

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION
[25 PA. CODE CH. 218]

Corrective Amendment to 25 Pa. Code Chapter 218

The Department of Environmental Protection has discovered a discrepancy between the agency text of 25 Pa. Code Chapter 218 (relating to fees), as deposited with the Legislative Reference Bureau and the official text published at 38 Pa.B. 6275 (November 15, 2008). The addition of § 218.11a (relating to special provisions for calculating fees during agreement state transition period) was inadvertently omitted from the ordering language at 38 Pa.B. 6278.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legislative Reference Bureau a corrective amendment to 25 Pa. Code Chapter 218. The corrective amendment to 25 Pa. Code Chapter 218 is effective as of January 1, 2009, the effective date stated in the ordering language at 38 Pa.B. 6278.

The correct version of 25 Pa. Code § 218.11a appears in Annex A.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE V. RADIOLOGICAL HEALTH

CHAPTER 218. FEES

§ 218.11a. Special provisions for calculating fees during agreement state transition period.

(a) The fees for the NRC licenses that are transferred to the Commonwealth on the date the Commonwealth becomes an agreement state will be invoiced on the license's next anniversary date.

(b) During the first year after the date the Department attains agreement state status, the annual fee for each NRC license transferred to the Commonwealth will include a proportional amount, based on the schedule of fees in Appendix A, for the period from the date agreement state status is attained until the license's next anniversary date, in addition to the amount assessed for the year following the license's anniversary date.

(c) In the event that the Commonwealth attains agreement state status prior to January 1, 2009, the provisions of this section and § 218.11 and Appendix A (relating to registration, renewal of registration and fees; and fees for radioactive material licenses) will be applied retroactively to NRC licenses transferred to the Commonwealth.

[Pa.B. Doc. No. 09-407. Filed for public inspection March 6, 2009, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 61]

Fishing

The Fish and Boat Commission (Commission) amends Chapter 61 (relating to seasons, sizes and creel limits). 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 on April 1, 2009.

B. *Contact Person*

For further information on the final-form rulemaking, contact Laurie E. Shepler, 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 § 61.2 (relating to Delaware River and River Estuary) are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

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*

Since 1992, during the time period when Delaware River and Estuary striped bass were in restoration mode, there has been an April and May closure to the harvest of striped bass from the spawning grounds in Pennsylvania, New Jersey and Delaware. The Commission's regulation in § 61.2 defines the segment to which the closure applies as extending from the Pennsylvania/Delaware State line upstream to the Calhoun Street Bridge, which is located just upstream from the head-of-tide and joins Morrisville, PA with Trenton, NJ.

In 1997, the Atlantic States Marine Fisheries Commission (ASMFC) declared that the Delaware River stock of striped bass had been restored to historical population levels based on high juvenile recruitment, high spawning stock biomass and low fishing mortality. Despite being restored, management of the fishery within the Basin states remained conservative with high size limits (28 inches), low creel limits (two fish per day) and spawning ground closures to harvest. In this Commonwealth, this meant that the season downstream from Calhoun Street Bridge closed on April 1, just as the adult striped bass population was building, and reopened on June 1, just as the bulk of the adult striped bass population had emigrated from this Commonwealth. This Commonwealth's anglers were given little opportunity to harvest striped bass, and striped bass angling when fish were most abundant was discouraged by the season closure.

Delaware River and Estuary striped bass harvest has been low. During the 2002 four state creel census, only 582 striped bass were harvested in the stretch that

extended from the Delaware River Memorial Bridge near Wilmington, DE upstream to the river's branches in New York. The Commonwealth's tagging data supported this observation of low harvest, particularly from this Commonwealth. Of the 2,872 striped bass that were tagged in the Delaware Estuary spawning grounds between Pennsylvania and New Jersey from 1995-2007, only 34 tags were returned from Pennsylvania's waters. Observations by the Commission's waterways conservation officers and biologists have been that the vast majority of striped bass caught in this Commonwealth are yearlings, 2-year olds, and some 3-year olds caught in late spring and summer as by-catch in other fisheries and as a targeted catch and release fishery in the tidal and nontidal river.

Male striped bass are abundant during April and May on the spawning grounds and about 90% are shorter than the 28 inch length limit. Furthermore, very few sublegal female striped bass are present on the spawning grounds. This Commonwealth's anglers desire an opportunity to take advantage of this restored striped bass population and the potentially excellent fishing that it could provide. Past regulatory and habitat protection efforts by the Commission have largely benefited coastal anglers and anglers outside of this Commonwealth.

