

PROPOSED RULEMAKING

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 update the Commission's list of threatened species.

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon 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 § 75.2 (relating to 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 amendments is described in more detail under the summary of proposal.

E. Summary of Proposal

(1) Bluebreast Darter (*Etheostoma camurum*): The Bluebreast Darter is a small species that inhabits rivers and large streams, preferring fast, clean riffles and runs having large gravel, rubble and boulder substrate. It occurs in the Ohio River basin from western New York to eastern Illinois, and south to the Tennessee River in Tennessee and Alabama. It is locally common but absent from large portions of its range. In this Commonwealth, it occurs throughout French Creek, the middle and lower sections of the Allegheny River and the Ohio River as well as additional tributaries to these waterways. It formerly occurred in the Shenango River as well but is now considered extirpated there.

The Bluebreast Darter has experienced a considerable range expansion since it was listed as threatened in 1999. At that time it was spottily distributed in French Creek and the middle Allegheny River. It is now known to occur throughout French Creek, from near the Erie County/New York border to its mouth in Venango County (88 river miles). It occurs in the Allegheny River from Warren to its mouth in Pittsburgh, including the lock-and-dam section (189 river miles), and has been documented in the Ohio River (40 river miles) as far downriver as the tailrace of Montgomery Lock and Dam, Beaver County. It also occurs in much of the following areas: Tionesta Creek and a tributary; Big Sandy Creek, Venango County; Redbank Creek, Clarion County; Mahoning Creek, Armstrong County; Kiskiminetas River, Armstrong and

Westmoreland Counties; and Bull Creek, Deer Creek and Pine Creek, Allegheny County. In addition, it has experienced a similar expansion in Ohio, where it has been collected as far downriver as the Cincinnati area and was delisted in 2012 (Zimmerman, 2014). It has also been collected in Oswayo Creek, Cattaraugus County, New York.

The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.1 (Population Reduction) in that its population is significantly increasing. Since the Bluebreast Darter now occupies more than 200 river miles of waterway, it also significantly exceeds Criterion B.3 (Extent of Occupancy). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator (Criswell, 2014) and received a State Conservation Rank of S4S5, meaning it is apparently secure to secure in this Commonwealth with a fairly low to very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of the Pennsylvania Biological Survey (PABS) reviewed this documentation and rank assignment and recommended that the Bluebreast Darter be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of threatened fishes. Therefore, the Commission proposes that the Bluebreast Darter be removed from the Commonwealth's list of threatened species.

(2) Gilt Darter (*Percina evides*): The Gilt Darter is a small species that inhabits clear rivers and large streams, where it prefers deeper riffles and runs with moderate to swift current over silt-free sand, gravel, cobble and rubble. It occurs in the Mississippi River basin from New York to Minnesota and south to northern Alabama and northern Arkansas. It also occurs in the Maumee River system of the Lake Erie drainage in Ohio and Indiana. In this Commonwealth, it occurs throughout French Creek, the middle and lower sections of the Allegheny River, and the Ohio River.

The Gilt Darter has experienced a considerable range expansion since it was listed as threatened in 1999. At that time it was spottily distributed in French Creek and the middle Allegheny River. It is now known to occur throughout French Creek, from Erie County to its mouth in Venango County (88 river miles). It occurs in the Allegheny River from Warren to its mouth in Pittsburgh, including the lock-and-dam section (189 river miles), and has been documented in the Ohio River as far downriver as the tailrace of Dashields Lock and Dam, Allegheny County.

It is now common in French Creek and abundant in sections of the Allegheny River. At least 7 benthic trawl events from the latter have resulted in the collection of more than 100 individuals, and 2 of those trawls included nearly 200 specimens.

The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.1 (Population Reduction) in that its population is significantly increasing. Since the Gilt Darter now occupies more than 150 river miles of waterway, it also significantly exceeds Criterion B.3 (Extent of Occupancy). In addition, it was evaluated with NatureServe's Conservation Status

Assessments Rank Calculator (Criswell, 2014) and received a State Conservation Rank of S4, meaning it is apparently secure in this Commonwealth with a fairly low to very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of PABS reviewed this documentation and rank assignment and recommended that the Gilt Darter be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of threatened fishes. Therefore, the Commission proposes that the Gilt Darter be removed from the Commonwealth's list of threatened species.

