

Order Adopting Amendments

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapter 61 Fishing

Preamble

The Fish and Boat Commission (Commission) amends Chapter 61 (relating to seasons, sizes and creel limits). 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 April 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 website at www.fish.state.pa.us.

C. *Statutory Authority*

The amendments to § 61.2 (relating to Delaware River and River Estuary) are published under the statutory authority of section 2102(b) 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 amendments is described in more detail under the summary of changes.

E. *Summary of Changes*

Since 1992, during the time period when Delaware River and Estuary striped bass were in restoration mode, there has been an April and May closure to the harvest of striped bass from the spawning grounds in Pennsylvania, New Jersey and Delaware. The Commission's regulation in §61.2 defines the segment to which the closure applies as extending from the Pennsylvania/Delaware state line upstream to the Calhoun Street Bridge, which is located just upstream from the head-of-tide and joins Morrisville, Pennsylvania with Trenton, New Jersey.

In 1997, the Atlantic States Marine Fisheries Commission (ASMFC) declared that the Delaware River stock of striped bass had been restored to historical population levels based on high juvenile recruitment, high spawning stock biomass and low fishing mortality. Despite being restored, management of the fishery within the Basin states remained conservative with high size limits (28 inches), low creel limits (2 fish per day) and spawning ground closures to harvest. In the Commonwealth, this meant that the season downstream from Calhoun Street Bridge closed on April 1, just as the adult striped bass population was building, and reopened on June 1, just as the bulk of the adult striped bass population had emigrated from the Commonwealth. The Commonwealth's anglers were given little opportunity to harvest striped bass, and striped bass angling when fish were most abundant was discouraged by the season closure.

Delaware River and Estuary striped bass harvest has been low. During the 2002 four state creel census, only 582 striped bass were harvested in the stretch that extended from the Delaware River Memorial Bridge near Wilmington, Delaware upstream to the river's branches in New York.

Pennsylvania's tagging data supported this observation of low harvest, particularly from Pennsylvania. Of the 2,872 striped bass that were tagged in the Delaware Estuary spawning grounds between Pennsylvania and New Jersey from 1995 through 2007, only 34 tags were returned from Pennsylvania's waters. Observations by the Commission's Waterways Conservation Officers and biologists have been that the vast majority of striped bass caught in the Commonwealth are yearlings, two-year olds, and some three-year olds caught in late spring and summer as by-catch in other fisheries and as a targeted catch and release fishery in the tidal and non-tidal river.

Male striped bass are abundant during April and May on the spawning grounds and about 90% are shorter than the 28 inch length limit. Furthermore, very few sub-legal female striped bass are present on the spawning grounds. The Commonwealth's anglers desire an opportunity to take advantage of this restored striped bass population and the potentially excellent fishing that it could provide. Past regulatory and habitat protection efforts by the Commission have largely benefited coastal anglers and anglers outside of the Commonwealth.

The Commission therefore proposed that an April and May fishery be established in the seasonally closed portions of the Delaware River and Estuary that is designed to specifically target mature male striped bass. The Commission also proposed that this fishery be regulated with a 20 inch to 26 inch slot limit from which two fish per day can be harvested during April and May. The Commission further proposed that there will be a 28 inch length limit and two fish per day creel limit in all other months of the year, and there will be no closed season. Regulations for the remainder of the river will remain unchanged.

The Commission coordinated this proposal with the State of Delaware, which took the lead in data analysis and reporting. The two states have made similar slot and creel limit proposals that will apply to different months of the year. Delaware's proposal will target male striped bass in summer and fall that have emigrated from the spawning grounds and taken up residency in Delaware.

ASMFC's Striped Bass Management Board approved both proposals on October 20, 2008.

The Commission adopted the amendments to §61.2 as set forth in the notice of proposed rulemaking.

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. 6935 (December 20, 2008). The Commission received a total of 23 public comments regarding the proposal. One comment that was received before the start of the official comment period supported the proposal. The Commission received 21 comments during the official comment period. Nineteen favored the proposal, and two opposed it. Two of the favorable comments also would like to see the April-June season extended to the upper Delaware River, with one comment suggesting a 12-20 inch limit for harvest on the upper Delaware. The other comment suggested a smaller slot limit during April-June for the entire river of 16-20 inches. One commenter thought that this proposal will help improve herring populations. One of the commenters who oppose the proposal was concerned that it will lead to greater mortality of female striped bass. After the official comment period, the Commission received one comment supporting the proposal. Copies of all public comments were provided to the Commissioners.

FINDINGS

The Commission finds that:

(1) Public notice of intention to adopt the amendments 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 all public comments received were considered.

(3) The adoption of the amendments 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 61, are amended by amending §61.2 to read as set forth in 38 Pa. B. 6935.

(B) The Executive Director will submit this order and 38 Pa. B. 6935 to the Office of Attorney General for approval as to legality as required by law.

(C) The Executive Director shall certify this order and 38 Pa. B. 6935 and deposit them with the Legislative Reference Bureau as required by law.

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

For the Pennsylvania Fish and Boat Commission

Douglas J. Austen, Ph.D.
Executive Director