 19 years from 1995 to 2013.

During 2012, Commission staff conducted a review of the management of Penns Creek, Section 03. Commission staff solicited feedback regarding a potential regulation change from landowners and anglers by means of letters and a public meeting. Additionally, Commission staff conducted an angler use, harvest and opinion survey to help inform a regulation change. To address landowner and angler feedback, to further increase the abundance of large wild brown trout and provide the opportunity to use all tackle types and harvest some trout, a new miscellaneous special regulation (slot limit) was established for a 7-year period from January 1, 2014, through December 31, 2020. The slot limit regulation allows for year-round fishing, use of all tackle types, and the harvest of two trout per day that are at least 7 inches but less than 12 inches in length from the opening day of trout season through Labor Day, with no harvest permitted the remainder of the year.

The trout population was monitored before and after implementation of the slot limit regulation in Section 03. Results of the monitoring showed a significant increase in

the electrofishing catch rates of larger (≥ 16 inches) brown trout during the post-slot limit regulation implementation period (2014—2019). These results suggest that the slot limit regulations likely played an important role in the increased electrofishing catch of large brown trout in Section 03.

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

Given the success of the experimental slot limit regulation program on Penns Creek, Section 03, Commission staff recommended that the Commission continue this regulatory approach until further notice. The regulation would allow for the use of all tackle types and harvest of up to two trout per day that are at least 7 inches but less than 12 inches in length from the opening day of trout season through Labor Day. No harvest would be permitted for the remainder of the year.

The Commission therefore amends § 65.24 to read as set forth in the proposed rulemaking published at 50 Pa.B. 3898 (August 1, 2020).

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 50 Pa.B. 3898. The Commission received a total of 127 public comments regarding the proposal: 86 supported the proposal, 20 opposed the proposal, and 21 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 127 comments were received: 86 supported the proposal, 20 opposed the proposal, and 21 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 § 65.24 to read as set forth at 50 Pa.B. 3898.

(B) The Executive Director will submit this order and 50 Pa.B. 3898 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 50 Pa.B. 3898 and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect January 1, 2021.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-300 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-112. Filed for public inspection January 22, 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 Commission's regulations for use of bait while angling at or on Lake Pleasant.

A. *Effective Date*

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

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 § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307(a) of the code (relating to waters limited to specific purposes).

D. *Purpose and Background*

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

E. *Summary of Changes*

Lake Pleasant, a 61-acre natural lake owned by the Commonwealth and managed by the Commission, is located in Greene, Venango and Waterford Townships in Erie County, approximately 10.5 miles southeast of the City of Erie. The lake's cold-water and warm-water fish populations are managed with Commonwealth Inland Waters angling regulations. The lake supports high-quality panfish and Largemouth Bass populations that are sustained through natural reproduction. To maintain a high-quality fishery for stocked trout, the lake receives annual plants of adult trout during the pre-season, in-

season and winter stocking periods which coincide with the peak periods of angler use and interest in trout angling. Recreational boating is permitted but is restricted to unpowered boats only. The Commission does not own or lease property adjacent to the lake and approximately 80% of the lake's shoreline is owned and maintained by the Western Pennsylvania Conservancy (WPC) with the remainder owned privately.

Lake Pleasant is one of the least impacted glacial lakes in the region and its natural flora and fauna are arguably the most intact among this category of waterbodies. The shoreline is nearly undeveloped, with much of the surrounding wetlands undisturbed. The WPC owns 350 acres around the lake, and the Pennsylvania Game Commission owns State Game Lands (SGL) 161 to the west and SGL 155 to the east. These collectively managed tracts of land act as a buffer for the lake. The lake is spring fed, relatively pristine and clear. The fish community that resides in Lake Pleasant is a result of unique historic glacial events and contains at least three of the Commonwealth's list of species (Blackchin Shiner, Warmouth and Iowa Darter). Two of these species, the Blackchin Shiner and Iowa Darter, are rare throughout the region due to extensive habitat degradation. The lake is difficult to survey for nongame fishes and thus has not received an intensive inventory to date; hence, it is possible that other rare species requiring pristine glacial lake habitats exist here and have yet to be documented.

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

The Commission therefore amends § 65.24 to read as set forth in the proposed rulemaking published at 50 Pa.B. 3896 (August 1, 2020).

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 50 Pa.B. 3896. The Commission received a total of six public comments regarding the proposal: all support 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 six comments were received, all supporting 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 § 65.24 to read as set forth at 50 Pa.B. 3896.

(B) The Executive Director will submit this order and 50 Pa.B. 3896 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 50 Pa.B. 3896 and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on January 1, 2021.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: Fiscal Note 48A-297 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 21-113. Filed for public inspection January 22, 2021, 9:00 a.m.]