

Notice of Proposed Rulemaking

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapter 65 Fishing

Preamble

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa. C.S. (relating to 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 Laurie E. Shepler, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fishandboat.com.

C. *Statutory Authority*

The proposed amendments to § 65.24 (relating to miscellaneous special regulations) are 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 improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

In 2011 and 2012, the Commission applied two black bass angling regulation changes to the Susquehanna River from Sunbury downriver to York Haven (middle Susquehanna River), the Susquehanna River from York Haven downriver to Holtwood Dam (lower Susquehanna River), and the Juniata River from Port Royal downriver to the mouth (lower Juniata River). In 2011, the Commission removed these river sections from the Big Bass Program and a year-round catch-and-immediate-release regulation was enacted. In 2012, the Commission adjusted this regulation to include a closed season for black bass from May 1 to the opening day of bass season in mid-June, with a catch and immediate release regulation remaining for the rest of the year. Bass tournaments were limited to catch-measure- immediate release only, with no weigh-in tournaments allowed.

The regulations implemented during 2011 and 2012 to protect Smallmouth Bass residing in the middle and lower Susquehanna River and the lower Juniata River were not intended to be permanent. Additionally, the Commission has received a number of complaints since these regulations went into effect stating that anglers are violating the closed season and the regulation is largely unenforceable. Further, recent changes in population characteristics of Smallmouth Bass at the middle Susquehanna River, lower Susquehanna River and lower Juniata River warranted a review of the current regulations to determine whether they are continuing to serve their intended role as part of managing this fishery.

As such, the Commission proposes to use an adaptive management approach to remove and reinstitute, if necessary, closed season regulations currently applied to these river reaches. By establishing a set of population recovery benchmarks, Commission staff developed guidance on when to remove current closed season regulations as well as when to reinstitute them should conditions change negatively in the future. A secondary benefit of this approach is public transparency as benchmark values for different metrics will be disseminated and annual evaluations will allow for up-to-date comparisons against benchmarks. This approach may streamline and expedite future regulatory action.

Commission staff developed a series of metrics to assess changes to the Smallmouth Bass population that could warrant removal as well as the application of closed season regulations based upon population characteristics. These data and literature-derived values set benchmarks for changing existing regulations as well as provide guidance for reinstatement should conditions change negatively in the future. These benchmarks are scientifically-based using available data and literature and are set at a standard to reflect the world-class fishery for which these waters are renowned. The application of the benchmarks will be similar to adaptive management strategies utilized by the Atlantic States Marine Fisheries Commission and the Great Lakes Fishery Commission. These metrics focus on a combination of measures of relative abundance and size composition of the population.

Commission staff recommend a review period of at least five years be used for evaluation based on the inherent variability in the factors controlling the population, variability in data collection, and longevity of Smallmouth Bass. For these same reasons, staff propose that benchmarks must be met for minimum time periods (e.g., three of five years) rather than for definitive time periods (e.g., consecutive years) given natural variability in healthy fish populations. Additionally, staff suggest that benchmarks be achieved for two of the three metrics for each reach for a five-survey evaluation period.

Review of the most contemporary survey data revealed that all three of the subject reaches met the recovery benchmarks to allow removal of closed season regulations beginning in the 2017 season. Staff will continue to survey population characteristics moving forward to guide future regulatory actions should population characteristics change.

Based on the foregoing, the Commission proposes that the closed bass (Smallmouth Bass and Largemouth Bass) season be removed from May 1 to mid-June (with dates described by the usual formula) and no tournaments be permitted during this period. Catch and release restrictions will continue to be applied to those portions of the Susquehanna River and Juniata River currently included under this miscellaneous special regulation (Figure 1). Bass tournaments occurring outside of the mid-April to mid-June period will continue to be restricted to catch-measure-immediate release only as will all bass angling. The Commission proposes that § 65.24 be amended to read as set forth in Annex A.

