

Notice of Proposed Rulemaking

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) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). 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 on April 1, 2009.

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.fish.state.pa.us.

C. *Statutory Authority*

The proposed 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 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*

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 this 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. This 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 proposes 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 further proposes 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. 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 proposes to amend §61.2 to read as set forth in Annex A.

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.

F. *Paperwork*

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

G. *Fiscal Impact*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no 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, Pennsylvania Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 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

Douglas J. Austen, Ph.D.

Annex A

Regulation No. 48A-209

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart B. Fishing

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§61.2. Delaware River and River Estuary.

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(d) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and to Delaware River tributaries, from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
* * *	* * *	* * *	* * *
STRIPED BASS and HYBRID STRIPED BASS	From Pennsylvania line upstream to Calhoun Street Bridge: [March 1 until March 31, and June 1 until December 31.] <u>January 1 until March 31 and June 1 until December 31</u> <u>April 1 through May 31</u> From Calhoun Street Bridge upstream: open year-round	28 inches <u>20 to 26 inches</u> <u>28 inches</u>	2
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