

# **PROPOSED RULEMAKING**

## **FISH AND BOAT COMMISSION**

**[58 PA. CODE CH. 69]**

### **Fishing; Fishing in Lake Erie and Boundary Lakes**

**[54 Pa.B. 7866]**

**[Saturday, December 7, 2024]**

The Fish and Boat Commission (Commission) proposes to amend Chapter 69 (relating to fishing in Lake Erie and boundary lakes). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments update the Commission's regulations relating to addressing changing conditions and current best practices.

#### *A. Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

#### *B. Contact Person*

For further information on this proposed rulemaking, contact Renae Kluk Kiehl, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at <https://www.pa.gov/en/agencies/fishandboat.html>.

#### *C. Statutory Authority*

The proposed amendments to §§ 69.26, 69.33 and 69.37—69.39 are published under the statutory authority of section 2903 of the code (relating to boat and net licenses for boundary lakes).

#### *D. Purpose and Background*

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

#### *E. Summary of Proposal*

This Commonwealth's portion of Lake Erie supports a thriving yellow perch commercial fishery, and there are three commercial trap net licenses issued by the Commission. The commercial fishery is regulated by the Commission in Subchapters C and D (relating to commercial fishing licenses; and commercial fishing, seasons and nets); however, these regulations need to be updated to address changing conditions and current best practices.

Commission staff systematically reviewed current regulations and identified potential amendments that would streamline regulatory compliance while continuing to provide resource protection to the Lake Erie fishery. Commission staff also consulted the three licensed commercial

fishers throughout the review process. Commission staff presented these proposed changes to the Fisheries and Hatcheries Committee at its October 2024 meeting.

The substantive changes to each amended section are as follows:

1.) § 69.26—*Reports*

Subsection (a) is proposed to be amended to refine reporting of daily and monthly catches allowing for a thorough understanding of spatial and temporal catches associated with the commercial fishery. Amendments also provide additional mechanisms by which reports can be filed by allowing for electronic (for example, e-mail) submission instead of mailing reports to the Commission. In addition to the Northwest Region Law Enforcement Office, the Lake Erie Unit should receive reports as it is responsible for tracking and summarizing commercial catches which are used to inform lake-wide, multijurisdictional harvest quotas.

2.) § 69.33—*Use of commercial trap nets*

This section is proposed to be amended to align scientific and common names of fish species that are permitted for harvest under a commercial trap net license with the American Fisheries Society nomenclature. Species defined in §§ 75.1 and 75.2 (relating to endangered species; and threatened species), as well as nondesirable species (for example, goldfish) were removed from the list of species that are permitted for harvest under a commercial trap net license. Marking of buoys and tags allows law enforcement to check compliance without negatively impacting commercial fishing operations. Amendments to the time in which fishing is permitted are necessary to align with time as defined in § 69.31 (relating to seasons).

3.) § 69.37—*Prohibited acts*

This section is proposed to be amended to ensure all commercial trap net catch is accounted for, regardless if the fish are alive or dead at the time of harvest, which is critical to regulating a quota-managed fishery. Language to further protect commercial fishing gear from tampering will improve commercial fishing operations.

4.) § 69.38—*Clearing of nets*

This section is proposed to be amended to avoid wanton waste of undesirable, undersized, or threatened or endangered species that could perish due to prolonged net sets.

5.) § 69.39—*Landing of catch*

This section is proposed to be amended to improve enforcement and monitoring of daily catch by species prior to the catch being transported for processing.

The Commission proposes that §§ 69.26, 69.33 and 69.37—69.39 be amended to read as set forth in Annex A.

F. *Paperwork*

This proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. *Fiscal Impact*

This 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 to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,  
Executive Director

**Fiscal Note:** 48A-359. No fiscal impact; recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart B. FISHING**

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

**Subchapter C. COMMERCIAL FISHING LICENSES**

**§ 69.26. Reports.**

(a) The holder of a license described in this chapter or section 2903 of the code (relating to boat and new licenses for boundary lakes), shall file a monthly report with the Commission describing the licensee's daily catch **and latitude and longitude coordinates** for each grid fished during the period. When a trap net licensee holds multiple trap net licenses, the licensee shall only file one consolidated report each month for catches with all trap nets. Separate reports shall be filed for other types of licensed gear. Reports shall be made on forms furnished by the Commission and shall be received on or before the 5th day of the month following the month to which the report pertains. **Reports filed electronically with a digital signature will be acceptable.** Reports shall be sent to the [Fish and Boat Commission,] **Commission's Lake Erie Unit and** Northwest Region Law Enforcement Office.

