

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this regulation as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (Code). The proposed regulation deals with fishing.

A. Effective date

This proposed regulation will, if approved on final rulemaking, go into effect on January 1, 1999, or upon publication of an order adopting the regulation, whichever occurs later.

B. Contact person

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

C. Statutory authority

This proposed regulation is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and background

The proposed regulation is designed to update, modify and improve Commission regulations pertaining to fishing. The specific purpose of the proposed regulation is described in more detail under the summary of proposal.

E. Summary of proposal

Angler opinions from the 1991 Trout Angler Telephone Survey resulted in strong support for the creation of more limited kill areas on wild trout fisheries. The same general theme was supported by the participants of the recent Wild Trout Workgroup. In keeping with this concept, the Commission is proposing the adoption of a new All Tackle Selective Harvest Program. This proposed regulation is designed to enhance wild trout fisheries, while providing anglers with an opportunity for limited harvest of larger individuals.

If adopted, the All Tackle Selective Harvest Program would provide an alternative to the current Selective Harvest Program, in which angling is limited to the use of artificial lures only (including flies and streamers). The proposed regulation would appeal to a broad spectrum of anglers, as fishing would be permitted with the use of artificial lures, flies, streamers, natural bait, baitfish or fishbait. Both spinning and fly fishing gear would be permitted in these areas. This proposed regulation would provide for year-round angling (no closed season) with a 12-inch minimum length limit on brown trout and a 9-inch minimum length limit for all other salmonid species. The daily creel limit would be two trout (combined species) from 8 a.m. on the opening day of regular trout season to midnight Labor Day. No harvest would be permitted from midnight Labor Day to 8 a.m. on the opening day of regular trout season of the following year.

Waters for the proposed All Tackle Selective Harvest Program include the following. In addition, the Commission's staff expect to have several new waters to add to this program. However, time did not permit staff to complete all of the necessary landowner contacts.

| County | Water | Description |
|--------------|-------------------------------|---|
| Westmoreland | Camp Run | Currently managed as a Class A wild brook trout fishery and unstocked. From the headwaters downstream to the mouth a distance of 4.1 miles. |
| Cameron | Hunts Run | Currently managed as a Class A wild brown trout fishery and unstocked. From the confluence with McNuff Branch downstream to the mouth, a distance of 4.7 miles. |
| Potter | Sinnemahoning Creek East Fork | Currently managed as a Class A wild brown trout fishery and unstocked. From the confluence with Wild Boy Run downstream to the confluence with Camp Run, a distance of 2.9 miles. |
| Union | Cherry Run | Currently managed as a Class A wild brown trout fishery and unstocked. From a point 2.7 miles upstream from the mouth downstream to the mouth, a distance of 2.7 miles. |

F. Paperwork

The proposed regulation will not increase paperwork and will create no new paperwork requirements.

G. Fiscal impact

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

H. Public comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed regulation 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 at "regulations@fish.state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-74. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS
§ 65.4b. All-Tackle Selective Harvest Program.

(a) **The Executive Director, with the approval of the Commission, may designate waters as all-tackle selective harvest areas. The designation of waters as all-tackle selective harvest areas will be effective when the waters are so posted after publication of a notice of designation in the *Pennsylvania Bulletin*.**

(b) **It is unlawful to fish in designated and posted all-tackle selective harvest areas except in compliance with the following requirements:**

(1) **The program is open to fishing year-round; there is no closed season.**

(2) **The minimum size is 12 inches for brown trout and 9 inches for all other salmonids caught on, or in possession on, the waters under the all-tackle selective regulations.**

(3) **The daily creel limit is two trout—combined species—from 8 a.m. on the opening day of trout season in April until midnight Labor Day, except during the period from the day after Labor Day to 8 a.m. on the opening day of regular trout season of the following year, when no trout may be killed or had in possession on the waters under regulation.**

(4) **A current trout/salmon permit is required.**

(c) **This section applies to trout only. Inland regulations apply to all other species.**

[Pa.B. Doc. No. 97-1946. Filed for public inspection December 5, 1997, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CHS. 143 AND 147]

Hunting and Furtaker Licenses; Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its October 7, 1997 meeting, proposed the following amendments to read as set forth in Annex A.

