

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 61 AND 65]

Fishing

The Fish and Boat Commission (Commission) amends Chapters 61 and 65 (relating to seasons, sizes and creel limits; and special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to 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 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 amendment to § 61.1 (relating to Commonwealth inland waters) is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations). The amendment to § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307(a) of the code (relating to waters limited to specific purposes).

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 final-form rulemaking is described in more detail under the summary of changes.

E. *Summary of Changes*

(1) *Amendment to § 61.1.* The Commission recently adopted an amendment to § 61.2 (relating to Delaware River, West Branch Delaware River and River Estuary) that reduced the creel limit for American shad on the West Branch and the entire Delaware River mainstem from the confluence of the East and West Branches downstream to the Commodore Barry Bridge from six to three. This change went into effect on January 9, 2010.

Upon further review of its regulations, however, the Commission determined that an amendment to § 61.1 was also needed. This section provides for a daily limit for American shad of six on all inland waters that are not covered by other sections within Chapter 61. Section 61.2, which is applicable only to those Delaware River tributaries from the mouths of the tributaries upstream to the limit of the tidal influence, does not cover large tributaries upriver of the tidal influence, such as the Lackawaxen River in Pike County. It is likely that a limited number of shad enter the larger tributaries upriver of the tidal influence. Currently, the limit for American shad on those Delaware River tributaries is six under § 61.1. Therefore, the Commission amended this section to reduce the creel limit to three as set forth in proposed rulemaking.

(2) *Amendment to § 65.24.* On October 26, 2009, the act of August 27, 2009 (P. L. 377, No. 40) (Act 40) went into effect. Act 40 amended section 2907.2 of the code

(relating to Lake Erie fishing permits) to provide that a Lake Erie permit is required to fish in Lake Erie, Presque Isle Bay and their tributaries, including waters that flow into those tributaries, instead of "the Pennsylvania waters of Lake Erie, Presque Isle Bay and their tributaries" only. This amendment requires anglers to procure a Lake Erie fishing permit to fish in Conneaut Creek, Turkey Creek and their tributaries when previously one was not required because although these streams begin in this Commonwealth, they enter Lake Erie in Ohio. Although a Lake Erie permit will be required to fish these streams, Act 40 also provides that proceeds derived from their sale may now be used to fund projects on those waters.

Section 65.24 currently provide that a Lake Erie permit is not required on Conneaut Creek, Turkey Creek and their tributaries. To be consistent with Act 40, this section is amended to remove that language.

In addition, the Commission currently applies the seasons, sizes and creels limits applicable to Lake Erie and its tributaries under § 69.12 (relating to seasons, sizes and creel limits—Lake Erie and Lake Erie tributaries) to the portion of Conneaut Creek that flows through Erie County. However, the Commission applies the seasons, sizes and creel limits applicable to Commonwealth inland waters under § 61.1 to the portion of Conneaut Creek and its tributaries that flow through Crawford County except with regard to salmon and steelhead that are addressed in § 65.24. To be consistent with Act 40, § 65.24 is amended to remove the existing language. With this change, the Commission will apply the Lake Erie seasons, sizes and creel limits to the entire length of Conneaut Creek and its tributaries. The Commission is actively developing a viable steelhead fishery in Conneaut Creek by annually stocking smolts. Accordingly, the Commission amended § 65.24 to read as set forth in proposed rulemaking published at 40 Pa.B. 427 (January 16, 2010).

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 not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

H. *Public Comments*

A notice of proposed rulemaking was published at 40 Pa.B. 427. During the public comment period, the Commission received one public comment supporting the proposal to amend § 61.1. The Commission did not receive public comments concerning the proposal to amend § 65.24. Copies of the public comment was provided to the Commissioners.

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 public 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 Chapters 61 and 65, are amended by amending §§ 61.1 and 65.24 to read as set forth at 40 Pa.B. 427.

