

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[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 to § 61.2 (relating to Delaware River, West Branch Delaware River and River Estuary) updates the Commission's regulations concerning Atlantic striped bass fishing in the Delaware River, West Branch Delaware River and River Estuary.

A. *Effective Date*

This proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2025.

B. *Contact Person*

For further information on this proposed rulemaking, contact Renae Kluk Kiehl, 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.fishandboat.com.

C. *Statutory Authority*

The proposed amendments to § 61.2 are published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

D. *Purpose and Background*

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

E. *Summary of Proposal*

At its January 2024 quarterly meeting, the Atlantic States Marine Fisheries Commission's (ASMFC) Atlantic Striped Bass Management Board, which includes the Commonwealth as a member, approved Addendum II to Amendment 7 to the Interstate Fishery Management Plan (FMP) for Atlantic striped bass. The Addendum modifies recreational measures to reduce fishing mortality by 14.1% in 2024, addresses requirements for recreational filleting and other management provisions. Addendum II builds upon the 2023 emergency action taken by the ASMFC by changing the measures in the FMP to reduce fishing mortality and support stock rebuilding.

Addendum II measures must be implemented by May 1, 2024. To address the coast-wide regulation directed by the ASMFC, the Commission's Executive Director took immediate actions to make modifications to fishing regulations under § 65.25 (relating to temporary changes to fishing regulations) to amend § 61.2. Specifically, the Executive Director amended this section to reduce the maximum harvestable length in the striped bass slot limit from less than 35 inches to less than 31 inches from the Pennsylvania line upstream to Calhoun Street Bridge (Delaware Estuary) from January 1 through March 31 and June 1 through December 31 and from the Calhoun Street Bridge upstream (Delaware River) year-round, which was published at 54 Pa.B. 69 (January 6, 2024). The Executive Director amended this section to reduce

the daily limit of striped bass from two fish to one fish and adjust the harvestable length slot limit from 21 inches to less than 24 inches and 22 inches to less than 26 inches from the Pennsylvania line upstream to Calhoun Street Bridge (Delaware Estuary) from May 1, 2024 through May 31, 2024, which was published at 54 Pa.B. 2191 (April 20, 2024). Gear restrictions remained unchanged. These temporary changes went into effect on January 1, 2024, and May 1, 2024, and will remain in effect until the Commission, by appropriate action, amends § 61.2. This proposed rulemaking seeks to amend the section accordingly.

To address concerns about recreational filleting allowances and compliance with harvestable size limits, Addendum II requires states that authorize at-sea or shore-side filleting, or both, of Atlantic striped bass to establish minimum requirements, including requirements for carcasses to be retained and possession to be limited to no more than two fillets per legal fish harvested. Commission staff proposed to add recreational filleting requirements specific to Atlantic striped bass to § 61.2 because it is the primary fishery in which Atlantic striped bass is found in this Commonwealth.

In addition to the ASMFC mandated amendments, Commission staff identified an opportunity to further clarify language in § 61.2(d) pertaining to the required use of a circle hook when fishing with bait for any species of fish in the tidal Delaware Estuary. The intent of this provision is to require a hook configuration consisting of a single, non-offset (in-line) circle hook; however, the current language is unclear regarding the prohibition of a multiple circle hook configuration. It is recommended to add clarifying language to the body of the text in the regulation.

The Commission proposes that § 61.2 be amended to read as set forth in Annex A.

F. *Paperwork*

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

G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this 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 notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-356. No fiscal impact; 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) It is unlawful to fish with bait for any species of fish in the tidal Delaware Estuary, including tributaries from the mouths of the tributaries upstream to the limit of tidal influence using any hook type other than a non-offset (in-line) circle [**hooks**] **hook**. The definition of a non-offset (in-line) circle hook is a **single**, non-offset hook where the point is pointed perpendicularly back towards the shank. The term “non-offset” means the point and the barb are in the same plane as the shank. **For purposes of this section, a non-offset (in-line) circle hook is considered a fishing device with no more than one point or barb.**

(d.1) It is unlawful for any person to gaff or attempt to gaff any striped bass at any time when fishing.

