

PROPOSED RULEMAKINGS

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Fishing; Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) proposes to amend Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

A. *Effective Date*

The proposed rulemaking, if adopted on final-form, will go into effect on January 1, 2012, or upon publication in the *Pennsylvania Bulletin*, whichever occurs later.

B. *Contact Person*

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

C. *Statutory Authority*

The proposed amendments to §§ 69.11 and 69.12 (relating to applicability of fishing regulations; and seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters) and proposed §§ 69.12b and 69.19 (relating to Lake Erie walleye and yellow perch adaptive management for establishing daily limits; and permits for the use of cast nets, throw nets or dip nets by sport anglers) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The proposed amendments to §§ 69.21, 69.22, 69.23, 69.26, 69.33, 69.35, 69.37 and 69.39 are published under the statutory authority of 2903 of the code (relating to boat and net licenses for boundary lakes).

D. *Purpose and Background*

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

E. *Summary of Proposals*

(1) The Lake Erie Committee (LEC) is a convening body consisting of fisheries managers from Pennsylvania, Ohio, New York, Michigan and Ontario, Canada, operating under the auspices of the Great Lakes Fishery Commission. Critical management issues regarding Lake Erie fisheries are discussed and decisions are derived through consensus among the members in the best interest of the resource. One major responsibility of the LEC is to set annual Lakewide harvest limits (quotas) for walleye and yellow perch in the form of a Total Allow Catch (TAC) for these species.

Annually, a range (minimum, mean and maximum) of recommended allowable harvests (RAH) for walleye and perch are generated by agency biologists that serve on technical task groups, the Walleye Task Group (WTG) and the Yellow Perch Task Group (YPTG). A compilation of assessment and fishery survey data from across Lake Erie are used to generate population estimates of perch

and walleye utilizing state-of-the-art catch-at-age models. Based on these abundance estimates, the RAHs are calculated by the WTG and YPTG and forwarded to the LEC to provide safe guidelines in establishing the annual TAC. Each March, the LEC reviews the RAH of the WTG and YPTG and sets the TAC for yellow perch and walleye based on a set of biological and social metrics.

After the TAC is established, individual harvest limits for each state (and Ontario) are apportioned based on the percentage of Lake Erie owned by each jurisdiction. It is the responsibility of each fisheries management agency to ensure that local TACs are not exceeded. These harvest controls are usually met through regional commercial quotas and angling regulations (creel limits, minimum size limits and closed seasons).

A challenge for the state fisheries agencies is applying angling regulations in a timely manner, synchronized with the condition of fish stocks. Because regulatory change is typically a lengthy process, harvest regulation changes cannot usually be applied in ample time to provide for effective control. Another issue is the application of analogous sport harvest regulations across jurisdictions. Many anglers believe that when more conservative or liberal regulations are appropriate, they should be applied across the board, effectively sharing in both the pain and the bounty. Ohio implemented this strategy in 2010, Michigan in 2011 and New York expects to adopt a proposal in 2012. The flexibility of being able to apply creel limits in April, before the onset of each fishing season (similar to setting commercial quotas), will align the harvest controls (regulations) with the condition of the stocks and establish fishing regulations similarly across jurisdictions.

The Commission therefore proposes to amend §§ 69.11 and 69.12 and add § 69.12b to read as set forth in Annex A. The proposed amendments to §§ 69.11 and 69.12(c)(4) and (f) are housekeeping changes. The other proposed amendments to § 69.12(f) and the proposed addition of § 69.12b implement the adaptive management approach to establishing daily limits for walleye and yellow perch.

(2) The discovery of viral hemorrhagic septicemia (VHS) in the Great Lakes watershed resulted in the creation of Federal and State regulations intended to contain the disease within the Great Lakes. The United States Department of Agriculture—Animal Plant Health Inspection Service prohibits the interstate transport of 37 VHS susceptible fish species, unless they are determined to be VHS free based on analysis from a certified laboratory. Similar regulations imposed by the Department of Agriculture and the Commission prohibit the transport of 27 of these species outside of the Great Lakes watershed (10 of these species are marine or not found in the Great Lakes). Among the VHS susceptible species listed are emerald and spottail shiners, which are popular baitfish preferred by Lake Erie yellow perch anglers. These restrictions have resulted in limited availability and significant increases in the cost of these species at local bait shops. In response, the sportsmen's group SONS of Lake Erie has requested that harvest limits of emerald shiners be increased from 50 per day to 150 per day.