(b) The Executive Director shall submit this order and 40 Pa.B. 427 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 40 Pa.B. 427 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-216 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 10-1199. Filed for public inspection July 2, 2010, 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 Fish and Boat Code) (code). The final-form rulemaking adds the Northern Redbelly Dace, Northern Cricket Frog and Blue-spotted Salamander to the list of endangered species. The final-form rulemaking also removes the Silver Chub from the list of endangered species, the Mooneye, Goldeye and Skipjack Herring from the list of threatened species and the Brook Silverside from the list of candidate species.

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 rulemaking is available electronically through the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendments to §§ 75.1 and 75.2 (relating to endangered species; and threatened species) are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species). The amendment to § 75.3 (relating to candidate species) is published under the statutory authority of section 2102 (relating to rules and regulations).

D. Purpose and Background

The final-form rulemaking is designed to update, modify and improve the Commission's regulations regard-

ing endangered, threatened and candidate species. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes.

E. Summary of Changes

Additions to the Endangered Species List

(1) Northern Redbelly Dace (*Phoxinus eos*). The Northern Redbelly Dace is a small cyprinid. Characterized as a colorful minnow, this dace has a dark olive or brown back with spots, and two dark, broad bands on the side. The space between the two bands is cream, reddish or dark. The stomach is cream-colored except in breeding males where the stomach is yellow-orange to red. It occurs in ponds and slow and swampy sections of streams. In this Commonwealth, it appears to be strictly confined to springs, wetlands and sections of waterways impounded by beavers (Doug Fischer, personal observation).

Its National distribution includes the Atlantic, Great Lakes, Hudson Bay, upper Mississippi, Missouri, and Peace-Mackenzie River drainages, from Nova Scotia west to Northwest Territories and British Columbia, south to northern Pennsylvania, Wisconsin, Nebraska and Colorado (Page and Burr, 1991). In this Commonwealth, it currently inhabits the Allegheny River drainage in Erie and Warren Counties (unpublished data). It also occurs adjacent to northwest Pennsylvania in the Brokenstraw Creek and Conewango Creek drainages in New York (Smith, 1985). This species is listed as endangered in Massachusetts.

Only one historic occurrence record, Susquehanna County, exists in this Commonwealth (Cope, 1862). More recently, five occurrences were documented in 2008: two in the French Creek drainage in Erie and Warren Counties; and three in the Brokenstraw Creek drainage in Warren County. Apparently three of these occupied waterways have not been previously surveyed and surveys on the remaining two did not include the occupied sections or habitat suitable for Northern Redbelly Dace (Raney, 1938; Stauffer, 1987; E. Cooper field notes; Commission unpublished data). The total known lineal occupancy appears to be no more than 10 kilometers.

The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed the Heritage rank of the Northern Redbelly Dace and recommended it be changed from Extirpated (SX) to "critically imperiled" (S1) "because of extreme rarity or because of some factor(s) making it especially vulnerable to extirpation" from this Commonwealth. Typically five or fewer occurrences or very few remaining individuals or acres occur in this Commonwealth. The PABS committee recommended endangered status based on the previously referenced data and apparent rarity of the species in this Commonwealth.

The Northern Redbelly Dace was described by Cope (1862) from specimens collected in Meshoppen Creek, Susquehanna County. Specimens have not been reported from this Commonwealth since that time and this taxon was considered extirpated (Cooper, 1983). This species was evaluated through the Commission's fish species documentation and objective listing criteria and met Criteria B.3 (Distribution & Trends) that the extent of occupancy in the stream/river is less than 10 miles. Recently discovered populations of this species in northeastern Erie and northwestern Warren Counties justify a change in status from extirpated to endangered. Therefore, the Commission added the Northern Redbelly Dace to the list of endangered species.

(2) Northern Cricket Frog (*Acris crepitans*). The Northern Cricket Frog is the smallest frog species in this

Commonwealth, averaging around 23mm. This small tree frog is variable in coloration and markings. The dorsal body color can be golden brown, tan, gray or olive and can vary among individuals depending on ground temperature. Most often middorsal stripes are present and vary in color from brown to lime green. The most characteristic marking of the Northern Cricket Frog is the V-shaped or dark triangle spot located between the eyes and the well defined longitudinal stripe along the rear surface of the dark dorsal thigh.

