

# PROPOSED RULEMAKING

## GAME COMMISSION

[ 58 PA. CODE CH. 135 ]

### Lands and Buildings; Goose Hunting Areas

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its September 25, 2018, meeting to amend § 135.103 (relating to registration for controlled goose hunting areas) to authorize persons who possess a senior lifetime resident hunting license or senior lifetime resident combination hunting license and who can provide documentation evidencing their eligibility for the resident disabled veteran license or a reduced fee resident disabled veteran license to apply to participate in the Veterans with disabilities only day.

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 September 25, 2018, meeting of the Commission. Comments can be sent until January 25, 2019, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

#### 1. Purpose and Authority

Current regulations authorize the Commission hold special disabled veteran goose hunts at both the Pymatuning and Middle Creek Wildlife Management Areas. Section 135.103 currently identifies those eligible to participate in these special hunts as persons holding a resident disabled veterans license. However, the Commission has become aware that § 135.103 unintentionally restricts an otherwise qualifying disabled veteran from applying to participate in the controlled goose hunt if he or she purchases a senior lifetime license of either the regular or combination class. The Commission has determined that this can easily be corrected through a minor regulatory change. The Commission is proposing to amend § 135.103 to authorize persons who possess a senior lifetime resident hunting license or senior lifetime resident combination hunting license and who can provide documentation evidencing their eligibility for the resident disabled veteran license or a reduced fee resident disabled veteran license to apply to participate in the Veterans with disabilities only day.

Section 721(a) of the code (relating to control of property) provides "The administration of all lands and waters owned, leased or otherwise controlled by the commission shall be under the sole control of the Director, and the commission shall promulgate regulations...for its use and protection as necessary to properly manage these lands or waters." The amendments to § 135.103 are proposed under this authority.

#### 2. Regulatory Requirements

This proposed rulemaking will amend § 135.103 to authorize persons who possess a senior lifetime resident hunting license or senior lifetime resident combination hunting license and who can provide documentation evidencing their eligibility for the resident disabled veteran license or a reduced fee resident disabled veteran license to apply to participate in the Veterans with disabilities only day.

#### 3. Persons Affected

Persons wishing to hunt waterfowl at the Middle Creek and Pymatuning Wildlife Management Areas 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 regarding this proposed 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:** 48-437. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART III. GAME COMMISSION

#### CHAPTER 135. LANDS AND BUILDINGS

#### Subchapter F. SPECIAL WILDLIFE MANAGEMENT AREAS

#### § 135.103. Registration for controlled goose hunting areas.

The following apply to reservations for controlled goose hunting areas:

\* \* \* \* \*

(4) The Director will establish the number of applications to be drawn no later than 20 days prior to the respective drawing of reservations for the Middle Creek and Pymatuning Wildlife Management Areas. Reservations will be awarded by the Commission to individuals selected during random public drawings from all eligible applications submitted for each management area. The drawings for each management area will occur on the date, time and at the location set by the Director or a designee. The Commission will hold separate drawings for the disabled access blinds for persons in possession of a disabled person permit issued under section 2923(a) of the act (relating to disabled person permits).

(i) *Youth only day.* The Director may designate 1 shooting day at the Middle Creek and Pymatuning Wildlife Management Areas as a youth-only day. Adults who accompany a junior hunter on this day may participate in the hunt by calling only. Applications received from junior hunters will be separated and drawn prior to the other applications on the established drawing date for the management area. Unsuccessful applicants for the youth shooting day will then be placed with all other applications and the drawing will proceed until all shooting days are filled.

(ii) *Veterans with disabilities day only day.* The Director may designate 1 shooting day at the Middle Creek and Pymatuning Wildlife Management Areas as a veterans with disabilities only day. Only persons who possess a

resident disabled veteran license [ or ], a reduced fee resident disabled veteran license **or persons who possess a senior lifetime resident license or senior lifetime resident combination hunting license who can provide documentation evidencing their eligibility for the resident disabled veteran license or a reduced fee resident disabled veteran license** are eligible to apply. Successful applicants may be accompanied by up to three properly licensed guests of any general or base hunting license classification. Applications received from veterans with disabilities will be separated and drawn prior to all other applications on the established drawing date for each wildlife management area.

