

## Order Adopting Amendments

### COMMONWEALTH OF PENNSYLVANIA PENNSYLVANIA FISH AND BOAT COMMISSION

#### Title 58. Recreation Part II. Fish and Boat Commission Chapters 51, 57, 71, 75, 79 and 93

#### General Provisions, Fishing and Boating

## Preamble

The Fish and Boat Commission (Commission) amends 58 Pa. Code Chapters 51, 57, 71, 75, 79 and 93 (relating to general provisions; statements of policy; propagation and introduction of fish into Commonwealth waters; endangered species; reptiles and amphibians; and boat registration and numbering). The Commission is publishing this final-form rulemaking under the authority of 30 Pa. C.S. (relating to the Fish and Boat Code) (code) and other authorities described below.

A. *Effective date*

This final-form rulemaking will go into effect immediately upon publication of this order 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](http://www.fishandboat.com).

C. *Statutory authority*

These amendments are published under the statutory authority of section 506 of The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 186.

These amendments also are published in accordance with section 204 of the Commonwealth Documents Law (CDL), Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. § 1204, which provides that an agency may omit or modify the procedures specified in sections 201 and 202 of the CDL if, among other things, the administrative regulation or change relates to agency organization, management or personnel; agency procedure or practice; or Commonwealth property or the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the procedures specified in sections 201 and 202 of the CDL are under the circumstances impracticable, unnecessary or contrary to the public interest.

D. *Purpose and background*

Pursuant to 58 Pa. Code § 51.5 (relating to correction of regulations), the Executive Director is authorized to take immediate corrective action on the Commission's behalf if the Executive Director or the Commission's staff discovers an error or omission in the text of a Commission regulation as published in the *Pennsylvania Code* or *Pennsylvania Bulletin*. The purpose of this final-form rulemaking is to update the Commission's regulations with current agency contact information.

E. *Summary of changes*

The Commission amends sections 51.2, 51.82, 57.11, 71.2, 71.7, 75.4, 79.3, 79.5, 79.6, 79.7, 79.8, 79.12 and 93.119 (relating to Commission offices; application for permits; listing of wild trout streams; fish species approved for artificial propagation and introduction;

triploid grass carp; special permits; season and daily possession limits; snapping turtle permits; venomous snake permits; organized reptile and amphibian hunt permits; artificial propagation and dealers of live reptiles and amphibians; color morphs of native species; and forms) because a recent review of the Commission's regulations by staff revealed that some of the agency's contact information is no longer current and is in need of updating. The Commission therefore amends these sections to read as set forth in Annex A.

F. *Paperwork*

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

G. *Fiscal Impact*

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

H. *Public Involvement*

Under section 204 of the CDL, an agency may omit the procedures specified in sections 201 and 202 of the CDL if the administrative regulation or change relates to agency organization, management or personnel or agency procedure or practice. The Commission, therefore, did not publish these amendments as a notice of proposed rulemaking or solicit public comment.

**FINDINGS**

The Commission finds:

(1) Inaccurate or outdated contact information was discovered in the text of 58 Pa. Code §§ 51.2, 51.82, 57.11, 71.2, 71.7, 75.4, 79.3, 79.5, 79.6, 79.7, 79.8, 79.12 and 93.119 as published in the *Pennsylvania Code*.

(2) Under 58 Pa. Code § 51.5, the Executive Director is authorized to take immediate corrective action on behalf of the Commission, including, if necessary, the issuance of an order to make the necessary correction, if the Executive Director or the Commission's staff discovers an error in the text of a Commission regulation as published in the *Pennsylvania Code*.

(3) Because the nature of the amendments is minor and designed to correct errors or update agency contact information, the Commission finds that the procedures of sections 201 and 202 of the CDL are unnecessary.

### **ORDER**

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

(A) The regulations of the Commission, 58 Pa. Code Chapters 51, 57, 71, 75, 79 and 93, are amended by amending §§ 51.2, 51.82, 57.11, 71.2, 71.7, 75.4, 79.3, 79.5, 79.6, 79.7, 79.8, 79.12 and 93.119 to read as set forth at Annex A.

(B) The Executive Director will submit this order and Annex A to the Attorney General for approval as to legality as required by law.

(C) The Executive Director shall certify this order and Annex A and deposit the same with the Legislative Reference Bureau as required by law.

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

For the Pennsylvania Fish and Boat Commission

John A. Arway  
Executive Director

**REVISED** Annex A

Regulation No. 48A-278

Title 58. Recreation

Part II. Fish and Boat Commission

Subpart A. General Provisions

CHAPTER 51. ADMINISTRATIVE PROVISIONS

§ 51.2. Commission offices.

