

## Order Adopting Amendments

### COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

#### Title 58. Recreation Part II. Fish and Boat Commission Chapters 61 and 65 Fishing

## Preamble

The Fish and Boat Commission (Commission) amends Chapters 61 and 65 (relating to seasons, sizes and creel limits; and 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 immediately upon publication of this order in the *Pennsylvania Bulletin*.

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

#### C. *Statutory Authority*

The amendment to § 61.1 (relating to Commonwealth inland waters) is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations). The

amendments to § 65.24 (relating to miscellaneous special regulations) are published under the statutory authority of section 2307(a) of the code (relating to waters limited for specific purposes).

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*

(1) *Amendment to § 61.1.* The Commission recently adopted an amendment to §61.2 (relating to Delaware River and River Estuary) that reduced the creel limit for American shad on the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge from six to three. This change went into effect on January 9, 2010.

Upon further review of its regulations, however, the Commission determined that an amendment to §61.1 was also needed. This section provides for a daily limit for American shad of six on all inland waters that are not covered by other sections within Chapter 61. Section 61.2, which is applicable only to those Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence, does not cover large tributaries upriver of the tidal influence, such as the Lackawaxen River in Pike County. It is likely that a limited number of shad enter the larger tributaries upriver of the tidal influence. Currently, the limit for American shad on those Delaware River tributaries is six under §61.1. Therefore, the Commission has amended this section to reduce the creel limit to three as set forth in notice of proposed rulemaking.

(2) *Amendment to § 65.24.* On October 26, 2009, Act 40 of 2009 went into effect. This act amended section 2907.2 of the code (relating to Lake Erie fishing permits), to provide that a Lake

Erie permit is required to fish in Lake Erie, Presque Isle Bay and their tributaries, including waters that flow into those tributaries, instead of “the Pennsylvania waters of Lake Erie, Presque Isle Bay and their tributaries” only. This amendment requires anglers to procure a Lake Erie fishing permit in order to fish in Conneaut Creek, Turkey Creek and their tributaries when previously one was not required because although these streams begin in Pennsylvania, they enter Lake Erie in Ohio. Although a Lake Erie permit will be required to fish these streams, Act 40 also provided that proceeds derived from their sale may now be used to fund projects on those waters.

The Commission’s regulations at §65.24 currently provide that a Lake Erie permit is not required on Conneaut Creek, Turkey Creek and their tributaries. In order to be consistent with the new law, this section must be amended to remove that language.

In addition, the Commission currently applies the seasons, sizes and creels limits applicable to Lake Erie and its tributaries under §69.12 (relating to seasons, sizes and creel limits – Lake Erie and Lake Erie tributaries) to the portion of Conneaut Creek that flows through Erie County. However, the Commission applies the seasons, sizes and creel limits applicable to Commonwealth inland waters under §61.1 to the portion of Conneaut Creek and its tributaries that flow through Crawford County except with regard to salmon and steelhead that are addressed in §65.24. In order to be consistent with the new law, §65.24 must be amended to remove the existing language. With this change, the Commission will apply the Lake Erie seasons, sizes and creel limits to the entire length of Conneaut Creek and its tributaries. The Commission is actively developing a viable steelhead fishery in Conneaut Creek by annually stocking smolts. Accordingly, the Commission has amended § 65.24 to read 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 containing the amendments was published at 40 Pa. B. 427 (January 16, 2010). During the public comment period, the Commission received one public comment supporting the proposal to amend §61.1. The Commission did not receive any public comments concerning the proposal to amend §65.24. 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 Chapters 61 and 65, are amended by amending §§61.1 and 65.24 to read as set forth in 40 Pa. B. 427.

(B) The Executive Director will submit this order and 40 Pa. B. 427 to the Office of Attorney General for approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 40 Pa. B. 427 and deposit them with the Legislative Reference Bureau as required by law.

(D) This order shall take effect on immediately upon publication in the *Pennsylvania Bulletin*.

For the Pennsylvania Fish and Boat Commission

John A. Arway  
Executive Director