

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Importation and Transportation of Horseshoe Crabs

The Fish and Boat Commission (Commission) proposes to add § 63.31 (relating to importation and transportation of horseshoe crabs). The Commission is publishing this addition as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposal relates to the importation and transportation of horseshoe crabs.

A. Effective Date

The proposal, if approved on final rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposal, 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

The proposal is published under the statutory authority of section 2102(c) of the code.

D. Purpose and Background

The proposal is designed to update, modify and improve Commission regulations relating to the importation and transportation of fish. The specific purpose is described in more detail under the summary of proposal.

E. Summary of Proposal

Late in 1998, the Commission's Law Enforcement and Fisheries staff became aware of issues related to landing in Commonwealth ports of horseshoe crabs taken from ocean waters. These animals are protected in New Jersey and Delaware, and the Atlantic States Marine Fisheries Commission is working on efforts to provide coastal wide protections.

The immediate issue late last year was resolved when Delaware was able to take action to prevent the transportation of these fish through Delaware waters. However, there is still a need for the Commission to take some action (similar to that the Commission took with respect to weakfish) to close any possible loopholes permitting landing of these fish in this Commonwealth.

F. Paperwork

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

G. Fiscal Impact

The proposal 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, except on those individuals who will now have to land horseshoe crabs in ports located in states other than this Commonwealth.

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-94. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.31. Importation and transportation of horseshoe crabs.

It is unlawful for a person to import into or transport in this Commonwealth horseshoe crabs for the purpose of sale at wholesale or retail. It is unlawful to sell, offer for sale or purchase any horseshoe crabs.

[Pa.B. Doc. No. 99-406. Filed for public inspection March 12, 1999, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 139]

Deer Damage Areas

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 12, 1999, meeting, proposed the following:

Add § 139.16 (relating to deer damage areas) which provides regulatory language for the enrollment and participation of certain landowners in the Deer Damage Areas Program as designated by the Executive Director.

This amendment will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposal of this regulation is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposal was made public at the January 12, 1999, meeting of the Commission, and comments on this proposal may be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until March 26, 1999.

*Proposed Additional of § 139.16*1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its January 12, 1999, meeting proposed adding § 139.16. The proposed section will establish conditions and procedures for designating deer damage areas where antlerless deer may be taken during the antlered deer season. Currently, the authorization to take an antlerless deer during the antlerless deer season on designated deer damage areas is established as part of the seasons and bag limits, § 139.4 (relating to seasons and bag limits for the license year), with no formal procedures for designating these areas. The proposal, which is being made under authority contained in section 2102 of the code (relating to regulations), would remedy this defect.

2. *Purpose and Authority*

Some years ago, the Commission authorized as part of the seasons and bag limits the taking of an antlerless deer during antlered deer season with the appropriate license on areas suffering severe agricultural damage. Requirements and procedures to be followed to establish deer damage areas were never promulgated as a regulation. Since the program has been accepted by the agricultural and hunting communities, the current proposal will remedy this situation.

Section 2102 of the code authorizes the Commission to promulgate regulations relating to seasons and bag limits and game and wildlife. This section provides the authority for the current proposal.

3. *Regulatory Requirements*

The proposed regulation formally establishes qualifications and procedures which have been informally followed for some time. The main requirement for land to be designated as a deer damage area is that it be enrolled in the Commission's cooperative farm game program or safety zone program.

4. *Persons Affected*

Landowners or lessees of farmland and hunters who wish to hunt on the land would be affected by this proposal.

5. *Cost and Paperwork Requirements*

Application to be designated as a deer damage area can be made either in writing or by telephone. Signs furnished by the Commission must be posted on lands so designated. Because of low volume, the Commission anticipates that the cost of application and signs will be fairly small.

6. *Effective Dates*

The proposed regulation will be effective upon publication of final adoption in the *Pennsylvania Bulletin* and will remain in effect until modified or rescinded by the Commission.

7. *Contact Person*

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

DONALD C. MADL,
Executive Director

Fiscal Note: 48-107. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 139. SEASONS AND BAG LIMITS

§ 139.16. Deer damage areas.

(a) This section provides for the hunting and taking of antlerless deer during the antlered deer season on certain lands designated by the Executive Director as "deer damage areas."

(1) To qualify as a designated deer damage area, the landowner or lessee of the eligible farmland shall be enrolled as a participant in the Commission's cooperative farm game program or safety zone program. The land enrolled in the program shall remain open to public hunting throughout the hunting license year.

