

**CHAPTER 71. PROPAGATION AND INTRODUCTION OF
FISH INTO COMMONWEALTH WATERS**

- Sec.
71.1. General.
71.2. Fish species approved for artificial propagation and introduction.
71.3. Closed system propagation.
71.4. Stocking of designated waters.
71.5. Improper stocking of Commission fish.
71.6. Prohibited acts.
71.7. Triploid grass carp.
71.8. Introduction of VHS-susceptible species of fish.

Source

The provisions of this Chapter 71 readopted January 6, 1984, effective January 7, 1984, 14 Pa.B. 46, unless otherwise noted. Immediately preceding text appears at serial pages (76833) to (76834) and (68842) to (68845).

§ 71.1. General.

The introduction of the grass carp or white amur into Commonwealth waters is prohibited, except that triploid grass carp may be introduced into Commonwealth waters as provided in § 71.7 (relating to triploid grass carp). It is unlawful to propagate grass carp (diploid or triploid) in this Commonwealth.

Authority

The provisions of this § 71.1 amended under the Fish and Boat Code, 30 Pa.C.S. §§ 2102, 2904 and 3309.

Source

The provisions of this § 71.1 amended December 14, 1990, effective December 15, 1990, 20 Pa.B. 6179; amended June 11, 1993, effective January 1, 1994, 23 Pa.B. 2735; amended April 5, 2002, effective April 6, 2002, 32 Pa.B. 1725. Immediately preceding text appears at serial page (276233).

Cross References

This section cited in 58 Pa. Code § 71.6 (relating to prohibited acts).

§ 71.2. Fish species approved for artificial propagation and introduction.

The Bureau of Fisheries will maintain a list of species by watershed for which the Department of Agriculture may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The Director of the Bureau of Fisheries may update or modify the list of authorized species by adding species to, or deleting species from, the list as necessary to provide for the protection and management of fish and fishing in this Commonwealth. The Commission will provide the list to the Department of Agriculture on or before January 31 each year and whenever the Commission updates or modifies the list. Copies

of the list of authorized species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, Pennsylvania 16823.

Authority

The provisions of this § 71.2 amended under the Fish and Boat Code, 30 Pa.C.S. §§ 2102, 2904 and 3309; and the Agricultural Development Act, 3 Pa.C.S. § 4219.

Source

The provisions of this § 71.2 amended December 14, 1990, effective December 15, 1990, 20 Pa.B. 6179; amended April 5, 2002, effective April 6, 2002, 32 Pa.B. 1725. Immediately preceding text appears at serial page (276234).

§ 71.3. Closed system propagation.

(a) *Closed (no discharge) system.* A propagating system may be designated as a closed system only if all of following criteria are met:

(1) There will be 100% recycling water as normal operations.

(2) Closed systems will be housed indoors in a structure enclosed by solid walls, floor and roof. For purposes of this subsection, a wall, floor or roof will be considered "solid" if it is constructed and maintained to prevent unauthorized human or animal intrusions into the closed system facility and to prevent release or escape of aquatic organisms from the closed system.

(3) Water can be added to the system only for making up evaporative loss, cleaning and fish harvesting or to reduce toxic ammonia/nitrates by diluting.

(4) The system does not discharge water into waters of this Commonwealth.

(5) No live fish or live fish eggs will be allowed to escape with water discharges. Accidental spillage of live fish or live fish eggs (including truck loading, and the like) will be contained within the facility in a manner that will prevent fish and fish eggs from escaping into the waters of this Commonwealth.

(6) The system operator is registered with the Department of Agriculture (Department). The Department will notify the Commission when it receives an application to register a proposed closed system, and the Commission may, within 30 days of receipt of the notice, inspect the system to ensure that it is designed and constructed in a manner to prevent escapement of live fish or live fish eggs into the waters of this Commonwealth. Closed systems registered under this subsection shall, in addition to an initial inspection, be subject to inspection at any time to ensure compliance with the requirements of this section and the Commission may issue an order to suspend operations of any closed system when an inspection discloses that it is not in compliance.

(7) The Commission will invite the Department's Aquaculture Advisory Committee or a subcommittee thereof to draft and periodically update construction guidelines for closed system propagators to help them ensure enclosed

facilities prevent escape of aquatic organisms into the waters of this Commonwealth. These guidelines will assist registered propagators in the design, construction and maintenance of closed systems and will assist the Commission in inspecting these systems.