The Commission identified two concerns with this request: 1) the formation of entitlement regulations unique to Lake Erie; and 2) protest by the Commonwealth's Lake Erie commercial seine fishery, which pays for a license that allows for the harvest and sale of baitfish. Upon review, the Commission determined that this issue could be best addressed by implementing a cast/throw net permit similar to the permit system currently in place on Blue Marsh Lake, Nockamixon Lake, Beltzville Lake, Raystown Lake, Lake Wallenpaupack, Lake Arthur and Shenango River Lake that allows for the harvest of certain baitfish (gizzard shad or alewife) in excess of the creel limit of 50 per day provided under the general fishing regulations. Including Lake Erie under this permit system will not provide a special privilege to Lake Erie anglers in the form of enhanced baitfish harvest limits beyond what is allowed in other areas of this Commonwealth. In addition, it will address possible opposition by commercial seine operators because anglers will also be paying for the opportunity to harvest additional shiners. The Commission therefore proposes that § 69.19 be added to read as set forth in Annex A.

(3) Related to the inadequate supply of shiners is the limited availability of commercial seine licenses for Lake Erie. Since 2007, there have been numerous requests for commercial seine licenses that have not been granted due to regulatory constraints limiting the availability of seine licenses. Currently, there are only ten seine licenses available, which are held by six individuals (one individual holds three licenses, two individuals hold two licenses and three individuals hold one license). Seine licenses are assigned to an individual net, which sometimes results in multiple licenses per applicant.

The impact of this fishery on shiner populations has been minimal. Harvest by the existing commercial seine fishery has averaged about 5,700 pounds annually since 1987, representing less than 2% of the total biomass estimates from assessment trawls conducted by the Commission's Lake Erie Research Unit. Harvest can fluctuate significantly and is correlated to the abundance of the population.

Harvest has steadily increased in the last 3 years and peaked at 17,673 pounds in 2010, coinciding with prodigious increases in emerald shiner abundance and demand for this popular baitfish by perch anglers during this same time period.

Increasing the number of available seine licenses in § 69.21 (relating to limitations on number and types of commercial licenses) from 10 to 40 should increase the local availability of shiners and help control the escalating cost of baitfish while having no measurable impact on shiner populations. Moreover, limiting the commercial harvest to emerald and spottail shiners, gizzard shad and alewife in § 69.35 (relating to use of commercial seines) will reduce the potential of accidental introduction of exotic species (that is, round gobies) by means of feral baitfish collections. The Commission therefore proposes that §§ 69.21 and 69.35 be amended to read as set forth in Annex A.

In addition, the Commission conducted a comprehensive review of Chapter 69, Subchapters C and D (relating to commercial fishing licenses; and commercial fishing, seasons and nets) and proposes amendments to other commercial fishing regulations. The Commission proposes that §§ 69.22, 69.23, 69.26, 69.33, 69.37 and 69.39 be amended to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new costs on the private sector or the general public. However, under section 2902 of the code (relating to net permits), the fee for net permits is \$10. Therefore, Lake Erie anglers wishing to take advantage of the new permit for the use of cast nets, throw nets or dip nets under proposed § 69.19 will be charged that fee. The Commission estimates that it will initially issue approximately 200 permits under proposed § 69.19 each year. The Commission expects that number to increase over time.

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 in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-232. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES

Subchapter B. SPORT FISHING AND ANGLING

§ 69.11. Applicability of fishing regulations.

Except as otherwise provided in this subchapter, this subpart applies to fish and sport fishing in Lake Erie [and its], Lake Erie tributaries and Presque Isle Bay, including peninsula waters.

§ 69.12. Seasons, sizes and creel limits—Lake Erie [and], Lake Erie tributaries and Presque Isle Bay including peninsula waters.

* * * * *

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

* * * * *

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. **A fish that is injured or is bleeding as a result of being caught will not be**

considered unharmed and will be considered as part of a daily creel or possession limits. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournament and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish

returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

* * * * *

(f) Subject to the provisions of subsections (d) and (e), the following seasons, sizes and creel limits apply to Lake Erie, Lake Erie tributaries and Presque Isle Bay, including peninsula waters:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
WALLEYE	January 1 to midnight March [15] 14 and [12:01 a.m. the first Saturday in] May 1 to December 31.	15 inches	[6] Established annually by April 15*
TROUT and SALMON	[First] 8 a.m. first Saturday after April 11 until midnight Labor Day. 12:01 a.m. the day after Labor Day until [midnight] 12:01 a.m. on the Friday before the first Saturday after April 11.	9 inches 15 inches	5 (combined species only 2 of which may be lake trout). 3 (combined species only 2 of which may be lake trout).
YELLOW PERCH	From December 1 through [March 31] April 30 From [April 1] May 1 through November 30	7 inches None	[30] Established annually by April 15** [30] Established annually by April 15*