The Commission therefore proposed that an April and May fishery be established in the seasonally closed portions of the Delaware River and Estuary that is designed to specifically target mature male striped bass. The Commission also proposed that this fishery be regulated with a 20 inch to 26 inch slot limit from which two fish per day can be harvested during April and May. The Commission further proposed that there will be a 28 inch length limit and two fish per day creel limit in all other months of the year, and there will be no closed season. Regulations for the remainder of the river will remain unchanged.

The Commission coordinated this proposal with the State of Delaware, which took the lead in data analysis and reporting. The two states have made similar slot and creel limit proposals that will apply to different months of the year. Delaware's proposal will target male striped bass in summer and fall that have emigrated from the spawning grounds and taken up residency in Delaware. ASMFC's Striped Bass Management Board approved both proposals on October 20, 2008.

The Commission adopted the amendments to § 61.2 as set forth in the notice of proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

A notice of proposed rulemaking was published at 38 Pa.B. 6935 (December 20, 2008). The Commission received a total of 23 public comments regarding the proposal. One comment that was received before the start of the official comment period supported the proposal. The Commission received 21 comments during the official comment period. Nineteen favored the proposal, and two opposed it. Two of the favorable comments also would like to see the April—June season extended to the upper Delaware River, with one comment suggesting a 12—20

inch limit for harvest on the upper Delaware. The other comment suggested a smaller slot limit during April—June for the entire river of 16—20 inches. One commentator thought that this proposal will help improve herring populations. One of the commentators who opposed the proposal was concerned that it will lead to greater mortality of female striped bass. After the official comment period, the Commission received one comment supporting the proposal. Copies of all public comments were provided to the Commissioners.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment 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 all public comments received were considered.

(3) The adoption of the amendment 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 61, are amended by amending § 61.2 to read as set forth in 38 Pa.B. 6935.

(b) The Executive Director will submit this order and 38 Pa.B. 6935 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 38 Pa.B. 6935 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on April 1, 2009.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-209 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 09-408. Filed for public inspection March 6, 2009, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 75]

Fishing

The Fish and Boat Commission (Commission) amends Chapter 75 (relating to endangered species). 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 immediately upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the final-form rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg,

PA 17106-7000, (717) 705-7810. This final-form rule-making is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendments to §§ 75.2 and 75.3 (relating to threatened species; and candidate species) are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species).

D. Purpose and Background

The final-form rulemaking is designed to improve, update and modify the Commission's threatened and candidate species lists. The specific purposes of the amendments are described in more detail under the summary of changes.

E. Summary of Changes

Commission staff recently reevaluated the listing/delisting process for endangered, threatened and candidate species and reviewed recent fish survey data, especially data collected by means of benthic trawling, which is a relatively new method used in the Commonwealth's rivers. Accordingly, the Commission proposed five fish species for delisting from the existing threatened or candidate species lists. The Fishes Technical Committee of Pennsylvania Biological Survey (PABS) reviewed the species proposed to be delisted and concurred with the proposed delisting.

(1) Smallmouth Buffalo (*Ictiobus bubalus*): The smallmouth buffalo is a large, deep-bodied sucker of the Ohio Basin that inhabits deeper sections of large rivers. It occurs in the Lake Michigan drainage and Mississippi River basin from Pennsylvania and Michigan to Montana and south to the Gulf of Mexico. It is secure or common across its range. In this Commonwealth, it inhabits the Ohio River, Monongahela River and lock and dam section of the Allegheny River.

The smallmouth buffalo has recently become common in the Ohio River and can be collected with regularity in the Monongahela and Lower Allegheny Rivers. Criswell collected in excess of 100 individuals during a single night of electrofishing on the Ohio River in 2003 and Ohio River Sanitation Commission personnel collected 49 during a survey in 1992. California University of Pennsylvania personnel collected 17 specimens on an electrofishing run on the Monongahela River in 2003, and 16 were collected by Commission staff in Pool 8 of the Allegheny River in July 2004. Argent and Kimmel (2003) considered the smallmouth buffalo common in several pools they sampled in the Allegheny and Ohio Rivers. Field surveys conducted throughout the historic Pennsylvania range since 1990 have documented a significant expansion in range and population size compared to pre-1990 information. The smallmouth buffalo is absent from the majority of twentieth century collection literature; however, recent electrofishing and gill netting surveys have documented a continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers in this Commonwealth.