Breeding habitats are typically described as permanent bodies of water such as slow-moving streams, ponds, lakes, marshes, bogs and swamps, but breeding sites can also be semipermanent ponds and seasonal forest pools. Often, breeding microhabitats within these larger systems are open-canopied, usually contain emergent vegetation and contain areas of flat, sparsely vegetated patches along the margins of open water (Bayne, 2004; Gibbs, et al., 2007; White and White, 2002). Upland habitats surrounding breeding habitats are varied but include floodplain forest, small scrub-shrub islands in impoundments, mature deciduous forest with rocky substrates, mature deciduous forest with sandy substrates and old fields.

The Northern Cricket Frog is known from southeastern New York, south along the Atlantic Coastal states and west along the Gulf Coast from northwestern Florida to eastern Texas. Southern populations range as far north as Tennessee and Missouri. Isolated populations occur on the coastal plain of South Carolina. It is listed as an endangered species in New York and as a species of concern in Ohio.

The Northern Cricket Frog was historically distributed throughout the southeastern and southcentral portions of this Commonwealth with several apparently disjunct populations found in northeastern and southwestern Pennsylvania. Counties in this Commonwealth of historical occurrence included Allegheny, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Franklin, Lebanon, Montgomery, Philadelphia and York. Nearly half of all records were collected from within or near the coastal plain in southern Bucks, Delaware, Montgomery and Philadelphia Counties. All records considered historical were initially documented before 1983.

The Northern Cricket Frog is apparently extirpated from approximately 92% of historically (initially discovered pre-1983: 34 of 37 locations) documented collection sites. Two of the three historical sites considered extant are included as a "best case scenario" since investigations or surveys have not been conducted for the species at these locations. The species may very well have disappeared from these locations as well. A total of six recent new sites have been initially documented since 1983. Of these sites, 50% (three of six) are considered extirpated, and an additional 33% (two of six) are located in a heavily disturbed industrial/urbanized landscape making future viability uncertain (these sites are considered extant in this analysis). Presently, of the 43 total sites that have been adequately documented as valid collection locations in this Commonwealth, only 14% (6 of 43) are considered extant. Suitable habitats in the vicinity of all but two of the historical collection locations (single sites in Chester and Franklin Counties have not been investigated since their initial discovery, but are considered extant in this analysis as a best case scenario) have been investigated in the last 15 years, thus documenting a significant (86%) population reduction for this species in this Commonwealth in the last 20 years (Listing Criterion A.1: Range

Reduction of > 80% in the last 20 years). The Area of Occupancy for *A. crepitans* in this Commonwealth is under 4 square miles (Listing Criterion B.2) and severely fragmented (Listing Criterion B.2.a). Additionally, declines are projected in the area of occupancy, area/extent/and or quality of habitat, number of locations or subpopulations and number of mature individuals (Listing Criterion B.2.b).

The Amphibian and Reptile Technical Committee of PABS reviewed the Heritage rank of the Northern Cricket frog and recommended it be changed to "critically imperiled" (S1), critically imperiled in this Commonwealth "because of extreme rarity or because of some factor(s) making it especially vulnerable to extirpation" from this Commonwealth. As the species meets Listing Criteria A.1 and B.2, the Committee recommended the status of the Northern Cricket Frog (*Acris crepitans*) be elevated to endangered in this Commonwealth. Therefore, given the apparent rarity and threats to the Statewide population, and multiple listing criteria met, the Commission added the Northern Cricket Frog to the list of endangered species.

(3) *Blue-spotted Salamander (Ambystoma laterale)*. The Blue-spotted Salamander is member of the Ambystomatidae (mole salamander) family. They are characterized as a small to medium sized salamander with a pattern of bright blue spots scattered over a grayish-black or black body. They live mostly a terrestrial, fossorial/subterranean existence. Blue-spotted Salamanders require both breeding (aquatic) and nonbreeding (upland) habitats. Breeding habitat in this Commonwealth consists of hardwood swamps, open marshes, oxbow ponds, ditches and seasonal forest pools, often within or near floodplains of large streams and rivers. Nonbreeding habitat can be characterized as deciduous and mixed forests surrounding breeding habitats.

