

PROPOSED RULEMAKINGS

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 75]

Fishing; Endangered Species

The Fish and Boat Commission (Commission) proposes to amend Chapter 75 (relating to endangered species). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments modify and update the Commission's endangered and threatened species regulations.

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed 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).

D. Purpose and Background

The specific purpose and background of the proposed rulemaking is described in more detail under the summary of proposal.

E. Summary of Proposal

The Eastern Spadefoot (*Scaphiopus holbrookii*) is a small to medium-sized stout-bodied toad (1.7 to 2.2 inches). It is mostly a fossorial (burrowing) creature that comes to the surface to feed during warm, humid conditions. It is known as a sporadic breeder and breeds during major rain storms associated with steep barometric drops. It typically inhabits loose, friable soils where it can use its hind feet for burrowing. In the northeast, Eastern Spadefoot tend to be associated with sandy or loamy soils along the floodplains of streams and rivers and in depressions in agricultural fields (Hulse et al., 2001). These depressions, sometimes quite shallow, may be temporary or permanent and often form ephemeral pools following rains.

The species range from southern New England to the Florida Keys and west to eastern Louisiana, but this Commonwealth forms a break between the New England populations and Maryland (NatureServe, 2010). In this Commonwealth, populations are in the Susquehanna, Delaware and Cumberland Valleys, including occurrences in Adams, Berks, Bucks, Centre, Chester, Clinton, Cumberland, Franklin, Lehigh, Lycoming, Montgomery, Northampton, Northumberland, Union and York Counties.

The Eastern Spadefoot is listed as endangered in Ohio, Connecticut and Rhode Island, threatened in Massachusetts and Species of Concern in Illinois, Indiana and Missouri (Nanjappa and Conrad, 2011). Additionally, NatureServe State rankings list the Eastern Spadefoot as considered "critically imperiled" in Connecticut, Ohio, Rhode Island and West Virginia and "imperiled" in Indiana, Missouri, New York and Massachusetts.

The Eastern Spadefoot was historically distributed in disjunct populations in south-central and central Pennsylvania. Counties of historical occurrence in this Commonwealth include the following (with collection dates): Cumberland (1954); Franklin (1933 and 1937); Northumberland (1938, 1943, and 1985); and Union (1941). The records considered historical were initially documented prior to 1988. Historically documented sites were not considered extirpated until indicated by evidence. Anecdotal observations for the Eastern Spadefoot were recorded in the Delaware Valley from the Philadelphia region north to Monroe County.

More recently, the Eastern Spadefoot was collected in York County in 1989, Berks County in 2003 and Lehigh County in 2003. The Eastern Spadefoot was listed as endangered by the Commission in 2005 due to the absence of observations during the first Pennsylvania Herp Atlas (1995–2001) and only two known breeding areas occur in this Commonwealth. In an attempt to understand the species, a major study investigating the distribution of the Eastern Spadefoot was conducted by East Stroudsburg University and funded by the Commission from 2008–2011. The Eastern Spadefoot was recorded in a total of 15 counties by the study in highly fragmented population centers. The following recent occurrence summary is derived from this work. It is important to note that these sites have been inhabited by the Eastern Spadefoot for an unknown period of time and do not constitute an active expansion of the range of this species but rather an expansion of the knowledge of the distribution. The current distribution of the Eastern Spadefoot in this Commonwealth is likely a relic of what was formerly a much wider range in this Commonwealth evidenced by the highly fragmented manner in which clusters or known sites occur. The following table relates the estimated area of occupancy (actual occupied habitats) in the 15-county Pennsylvania range.

