

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CHS. 121, 126 AND 139] Gasoline Volatility

The Environmental Quality Board (Board) by this order amends Chapters 121, 126 and Chapter 139 (relating to general provisions; standards for motor fuels; and sampling and testing) to read as set forth in Annex A. The final-form regulations will limit the volatility of gasoline sold in the Pittsburgh-Beaver Valley Area during the ozone season.

These final-form regulations will be submitted to the Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

The Board approved the amendments at its September 16, 1997 meeting.

#### A. Effective Date

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

#### B. Contact Persons

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Compliance and Enforcement, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-1663; or M. Dukes Pepper, Jr., Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final rule is available electronically through the Department of Environmental Protection (Department) Web site (<http://www/dep.state.pa.us>).

#### C. Statutory Authority

This action is being taken under the authority of section 5 of the Air Pollution Control Act (35 P. S. § 4005) which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

#### D. Background and Summary of the Amendments

These amendments establish controls on the volatility of gasoline sold in the Pittsburgh-Beaver Valley Area as part of the Commonwealth's demonstration of attainment of the health-based ozone standard. Based on 1991 through 1994 monitoring data, the EPA, on July 19, 1995, determined that measured air quality in the area met the ozone National Ambient Air Quality Standards (NAAQS) and that the statutory requirement for an attainment demonstration (and other related requirements) was no longer applicable. However, there were a number of ozone exceedances in 1995 that resulted in a violation of the ozone NAAQS. In response to this violation, the Governor formed the Southwestern Pennsylvania Ozone Stakeholder Working Group to review the ozone problem and recommend additional emission control programs.

In response to the 1995 ozone NAAQS violation, the EPA, on June 4, 1996, published a finding at 61 FR 28061 et seq. that the area was no longer attaining the ozone standard and reinstated the applicability of the attainment demonstration and related requirements. These requirements are those established by Part D of Title I of the Clean Air Act, sections 182(b) and 172(c)(9) (42 U.S.C.A. §§ 7511a(b) and 7502(c)(9)). The EPA recognized the work of the Southwestern Pennsylvania Ozone Stakeholder Working Group when it published the schedule for completion of the attainment demonstration for the Pittsburgh-Beaver Valley Ozone Nonattainment Area. The schedule was a result of a letter submitted by the Commonwealth. Under the schedule, by December 31, 1997, the Commonwealth must submit to the EPA, as a SIP revision, final regulations establishing the emission controls contained in Annex A. In the event the Commonwealth fails to meet this schedule, the sanctions established by the Clean Air Act will go into effect early in January, 1998. These sanctions include 2 to 1 emission offsets and (after 6 months) the loss of Federal highway funds in the Pittsburgh-Beaver Valley Ozone Nonattainment Area.

These amendments are one of four core emission reduction strategies necessary for the demonstration of attainment of the ozone standard. The four strategies are:

1. Minor changes to the proposed low-enhanced (decentralized) motor vehicle emission inspection and maintenance program.
2. The second phase (55% reduction) of the Ozone Transport Commission NO<sub>x</sub> Memorandum of Understanding.
3. Clean gasoline proposal.
4. Stage II vapor control requirements.

These four core strategies were recognized by the Southwestern Pennsylvania Ozone Stakeholder Working Group as necessary to achieve the ozone standard in the Pittsburgh-Beaver Valley Area and this proposal was recommended by the Stakeholder Group. Other mandatory strategies were considered by the Stakeholder Group, but were found to be either unreasonable or impracticable. In addition, the Department discussed these regulations with the Air Quality Technical Advisory Committee (AQTAC). At its July 21, 1997, meeting, the AQTAC recommended adoption of the final-form regulations.

The Department is adding definitions for the terms "compliant fuel," "Federal reformulated gasoline or RFG," "importer," "low RVP gasoline," "Pittsburgh-Beaver Valley Area" and "Reid vapor pressure." In addition, the Department is modifying the definition of "distributor."

These final-form regulations add a new Subchapter C (relating to gasoline volatility requirements) to Chapter 126. Section 126.301 (relating to compliant fuel requirement) provides that this new subchapter applies to the sale of gasoline in the Pittsburgh-Beaver Valley Area between May 1 and September 15 of each calendar year. Section 126.301 also imposes a Reid vapor pressure (RVP) limit on all gasoline marketed in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland Counties. The regulation provides for Federal reformulated gasoline (RFG) as an alternate compliant fuel. The restrictions on fuel would be effective between May 1 and September 15 of each year beginning in calendar year 1998 for all refiners, distributors, resellers, carriers and

wholesalers. The restrictions would be applicable between June 1 and September 15 of each year for all wholesale purchaser consumers and retailers of gasoline. Finally, if the RFG is required by Federal law to be sold in the Pittsburgh-Beaver Valley Area, the requirements of these final-form regulations are terminated.

The requirements of § 126.302 (relating to labeling requirements) for gasoline dispensed at any retail outlet in the Pittsburgh-Beaver Valley area have been deleted in response to comments received.

Section 126.303 (relating to recordkeeping and reporting) requires each entity in the gasoline dispensing network, beginning with the terminal owner, to maintain records of the date, name and address of transferor and transferee, the location and volume of gasoline being sold or transferred, and a statement certifying that the gasoline meets the RVP or RFG requirements. These records must be retained for at least 2 years from the date of sale or transfer of the compliant fuel.

Section 126.304 (relating to compliance and test methods) and the amendments to Chapter 139 (relating to sampling and testing) establish the compliance test methods for evaluating fuel volatility and RVP. These test methods are consistent with the requirements established by the EPA.

#### E. *Summary of Comments and Responses on the Proposed Rulemaking*

Comments were received from petroleum industry representatives, the EPA and the Independent Regulatory Review Commission (IRRC). The comments from the petroleum industry and IRRC suggested that the program implementation dates be changed to be consistent with the Federal fuel program dates and that the pump labeling requirements be deleted. Changes were made in response to these comments altering the program start dates and deleting the pump labeling provisions.