Blue-spotted Salamanders occur in southeastern Quebec to Lake Winnipeg, south through the Great Lakes region and New England to northern Indiana and northern New Jersey. Hybrid *A. laterale* populations (in association with *A. jeffersonianum*, *A. texanum* and *A. tigrinum*) occur throughout the range of this species. The Blue-spotted Salamander is listed as endangered in Ohio and New Jersey and as a species of concern in New York.

The Blue-spotted Salamander complex (including associated hybrids) is a peripheral species to this Commonwealth with all known populations being found in northern tier counties bordering the New Jersey and New York: the Delaware River drainage (Northampton County) and the Allegheny River drainage (McKean County and Warren County).

The Blue-spotted Salamander was not discovered in this Commonwealth until April 2000. The Blue-spotted Salamander probably did not recently colonize this Commonwealth; rather, this species likely escaped detection due to locations being situated in fairly rural areas and general similarity in appearance to the Jefferson Salamander. This species was not detected during the 7-year long Pennsylvania Herpetological Atlas project.

The Blue-spotted Salamander was first discovered in this Commonwealth in McKean County (Allegheny River drainage) during the spring of 2000 as part of a distribution-wide survey for the Jefferson Salamander (*Ambystoma jeffersonianum*) and Blue-spotted Salamander complex (Bogart and Klemens, 2008; Ruhe, unpublished). Two additional populations were subsequently found in Northampton (Delaware River drainage) and

Warren (Allegheny River drainage) Counties (Bogart and Klemens, 2008; Ruhe, unpublished). The Northampton County population was discovered in October 2003 and the Warren County population in October 2008 (Ruhe, unpublished).

The known extent of occurrence for the Blue-spotted Salamander in this Commonwealth encompasses an area of under 3 square miles, qualifying the species for listing as endangered under listing criteria B.1. (Extent of Occurrence < 40 mi²). As the Blue-spotted Salamander meets the listing criteria B.1, the Amphibian and Reptile Technical Committee of PABS recommends that the Blue-spotted Salamander be listed as an endangered species. Therefore, based upon the limited range of the species within the Commonwealth, the small number of known sites and threats to these sites, the Commission added the Blue-spotted Salamander to the list of endangered species.

Removals from the Endangered, Threatened and Candidate Species Lists

(1) Silver Chub (*Macrhybopsis storeriana*). The Silver Chub is a small, slender, silvery minnow with large eyes, small mouth and small, posterior maxillary barbel. It inhabits large rivers and lakes, where it prefers clean sand and gravel substrates. The Silver Chub's Nationwide distribution includes the Lake Erie drainage in Ontario, New York, Pennsylvania, Ohio and Michigan; Mississippi River basin from Pennsylvania and West Virginia to the Midwest, and south to Gulf Coast drainages from Alabama to Louisiana. In this Commonwealth, they occur in Lake Erie and in the Allegheny, Monongahela and Ohio River drainages (Argent and Carline, 2005).

The Silver Chub was probably common in the large rivers in this Commonwealth's portion of the Ohio River drainage prior to European settlement (Trautman, 1981). It was abundant in the Monongahela in the late 1800s (Evermann and Bollman, 1886). It was apparently extirpated during the early 1900s, when conditions in these rivers were degraded (Ortmann, 1909). The Ohio River Sanitation Commission collected one specimen in 1957 and eight in 1959 from the lower Allegheny River. Cooper (1983) collected a single specimen from Lake Erie near the mouth of Walnut Creek in 1971.

The Silver Chub is rarely taken in Lake Erie and was considered extirpated in the Ohio River drainage by Gilbert (1985). It was collected in 1986 in the Ohio River and has subsequently been documented in the Monongahela and lower Allegheny as well (unpublished data—California University of Pennsylvania (CU of PA), ORSANCO, Pennsylvania State University (PSU) and the Commission). It has been collected more often since the early 1990s, with collections ranging from 1 to 24 specimens (unpublished data—CU of PA, ORSANCO, PSU and the Commission). Multiple size classes including juveniles have been collected recently in the Ohio River (T. Stecko, PSU, personal communication, unpublished data, 2009).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Silver Chub and recommended that it be changed from "critically imperiled" (S1) to "vulnerable-apparently secure" (S3S4) status, "uncommon but not rare, and usually widespread" in this Commonwealth. The PABS committee additionally recommended "delisting" status based on the previously referenced data and apparent commonality of the species in this Commonwealth. The PABS definition of "delisted species" is "species which were once listed but now cited for delisting."