County	Number of Breeding Sites	Estimated Area of Occupancy (ac)	Estimated Area of Occupancy (mi ²)
Adams	5	172.00	0.27
Berks	8	275.20	0.43
Bucks	4	137.60	0.22
Centre	3	103.20	0.16
Chester	2	68.80	0.11

<i>County</i>	<i>Number of Breeding Sites</i>	<i>Estimated Area of Occupancy (ac)</i>	<i>Estimated Area of Occupancy (mi²)</i>
Clinton	4	137.60	0.22
Cumberland	61	2,098.40	3.28
Franklin	29	997.60	1.56
Lehigh	2	68.80	0.11
Lycoming	3	103.20	0.16
Montgomery	4	137.60	0.22
Northampton	4	137.60	0.22
Northumberland	14	481.60	0.75
York	3	103.20	0.16
Union	2	68.80	0.11
<i>Total</i>	148	5,091.20	7.96

The Eastern Spadefoot occurs in broad valleys and the Atlantic Coastal Plain and is threatened by habitat destruction from residential and industrial development. Many known locations exist in areas that receive substantial pressure from these development practices. Habitat alteration and changes in water chemistry from agricultural practices can also impact breeding habitat (Jansen et al., 2001; Wildlife in Connecticut, 1999). The water in which they breed can be temporary pools, which are not necessarily delineated wetlands; thus, wetland regulations cannot be relied upon to provide sufficient protection for the breeding habitat of this species. The level of fragmentation of Eastern Spadefoot habitats is significant both on an individual population level and on a metapopulation level.

Only 12 known breeding sites (8% of 148) have some level of protection: Centre County, 2; Cumberland County, 4; Franklin County, 4; and Berks County, 2. It is important to note that only 2 of 12 ($\pm 17\%$) of protected sites have adequate upland buffers receiving protection. Only 1% of Eastern Spadefoot sites in this Commonwealth can be considered secure from a direct development threat, though other threats (such as drought, disease, poaching or isolation due to fragmentation) may leave these sites vulnerable. Pennsylvania Eastern Spadefoot occur in landscapes heavily disturbed by either urbanization or some types of intensive agriculture (row crops are seemingly compatible as long as breeding pools are not drained). Unfortunately, agricultural easements, a potentially important tool in Eastern Spadefoot conservation, do not factor biological resources.

The Amphibian and Reptile Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed the Heritage rank of the Eastern Spadefoot and recommended it be changed from "critically imperiled" (S1) to "imperiled" (S2) status, rare in this Commonwealth. (State Rank Definitions, 1996). The PABS committee additionally recommended changing the Pennsylvania status to "threatened" based on the supporting data and conclusions of the recent status assessment of the species in this Commonwealth. The PABS definition of a threatened species is a species which was once listed but now cited for delisting (Pennsylvania Biological Survey Suggested Status Definitions, 2005).

After a thorough status assessment was conducted from 2008 to 2011, this species was run through the Commission's amphibian and reptile species documentation and objective listing/delisting criteria and met Threatened Criteria B.1 (Extent of Occurrence is less than 2000

square miles) and B.2 (Area of Occupancy is less than 200 square miles) and three subcriteria under B.2: a) severely fragmented; b) continued decline; and c) extreme in fluctuations.

Enough information is available to make the determination that the Eastern Spadefoot no longer meets Endangered criteria; however, it clearly meets two Threatened species criteria. The Eastern Spadefoot faces considerable threats and is relatively rare in this Commonwealth; therefore, it continues to warrant protection. As two Threatened species criteria have been met, the Commission believes that this justifies removing the Eastern Spadefoot from the Commonwealth's list of Endangered species and adding the Eastern Spadefoot to the list of Threatened species. The Commission therefore proposes to amend §§ 75.1 and 75.2 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

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

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-245. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART II. FISH AND BOAT COMMISSION
Subpart B. FISHING
CHAPTER 75. ENDANGERED SPECIES

§ 75.1. Endangered species.

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(c) *Reptiles and amphibians.* The following species are endangered:

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(7) [**Eastern Spadefoot Toad, *Scaphiopus holbrookii.***

(8)] Rough Green Snake, *Opheodrys aestivus.*

[(9)] (8) Northern Cricket Frog, *Acris crepitans.*

[(10)] (9) Blue-spotted Salamander, *Ambystoma laterale.*

[(11)] (10) Eastern Mud Turtle, *Kinosternon subrubrum subrubrum.*

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§ 75.2. Threatened species.

