

RULES AND REGULATIONS

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 131]

Preliminary Provisions; Enforcement

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 25, 2012, meeting amended § 131.3 (relating to enforcement) to eliminate the reference to the Department of Environmental Resources and replace it with a reference to Department of Conservation and Natural Resources and also to update the reference to the Commission's officers as Wildlife Conservation Officers.

The final-form rulemaking will not have an 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 42 Pa.B. 5236 (August 11, 2012).

1. Purpose and Authority

On July 1, 1995, relevant portions of the Conservation and Natural Resources Act (71 P.S. §§ 1340.101—1340.1103) effectively created the Department of Conservation and Natural Resources and changed the name of the Department of Environmental Resources to the Department of Environmental Protection. The 1995 name changes were not incorporated in § 131.3. The Commission amended § 131.3 to eliminate the reference to the Department of Environmental Resources by updating the reference to the Department of Conservation and Natural Resources. The Commission also updated the reference to the Commission's officers as Wildlife Conservation Officers. This final-form rulemaking is nonsubstantive and is not intended to further expand or further limit the enforcement authority of any classification of officer.

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 § 131.3 are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 131.3 to eliminate the reference to the Department of Environmental Resources and replace it with a reference to Department of Conservation and Natural Resources and to also update the reference to the Commission's officers as Wildlife Conservation Officers.

3. Persons Affected

Enforcement personnel of the Department of Conservation and Natural Resources will be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding the final-form rulemaking.

5. Cost and Paperwork Requirements

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

6. Effective Date

The 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 the final-form 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 amendments 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 the amendments 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 the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 131, are amended by amending § 131.3 to read as set forth at 42 Pa.B. 5236.

(b) The Executive Director of the Commission shall certify this order and 42 Pa.B. 5236 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 48-345 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 12-2222. Filed for public inspection November 16, 2012, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 133]

Wildlife Classification; Birds

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 25, 2012, meeting amended § 133.21 (relating to classification of birds) to reflect the current status of breeding populations of threatened and endangered wild birds within this Commonwealth and also to update scientific nomenclature.

The final-form rulemaking will not have an 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 42 Pa.B. 5238 (August 11, 2012).

1. *Purpose and Authority*

The Commission amended § 133.21 to reflect the current status of breeding populations of threatened and endangered wild birds within this Commonwealth and also to update scientific nomenclature. The upland sandpiper, a grassland nesting bird long classified as threatened, has declined precipitously over the last two decades and has virtually disappeared from this Commonwealth. The Commission believes its rarity and diminished breeding range warrant downgrading its status to endangered. The northern harrier, once a rare but regular breeder in this Commonwealth, has experienced a marked decline in this Commonwealth as well as declines in northwest and northcentral regions over the last few decades, prompting a proposal to list this species as threatened. The northern harrier is listed as either endangered or threatened in all neighboring states. Long-eared owls are extremely rare breeders in this Commonwealth, and difficult to survey. Nesting locations have been confirmed in only seven locations in recent years despite a concerted survey effort over much of the last decade. Most nests are located in the Ridge and Valley and Appalachian Plateau regions. The rarity and diffuse scattering of nest records within this Commonwealth have prompted this final-form rulemaking to list the long-eared owl as threatened. Finally, in a major reorganization of warbler nomenclature in 2011 by the American Ornithologist's Union, the genus *Dendroica* was changed to *Setophaga* necessitating this administrative change in the scientific name of the endangered blackpoll warbler.

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 are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 133.21 to reflect the current status of breeding populations of threatened and endangered wild birds in this Commonwealth and also to update scientific nomenclature.

3. *Persons Affected*

Persons wishing to hunt or trap game or wildlife within this Commonwealth may be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

The 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 the final-form 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 amendments 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 the amendments 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 statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 133, are amended by amending § 133.21 to read as set forth at 42 Pa.B. 5238.

(b) The Executive Director of the Commission shall certify this order and 42 Pa.B. 5238 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 48-344 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 12-2223. Filed for public inspection November 16, 2012, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 135]

Lands and Buildings; Unlawful Actions

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 25, 2012, meeting amended § 135.2 (relating to unlawful actions) to create a regulatory violation to possess, maintain, operate, occupy or travel by all-terrain vehicle (ATV) or snowmobile in a manner not in accordance with the standards in 75 Pa.C.S. (relating to Vehicle Code).

The final-form rulemaking will not have an 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 42 Pa.B. 5235 (August 11, 2012).

1. Purpose and Authority

Unauthorized ATV operation on State game lands and hunter access cooperator properties continues to be one of the top ten violations Wildlife Conservation Officers (WCO) encounter each year. Illegal ATV operation has been identified as a major source of wildlife habitat destruction across the landscapes of these lands and waters. These usage violations are very often accompanied by ATV classification offenses (registration, insurance, and the like) as set forth in 75 Pa.C.S. Under current law, WCOs do not have authority to enforce 75 Pa.C.S. summary offenses. The Commission normally forwards these violations to other enforcement authorities. This practice typically ends in mixed results. Delays and jurisdictional problems often result in significant challenges in the processing of these cases successfully. The Commission amended § 135.2 to create a regulatory violation to possess, maintain, operate, occupy or travel by ATV or snowmobile in a manner not in accordance with the standards in 75 Pa.C.S. This final-form rulemaking will ensure safe and effective enforcement of these requirements occurring on lands and waters under Commission ownership, lease, agreement or control.