Other comments from the industry suggested that the prohibition against mixing of complying and noncomplying fuels could prohibit blending to correct off-specification gasoline. Noncomplying fuel should not be in the area during the control period, and these requirements have not been changed in the final rulemaking. A commentator indicated that the proposed regulation requires the segregation of low volatility gasoline and RFG and will prohibit the mixing of RFG and low volatility gasoline in the pipeline or storage and may keep RFG from the market. The Federal definition of RFG prevents the mixing of a fuel certified as RFG with any non-RFG gasoline. No change was made in response to this comment. A commentator suggested that industry codes be allowed to identify gasoline in addition to the other identifiers. The final rulemaking provides for use of appropriately identified product codes. Several commentators questioned whether there would be a test tolerance of 0.3 psi allowed for enforcement purposes. This is an implementation issue based on the analysis technique, and the final-form regulations do not specifically provide a testing tolerance. However, testing and analysis are conducted in a manner consistent with Federal requirements.

The EPA made a number of comments related to the proposed amendments. One comment related to possible Federal preemption of the RFG provisions in the amendments. Based on further discussions with the EPA, this is an issue that can be addressed by the EPA in its review and approval of SIP. The EPA also questioned the level of emission reduction credits the Department would claim

because of the difference in reductions which occur with the use of the different complying fuels. There is a slight difference in evaporative emission reductions between the RFG and low volatility fuels, but the overall emission reductions including evaporative and tailpipe emissions are actually greater with the RFG than with the low volatility gasoline. The Department plans to take credit only for emission reductions realized through the use of low volatility gasoline. No changes have been made to the regulation to address the EPA's comments.

One industry commentator, in response to the Department's request for comment regarding a "ramp-up" interval, suggested that the amendments should not specify details of getting complying fuel into the market, but that the matter should be left to the industry to comply by the required deadlines. No provisions are contained in the final-form regulations regarding a "ramp-up" period.

One industry commentator, in response to the Department's request for comment regarding the generation of emission reduction credits (ERCs) for use of the RFG, suggested that this program would be too complex and costly to implement and advised against a program. No specific provisions are contained in the final-form regulations regarding the generation of ERCs.

One industry commentator described an implementation/enforcement policy which the Department should consider. Implementation policy will be developed after the final rule is promulgated. Enforcement will be consistent with the Department's *Thoughtful and Thorough Enforcement Policy* dated September 21, 1995.

#### F. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the amendments.

##### *Benefits*

The approximately 2.8 to 3 million people in the seven counties affected by these final-form regulations will benefit from the sale of cleaner burning fuel. Both low RVP gasoline and RFG have been proven to reduce emissions of volatile organic compounds (VOC), compounds that are instrumental in the formation of ground level ozone. In addition, RFG lowers emissions of air toxics, nitrogen oxides, carbon monoxide and benzene.

##### *Compliance Costs*

There will be an increased cost to the regulated community to produce compliant fuel. Both low RVP and RFG cost more to make than conventional gasoline. It is anticipated that the increased cost of production the refiners experience will be passed onto the consumer and, consequently, the regulated community will not bear the increased cost. Estimates regarding the price per gallon increases vary depending on a number of factors, but generally the increase has been documented to be 1 to 2¢ per gallon for low RVP and 3 to 5¢ per gallon for RFG. This cost, based on an estimate of the number of gallons sold in a 5 month period in the seven county area, could range from \$4 million to \$20 million each ozone season.

##### *Compliance Assistance Plan*

The Department plans to educate and assist the public and regulated community with understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing regional compliance assistance program.

##### *Paperwork Requirements*

There will be additional recordkeeping and reporting costs for any entity that sells or transfers gasoline intended for use in the seven-county Pittsburgh-Beaver Valley Area during the ozone season. Each transferor or

transferee will be required to alter its current recordkeeping documents to include the information required by these final-form regulations.

G. *Sunset Review*

These final-form regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the final-form regulations effectively fulfill the goals for which they were intended.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 21, 1997, the Department submitted a copy of the proposed amendments to IRRC and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. These comments are addressed in the comment and response document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committee on October 7, 1997. IRRC met on October 9, 1997, and approved the final-form regulations in accordance with section 5(c) of the Regulatory Review Act.

I. *Findings of the Board*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and a public hearing held as required by law, and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 27 Pa.B. 2130 (May 3, 1997).

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble and are reasonably necessary to achieve and maintain the NAAQS for ozone.

J. *Order of the Board*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 121, 126 and 139, are amended by amending §§ 121.1, 139.4 and 139.14 and adding §§ 126.301—126.303 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication.

JAMES M. SEIF,  
*Chairperson*

*(Editor's Note: Proposals to amend § 121.1 remain outstanding at 27 Pa.B. 1822, 4325 and 4340 (April 12, 1997 and August 23, 1997). For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 5561 (October 25, 1997).)*

**Fiscal Note:** Fiscal Note 7-319 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION  
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE III. AIR RESOURCES**

**CHAPTER 121. GENERAL PROVISIONS**

**§ 121.1. Definitions.**

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*Compliant fuel*—Low RVP gasoline or RFG.

\* \* \* \* \*

*Distributor*—A person who transports, stores or causes the transportation or storage of gasoline at any point between a refinery, an oxygenate blending facility or terminal and a retail outlet or wholesale purchaser-consumer's facility. The term includes a refinery, an oxygenate blending facility or a terminal.

\* \* \* \* \*

*Importer*—A person who imports gasoline or gasoline blending stocks or components from a foreign country into the United States.

\* \* \* \* \*

*Low RVP gasoline*—Gasoline that has an RVP of 7.8 pounds per square inch or less as determined in accordance with the appropriate sampling and testing methodologies in 40 CFR Part 80, Appendix E (relating to test for determining Reid vapor pressure (RVP) of gasoline and gasoline-oxygenate blends).

\* \* \* \* \*

*Pittsburgh-Beaver Valley Area*—The seven-county area comprised of the following Pennsylvania counties: Allegheny, Armstrong, Beaver, Butler, Fayette, Washington and Westmoreland.

\* \* \* \* \*

*RFG*—*Federal Reformulated Gasoline*—Gasoline that meets the requirements for RFG as specified in 40 CFR Part 80 Subpart D (relating to reformulated gasoline).