(d.2) Except as follows, it is unlawful to possess a striped bass in any form or condition other than in

the whole or having the entrails removed while on shore, along the waters of this Commonwealth, onboard a boat or on a dock, pier, launch area or a parking lot adjacent thereto:

(1) Striped bass may be processed fully if they are being prepared for immediate consumption.

(2) Provided that the requirements of this paragraph are met, striped bass may be processed by a permitted charter boat or fishing guide operation. The charter boat operator or fishing guide may fully process the striped bass at any time provided that there are no more than two fillets per striped bass (cutting the fillets into pieces, also known as chunking, is prohibited) and the charter boat operator or fishing guide retains the carcass until possession of the striped bass is transferred to the customer on shore. The charter boat operator or fishing guide shall give the customer who receives the processed striped bass a signed, dated receipt on the form prescribed by the Commission.

(e) 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
* * * * *			
STRIPED BASS and HYBRID STRIPED BASS	From Pennsylvania line upstream to Calhoun Street Bridge: January 1 until March 31 and June 1 until December 31.	28 to less than [35] 31 inches	1
	April 1 through May 31	[21] 22 to less than [24] 26 inches	[2] 1
	From Calhoun Street Bridge upstream: open year-round	28 to less than [35] 31 inches	1
* * * * *			

[Pa.B. Doc. No. 24-1249. Filed for public inspection September 6, 2024, 9:00 a.m.]

FISH AND BOAT COMMISSION

[**58 PA. CODE CH. 95**]

Boating; Manufacturer Installed Equipment

The Fish and Boat Commission (Commission) proposes to amend Chapter 95 (relating to manufacturer installed equipment) by adding § 95.10 (relating to engine cut-off switch). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed addition updates the Commission’s regulations pertaining to engine cut-off switch (ECOS) safety standards per the Cooperative Agreement for Recreational Boating Safety with the United States Coast Guard (USCG).

A. Effective Date

This 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 this proposed rulemaking, contact Renae Kluk-Kiehl, 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.fishandboat.com.

C. Statutory Authority

The proposed addition of § 95.10 is published under the statutory authority of section 5123(a) of the code (relating to general boating regulations).

D. Purpose and Background

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

E. Summary of Proposal

The ECOS is an important tool to prevent unnecessary death and disfigurement caused by a recreational boat operator being unexpectedly displaced from the boat and then struck by the boat’s propeller. The ECOS lanyard

connects the vessel operator to a switch that shuts off the engine if the operator is displaced from the boat. The lanyard can be looped around the operator's wrist or clipped to a life jacket or clothing. Wireless versions are also available, doing away with the physical tether and allowing the operator a little more flexibility to roam. Section 109.3(c) (relating to personal watercraft) currently requires a person operating a personal watercraft equipped by the manufacturer with a lanyard type ECOS to attach it to their person, clothing or personal flotation device.

Effective April 1, 2021, section 503(a) of the Frank LoBiondo Coast Guard Authorization Act of 2018 (46 U.S.C. § 4312), requires operators of certain motorized recreational vessels to use an ECOS when operating at greater than displacement speed. The Federal law, enforced by the USCG, applies to operators of all personal watercraft and recreational boats less than 26 feet with motors capable of developing 115 pounds or more of static thrust (approximately 3 horsepower). Boats not equipped by the manufacturer with an ECOS are exempt, but Federal regulations require all boats manufactured beginning January 1, 2020, to have an ECOS installed. The Federal regulation also does not apply to operators of vessels with a main helm inside an enclosed cabin. The law does not require operators to have the lanyard attached when the vessel is idling or performing docking maneuvers.

The Commission is encouraged to align its laws, rules and regulations with Federal law, to the fullest extent practicable, per the Cooperative Agreement for Recreational Boating Safety with the USCG.

The Commission proposes that § 95.10 be added as set forth in Annex A.

