

LCB File No. R133-04

**PROPOSED REGULATION OF THE BOARD OF
WILDLIFE COMMISSIONERS**

COMMISSION GENERAL REGULATION 327

Authority: NRS 501.105, 501.110, 501.181

Notice of Intent: June 22, 2004

Workshop Date: September 10, 2004

Commission Approval: September 11, 2004

EXPLANATION: Updating “Classification and Taking of Wildlife” section – definitions, species nomenclature, addition of species to “Endangered”, “Sensitive”, and “Protected” categories.

NOTE: Matter in *italics* is new; matter within brackets **[H]** is to be omitted.

Section 1. NAC 503.010 is hereby amended to read as follows:

503.010 As used in NAC 503.005 to 503.104, inclusive, and NAC 503.135, unless the context otherwise requires:

1. A species or subspecies is “endangered” if it is in danger of extinction throughout all or a significant portion of its range.
2. A species or subspecies is “threatened” if it is likely to become an endangered species in the near future throughout all or a significant portion of its range.
3. *A species or subspecies is “sensitive” if so classified by the Commission after using the criteria provided in NAC 503.104.*
4. *A species or subspecies is “protected” if so classified by the Commission after using the criteria provided in NAC 503.103.*

Sec. 2. NAC 503.015 is hereby amended to read as follows:

503.015 Wild **[animals]** *mammals* include all species classified as game, fur-bearing, protected and unprotected **[animals]** *mammals*.

Sec. 3. NAC 503.020 is hereby amended to read as follows:

503.200 The following wild mammals are further classified as game mammals:

	Common Name	Scientific Name
1. Antelope	Pronghorn.....	<i>Antilocapra americana</i>
2. Bear	Black.....	<i>Ursus americanus</i>
3. Deer	Mule.....	<i>Odocoileus hemionus</i>
4. Goat	Mountain.....	<i>Oreamnos americanus</i>
5. Lion	Mountain (Cougar).....	<i>Felis concolor</i>
6. Moose		<i>Alces alces</i>
7. Peccary		<i>Pecari angulatus</i>
8. Rabbit	Cottontail (Audubon).....	<i>Sylvilagus audubonii</i>
	Cottontail (Nuttall).....	<i>Sylvilagus nuttallii</i>
	[Pigmy] Pygmy	<i>Sylvilagus idahoensis</i>
	Snowshoe.....	<i>Lepus americanus</i>
9. Sheep	White-tailed Jack.....	<i>Lepus townsendii</i>
	Bighorn.....	<i>Ovis canadensis canadensis</i>
		<i>Ovis canadensis nelsoni</i>
10. Elk		<i>Ovis canadensis californiana</i>
	Rocky Mountain.....	<i>Cervus elaphus nelsoni</i>

Sec. 4. NAC 503.025 is hereby amended to read as follows:

503.025 Fur-bearing ~~[animals]~~ **mammals** include:

	Common Name	Scientific Name
1. Beaver		<i>Castor canadensis</i>
2. Bobcat		<i>Lynx rufus</i>
3. Fox	Gray.....	<i>Urocyon cinereoargenteus</i>
	Kit (Swift).....	<i>Vulpes</i> [<i>macrotis nevadensis</i> and <i>macrotis arsipus</i>] velox
4. Marten	Red.....	<i>Vulpes</i> [<i>fulva</i>] vulpes
	American	<i>Martes</i> [<i>caurina</i>] americana
5. Mink		<i>Mustela vison</i>
6. Muskrat		<i>Ondatra zibethica</i>
[7. Nutria		<i>Myocaster coypus</i>
—8.] Otter	River.....	[<i>Lutra</i>] Lontra canadensis

Sec. 5. NAC 503.030 is hereby amended to read as follows:

503.030 1. Protected ~~animals~~ *mammals* include:

