

## Order Adopting Regulations

### COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

#### Title 58. Recreation Part II. Fish and Boat Commission Chapter 63 Fishing

## Preamble

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 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](http://www.fish.state.pa.us).

C. *Statutory Authority*

The additions of §§ 63.53 and 63.54 (relating to egg collection; and possession or use of eggs as bait) are published under the statutory authority of section 2102(a) of the code (relating to rules and regulations).

D. *Purpose and Background*

The Commission's waterways conservation officers during the past year encountered anglers catching large female brown trout and removing the eggs contained within the fish. The fish were released back into the waters from which they were taken. The anglers indicated that they used these eggs as bait to fish for trout in other water areas. The continued removal of eggs from large female trout may have a detrimental effect on the numbers of young of the year fish in a wild trout population and likely cause undue harm to a fish that is released. In addition, using eggs taken from fish in one watershed as bait in another watershed may spread diseases.

Currently, the regulations require that fish must be released immediately unharmed from most specially regulated trout waters. The Commission's officers successfully charged two individuals for a violation of this regulation and, in doing so, had to prove that the fish were harmed by the removal of the eggs. To clearly prohibit this activity, the Commission proposed a new regulation making it unlawful to take eggs from a fish taken from waters of this Commonwealth outside the Lake Erie watershed or to possess these eggs or use them as bait. The proposed regulation permitted eggs taken from lawfully harvested fish from the Lake Erie watershed to be possessed and used as bait in the Lake Erie watershed only.

By notice published at 38 Pa. B. 3875 (July 12, 2008), the Executive Director, acting under the authority of §65.25 (relating to temporary changes to fishing regulations), took immediate action to make it unlawful to take eggs from a fish taken from waters of this Commonwealth outside the Lake Erie watershed or to possess these eggs or use them as bait. The temporary modification, like the proposed rule, allowed eggs taken from lawfully harvested fish from the Lake Erie watershed to be possessed and used as bait in the Lake Erie watershed only. This temporary modification went into effect immediately and will remain in effect until January 1, 2009, at which time the new regulations adopted by this order will go into effect.

E. *Summary of Changes*

On final rulemaking, the Commission adopted more restrictive regulations regarding egg collection and the possession and use of eggs as bait than the proposed regulation contained in the notice of proposed rulemaking. Specifically, the Commission adopted a regulation that makes it unlawful to remove or strip eggs from any fish taken from waters of the Commonwealth, whether dead or alive, except for trout and salmon that are taken from waters in the Lake Erie watershed. The Commission also adopted a regulation that prohibits the possession and use of unpreserved, refrigerated or frozen eggs regardless of their origin in or along the waters of this Commonwealth except in the Lake Erie watershed. In the Lake Erie watershed, unpreserved, refrigerated or frozen eggs from trout and salmon only may be possessed and used as bait. The Commission adopted the new regulations to read as set forth in Annex A.

Because of the more general and restrictive regulation dealing with the possession and use of eggs as bait, a regulation specifically addressing eggs from species of fish that are susceptible to Viral Hemorrhagic Septicemia (VHS), an infectious disease found in a variety of fish species, is not needed. The Commission therefore chose not to adopt proposed §63.52 (relating to eggs from VHS-susceptible species of fish) in another rulemaking package (48A-204).

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 Involvement*

A notice of proposed rulemaking was published at 38 Pa. B. 4776 (August 30, 2008). The Commission received two public comments regarding the proposed regulation. One supported the proposal and favored an even more restrictive approach that would prohibit the taking of eggs from fish from any water and would prohibit them from being used anywhere in the Commonwealth as bait. The other expressed concern because the proposed regulation does not address the use of eggs from other jurisdictions. Copies of all public comments were provided to the Commissioners.

### **FINDINGS**

The Commission finds that:

(1) Public notice of intention to adopt the regulations 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 regulations 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 adding §§63.53 and 63.54 to read as set forth in Annex A.

(B) The Executive Director will submit this order, Annex A and 38 Pa. B. 4776 to the Office of Attorney General for approval as to legality as required by law.

(C) The Executive Director shall certify this order, Annex A and 38 Pa. B. 4776 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-205

(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 63. GENERAL FISHING REGULATIONS

##### §63.53. Egg collection.

~~It is unlawful to take eggs from a fish taken from waters of this Commonwealth outside the Lake Erie watershed or to possess these eggs or use them as bait. Eggs taken from lawfully harvested fish from the Lake Erie watershed may be possessed and used as bait in the Lake Erie watershed only. This section does not prohibit the possession of eggs contained within a lawfully harvested fish that is possessed for the purpose of human consumption.~~ IT IS UNLAWFUL TO REMOVE OR STRIP EGGS FROM FISH TAKEN FROM WATERS OF THIS COMMONWEALTH EXCEPT FOR TROUT AND SALMON TAKEN FROM WATERS IN THE LAKE ERIE WATERSHED.

**§63.54. POSSESSION OR USE OF EGGS AS BAIT.**

**EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IT IS UNLAWFUL TO POSSESS OR USE AS BAIT UNPRESERVED, REFRIGERATED OR FROZEN FISH EGGS REGARDLESS OF THEIR ORIGIN WHILE IN THE ACT OF FISHING IN OR ALONG WATERS OF THIS COMMONWEALTH. UNPRESERVED, REFRIGERATED OR FROZEN EGGS FROM TROUT OR SALMON MAY BE USED AND POSSESSED AS BAIT WHILE FISHING IN OR ALONG THE WATERS OF THE LAKE ERIE WATERSHED.**