

RULES AND REGULATIONS

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to 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 upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on this 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.fishandboat.com.

C. *Statutory Authority*

The 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*

This final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the amendment is described in more detail under the summary of change.

E. *Summary of Change*

Glade Run Lake, a 52-acre impoundment owned by the Commonwealth and managed by the Commission, is located in Middlesex Township, Butler County, approximately 10 miles south of the City of Butler and 20 miles northeast of Pittsburgh. The dam impounds Glade Run near its headwaters. This lake was completely dewatered in July 2011 to make dam and spillway repairs and modifications per dam safety standards of the Department of Environmental Protection.

Following completion of the dam and spillway repairs and modifications as well as construction of numerous habitat enhancement devices, the impoundment will be refilled by the opening day of trout season in 2017. The Commission will begin to re-establish a high quality warmwater and coolwater fishery through plants of select forage fish species beginning in spring 2017 (if the lake is refilled to adequate levels) with gamefish and panfish fingerling plants later in 2017. This process will continue for several years.

To allow Glade Run Lake's forage base and warm and coolwater fish communities to develop, the Commission proposed placing Glade Run Lake under a miscellaneous special regulation that allows for the harvest of trout under Commonwealth inland seasons, sizes and creel limits but allows catch and release fishing only for all other fish species. The stocking of adult catchable trout will begin in spring 2017.

The Commission proposed this approach to allow a balanced fishery to develop under protective regulations while offering acceptable levels of recreational angling opportunities. The Commission proposed that the miscellaneous special regulation be established in early 2017 and extend until the warmwater fish populations rebuild appropriate levels. Commission staff will continue to monitor the fish populations as 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 Glade Run Lake. Once the warmwater fishery has been re-established, the Commission will consider removal of the miscellaneous special regulation on the Glade Run Lake and inclusion of the lake in one of the Commission's existing warmwater regulation programs.

The Commission amends § 65.24 to read as set forth in the proposed rulemaking published at 46 Pa.B. 5736 (September 3, 2016).

F. *Paperwork*

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

G. *Fiscal Impact*

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

H. *Public Involvement*

Notice of proposed rulemaking was published at 46 Pa.B. 5736. The Commission did not receive public comments regarding the proposed amendment.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no public comments were received.

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

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending § 65.24 to read as set forth at 46 Pa.B. 5736.

(b) The Executive Director will submit this order and 46 Pa.B. 5736 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 46 Pa.B. 5736 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-272 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 17-409. Filed for public inspection March 10, 2017, 9:00 a.m.]

FISH AND BOAT COMMISSION
[58 PA. CODE CH. 65]
Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to 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

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this 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.fishandboat.com.

C. Statutory Authority

The 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

This final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the amendment is described in more detail under the summary of change.

E. Summary of Change

Harveys Lake is a 658-acre natural lake in Luzerne County. It is one of the few lakes in this Commonwealth managed as a put, grow and take stocked trout fishery. Brown trout survive year-round in Harveys Lake and commonly reach weights in excess of 10 pounds. The Commission established a miscellaneous special regulation to protect this fishery in 1998. Under this regulation, Harveys Lake is closed to all fishing for a 2-week period from April 1 to the opening day of trout season. Trout harvest is permitted at all other times of the year. The creel limit is 3 trout per day, only one of which may exceed 18 inches in length.

Commission law enforcement personnel have received numerous requests to open Harveys Lake to year-round fishing. In addition to trout, Harveys Lake supports excellent fisheries for Black Bass, Walleye, Yellow Perch, Rock Bass and Bluegill. Bass anglers in particular will appreciate this amendment because Harveys Lake is one of the few lakes in the region large enough to support power boating.

Allowing year-round fishing will benefit Harveys Lake anglers. It also will benefit stream anglers because it will allow the Commission to stock Harveys Lake in March, thus freeing up a stocking trip closer to opening day for a stream that has trout residency problems. However,

opening Harveys Lake to year-round fishing will also require a change in harvest dates. Currently, Harveys Lake is open to trout harvest from March 1 to March 31. Trout harvest should be prohibited from March 1 to opening day to make Harveys Lake consistent with other stocked trout waters that are open to year-round fishing. The closure to harvest is also necessary to allow recently stocked trout to avoid rapid harvest and grow to large sizes.

In summary, the Commission proposed two amendments to the miscellaneous special regulation, that is, to open Harveys Lake to year-round fishing and prohibit the harvest of trout from March 1 to opening day of trout season. The Commission amends § 65.24 to read as set forth in the proposed rulemaking published at 46 Pa.B. 7540 (December 3, 2016).

F. Paperwork

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

G. Fiscal Impact

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

H. Public Involvement

Notice of proposed rulemaking was published at 46 Pa.B. 7540. The Commission did not receive public comments regarding the proposed amendment.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and no public comments were received.

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

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending § 65.24 to read as set forth at 46 Pa.B. 7540.