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(c) *Amphibians and reptiles.* The following species are threatened:

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(2) Eastern Redbelly Turtle, *Pseudemys rubriventris.*

(3) **Eastern Spadefoot Toad, *Scaphiopus holbrookii.***

(d) *Invertebrates.* The following species are threatened:

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[Pa.B. Doc. No. 13-1077. Filed for public inspection June 14, 2013, 9:00 a.m.]

[**58 PA. CODE CH. 63**]
Fishing; General Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments modify and update the Commission's fishing regulations.

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 63.50 (relating to importation of tautog) is published under the statutory author-

ity of section 2102(c) of the code (relating to rules and regulations). Proposed § 63.56 (relating to replacement costs for fish killed) is published under the statutory authority of section 923(c.1) of the code (relating to classification of offenses and penalties).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposals.

E. Summary of Proposals

At its July 2007 meeting, the Commission approved a 14-inch minimum size limit on tautog (*Tautoga onitis*) imported into this Commonwealth. Tautog is a marine fish common on hard bottom from Cape Cod, Massachusetts to Delaware. The Commission promulgated the regulation in 2007 because tautog were being harvested illegally on the Atlantic Coast and being sold in the live fish markets in Philadelphia. The New Jersey Division of Fish and Wildlife asked the Commission to implement a 14-inch minimum size limit on tautog that are imported into the Commonwealth to address the black market sale of sublegal fish.

Recently, the New Jersey Division of Fish and Wildlife raised its size limit to 15 inches. Accordingly, that New Jersey Division of Fish and Wildlife requested that the Commission raise its importation size limit to 15 inches. Coastwide, commercial and recreational size limits are currently either 15 or 16 inches. By raising the Commission's importation size limit to 15 inches rather than 16 inches, the Commission maintains consistency with New Jersey, its closest neighbor to the Atlantic Ocean. A size limit of 16 inches would render it illegal for tautog legally caught in New Jersey with a 15-inch size limit to be imported to the Commonwealth. The Commission therefore proposes that § 63.50 be amended to read as set forth in Annex A.

The act of October 24, 2012 (P.L. 1323, No. 167) amended section 923 of the code to add subsection (c.1). This subsection provides that in addition to other penalties in section 923 of the code, a person convicted of or acknowledging guilt of violating section 2109 or 2110 of the code (relating to serious unlawful take; and taking or possessing by illegal methods) will be assessed the costs incurred by the Commission for the replacement of the species involved in the violation in an amount determined by Commission regulation consistent with the values established by the American Fisheries Society (AFS) or other recognized professional fisheries organization. Replacement costs may only be assessed for violations relating to Federally listed threatened or endangered species and other species of fish designated by the Commission.

When determining the replacement costs for game fish, the Commission consulted guidelines established by AFS, specifically, Southwick, R. I. and A. J. Loftus, ed. (2003). "Investigation and monetary values of fish and freshwater mussel kills." American Fisheries Society Special Publication 30. The Commission updated AFS's 2003 values to 2012 values using the United States Department of Labor, Bureau of Labor Statistics CPI Inflation Calculator at http://www.bls.gov/data/inflation_calculator.htm. Costs were averaged for the various size groups. The Commission has been relying on AFS values for establishing replacement costs in pollution cases for over 20 years.

AFS has not established values for herptiles and, to the Commission's knowledge, no other recognized professional

fisheries organization has done so. However, it is standard practice for state resource agencies, including the Commission, to look to the commercial market when determining replacement costs for reptiles and amphibians in pollution and poaching cases. The Commission last updated its list of commercial values for herptiles in 2010 and therefore relied on those market values when establishing their replacement costs. Specifically, the median cost of each species from commercial vendors was identified on the Internet using values for adults to simplify the process. The herptiles selected represent the animals that are most targeted in poaching cases and that have relatively high commercial values. The Commission has been relying on commercial values to establish replacement costs for reptiles and amphibians for the last 15 years.