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**Subchapter D. COMMERCIAL FISHING, SEASONS AND NETS**

**§ 69.33. Use of commercial trap nets.**

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(b) *Species*. A commercial trap net licensee may not possess or sell a fish except in compliance with the following size limits and seasons. **Species, as listed in §§ 75.1 and 75.2 (relating to endangered species; and threatened species), encountered shall be released unharmed.** The

following size limits apply to commercial trap net licensees except that 5% of each licensee's daily catch by number per species may be undersized fish that may be lawfully sold:

Species	Size Limit	Season
Yellow perch ( <i>Perca flavescens</i> )	None	No closed season until the total allowable catch is taken. See § 69.31 (relating to seasons).
Walleye [( <i>Stizostedion vitreum</i> )] ( <i>Sander vitreus</i> )	15 inches	January 1 to March 14 and <b>[May 1] the first Saturday in May</b> to December 31. This season will close when the total allowable catch for walleye is taken. See § 69.31.
<b>[White fish (<i>Coregonus spp.</i>)</b>	<b>17 inches</b>	<b>No closed season]</b>
White perch ( <i>Morone americana</i> )	No size limit	No closed season
<b>[Cisco (<i>Coregonus spp. except C. artedii</i>)</b>	<b>No size limit</b>	<b>No closed season]</b>
White bass ( <i>Morone chrysops</i> )	No size limit	No closed season
Burbot ( <i>Lota lota</i> )	No size limit	No closed season
<b>[Sheepshead] Freshwater Drum</b> ( <i>Aplodinotus grunniens</i> )	No size limit	No closed season
Gizzard shad ( <i>Dorosoma cepedianum</i> )	No size limit	No closed season
<b>[Goldfish (<i>Carassius auratus</i>)</b>	<b>No size limit</b>	<b>No closed season]</b>
Lake whitefish ( <i>Coregonus clupeaformis</i> )	No size limit	No closed season
Brown bullhead ( <i>Ictalurus nebulosus</i> )	No size limit	No closed season
Yellow bullhead ( <i>Ictalurus natalis</i> )	No size limit	No closed season
<b>[Rainbow smelt (<i>Osmerus mordax</i>)</b>	<b>No size limit</b>	<b>No closed season]</b>
Channel catfish ( <i>Ictalurus punctatus</i> )	No size limit	No closed season
Suckers [( <i>Carpides sp</i> ] <i>Carpiodes spp.</i> , <i>Catostomus [sp.] commersonii</i> , <b>[<i>Ictiobus sp.</i>] and <i>Moxmostoma [sp.] spp.</i></b>	No size limit	No closed season
Carp ( <i>Cyprinus carpio</i> )	No size limit	No closed season

(c) *Buoys/tags*. Marker buoys shall be attached to the beginning of each lead and to the back of the crib. A staff extending 8 feet above the water with a minimum size flag of 18 inches by 18

inches secured near the top shall be attached to the anchor for the beginning of the lead and a staff extending 8 feet above the water with 2 minimum size flags of 18 inches by 18 inches (double flags) shall be attached to the anchor for the crib. **An orange buoy float ball with a minimum diameter of 15 inches shall be attached to the anchor line of wing walls that are attached to the trap.** The licensee shall affix a metal, numbered tag provided by the Commission to each of the **[required staffs showing the name and address of the owner or the lessee] traps and mark buoys and staffs with the tag number.** Licensees shall report **vandalism to a trap net**, a seal that is lost, misplaced or stolen orally within 24 hours of discovery **[and in writing]** to the Commission at Northwest Law Enforcement Region **[within 2 business days]**. **Trap nets shall be properly tagged and marked and buoys, floats, staffs and flag markings shall be in good serviceable condition at all times. [Improperly marked or tagged nets] Trap nets not properly marked and maintained** shall be subject to confiscation by the Commission. Officers authorized to enforce the code and this part may mark trap nets for the purpose of determining the number of trap nets being used by a particular licensee.

\* \* \* \* \*

(f) *Time.* Trap nets may be fished 24 hours a day, but it is unlawful to set or lift them during the period from 30 minutes after sunset to 30 minutes before sunrise. **[Trap nets may be set or fished, or both, from March 1 to November 30.]**

\* \* \* \* \*

**§ 69.37. Prohibited acts.**

\* \* \* \* \*

(d) It is unlawful to fish by hook and line from a boat engaged in commercial fishing under this chapter.

**(e) It is unlawful while fishing under a commercial license to dispose of dead, legally caught fish within the trap net and dispose of them in waters of this Commonwealth. These fish shall be disposed of properly and will count towards the licensee's quota.**

**(f) Anglers and boaters may not interfere with properly marked commercial trap nets.**

**§ 69.38. Clearing of nets.**

Nets fished **[under] pursuant to** a commercial fishing license or subject to licensing under this chapter and section 2903 of the code (relating to boat and net licenses for boundary lakes), shall be lifted and cleared of catch **[on a schedule as the] every 7 days or less after the net is set. Live undersized fish or live fish with no market value may be returned to the lake.** The Executive Director may establish **additional time frames** to provide for the better protection and management of fish, except under circumstances where the Executive Director or his designee, upon a showing of good cause by the licensee, authorizes the licensee to lift and clear his nets on an alternate schedule.

**§ 69.39. Landing of catch.**

\* \* \* \* \*

(c) Fish caught under a Commonwealth commercial fishing license may not be off-loaded onto a boat other than a boat on which they were caught.

**(d) A licensee shall notify the Commission's Lake Erie Unit and Northwest Region Law Enforcement Office within 24 hours prior to each time nets are lifted and cleared of catch. All of the following conditions shall be met:**

- (1) Fish shall be separated in containers by species.**
- (2) Containers shall be labeled with the trap net tag number from which they were caught.**
- (3) The weight of the containers shall be estimated while on the water.**
- (4) Containers that are being off-loaded with fish at the dock shall have an accurate weight attached to them.**
- (5) Weights shall be posted in or on the containers and documented on reports at the time the containers are off-loaded and prior to transport.**
- (6) Containers and reports shall be subject to inspection by officers authorized to enforce the code.**

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