(b) *Systems with discharges rendered incapable of containing living organisms.* A system whose discharge of water is rendered incapable of containing self-perpetuating living organisms shall be registered with the Department. The Department will notify the Commission when it receives an application to register a proposed system under this subsection, and the Commission may, within 30 days of receipt of the notice, inspect the system to ensure that it is designed and constructed so that its discharge is rendered incapable of containing live fish or live fish eggs. Systems registered under this subsection shall, in addition to an initial inspection, be subject to inspection at any time to ensure compliance with this section and the Commission may issue an order to suspend operations of any system when an inspection discloses that it is not in compliance. The registration of this system may include any species of fish with the approval of the Department.

(c) *Escape of fish into waters of this Commonwealth.* It is unlawful for an operator of any system registered under subsection (a) or (b) to allow fish to escape into the waters of this Commonwealth.

(d) *Written plans for discharge.* An operator of any system registered under subsection (a) or (b) shall develop, maintain and make available for immediate inspection by the Commission and the Department upon request a written plan for containing or treating discharge in the event of a discharge system failure.

(e) *Satisfaction in event of discharge.* An operator of any system registered under subsection (a) or (b) shall notify both the Commission's Director of the Bureau of Fisheries and the Department's Aquaculture Coordinator immediately in the event of a discharge system failure that is likely to contain viable living organisms.

Authority

The provisions of this § 71.3 amended under the Fish and Boat Code, 30 Pa.C.S. § 2102; and the Aquacultural Development Law, 3 Pa.C.S. § 4219.

Source

The provisions of this § 71.3 amended April 29, 1988, effective April 30, 1988, 18 Pa.B. 2030; amended December 14, 1990, effective December 15, 1990, 20 Pa.B. 6179; amended April 5, 2002, effective April 6, 2002, 32 Pa.B. 1725. Immediately preceding text appears at serial pages (276234) to (276235).

§ 71.4. Stocking of designated waters.

It is unlawful to place fish in waters that have been designated by the Commission as catch and release, wilderness trout or wild trout management waters except with the express written consent of the Executive Director or his designee. This section does not prohibit a person from returning fish unharmed to the waters from which they were caught or taken.

Cross References

This section cited in 58 Pa. Code § 57.8a (relating to Class A wild trout streams).

§ 71.5. Improper stocking of Commission fish.

In stocking fish reared or salvaged by the Commission or a cooperative nursery recognized by the Commission, the following acts are prohibited:

- (1) Failure to stock fish in waters designated by Commission personnel.
- (2) Diversion of fish to be stocked to waters not open or accessible to free public fishing.
- (3) Mishandling or misuse of fish being stocked in a manner so as to damage or destroy the fish.

§ 71.6. Prohibited acts.

(a) Except as otherwise provided in § 71.7 (relating to triploid grass carp), it is unlawful to introduce or import grass carp (white amur) into this Commonwealth. Except as otherwise provided in § 71.7, it is unlawful to possess grass carp (white amur) in this Commonwealth.

(b) It is unlawful to introduce tilapia, including blue tilapia and tilapia hybrids, into the waters of this Commonwealth.

(c) As an exception to subsection (a), §§ 71.1 and 73.1 (relating to general; and transportation), the Executive Director may authorize the Research Division of the Bureau of Fisheries to possess grass carp (white amur) and introduce them into waters within the confines of the Commonwealth hatchery system as part of a carefully controlled research effort, subject to conditions as the Executive Director may prescribe.

(d) It is unlawful to possess the following live species in this Commonwealth. It is unlawful to introduce or import the following live species into the waters of this Commonwealth:

- (1) Snakehead (all species).
- (2) Black carp (*Mylopharyngodon piceus*).
- (3) Bighead carp (*Hypophthalmichthys nobilis*).
- (4) Silver carp (*Hypophthalmichthys molitrix*).
- (5) Zebra mussel (*Dreissena polymorpha*).
- (6) Quagga mussel (*Dreissena bugensis*).
- (7) Round goby (*Neogobius melanostomus*).
- (8) Tubenose goby (*Proterorhinus marmoratus*).
- (9) European rudd (*Scardinius erythrophthalmus*).
- (10) Crayfish (all species).

(i) Except when they are either:

(A) Possessed and used as bait on, in or about the water from which taken.