Amend Chapter 143, Subchapter C (relating to antlerless deer licenses) by amending §§ 143.42, 143.51, 143.52 and 143.55, to eliminate the reference to “bonus” tags in this subchapter and change the definition to “surplus” tags and provide for their issuance as well as the issuance of unlimited antlerless licenses for counties in the Special Regulations Areas.

Amend Chapter 147, Subchapter A (relating to general provisions) by removing language in § 147.1 (relating to scope) that has been determined to exceed the parameters under 34 Pa.C.S. (relating to Game and Wildlife Code (code)).

Amend Chapter 147, Subchapter A with the addition of the definition of “field trial/hunt test” in § 147.2 (relating to general) and to Subchapter L, § 147.221 (relating to general) and removing the language in § 147.222 (relat-

ing to permits for bird dog trials on Commission controlled lands) making reference to “official guns.”

Amend Chapter 147, Subchapter H (relating to protected specimen) by adding new §§ 147.143—147.145, to provide a definition of “abandoned venison” and to outline the procedures for the transfer of ownership of the abandoned venison.

These proposed amendments will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposal of these amendments is the code.

These proposals were made public at the October 7, 1997, meeting of the Commission, and comments on these proposals may be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797 until December 19, 1997.

Proposed amendments to Chapter 143, Subchapter C

1. Introduction

In establishing the antlerless deer license allocation for 1997, the Commission decided to eliminate the bonus license system and to establish a much restricted “surplus” system involving issuance of these licenses to flintlock muzzleloader hunters and in special regulations areas only. The proposed changes to Subchapter C of Chapter 143 would accomplish this purpose. These changes are being proposed under authority contained in section 2102 of the code (relating to regulations).

2. Purpose and Authority

Given concerns by Legislators and sportsmen with regard to deer populations in parts of this Commonwealth, the Commission at its April 15, 1997, meeting decided to reduce antlerless license allocations and eliminate the bonus system which virtually guaranteed the sale of all antlerless licenses and permitted deer hunters to each harvest a number of deer. The Commission decided to initiate a limit of a maximum of two deer, one of each sex, per hunter per year and to restrict “surplus” antlerless licenses to flintlock muzzleloader hunters and to special regulations areas where antlerless licenses are unlimited. At its October 7, 1997, meeting the Commission proposed changes to Subchapter C of Chapter 143 which would implement this change.

Section 2102 of the code authorizes the Commission to “. . . promulgate regulations relating to seasons and bag limits for hunting or furtaking. . . .” This section provides the authority for the proposed changes.

3. Regulatory Requirements

With the exception of those areas where unlimited antlerless deer licenses are available, the proposed changes would limit deer hunters to one antlerless or one surplus license per year.

4. Persons Affected

Persons wishing to hunt antlerless deer in this Commonwealth would be affected by the proposed changes.

5. Cost and Paperwork Requirements

There would be no significant increase in cost or paperwork requirements resulting from the proposed changes.

Proposed amendments to § 147.1

1. Introduction

In a memorandum opinion in the case of *Showers v. Spangler, et. al.*, 1 CV-94-2129, Judge Caldwell of the

Federal District Court for the Middle District of Pennsylvania expressed the opinion that § 147.1(b) is invalid as being inconsistent with section 2906 of the code (relating to records). To avoid any potential future problems, the Commission at its October 7, 1997, meeting proposed deleting a sentence which expands the scope of the section. This change is being proposed under the authority contained in section 2901(b) of the code (relating to regulations for permits).

2. Purpose and Authority

Section 2906 of the code provides that: "The records must be kept for a period of three years and shall be open to inspection by any officer of the Commission during normal business hours . . ." Section 147.1(b) provides that: "The record, together with the premises, shall be open to inspection upon demand of an officer of the Commission." Clearly the regulation authorizes much more than the statute, namely the inspection of premises and records on demand, not during reasonable business hours. As such, the Commission is proposing to delete the above sentence.

Section 2901 of the code authorizes the Commission to ". . . promulgate regulations to control the activities which may be performed under authority of any permit issued." This provides authority for the proposed change in the regulation.

3. Regulatory Requirements

The proposed change would relax current requirements.