(3) Spotted Darter (*Etheostoma maculatum*): The Spotted Darter is a small species that inhabits large streams and rivers, where it prefers the faster, deeper portions of riffles possessing gravel and rubble substrates. It occurs in the Ohio River basin from western New York and Pennsylvania to northern Indiana and south to West Virginia and Kentucky. It is extremely localized and uncommon in much of its range. In this Commonwealth, it occurs in French Creek and the Allegheny River and Ohio River.

The Spotted Darter has experienced a considerable range expansion since it was listed as threatened in 1999. At that time it was spottily distributed in French Creek and the middle Allegheny River. It is now known to occur throughout French Creek, including its West Branch, from near the Erie County/New York border to its mouth in Venango County (88 river miles). It occurs in the Allegheny River from Warren to its mouth in Pittsburgh, including the lock-and-dam section (189 river miles), and has been documented in the Ohio River as far downriver as the tailrace of Montgomery Lock and Dam, Beaver County. It also occurs in the following areas: Oil Creek, Venango County; Kiskiminetas River, Armstrong and Westmoreland Counties; and Bull Creek, Deer Creek and Pine Creek, Allegheny County.

Benthic trawls in the Allegheny River included yields of as many as 89 and 202 individuals. It is well distributed and relatively common, although not necessarily abundant, through its Pennsylvania range. The Spotted Darter was recently considered for Federal protection under the Endangered Species Act but a review published in 2011 concluded that "threats to spotted darter are not of sufficient imminence, intensity, or magnitude that would cause substantial losses of population distribution or viability."

The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A.1 (Population Reduction) in that its population is significantly increasing. Since the Spotted Darter now occupies more than 200 river miles of waterway, it also significantly exceeds Criterion B.3 (Extent of Occupancy). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator (Criswell, 2014) and received a State Conservation Rank of S4, meaning it is apparently secure in this Commonwealth with a fairly low to very low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of PABS reviewed this documentation and rank assignment and recommended that the Spotted Darter be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of threatened fishes. Therefore, the Commission proposes that the Spotted Darter be removed from the the Commonwealth's list of threatened species.

(4) Tippecanoe Darter (*Etheostoma tippecanoe*): The Tippecanoe Darter is a small species that inhabits rivers and large streams, where it requires clean gravel or sand/gravel substrates. It occurs in the Ohio River basin from western Pennsylvania to Indiana, and south to the Cumberland River drainage in Tennessee. It is extremely localized but locally common. In this Commonwealth, it occurs throughout French Creek, the middle and lower sections of the Allegheny River, the Ohio River and additional tributaries to these waterways.

The Tippecanoe Darter has experienced a considerable range expansion since it was listed as threatened in 1999. At that time it was spottily distributed in French Creek and the middle Allegheny River. It is now known to occur throughout French Creek, from near the Erie County/New York border to its mouth in Venango County (88 river miles). It occurs in the Allegheny River from Warren to its mouth in Pittsburgh, including the lock-and-dam section (189 river miles), and has been documented in the Ohio River as far downriver as the tailrace of Montgomery Lock and Dam, Beaver County. It also occurs in the following areas: Oil Creek, Venango County; Kiskiminetas River, Armstrong and Westmoreland Counties; and Bull Creek, Deer Creek and Pine Creek, Allegheny County.

Hundreds of Tippecanoe Darters were easily captured in a riffle below Lock and Dam 3 on the Allegheny River (Koryak et al., 2009), and at least 17 stations have produced 20 or more individuals. It is locally common at many locations within its Pennsylvania range.

The status of this species was reviewed using the Commission's documentation and objective listing/delisting process. It exceeds criterion A1 (Population Reduction) in that its population is significantly increasing. Since the Tippecanoe Darter now occupies more than 150 river miles of waterway, it also significantly exceeds Criterion B3 (Extent of Occupancy). In addition, it was evaluated with NatureServe's Conservation Status Assessments Rank Calculator (Criswell, 2014) and received a State Conservation Rank of S4, meaning it is apparently secure in this Commonwealth with a fairly low risk of extirpation due to its extensive range and/or many populations or occurrences. The Fishes Technical Committee of PABS reviewed this documentation and rank assignment and recommended that the Tippecanoe Darter be delisted. Enough information is available to make the determination that it is secure in this Commonwealth at present and to justify its removal from the Commonwealth's list of threatened fishes. Therefore, the Commission proposes that the Tippecanoe Darter be removed from the the Commonwealth's list of threatened species.