\* \* \* \* \*

[Pa.B. Doc. No. 18-1785. Filed for public inspection November 16, 2018, 9:00 a.m.]

## GAME COMMISSION

### [ 58 PA. CODE CH. 147 ]

#### Special Permits; Mentored Hunting Program Permit

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its September 25, 2018, meeting to amend §§ 147.802—147.804 (relating to definitions; application; and general) to: 1) expand the mentored youth program to include youth up to 16 years of age; 2) expand the mentored adult program to include persons 17 years of age or older; 3) limit participation in the mentored junior and mentored adult program to 3 years total; and 4) set mentored junior permit fees at \$5 for resident applicants and \$40 for nonresident applicants, plus any applicable transactional and issuing agent fees.

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 September 25, 2018, meeting of the Commission. Comments can be sent until January 25, 2019, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

#### 1. Purpose and Authority

Currently the regulations provide for a mentor program for youth, defined as an individual under 12 years of age, and adults, defined as an individual 18 years of age or older. There is currently no provision in the regulations for mentoring individuals 12 years of age or older, but under 17 years of age. This proposal would expand the mentored youth program to allow individuals 12 years of age or older, but under 17 years of age to be eligible, thereby allowing them to participate in hunting without taking hunter-trapper education or purchasing a hunting license. The mentored youth program has been a very successful mechanism for introducing potential hunters to the sport. A recent survey showed that individuals who participate in the mentored youth program were more likely to purchase hunting licenses in the future, compared to individuals who had not participated in the mentored youth program. Expanding upon the mentored youth program to allow individuals 12 years of age or older, but under 17 years of age to participate, would

allow the agency to recruit nontraditional potential hunters, who did not have access to someone who could take them hunting on a consistent basis, or shepherd them through hunter-trapper education, but yet have developed an interest in hunting and would like to participate before making the commitments necessary to become a license buyer. The Commission is proposing to amend §§ 147.802—147.804 to: 1) expand the mentored youth program to include youth under 17 years of age; 2) expand the mentored adult program to include persons 17 years of age or older; 3) limit participation in the mentored junior and mentored adult program to 3 years total; and 4) set mentored junior permit fees at \$5 for resident applicants and \$40 for nonresident applicants, plus any applicable transactional and issuing agent fees.

Section 2701(a) of the code (relating to license requirements) states that “Except in defense of person or property or pursuant to exemptions authorized by the commission for implementing a mentored youth hunting program, every person, prior to engaging in any of the privileges granted by this title, shall first obtain the applicable license subject to any conditions or other requirements imposed by this title.” 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 §§ 147.802—147.804 are proposed under this authority.

#### 2. Regulatory Requirements

This proposed rulemaking will amend §§ 147.802—147.804 to: 1) expand the mentored youth program to include youth under 17 years of age; 2) expand the mentored adult program to include persons 17 years of age or older; 3) limit participation in the mentored junior and mentored adult program to 3 years total; and 4) set mentored junior permit fees at \$5 for resident applicants and \$40 for nonresident applicants, plus any applicable transactional and issuing agent fees.

#### 3. Persons Affected

Persons 12 years of age and older and under 18 years of age who wish to participate in the mentored hunting program 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 regarding this proposed 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:** 48-438. No fiscal impact; (8) recommends adoption.

## Annex A

## TITLE 58. RECREATION

## PART III. GAME COMMISSION

## CHAPTER 147. SPECIAL PERMITS

## Subchapter X. MENTORED HUNTING PROGRAM PERMIT

## § 147.802. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Lawful hunting device*—Any firearm or implement that is lawful to be possessed during the current season and used to harvest the particular species hunted.

*Mentor*—A licensed person, 21 years of age or older who is serving as a guide to a mentored youth or mentored adult while engaged in hunting or related activities.

*Mentored adult*—An unlicensed person, [ 18 ] 17 years of age or older, who is accompanied by a mentor while engaged in hunting or related activities.

*Mentored youth*—An unlicensed person, under [ 12 ] 17 years of age who is accompanied by a mentor while engaged in hunting or related activities.