(2) Interested landowners shall contact their respective Commission regional office in writing or by phone between July 1 and August 31 of each year. If contacting the office by mail, correspondence shall be postmarked by August 31.

(3) Commission officers will contact interested landowners by October 10 and provide them with the program details and assist them with the sign-up procedures.

(4) Deer damage area signs provided by the Commission shall be conspicuously posted on the boundary of the property by the landowner/cooperator on all contiguous acres of the farm under agreement. Posting should be completed prior to the opening of the fall archery deer season, but no later than October 31.

(5) Failure to meet any conditions in paragraph (1), (2), (3) or (4) will cause the farm to be removed from the deer damage area program.

(b) Hunters shall have the appropriate antlerless license for the county in which the deer damage area is found before hunting or taking an antlerless deer.

[Pa.B. Doc. No. 99-407. Filed for public inspection March 12, 1999, 9:00 a.m.]

[58 PA. CODE CHS. 141 AND 143]

Hunting and Trapping; Hunting and Furtaker Licenses

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 12, 1999, meeting, proposed the following:

Amend Chapter 141 (relating to hunting and trapping), to make editorial amendments in § 141.41(1) (relating to general) to be consistent with the language in 34 Pa. Code (relating to Game and Wildlife Code) (code) and make editorial amendments to paragraph (2) that provide for the wearing of daylight fluorescent orange while hunting.

Amend § 141.43(d) (relating to deer), with addition of further requirements for the wearing and display of daylight fluorescent orange material while hunting in the proposed early flintlock muzzleloading antlerless deer season.

Amend Chapter 143 (relating to hunting and furtaker licenses), to provide additional amendatory language to § 143.51 (relating to application and issuance of surplus tags) to allow for the sale of surplus antlerless deer

licenses within the Commission's administrative field regions of the Northwest, Northcentral, Southcentral, Northeast and Southeast.

Amend the flintlock muzzleloading deer license language in § 143.84 (relating to application) by removing restrictions on when the license (stamp) can be purchased; and removing the requirement of surrendering the antlerless deer license application when purchasing a muzzleloading license (stamp).

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

The authority for this proposal is the code.

This proposal was made public at the January 12, 1999, meeting of the Commission, and comments on this proposal may be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until March 26, 1999.

Proposed Amendments to §§ 141.41 and 141.43

1. Introduction

To provide for the safety of hunters in the field and to simplify regulatory provisions relating to the wearing of fluorescent orange-colored material while hunting, the Commission at its January 12, 1999, meeting proposed changes to §§ 141.41 and 141.43 to require the wearing of daylight fluorescent orange-colored material during the proposed early flintlock muzzleloader season and to make some editorial changes. These changes are proposed under the authority contained in section 2102 of code (relating to regulations).

2. Purpose and Authority

As part of the proposed 1999-2000 seasons and bag limits, the Commission decided to propose a 3-day early flintlock muzzleloader antlerless deer season. Since this season would overlap the small game season, it was decided to require the wearing of daylight fluorescent orange-colored material which necessitated the adding of a subsection to § 141.43. In addition, the following changes to § 141.41 were proposed:

a. Change the term "mammals" to "animals" in paragraph (1) to be more consistent with terminology in the code.

b. Remove mention of turkey in paragraph (2) because there are more specific requirements for turkey hunting § 141.45 (relating to turkey).

c. Delete the last sentence of paragraph (2) because the exception is already provided for in section 2524 of the code (relating to protective material required).

Section 2101(a) of the code directs the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning . . . the ways, manner, methods, and means of hunting or furtaking and the health and safety of persons who hunt or take wildlife . . ." This provision provides the authority for the proposed changes.

3. Regulatory Requirements

The proposed changes require the wearing of daylight fluorescent orange-colored material during the early flintlock muzzleloader antlerless deer season.

4. Persons Affected

Those desiring to hunt during the early flintlock muzzleloader antlerless deer season will be affected by the proposed changes.

5. Cost and Paperwork Requirements

There will be no additional costs or paperwork.

Proposed Amendment to § 143.51

1. Introduction

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on January 12, 1999, proposed changing § 143.51 to allow the sale of surplus antlerless deer licenses in five regions of this Commonwealth in addition to counties in the Southwest region. This change was proposed under section 2722(g) of the code (relating to regulations).

2. Purpose and Authority

Sale of surplus antlerless deer licenses during the 1998-99 hunting license year was limited to counties in the Southwest administrative region and it had a significant impact on how close those counties came to antlerless goals. As a result, the Commission has decided to propose the sales in the other five administrative regions of this Commonwealth.