4. Persons Affected

Individuals holding Commission permits would be affected by the proposed change.

5. Cost and Paperwork Requirements

There would be no additional cost or paperwork requirements under the proposed change.

Proposed amendments to Chapter 147, Subchapters A and L

1. Introduction

By Act No. 184 of 1996, enacted on December 19, 1996, section 2382 of the code (relating to training dogs on small game) was amended to allow lawful training of dogs on small game at any time during the year. As a result of this change, many dog training organizations requested that the Commission review some of its regulations relating to dog training. That review led the Commission to propose at its October 7, 1997, meeting, changes to Subchapters A and L of Chapter 147 to define "field trial/hunt test" and allow the firing of blank ammunition from a firearm normally fired from the shoulder by up to 10 "official guns" during the trials/tests. These changes are proposed under authority contained in section 2901(b) of the code.

2. Purpose and Authority

As a result of recent changes in the code and a dialogue with representatives of dog training organizations, the Commission has decided to recognize sanctioned dog training events which will be referred to as "field trials/hunt tests." In addition, the Commission also is proposing to allow the firing of blank ammunition at the events from a firearm normally fired from the shoulder by no more than 10 persons. Finally, a provision in § 147.222 (relating to bird dog trials on Commission controlled property) providing for five "official guns" would be increased to 10.

These activities would be authorized by permits issued by the Commission. Section 2902(b) of the code authorizes

the Commission to promulgate regulations to control activities which may be performed under the authority of any permit.

3. Regulatory Requirements

The proposed changes would expand activities that could be performed under Commission permits and would increase the number of "official guns" to 10 persons.

4. Persons Affected

Persons wishing to train hunting dogs would be affected by the proposed changes.

5. Cost and Paperwork Requirements

Because of the limited number of dog training permits that are issued, it is unlikely that there would be a significant increase in cost or paperwork requirements.

Proposed amendments to Chapter 147, Subchapter H

1. Introduction

As a result of several meetings held among representatives of the Commission, legislators and meat processors, the need became evident for a mechanism by which meat processors could dispose of unclaimed venison which they have been given to process. The Commission therefore proposed at its October 7, 1997, meeting that §§ 147.143—147.145, be added to Subchapter H of Chapter 147 to provide the mechanism. These additions are being proposed under authority contained in sections 2102 and 2901 of the code, relating to regulations, and regulations for permits.

2. Purpose and Authority

Meat processors are often asked to butcher deer, yet when they notify the customer that the meat is ready for pickup, the owner does not pick up the venison. Currently, regulations do not permit the meat processor to lawfully transfer the venison and the processor has therefore lost the time and expense of butchering the meat. The proposed additions would change this situation by creating a special permit which would allow transfer of venison in return for payment of processing fees.

Section 2102(a) of the code directs the Commission to ". . . promulgate such regulations as it deems necessary and appropriate concerning game or wildlife . . ." Section 2901(b) of the code authorizes the Commission ". . . as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit . . ." These provisions provide the authority for the proposed additions, which would control limited transfer of venison.

3. Regulatory Requirements

The proposed additions would allow actions currently not permitted by regulation but would require compliance with a notification and reporting procedure and the obtaining of a permit.

4. Persons Affected

Meat processors who process venison and their customers who fail to pick up meat would be affected by the proposed additions.

5. Cost and Paperwork Requirements

Prior to transfer of abandoned venison, meat processors would be required to give written notice to the owner by registered mail. Any transferee would be required to obtain a permit free of charge to possess the venison.

Finally, the meat processor would be required to mail a brief report of the transaction to the local wildlife conservation officer.

Effective Dates

These proposed amendments would be effective on final publication in the Pennsylvania Bulletin and would remain in effect until changed by the Commission.

Contact Person

For further information on the proposed changes the contact person is James R. Fagan, Director, Bureau of Law Enforcement, (717) 783-6526, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

DONALD C. MADL, Executive Director

Fiscal Note: 48-101. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 143. HUNTING AND FURTAKER LICENSES

Subchapter C. ANTLERLESS DEER LICENSES

§ 143.42. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[Bonus] Surplus tag—An antlerless deer license permitting properly licensed [persons] flintlock muzzleloader hunters to take an [additional] antlerless deer during the regular firearms antlerless deer season, archery or flintlock muzzleloader deer seasons in [a specific] the county of issue.