With regard to Federally listed species, the Commission determined that the bog turtle is the species most targeted in poaching cases. Its replacement cost was determined in the same manner as the other herptiles, that is, by determining its commercial value on the Internet.

The Commission proposes that § 63.56 be added to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose new costs on the private sector or the general public. New costs to the private sector or the public are the result of section 923(c.1) of the code, which imposes the additional penalties for fish killed in violation of sections 2109 and 2110 of the code.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-244. 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

§ 63.50. Importation of tautog.

It is unlawful for a person to import into this Commonwealth, sell, offer for sale or purchase tautog (*Tautoga onitis*) measuring less than [14] 15 inches in length.

(*Editor's Note:* The following section is new and printed in regular type to enhance readability.)

§ 63.56. Replacement costs for fish killed.

(a) Under section 923(c.1) of the code (relating to classification of offenses and penalties), the Commission established the following replacement costs in 2012 dollars for fish killed in violation of sections 2109 and 2110 of the code (relating to serious unlawful take; and taking or possessing by illegal methods):

(1) *Game fish.*

- (i) Trout, 14 to 20 inches, \$14.
- (ii) Trout, 21 to 30 inches, \$53.
- (iii) Trout, greater than 30 inches, \$106.
- (iv) Black bass (largemouth, smallmouth and spotted), 15 to 21 inches, \$19.
- (v) Black bass (largemouth, smallmouth and spotted), greater than 21 inches, \$36.
- (vi) Striped bass and hybrids, 15 to 27 inches, \$78.
- (vii) Striped bass and hybrids, 28 to 39 inches, \$360.
- (viii) Striped bass and hybrids, greater than 39 inches, \$693.
- (ix) Walleye/Sauger, 15 to 18 inches, \$17.
- (x) Walleye/Sauger, 19 to 23 inches, \$48.
- (xi) Walleye/Sauger, 24 to 28 inches, \$74.
- (xii) Walleye/Sauger, greater than 28 inches, \$149.
- (xiii) Northern pike, 24 to 28 inches, \$71.
- (xiv) Northern pike, greater than 28 inches, \$143.
- (xv) Muskellunge and hybrids, 30 to 40 inches, \$188.
- (xvi) Muskellunge and hybrids, 41 to 50 inches, \$442.
- (xvii) Muskellunge and hybrids, greater than 50 inches, \$693.

(2) *Reptiles and amphibians.*

- (i) Wood turtle, \$300.
- (ii) Spotted turtle, \$225.
- (iii) Eastern box turtle, \$80.
- (iv) Snapping turtle, \$160.
- (v) Timber rattlesnake, \$188.
- (vi) Copperhead, \$40.
- (vii) Spotted salamander, \$30.
- (viii) Marble salamander, \$30.
- (ix) Northern spring salamander, \$51.
- (x) Blanding's turtle, \$275.
- (xi) Eastern spiny softshell, \$40.
- (xii) Eastern hognose snake, \$88.

(3) *Federally listed threatened and endangered species.*

Bog turtle, \$1,200.

(b) The replacement costs in subsection (a) will be adjusted annually for inflation in accordance with the Consumer Price Index.

[Pa.B. Doc. No. 13-1078. Filed for public inspection June 14, 2013, 9:00 a.m.]

[58 PA. CODE CH. 61]

Fishing; Seasons, Sizes and Creel Limits

The Fish and Boat Commission (Commission) proposes to amend Chapter 61 (relating to seasons, sizes and creel limits). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendment modifies and updates the Commission’s fishing regulations.