RVP—Reid Vapor Pressure—The measure of pressure exerted on the interior of a special container as determined by the appropriate methodologies in 40 CFR Part 80, Appendix E.

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CHAPTER 126. STANDARDS FOR MOTOR FUELS

Subchapter C. GASOLINE VOLATILITY REQUIREMENTS

- Sec. 126.301. Compliant fuel requirement. 126.302. Recordkeeping and reporting. 126.303. Compliance and test methods.

§ 126.301. Compliant fuel requirement.

(a) This subchapter applies to gasoline which is sold or transferred into or within the Pittsburgh-Beaver Valley area during the period May 1 through September 15, 1998, and continuing every year thereafter.

(b) A refiner, importer, distributor, reseller, terminal owner and operator or carrier, may not:

(1) Sell, exchange or supply gasoline that is not a compliant fuel during the period described in subsection (a).

(2) Blend, mix, store or transport or allow blending, mixing, storing or transporting of compliant fuel with noncompliant fuel during the period described in subsection (a).

(c) A retailer or wholesale purchaser-consumer may not sell, exchange or supply gasoline that is not a compliant fuel during the period June 1 through September 15, 1998, and continuing every year thereafter.

(d) If RFG is required by operation of Federal law to be sold in the Pittsburgh-Beaver Valley, this subchapter no longer applies after the date that RFG is required to be sold.

§ 126.302. Recordkeeping and reporting.

(a) Beginning with the terminal owner or operator who sells or transfers gasoline intended for use in the Pittsburgh-Beaver Valley area during the period described in § 126.301(a) (relating to compliant fuel requirement), each time the physical custody of or title to a shipment of gasoline changes hands, other than when gasoline is sold or transferred for use in motor vehicles at a retail outlet or wholesale purchaser-consumer's facility, the transferor shall provide to the transferee a copy of the record described in this subsection. This record shall legibly and conspicuously contain, at a minimum, the following information:

- (1) The date of the sale or transfer. (2) The name and address of the transferor. (3) The name and address of the transferee. (4) The location of the gasoline at the time of transfer. (5) The volume of gasoline which is being sold or transferred.

(6) A statement or grade code certifying that the gasoline has an RVP of 7.8 pounds per square inch or less per gallon or is certified as RFG. If the gasoline is certified as RFG, each invoice, loading ticket, bill of lading, delivery ticket and other document that accompanies a shipment of RFG shall contain a statement from the refiner that certifies this fact.

(b) A person who transports, stores or sells compliant fuel that is intended for use in the Pittsburgh-Beaver Valley area during the period described in § 126.301(a), shall segregate the compliant fuel from noncompliant fuel and the documentation described in subsection (a) shall accompany the compliant fuel at all times.

(c) Each person in the gasoline distribution network shall maintain records containing the compliance information in subsection (a). These records shall be retained for at least 2 years from the date of the sale or transfer of compliant fuel.

§ 126.303. Compliance and test methods.

(a) Compliance with the 7.8 pounds per square inch RVP standard shall be determined by use of the sampling and testing methods specified in this section. Sampling or testing of gasoline required by this chapter shall be accomplished as follows:

(1) Sampling of gasoline for the purpose of determining compliance with this subchapter shall be conducted in accordance with 40 CFR Part 80, Appendix D (relating to sampling procedures for fuel volatility).

(2) Testing of gasoline for purposes of determining compliance with this rule shall be conducted in accordance with 40 CFR Part 80, Appendix E (relating to test for determining Reid vapor pressure (RVP) of gasoline and gasoline-oxygenate blend).

(b) RFG shall be certified and tested in accordance with 40 CFR Part 80, Subpart D (relating to reformulated gasoline).

CHAPTER 139. SAMPLING AND TESTING

Subchapter A. SAMPLING AND TESTING METHODS AND PROCEDURES

GENERAL

§ 139.4. References.

The references referred to in this subchapter are as follows:

\* \* \* \* \*

(18) "Sampling Procedures for Fuel Volatility," 40 CFR Part 80, Appendix D (relating to reformed gasoline).

(19) "Tests for Determining Reid Vapor Pressure (RVP) of Gasoline and Gasoline-Oxygenate Blends," 40 CFR Part 80, Appendix E (relating to test for determining Reid vapor pressure (RVP) of gasoline and gasoline-oxygenate blends).

STATIONARY SOURCES

§ 139.14. Emissions of VOCs.

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(b) The following are applicable to tests for determining the emissions of VOCs:

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(8) Test methods for the determination of RVP in gasoline shall be in accordance with the procedures in 40 CFR Part 80, Appendix E (relating to test for determining Reid vapor pressure (RVP) of gasoline and gasoline-oxygenate blends).

[Pa.B. Doc. No. 97-1736. Filed for public inspection October 31, 1997, 9:00 a.m.]

# Title 58—RECREATION

## FISH AND BOAT COMMISSION [58 PA. CODE CHS. 61, 63, 65 AND 69]

### Fishing

The Fish and Boat Commission (Commission) by this order amends Chapters 61, 63, 65 and 69. The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The amendments deal with fishing.

#### A. *Effective Date*

These amendments will go into effect on January 1, 1998.

#### B. *Contact Person*

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P.O. Box 67000, Harrisburg, PA 17106-7000. This final rule-making is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

#### C. *Statutory Authority*

These amendments are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

#### D. *Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations relating to fishing. The specific purpose for the amendments is described in more detail under the summary of changes.

#### E. *Summary of Changes*

1) Sections 61.1, 61.4 and 61.7 (relating to Commonwealth inland waters; Conowingo Reservoir; and Susquehanna River and tributaries). Regulations for the Susquehanna River (footnote in § 61.1 and § 61.7) and the Conowingo Reservoir (§ 61.4) prohibit the harvest of American shad; this was done primarily to protect adult shad that were being trapped and transported up river for stock rebuilding purposes. River herring and hickory shad are other anadromous fish species for which restoration is expected within the Susquehanna River Basin through the operation of the fish passage facilities at the dams. Harvest of hickory shad is prohibited in the Conowingo Reservoir where the Commission follows the regulatory lead of the state of Maryland. Prohibiting harvest of American shad, hickory shad and both species of river herring will remain important during the initial phases of fish passage at the dams. It is appropriate that these fish stocks be protected from harvest during the population building phases in the entire Susquehanna River Basin.

