

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 January 1, 2011.

B. *Contact Person*

For further information on the proposed rulemaking, contact Jason E. Oyler, 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 §§61.1, 61.2 and 61.3 (relating to Commonwealth inland waters; Delaware River, West Branch Delaware River and River Estuary; and Pymatuning Reservoir)

are published under the statutory authority of section 2102 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 purposes of the proposed amendments are described in more detail under the summary of proposal.

E. *Summary of Proposal*

Because mussels, sometimes referred to as clams in slang, have declined greatly in their populations and their ranges both nationally and within the Commonwealth, the conservation of mussels faces many challenges. Nearly 82% (54 species) of the Commonwealth's native mussels are considered endangered, extirpated or of special concern (PABS 2008). Nationally, mussels are declining; 70% of the 297 native species have an endangered, threatened, special concern or extinct status (Williams and Neves 1995).

Under section 58 Pa. Code §§61.1(d) and 61.2(d), harvest of up to 50 fish bait is permitted per day with no seasons or size limits. Inland seasons, sizes and creel limits for fish bait apply to the Susquehanna River and Lehigh River under §§61.7 and 61.8 (relating to Susquehanna River and tributaries; and Lehigh River, Schuylkill River and tributaries). Under §61.3(c), there are no season, size or creel restrictions on fish bait. Section 102 of the code defines "fish bait" as "[u]nless otherwise provided by Commission regulation, crayfish or crabs, mussels, clams and the nymphs, larvae and pupae of all insects spending any part of their life cycle in the water."

Harvest of endangered and threatened mussels is prohibited under §§75.1 and 75.2 (relating to endangered species; and threatened species). Since mussels as a group are severely threatened,

additional reduction of mussel populations by harvest as fish bait should be prohibited. Specifically, with the existing laws, the Commission is concerned that:

(1) Rare species will be harvested because they are difficult to identify correctly. Unless mussels are prohibited from bait use, anglers or other collectors could inadvertently collect rare or protected species. Additionally, enforcement of laws prohibiting harvest of protected species will not be effective if the Commission's Waterways Conservation Officers are not well trained in the identification of mussels.

(2) Commercial pressure for mussel harvest for the pearl industry could decimate populations. Mussel shells are collected and pieces of nacre are used to seed pearl-producing oysters. At this time, a commercial harvester can legally take large quantities of mussels, removing many thousands of pounds of mussels a year. With a legal limit of 50 mussels per day and no season, 10 commercial collectors could legally take 500 mussels per day (182,500 mussels per year) as fishbait under existing Commission regulations. Commercial mussel poachers have been convicted for illegal harvest in West Virginia, Ohio, Illinois, Indiana, Michigan and in the southeastern United States. By prohibiting a legal possession limit of mussels as fishbait, the Commonwealth can better protect its mussel resource.

(3) The transportation of aquatic invasive mussels could result in the introduction to additional waterways. Discharged zebra mussel and quagga mussels used for bait present significant risk for invasive mussel infestation. Although it is unlawful to possess the exotic zebra mussel and the closely related quagga mussel, they may be inadvertently transported to otherwise uninfested waters as fishbait.

The Pennsylvania Biological Survey's Bivalve Subcommittee and the Mollusk Committee have requested that the current mussel harvest with a Pennsylvania fishing license be disallowed. Other states, such as West Virginia, Ohio, Maryland, New Jersey, New York, Indiana, and Illinois, have laws making mussel harvest illegal.

For the above reasons, the Commission proposes to prohibit the harvest of live mussels by amending §§61.1, 61.2 and 61.3 to read as set forth in Annex A.

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, except to the degree there is commercial harvest of mussels in the Commonwealth.

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

John A. Arway
Executive Director

Annex A

Regulation No. 48A-219

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart B. Fishing

CHAPTER 61. SEASONS SIZES AND CREEL LIMITS

§69.1. Commonwealth inland waters.

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

SPECIES	SEASONS	SIZE	DAILY LIMIT
***	***	***	***
BAIT FISH FISH BAIT except mud bugs and <u>mussels/clams</u>	***	***	***
MUD BUGS (dragonfly nymphs)	***	***	***
<u>MUSSELS/CLAMS</u>	<u>Closed year-round</u>		<u>0</u>
***	***	***	***

§69.2. Delaware River, West Branch Delaware River, River Estuary.

(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	SIZE	DAILY LIMIT
***	***	***	***
BAIT FISH FISH BAIT, except <u>mussels/clams</u>	***	***	***
<u>MUSSELS/CLAMS</u>	<u>Closed year-round</u>		<u>0</u>
***	***	***	***

§69.3. Pymatuning Reservoir.

(c) Except as provided by special regulations the following sizes and creel limits apply to Pymatuning Reservoir[; **no closed season applies**]:

SPECIES	<u>SEASONS</u>	MINIMUM SIZE	DAILY [CREEL] LIMIT
WALLEYE	<u>Open year-round</u>	15 inches	6
BASS	<u>Open year-round</u>	12 inches	5
MUSKELLUNGE AND MUSKELLUNGE HYBRIDS	<u>Open year-round</u>	30 inches	2
OTHERS (including Bait Fish and Fish Bait)	<u>Open year-round</u>	None	None
TURTLES (each species other than snapping turtles)	<u>Open year-round</u>	None	2
<u>MUSSELS/CLAMS</u>	<u>Closed year-round</u>		<u>0</u>