

Notice of Proposed Rulemaking

COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

Title 58. Recreation Part II. Fish and Boat Commission Chapter 65 Special Fishing Regulations

Preamble

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to 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). The proposed amendments update the Commission's regulations for angling on Penns Creek.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2021.

B. *Contact Person*

For further information on this proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fishandboat.com.

C. *Statutory Authority*

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 to specific purposes).

D. *Purpose and Background*

The specific purpose and background of the proposed amendments is described in more detail under the summary of proposal.

E. *Summary of Proposal*

Penns Creek is a large, limestone-influenced stream that supports one of the most popular and renowned wild Brown Trout fisheries in Pennsylvania and the eastern United States. Its excellent insect hatches, large size, and scenic setting in the mountains of Central Pennsylvania draws anglers from across the United States. Penns Creek is delineated into eight stream sections for fisheries management purposes, with sections 01-07 managed for trout. Penns Creek, Section 03, extends for 7.0 miles from the confluence with Elk Creek in Coburn, Pennsylvania downstream to 600 meters downstream of the confluence with Swift Run. Section 03 was managed as a stocked trout fishery until 1992 when it was designated by the Pennsylvania Fish and Boat Commission as a Class A wild trout stream and the stocking of hatchery trout was discontinued in favor of wild trout management.

During 1993, landowner and angler surveys were conducted on Section 03 to inform management decisions. Based on this information and biological data collected during 1991 and 1992, Miscellaneous Special Regulations (later renamed All-Tackle Trophy Trout under § 65.4a) were developed for Section 03 and implemented on January 1, 1995. Section 03 was managed with All-Tackle Trophy Trout regulations for 19 years from 1995 to 2013.

During 2012, Commission staff conducted a review of the management of Penns Creek, Section 03. Staff solicited feedback regarding a potential regulation change from landowners and anglers via letters and a public meeting. Additionally, staff conducted an angler use, harvest, and opinion survey to help inform a regulation change. To address landowner and angler feedback, to further increase the abundance of large wild Brown Trout, and provide the opportunity to use all tackle types and harvest some trout, a new Miscellaneous Special Regulation (slot limit) was established for a seven- year period from January 1, 2014 through December 31, 2020. The slot limit regulation allows for year-round fishing, use of all tackle types, and the harvest of two trout per day that are at least seven inches but less than 12 inches in length from the opening day of trout season through Labor Day, with no harvest permitted the remainder of the year.

The trout population was monitored before and after implementation of the slot limit regulation in Section 03. Results of the monitoring showed a significant increase in the electrofishing catch rates of larger (≥ 16 inches) Brown Trout during the post-slot limit regulation implementation period (2014-2019). These results suggest that the slot limit regulations likely played an important role in the increased electrofishing catch of large Brown Trout in Section 03.

In 2019, staff conducted an angler use, harvest, and opinion survey to evaluate the social aspects of the regulation change and estimate angler harvest. Results showed low harvest of trout occurred and high angler support for continuing the slot limit regulations on Penns Creek, Section 03. Despite low angler harvest under the slot limit rule, these regulations provide the opportunity for anglers to harvest a trout if they desire, which was an important social consideration when the regulations were implemented.

Given the success of the experimental slot limit regulation program on Penns Creek, Section 03, staff recommended that the Commission continue this regulatory approach until

further notice. The regulation would allow for the use of all tackle types and harvest of up to two trout per day that are at least seven inches but less than 12 inches in length from the opening day of trout season through Labor Day. No harvest would be permitted for the remainder of the year.

The Commission proposes that § 65.24 be amended 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.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this proposed rulemaking to the Executive Director, 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

/s/ Timothy D. Schaeffer
Timothy D. Schaeffer

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

CHAPTER 65. SPECIAL FISHING REGULATIONS

65.24. Miscellaneous Special Regulations.

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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Centre and Mifflin	Penns Creek, from the confluence of Elk Creek downstream 7 miles to 600 meters downstream of Swift Run	<p>Open to fishing year-round. All tackle types are permitted. From 8 a.m. on the first Saturday after April 11 through Labor Day – the daily creel limit for trout is 2 (combined species). Trout must be at least 7 inches but less than 12 inches in length to be killed or possessed.</p> <p>From the day after Labor Day until 8 a.m. on the first Saturday after April 11, no trout may be killed or possessed.</p> <p>Inland regulations apply to all other species.</p> <p>This miscellaneous special regulation will remain in effect until [December 31, 2020] <u>further notice.</u></p>
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