

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 63, 65, 71 AND 73]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapters 63, 65, 71 and 73. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. Effective Date

The 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 the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. Statutory Authority

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 of the code (relating to permits for protection and management of particular fish). The proposed amendments to §§ 63.46, 71.6 and 73.1 (relating to sale, purchase or barter of injurious, nonnative species; prohibited acts; and transportation) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals.

E. Summary of Proposals

(1) *Section 63.20*. The requirements for when and where an angler needs a trout/salmon permit are, and historically have been, in § 63.20. With the recent simplification of the specially regulated trout programs in Chapter 65 (relating to special fishing regulations), the special trout regulations were amended to expressly provide, among other things, that a trout/salmon permit is required in those waters and the requirement in § 63.20 was deleted.

Upon a closer review of the amendments, the Commission has determined that as a result of the change to § 63.20, the Commission's law enforcement officers may no longer cite someone under section 2908 of the code (relating to penalties) for fishing in a specially regulated trout water without the required trout/salmon permit. They may only issue a citation under section 2102 of the code. Section 2908 of the code allows imposition of an additional penalty for not having the required permits.

To allow the Bureau of Law Enforcement to initiate an enforcement action under section 2908 of the code for

failing to possess a trout/salmon permit while fishing in a specially regulated trout water, an amendment restoring this provision to § 63.20 is required. Accordingly, the Commission proposes to amend § 63.20 to read as set forth in Annex A.

(2) *Sections 63.46, 71.6 and 73.1*. From time to time, the Commission has found it desirable to specifically prohibit the sale, purchase or barter, possession, introduction, importation and transportation of certain injurious, nonnative species. There are currently nine species listed. They are snakehead (all species), black carp (*Mylopharyngodon piceus*), bighead carp (*Hypophthalmichthys nobilis*), silver carp (*Hypophthalmichthys molitrix*), zebra mussel (*Dreissena polymorpha*), quagga mussel (*Dreissena bugensis*), round goby (*Neogobius melanostomus*), tubenose goby (*Proterothinus marmoratus*) and European rudd (*Scardinius erythrophthalmus*).

The Commission proposes adding the rusty crayfish (*Orconectes rusticus*) and ruffe (*Gymnocephalus cernuus*) to this list. Rusty crayfish have been introduced into this Commonwealth and have expanded their range primarily in the Susquehanna River basin. They are an aggressive riverine species, and the Commission should provide regulatory disincentives to relocating rusty crayfish from one water body to another. Ruffe is an invasive species in the Great Lakes. However, it has not yet been captured in the Pennsylvania waters of Lake Erie. This species has the potential to compete with yellow perch and should be prevented from being introduced into this Commonwealth. Accordingly, the Commission proposes to amend §§ 63.46, 71.6 and 73.1 to read as set forth in Annex A.

(3) *Section 65.24*. Since 1999, Cross Creek Lake has been regulated and managed under § 65.9 (relating to big bass special regulations). The lake also is regulated and managed under § 65.11 (relating to panfish enhancement special regulation). When Cross Creek Lake was added to these special regulations programs, the Commission intended that it be removed from the miscellaneous special regulations under § 65.24. However, due to an oversight, the change did not occur at that time. The Commission accordingly proposes to amend § 65.24 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the 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 proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the com-

ments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-182. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

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

* * * * *

(e) *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 permit**, wilderness trout streams or their tributaries or Class A wild trout waters or their tributaries.

* * * * *

§ 63.46. Sale, purchase or barter of injurious, non-native species.

It is unlawful for a person to sell, purchase, offer for sale or barter the following live species in this Commonwealth:

* * * * *

(10) Rusty crayfish (*Orconectes rusticus*).

(11) Ruffe (*Gymnocephalus cernuus*).

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

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

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
		* * * * *
[Washington]	[Cross Creek Lake]	[Bass—15-inch minimum size limit. Panfish groupings—10 per day creel limit combined species within grouping. Sunfish, crappies, rock bass—10 per day creel limit; combined species. Perch—10 per day creel limit; combined species. Catfish—10 per day creel limit; combined species. Other panfish (except those specified above) 10 per day creel limit; combined species. All other species—Inland seasons, size and creel limits apply. See § 61.1.]
		* * * * *

CHAPTER 71. PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS

§ 71.6. Prohibited acts.

* * * * *

(d) It is unlawful to possess the following live species in this Commonwealth. It is unlawful to introduce or import the following live species into the waters of this Commonwealth:

* * * * *

(10) Rusty crayfish (*Orconectes rusticus*).