The Silver Chub was listed as endangered based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the historic Pennsylvania range since 1990 have documented an expansion in range and population size compared to pre-1990 information. These species were considered extirpated during the first half of the 20th century; however, recent electrofishing and benthic trawl surveys have documented a more or less continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers. Based on recent records, it appears that this species is now fairly widespread in the lock and dam section of the "Three Rivers" (Crisswell and Stauffer, 2005).

This species was evaluated through the Commission's fish species documentation and objective listing/delisting criteria. The Silver Chub now occupy much of their former range and their population is increasing. Therefore, it no longer meets endangered species listing criteria. It also does not meet the threatened species listing criteria. Enough information is available to make the determination that this species is secure in this Commonwealth at present and to justify removal from the list of endangered fishes. Therefore, the Commission removed the Silver Chub from the list of endangered species.

(2) Mooneye (*Hiodon tergisus*). The Mooneye is a medium-sized, deep-bodied pelagic fish that inhabits large rivers and reservoirs. The Mooneye is known from the St. Lawrence—Great Lakes drainage (except Lake Superior), Mississippi River and Hudson Bay basins from Quebec to Alberta and south to the Gulf; Gulf Slope drainages from Alabama to Louisiana. In this Commonwealth, it occurs in the Monongahela and Ohio Rivers, the lock and dam section of the Allegheny River and formerly occurred in Lake Erie (Fowler, 1940; Cooper, 1983).

Lessueur's original 1818 description of this species, based in part on specimens collected in Pittsburgh, is apparently the only historic record from the Ohio River drainage in this Commonwealth (Cooper, 1985). In Lake Erie, it was collected in 1920 near Erie (UMMZ 55667). The Mooneye was common in Ohio waters before 1900, but has decreased greatly since and is rarely taken in Lake Erie (Trautman, 1981). It was probably fairly common in this Commonwealth before 1900 as well but was apparently extirpated during the early 1900s when conditions in these rivers were degraded. Its recent recolonization is undoubtedly a result of improved water quality.

The Mooneye was collected in 1987 in the Allegheny River and since has been collected as far upriver as River Mile 60 and has subsequently been documented in the Monongahela and lower Ohio Rivers as well (unpublished data—CU of PA, ORSANCO, PSU and the Commission). It has been collected more often since the early 1990s with collections ranging from 1 to 22 specimens (unpublished data—CU of PA, ORSANCO, PSU and the Commission).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Mooneye and recommended that it be changed from "imperiled-vulnerable" (S2S3) to "apparently secure" (S4) status, "uncommon but not rare, and usually widespread" in this Commonwealth with "usually more than 100 occurrences." The PABS committee additionally recommended "delisting" status based on the previously referenced data and apparent commonality of the species in this Commonwealth.

The Mooneye was listed as threatened in this Commonwealth based on a limited number of collections and

apparent low numbers. 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 Mooneye was considered extirpated from this Commonwealth, with no collections reported between 1920 and 1987 (Cooper, 1985; unpublished data); however, recent electrofishing and gillnet surveys have documented a more or less continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers. This species was evaluated through the Commission's fish species documentation and objective listing/delisting criteria. The Mooneye no longer meets listing the threatened species listing criteria as the distribution and population of the Mooneye is increasing.

Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify removal from the list of threatened fishes. Therefore, the Commission removed the Mooneye from the list of threatened species.

(3) Goldeye (*Hiodon alosoides*). Similar in shape and form to the Mooneye, the Goldeye inhabits large turbid rivers and the silty shallows of large lakes. It is known from tributaries to James Bay in Quebec and Ontario; Arctic, Missouri, Mississippi and Ohio River drainages from Northwest Territories to Pennsylvania and south to Louisiana. In this Commonwealth, the Goldeye was known from the Ohio River Basin.