*Stationary*—The state or condition where a person is still, fixed in place or static, indicated by a cessation of all forward, backward or lateral movement, whether in the standing, kneeling, sitting or prone position.

## § 147.803. Application.

(a) *Form and content.* Applications for mentored hunting permits issued under this subchapter shall be made through the Commission or any of its authorized license-issuing agents on the appropriate form designated by the Commission for this purpose. Each application must include the name, address, telephone number, date of birth, Social Security number of the applicant and any other information required by the Commission.

(b) *Eligibility.*

(1) Mentored youth hunting permits are available to youth applicants under 12 years of age or 12 years of age or older, but under 17 years of age, who have never held a prior hunting license within this Commonwealth or another state or nation. Mentored youth hunting permits are available to eligible youth applicants [ until they reach 12 years of age, after which a junior hunting license is required. ] under 12 years of age for an unrestricted number of license years. Mentored youth hunting permits are available to eligible junior applicants 12 years of age or older, but under 17 years of age, except when the applicant has previously held a mentored youth permit for a total of 3 license years, including years when under 12 years of age. In these circumstances, an applicable junior hunting license is required.

(2) Mentored adult hunting permits are available to adult applicants [ 18 ] 17 years of age or older who have never held a prior hunting license within this Commonwealth or another state or nation. [ Mentored adult hunting permits are available to eligible adult applicants for a total of 3 consecutive, unbroken license years after which an applicable adult hunting license is required. ] Mentored adult hunting permits are available to eligible adult applicants

for a total of 3 license years, including years when under 17 years of age. In these circumstances, an applicable adult hunting license is required.

(c) *Minors.* Applications may be submitted on behalf of an eligible mentored youth upon presentation of a written request executed by a parent or legally constituted guardian.

(d) *Fee.*

(1) The fee for a mentored youth hunting permit will be [ \$1, plus any applicable transactional and issuing agent fees. ]:

(i) \$1, plus any applicable transactional and issuing agent fees, for resident and nonresident applicants under 12 years of age.

(ii) \$5, plus any applicable transactional and issuing agent fees, for resident applicants 12 years of age or older, but under 17 years of age.

(iii) \$40, plus any applicable transactional and issuing agent fees, for nonresident applicants 12 years of age or older, but under 17 years of age.

(2) The fee for a mentored adult hunting permit will be:

(i) For residents, \$19, plus any applicable transactional and issuing agent fees.

(ii) For nonresidents, \$100, plus any applicable transactional and issuing agent fees.

## § 147.804. General.

(a) *License required.* A mentor shall possess a valid Pennsylvania hunting license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions) prior to engaging in any mentored hunting activities.

(b) *Permit required.* A mentored youth or mentored adult shall possess a valid applicable mentored hunting permit prior to engaging in any mentored hunting activities. Purchase of a hunting license by an eligible mentored youth or mentored adult shall automatically invalidate any mentored permit and associated harvest tags held by same.

\* \* \* \* \*

[Pa.B. Doc. No. 18-1786. Filed for public inspection November 16, 2018, 9:00 a.m.]

## GAME COMMISSION

[ 58 PA. CODE CH. 133 ]

## Wildlife Classification; Birds and Mammals

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its September 25, 2018, meeting to amend §§ 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 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 September 25, 2018, meeting of the Commission. Comments can be sent until January 25, 2019, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

### 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 the Commission serves. Listing engages the Commission in 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 is proposing to amend §§ 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 Board-approved Peregrine Falcon Management Plan. The recovery metrics for upgrading species status to Threatened have 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 (relating 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 (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. The 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 proposed under this authority.

### 2. Regulatory Requirements

This proposed rulemaking will amend §§ 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 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 regarding this proposed 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:** 48-436. 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) King Rail (*Rallus elegans*)
  - (ii) Short-eared Owl (*Asio flammeus*)
  - (iii) Black Tern (*Chlidonias niger*)
  - (iv) Least Bittern (*Ixobrychus exilis*)
  - (v) [ **Peregrine Falcon (*Falco peregrinus anatum*)** ] **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 nycticorax*)
- (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 lucifungus*)**
- (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*)

[Pa.B. Doc. No. 18-1787. Filed for public inspection November 16, 2018, 9:00 a.m.]