

Order Adopting Regulation

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) 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 the Fish and Boat Code) (code).

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2009.

B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, 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.fish.state.pa.us.

C. *Statutory Authority*

The addition of § 65.19 (relating to approved trout waters open to year-round fishing) is published under the statutory authority of section 2102(a) of the code (relating to rules and regulations).

D. *Purpose and Background*

The final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the regulation is described in more detail under the summary of changes.

E. *Summary of Changes*

Currently, there are a number of waters listed in the *Pennsylvania Fishing Summary* as approved trout waters open to year-round fishing. These waters are regulated the same as approved trout waters except that they are open to fishing from March 1 through the opening day of trout season. Fishing for trout is permitted during this period, but no trout may be taken or possessed. In a recent review of the Commission's regulations, staff discovered that this special regulation program was never formally adopted by the Commission. To correct this oversight, the Commission proposed that a new section in Chapter 65 be adopted, thereby formally establishing this regulatory program.

Under the proposed regulation, it is unlawful to fish in waters designated as approved trout waters open to year-round fishing except in compliance with the prescribed seasons and size and creel limits. It is not a violation of the proposed regulation if a trout is immediately returned unharmed to the waters from which it is taken. The proposed regulation further provides that it is unlawful to fish in waters designated as approved trout waters open to year-round fishing without a current trout/salmon permit.

Based upon the public comments that were received (see summary below) and upon further consideration of the trout/salmon permit requirement, the Commission adopted the proposed regulation on final rulemaking to limit the trout/salmon permit requirement to designated rivers and streams and chose not to require a permit to fish in designated lakes and ponds unless a person takes, kills or possesses, while in the act of fishing, a trout or salmon on or in these waters. As recognized by several of the individuals who submitted public comments, there will be anglers who will fish

these waters for species other than trout. In addition, limiting the permit requirement to designated rivers and streams is consistent with current regulations (58 Pa. Code §63.20(e) (relating to permits for the protection and management of trout and salmon)) that provide that a person fishes for trout or salmon and therefore is required to have a permit when the person fishes in streams or rivers that are approved trout waters or their tributaries during the period 12:01 a.m. on March 1 until midnight May 31.

The Commission adopted the regulation to read as set forth in Annex A.

F. *Paperwork*

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

G. *Fiscal Impact*

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

H. *Public Comments*

A notice of proposed rulemaking was published at 38 Pa. B. 1588 (April 5, 2008). Prior to the formal public comment period, the Commission received two comments opposing the trout/salmon permit requirement because there are anglers who will fish these waters for species other than trout. The Commission received a total of four comments during the formal comment period – 3 generally support the program and one opposes the permit requirement. After the public comment period, the Commission received one comment opposing the permit requirement. Copies of all public comments were provided to the Commissioners.

FINDINGS

The Commission finds that:

(1) Public notice of intention to adopt the amendment 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, 1202) and the regulations promulgated thereunder, 1 Pa. Code §§7.1 and 7.2.

(2) A public comment period was provided, and the comments that were received were considered.

(3) The adoption of the amendment 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 adding §65.19 to read as set forth in Annex A.

(B) The Executive Director will submit this order, 38 Pa. B. 1588 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(C) The Executive Director shall certify this order, 38 Pa. B. 1588 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on January 1, 2009.

For the Pennsylvania Fish and Boat Commission

Douglas J. Austen, Ph.D.
Executive Director

Annex A

Regulation No. 48A-200

(Note: Language that was added on final rulemaking is in capital letters; language that was deleted contains “strikethroughs.”)

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart B. Fishing

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.19. Approved trout waters open to year-round fishing.

(a) The Executive Director, with the approval of the Commission, may designate waters as

approved trout waters open to year-round fishing. The designation of waters as approved

trout waters open to year-round fishing shall be effective upon publication of a notice of

designation in the *Pennsylvania Bulletin*.

(b) It is unlawful to fish in waters designated as approved trout waters open to year-round

fishing except in compliance with the following seasons and size and creel limits. It is not a

violation of this section if a trout is immediately returned unharmed to the waters from which

it is taken.

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
<u>ALL SPECIES OF TROUT AND SALMON (except</u>	<u>Regular Season: 8 a.m. first Saturday after April 11 (or the first Saturday after</u>	<u>7 inches</u>	<u>5 (combined species)</u>

<u>landlocked Atlantic salmon)</u>	<u>March 28 for waters in the Regional Opening Day of Trout Season Program) to midnight Labor Day</u>		
	<u>Extended Season: 12:01 a.m. day after Labor Day to midnight last day of February of the following year.</u>	<u>7 inches</u>	<u>3 (combined species)</u>
	<u>12:01 first day of March to first Saturday after April 11 (or the first Saturday after March 28 for waters in the Regional Opening Day of Trout Season Program)</u>		<u>NO HARVEST</u> <u>– Catch and immediate release only</u>

(c) It is unlawful to fish in waters RIVERS AND STREAMS designated as approved trout waters open to year-round fishing without a current trout/salmon permit. A

TROUT/SALMON PERMIT IS NOT REQUIRED TO FISH IN LAKES AND PONDS THAT HAVE BEEN DESIGNATED AS APPROVED TROUT WATERS OPEN TO YEAR-ROUND FISHING UNLESS THE PERSON TAKES, KILLS OR POSSESSES, WHILE IN THE ACT OF FISHING, A TROUT OR SALMON ON OR IN THESE WATERS.