* * * * *

****See § 69.12b (relating to Lake Erie walleye and yellow perch adaptive management for establishing daily limits). After the Executive Director establishes the daily limit for the year, the information will be posted on the Commission's web site and available from any Commission office.**

(Editor's Note: Sections 69.12b and 19 are new and printed in regular type to enhance readability.)

§ 69.12b. Lake Erie walleye and yellow perch adaptive management for establishing daily limits.

The Executive Director or a designee will monitor the walleye and yellow perch populations in Lake Erie taking into account commercial and recreational harvest. Based on that information, the Executive Director will establish daily limits for walleye and yellow perch that are necessary and appropriate for the better protection and management of the fishery. The Executive Director will establish the daily limits for walleye and yellow perch each year and announce them on or before April 15. In any given year, the Executive Director may revise the daily limit for walleye or yellow perch if the Executive Director determines that conditions warrant a revision. The daily limits will remain in effect until the Executive Director establishes new daily limits. Anglers are responsible for obtaining the current daily limits for walleye and yellow perch on Lake Erie including Presque Isle Bay prior to fishing those waters.

§ 69.19. Permit for the use of cast nets, throw nets or dip nets by sport anglers.

(a) The Executive Director or a designee may issue permits for the use of cast nets, throw nets or dip nets for

the taking of emerald shiners or spottail shiners from Lake Erie including Presque Isle Bay.

(b) In addition to other permit conditions that the Executive Director may require, the cast nets or throw nets may not be greater than 10 feet in radius (20 feet in diameter) and the dip nets may not be greater than 10 feet in diameter.

(c) Notwithstanding the provisions in § 69.12 (relating to seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters), holders of a permit issued under this section may take, catch, kill or possess a daily creel limit of 200 emerald shiners and spottail shiners (combined species).

(d) A person may apply for a permit for the use of cast nets, throw nets or dip nets by completing the form prescribed by the Commission. The applicant shall submit the completed form to the Commission along with the fee in section 2902 of the code (relating to net permits).

(e) It is unlawful to use cast nets, throw nets or dip nets for the taking of emerald shiners or spottail shiners or to take, catch, kill or possess more than the daily creel limit of emerald shiners or spottail shiners as set forth in § 69.12 without the required permit. A permit for the use of cast nets, throw nets or dip nets shall be carried so that it can be presented to an officer authorized to enforce the code. The permit holder is the only person authorized to use the cast net, throw net or dip net.

(f) It is unlawful to use emerald shiners or spottail shiners taken under a permit for the use of cast nets, throw nets or dip nets as bait in any water other than Lake Erie and Lake Erie tributaries including Presque Isle Bay.

(g) It is unlawful to sell, offer for sale, trade or barter live, dead or preserved emerald shiners or spottail shiners taken under a permit for the use of cast nets, throw nets or dip nets.

(h) It is unlawful to transport or export live, dead or preserved emerald shiners or spottail shiners taken under a permit for the use of cast nets, throw nets or dip nets out of the Lake Erie watershed.

(i) The holder of a permit for the use of cast nets, throw nets or dip nets may possess an unlimited number of preserved emerald shiners or spottail shiners at the permit holder's residence provided the residence is located within the Lake Erie watershed.

(j) It is unlawful for a holder of a permit under this section to use a cast net, throw net or dip net within 100 yards of a holder of a commercial seine license.

(k) It is unlawful for a holder of a permit under this section to use a cast net, throw net or dip net within an area 300 feet from the mouth of any stream or within the confines of a tributary stream to Lake Erie.

(l) It is unlawful for a holder of a permit under this section to use a cast net, throw net or dip net to interfere with sport anglers or boaters.

Subchapter C. COMMERCIAL FISHING LICENSES

§ 69.21. Limitations on number and types of **commercial** licenses.

[(a)] The number and types of commercial fishing licenses for fishing in Lake Erie shall be limited as follows:

(1) Trap nets: Up to three [**individuals**] **applicants** may be licensed to fish up to six trap nets each. Each trap net requires a separate license.