Section 2722(g) of the code directs the Commission to adopt regulations for the administration, control and performance of license issuance. The proposed change is made under that authority.

3. Regulatory Requirements

The proposed change should increase antlerless license sales without imposing additional requirements.

4. Persons Affected

County treasurers and their employes and persons wishing to hunt antlerless deer in this Commonwealth will be affected by the proposed change.

5. Cost and Paperwork Requirements

The change will not result in additional costs or paperwork.

Proposed Amendment to § 143.84

1. Introduction

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on January 12, 1999, proposed a change to § 143.84 to dispense with the requirement that purchasers of flintlock muzzleloader licenses surrender their antlerless deer license application at the time they purchase their muzzleloader license. The change is being proposed under the authority contained in section 2722(g) of the code.

2. Purpose and Authority

Some time ago, to limit what seemed to be a skyrocketing population of flintlock muzzleloader hunters, the Commission established a requirement that these hunters choose between an antlerless deer license and a muzzleloader license. Antlerless deer licenses, however, have, in recent years not sold very well, impacting deer population management. To counter this trend, the Commission is proposing to allow muzzleloader hunters to also obtain an antlerless license.

Section 2722(g) of the code directs the Commission to adopt regulations for the administration, control and performance of license issuance. The change is proposed under this authority.

3. Regulatory Requirements

The proposed change will relax current regulatory requirements.

4. *Persons Affected*

County treasurers and their employes and persons wishing to hunt antlerless deer in this Commonwealth will be affected by the change.

5. *Cost and Paperwork Requirements*

The change will not result in additional costs or paperwork.

Effective Date

The proposed amendments will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

Contact Person

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

DONALD C. MADL,
Secretary

Fiscal Note: 48-109. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 141. HUNTING AND TRAPPING
Subchapter C. BIG GAME

§ 141.41. General.

It is unlawful to:

(1) Hunt for big game birds or **[mammals] animals** with arrows other than those tipped with broadheads of a cutting-edge design.

(2) Hunt for or assist to hunt for deer **[,] or bear [or turkey]** during the regular firearms season without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material. The material shall be worn on the head, chest and back combined so it is visible in a 360° arc. **[This paragraph does not apply to a season for using muzzleloading firearms or season for using bows and arrows only.]**

§ 141.43. Deer.

* * * * *

(d) *Prohibitions.* It is unlawful to:

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(5) Hunt for or assist to hunt for deer during any flintlock muzzleloading season that precedes the regular firearms season for deer without wearing a minimum of 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined so that it is visible in a 360° arc.

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**CHAPTER 143. HUNTING AND FURTAKE
LICENSES**

Subchapter C. ANTLERLESS DEER LICENSES

§ 143.51. Application and issuance of surplus tags.

(a) **[County treasurers shall accept and process surplus applications from applicants in possession of a current flintlock muzzleloader license (stamp)**

beginning the third Monday in August. 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 surplus application. The applicant shall write or indicate "Flintlock/Muzzleloader" in the lower left corner of the official envelope.

(b)] Except as provided in [subsection (a) and] § 143.52 (relating to procedures for unlimited antlerless licenses), beginning on the fourth Monday in August, residents and nonresidents of this Commonwealth shall be eligible to receive a surplus tag in one of the following counties: Armstrong, Beaver, Cambria, Fayette, Greene, Indiana, Somerset, Washington and Westmoreland or in a county within the Commission's administrative regions of the Northwest, Northcentral, Southcentral, Northeast or Southeast region.

[(c)] (b) ***

[(d)] (c) ***

[(e)] (d) ***

[(f)] (e) ***

**Subchapter E. FLINTLOCK (MUZZLELOADER)
DEER LICENSES**

§ 143.84. Application.

(a) Application may be made when purchasing a regular hunting license, or **any time** thereafter, upon presentation of the regular hunting license **[and matching antlerless license application]**.

(b) **[An application for the license may not be submitted or a license issued after July 31, except to replace a license which was lost. The official affidavit for replacement of a lost license shall be filed when applying for a replacement license.**

(c) When applying for a flintlock firearm deer season license, the applicant shall surrender the entire current antlerless deer license application.

(d) The issuing agent shall write the word **VOID**, in ink, boldly across the face of the surrendered antlerless deer license application and attach it to the application for the flintlock license.

(e)] ***

[(f) A resident serving on active duty in the Armed Forces of the United States or in the United States Coast Guard is not bound by this section as it applies to surrendering the antlerless application or deadline for application.]

[Pa.B. Doc. No. 99-408. Filed for public inspection March 12, 1999, 9:00 a.m.]