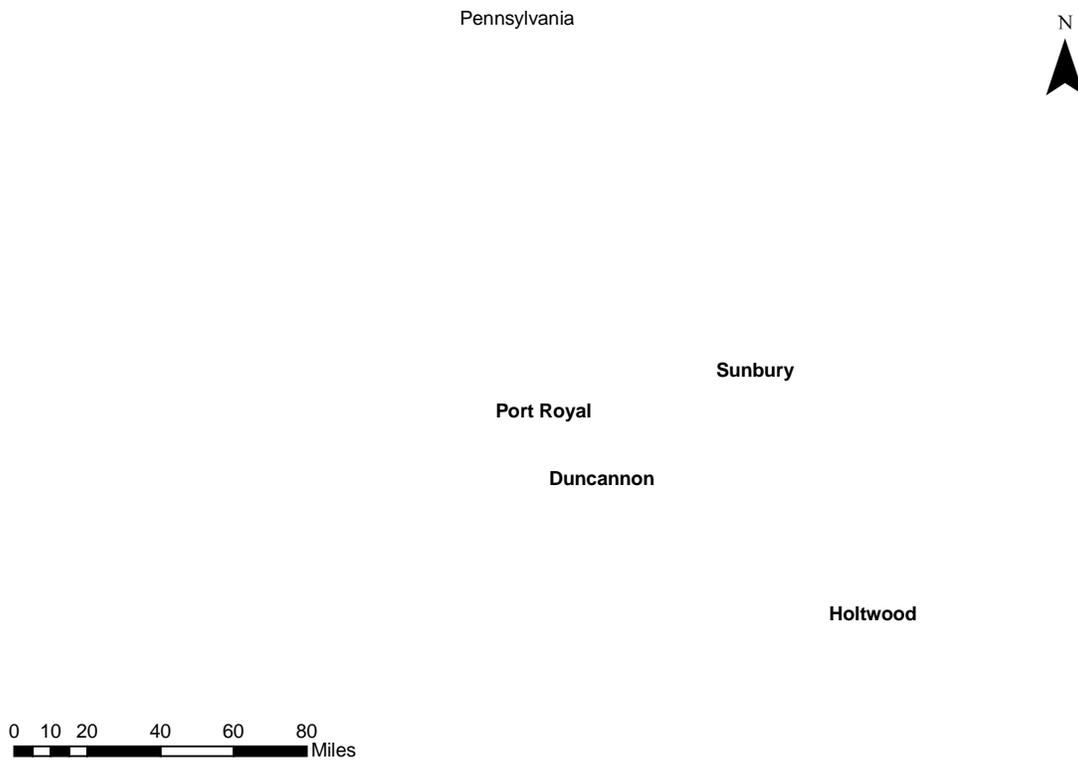


Figure 1. Location on the lower Susquehanna River and lower Juniata River where a closed bass season with no tournaments permitted will be removed. Year-round black bass catch and immediate release regulations will continue to apply to these locations. No tournaments will be permitted during the mid-April to mid-June closed season consistent with other waters in the Commonwealth. Catch-measure-immediate release tournaments will be permitted at other times of year.

Commission staff also recommend that in the future, the lower Susquehanna River reach be treated independently while the middle Susquehanna River and lower Juniata River reaches be treated jointly for removal or application of closed season regulations. Unrestricted movement of fish between the two systems would complicate treatment of each exclusively. The joint treatment of those reaches would defer to the most conservative option for either reach based upon their data relative to benchmarks.

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 impacts on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose 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 60 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

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

For the Pennsylvania Fish and Boat Commission

John A. Arway, Executive Director

Annex A

Regulation No. 48A-274

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart B. Fishing

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> |
|--|--|---|
| *** | *** | *** |
| Cumberland, Dauphin, Juniata, Lancaster, Northumberland, Perry, Snyder, York | Susquehanna River (98.0 miles) from the inflatable dam near Sunbury downstream to Holtwood Dam, including all tributaries to a point ½ mile upstream from the confluence | [Bass (smallmouth and largemouth)—From May 1 to 12:01 a.m. the first Saturday after June 11—Closed season; no tournaments. During the closed season, it is unlawful to target or attempt to catch a bass. A bass that is accidentally caught during the closed season must be immediately released unharmed without being removed from the water. It is unlawful to possess bass in, on or along these waters. Remainder of the year—No harvest—Catch and immediate release only; catch-measure-immediate release tournaments only.] |

| <i>County</i> | <i>Name of Water</i> | <i>Special Regulations</i> |
|-------------------------|---|--|
| | | <p><u>Bass (Smallmouth and Largemouth) – No harvest year-round – catch and immediate release only.</u> <u>From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11 – no Bass tournaments.</u> <u>Remainder of the year – Catch-measure-immediate release tournaments only.</u></p> |
| Dauphin, Juniata, Perry | Juniata River (31.7 miles) from SR0075 bridge at Port Royal downstream to the mouth, including all tributaries to a point ½ mile upstream from the confluence | <p>[Bass (smallmouth and largemouth)— From May 1 to 12:01 a.m. the first Saturday after June 11—Closed season; no tournaments. During the closed season, it is unlawful to target or attempt to catch a bass. A bass that is accidentally caught during the closed season must be immediately released unharmed without being removed from the water. It is unlawful to possess bass in, on or along these waters. Remainder of the year—No harvest—Catch and immediate release only; catch-measure-immediate release tournaments only.] <u>Bass (Smallmouth and Largemouth – No harvest year-round – catch and immediate release only.</u> <u>From 12:01 a.m. the first Saturday after April 11 to 12:01 a.m. the first Saturday after June 11 – no Bass tournaments.</u> <u>Remainder of the year – Catch-measure-immediate release tournaments only.</u></p> |
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