This species was run through the Commission's fish species documentation and objective listing/delisting criteria and met Criteria A.1. (Population reduction) that the population is increasing, Criteria B.3. (Distribution & Trends) that the distribution is greater than 150 miles of river/stream, and criteria B.4. (Summed Proportion of Watersheds Occupied), which compares all fish species documented occurrences and shows that this species is no longer rare in this Commonwealth. The Fishes Technical

Committee of the PABS reviewed the Heritage rank of the smallmouth buffalo and recommended it be changed to "apparently secure" (S4) status—uncommon but not rare, and usually widespread in the State. The PABS Committee additionally recommended "delisting" status based on the aforementioned data and apparent commonality of the species in this Commonwealth. Enough information is available to determine that it is secure in the State at present and to justify the removal of smallmouth buffalo from the Commonwealth's list of threatened fishes. Therefore, the Commission proposed that smallmouth buffalo be removed from the Commonwealth's list of threatened species.

(2) Longhead Darter (*Percina macrocephala*): The longhead darter is a small fish species that prefers warm rivers and large streams and occupies a wide array of habitats, including riffles and runs over substrates of clean gravel, cobble, rubble and boulders, especially at the interface areas between strong current and backwash. It also occurs in pools with both clean bottoms of gravel and rubble and those covered with silt or detritus, or both. The longhead darter occurs in the Ohio River drainage from New York to North Carolina, and west to Kentucky and Tennessee, but it is rare and highly localized in these locations. In this Commonwealth, it occurs throughout French Creek and the Allegheny River, including the lowermost sections of a number of tributaries in Crawford, Erie, Forest, McKean and Warren Counties. It formerly occurred in the Monongahela River drainage.

The longhead darter has increased its range considerably during the past 25 years. Although Cooper (1985) did not report this taxon in this Commonwealth upriver of Allegheny Reservoir, it has been collected with frequency in the upper Allegheny River as far as Roulette, Potter County, and in Cole and Potato Creeks in McKean County. It was also collected with regularity in the middle Allegheny River between the Allegheny Reservoir and the influence of the lock and dam system near East Brady, Clarion County, and in French Creek during the period 1990—present. The first recent records in the Lower Allegheny River are those of single specimens from Armstrong County in 1986 and 1987. Argent and Kimmel (2003) reported the longhead darter from Allegheny County and it was collected by Commission staff in Pool 8 of the Allegheny River in 2004 and by R. Spear during benthic trawl trials in 2005 in Pools 6—8.

Field surveys conducted throughout the historic Pennsylvania range since 1985 have documented a significant expansion in range and population size compared to pre-1985 information. Although historically represented by limited, widely scattered collections consisting of only a single or few individuals, recent research has documented continuous distribution throughout French Creek from the New York state line in Erie County to its mouth in Venango County, and the Allegheny River from Potter County downstream to Allegheny County, as well as in the lower sections of a number of larger tributaries to both. Observations of more than 100 individuals at a single station have been reported on at least three occasions, and this taxon is now locally common to abundant in both waterways.

This species was run through the Commission's fish species documentation and objective listing/delisting criteria and met Criteria A.1. (Population reduction) that the population is increasing. The Fishes Technical Committee of PABS reviewed the Heritage rank of the longhead darter and recommended it be changed to "apparently secure" (S4) status—uncommon but not rare, and usually

widespread in the State. The PABS Committee additionally recommended “delisting” status based on the aforementioned data and apparent commonality of the species in this Commonwealth. Enough information is available to make the determination that it is secure in the State at present and to justify the removal of longhead darter from the Commonwealth’s list of threatened fishes. Therefore, the Commission proposed that the longhead darter be removed from the Commonwealth’s list of threatened species.

(3) Channel Darter (*Percina copelandi*): Channel darters are small fish that occur primarily in clear rivers and large streams over substrates of sand and gravel. They occupy a variety of habitats, including riffles, runs, and pools, lakeshores and sluggish pools with lightly silted bottoms in the Allegheny River. During a study in the Allegheny River, channel darters were found in significantly deeper habitats than other darter species. The Channel Darter occurs in the Great Lakes/St. Lawrence and Ohio River drainages from southern Quebec and Vermont to Michigan, and south to Kentucky and Tennessee. A disjunct population exists in the Arkansas, Ouchita and Red River drainages in the southern Midwest, and additional isolated populations occur in Mississippi/Louisiana and Alabama. In this Commonwealth, they are distributed throughout most of the Allegheny and Ohio Rivers. Also a few records exist from the Lake Erie drainage.