Amending § 61.7 and footnote #4 to § 61.1 to make it illegal to take, catch or kill hickory shad and alewife and blueback herring (collectively known as river herring) will provide the appropriate protection. Amending § 61.4 to make it illegal to take, catch or kill alewife and blueback herring (collectively known as river herring) will add protection to these species in addition to the protection already provided to American shad and hickory shad in the Conowingo Reservoir. The Commission adopted these changes with the clarification that landlocked alewife taken from inland ponds, lakes or reservoirs (such as Lake Raystown), collected by legal means and measuring less than 8 inches in length may be harvested for use as baitfish.

2) Sections 61.1, 61.2, 63.11 and 63.12 (relating to Commonwealth inland waters; Delaware River and River Estuary; eel chutes; and eelpots and fyke nets). Management of American eels is a subject of much discussion among East Coast jurisdictions. According to the *American Eel and Horseshoe Crab Public Information Document* prepared by the Atlantic States Marine Fisheries Commission American Eel Plan Development Team, "status of American eel populations along the Atlantic seaboard is poorly understood. At the same time, growing exploitation of American eel has raised concern by various fisheries management interests. Domestic and overseas markets utilize nearly all life history stages of eels and demand for the species continues to be greater than the fishery can supply." The economic value of eels, particularly baby eels or elvers (also glass eels), has been referred to as the next most lucrative commodity next to illegal drugs. Values of several hundred dollars per pound of elvers are not uncommon, particularly when destined for aquaculture use in Asia or Europe. It is common knowledge that major suppliers follow the migration and obtain elvers in various jurisdictions through permitted or illegal fisheries, or both. The lack of uniformity, particularly length limits, complicates and hinders action by law enforcement personnel.

This Commonwealth, by virtue of having only one or two commercial fisheries for eels, is relatively well off compared to most other jurisdictions. Even so, the Commission's regulations merit some attention in light of problems with American eel fisheries. Under the code, an applicant can be issued an eel chute (weir) license for \$25 for reaches of the North and West Branches of the Susquehanna River, the Juniata River downstream of Mount Union and in the Delaware River. In recent years, undoubtedly due to a scarcity of eels in the Susquehanna drainage, no such permits have been issued. Two were issued for the Delaware River in 1996 with only one involving active fishing and reporting a catch slightly over 400 pounds. Much of the Delaware River, especially that involving the Delaware Water Gap National Recreation Area, is now closed to commercial take of any species, including eels. The authority requiring issuance of eel chute licenses is statutory, and the Commission has no explicit statutory authority to refuse to issue licenses to qualified licensees. However, the Commission does have explicit statutory authority to prohibit the sale of eels taken from Commonwealth and boundary waters. Accordingly, staff recommended that § 63.11(13) be amended so that eels caught lawfully under this section may not be sold or offered for sale. In addition, this section should be amended to add a new subsection providing that eels taken with eel chutes shall be subject to the same size and creel limits as eels taken with hook and line.

It is not known how many anglers take eels with eelpots as currently permitted under § 63.12. It is speculated that few if any take advantage of this practice, which does not require any special permit or license. Staff further suggested that eelpots be considered an illegal device having no place in today's fisheries management plan for American eel.

Use of fyke nets as authorized by § 63.12 requires a \$10 permit and may occur only in the Delaware River common to this Commonwealth and New Jersey. In 1996, staff initiated a moratorium on issuing fyke net permits in anticipation of possible changes brought about by an ASMFC coastwide eel management plan. This was intentionally done to minimize inconvenience to anglers who geared up to harvest and sell elvers only to lose that

opportunity a year or so later. One permit was issued before word on the moratorium became known to staff. It is not known whether or not that permit was utilized. Based on social conflicts involving fyke netters in other jurisdictions, uncertainty of American eel stocks and the philosophical difference of a commercial elver fishery contrary to recreational angling throughout the rest of this Commonwealth, except Lake Erie, staff suggested that the fyke net program be retired.

American eels, both adult and young, still play a role in recreational angling in this Commonwealth. It is the intent of staff to continue to permit the taking of eels as bait and as conventional sport harvest (if taken on hook and line). In doing so, a 6-inch minimum length limit (with a 50 fish possession limit) needs to be considered to facilitate law enforcement relative to the harvest and trafficking of elvers through Commonwealth markets and to be consistent with regulations in neighboring jurisdictions. This means an angler taking elvers with a seine, dip net or other legal device will have a 6-inch minimum and an 8-inch maximum. The 8-inch maximum applies to eels, chubs, suckers, lampreys and fallfish when taken as baitfish. Otherwise, those over 8 inches in length can be taken only by hook and line.

The Commission adopted changes consistent with staff's recommendations with the understanding that staff will meet with representatives from New York and New Jersey to ensure regulation uniformity.

3) Sections 63.6, 63.7 and 63.8 (relating to authorized devices for game fish, baitfish and fishbait; exceptions to limitations on devices; and long bows, spears and gigs). A review of these regulations revealed a need to clarify or make minor corrections to insure that anglers are able to understand them and that the original intent is contained therein. The Commission adopted these changes that do not alter or change the regulations in any significant manner.

4) Section 65.24 (relating to miscellaneous special regulations). Management of Harveys Lake, a 658-acre natural lake in Luzerne County, has been dynamic and at times controversial in the last 10 years or so. In the mid-1980's, stocking was terminated as the lake exceeded the 200-acre maximum for the adult trout program. Fingerlings stocked on a put-grow-and-take basis were used in recognition of suitable thermal and chemical traits characteristic of a two-story lake. Evaluation of fingerling stockings in comparison to larger size trout indicated very poor survival during the first and perhaps most critical year in the lake. Losses over the dam and predation by chain pickerel, perhaps walleye, and resident waterfowl were thought to be limiting factors in the use of fingerlings. About the same time, results from use and harvest studies across the State on trout-stocked waters were being used to revise stocking rates for better use of hatchery trout and to provide more opportunity for trout angling. Staff recognized the potential to provide year long opportunity for trout angling on a few select two-story lakes/reservoirs through the stocking of adult trout at a very light stocking rate, particularly when use of fingerlings did not achieve success. Thus, adult trout stocking was phased back into the program for Harveys Lake. Brown trout have been emphasized given their greater potential to achieve a larger size in a two-story lake with alewife forage.