(2) [**Trawls: zero licenses.**

(3)] Seines: [**ten**] **40** licenses. **An applicant may be issued up to three seine licenses in a year. Each seine requires a separate license.**

[(4) **Outlines: zero licenses.**

(b) **Implementation of trap net licenses.** The Executive Director may implement subsection (a)(1), providing for additional trap net licenses, by gradually increasing the number of trap net licenses on an annual basis up to the maximum number of licenses authorized. In making a determination on how many trap net licenses to issue, the Executive Director may consider the available estimates of fish populations and the possible impacts of additional commercial fishing efforts.]

§ 69.22. Applications.

(a) *Renewals.* Licensees applying for renewal of a Lake Erie commercial fishing license shall submit their application on forms provided by the Commission by no later than March [**26**] **1** of the year for which the license is sought. The applicant shall fully and accurately complete the application and provide requested information.

(b) *Nonrenewals.* Applicants for new licenses shall submit their applications on forms provided by the Commission by no later than [**April**] **March** 15 of the year for which the license is sought. Applicants shall fully and accurately complete the application [**form**] and provide requested information. A new license will not be issued until on or after April [**16**] **1**. If there are more

applicants for new licenses than the number of licenses available after renewals have been issued, on or after April [**16**] **1**, the Executive Director will cause a random drawing to be conducted to determine which applicants for new licenses shall be issued these licenses.

(c) *Residency.* Applicants for resident commercial fishing licenses shall submit proof of their residence in this Commonwealth by showing that they paid personal income tax to the Commonwealth for the year prior to the year of application. Proof shall include evidence that the applicant paid resident personal income tax to the Commonwealth and did not pay income tax as a resident of any other state or sovereignty. Applicants for resident commercial licenses shall also submit proof that boats used for fishing in Commonwealth waters of Lake Erie are either registered with the Commonwealth or documented in accordance with **Federal** law. To qualify for a resident license, both the applicant and the principal operators of the gear subject to licensing shall prove to the satisfaction of the Commission that they are bona fide residents of this Commonwealth. The applicant shall submit the names and addresses of all operators of the gear to be licensed, including proof of their residence in this Commonwealth.

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§ 69.23. Responsibility of licensees.

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(b) [**Licensees**] **Trap net licensees** are personally responsible for, and shall be physically present during, the day-to-day operation of gear licensed under this chapter and section 2903 of the code (relating to boat and net licenses for boundary lakes). Day-to-day operation of gear includes setting, lifting, pulling and cleaning of nets and the sorting and landing of catch. If exigent circumstances preclude the physical presence of the licensee during the day-to-day operation of gear, the licensee shall notify in advance the Northwest Region Law Enforcement Office.

(c) **Seine net licensees are personally responsible for the day-to-day operation of gear licensed under this chapter and section 2903 of the code. The seine net licensee, agent or employee of a licensee may conduct day-to-day operation of the licensed seine net. Day-to-day operation of gear includes setting, pulling and cleaning of the seine net and the sorting and landing of catch.**

(d) A licensee shall prove to the satisfaction of the Commission that the licensee is responsible to carry out the obligations of the license. The proof shall consist of the following:

* * * * *

(2) For the second and [**all**] subsequent years, the **trap net** licensee shall show proof of at least 50 days of commercial fishing **with the licensed gear** in the Commonwealth waters of Lake Erie in the previous year.

(3) **For the second and subsequent years, the seine net licensee shall show proof of at least 10 days of commercial fishing with the licensed gear in the Commonwealth waters of Lake Erie including Presque Isle Bay in the previous year.**

(e) **A licensee that fails to show proof of the required minimum number of days of commercial fishing with the licensed gear may not be eligible for renewal of the license for the next year.**

§ 69.26. Reports.

(e) Information contained in reports submitted under this section may be used for governmental purposes by the Commission and other agencies [**and for reporting catch statistics to the authorized agent of the United States Fish and Wildlife Service**]. Information contained in the reports will not be released to the public without the consent of the licensee except as may be required in compliance actions and prosecutions for violation of reporting requirements or as otherwise required by law.

<i>Species</i>	<i>Size Limit</i>
Yellow perch (<i>Perca flavescens</i>)	None
Walleye (<i>Stizostedion vitreum</i>)	15 inches

* * * * *

(e) **Restricted waters.** The use of trap nets to harvest yellow perch from Lake Erie will be prohibited from an area bound on the west by the 80°00" longitudinal line and on the east at the Commonwealth/New York border (79°45'43") and on the south by the Lake Erie shoreline and on the north by the international border between the Commonwealth and Ontario, Canada.