(11) Ruffe (*Gymnocephalus cernuus*).

CHAPTER 73. TRANSPORTATION OF LIVE FISH INTO THIS COMMONWEALTH

§ 73.1. Transportation.

* * * * *

(d) Transportation of the following live species in or through this Commonwealth is prohibited.

* * * * *

(10) Rusty crayfish (*Orconectes rusticus*).

(11) Ruffe (*Gymnocephalus cernuus*).

[Pa.B. Doc. No. 06-570. Filed for public inspection April 7, 2006, 9:00 a.m.]

[58 PA. CODE CHS. 61 AND 65]

Fishing; Musky Enhancement Program

The Fish and Boat Commission (Commission) proposes to amend Chapters 61 and 65 (relating to seasons, sizes and creel limits; and special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking modifies the seasons, sizes and creel limits for muskellunge and muskellunge hybrids, northern pike and pickerel. In addition, the proposed rulemaking creates the Musky Enhancement Program (Program).

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2007.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fish.state.pa.us.

C. *Statutory Authority*

The proposed amendments to § 61.1 (relating to Commonwealth inland waters) and the proposed amendments to § 65.16 (relating to Musky Enhancement Program) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's regulations regarding the muskellunge and muskellunge hybrids, northern pike and pickerel. The specific purpose of the proposed amendments is described in more detail under the summary of proposals.

E. *Summary of Proposals*

(1) *Muskellunge and muskellunge hybrids.* The Commission solicited information from muskellunge and tiger muskellunge (musky) anglers to guide enhancement of fishing opportunities for these species in this Commonwealth. As part of its efforts, the Commission convened a musky workgroup that included representatives from the musky fishing community as well as the broader angling community, including black bass anglers. The Commission also solicited water specific fishing quality information from musky anglers through a volunteer survey and examined and summarized available biological information describing muskellunge and tiger muskellunge in this Commonwealth.

Following a formal opinion gathering process, the workgroup formulated the following goal statement: "To enhance musky fishing through advanced fish culture methods, education and harvest management while considering habitat potential." The workgroup also formulated a number of draft objectives that identified specific prioritized needs, including enhancing muskellunge and tiger muskellunge density and size-structure through alternative harvest restrictions. The workgroup addressed a variety of topics, including recommending that the total number of waters or water sections managed for muskellunge (currently 150) be reduced to provide opportunities for more intensive management on fewer waters.

The workgroup further proposed that density and size structure could be enhanced by further restricting harvest on waters Statewide following review of simulation results that examine alternative size limits. In addition, the workgroup proposed further restrictions on selected waters where biologists determined that density could be further enhanced. Under the workgroup's proposals, the Statewide minimum size limit would be 36 inches and the "enhanced" minimum size limit would be 45 inches. Another option discussed by the workgroup was a Statewide size limit of 40 inches in the event that an "enhanced" option is not adopted by the Commission.

As a result of the input gathered from the workgroup and the independent assessment of the Commission's biologists, the Commission proposes to increase the Statewide minimum size limit for muskellunge and muskel-

lunge hybrids from 30 inches to 36 inches, to reduce the daily limit from two (combined species) to one and to allow for a year-round open season. The Commission proposes to amend § 61.1 to read as set forth in Annex A.

The Commission also proposes the Program to designate waters for more intensive development of musky populations. For waters regulated and managed under the Program, the season will be open year-round, the minimum size limit will be 45 inches and the daily limit will be one. The Commission anticipates that the Program initially will apply to no more than six waters Statewide. Examples of waters to which the Program may be applied include Lake Arthur (Butler County), Rose Valley Lake (Lycoming County), Cowanesque Reservoir (Tioga County), Marsh Creek Lake (Chester County), Susquehanna River (Fabridam to 1.3 miles downstream) and Loyalhanna Lake (Westmoreland County). The Commission proposes to add § 65.16 to read as set forth in Annex A.

In addition to the previously described proposal, the Commission seeks comments on an alternative proposal. The alternative proposal sets the Statewide limit for muskellunge and muskellunge hybrids at 40 inches and does not include the Program.