Staff would now like to advance the management of Harveys Lake, bearing in mind several key aspects, including: 1) keeping the lake open as long as possible for warmwater/coolwater species angling; 2) providing more

trout fishing opportunity by stocking adult trout prior to opening day, during the spring inseason period, and in the fall; 3) stocking a mix of rainbow and brown trout in recognizing differences in catchability and the idea that some, primarily brown trout, will provide the basis for a trophy fishery; and 4) using special regulations to manage a trophy fishery without eliminating opportunity for the typical trout angler to catch and keep a few trout from recent stockings.

New regulations are envisioned to manage a trophy fishery while still permitting anglers to enjoy recently stocked trout center on a reduced daily creel, an elevated minimum length limit and a short period of no-fishing. For a program based on the stocking of hatchery trout, a three trout daily creel will be used in an attempt to prolong the fishery. While the Statewide 7-inch length limit will still apply, only one of the three fish daily limit may exceed 18 inches. This is intended to emphasize the trophy potential of trout stocked in Harveys Lake as it takes brown trout on the average two seasons before the 18 inch length is attained. The no-fishing season of April 1 through 8 a.m. of the opening day of regular trout season is like that for waters in the late winter-extended trout fishing program. It is staff's intent to maximize the number of days Harveys Lake is open for angling but have a very short closure so preseason stocking for the mid-April opener can occur.

The general approach has been aired at several meetings, including meetings of the Luzerne County Federation of Sportsmen and the Harveys Lake Protection Association. Overall reaction has been favorable. On final rulemaking, the Commission slightly reworded the proposed amendments for the purpose of clarity.

5) Section 69.12 (relating to seasons, sizes and creel limits—Lake Erie). Fisheries Management staff have noted changes in (1) water quality; (2) aquatic macrophyte (vegetation) density; and (3) fish species composition in Presque Isle Bay. Generally, improvement in water quality has been noted. Aquatic macrophyte density has increased undoubtedly as a consequence of zebra mussel colonization and related increases in water clarity. Changes in fish species composition can be expected to exhibit modes fluctuations as a consequence of environmental factors. However, substantial increases in rough-fish, primarily quillback, have been noted in recent surveys. Recent surveys also have found evidence of natural reproduction of muskellunge.

Increases in Great Lakes muskellunge stocks in Lake Erie in the vicinity of Buffalo, NY, have been documented. Additionally, recent studies by New York biologists suggest that Great Lakes muskellunge utilize very specific spawning habitats and young muskellunge associate themselves with very specific types of aquatic vegetation. cursory survey information suggests that these habitats and aquatic plants are available in Presque Isle Bay. Given adequate habitat (spawning and nursery) and availability of adequate forage fish, staff are anxious to foster recovery of the Great Lakes strain muskellunge by protecting larger and mature size classes. Great Lakes muskellunge exhibit maturity schedules where all or most females attain sexual maturity by age 7 at approximately 39 inches. Given this schedule, staff recommended to the Commission that a minimum size limit of 40 inches be established with a one fish daily creel limit. Restrictive regulations and perhaps supplemental stocking of Great Lakes strain muskellunge from out-of-State sources will be used to restore wild muskellunge populations to

Presque Isle Bay with a multi-year evaluation. The Commission adopted changes consistent with staff's recommendations.

When the proposed changes appeared in the *Pennsylvania Bulletin* on proposed rulemaking, the proposed daily creel limit for muskellunge was omitted. Under § 51.5 (relating to correction of regulations), the Commission's staff made a corrective amendment to this section to reflect that the daily creel limit is one.

6) Sections 69.31 and 69.33 (relating to seasons; and use of trap nets). A notice of proposed rulemaking containing proposed changes to §§ 69.21—69.39 was published at 26 Pa.B. 5982 (December 14, 1996). Staff also directly solicited comments from all licensed commercial fishermen on Lake Erie. Although the Commission did not receive any comments during the public comment period, it received one comment shortly after the comment period ended. The commentator offered many suggestions worthy of consideration. However, the extensive changes that he suggested, while within the scope of the proposed rulemaking, required further staff review and will profit from public input. Accordingly, the Commission adopted the regulations as proposed at its January 1997 meeting and agreed to consider additional changes as proposed rulemaking at its spring 1997 meeting.

During a technical staff review in March 1997, staff considered the commentator's requests. Staff found no compelling reason to regulate the time of year when walleye are harvested commercially; therefore, staff recommended that when the total allowable harvest is attained, the season is closed. Staff also acknowledged that trap nets fish more easily and efficiently in shallow water thereby improving the expectation that the total allowable catch can be attained. The distance limits recommended by staff are intended to preserve navigation.

As a result of the technical review, staff recommended to the Commission that the regulations be amended as set forth in this Preamble. The Commission adopted changes to the regulations consistent with staff's recommendations.

*F. Fiscal Impact*

The amendments hereby adopted will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no new costs on the private sector or the general public.

*G. Paperwork*

The amendments will not increase paperwork and will create no new paperwork requirements.

*H. Public Involvement*

A notice of proposed rulemaking containing the proposed changes was published at 27 Pa.B. 4450 (August

30, 1997). The only change to attract public comment was the amendment to the muskellunge regulations set forth in § 69.12. The Commission received nine public comments favoring the proposed changes. One of the letters also included a list of 142 signatures of anglers who support the changes. 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 and 1202) and the regulations promulgated thereunder 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and that all comments received were considered.