(f) **Time.** Trap nets may be fished 24 hours a day, but it is unlawful to set or lift them during the period from 30 minutes after sunset to 30 minutes before sunrise. Trap nets may be set or fished, or both, from March 1 to November 30.

[(f)] (g) *Description of trap net.*

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(2) A trap net fishing device is designed to catch fish by impoundment[, as opposed to catching fish by entanglement, which is the action by which gill nets capture fish]. Fish caught by impoundment remain alive and swimming for an extended period while confined within the trap net crib. [**Fish caught by entanglement are unable to free themselves of the net, cannot swim freely and cannot be expected to live while entangled in the gear.**] The elements of netting, webbing and twine (thread) size (diameter) used in the construction of a trap net shall be of design and dimension that will discourage, prohibit and preclude the enmeshing and entanglement of fish in the netting of any part of the trap net device. The netting of the crib shall be constructed as a single panel or sheet of webbing. Lawful trap nets may not have liners or covers which would make the external crib webbing two or more sheets in thickness.

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[(g)] (h) *Setting or tending trap nets.* A boat engaged in the setting or tending of trap nets shall comply with

Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS

§ 69.33. Use of **commercial** trap nets.

* * * * *

(b) *Species.* A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. The following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

Season

No closed season until the total allowable catch is taken. **See § 69.31 (relating to seasons).**

January 1 to March 14 and [**12:01 a.m. the first Saturday in**] May 1 to December 31. This season will close when the total allowable catch for walleye is taken. **See § 69.31.**

Navigation Rule 26 (United States Coast Guard) from the time the boat leaves the dock until it arrives back at the dock.

§ 69.35. [**Seines**] Use of **commercial seines.**

(a) *Species.* It is unlawful to use a seine for commercial fishing in Lake Erie except for the taking of [**minnows and smelt**] **emerald shiners, spottail shiners, gizzard shad and alewife.** There shall be no minimum length or **daily limit** for legal species captured by means of seines.

(b) *Taking shiners, gizzard shad and alewife.* It is unlawful to use a seine for the purpose of taking [**smelt,**] **emerald shiners, [and spot tail] spottail shiners, gizzard shad and alewife** within an area 300 feet from the mouth of any stream or within the confines of a [**stream**] **tributary stream** to Lake Erie.

(c) [**Presque Isle Bay.** In the waters of Presque Isle Bay it is unlawful to use a seine other than from a dock or a boat. Seines of a length of more than 12 feet are prohibited.

(d) [*Lake Erie proper.* Shore seining and seining from docks and boats with no restrictions on the [**type or**] size of seine used is permitted for legal species designated in subsection (a).

[(e)] (d) *Identification of seine.* Each seine used shall be licensed separately and shall carry the identifying plastic tag furnished with the license.

(e) **Sale.** **Emerald shiners, spottail shiners, gizzard shad or alewife caught by the holder of a seine license issued under this chapter may be sold either alive, dead or preserved by the holder of the license in the Lake Erie watershed only. It is unlawful to sell these fish in other watersheds of this Commonwealth except in accordance with § 69.3(e) (relating to transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed).**

(f) *Interference with sport anglers or boaters.* It is unlawful for a holder of a seine license issued under this chapter to interfere with sport anglers or boaters.

(g) *Interference with other holders of commercial seine license.* It is unlawful for the holder of a commercial seine license to use a seine within 100 yards of another holder of a commercial seine license.

§ 69.37. Prohibited acts.

* * *

(b) It is unlawful for a person other than the holder of a commercial fishing license, [an authorized agent] and the agents and employees of the holder or an officer authorized to enforce the code or this part to lift, clear[,] or disturb a commercial net or net-marking buoy.

(c) It is unlawful while fishing under a commercial license or otherwise fishing with a device subject to commercial licensing to manipulate, alter or otherwise use a commercial fishing device [including gill nets] in a way to reduce the effective mesh size of the net being fished.

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§ 69.39. Landing of catch.

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[(d) The Executive Director or his designee may grant an exception to subsection (a) and permit a commercial licensee to land its catch outside of this Commonwealth upon application in writing from the licensee showing reasonable grounds why it is impossible, infeasible, or impractical for the licensee to land its catch in this Commonwealth. A permit for a commercial licensee to land its catch outside this Commonwealth will set forth terms and conditions as the Executive Director may deem appropriate. It is unlawful for a licensee to land its catch outside this Commonwealth without first procuring the required permit and being in compliance with the terms and conditions thereof.]