F. Paperwork

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

G. Fiscal Impact

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about this 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 notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to RA-pfbceregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-357. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 95. MANUFACTURER INSTALLED EQUIPMENT

(*Editor's Note:* Section 95.10 is proposed to be added and is printed in regular type to enhance readability.)

§ 95.10. Engine cut-off switch.

The operator of a boat less than 26 feet in length equipped with an engine cut-off switch shall use the engine cut-off switch when the boat is operated at greater than slow no-wake speed. The use of an engine cut-off switch shall not be required when the operator is in a fully enclosed cabin of a boat.

[Pa.B. Doc. No. 24-1250. Filed for public inspection September 6, 2024, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 99a]

Boating; Capacity Plates

The Fish and Boat Commission (Commission) proposes to delete Chapter 99a (relating to capacity plates). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code). The proposed deletion updates the Commission's regulations pertaining to capacity plates.

A. Effective Date

This 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 this proposed rulemaking, contact Renae Kluk-Kiehl, 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.fishandboat.com.

C. Statutory Authority

The proposed deletion of Chapter 99a is published under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics).

D. Purpose and Background

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

E. Summary of Proposal

Prior to January 1, 2013, the Commission issued capacity plates, upon request, for certain boats that were operated or offered for sale within this Commonwealth. During an audit of the Commission's Recreational Boating Safety Program in 2011, the United States Coast Guard (USCG) identified this practice as a violation of Federal regulations and directed the Commission to stop issuing the plates.

In response to this direction, the Commission deleted the entirety of Chapter 99 at 42 Pa.B. 7688 (December 22, 2012) of its regulations pertaining to capacity plates. At the time, this decision was thought to be the best way to handle the issue. However, in August 2018, it was determined that the best change would have been to delete only those sections dealing with the Commission's issuance of capacity plates and not to delete other sections that extended the Federal standard to Commonwealth waters. The Commission reinstated and amended certain sections of the former regulations.

Commission staff have again consulted with the USCG and have been advised that Federal capacity plate re-

quirements apply to manufacturers and are enforced by the USCG. It is unnecessary for the Commission to promulgate regulations regarding capacity plate requirements, therefore Chapter 99a can be deleted.

Commission staff propose that Chapter 99a be deleted as set forth in Annex A.

F. *Paperwork*

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

G. *Fiscal Impact*

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

H. *Public Comments*

Interested persons are invited to submit written comments, objections or suggestions about this 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 notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically to RA-pfbcregulations@pa.gov. Electronic comments submitted in any other manner will not be accepted.

TIMOTHY D. SCHAEFFER,
Executive Director

Fiscal Note: 48A-358. No fiscal impact; recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

**CHAPTER 99a. [CAPACITY PLATES]
[RESERVED]**

(Editor’s Note: Chapter 99a which appears in 58 Pa. Code pages 99a-1 and 99a-2, serial pages (393605) and (393606) is proposed to be deleted in its entirety.)

§§ 99a.1—99a.4. [Reserved].

(Pa.B. Doc. No. 24-1251. Filed for public inspection September 6, 2024, 9:00 a.m.)

GAME COMMISSION

[58 PA. CODE CH. 133]

Wildlife Classification; Birds; Classification of Birds

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its July 12, 2024, meeting to amend § 133.21 (relating to classification of birds) to update the common and scientific name of Northern Goshawk (*Accipiter gentilis*) to American Goshawk (*Accipiter atricapillus*) on the Commonwealth’s list of endangered birds.

