

# RULES AND REGULATIONS

## Title 58—RECREATION

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

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 2, 2007, meeting, adopted § 133.41 (relating to classification of mammals) to update Pennsylvania's list of native endangered and threatened species with current recommendations provided by scientific technical committees of the Pennsylvania Biological Survey by adding the northern flying squirrel to the endangered species list.

The final-form rulemaking will have no 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 37 Pa.B. 5164 (September 22, 2007).

#### 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. Chapter 133 (relating to wildlife classification) lists native birds and mammals determined by the Commission to be endangered or threatened. This chapter was last modified in October 2005. 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 birds, however, the Mammal Technical Committee recommended one change to the list of threatened and endangered mammals. The amendment to § 133.41 represents the addition of the northern flying squirrel to the endangered species list.

The northern flying squirrel is not a game species, and it is the larger and rarer of the two flying squirrel species in this Commonwealth. Surveys by both Commission personnel and independent researchers demonstrate population declines in this species. Historical records indicate this species once was distributed across northern Pennsylvania; however, recent surveys suggest it is now found only in small island populations in the northeast Pocono region and at one site in Warren County. The primary cause for the decline of this species is the loss and fragmentation of older-growth coniferous forests in this Commonwealth.

Section 322(c)(8) of the code (relating to powers and duties of the 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 amendment to § 133.41 was adopted pursuant to this authority.

#### 2. Regulatory Requirements

The final rulemaking updated Pennsylvania's list of native endangered and threatened species found in § 133.41 with current recommendations provided by scientific technical committees of the Pennsylvania Biological Survey by adding the northern flying squirrel to the endangered species list.

#### 3. Persons Affected

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

#### 4. Comment and Response Summary

The Commission received one comment respecting this final-form rulemaking, however, the substance of the comment was limited to the short duration of the comment period associated with the proposal rather than the actual substance of the amendment.

#### 5. Cost and Paperwork Requirements

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

#### 6. Effective Date

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

#### 7. Contact Person

For further information regarding the final rulemaking, contact Richard R. Palmer, 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 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 thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

#### Order

The Commission, acting under authorizing statute, order that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 133, are amended by amending § 133.41 to read as set forth 37 Pa.B. 5164.

(b) The Executive Director of the Commission shall certify this order and 37 Pa.B. 5164 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*.

CARL G. ROE,  
Executive Director

**Fiscal Note:** Fiscal Note 48-255 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 07-2350. Filed for public inspection December 21, 2007, 9:00 a.m.]