

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CH. 135]

Lands and Buildings; State Game Lands

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its September 24, 2013, meeting to amend § 135.41 (relating to State game lands) to limit the availability of the fire exception to only licensed hunters, trappers or fishermen and through hikers within the corridor of the Appalachian Trail.

The proposed rulemaking will not have an 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 September 24, 2013, meeting of the Commission. Comments can be sent until January 24, 2014, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Purpose and Authority

The Commission has historically permitted the use of small open fires on State game lands for cooking or warming purposes by licensed hunters, trappers or fishermen and through hikers within the corridor of the Appalachian Trail. The continued support for the use of small open fires by these users has not diminished. However, the Commission has identified an increasing number of fires being set and maintained by persons using the State game lands for other than their intended uses. In an effort to discourage and reduce the occurrence of these unintended uses, the Commission is proposing to limit the availability of the fire exception in § 135.41(a) to only licensed hunters, trappers or fishermen and through hikers within the corridor of the Appalachian Trail.

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 . . . for its use and protection as necessary to properly manage these lands or waters." Section 741(b) of the code (relating to commission actions for damage to buildings or property) provides "The commission shall promulgate regulations to protect users, improvements, lands and buildings under its control. These regulations shall cover, but need not be limited to: (1) Removal of any material[;] (2) Damage of any kind[; and] (3) Any other regulations required to properly protect and preserve these lands for their intended use." The amendments to § 135.41 are proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 135.41 to limit the availability of the fire exception to only licensed hunters, trappers or fishermen and through hikers within the corridor of the Appalachian Trail.

3. Persons Affected

Persons wishing to use small open fires for cooking or warming purposes on State game lands 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 Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-358. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 135. LANDS AND BUILDINGS

Subchapter C. STATE GAME LANDS

§ 135.41. State game lands.

(a) *Restrictions limited.* The following exceptions to § 135.2 (relating to unlawful actions) pertain to lands and waters designated as State game lands:

* * * * *

(2) [**Small open fires for cooking or warming purposes are permitted only at places where adequate precautions are taken to prevent the spread of fire which may damage adjacent areas and shall be attended at all times and completely extinguished before leaving the site of the fire. Open fires are prohibited when the fire index rating used by the Department of Conservation and Natural Resources, is high, very high or extreme.**] Small open fires for cooking or warming purposes may be kindled, used and maintained by persons exercising the privileges of a valid hunting, furtaking or fishing license and through hikers within the corridor of the Appalachian Trail as is defined in § 135.42 (relating to Appalachian Trail). This exception to the prohibition on fires in § 135.2(8) is applicable only when the small fires are located at places where adequate precautions are taken to prevent the spread of fire and the small fires are attended at all times and completely extinguished before leaving the sites of the fires. This exception does not apply when the fire index rating used by the Department of Conservation and Natural Resources is high, very high or extreme for that area. A person causing a wildfire, in addition to possible criminal penalty, is liable for all damages, cost of extinguishing and fines.

[Pa.B. Doc. No. 13-2367. Filed for public inspection December 20, 2013, 9:00 a.m.]

[58 PA. CODE CH. 147]
Special Permits; Deer Control

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its September 24, 2013, meeting to amend § 147.673 (relating to eligibility and application for DMAP) by advancing the Deer Management Assistance Permit (DMAP) application deadline to May 1.

The proposed rulemaking will not have an 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 September 24, 2013, meeting of the Commission. Comments can be sent until January 24, 2014, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

Pennsylvania hunters have the opportunity to purchase their new hunting licenses from license issuing agents and the Pennsylvania Automated License System in early June each year. Ideally, every hunter interested in also redeeming a DMAP coupon for a harvest permit would be able to do so at the time of their general hunting license purchase. Unfortunately, due to the current DMAP application deadline and accompanying processing time, most DMAP landowner applications are not available until late June or early July. To accommodate hunting license buyers and permit one-stop purchases for licenses and permits in early June, the Commission is proposing to amend § 147.673 by advancing the DMAP application deadline to May 1. With this deadline date change DMAP applications would be made available to prospective landowner applicants no later than February 15 each year.

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 amendment to § 147.673 is proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 147.673 by advancing the DMAP application deadline to May 1.

3. *Persons Affected*

Persons wishing to submit a DMAP landowner application or redeem a DMAP coupon for a harvest permit 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 Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-357. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter R. DEER CONTROL

DEER MANAGEMENT ASSISTANCE PROGRAM PERMITS

§ 147.673. Eligibility and application for DMAP.

(a) Owners or lessees of private land, hunting clubs or authorized officers or employees of political subdivisions or government agencies shall apply for the DMAP on a form provided by the Commission.

(1) Applications shall be submitted to a regional office by [**June**] **May 1** immediately preceding the first fall deer season and include the name of the owner, lessee, political subdivision or government agency that is applying for the DMAP and the name and address of the contact person for the DMAP as well as other information required on the application.

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[Pa.B. Doc. No. 13-2368. Filed for public inspection December 20, 2013, 9:00 a.m.]

[58 PA. CODE CH. 133]

Wildlife Classification; Classification of Birds

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) proposed at its September 24, 2013, meeting to amend § 133.21 (relating to classification of birds) to remove the bald eagle from the endangered and threatened species list entirely.

The proposed rulemaking will not have an 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 September 24, 2013, meeting of the Commission. Comments can be sent until January 24, 2014, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Purpose and Authority*

The Commission currently lists the bald eagle (*Haliaeetus leucocephalus*) as a threatened species within this Commonwealth. The Commission has recently determined that the bald eagle has achieved a population level and geographical distribution that no longer meets the definition of a threatened species. As of the 2013 nesting season, bald eagle populations have reached all criteria in the Pennsylvania Bald Eagle Management Plan, 2010-

2019 (Plan) to be removed from the Commonwealth endangered and threatened species list since they are now sustaining a minimum of 150 nesting pairs, including successful pairs in at least 40 counties, with 60% of known nests successful and productivity of 1.2 eaglets fledged per successful nest, based on a 5-year running period. The Commission is proposing to amend § 133.21 to remove the bald eagle from the endangered and threatened species list entirely. Upon delisting, bald eagles will continue to be a protected species under applicable Commonwealth statutes and will continue to be afforded added protection under the Federal Bald and Golden Eagle Protection Act (16 U.S.C.A. §§ 668—668d) and Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—712). Commission staff will continue to implement the plan and monitor bald eagle nests to ensure that this species does not regress toward endangerment.

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 2167 of the code (relating to endangered or threatened species) states that “The commission may, by regulation, add or remove any wild bird or wild animal native to this Commonwealth to or from the Pennsylvania native list of endangered or threatened species.” The amendments to § 133.21 are proposed under this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 133.21 to remove the bald eagle from the endangered and threatened species list entirely.

3. *Persons Affected*

Persons having an interest in the protected status of bald eagles 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 Richard R. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,
Executive Director

Fiscal Note: 48-356. 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:

* * * * *

(2) *Threatened.*

(i) Osprey (*Pandion haliaetus*)

[(ii) **Bald Eagle (*haliaetus leucocephalus*)**

(iii)] (ii) Northern Harrier (*Circus cyaneus*)

[(iv)] (iii) Long-eared Owl (*Asio otus*)

[Pa.B. Doc. No. 13-2369. Filed for public inspection December 20, 2013, 9:00 a.m.]