Section 721(a) of the code (relating to control of property) provides "The administration of all lands or waters owned, leased or otherwise controlled by the commission shall be under the sole control of the director, and the commission shall promulgate regulations consistent with the purpose of this title for its use and protection as necessary to properly manage these lands or waters." 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 § 135.2 are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 135.2 to create a regulatory violation to possess, maintain, operate, occupy or travel by ATV or snowmobile in a manner not in accordance with the standards in 75 Pa.C.S.

3. Persons Affected

Persons operating snowmobiles or ATVs on lands or waters under Commission ownership, lease, agreement or jurisdiction may be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding the final-form rulemaking.

5. Cost and Paperwork Requirements

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

6. Effective Date

The 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 the final-form 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 amendments 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 the amendments 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 statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 135, are amended by amending § 135.2 to read as set forth at 42 Pa.B. 5235.

(b) The Executive Director of the Commission shall certify this order and 42 Pa.B. 5235 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 48-346 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 12-2224. Filed for public inspection November 16, 2012, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping; Permitted Devices

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 25, 2012, meeting amended § 141.18 (relating to permitted devices) to permit the use of electronic crow decoys to hunt crows.

The final-form rulemaking will not have an 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 42 Pa.B. 5234 (August 11, 2012).

1. Purpose and Authority

Each year the Commission is asked to review the potential use of certain devices for hunting or trapping purposes that are otherwise prohibited by statute or regulation. As part of the review process, the Commission generally reviews to what degree use of a given device might negatively impact principles of resource conservation, equal opportunity or public safety. The Commission has recently been requested to review the use of electronic crow decoys for use in the hunting of crows. After

thoughtful review, the Commission determined that use of these devices for crow hunting purposes would be acceptable due to negligible impacts to the previously mentioned principles.

Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to “promulgate regulations relating to seasons and bag limits for hunting or furtaking, the possession of certain species or parts thereof, the number and types of devices and equipment allowed, the identification of devices and the use and possession of devices.” 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 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 § 141.18 are adopted under this authority.

2. *Regulatory Requirements*

The final-form rulemaking amends § 141.18 to permit the use of electronic crow decoys to hunt crows.

3. *Persons Affected*

Persons wishing to hunt crows through the use of crow decoys within this Commonwealth may be affected by the final-form rulemaking.

4. *Comment and Response Summary*

There were no official comments received regarding the final-form rulemaking.

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

The 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 the final-form 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 amendments 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 the amendments 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 the authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 141, are amended by amending § 141.18 to read as set forth at 42 Pa.B. 5234.

(b) The Executive Director of the Commission shall certify this order and 42 Pa.B. 5234 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 48-347 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 12-2225. Filed for public inspection November 16, 2012, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 147]

Special Permits; Nuisance Wildlife Control Operator

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its September 25, 2012, meeting amended § 147.724 (relating to nuisance wildlife control operator examination) to require applicants to take the required examination within 180 days of the final approval of their applications by the Bureau of Wildlife Protection (Bureau) and limit approved applicants to a total of two opportunities to take the examination each permit year. The Commission also rescinded § 147.724a and added these requirements to § 147.724.

The final-form rulemaking will not have an 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 42 Pa.B. 5236 (August 11, 2012).

1. *Purpose and Authority*

Each year the Commission processes a few hundred nuisance wildlife control operator applications. The application process ends with an examination that shall be passed with a minimum score of 80% before a permit will be issued. In numerous instances, applicants never take the examination or contact the Commission after an extended period of time and request the opportunity to take the examination. Prior to this final-form rulemaking, § 147.724 did not limit an applicant from taking the examination months or even years after his initial application. The deferral in time often resulted in unreasonable administrative difficulties for the Commission in its attempt to accommodate the delayed testing for these applicants. The Commission amended § 147.724 to require applicants to take the required examination within 180 days of the final approval of their applications by the Bureau.

The nuisance wildlife control operator examination has a high failure rate. This is normally the result of the applicant not reviewing or studying the materials provided by the Commission. The Commission recently identified a significant rise in the number of applicants retesting, sometimes multiple times in a single year, in an attempt to learn the material from the test and ultimately pass the examination. Prior to this final-form rulemaking, § 147.724 did not limit the number of times an approved applicant could take the required examina-

tion. The Commission amended § 147.724 to limit approved applicants to a total of two opportunities to take the examination each permit year.

Lastly, the Commission rescinded § 147.724a and added the requirements to § 147.724. This amendment is nonsubstantive and does not create or remove regulatory requirements.

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 § 147.724 and the rescission of § 147.724a are adopted under this authority.

2. Regulatory Requirements

The final-form rulemaking amends § 147.724 to require applicants to take the required examination within 180 days of the final approval of their applications by the Bureau and limits approved applicants to a total of two opportunities to take the examination each permit year. The final-form rulemaking rescinds § 147.724a and adds the requirements to § 147.724.

3. Persons Affected

Persons wishing to apply for a nuisance wildlife control operator permit may be affected by the final-form rulemaking.

4. Comment and Response Summary

There were no official comments received regarding the final-form rulemaking.

5. Cost and Paperwork Requirements

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

6. Effective Date

The 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 the final-form 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 amendments 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 the amendments 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, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 147, are amended by deleting § 147.724a and amending § 147.724 to read as set forth at 42 Pa.B. 5236.

(b) The Executive Director of the Commission shall certify this order and 42 Pa.B. 5236 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 48-348 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 12-2226. Filed for public inspection November 16, 2012, 9:00 a.m.]