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(b) The address of the [**Bureau of Fisheries, the Bureau of Hatcheries and the Bureau of Engineering**] **Centre Region Office** of the Commission is as follows:

Pennsylvania Fish and Boat Commission  
**[450 Robinson Lane] 595 East Rolling Ridge Drive**  
Bellefonte, Pennsylvania 16823

[(c) **The address of the Division of Licensing and Registration is:**

**Pennsylvania Fish and Boat Commission  
Division of Licensing and Registration  
Post Office Box 67000  
Harrisburg, Pennsylvania 17106-7000]**

§ 51.82. Application for permits.

(a) An application for a permit to draw down impounded waters is available from the Fish and Boat Commission, Division of Environmental Services, [**450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823[**-9616**].

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CHAPTER 57. STATEMENTS OF POLICY

§ 57.11. Listing of wild trout streams.

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(d) *Requests for evaluation or reevaluation of streams.* The Commission staff will evaluate or reevaluate the classification of streams as wild trout streams at the request of the Department of Environmental Protection (DEP) in connection with permitting decisions. Requests for evaluation or reevaluation from persons or parties other than DEP will be considered for review consistent with available staff and resources and prioritized based on the status of DEP permitting decisions related to the sites. Requests that the Commission staff evaluate or reevaluate stream sections for inclusion on or removal from the list of streams supporting naturally reproducing populations of trout may be addressed to the Bureau of Fisheries, Pennsylvania Fish and Boat Commission, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823[-9616]. In evaluating requests to remove streams from the list of wild trout streams, the Commission will take into account circumstances where human intervention or manmade changes have diminished the capacity of a stream to meet the criteria set forth in this section. Streams will not be removed from the list of wild trout streams in circumstances where the investigator finds evidence that their characteristics and trout populations have been changed solely or principally as a result human intervention.

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Subpart B. Fishing

CHAPTER 71. PROPAGATION AND INTRODUCTION OF FISH INTO COMMONWEALTH WATERS

§ 71.2. Fish species approved for artificial propagation and introduction.

The Bureau of Fisheries will maintain a list of species by watershed for which the Department of Agriculture may issue registrations for artificial propagation and registrations for dealers of live aquatic animals. The Director of the Bureau of Fisheries may update or modify the list of authorized species by adding species to, or deleting species from, the list as necessary to provide for the protection and management of fish and fishing in this Commonwealth. The Commission will provide the list to the Department of Agriculture on or before January 31 each year and whenever the Commission updates or modifies the list. Copies of the list of authorized species are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823.

§ 71.7. Triploid grass carp.

\* \* \*

(c) *Permit required.*

(1) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that permits shall be required for possessing triploid grass carp (white amur) or introducing them into Commonwealth waters and for importing or transporting triploid grass carp into this Commonwealth to provide for proper protection and management of these fish and other fish in the waters of this Commonwealth. A pondowner, landowner or other person who wishes to possess triploid grass carp and introduce them into a pond or waters located on property owned, leased or otherwise controlled by the person shall, before placing triploid grass carp in the waters, obtain from the Commission a triploid grass carp possession/introduction permit for a fee of \$75. A person who wishes to import triploid grass carp into this Commonwealth shall, before doing so, obtain from the Commission a triploid grass carp importation/ transportation permit for a fee of \$75. Permits

shall be applied for on forms supplied by the Commission. Applications for permits may be obtained from: Triploid Grass Carp Manager, Bureau of Fisheries, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, PA 16823[-9616]. Permits will not be issued until after January 1, 1994.

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#### CHAPTER 75. ENDANGERED SPECIES.

##### § 75.4. Special permits.

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(2) Persons and institutions requesting special permits shall apply before taking, catching, killing, possessing or acquiring the threatened or endangered species. Application forms and information are available from the Natural Diversity Section, Division of Environmental Services, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823[-9616].

#### CHAPTER 79. REPTILES AND AMPHIBIANS.

##### § 79.3. Season and daily possession limits.

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(f) In prosecutions for violations of the possession limits, when venomous reptiles have been killed in apparent violation of the limits, it shall be a defense that the person who killed the venomous reptiles acted under a reasonable apprehension of immediate death or bodily harm to himself or other persons in his immediate vicinity, if no more venomous reptiles are killed than necessary to protect life and limb and if the person reported the kills in writing to the Natural Diversity Section Chief, Division of Environmental Services, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823[-9616], within 5 business

days after the kill. It is unlawful for a person to possess a venomous reptile, in whole or in parts, that was killed under this subsection.