Muskellunge and tiger muskellunge are a long-lived, low-density species that, at maximum, occur at densities of one legal fish per surface acre in this Commonwealth's waterways. Diet studies carried out in this Commonwealth and elsewhere show that muskellunge and tiger muskellunge primarily prefer soft-rayed fishes, and most studies show, including those in this Commonwealth, that catostomids (suckers) are the primary prey fish of large muskellunge. Consequently, impacts to other game fish and panfish species are expected to be limited. The increased size limit, if adopted, may facilitate greater levels of natural recruitment in the native range of muskellunge (western Pennsylvania) where rather dramatic improvements in water quality and species diversity have occurred in recent decades. Currently, natural recruitment Statewide is very low with Commission stocking programs accounting for an estimated 98% of angler trips. Although increased size limits coupled with water quality improvements may foster some additional natural recruitment, it is expected that Commission stocking programs will continue to provide the bulk of recreational fishing opportunities now and well into the future.

(2) *Northern Pike.* Northern pike fisheries occur in 59 waterways open to public fishing across this Commonwealth. Most fisheries are sustained through natural reproduction and occur in the upper Allegheny drainage (northwest Pennsylvania). Angler catch rates are frequently high in the spring, often encompassing a portion of that period corresponding to the closed season. To provide this Commonwealth's anglers with expanded opportunities to catch and, if desired, harvest northern pike, the Commission proposes a year-round open season, a reduced minimum size limit of 18 inches, and an increased creel limit of four.

Amur pike or Amur pike hybrids have not been sustained through a stocking program in this Commonwealth since the early 1970s and no longer occur in this Commonwealth. The Commission therefore proposes that they be removed from the species list in § 61.1.

Accordingly, the Commission proposes to amend this section to read as set forth in Annex A.

(3) *Pickerel.* Pickerel fisheries occur in 73 waterways open to public fishing across this Commonwealth. These

populations are largely confined to the central and eastern end of this Commonwealth with the highest number of waters (27) in northeastern Pennsylvania. Virtually all populations are sustained through natural reproduction. Angler catch rates are frequently high in the spring, often encompassing a portion of the closed season. To provide this Commonwealth's anglers with expanded opportunities to catch and, if desired, harvest chain pickerel in the spring, the Commission proposes a Statewide year-round open season. The Commission also proposes that the minimum size limit be increased from 15 inches to 18 inches. Analytical predictions indicate that populations with average growth rates will increase in density in conjunction with this change. Additionally, the minimum size limit of 18 inches provides necessary protections in the spring and other times of the year to sustain populations through natural reproduction. The Commission further proposes that the daily limit be changed to four year-round. Accordingly, the Commission proposes to amend § 61.1 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the 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 proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.state.pa.us/Fish/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.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: 48A-181. 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 Youghiogheny Reservoir:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
	* * * * *		
MUSKELLUNGE and MUSKELLUNGE HYBRIDS	[January 1—March 14; and 12:01 a.m. first Saturday in May to midnight, December 31]	[30 inches] 36 inches	[2 (combined species)] 1
PICKEREL [***]	Open year-round	[15 inches] 18 inches	[6] 4
[PIKE Northern Amur] NORTHERN PIKE		[24 inches] 18 inches	[2 (combined species)] 4
WALLEYE and hybrids (Saugeye)	January 1—March 14; and 12:01 a.m. first Saturday in May to midnight, December 31	15 inches	6
SAUGER		12 inches	6
AMERICAN SHAD [****] ***	Open year-round	No minimum	6
HICKORY SHAD [****] ***	Closed year-round		0

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
GIZZARD SHAD [****] ***	Open year-round	No minimum	50
HERRING [****] ***	Open year-round	No minimum	50
* * * * *			

* * *

*** [Note: During the period from 12:01 a.m. January 1 to midnight March 14 and 12:01 a.m. December 1 to midnight December 31, the daily limit of Pickerel is three.

****] Note: Unlawful to take, catch or kill American shad, hickory shad and alewife and blueback herring (collectively known as river herring) in Susquehanna River and its tributaries. See §§ 61.4 and 61.7.

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.16. Musky Enhancement Program.

(a) The Executive Director, with the approval of the Commission, may designate waters as part of the Musky Enhancement Program. The designation of waters as part of the Musky Enhancement Program will be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to take, catch, kill or possess muskellunge or muskellunge hybrids on or in waters designated as part of the Musky Enhancement Program except in compliance with the following season and size and creel limits: Open-year round, minimum size of 45 inches and daily limit of 1. It is not a violation of this section if the muskellunge or muskellunge hybrid is immediately returned unharmed to the waters from which it is taken.

[Pa.B. Doc. No. 06-571. Filed for public inspection April 7, 2006, 9:00 a.m.]