(B) Possessed or imported for testing and scientific purposes or restaurant consumption, adequate measures have been taken to prevent their escape and they are accompanied by documentation stating the point of origin and the destination to which they are to be delivered.

- (ii) Except when used as bait as provided in this section, introduction of live crayfish (all species) into the waters of the Commonwealth is prohibited.
- (11) Ruffe (*Gymnocephalus cernuus*).

Authority

The provisions of this § 71.6 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 305, 322, 741, 928, 2102, 2307, 2711, 5122, 5123 and 5124; amended under the Fish and Boat Code, 30 Pa.C.S. §§ 2102 and 2904.

Source

The provisions of this § 71.6 adopted December 28, 1984, effective December 29, 1984, 14 Pa.B. 4691; amended March 13, 1987, effective March 14, 1987, 17 Pa.B. 1088; amended February 3, 1989, effective February 4, 1989, 19 Pa.B. 405; amended June 11, 1993, effective January 1, 1994, 23 Pa.B. 2735; amended September 13, 2002, effective September 14, 2002, 32 Pa.B. 4485; amended September 5, 2003, effective September 6, 2003, 33 Pa.B. 4447; amended August 25, 2006, effective August 26, 2006, 36 Pa.B. 4724; amended July 3, 2014, effective January 1, 2015, 44 Pa.B. 4177. Immediately preceding text appears at serial pages (322558) and (360755).

§ 71.7. Triploid grass carp.

(a) *Policy.* As a limited exception to the prohibition of grass carp (white amur) in this Commonwealth, it is the policy of the Commission to permit triploid grass carp, certified as such by the United States Fish and Wildlife Service (USFWS) and procured from a producer participating in the USFWS certification program, to be introduced into Commonwealth waters and imported and transported into this Commonwealth in accordance with this section.

(b) *Status.* The triploid grass carp (white amur) (*Ctenophryngodon idella*) is not a game fish.

(c) *Permit required.*

(1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid grass carp (white amur) or introducing them into Commonwealth waters and for importing or transporting triploid grass carp into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit for a fee of \$75. A person who wishes to import triploid grass carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid grass carp importation/ transportation permit for a fee of \$75. Permits shall be applied for on forms supplied by the Commission. Applications for permits may be obtained from: Triploid Grass Carp Manager, Bureau of Fisheries, 450 Robinson Lane, Bellefonte, PA 16823-9616. Permits will not be issued until after January 1, 1994.

(2) A person aggrieved by a Commission staff action on a permit application may appeal under Chapter 51, Subchapter E (relating to permit procedures) and 1 Pa. Code Part II (relating to the general rules of administrative practice and procedure).

(d) *Dealers and importers.* In addition to the triploid grass carp permit required by subsection (c), dealers and importers shall obtain and maintain all licenses, permits and registrations required by the Department of Agriculture for the sale or transportation of fish.

(e) *Restrictions on introduction of triploid grass carp.*

(1) The Commission will not approve the stocking or release of triploid grass carp into a water body wholly or partially in this Commonwealth that is currently known to be inhabited by a species of animal or plant currently listed as status endangered, threatened, candidate or other special concern status, by a state or Federal agency with jurisdiction for the species, without prior written approval for the stocking or release by the agencies which classified the species as endangered, threatened, candidate or of special concern.

(2) The Commission will not approve stocking or release of triploid grass carp into wetlands under Federal or state jurisdiction except in compliance with applicable Federal or state regulations including, when required, the written approval for the stocking or release by the involved agencies.

(3) The Commission will not approve stocking or release of triploid grass carp into a body of water more than 5 acres in surface area until the applicant submits an environmental inspection report prepared by a biologist or fisheries or environmental scientist acceptable to the Commission. The environmental inspection report shall include a certification that the preparer has personally inspected the pond or body of water and that the stocking of triploid grass carp will have no adverse environmental impacts on the waters where stocked or waters upstream or downstream of the waters. The report shall describe the measures taken by the applicant to prevent escape of the grass carp into waters upstream or downstream of the stocked waters. The environmental inspection report shall also include additional information as the Commission may require.

(4) The Commission may require an applicant for a permit to stock triploid grass carp in a pond or body of water of 5 or less acres in surface area to submit an environmental inspection report in the format described in paragraph (3) when the staff's review of the application indicates that further inspection or review of the proposed stocking is appropriate under the circumstances.