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§ 79.5. Snapping turtle permits.

(a) The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the common snapping turtle (*Chelydra serpentina*) that persons who hunt, take, catch or kill this species for the purpose of sale, barter or trade have an annual permit for the activity. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823**[-9616]**. The fee for residents is \$50 per year; the fee for nonresidents is \$100 per year. The denial of a permit under this section is appealable in the manner provided by Chapter 51, Subchapter E (relating to permit procedures).

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§ 79.6. Venomous snake permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of particular fish), that it is necessary for the proper protection and management of the timber rattlesnake (*Crotalus horridus*) and copperhead (*Agkistrodon contortrix*) that persons who hunt, take, catch or kill these species have a permit for the activity. Application for a permit must be made on a form prescribed by the Commission and accompanied by the appropriate fee. Permits may be obtained by applying

to: Natural Diversity Section Chief, Division of Environmental Services, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823[-9616]. The fee for residents is \$25 per year; the fee for nonresidents is \$50 per year. The denial of a permit under this section is appealable in the manner provided by Chapter 51, Supchapter E (relating to permit procedures).

\* \* \*

(c) *Reporting.* Within 10 business days following the capture or kill, or if no snake is captured or killed, within 10 days of the conclusion of the season, the permittee shall complete a report on the form prescribed by the Commission and shall mail the report to the Commission's Natural Diversity Section, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823.

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§ 79.7. Organized reptile and amphibian hunt permits.

(a) *Application.* The Commission finds, under section 2904 of the code (relating to permits for protection and management of fish), that it is necessary for the proper protection and management of reptiles and amphibians in this Commonwealth that organized reptile and amphibian hunts be conducted under permits issued under this section. The sponsor of an organized reptile and amphibian hunt shall apply for a permit by no earlier than January 1 and no later than March 1 of the year for which the hunt is proposed. Application for a permit must be made on a form prescribed by the Commission and must be accompanied by the appropriate fee. Permits may be obtained by applying to: Natural Diversity Section Chief, Division of Environmental Services, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823[-9616]. The fee for the permit is \$100. The denial of a

permit under this section is appealable in a manner provided by Chapter 51, Subchapter E (relating to permit procedures).

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§ 79.8. Artificial propagation and dealers of live reptiles and amphibians.

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(b) *Approved lists.* The Bureau of Fisheries will maintain lists of species, subspecies and color morphs for which the Department may issue registrations for artificial propagation and registrations for dealers of live reptiles and amphibians. The Bureau of Fisheries will maintain two separate lists—one that the Commission has approved for artificial propagation in an open system and one that the Commission has approved for artificial propagation in a closed system. The Director of the Bureau of Fisheries may update or modify the lists of approved species, subspecies and color morphs by adding species, subspecies or color morphs to or deleting species, subspecies or color morphs from the lists as necessary for the protection and management of reptiles and amphibians in this Commonwealth. The Commission will provide the lists to the Department on or before January 31 each year and whenever the Commission updates or modifies the lists. Copies of the lists of approved species, subspecies and color morphs are available upon request from the Pennsylvania Fish and Boat Commission, Bureau of Fisheries, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823.

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§ 79.12. Color morphs of native species.

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(b) The Commission recognizes that the captive breeding of color morphs approved for propagation by the Commission in this section may result in animals that have a normal color appearance (typical phenotype). The typical phenotype progeny of these color morphs may be sold provided that the following conditions are met:

\* \* \*

(5) The artificial propagator or dealer selling them shall submit an annual report on the form prescribed by the Commission that includes changes in the numbers possessed (for example, gains and losses to the inventory) and other information that the Commission requires. The artificial propagator or dealer shall submit the report to the Commission's Natural Diversity Section Chief, Division of Environmental Services, **[450 Robinson Lane] 595 East Rolling Ridge Drive**, Bellefonte, Pennsylvania 16823 by no later than January 31 of the following year.

#### Subpart C. Boating

### CHAPTER 93. BOAT REGISTRATION AND NUMBERING

#### § 93.119. Forms.

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(b) Except as otherwise provided in this subchapter, all forms and notices required in this subchapter shall be forwarded to the Fish and Boat Commission, Division of Licensing and Registration, Post Office Box **[67000] 68900**, Harrisburg, Pennsylvania 17106-**[7000] 8900**.