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

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

This proposed rulemaking was made public at the July 12, 2024, meeting of the Commission. Comments can be sent until September 11, 2024, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

Based on current scientific findings and changes to accepted nomenclature, the Commission is proposing to amend § 133.21 to update the common and scientific name of Northern Goshawk (*Accipiter gentilis*) to American Goshawk (*Accipiter atricapillus*) on the Commonwealth’s list of endangered birds. Formerly considered a single species, goshawks in Europe and North America were split into separate species in the 64th Supplement to the American Ornithological Society’s Checklist of North American Birds due to genetic and behavioral differences. The European species, Northern Goshawk (*Accipiter gentilis*), retained the original common and scientific names and the North American species, American Goshawk (*Accipiter atricapillus*) received new common and scientific names. These changes do not affect protection or management of goshawks within this Commonwealth, but update the Commonwealth’s list to reflect the current taxonomic resolution of each species, maintaining the agency’s science-based approach to wildlife management.

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 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 § 133.21 are proposed under this authority.

2. *Regulatory Requirements*

This proposed rulemaking will amend § 133.21 to update the common and scientific name of Northern Goshawk (*Accipiter gentilis*) to American Goshawk (*Accipiter atricapillus*) on the Commonwealth’s list of endangered birds.

3. *Persons Affected*

Persons concerned with American Goshawk (*Accipiter atricapillus*) within this Commonwealth will be affected by this proposed rulemaking.

4. *Cost and Paperwork Requirements*

This proposed rulemaking should not result in any additional cost or paperwork.

5. *Effective Date*

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

6. Contact Person

For further information about this proposed rule-making, contact Jason L. DeCoskey, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

STEPHEN SMITH, Executive Director

Fiscal Note: 48-509. No fiscal impact; recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 133. WILDLIFE CLASSIFICATION
Subchapter B. BIRDS

§ 133.21. Classification of birds.

The following birds are classified:

- (1) Endangered.
(i) King Rail (Rallus elegans)
(xvi) Upland Sandpiper (Batramia longicauda)
(xvii) [Northern] American Goshawk (Accipiter [gentilis] atricapillus)
(2) Threatened.

[Pa.B. Doc. No. 24-1252. Filed for public inspection September 6, 2024, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Falconry; Classes

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its July 12, 2024, meeting to amend § 147.103 (relating to classes) to decrease the minimum age eligibility threshold for a general class falconry permit from 18 years of age to 16 years of age.

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

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

This proposed rulemaking was made public at the July 12, 2024, meeting of the Commission. Comments can be sent until September 11, 2024, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

The Pennsylvania Falconry and Hawk Trust (PFHT) approached the Commission with a request to decrease the Commonwealth's minimum age eligibility threshold for a general class falconry permit from 18 years of age to 16 years of age. Under 50 CFR 21.82 (relating to falconry standards and falconry permitting), Federal regulations set the minimum age eligibility threshold at 16 years of

age. While states cannot go below this threshold, they can raise the threshold higher. The Commonwealth historically maintained the minimum age eligibility threshold for a general class falconry permit at 18 years of age. The Commission has not identified a significant biological or safety concern that would necessitate maintaining the 18 years of age threshold. As a result, the Commission is proposing to amend § 147.103 to decrease the minimum age eligibility threshold for a general class falconry permit from 18 years of age to 16 years of age.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." The amendments to § 147.103 are proposed under this authority.

2. Regulatory Requirements

This proposed rulemaking will amend § 147.103 to decrease the minimum age eligibility threshold for a general class falconry permit from 18 years of age to 16 years of age.

3. Persons Affected

Persons under the age of 18 who are interested in participating in falconry activities within this Commonwealth may be affected by this proposed rulemaking.

4. Cost and Paperwork Requirements

This proposed rulemaking should not result in any additional cost or paperwork.

5. Effective Date

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

6. Contact Person

For further information about this proposed rule-making, contact Jason L. DeCoskey, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

STEPHEN SMITH, Executive Director

Fiscal Note: 48-510. No fiscal impact; recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 147. SPECIAL PERMITS
Subchapter F. FALCONRY

§ 147.103. Classes.

* * * * *

(b) General. Permittees of the general class shall be subject to the following requirements and limitations:

- (1) Permittees shall be [18] 16 years of age or older.

* * * * *

[Pa.B. Doc. No. 24-1253. Filed for public inspection September 6, 2024, 9:00 a.m.]