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2014.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission’s web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 61.2 (relating to Delaware River, West Branch Delaware River and River Estuary) is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission’s fishing regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

E. Summary of Proposal

In 2007, the Atlantic States Marine Fisheries Commission’s Shad and River Herring Technical Committee and American Shad Stock Assessment Subcommittee developed a coastwide stock assessment that indicated that adult American shad stocks in the Delaware River have been declining since 1994. In response, in January 2010, the Commission reduced the daily creel limit of American shad from six to three fish in cooperation and coordination with the other boundary states (New Jersey, New York and Delaware).

The freshwater and marine bureaus of the New Jersey Division of Fish and Wildlife have jurisdiction over different parts of the river. The Bureau of Freshwater Fisheries has jurisdiction over the waters of the Delaware River upstream of the Commodore Barry Bridge. The Bureau of Marine Fisheries has jurisdiction over waters downstream of this bridge. The Bureau of Freshwater Fisheries adopted the three fish limit in 2010. Although the Bureau of Marine Fisheries also had been working on a three fish creel limit for 2010, marine regulations in New Jersey are approved by both the New Jersey Marine Council and the New Jersey Department of Environmental Protection. This prolongs the process for regulatory changes in the marine waters of New Jersey.

To be consistent with New Jersey, the Commission adopted the three fish limit for the Delaware River from the New York/Pennsylvania state line downstream to the Commodore Barry Bridge in 2010. The creel limit remained at six fish in the 2.9-mile section of the river between the bridge and the Pennsylvania/Delaware state line. When the three fish limit was approved by the Commission, the Commission acknowledged that the daily limit would remain at six fish in this section until the

New Jersey Marine Council effectuated a change to three fish. The Commission indicated that it would then seek public comment on an amendment that would reduce the creel limit of the lower section to three fish.

In December 2012, the New Jersey Marine Council and the New Jersey Department of Environmental Protection acted to reduce the creel limit of American shad in the marine waters of New Jersey (including the portion of the Delaware River downstream of the Commodore Barry Bridge) from six to three fish. To coordinate the Commonwealth’s regulation with New Jersey, the Commission proposes to extend the three fish limit to the entire river, including the 2.9-mile section from the Commodore Barry Bridge downstream to the Pennsylvania/Delaware state line. The Commission therefore proposes that § 61.2 be amended to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

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

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/reg comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-243. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 61. SEASONS, SIZES AND CREEL LIMITS

§ 61.2. Delaware River, West Branch Delaware River and River Estuary.

* * * * *

(d) The following seasons, sizes and creel limits apply to the Delaware River, West Branch Delaware River and Delaware River tributaries, from the mouths of the tributaries upstream to the limit of the tidal influence and the Lehigh River from its mouth upstream to the first dam in Easton, Pennsylvania:

SPECIES	SEASONS	MINIMUM SIZE					DAILY LIMIT
		*	*	*	*	*	
AMERICAN SHAD	Open year-round			No minimum			[From Pennsylvania line upstream to the Commodore Barry Bridge: 6 From the Commodore Barry Bridge upstream:] 3
		*	*	*	*	*	

[Pa.B. Doc. No. 13-1079. Filed for public inspection June 14, 2013, 9:00 a.m.]

[58 PA. CODE CHS. 53, 101 AND 105]
General Provisions and Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 53, 101 and 105 (relating to Commission property; boating accidents; and operational conditions). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed amendments modify and update the Commission’s property and boating regulations.

A. Effective Date

The proposed amendments to §§ 53.8, 101.6 and 105.3 (relating to boats; investigation reports by Commission officers; and unacceptable boating practices) and the proposed rescission of § 101.8 (relating to duties of operators involved in boating accidents), if approved on final-form rulemaking, will go into effect on January 1, 2014.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission’s web site at www.fish.state.pa.us.