(3) The adoption of the amendments to the regulations 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, 63 and 69, are amended by amending §§ 61.1, 61.2, 61.4, 61.7, 63.6—63.8, 63.11, 69.31 and 69.33 and by deleting § 63.12 to read as set forth at 27 Pa.B. 4450 and by amending § 65.24 and 69.12 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Executive Director will submit this order, 27 Pa. B. 4460 and Annex A to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 27 Pa.B. 4450 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

*(Editor's Note: See 27 Pa.B. 5609 (November 1, 1997) for a document which amends § 65.24, amended in this document. The amendment at 27 Pa.B. 5609 has been incorporated into this document.*

(A proposal to amend § 63.8, amended in this document, remains outstanding at 27 Pa.B. 4456 (August 30, 1997).

**Fiscal Note:** Fiscal Note 48A-68 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**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>
	* * *	* * *
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 opening day of trout season in April. 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 opening day of trout season in April. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
	* * *	* * *
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 opening day of trout season in April. Minimum size limit: 15 inches. Daily creel limit: 3 (combined species). Lake Erie fishing permit is not required.
	* * *	* * *
Luzerne	Harveys Lake	During the period from the opening day of trout season through midnight March 31, the daily creel limit for trout (combined species) is 3, only one of which may exceed 18 inches in length. Fishing is prohibited from April 1 through 8 a.m. of the opening day of regular trout season. Warmwater/coolwater species, except as provided in this section—Inland regulations apply.
	* * *	* * *

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**Subchapter B. SPORT FISHING AND ANGLING**

**§ 69.12. Seasons, sizes and creel limits—Lake Erie.**

(a) It is unlawful to take, catch, kill or possess fish, except during the seasons specified in this section. It is not a violation of this section if a fish caught out of season from water where fishing for other species is lawful is immediately returned unharmed to the waters from which it was taken.

(b) It is unlawful to take, catch, kill or possess fish of less than the minimum size specified in this section. It is not a violation of this section if an undersized fish taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the following chart during 1-calendar day. It is unlawful to possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

(1) A person may possess any number of lawfully caught fish at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may, while transporting fish from the place where caught to his

residence, possess a number of fish equal to no more than two times the daily creel limit for that species of fish. In prosecution for violation of this section, it shall be a rebuttable presumption that a person transporting fish from a fishing site caught all the fish during 1-calendar day.

(3) A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournament and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

(5) Fish may be given to another person, but the fish will be counted in the donor's creel limit and neither the donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

(d) The following seasons, sizes and creel limits apply to Lake Erie and Presque Isle Bay, including peninsula waters:

<i>SPECIES</i>	<i>SEASONS</i>	<i>MINIMUM SIZE</i>	<i>DAILY LIMIT</i>
MUSKELLUNGE and MUSKELLUNGE HYBRIDS PIKE Northern	Inland seasons apply: See § 61.1	40 inches  24 inches	1  2
WALLEYE*	Open year-round	15 inches	6
BASS Largemouth Smallmouth	January 1 to opening day of trout season in April and first Saturday after June 11 until December 31  Opening day of trout season in April until first Saturday after June 11.*	15 inches  20 inches	4 (combined species)  1
TROUT and SALMON	First Saturday after April 11 until midnight Labor Day.  12:01 a.m. the day after Labor Day until midnight on the Friday before the first Saturday after April 11	9 inches  15 inches	8 (combined species only 2 of which may be lake trout). Of the entire catch (combined species) only 5 fish total may exceed 15 inches in length.  3 (combined species only 2 of which may be lake trout).
STURGEON	No open season	ENDANGERED SPECIES	
SUNFISH, CRAPPIES, CATFISH, ROCK BASS, SUCKERS, EELS, CARP, WHITE BASS	Open year round	None	50 (combined species)
YELLOW PERCH	Open year-round	8 inches	20
BAIT FISH FISH BAIT	Open year-round	None	50 (combined species)
ALL OTHER SPECIES	Inland regulations apply: See § 61.1		

\*It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to seasons for fishing tournaments)) for bass on Lake Erie or Presque Isle Bay during the period from opening day of trout season in April until the first Saturday after June 11.

[Pa.B. Doc. No. 97-1737. Filed for public inspection October 31, 1997, 9:00 a.m.]

**FISH AND BOAT COMMISSION**

**[58 PA. CODE CHS. 65, 67 AND 69]**

**Fishing**

The Fish and Boat Commission (Commission) by this order amends Chapters 65, 67 and 69 (relating to special fishing regulations; nursery waters; and fishing in Lake Erie and boundary lakes). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to Fish and Boat Code (code)). The amendments deal with fishing.

*A. Effective Date*

These amendments will go into effect on January 1, 1998.

*B. Contact Person*

For further information on the amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 657-4546, P. O. Box 67000, Harrisburg, PA 17106-7000. This final

rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

*C. Statutory authority*

The amendments are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

*D. Purpose and Background*

The amendments are designed to update, modify and improve Commission regulations relating to fishing. The specific purpose of the amendments is described in more detail under the summary of changes.

*E. Summary of Changes*

1) Sections 65.1 and 65.7 (relating to selective harvest program; and trophy trout program). The Commission has clarified these regulations to include a specific reference to the time (8 a.m.) that trout season opens each year.

2) Sections 65.24, 67.1, 69.13, 69.14 and 69.15 (relating to miscellaneous special regulations; nursery waters and

exhibition areas; seasons, sizes and creel limits—Lake Erie tributaries; special regulations applicable during the fall season; and miscellaneous special regulations). 3CU has requested the Commission to modify existing steelhead and salmon fishing regulations and to develop new ones for Lake Erie and associated tributary streams. Upon consideration of 3CU's request, the Bureaus of Fisheries and Law Enforcement jointly recommended that the season for salmon and steelhead be extended until the opening day of the regular trout season because steelhead frequent the streams from late summer to mid-April. The Bureaus further recommend that wading be prohibited in Crooked Creek, Peck Run and Orchard Beach Run and that the disturbance of fish in nursery waters be a violation.

A separate special regulation is needed for Conneaut Creek (Erie and Crawford Counties) because of the approved trout water designation. The Bureaus accordingly recommended that fishing in Conneaut Creek be extended from March 1 to midnight the Thursday before the opening day of the regular trout season. The creel limit should be three trout/salmon with a minimum size of 15 inches. Although Conneaut Creek and Turkey Creek are tributaries to Lake Erie, they historically have been treated as inland waters for regulatory purposes rather than as part of the Commission's Lake Erie tributary program.