[Bonus] Surplus tag application—The form contained in the Hunting and Trapping Digest used in applying for a [bonus] surplus tag and unlimited antlerless deer licenses in special regulations areas.

* * * * *

§ 143.45. Completing and submitting applications.

(a) Except as otherwise provided in § 143.52 (relating to procedure for [unexhausted allocation] unlimited antlerless licenses) and for those applications submitted by qualified landowners, it is unlawful for a county treasurer to accept an application in a manner other than by standard mail delivery through and by the United States Postal Service.

* * * * *

§ 143.51. Application and issuance of [bonus] surplus tags.

(a) [Beginning on the fourth Monday in August, remaining unsold antlerless deer licenses will be made available as first bonus tags to properly licensed applicants under §§ 143.45 and 143.50 (relating to completing and submitting applications; and procedure for nonresidents of this Commonwealth). Other appropriate sections of this chapter apply.

(b)] County treasurers shall accept and process [bonus] surplus applications from applicants in possession of a current flintlock muzzleloader license stamp beginning the third Monday in August. [Bonus] Surplus applications accepted by county treasurers on the third Monday in August shall have the applicant's flintlock muzzleloader license number written in the upper corners of the [bonus] surplus application. The applicant shall write or indicate "Flintlock/Muzzleloader" in the lower left corner of the official envelope.

[(c)] (b) An applicant for this tag may not use the regular antlerless deer license application. An applicant shall only use the [bonus] surplus application contained in the Hunting [&] and Trapping Digest or a reasonable facsimile thereof.

[(d)] (c) ***

[(e)] (d) ***

[(f) In a county where bonus tags become available, a person who may lawfully hunt without a license as defined in section 2706 of the act (relating to resident license and fee exemptions) may take the number of bonus antlerless deer without a license during the regular firearms antlerless deer season or the archery and muzzleloader deer season equal to the number of licenses available to a licensed individual. Deer taken shall be tagged and reported as set forth in section 2323(b) of the act (relating to tagging and reporting big game kills). The tag and report shall contain the wording "antlerless deer," along with the other information required.

(g)] (e) [Bonus] Surplus tags shall be validated by the addition of the county treasurer's signature or signature stamp, date of issue and the applicant's regular hunting license back tag number. The county treasurer shall write in ink the applicant's regular hunting license back tag number on the antlerless deer ear tag.

§ 143.52. Procedure for [unexhausted allocation] unlimited antlerless licenses.

(a) [A county treasurer who has unsold licenses on the second Monday in September and thereafter, shall accept regular antlerless, first bonus and second bonus applications (see subsection (b)) by mail from residents and nonresidents of this Commonwealth and issue licenses to the applicants until the county allocation is exhausted.

(b) Beginning on the date defined in subsection (a), residents and nonresidents of this Commonwealth shall be eligible to apply for and receive one additional bonus tag for a total of two—under the conditions in subsection (a).

(c)] Beginning on the [date defined in subsection (a)] fourth Monday in August, residents and nonresidents of this Commonwealth shall be eligible to apply to any county within the special regulations areas defined in § 141.1 (relating to special regulations areas) for an unlimited number of [bonus tags under the conditions of subsection (a)] antlerless deer licenses by mail. Applicants shall be limited to submitting not more than three applications per official envelope [when application is made through the mail].

[(d)] (b) Beginning on the **[last Wednesday in September]** date specified in subsection (a), county treasurers within the special regulations areas defined in § 141.1 (relating to special regulations areas) shall accept **[regular]** antlerless **[and bonus]** applications over the counter **[and by mail]** from residents and nonresidents of this Commonwealth and may immediately issue licenses to applicants.

§ 143.55. Unlawful acts.

It is unlawful:

* * * * *

(5) Except as specified in §§ 143.52 (a) and (b) **[and (c)]** and 143.53 (relating to procedure for **[unexhausted allocation]** unlimited antlerless licenses; and reapplication), to apply for or receive more than one **[of the following:]** antlerless license or more than one surplus license.

