

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 69]

Fishing; Lake Erie and Boundary Lakes

The Fish and Boat Commission (Commission) amends Chapter 69 (relating to fishing in Lake Erie and boundary lakes). 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 upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. *Statutory Authority*

The amendments to §§ 69.11 and 69.12 (relating to the applicability of fishing regulations; and seasons, sizes and creel limits—Lake Erie, Lake Erie tributaries and Presque Isle Bay including peninsula waters) and the adoption of §§ 69.12b and 69.19 (relating to Lake Erie walleye and yellow perch adaptive management for establishing daily limits; and permit for the use of cast nets, throw nets or dip nets by sport anglers) are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amendments to §§ 69.21, 69.22, 69.23, 69.26, 69.33, 69.35, 69.37 and 69.39 are published under the statutory authority of 2903 of the code (relating to boat and net licenses for boundary lakes).

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) The Lake Erie Committee (LEC) is a convening body consisting of fisheries managers from Pennsylvania, Ohio, New York, Michigan and Ontario, Canada, operating under the auspices of the Great Lakes Fishery Commission. Critical management issues related to Lake Erie fisheries are discussed and decisions are derived through consensus among the members in the best interest of the resource. One major responsibility of the LEC is to set annual Lakewide harvest limits (quotas) for walleye and yellow perch in the form of a Total Allow Catch (TAC) for these species.

Annually, a range (minimum, mean, maximum) of recommended allowable harvests (RAH) for walleye and perch are generated by agency biologists that serve on technical task groups, the Walleye Task Group (WTG) and the Yellow Perch Task Group (YPTG). A compilation of assessment and fishery survey data from across Lake Erie are used to generate population estimates of perch and walleye utilizing state-of-the-art catch-at-age models. Based on these abundance estimates, the RAHs are

calculated by the WTG and YPTG and forwarded to the LEC to provide safe guidelines in establishing the annual TAC. Each March, the LEC reviews the RAH of the WTG and YPTG and sets the TAC for yellow perch and walleye based on a set of biological and social metrics.

After the TAC is established, individual harvest limits for each state (and Ontario) are apportioned based on the percentage of Lake Erie owned by each jurisdiction. It is the responsibility of each fisheries management agency to ensure that local TACs are not exceeded. These harvest controls are usually met through regional commercial quotas and angling regulations (creel limits, minimum size limits and closed seasons).

A challenge for state fisheries agencies is applying angling regulations in a timely manner, synchronized with the condition of fish stocks. Because regulatory change is typically a lengthy process, harvest regulation changes cannot usually be applied in ample time to provide for effective control. Another issue is the application of analogous sport harvest regulations across jurisdictions. Many anglers believe that when more conservative or liberal regulations are appropriate, they should be applied across the board, effectively sharing in both the pain and the bounty. Ohio implemented this strategy in 2010, Michigan in 2011 and New York expects to adopt this proposal in 2012. The flexibility of being able to apply creel limits in April, before the onset of each fishing season (similar to setting commercial quotas), will align the harvest controls (regulations) with the condition of the stocks and establish fishing regulations similarly across jurisdictions.

The Commission amends §§ 69.11 and 69.12 and adds § 69.12b to read as set forth in the proposed rulemaking published at 41 Pa.B. 5555 (October 15, 2011). The amendments to §§ 69.11, 69.12(c)(4) and portions of 69.12(f) are housekeeping changes. The amendments to § 69.12(f) and the addition of § 69.12b implement the adaptive management approach to establishing daily limits for walleye and yellow perch.

(2) The discovery of viral hemorrhagic septicemia (VHS) in the Great Lakes watershed resulted in the creation of Federal and State regulations intended to contain the disease within the Great Lakes. The United States Department of Agriculture—Animal Plant Health Inspection Service prohibits the interstate transport of 37 VHS susceptible fish species, unless they are determined to be VHS free based on analysis from a certified laboratory. Similar regulations imposed by the Department of Agriculture and the Commission prohibit the transport of 27 of these species outside of the Great Lakes watershed (10 of these species are marine or not found in the Great Lakes). Among the VHS susceptible species listed are emerald and spottail shiners, which are popular baitfish preferred by Lake Erie yellow perch anglers. These restrictions have resulted in limited availability and significant increases in the cost of these species at local bait shops. In response, the sportsmen's group, SONS of Lake Erie, requested that harvest limits of emerald shiners be increased from 50 per day to 150 per day.