In Erie and Crawford Counties, additional angling opportunities would be available if special regulations were adopted for Turkey Creek (Erie County); East Branch of Conneaut Creek (Erie County); Temple Run (Erie County); Marsh Run (Erie County); West Branch of Conneaut Creek (Erie and Crawford Counties); Stone Run (Erie and Crawford Counties); Mud Run (Erie and Crawford Counties); East Branch (Erie and Crawford Counties); Middle Branch (Erie and Crawford Counties); and Crazy Run (Crawford County). The Bureaus therefore recommended that the catching of steelhead and salmon should be permitted from 12:01 a.m. the day after Labor Day to midnight the Thursday before the opening day of the regular trout season. The creel limit should be three trout/salmon with a minimum size of 15 inches.

Current regulations applicable to the Lake Erie tributaries (§ 69.13) provide that the extended season closes at midnight on the Friday before opening day of trout season in April. Staff proposed that this wording be changed to midnight of the Thursday before opening day. Traditionally, these streams have been stocked on the Friday before opening day. This has been the practice for at least 15 years. Allowing fishing on the Friday before opening day is inconsistent with the Commission's stocking schedule.

The Commission approved the publication of a notice of proposed rulemaking consistent with staff's recommendations set forth in the Preamble. On final rulemaking, staff recommended that the Commission approve the changes to §§ 65.24, 69.13 and 69.15 as set forth in the notice of proposed rulemaking. Staff also recommended that the Commission approve the changes to § 69.14 except insofar as the changes prohibit wading in Crooked Creek, Peck Run and Orchard Beach Run. Staff did not recommend that the Commission approve the change to § 67.1, which makes it unlawful to disturb fish or other aquatic life in nursery waters or exhibition areas by any means, including wading, throwing stones, rocks or other objects or otherwise agitating the waters. The Commission adopted changes to the regulations consistent with staff's recommendations.

Thereafter, the Commission submitted the final rulemaking package to the Attorney General's office and the Bureau of Legislative and Regulatory Analysis for legal and fiscal review, respectively. Prompted by comments received from the Attorney General's office, the Commission's staff revisited this issue and solicited additional input from the Commission's Bureau of Law Enforcement. Based upon input provided by waterways conservation officers in the Northwest Region, staff recommended to the Commission that it reconsider its prior rulemaking decision and amend § 67.1 to make it unlawful to disturb fish or other aquatic life in nursery waters or exhibition areas by throwing stones, rocks or other objects or otherwise agitating the waters. Staff recommended that any reference to wading be deleted. Staff further recommended that the Commission amend § 69.14 to prohibit wading in Peck Run only and not prohibit wading in Crooked Creek and Orchard Beach Run (which, or portions of which, are designated nursery waters). The intent of these changes is to protect fish that reach the sanctuary of nursery waters and to prevent individuals from driving the fish from these areas. The Commission approved the changes to §§ 67.1 and 69.14, consistent with the staff's recommendations.

Under § 51.5 (relating to correction of regulations), the Commission's staff made a corrective amendment to § 69.13(d) as it pertains to fish bait and bait fish.

#### F. *Fiscal Impact*

The amendments hereby adopted will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no new costs on the private sector or the general public.

#### G. *Paperwork*

The amendments hereby adopted will not increase paperwork and will create no new paperwork requirements.

#### H. *Public Involvement*

A notice of proposed rulemaking containing the proposed changes was published at 27 Pa.B. 1468 (March 22, 1997). The only change to attract public comment was the amendment to § 69.14. The Commission received two public comments on this proposed change. Both comments, one from the Board of Directors of the Orchard Beach Park Association and another from two members of the Association, oppose the proposed amendments that prohibits wading in Orchard Beach Run. Copies of both 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 and 1202) and the regulations promulgated thereunder 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and that all comments received were considered.

(3) The adoption of the amendments to the regulations 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 65, 67 and 69, are amended by amending §§ 65.1, 65.7, 65.24 and 69.15 to read as set forth in 27 Pa. B. 1468 and by amending §§ 67.1, 69.13 and 69.14 to read as set forth at Annex A.

(b) The Executive Director will submit this order and Annex A to the Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order, 27 Pa. B. 1468 and Annex A and deposit the same with the Legislative Reference Bureau as required by law.

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

PETER A. COLANGELO,  
*Executive Director*

*(Editor's Note: See 27 Pa.B. 5605 (November 1, 1997) for a document which amends § 65.24. The amendment to § 65.24 adopted as proposed in this document has been incorporated into the section printed at 27 Pa.B. 5605.)*

**Fiscal Note:** Fiscal Note 48A-65 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

**CHAPTER 67. NURSERY WATERS**

**§ 67.1. Nursery waters and exhibition areas.**

(a) The Executive Director, with the approval of the Commission, may designate waters as nursery waters or exhibition areas to which the penalties of section 2106 of the code (relating to fishing in hatchery or nursery waters) applies. The designation of waters as nursery waters or exhibition areas shall be effective upon posting of the waters after publication of a notice that the waters have been so designated in the *Pennsylvania Bulletin*.

(b) A person commits a summary offense of the first degree as provided by section 2106 of the code if the person fishes or trespasses with intent to fish in designated nursery waters or exhibition areas.

(c) It is unlawful to disturb fish or other aquatic life in nursery waters or exhibition areas by throwing stones, rocks or other objects or otherwise agitating the waters.

**CHAPTER 69. FISHING IN LAKE ERIE AND BOUNDARY LAKES**

**Subchapter B. SPORT FISHING AND ANGLING**

**§ 69.13. Seasons, sizes and creel limits—Lake Erie Tributaries**

(a) It is unlawful to take, catch, kill or possess fish except during the seasons specified in this section. It is

not a violation of this section if a fish caught out of season from waters where fishing for other species is lawful is immediately returned unharmed to the waters from which it was taken.