(5) The issuance of permits under this section will be subject to the public notice and comment provisions of Chapter 51, Subchapter E.

(f) *Prohibited acts.*

(1) It is unlawful to transport, import, possess or introduce triploid grass carp in this Commonwealth unless the person possessing, transporting, importing or introducing the grass carp obtains and maintains required permits. Permits shall be displayed upon request to an officer authorized to enforce the code or this part.

(2) It is unlawful to transport, import, possess or introduce grass carp in this Commonwealth unless the person possessing, transporting, importing or introducing the grass carp possesses a valid bill of sale or bill of origin from a producer participating in the USFWS triploid grass carp certification program.

(3) It is unlawful to transport, import, possess or introduce grass carp in this Commonwealth unless the grass carp are certified by the USFWS to be triploid grass carp. The certification of triploid status shall be obtained from the producer at the time of purchase.

(4) It is unlawful to import, transport, possess or introduce triploid grass carp into Commonwealth waters except in compliance with this section and conditions of the applicable permits.

(5) Persons, organizations or companies are prohibited from giving, trading or exchanging triploid grass carp except to persons holding valid triploid grass carp possession/introduction permits.

(g) *Revocation or suspension of permits.*

Failure to abide by regulations, permits and permit conditions pertinent to triploid grass carp possession, transportation and introduction may result in suspension or revocation of the applicable permits in accordance with Chapter 51, Subchapter C (relating to suspension, denial or revocation of licenses, permits, registrations or privileges). Revocation or suspension shall be in addition to other applicable penalties provided by law or regulation.

Authority

The provisions of this § 71.7 issued under the Fish and Boat Code, 30 Pa.C.S. §§ 2102 and 2904; amended under the Fish and Boat Code, 30 Pa.C.S. § 2904.

Source

The provisions of this § 71.7 adopted June 11, 1993, effective January 1, 1994, 23 Pa.B. 2735; amended April 5, 2002, effective April 6, 2002, 32 Pa.B. 1725; amended April 6, 2012, effective July 1, 2012, 42 Pa.B. 1859. Immediately preceding text appears at serial pages (322559) to (332560), (287825) to (287826) and (340047).

Cross References

This section cited in 58 Pa. Code § 71.1 (relating to general); 58 Pa. Code § 71.6 (relating to prohibited acts); and 58 Pa. Code § 73.1 (relating to transportation).

§ 71.8. Introduction of VHS-susceptible species of fish.

(a) For purposes of this section, the following terms have the following meanings:

(1) Species of fish that are susceptible to viral hemorrhagic septicemia (VHS) are those species that the Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS) designates by order or the Commission defines by notice in the *Pennsylvania Bulletin*.

(i) The term “VHS-susceptible species” includes fish that are dead or alive, preserved or unpreserved, and the parts thereof.

(ii) The term “VHS-susceptible species” does not include the eggs of these species.

(2) A VHS-affected or VHS-at risk state includes Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin or other state that APHIS later designates by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.

(3) A VHS-affected or VHS-at risk region includes the Canadian provinces of Ontario and Quebec or other region that APHIS later designates by order or the Commission later defines by notice in the *Pennsylvania Bulletin* as being VHS-affected or VHS-at risk.

(b) It is unlawful to introduce VHS-susceptible species of fish from the portion of the Lake Erie watershed in this Commonwealth into other watersheds of this Commonwealth except in accordance with § 69.3(d) (relating to transportation, introduction and sale of VHS-susceptible species of fish out of the Lake Erie watershed).

(c) It is unlawful to introduce into the waters of this Commonwealth VHS-susceptible species of fish from an affected or at-risk state unless the fish are from a group of fish certified as having tested negative for VHS or are from an artificial propagation facility certified as having tested negative for VHS in accordance with the testing protocols adopted by the Pennsylvania Department of Agriculture and approved by the Commission.

(d) It is unlawful to introduce into the waters of this Commonwealth VHS-susceptible species of fish from an affected or at-risk region unless the fish meet the requirements of § 73.3(d)(1) (relating to transportation and importation of VHS-susceptible species of fish).

Authority

The provisions of this § 71.8 adopted under the Fish and Boat Code, 30 Pa.C.S. § 2102(a).

Source

The provisions of this § 71.8 adopted December 12, 2008, effective January 1, 2009, 38 Pa.B. 6742.

[Next page is 73-1.]