

RULES AND REGULATIONS

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 133]

Wildlife Classification; Birds and Mammals

[49 Pa.B. 1362]

[Saturday, March 23, 2019]

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 29, 2019, meeting, amended §§ 133.21 and 133.41 (relating to classification of birds; and classification of mammals) to adjust the Commonwealth's threatened and endangered species list for the Peregrine Falcon, Piping Plover, Red Knot, Northern long-eared bat, Little brown bat and Tri-colored bat.

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 48 Pa.B. 7218 (November 17, 2018).

1. *Purpose and Authority*

The Commission has a fiduciary duty to manage our wildlife and their habitat for present and future generations. With this trust comes tough decisions. Enhanced protection through listing of these species is the right decision for this Commonwealth's wildlife and the public that the Commission serves. Listing these species engages the Commission in roles and decisions that help avoid, minimize or mitigate impacts compounded by the primary causes of decline. The endangered/threatened classification recognizes the inherent value of each surviving member of the species. The Commission amended §§ 133.21 and 133.41 to adjust the Commonwealth's threatened and endangered species list for the following species:

Peregrine Falcon: Upgrading from "Endangered" to "Threatened" reflects steady Statewide population recovery as specified in the Commission-approved Peregrine Falcon Management Plan. The recovery metrics for upgrading species status to Threatened has been achieved.

Piping Plover: Upgrading from "Extirpated" to "Endangered" recognizes the return of a breeding bird to this Commonwealth and follows the regulatory process in § 133.4 (relation to definitions). The Commission is celebrating the return of a native bird species to this

Commonwealth after more than 60 years absence, in which pairs have successfully nested at Presque Isle State Park in 2017 and 2018, with reasonable expectation that they will return in the future. Presque Isle is the only regular location in which this species occurs in this Commonwealth.

Red Knot: Red knot subspecies *rufa* was classified as Federally "Threatened" in 2014, with this Commonwealth listed in the historic migratory range. It was designated a Species of Greatest Conservation Need in the Pennsylvania Wildlife Action (Plan) because it is a rare migrant (found only at Presque Isle State Park and Conejohela Flats), due to its Federally protected status, and because the population is highly vulnerable to further declines (PGC-PFBC 2015). Averting adverse impacts to the species during migration contributes to the range-wide conservation of this species. This State listing follows § 133.4 in response to Federal listing.

Bats: All hibernating bat species are Species of Greatest Conservation Need in the Plan due to their catastrophic declines caused by White Nose Syndrome (PGC-PFBC 2015). State listing provides the best tool to protect the remaining maternity sites and hibernacula to thwart further declines and, hopefully, prevent Federal listing through the environmental review process. Tri-colored bat was recently petitioned to be protected under the United States Endangered Species Act (16 U.S.C.A §§ 1531-1544), with a 90-finding of "warranted." The United States Fish and Wildlife Service will evaluate all information as part of the status review process. State listing of the Northern long-eared bat follows Federal listing in 2016 by regulation. Declines in the Little brown bat and Tri-colored bat are more severe in this Commonwealth than that of the long-eared bat, and therefore call for State listing. Protection of the few remaining populations of these bats is critical to their potential recovery. State listing triggers protections, through environmental review, and proactive measures to encourage recovery. Only recent occurrence sites will be regulated.

Section 322(c)(8) of the code (relating to powers and duties of commission) specifically empowers the Commission to "Add to or change the classification of any wild bird or wild animal." Section 2102(a) of the code (relating to regulations) provides that "The 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 and 133.41 are adopted under this authority.

2. *Regulatory Requirements*

This final-form rulemaking amends §§ 133.21 and 133.41 to adjust the Commonwealth's threatened and endangered species list for the Peregrine Falcon, Piping Plover, Red Knot, Northern long-eared bat, Little brown bat and Tri-colored bat.

3. *Persons Affected*

Persons concerned with the protected status of the Peregrine Falcon, Piping Plover, Red Knot, Northern long-eared bat, Little brown bat and Tri-colored bat within this Commonwealth may be affected by the 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 any 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 Randy L. Shoup, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

BRYAN J. BURHANS,
Executive Director

Fiscal Note: Fiscal Note 48-436 remains valid for the final adoption of the subject regulations.

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*)
- (ii) Short-eared Owl (*Asio flammeus*)
- (iii) Black Tern (*Chlidonias niger*)
- (iv) Least Bittern (*Ixobrychus exilis*)
- (v) Piping Plover (*Charadrius melodus*)
- (vi) Loggerhead Shrike (*Lanius ludovicianus*)
- (vii) American Bittern (*Botaurus lentiginosus*)
- (viii) Great Egret (*Ardea alba*)

- (ix) Yellow-crowned Night Heron (*Nycticorax violaceus*)
 - (x) Common Tern (*Sterna hirundo*)
 - (xi) Blackpoll Warbler (*Setophaga striata*)
 - (xii) Black-crowned Night-Heron (*Nycticorax nycti-corax*)
 - (xiii) Dickcissel (*Spiza americana*)
 - (xiv) Sedge Wren (*Cistothorus platensis*)
 - (xv) Yellow-bellied Flycatcher (*Empidonax flavi-ventris*)
 - (xvi) Upland Sandpiper (*Batramia longicauda*)
- (2) *Threatened.*
- (i) Northern Harrier (*Circus cyaneus*)
 - (ii) Long-eared Owl (*Asio otus*)
 - (iii) Peregrine Falcon (*Falco peregrinus anatum*)
 - (iv) Red Knot (*Calidris canutus rufa*)

Subchapter C. MAMMALS

§ 133.41. Classification of mammals.

The following mammals are classified:

- (1) *Endangered.*
- (i) Indiana Bat (*Myotis sodalis*)
 - (ii) Least Shrew (*Cryptotis parva*)
 - (iii) Northern flying squirrel (*Glaucomys sabrinus macrotis*)
 - (iv) Northern long-eared bat (*Myotis septentrionalis*)
 - (v) Little brown bat (*Myotis lucifugus*)
 - (vi) Tri-colored bat (*Perimyotis subflavus*)
- (2) *Threatened.*
- (i) Small-footed Myotis (*Myotis leibii*)
 - (ii) Allegheny Woodrat (*Neotoma magister*)
 - (iii) West Virginia Water Shrew (*Sorex palustris punctulatus*)

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