The Commission identified two concerns with this request: the formation of entitlement regulations unique to Lake Erie; and protest by this Commonwealth's Lake Erie commercial seine fishery, which pays for a license that allows for the harvest and sale of baitfish. Upon

review, the Commission determined that this issue could be best addressed by implementing a cast/throw net permit similar to the permit system currently in place on Blue Marsh Lake, Nockamixon Lake, Beltzville Lake, Raystown Lake, Lake Wallenpaupack, Lake Arthur and Shenango River Lake that allows for the harvest of certain baitfish (gizzard shad or alewife) in excess of the creel limit of 50 per day provided under the general fishing regulations. Including Lake Erie under this permit system will not provide a special privilege to Lake Erie anglers in the form of enhanced baitfish harvest limits beyond what is allowed in other areas of this Commonwealth. In addition, it will address possible opposition by commercial seine operators because anglers will also be paying for the opportunity to harvest additional shiners.

The Commission adds § 69.19 to read as set forth in the proposed rulemaking.

(3) Related to the inadequate supply of shiners is the limited availability of commercial seine licenses for Lake Erie. Since 2007, there have been numerous requests for commercial seine licenses that have not been granted due to regulatory constraints limiting the availability of seine licenses. Currently, there are only ten seine licenses available, which are held by six individuals (one individual holds three licenses, two individuals hold two licenses and three individuals hold one license). Seine licenses are assigned to an individual net, which sometimes results in multiple licenses per applicant.

The impact of this fishery on shiner populations has been minimal. Harvest by the existing commercial seine fishery has averaged about 5,700 pounds annually since 1987, representing less than 2% of the total biomass estimates from assessment trawls conducted by the Commission's Lake Erie Research Unit. Harvest can fluctuate significantly and is correlated to the abundance of the population. Harvest has steadily increased in the last 3 years and peaked at 17,673 pounds in 2010, coinciding with prodigious increases in emerald shiner abundance and demand for this popular baitfish by perch anglers during this same time period.

Increasing the number of available seine licenses in § 69.21 (relating to limitations on number and types of commercial licenses) from 10 to 40 should increase the local availability of shiners and help control the escalating cost of baitfish while having no measurable impact on shiner populations. Moreover, limiting the commercial harvest to emerald and spottail shiners, gizzard shad and alewife in § 69.35 (relating to use of commercial seines) will reduce the potential of accidental introduction of exotic species (that is, round gobies) by means of feral baitfish collections. The Commission therefore amends §§ 69.21 and 69.35 to read as set forth in the proposed rulemaking.

In addition, the Commission conducted a comprehensive review of Subchapters C and D (relating to commercial fishing licenses; and commercial fishing, seasons and nets) and adopted changes to other commercial fishing regulations. The Commission amends §§ 69.22, 69.23, 69.26, 69.33, 69.37 and 69.39 to read as set forth in the proposed rulemaking.

F. Paperwork

The final-form rulemaking will not significantly increase paperwork and will create minimal new paperwork

requirements associated with the new permit for the use of cast nets, throw nets or dip nets by sport anglers under § 69.19.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public. However, under section 2902 of the code (relating to net permits), the fee for net permits is \$10. Therefore, Lake Erie anglers wishing to take advantage of the new permit for the use of cast nets, throw nets or dip nets under § 69.19 will be charged that fee. The Commission estimates that it will initially issue approximately 200 permits under § 69.19 each year. The Commission expects that number to increase over time.

H. Public Involvement

Notice of proposed rulemaking was published at 41 Pa.B. 5555. The Commission did not receive public comments regarding the amendments to §§ 69.11, 69.12, 69.21, 69.22, 69.23, 69.26, 69.33, 69.35, 69.37 and 69.39 or the addition of § 69.12b. Prior to the formal public comment period, the Commission received one public comment opposing the addition of § 69.19.

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 the 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 Chapter 69, are amended by amending §§ 69.11, 69.12, 69.21, 69.22, 69.23, 69.26, 69.33, 69.35, 69.37 and 69.39 and by adding §§ 69.12b and 69.19 to read as set forth at 41 Pa.B. 5555.
- (b) The Executive Director will submit this order and 41 Pa.B. 5555 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 41 Pa.B. 5555 and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JOHN A. ARWAY
Executive Director

Fiscal Note: Fiscal Note 48A-232 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 12-528. Filed for public inspection March 23, 2012, 9:00 a.m.]