(b) The Executive Director will submit this order and 46 Pa.B. 7540 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 46 Pa.B. 7540 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-273 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 17-410. Filed for public inspection March 10, 2017, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 131]

Preliminary Provisions; Replacement Costs for Wildlife Killed

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 31, 2017, meeting, amended § 131.8 (relating to replacement costs for wildlife killed) to increase replacement costs for osprey from \$200 to \$2,500.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 46 Pa.B. 6868 (October 29, 2016).

1. *Purpose and Authority*

In accordance with the goals and objectives stated in the Management Plan for Osprey in Pennsylvania, 2015—2025, the osprey (*Pandion haliaetus*) has achieved a population level, geographical distribution and tolerance of human activity that no longer meets the definition of a threatened species. As a result, the Commission has removed the osprey from the Commonwealth's threatened species list. Former replacement costs for osprey as a listed threatened species were \$5,000. Upon delisting, replacement costs for osprey were reduced to a default of \$200. Notwithstanding its efforts to delist the osprey, the Commission determined that the species necessitates further protection from unlawful takings in the form of increased replacement costs upon its effective delisting date. As a result, the Commission amends § 131.8 to increase replacement costs for osprey from \$200 to \$2,500.

Section 925(i) of code (relating to jurisdiction and penalties) states that “[i]n addition to the fines and costs imposed for violations pursuant to subsection (b), the costs incurred by the commission for the replacement of the species involved in the violation shall be assessed by the magisterial district judge in such amount as is fixed by regulation of the commission.” Section 2102(a) of the code (relating to regulations) provides that “[t]he commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth.” The amendments to § 131.8 are adopted under this authority.

2. *Regulatory Requirements*

This final-form rulemaking amends § 131.8 to increase replacement costs for osprey from \$200 to \$2,500.

3. *Persons Affected*

Persons who unlawfully take or kill ospreys within this Commonwealth will be affected by this final-form rulemaking.

4. *Comment and Response Summary*

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

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Contact Person*

For further information regarding this final-form rulemaking, contact Thomas P. Grohol, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

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

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the 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 131, are amended by amending § 131.8 to read as set forth at 46 Pa.B. 6868.

(b) The Executive Director of the Commission shall certify this order and 46 Pa.B. 6868 and deposit them with the Legislative Reference Bureau as required by law.

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

R. MATTHEW HOUGH,
Executive Director

Fiscal Note: Fiscal Note 48-401 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 17-411. Filed for public inspection March 10, 2017, 9:00 a.m.]

GAME COMMISSION
[58 PA. CODE CH. 133]
Wildlife Classification; Birds

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 31, 2017, meeting, amended § 133.21 (relating to classification of birds) to remove the osprey from the Commonwealth's list of threatened and endangered birds.

This final-form rulemaking will not have an adverse impact on the wildlife resources of this Commonwealth.

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

Notice of proposed rulemaking was published at 46 Pa.B. 6869 (October 29, 2016).

1. Purpose and Authority

In accordance with the goals and objectives stated in the Management Plan for Osprey in Pennsylvania, 2015—2025 (Plan), the osprey (*Pandion haliaetus*) has achieved a population level, geographical distribution and tolerance of human activity that no longer meets the definition of a threatened species under § 133.4 (relating to definitions). As of the 2016 nesting season, osprey populations have met the objectives of at least 50 total nesting pairs with a steady or increasing population, including at least 10 nesting pairs in each of 4 watersheds for the second consecutive comprehensive survey. As a result, the Commission amends § 133.21 to remove the osprey from the Commonwealth's list of threatened and endangered birds. Notwithstanding this delisting, ospreys will continue to be a protected species under the code and will continue to be afforded protection under the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—712). Commission staff will continue to implement the Plan and monitor osprey nests to ensure that this species does not regress toward endangerment.

Section 322(c)(8) of the code (relating to powers and duties of commission) specifically empowers the Commission to “[a]dd to or change the classification of any wild bird or wild animal.” Section 2167 of the code (relating to endangered or threatened species) states that “[t]he commission may, by regulation, add or remove any wild bird or wild animal native to this Commonwealth to or from the Pennsylvania native list of endangered or threatened species.” The amendments to § 133.21 are adopted under this authority.

2. Regulatory Requirements

This final-form rulemaking amends § 133.21 to remove the osprey from the Commonwealth's list of threatened and endangered birds.

3. Persons Affected

Persons concerned with the protected status of the osprey within this Commonwealth will be affected by this final-form rulemaking.

4. Comment and Response Summary

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

5. Cost and Paperwork Requirements

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

6. Effective Date

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

7. Contact Person

For further information regarding this final-form rulemaking, contact Thomas P. Grohol, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

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

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the 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 133, are amended by amending § 133.21 to read as set forth at 46 Pa.B. 6869.

(b) The Executive Director of the Commission shall certify this order and 46 Pa.B. 6869 and deposit them with the Legislative Reference Bureau as required by law.

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

R. MATTHEW HOUGH,
Executive Director

Fiscal Note: Fiscal Note 48-400 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 17-412. Filed for public inspection March 10, 2017, 9:00 a.m.]