(b) It is unlawful to take, catch, kill or possess fish of less than the minimum size specified in this section. It is not a violation of this section if an undersized fish taken from waters where fishing is otherwise lawful is immediately returned unharmed to the waters from which it was taken.

(c) It is unlawful to take, catch or kill more than 1 day's limit of any species of fish as specified in the following chart during 1 calendar day. It is unlawful to possess more than 1 day's limit of any species of fish as specified in the following chart except under the following circumstances:

(1) A person may possess any number of lawfully caught fish at the person's residence.

(2) A person who is engaged in a fishing trip away from home for 2 or more consecutive calendar days may, while transporting fish from the place where caught to his residence, possess a number of fish equal to no more than two times the daily creel limit for that species of fish. In prosecution for violation of this section, it shall be a rebuttable presumption that a person transporting fish from a fishing site caught all of the fish during 1 calendar day.

(3) A fish will not be considered to be caught in violation of this section if it is immediately returned unharmed to the waters from which it was taken.

(4) A fish caught that is not to be counted in the creel limit shall be immediately released unharmed into the water from which taken. Except as otherwise provided in § 53.24 or § 63.40 (relating to tournament and fishing derby permits; and fishing tournament and fishing derbies), a fish placed on a stringer, or confined by any type of container, structure or device, or not returned immediately to the water, will be considered as part of the daily creel or possession limits. Fish returned to the water shall be handled carefully and be returned unharmed to the water from which taken.

(5) Fish may be given to another person, but the fish shall be counted in the donor's creel limit and neither the donor nor the recipient may kill or possess (while in the act of fishing) more than the limit allowed.

(d) Except as provided in §§ 69.14 and 69.15 (relating to special regulations applicable during the salmon and steelhead trout season; and miscellaneous special regulations) and for those waters listed as nursery waters, the following seasons, size and creel limits apply to the tributary streams of Lake Erie in this Commonwealth:

<i>Species</i>	<i>Seasons</i>	<i>Minimum Size</i>	<i>Daily Limit</i>
TROUT and SALMON	8:00 a.m. first Saturday after April 11 until midnight Labor Day.	9 inches	8 (combined species only 2 of which may be lake trout). Of the entire catch (combined species) only 3 fish total may exceed 15 inches in length.

<i>Species</i>	<i>Seasons</i>	<i>Minimum Size</i>	<i>Daily Limit</i>
	12:01 a.m. the day after Labor Day until midnight Thursday before the opening day of trout season in April.	15 inches	3 (combined species only 2 of which may be lake trout)
SMELT*	12:01 a.m. April 1 to midnight, May 31.	No minimum	No limit
FISH BAIT BAIT FISH	Open year-round (Except approved trout waters where fishing is prohibited from midnight Thursday before the first Saturday after April 11 until 8:00 a.m. on the opening day of trout season).	No minimum	50 (combined species)
BASS Largemouth Bass Small mouth Bass	January 1 to opening day of trout season in April and first Saturday after June 11 until December 31 Opening day of trout season in April until first Saturday after June 11.**	15 inches  20 inches	4 (combined species)  1
ALL OTHER SPECIES	Inland regulations apply except as provided in special regulations (see § 61.1)		

\* Smelt may be taken only in that portion of Lake Erie tributaries from the mouth of the stream in a southerly direction to State Highway No. 5, a distance of approximately 1/2 mile. In taking smelt from tributary streams, devices are limited to dip nets or seines not over 20 inches square or in diameter.

\*\* It is unlawful to conduct or participate in a fishing tournament (as defined in § 63.40 (relating to seasons for fishing tournaments)) for bass on lake Erie tributaries during the period from opening day of trout season in April until the first Saturday after June 11.

**§ 69.14. Special regulations applicable during the salmon and steelhead trout season.**

(a) *Season.* This section applies from 12:01 a.m. the day after Labor Day until midnight the Thursday before the opening day of trout season in April.

(b) *Specific restrictions.* The following specific restrictions apply to streams marked with an "X" during salmon and steelhead trout season described in subsection (a). It is unlawful for a person to fish in violation of these restrictions:

	<i>Fishing permitted, no time restrictions</i>	<i>Fishing permitted except closed from 10 p.m. to 5 a.m.</i>	<i>Fishing permitted, no time restrictions north of Route 5, closed from 10 p.m. to 5 a.m. south of Route 5</i>	<i>Fishing prohibited</i>	<i>Fishing prohibited from 10 p.m. to 5 a.m. in areas of Lake Erie shoreline within 50 yards of mouth of stream</i>	<i>Fishing prohibited in portions designated as nursery waters</i>	<i>Remarks</i>
Conneaut Creek	X						
W. Branch Conneaut Creek	X						
E. Branch Conneaut Creek	X						
Turkey Creek	X						
Raccoon Creek			X				
Crooked Creek			X			X	
Elk Creek			X			X	
Trout Run, including tributary				X	X		Wading prohibited
Walnut Creek			X				

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	<i>Fishing permitted, no time restrictions</i>	<i>Fishing permitted except closed from 10 p.m. to 5 a.m.</i>	<i>Fishing permitted, no time restrictions north of Route 5, closed from 10 p.m. to 5 a.m. south of Route 5</i>	<i>Fishing prohibited</i>	<i>Fishing prohibited from 10 p.m. to 5 a.m. in areas of Lake Erie shoreline within 50 yards of mouth of stream</i>	<i>Fishing prohibited in portions designated as nursery waters</i>	<i>Remarks</i>
Godfrey Run				X	X		Wading Prohibited
Four Mile Creek		X					
Six Mile Creek		X					
Seven Mile Creek		X					
Eight Mile Creek		X					
Twelve Mile Creek		X					
Sixteen Mile Creek		X					
Twenty Mile Creek		X					
Peck Run				X			Wading prohibited
Orchard Beach Run				X			
Cascade Creek		X					
Mill Creek		X					
Lake Erie Shoreline	X						50 yards (east and west) mouth of Trout Run and Godfrey Run—Closed from 10 p.m. to 5 a.m.
All other tributaries				X			

[Pa.B. Doc. No. 97-1738. Filed for public inspection October 31, 1997, 9:00 a.m.]