The channel darter is locally common in sections of the Allegheny River where clean gravel substrate occurs. Recent benthic trawl surveys of the “Three Rivers” area indicate that the channel darter is the most common darter species within samples. Abundance in the wadeable Upper Allegheny River and tributaries appears to be low, and abundance is uncertain in the Lake Erie drainage. The channel darter is absent from the majority of twentieth century collection literature; however, recent electrofishing and benthic trawl surveys have documented a mostly continuous distribution throughout the Ohio and Allegheny Rivers within this Commonwealth.

This species was run through the Commission’s fish species documentation and objective listing/delisting criteria and met Criteria B.3. (Distribution & Trends) that the distribution is greater than 150 miles of river/stream. The Fishes Technical Committee of PABS reviewed the Heritage rank of the channel darter and recommended it be changed to “apparently secure” (S4) status—uncommon but not rare, and usually widespread in the State. The PABS Committee additionally recommended “delisting” status based on the aforementioned data and apparent commonality of the species in this Commonwealth. Enough information is available to determine that it is secure in the State at present and to justify the removal of channel darter from the Commonwealth’s list of threatened fishes. Therefore, the Commission proposed that channel darter be removed from the Commonwealth’s list of threatened species.

(4) River Redhorse (*Moxostoma carinatum*): The river redhorse is a large sucker that inhabits rivers and large creeks. It prefers clearer waters and gravelly or rocky substrates in flowing pools and runs. The river redhorse’s enlarged pharyngeal arches and molariform teeth make it well suited for crushing the shells of mollusks, an important component of its diet. The river redhorse occurs in the St. Lawrence, Great Lakes and Mississippi River drainages from southern Quebec to central Minnesota and western Iowa, south to northern Alabama and eastern Oklahoma, and on the Gulf Slope from Florida to

Louisiana and Mississippi. In this Commonwealth, it occurs in the Ohio River drainage, including the Allegheny, Beaver, Monongahela, Ohio, Shenango and Youghiogheny Rivers.

Although never abundant, the river redhorse can now be collected regularly in the Allegheny and Ohio Rivers and to a lesser extent in the Monongahela River. It was collected recently in the Shenango River as well. This is the first record there since 1933. Its former and present scarcity may be attributed in part to the difficulty in sampling its large river habitat. Field surveys conducted throughout the historic Pennsylvania range since 1990 have documented a significant expansion in range and population size compared to pre-1990 information. The river redhorse is absent from the majority of 20th century collection literature; however, recent electrofishing and gill netting surveys have documented a continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers and in Lake Erie within this Commonwealth.

This species was run through the Commission’s fish species documentation and objective listing/de-listing criteria and met Criteria A. 1. (Population reduction) that the population is increasing and Criteria B.3. (Distribution & Trends) that the distribution is greater than 150 miles of river/stream. The Fishes Technical Committee of PABS reviewed the Heritage rank of the river redhorse and recommended it be changed to “apparently secure” (S4) status—uncommon but not rare, and usually widespread in the State. The PABS Committee additionally recommended “delisting” status based on the aforementioned data and apparent commonality of the species in this Commonwealth. Enough information is available to determine that it is secure in the State at present and to justify the removal of river redhorse from the Commonwealth’s list of candidate fish species. Therefore, the Commission proposed that river redhorse be removed from the Commonwealth’s list of candidate species.

(5) Longnose Gar (*Lepisteous osseus*): The longnose gar is a large pelagic fish species with an elongate body, long snout with numerous sharp, needle-like teeth. It prefers medium-sized, low-gradient rivers and large streams, lakes, impoundments, oxbows, and backwaters over a wide variety of substrates. The longnose gar occurs in the Atlantic Slope drainages from New Jersey and Pennsylvania to Florida, the St. Lawrence River, Quebec through Great Lakes (except Lake Superior) and the Mississippi River basin to the Gulf Coast. It also occurs in the Gulf Slope drainages from Florida to Texas. In this Commonwealth, it was historically widespread in the Ohio River drainage, including the Allegheny, Conemaugh, Monongahela and Ohio Rivers, and Conneaut Lake. It also occurs at Presque Isle-Lake Erie, lower Susquehanna River and Delaware River to Monroe County. It has not been taken recently in the Conemaugh or Susquehanna Rivers, and is now considered extirpated from the Delaware River.

The longnose gar has become fairly common in the Ohio River and is taken regularly in the Monongahela River and lower section of the Allegheny River. Criswell and Stauffer (2003) captured approximately 25 specimens in a single gill net during a sampling effort on the Ohio River. Although it has been taken recently in Conneaut Lake, its population status there is not known. The Lake Erie population is considered stable, and longnose gar can be collected regularly in near shore areas and around the mouths of tributaries.

