

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CH. 141]
Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 28, 2005, meeting, proposed to amend § 141.22 (relating to small game) to remove regulatory language regarding furbearer hunting from Subchapter B (relating to small game) and relocate this language to the more appropriate Subchapter D (relating to trapping) by adding § 141.67 (relating to furbearer hunting) and also expand this language to permit the use of shot up to #4 buckshot for furbearer hunting with shotguns.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the June 28, 2005, meeting of the Commission. Comments can be sent until September 30, 2005, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

Currently, § 141.22 limits the use of shot size for furbearer hunting to shot size no larger than BB lead, size BB Bismuth/tin or size T steel. A number of predator hunters have recently requested that the Commission expand this limiting language to permit the use of shot size no larger than #4 buckshot for furbearer hunting to increase their effectiveness and efficiency while hunting furbearers with shotguns. After consideration of relevant safety and furbearer management issues/concerns, the Commission determined that it is appropriate to accommodate the request of the predator hunters. However, the Commission has also determined that the regulatory language regarding furbearer hunting in § 141.22 would be more appropriately located in another section. The Commission is therefore proposing to delete and relocate this regulatory language from § 141.22 to proposed § 141.67 in Subchapter D, proposed to be renamed "Furbearers."

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating . . . the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." Section 2102(a) of the code 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 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 amendment to § 141.22 and the addition of § 141.67 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 141.22 by deleting and relocating the regulatory language regarding

furbearer hunting to proposed § 141.67, which will expand this language to permit the use of shot size up to #4 buckshot for furbearer hunting with shotguns.

3. Persons Affected

Persons wishing to hunt furbearers within this Commonwealth with a shotgun will be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

5. Effective Date

The 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 regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-214. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 58. RECREATION
PART III. GAME COMMISSION
CHAPTER 141. HUNTING AND TRAPPING
Subchapter B. SMALL GAME

§ 141.22. Small game.

(a) *Unlawful [activities] acts. It is unlawful to:*

* * * * *

(2) [Take furbearers using shot larger than size BB lead, size BB Bismuth/tin or size "T" steel.

(3)] Possess a firearm while hunting with a raptor.

[(4)] (3) * * *

[(5)] (4) * * *

[(6)] (5) * * *

[(7)] (6) * * *

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Subchapter D. [TRAPPING] FURBEARERS

§ 141.67. Furbearer hunting.

It is unlawful to take furbearers using shot larger than #4 buckshot.

[Pa.B. Doc. No. 05-1591. Filed for public inspection August 26, 2005, 9:00 a.m.]

[58 PA. CODE CH. 137]
Wildlife

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at

its June 28, 2005, meeting, proposed to add § 137.34 (relating to Chronic Wasting Disease and emergency authority of Director).

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the June 28, 2005, meeting of the Commission. Comments can be sent until September 30, 2005, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

In light of the recent outbreak of Chronic Wasting Disease (CWD) a short distance across this Commonwealth's northern border in the state of New York, the Commission has been aggressively developing a current CWD response plan to help prevent CWD from entering this Commonwealth or at least slow and restrict the spread of CWD should an outbreak occur within this Commonwealth. As an important step to preventing or slowing the spread of CWD in this Commonwealth, the Commission is proposing to add § 137.34 to give the Director emergency authority to remove protection on certain wildlife, order the disposal of certain wildlife or their parts in designated areas, prohibit the removal of the carcasses or certain parts from designated areas, prohibit the possession or transportation of certain live wildlife from designated areas, prohibit the importation of certain wildlife parts from endemic states or nations and also prohibit the feeding of certain wildlife if the spread of CWD poses a threat to human safety, farm animals, pets or other wildlife within or adjacent to this Commonwealth. The Commission believes that this expanded authority is necessary to more effectively respond to potential outbreaks of CWD, a transmissible disease.

Section 103(a) of the code (relating to ownership, jurisdiction and control of game and wildlife) states that "The ownership, jurisdiction over and control of game or wildlife is vested in the commission as an independent agency of the Commonwealth in its sovereign capacity to be controlled regulated and disposed of in accordance with this chapter." Section 322(c)(2) of the code (relating to powers and duties of commission) specifically empowers the Commission to "Remove protection, declare an open season or increase, reduce or close a season." Section 322(c)(9) of the code specifically empowers the Commission to "Prohibit the possession, importation, exportation or release of any species of birds or animals which may be considered dangerous or injurious to the general public or to the wildlife of this Commonwealth." 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 . . . in this Commonwealth." The addition of § 137.34 was proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will add § 137.34 to give the Director emergency authority to remove protection on certain wildlife, order the disposal of certain wildlife or their parts in designated areas, prohibit the removal of the carcasses or parts of certain wildlife from designated areas, prohibit the possession or transportation of certain live wildlife from designated areas, prohibit the importa-

tion of certain wildlife parts from endemic states or nations and also prohibit the feeding of certain wildlife if the spread of CWD poses a threat to human safety, farm animals, pets or other wildlife within or adjacent to this Commonwealth.