C. Statutory Authority

The proposed amendment to § 53.8 is published under the statutory authority of section 741 of the code (relating to control of property). The proposed amendments to §§ 101.6 and 105.3 and the proposed rescission of § 101.8 are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission’s property and boating regulations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal. On February 7, 2013, the Boating Advisory Board considered these proposals and recommended that the Commission approve the publication of this proposed rulemaking.

E. Summary of Proposals

(1) Effective January 1, 2007, the Commission established a Regional Opening Day of Trout Season Program which allows the Executive Director, with approval of the Commission, to designate waters in certain regions of the

Commonwealth to open for trout fishing beginning the first Saturday after March 28. In 2013, the regional opening day for trout season was March 30 for designated waters in the 18-county southeastern region while the rest of this Commonwealth opened April 13. Recently, the Commission proposed eliminating its Early Season Trout Stocked Waters Program and moved waters in that program to the Approved Trout Waters Open to Year-Round Fishing Program to allow angling to occur from March 1 through the opening day of trout season and increase recreational angling opportunities on these waters.

Section 53.8 permits the overnight mooring of boats at designated mooring areas from April 1 to November 30. This regulation prohibits trout anglers and others using boats from mooring their boats on Commission property for the early regional opening day of trout season or to take advantage of the year-round fishing designation during winter and early spring.

The Commission proposes that § 53.8 be amended to allow for mooring of boats on Commission property at the beginning of March to increase fishing and boating opportunities and encourage greater participation in the two regulatory fishing programs. The Commission proposes that § 53.8 be amended to read as set forth in Annex A.

(2) In accordance with § 101.6(a), Commission officers conduct an investigation when a recreational boating accident occurs involving loss of life, disappearance, medical treatment given beyond first aid or in other circumstances the Commission deems appropriate. A boating accident investigation report is completed for each boating accident investigated and is submitted by the Bureau of Law Enforcement to the Boating Accident Review Officer within the Bureau of Boating and Outreach.

Written reports are required to be submitted by operators or owners involved in recreational boating accidents when one or more of the following conditions exist: a person dies; a person is injured and requires medical treatment beyond first aid; damage to the vessels and other property totals \$2,000 or more or there is complete loss of a vessel; or a person disappears from the boat under circumstances that indicate death or injury is likely. Owner/operator-submitted accident reports are submitted on Form PFBC 260 directly to the Boating Accident Review Officer and are for statistical purposes only. These reports are for the information of the Commission, maintained as confidential and not releasable to the public.

Section 101.6(b) currently states that Commission personnel will complete a boating accident investigation report without referring to the boating accident report (PFBC 260) submitted by the owner or operator of the boat. However, there are limited occasions when an investigating officer may need to reference information in the operator-submitted form (PFBC 260). These limited references by the officer are meant to assist with the completion of the investigation, not to supplant a step in the investigation process or supplement information gained in the investigative process. The Commission proposes to delete § 101.6(b) to read as set forth in Annex A.

(3) The act of November 1, 2012 (P. L. 1716, No. 211) (Act 211) updated the code. In particular, section 5507 of the code (relating to duties of operators involved in boating accidents) was added to be consistent with requirements and penalties for operators involved in motor vehicle accidents in 75 Pa.C.S. (relating to Vehicle Code).

Section 101.8 currently details the duties of operators involved in boating accidents. A violation of this section is a summary of the second degree. Act 211 increased the grading of the violation to a misdemeanor of the first degree and if a victim of an accident dies the violator commits a felony of the third degree. Since the duties detailed in § 101.8 are now law, and to bring the penalties in the Commission’s regulations into conformance, the Commission proposes that § 101.8 be deleted in its entirety.

(4) In 2009, the Commission amended its regulations to prohibit passengers from riding outside the normal passenger carrying area of pontoon boats when the boat is travelling at any speed. Tragic boat accidents proved that riding outside of the passenger carrying area on a pontoon boat at any speed was an unsafe practice because the passenger can very easily fall overboard and will most likely be struck by the boat’s propeller.

