

## Notice of Proposed Rulemaking

### 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) proposes to amend Chapters 61 and 65 (relating to seasons, sizes and creel limits; and special fishing regulations). 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 immediately upon publication in the *Pennsylvania Bulletin*.

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

#### C. *Statutory Authority*

The proposed 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 proposed 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 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 proposals.

E. *Summary of Proposals*

(1) *Amendment to § 61.1.* The Commission recently adopted an amendment to §61.2 (relating to Delaware River and River Estuary) that reduces 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 will go into effect on January 1, 2010 or upon publication of an order in the *Pennsylvania Bulletin*, whichever occurs later.

Upon further review of its regulations, however, the Commission has determined that an amendment to §61.1 is 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. The Commission proposes an amendment to this section to reduce the creel limit to three as set forth in Annex A in order to be consistent with §61.2.

The Executive Director of the Commission, acting under the authority of 58 Pa. Code §65.25 (relating to temporary changes to fishing regulations), already has taken immediate action to amend §61.1 in order to be consistent with §61.2. This temporary modification will go into effect on January 1, 2010 and will remain in effect until the Commission, by appropriate action, amends §61.1.

(2) *Amendment to § 65.24.* On October 26, 2009, Act 40 of 2009 went into effect. This act amends 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 provides 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 proposes that § 65.24 be amended to read as set forth in Annex A.

By notice published in the *Pennsylvania Bulletin* at 39 Pa. B. 6524 (November 7, 2009), the Executive Director, acting under the authority of 58 Pa. Code §65.25 (relating to temporary changes to fishing regulations), already has taken immediate action to rescind these regulations. The temporary modification went into effect on October 26, 2009 and will remain in effect until the Commission, by appropriate action, rescinds the regulations.

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](http://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.  
Executive Director

**Annex A**

**Regulation No. 48A-216**

**Title 58. Recreation**

**Part II. Fish and Boat Commission**

***Subpart B. Fishing***

**CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS**

§61.1. Commonwealth inland waters.

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(d) Except as otherwise provided in this subpart, the following seasons, sizes and creel limits apply to inland waters of this Commonwealth and the Youghiogheny Reservoir:

SPECIES	SEASONS	MINIMUM SIZE	DAILY LIMIT
* * *	* * *	* * *	* * *
AMERICAN SHAD	Open year-round	No minimum	[6] <u>3</u>
* * *	* * *	* * *	* * *

§65.24. Miscellaneous special regulations.

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The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
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[Crawford and Erie]	[Conneaut Creek E. Branch Conneaut Creek M. Branch Conneaut Creek W. Branch Conneaut Creek Mud Run Stone Run]	[Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.]
[Crawford]	[Crazy Run]	[Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.]
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[Erie]	[E. Branch Conneaut Creek Marsh Run Temple Run Turkey Creek]	[Salmon and Steelhead: 12:01 a.m. the day after Labor Day until midnight the Thursday before the first Saturday after April 11. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.]
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