Field surveys conducted throughout the historic Pennsylvania range since 1990 have documented a significant expansion in range and population size compared to pre-1990 information. Recent electrofishing and gill netting surveys have documented continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers and in Lake Erie within this Commonwealth.

This species was run through the Commission's fish species documentation and objective listing/delisting criteria and met Criteria A.1. (Population reduction) that the population is increasing and Criteria B.3. (Distribution & Trends) that the distribution is greater than 150 miles of river/stream. The Fishes Technical Committee of PABS reviewed the Heritage rank of the longnose gar and recommended it be changed to "apparently secure" (S4) status—uncommon but not rare, and usually widespread in the State. The PABS Committee additionally recommended "delisting" status based on the aforementioned data and apparent commonality of the species in this Commonwealth. Enough information is available to determine that it is secure in the State at present and to justify removal of longnose gar from the Commonwealth's list of candidate fishes. Therefore, the Commission proposed that longnose gar be removed from the Commonwealth's list of candidate species.

On final-form rulemaking, the Commission adopted the amendments to §§ 75.2 and 75.3 to read as set forth in the notice of proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

A notice of proposed rulemaking was published at 38 Pa.B. 5035 (September 13, 2008). The Commission received one public comment supporting the proposed rulemaking. Copies of all public comments were provided to the Commissioners and considered prior to adoption of this final-form rulemaking.

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 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 75, are amended by amending §§ 75.2 and 75.3 to read as set forth in 38 Pa.B. 5035.

- (b) The Executive Director will submit this order and 38 Pa.B. 5035 to the Office of Attorney General for approval as to legality as required by law.

- (c) The Executive Director shall certify this order and 38 Pa.B. 5035 and deposit them with the Legislative Reference Bureau as required by law.

- (d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

DOUGLAS J. AUSTEN, Ph.D.,
Executive Director

Fiscal Note: Fiscal Note 48A-207 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 09-409. Filed for public inspection March 6, 2009, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 147]
Special Permits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2009, meeting, adopted the following rulemaking:

Amend § 147.783 (relating to permit) to authorize the limited use of electronic calls for all hunting and taking activities conducted under a snow goose conservation hunt permit.

The final-form rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the final-form rulemaking is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

Notice of proposed rulemaking was published at 38 Pa.B. 6941 (December 20, 2008).

1. Purpose and Authority

In recent years, continental snow goose populations have experienced a rapid growth in their numbers. This dramatic increase in population size has in turn resulted in extensive, possibly irreversible, damage to arctic and subarctic breeding habitats of the continental snow goose, as well as other bird populations dependant on these habitats. In January 2008, the Commission, working in conjunction with the Federal government, created Chapter 147, Subchapter W (relating to snow goose conservation hunt permit) to define and create the regulatory structure necessary to implement the new snow goose conservation hunt program within this Commonwealth. However, since the adoption of this rulemaking, the Commission has continued to receive extensive public input from various sources including the Susquehanna River Waterfowlers Association, hunters and guides on ways to improve the program. In particular, these sources have strongly encouraged the permitted use of electronic calls during the snow goose conservation hunt, a proven method that is effective in increasing harvest rates. In light of the Commission's continued recognition of the need to dramatically increase the harvest of snow geese in this Commonwealth to assist in the reduction of the overall continental populations, the Commission amended § 147.783 (relating to permit) to authorize the limited use of electronic calls for all hunting and taking activities conducted under a snow goose conservation hunt permit.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendment to § 147.783 was adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking will amend § 147.783 to authorize the limited use of electronic calls for all hunting and taking activities conducted under a snow goose conservation hunt permit.

3. *Persons Affected*

Persons wishing to hunt snow geese under a snow goose conservation hunt permit within this Commonwealth may be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding this final-form rulemaking.

5. *Cost and Paperwork Requirements*

The final-form rulemaking should not result in any additional cost or paperwork.

6. *Effective Date*

The final-form rulemaking will be effective upon final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the final-form rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendment 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this amendment of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by amending § 147.783 to read as set forth at 38 Pa.B. 6941.

(b) The Executive Director of the Commission shall certify this order and 38 Pa.B. 6941 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final-form publication in the *Pennsylvania Bulletin*.

CARL G. ROE,
Executive Director

Fiscal Note: Fiscal Note 48-277 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 09-410. Filed for public inspection March 6, 2009, 9:00 a.m.]