The Commission therefore proposes to amend § 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 of this proposed rulemaking 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-261. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 75. ENDANGERED SPECIES

§ 75.2. Threatened species.

* * * * *

(b) *Fish*. The following species are threatened:

- (1) Mountain brook lamprey, *Ichthyomyzon greeleyi*.
- (2) Bigmouth shiner, *Notropis dorsalis*.
- (3) Southern redbelly dace, *Phoxinus erythrogaster*.
- (4) Spotted sucker, *Minytrema melanops*.
- (5) Brindled madtom, *Noturus miurus*.

[(6) Bluebreasted darter, *Etheostoma camurum*.

(7) Spotted darter, *Etheostoma maculatum*.

(8) Tippecanoe darter, *Etheostoma tippecanoe*.

(9) Gilt darter, *Percina evides*.

(10)] (6) Chesapeake Logperch, *Percina bimaculata*.

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[Pa.B. Doc. No. 14-2621. Filed for public inspection December 19, 2014, 9:00 a.m.]

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

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

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon 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 § 65.24 (relating to miscellaneous special regulations) is published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

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 amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

Lake Perez, a 72-acre impoundment owned by The Pennsylvania State University, is located in Barree Township, Huntingdon County, approximately 3 miles northeast from the Village of Neffs Mills. This lake was completely dewatered during late spring 2009 to complete dam and spillway repairs and modifications per Department of Environmental Protection dam safety standards. The earth-fill dam, constructed in 1959, impounds Shaver Creek at river mile 13.6 upstream from the mouth at the Juniata River. Prior to the drawdown in 2009, access to the shoreline was primarily provided at two discrete access points as well as from numerous walking trails surrounding the lake. Approximately 80% of this shoreline was considered fishable. Additionally, one boat ramp provided boat access for nonpowered and electric motor crafts. The lake offered angling opportunities for multiple warm and coolwater fish species and adult trout stocked by the Commission during spring, fall and winter offered seasonal angling opportunities for trout. Dam and spillway repairs were completed during early summer 2014, and the reservoir began refilling at that time.

The Commission plans to stock the lake and establish a high quality warmwater and coolwater fishery through fingerling plants of select species. Immediately upon refilling of the lake, the Commission proposes to open the lake to fishing under a miscellaneous special regulation that will allow for the harvest of trout under Commonwealth inland regulations but allow only catch and release fishing for all other fish species. The Commission believes that this approach will allow the development of a balanced warmwater and coolwater fish community to rapidly develop while offering acceptable levels of recreational angling opportunities. The Commission will monitor the fish populations as needed while they develop and make the necessary adjustments to the species being stocked and the regulations governing the fishery to continually provide high quality recreational angling opportunities at Lake Perez.

The Commission proposes to amend § 65.24 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 of this proposed rulemaking 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-260. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.24. Miscellaneous special regulations.

The following waters are subject to the following miscellaneous special regulations:

<i>County</i>	<i>Name of Water</i>	<i>Special Regulations</i>
		* * * * *
Elk	West Branch, Clarion River	The following additional restrictions apply to the “Catch and Release, Fly-Fishing Only” area located on a 1/2-mile stream section from the intersection of S. R. 219 and S. R. 4003, upstream to the Texas Gulf Sulphur Property: Wading prohibited. Fishing permitted from east shore only.
Huntingdon	Lake Perez	All species except trout—Catch and release/no harvest; it is unlawful to take, kill or possess any fish except trout. All fish caught other than trout must be immediately returned unharmed. Trout—inland regulations apply. See § 61.1. This miscellaneous special regulation will remain in effect until June 16, 2018.
Huntingdon	Raystown Lake (includes Raystown Branch from the Raystown Dam downstream to the confluence with the Juniata River).	Trout (all species)—no closed season. Daily limit: First Saturday after April 11 until Labor Day—5 trout per day; day after Labor Day to first Saturday after April 11 of the following year—3 trout per day. Size limits: Inland rules apply. Smelt may be taken from shore or by wading by means of dip nets not to exceed 20 inches in diameter or 20 inches square. The daily limit per person is the greater of 1 gallon of smelt by volume or 200 smelt by number.
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[Pa.B. Doc. No. 14-2622. Filed for public inspection December 19, 2014, 9:00 a.m.]