The historic distribution of Goldeye within this Commonwealth is difficult to determine. Fowler (1911 and 1919) reported collections from the Beaver River (one specimen) and the Youghiogheny River (two specimens) made by Edward D. Cope, presumably in the 1860s or 1870s. Trautman (1981) reported that in Ohio it was far more numerous in the Ohio River below Portsmouth than in the industrially polluted upper Ohio River near the Pennsylvania state line and remained fairly common there from 1955 to 1980. However, recent records do not exist.

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Mooneye and recommended it be changed to "extirpated" (SX) status, "believed to be extirpated from the 'state'" (State Rank Definitions, 1996). The PABS committee recommended "delisting" status based on the previously referenced data and lack of contemporary collections of the species in this Commonwealth.

The Goldeye was listed as threatened based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the Ohio River basin during the last 110 years have not yielded a known collection of Goldeye supported by a preserved voucher specimen. These surveys include increasingly intensive efforts using multiple methodologies implemented by multiple scientific entities. At this time, enough information is available to make the determination that the Goldeye is presumed extirpated from this Commonwealth and to justify its removal from the list of threatened fishes. Therefore, the Commission removed the Goldeye from the list of threatened species.

(4) Skipjack Herring (*Alosa chrysochloris*). The Skipjack Herring is a streamlined, laterally compressed herring with a large mouth and protruding lower jaw. It inhabits open waters of medium to large rivers and reservoirs. The Skipjack Herring is known from the Hudson Bay drainage and Mississippi River basin from Minnesota south to the Gulf of Mexico, and from Pennsyl-

vania to South Dakota, Nebraska, Kansas, Oklahoma and Texas Gulf Slope drainages from Florida to Texas. In this Commonwealth, it is known from the Ohio, Monongahela and Allegheny River basins.

Early accounts indicated that the Skipjack Herring was evidently uncommon in the Commonwealth. Rafinesque (1820) stated that it seldom went as far upriver as Pittsburgh. Trautman (1981) reported that rivermen occasionally took individuals between Marietta, Ohio and the Pennsylvania state line. Fowler (1919) reported an occurrence from the Conemaugh River, Indiana County, that he thought was likely a Skipjack Herring. However, Fowler (1940) also reported this species from Blair County, a questionable record at best. Cooper (1985) considered it extirpated and thought it possible that the species never had been collected from this Commonwealth. It was occasionally collected in this Commonwealth's portion of the Ohio River during the mid-1980s and has continued to increase in numbers, and recent records show the Skipjack Herring is well distributed and taken regularly in the Ohio and Monongahela Rivers (Criswell and Stauffer, 2005; unpublished data—CU of PA ORSANCO, PSU and the Commission).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Skipjack Herring and recommended it be changed to "apparently secure" (S4) status, "uncommon but not rare, and usually widespread" in this Commonwealth with "usually more than 100 occurrences." The PABS committee additionally recommended "delisting" status based on the previously referenced data and apparent commonality of the species in this Commonwealth.

The Skipjack Herring was listed as threatened based on a limited number of collections and apparent low numbers. Field surveys conducted throughout the historic Pennsylvania range since the 1990s have documented an expansion in range and population size compared to pre-1990 information. The Skipjack Herring was considered extirpated until the mid-1980s; however, recent electrofishing and gillnet surveys have documented a more or less continuous distribution throughout the Ohio River and lower reaches of the Monongahela and Allegheny Rivers. This species was evaluated through the Commission's fish species documentation and objective listing/delisting criteria. The Skipjack Herring now occupy their former range (widespread in the Ohio and Monongahela and increasing in the Allegheny) and the population is increasing in this Commonwealth. They no longer meet the threatened species listing criteria.

Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify removal from the list of threatened fishes. Therefore, the Commission removed the Skipjack Herring from the list of threatened species.