[Pa.B. Doc. No. 11-1764. Filed for public inspection October 14, 2011, 9:00 a.m.]

[58 PA. CODE CH. 71]

Fishing; Propagation and Introduction of Fish into Commonwealth Waters

The Fish and Boat Commission (Commission) proposes to amend Chapter 71 (relating to propagation and introduction of fish into Commonwealth waters). 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 amends and updates the Commission's fishing regulations.

A. Effective Date

The proposed rulemaking, if approved on final-form, will go into effect on January 1, 2012.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harris-

burg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendments to § 71.7 (relating to triploid grass carp) are published under the statutory authority of section 2904 of the code (relating to permits for protection and management of particular fish).

D. Purpose and Background

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

E. Summary of Proposal

Under section 2904 of the code, the Executive Director, with the Commission's approval, may require permits for the taking, catching, killing, possession, introduction, removal, importing, transporting, exporting or disturbing of fish when it is determined that the permits may be needed to insure proper protection and management of any species of fish. This section also authorizes the Commission to establish fees and to promulgate regulations. Under the section, the Commission may not establish a fee in excess of \$5 per permit for trout/salmon permits. There is no other restriction on fees. This section further provides that the Commission may not issue permits under the authority of the section for game fish other than trout or salmon.

Section 71.7 pertains to the possession and introduction of triploid grass carp (white amur). This section provides that permits shall be required for possessing triploid grass carp, introducing them into Commonwealth waters and importing or transporting them into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain a triploid grass carp possession/introduction permit from the Commission. A person who wishes to import triploid grass carp into this Commonwealth shall obtain a triploid grass carp importation/transportation permit from the Commission.

The triploid grass carp program (program) was initiated by the Commission in January 1994. Two types of permits with associated fees were established and those fees are the same today. A triploid grass carp possession/introduction permit is \$20. A triploid grass carp importation/transportation permit is \$50.

For bodies of water that are more than 5 acres in surface area or are considered to be of special concern, an applicant is required to submit an environmental inspection report prepared by a biologist or fisheries or environmental scientist acceptable to the Commission. This is a detailed report that requires personal inspection of the body of water. Currently, § 71.7 states that the applicant may request the Commission to conduct the inspection and prepare the report upon payment of a \$200 fee. Today, this fee would not begin to cover costs that would be incurred by staff to perform an environmental inspection of a large body of water or a water of special concern.

The Aquatic Resource Section within the Commission's Bureau of Fisheries, Division of Environmental Services, administers the program. Administering the program

requires staff to review permit applications, maintain a database, process and approve the permits. Reviewing the applications requires a technical review, some field views and clerical support.

In 2010, the Commission issued 307 triploid grass carp permits and in the past 5 years approximately 1,700 triploid grass carp permits have been issued by the Commission. Staff time spent reviewing and processing triploid grass carp permits costs approximately \$75 per permit. The Commission therefore proposes to increase the fees in § 71.7 to \$75 to help offset inflation and increasing program costs and to remove the option for applicants to request the Commission to perform the environmental inspection for a \$200 fee. The Commission proposes that § 71.7 be amended to read as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking, however, will impose new costs on the private sector and the general public. The current fees for a triploid grass carp possession/introduction permit and an importation/transportation permit are \$20 and \$50, respectively. The Commission proposes to increase the fee for both permit types to \$75. These fee increases will affect the applicants for the approximately 300 to 400 permits that the Commission issues per year.

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 in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-231. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 71. PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS

§ 71.7. Triploid grass carp.

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(c) *Permit required.*

(1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid grass carp (white amur) or introducing them into Commonwealth waters and for importing or transporting triploid grass carp into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit for a fee of [\$20] \$75. A person who wishes to import triploid grass carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid grass carp importation/transportation permit for a fee of [\$50] \$75. Permits shall be applied for on forms supplied by the Commission. Applications for permits may be obtained from: Triploid Grass Carp Manager, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, PA 16823-9616. Permits will not be issued until after January 1, 1994.

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(e) *Restrictions on introduction of triploid grass carp.*

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[(6) When an applicant for a triploid grass carp permit is required to submit an environmental inspection report, the applicant may request the Commission to conduct the inspection and prepare the report upon payment of a fee of \$200.]

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