3. Persons Affected

Persons wishing to hunt or trap, possess or transport certain live wildlife, remove the carcasses or parts of certain wildlife, import certain wildlife parts or feed certain wildlife in designated areas within this Commonwealth when the spread of CWD poses a threat to human safety, farm animals, pets or other wildlife within or adjacent to this Commonwealth may be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

5. Effective Date

The 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 regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-212. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.34. Chronic Wasting Disease and emergency authority of Director.

(a) The Director has emergency authority to remove protection on cervids, prohibit any new permits to possess live cervids in containment areas, and order the disposal of certain cervids or their parts in containment areas, if the Director determines the spread of Chronic Wasting Disease (CWD) poses a threat to human safety, farm animals, pets or other cervids within or adjacent to this Commonwealth in accordance with the CWD response plan.

(1) If the Director removes the protection on cervids in containment areas, except for animals or their parts submitted for laboratory analysis, it is unlawful to:

(i) Remove any cervid carcasses or certain parts from the containment areas.

(ii) Possess or transport any live cervids contrary to 3 Pa.C.S. Chapter 23, Subchapter C (relating to detection, containment or eradication of certain diseases) within the containment areas.

(2) Nothing in this subsection prevents removal of dried or cured skins of cervids from the areas where the protection has been removed, only if removal poses no threat to other areas of this Commonwealth.

(b) The Director has emergency authority to control the spread of CWD by banning the importation of certain cervid parts from other states or nations.

(c) The Director has emergency authority to ban the feeding of cervids within the containment area to prevent the congregation or habituation to an area by cervids that could spread CWD.

[Pa.B. Doc. No. 05-1592. Filed for public inspection August 26, 2005, 9:00 a.m.]

**[58 PA. CODE CH. 133]
Wildlife Classification**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its June 28, 2005, meeting, proposed to amend § 133.21 (relating to classification of birds).

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the June 28, 2005, meeting of the Commission. Comments can be sent until September 30, 2005, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

To effectively protect and manage the wildlife resources of this Commonwealth, section 2167 of the code (relating to endangered or threatened species) empowers the Commission to make changes to the Pennsylvania list of native endangered and threatened species. Native birds and mammals determined by the Commission to be endangered or threatened are listed in Chapter 133 (relating to wildlife classification) last amended in February 1999. Commission staff has met with and received recommendations from the scientific technical committees of the Pennsylvania Biological Survey on species classification changes. No classifications were proposed for mammals, however, the Ornithological Technical Committee recommended several changes to the list of threatened and endangered birds that were supported by extensive documentation. The proposed changes to § 133.21 represent two additions to the endangered species list (blackpoll warbler and black-crowned night-heron), three changes from threatened to endangered (dickcissel, sedge wren and yellow-bellied flycatcher) and one change from endangered to threatened (bald eagle).

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 . . . in this Commonwealth." The amendments to § 133.21 were proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will update the list of native endangered and threatened species in § 133.21 with current recommendations provided by scientific technical committees of the Pennsylvania Biological Survey.

3. *Persons Affected*

Persons wishing to hunt, trap or otherwise affect certain wildlife (or their habitat) within this Commonwealth may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

5. *Effective Date*

The 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 regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-215. No fiscal impact; (8) 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) [**Bald Eagle (*Haliaeetus leucocephalus*)**

(ii)] King Rail (*Rallus elegans*)

[(iii)] (ii) * * *

[(iv)] (iii) * * *

[(v)] (iv) * * *

[(vi)] (v) * * *

[(vii)] (vi) * * *

[(viii)] (vii) * * *

[(ix)] (viii) Great Egret ([*Casmerodius ulbus*]
Ardea alba)

[(x)] (ix) * * *

[(xi)] (x) * * *

(xi) **Blackpoll Warbler (*Dendroica striata*)**

(xii) **Black-crowned Night-Heron (*Nycticorax nycticorax*)**

(xiii) **Dickcissel (*Spiza americana*)**

(xiv) **Sedge Wren (*Cistothorus platensis*)**

(xv) **Yellow-bellied Flycatcher (*Empidonax flaviventris*)**

(2) *Threatened.*

* * * * *

(ii) [**Dickcissel (*Spiza americana*)**] **Bald Eagle (*Haliaeetus leucocephalus*)**

* * * * *

[(iv) Sedge Wren (*Cistothorus platensis*)

(v) Yellow-bellied Flycatcher (*Empidonax flaviventris*)]

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