Waterways conservation officers encounter as many, if not more, boats travelling at high speeds with persons, most frequently children, riding on closed bow decking with ornamental railings or railings intended for use during docking, mooring or rafting. These railings are not intended to protect a passenger from falling overboard; however, there are not regulations to prohibit passengers from riding in this area of the boat at high speeds. Although, fortunately, the Commission has not had to investigate accidents of this nature, the Commission intends to take a proactive approach to prohibiting this activity before a tragedy occurs. In an effort to simplify and clarify unacceptable boating practices, the Commission proposes to amend § 105.3 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

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

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commis-

sion, P. O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/regcomments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-242. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.8. Boats.

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(b) Overnight mooring of boats is permitted at designated mooring areas from [**April 1**] **March 1** to November 30. A boat utilizing mooring areas shall be registered and display the official registration number and current validation stickers described under Subpart C (relating to boating) and Part III of the code (relating to boats and boating). The mooring is at the sole risk of the owner.

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Subpart C. BOATING

CHAPTER 101. BOATING ACCIDENTS

§ 101.6. Investigation reports by Commission officers.

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(b) [**A boating accident investigation report will be completed without referring to the boating accident report submitted by the owner or operator of the boat.**

(c)] Under section 324 of the code (relating to Commission records), boating accident investigation reports are not considered public records and they will not be released except for the following:

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§ 101.8. [**Duties of operators involved in boating accidents**] (Reserved).

[(a) **General rule.** The operator of a watercraft involved in an accident shall immediately stop the watercraft at the scene of the accident or as close thereto as possible. Every stop shall be made without obstructing the safe navigation of other watercraft more than is necessary.

(b) **Duty to give information.** The operator of a watercraft involved in an accident resulting in injury to or death of a person or damage to property shall give his name, address and the registration number of his watercraft to:

- (1) An officer authorized to enforce this title.

(2) The operator or occupants of any other watercraft involved in the accident.

(3) A person who owns or is in control of any property damaged in the accident.

(c) *Duty to render aid.* The operator of a watercraft involved in an accident involving injury or death shall render reasonable assistance to a person injured in the accident if the operator can reasonably do so without endangering persons or property.

(d) *Duty to remain at or near scene.* The operator of a watercraft involved in a watercraft accident involving injury to or death of a person other than the operator or a passenger of the operator's watercraft or damage to property other than the operator's watercraft or other property contained therein shall remain at or near the scene of the accident until he has fulfilled the duties described in subsection (b) if the operator can reasonably do so without obstructing navigation of other watercraft or endangering persons or property. When circumstances make it clearly impractical to remain at or near the scene of the accident on the water, the operator may fulfill the requirements of this subsection by going to shore at a location near the scene of the accident.

(e) *Purpose.* This section is designated as a regulation for the protection of the health and safety of persons under section 5123(a)(1) of the Code (relating to general boating regulations).]

CHAPTER 105. OPERATIONAL CONDITIONS

§ 105.3. Unacceptable boating practices.

It is unlawful to:

(1) Operate a motorboat [not equipped with railings or other safeguards] at greater than [a] slow, no wake speed with a person riding outside the passenger carrying area or while a person is riding on bow decking, gunwales, transom or motor cover. It is not a violation of this paragraph to ride on the motor cover of an inboard motorboat while underway at that speed if the motor cover is designed by the manufacturer for the operator or a passenger to ride on it. **For the purposes of this paragraph, the passenger carrying area is defined as the space intended by the manufacturer for persons to sit or stand while the boat is underway. This prohibition does not apply when the operator of the boat is docking, mooring, anchoring or rafting the boat.**

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(9) Operate a pontoon boat while a person is riding outside the passenger carrying area. [**The**] **For the purposes of this paragraph, the passenger carrying area is defined by continuous railings or enclosed spaces intended for persons to use while the pontoon boat is underway. This prohibition does not apply when the operator of the boat is docking, mooring, anchoring or rafting the pontoon boat.**

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