(5) Brook Silverside (*Labidesthes sicculus*). The Brook Silverside is a slender, elongate fish with a nearly straight dorsal profile anteriorly, including a flattened head. It inhabits lakes and sluggish sections of large streams and rivers, where it occurs primarily in schools near the surface in open water, often over substrates of silt, sand or mud. The Brook Silverside is known from the St. Lawrence—Great Lakes drainage (except Lake Superior) and Mississippi River basin from southern Quebec to eastern Minnesota and south to Louisiana; Atlantic and Gulf drainages from South Carolina to Texas. It has been introduced elsewhere. In this Commonwealth, it is known from the Ohio River and Lake Erie drainages in western part of this Commonwealth (Cooper, 1983).

Little historical information on abundance is available for this Commonwealth. Trautman (1981) reported that in Ohio the Brook Silverside was abundant and distributed throughout this Commonwealth prior to 1900 but was severely reduced and many populations were extirpated. He identified the chief factor causing this decline as increased turbidity levels. Since this species is generally detected during surveys targeting other fishes, comprehensive data on distribution and abundance is lacking. It probably declined significantly in our western rivers, as did many other fishes, and is now rebounding there.

In the last 25 years, collection records indicate that the Brook Silverside is found to be locally common in larger water bodies. It is collected regularly in the Allegheny, Monongahela and Ohio Rivers, French Creek and tributaries, Shenango River and its tributaries and major impoundments, and Lake Erie (CU of PA, ORSANCO, PSU and the Commission).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the Brook Silverside and recommended it be changed to "apparently secure" (S4) status, "uncommon but not rare, and usually widespread" in this Commonwealth with "usually more than 100 occurrences." The PABS committee additionally recommended "delisting" status based on the previously referenced data and apparent commonality of the species in this Commonwealth.

The Brook Silverside was listed as a candidate species based on a limited number of collections and apparent low numbers. Recent field surveys conducted throughout the historic Pennsylvania range have documented a significant expansion in range and population size compared to pre-1990 information. This species was evaluated through the Commission's fish species documentation and objective listing/delisting criteria. The Brook Silverside population and distribution is increasing in this Commonwealth and they no longer meet the candidate species listing criteria. Enough information is available to determine that it is secure in this Commonwealth at present and to justify Brook Silverside's removal from the list of candidate fishes. Therefore, the Commission removed the Brook Silverside from the list of candidate species.

The Commission amends §§ 75.1, 75.2 and 75.3 to read as set forth in the proposed rulemaking published at 40 Pa.B. 429 (January 16, 2010).

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 not have direct adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new direct costs on the private sector or the general public. The direct regulatory significance of designating a species as endangered or threatened is limited to prohibiting persons from taking, catching, killing or possessing these mussels in this Commonwealth. Because none of the species that are proposed for listing have commercial or recreational significance because of their rarity, there are no direct fiscal impacts from providing these protections.

With respect to listings previously proposed by the Commission, the private sector and regulated community have asserted that the designation of certain species as

endangered or threatened may have indirect fiscal impacts on them and the Commonwealth because of impacts on permitting decisions by the Department of Environmental Protection and other agencies. If an endangered species is found in an area slated for development, applicants for permits may be required to conduct additional studies or adjust the project to avoid adverse impacts on these species and their habitat. These are fiscal impacts resulting from regulatory and statutory authorities other than those under the aegis of the Commission.

H. Public Comments

A notice of proposed rulemaking was published at 40 Pa.B. 429. During the formal comment period, the Commission received 67 public comments supporting the listings and one public comment advocating that the listings of the Northern Redbelly Dace and the Blue-spotted Salamander be deferred to allow for additional studies of both species to be undertaken and to explain the basis of the listing for the Blue-spotted Salamander to the public. The Commission received one public comment supporting the listings after the formal comment period. During the formal comment period, the Commission received one public comment supporting the delistings. Copies of the public comments were provided to the Commissioners.

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 the public 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 §§ 75.1, 75.2 and 75.3 to read as set forth at 40 Pa.B. 429.
- (b) The Executive Director shall submit this order and 40 Pa.B. 429 to the Office of Attorney General for approval as to legality and form as required by law.
- (c) The Executive Director shall certify this order and 40 Pa.B. 429 and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect on immediately upon publication in the *Pennsylvania Bulletin*.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-215 remains valid for the final adoption of the subject regulations.

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