[(i) One antlerless license.

(ii) One bonus license.]

* * * * *

CHAPTER 147. SPECIAL PERMITS

Subchapter A. GENERAL PROVISIONS

§ 147.1. Scope.

* * * * *

(b) A holder of a permit shall keep a record of transactions on a form provided by the Commission in accordance with the instructions provided. **[The record, together with the premises, shall be open to inspection upon demand of an officer of the Commission.]** A permittee shall answer, without evasion, questions that may be asked by a representative or officer of the Commission relative to ownership of a bird or mammal or part thereof, found in the permittee's possession or under the permittee's control, or which has passed through the permittee's hands.

§ 147.2. General.

(a) In addition to definitions in section 102 and 2961 of the act (relating to definitions**;** **and definitions**), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Field trial/hunt test—A club, group or organization of ten or more dog owners/handlers participating in the actual performance of sporting dogs in one of the following events advertised and registered with AKC, UKC, NAHRA or the NAVHDA:

- (i) Member trial.
- (ii) Licensed trial.
- (iii) Sanctioned trial.

* * * * *

Subchapter H. PROTECTED SPECIMEN

§ 147.143. Transfer of lawful possession of abandoned venison.

(a) **Definition.**

Abandoned venison—Venison which remains unclaimed by the lawful owner at a butcher shop for

longer than 10 days after the lawful owner has been notified by the butcher or an employe that the venison is dressed and ready to be picked up.

(b) **Procedure for transfer of lawful possession of abandoned venison.** Lawful possession of abandoned venison may be transferred to any resident of this Commonwealth who is in possession of a valid permit to possess deer (PGC-90-LE) provided that:

(1) Prior to a transfer of possession of abandoned venison, the butcher or an employe has notified the lawful owner of the venison in the butcher shop by United States registered mail to the person's last known address of the intent to dispose of the venison.

(2) The notification gives the lawful owner of the venison 30 days to claim the venison and pay to the butcher the standard labor fee for preparing the venison for consumption.

(c) After the 30-day period has expired, the butcher may transfer the lawful possession of abandoned venison to a resident of this Commonwealth who presents a valid permit to possess deer (PGC-90-LE) and if required by the butcher pays the standard labor fee for preparing the venison for consumption.

(d) The butcher shall, within 24 hours of transferring possession of abandoned venison, send by United States mail a report setting forth the date of transfer and the name, address and telephone number of the person or organization that received the venison to the wildlife conservation officer in charge of the district where the butcher shop is located.

§ 147.144. Transfer of lawful possession of abandoned venison to food banks.

Lawful possession of abandoned venison may be transferred to a food bank by a butcher after proper notification to the lawful owner of the venison as set forth in § 147.143(b) (relating to transfer of lawful possession of abandoned venison). Food banks or persons who receive venison from a food bank are not required to possess a permit to possess deer (PGC-90-LE), however, the report to the wildlife conservation officer as set forth in § 147.143(b) shall be made.

§ 147.145. Unlawful acts.

A person who transfers possession or takes possession of abandoned venison from a butcher shop contrary to §§ 147.143(b) and 143.144 (relating to transfer of lawful possession of abandoned venison; and transfer of lawful possession of abandoned venison to food banks) shall be subject to the penalties in section 2312(d) of the act (relating to buying and selling game).

Subchapter L. PERMITS RELATING TO DOGS

§ 147.221. General.

* * * * *

(d) During field trials/hunt tests for which a permit has been issued, a firearm normally fired from the shoulder may be used with blank ammunition, if no live ammunition is possessed.

(e) No more than ten persons may be listed on the permit as "official guns."

§ 147.222. Permits for bird dog trials on Commission controlled lands.

* * * * *

[(e) No more than five persons may be listed on the permit as "Official Guns".]

[(f)] (e) ***

[(g)] (f) ***

[(h)] (g) ***

[(i)] (h) ***

[(j)] (i) ***

[(k)] (j) ***

[(l)] (k) ***

[(m)] (l) ***

[(n)] (m) ***

[(o)] (n) ***

[Pa.B. Doc. No. 97-1947. Filed for public inspection December 5, 1997, 9:00 a.m.]