	Common Name	Scientific Name
(a) Beaver	Mountain.....	<i>Aplodontia rufa</i>
(b) Pika		<i>Ochotona princeps</i>
(e) (b) Squirrel	Chickaree (Douglas).....	<i>Tamiasciurus douglasi</i>
	Northern Flying.....	<i>Glaucomys sabrinus</i>
	Western Gray.....	<i>Sciurus griseus</i>
(c) <i>Myotis</i>	<i>Fringed</i>	<i>Myotis thysanoides</i>
(d) <i>Bat</i>	<i>Pallid</i>	<i>Antrozous pallidus</i>
	<i>Allen's Lappet-eared</i>	<i>Idionycteris phyllotis</i>
	<i>Brazilian free-tailed</i>	<i>Tadarida brasiliensis</i>
(e) <i>Mouse</i>	<i>Dark Kangaroo</i>	<i>Microdipodops megacephalus</i>
	<i>Pale Kangaroo</i>	<i>Microdipodops pallidus</i>

2. The following species of protected ~~animal~~ *mammal* is further classified as threatened:

	Common Name	Scientific Name
Bat	Spotted.....	<i>Euderma maculatum</i>

3. *The following species of protected mammals are further classified as sensitive:*

	<i>Common Name</i>	<i>Scientific Name</i>
(a) <i>Bat</i>	<i>California leaf-nosed</i>	<i>Macrotus californicus</i>
	<i>Western Red</i>	<i>Lasiurus blossevillii</i>
	<i>Townsend's Big-eared</i>	<i>Corynorhinus townsendii</i>
	<i>Western Mastiff</i>	<i>Eumops perotis</i>
(b) <i>Beaver</i>	<i>Sierra Mountain</i>	<i>Aplodontia rufa californica</i>
(c) <i>Chipmunk</i>	<i>Hidden Forest Uinta</i>	<i>Tamias umbrinus nevadensis</i>
	<i>Palmer's</i>	<i>Tamias palmeri</i>
(d) <i>Vole</i>	<i>Ash Meadows Montane</i>	<i>Microtus montanus nevadensis</i>
	<i>Pahranagat Valley Montane</i>	<i>Microtus montanus fucosus</i>

Sec. 6. NAC 503.035 is hereby amended to read as follows:

503.035 Unprotected ~~animals~~ **mammals**:

1. Are all species of mammals which are not classified as game, fur-bearing, protected, threatened or endangered animals.

2. Include:

	Common Name	Scientific Name
(a) Coyote		<i>Canis latrans</i>
(b) Rabbit	Black-tailed Jack.....	<i>Lepus californicus</i>
(c) Skunk	Spotted.....	<i>Spilogale gracilis</i>
	Striped.....	<i>Mephitis mephitis</i>
(d) Weasel	Long-tailed.....	<i>Mustela frenata</i>
	Short-tailed.....	<i>Mustela</i> ericognanii erminea

Sec. 7. NAC 503.045 is hereby amended to read as follows:

503.045 Game birds are classified as:

1. Upland game birds, which include:

	Common Name	Scientific Name
(a) Grouse	Blue.....	<i>Dendragapus obscurus</i>
	Ruffed.....	<i>Bonasa umbellus</i>
	Sage.....	<i>Centrocercus urophasianus</i>
	Sharp-tailed.....	Pedioecetes Tympanuchus <i>phasianellus</i>
(b) Partridge	Chukar.....	<i>Alectoris chukar</i>
	Gray (Hungarian).....	<i>Perdix perdix</i>
	Snow.....	<i>Tetrogallus himalayensis</i>
(c) Pheasant	Ring-necked.....	<i>Phasianus colchicus</i>
	White-wing.....	<i>Phasianus colchicus</i>
(d) Quail	Northern Bobwhite.....	<i>Colinus virginianus</i>
	California.....	Lophortyx Callipepla <i>californicus</i>
	Gambel's.....	Lophortyx Callipepla <i>gambelii</i>
	Mountain.....	<i>Oreortyx pictus</i>
	Scaled.....	<i>Callipepla squamata</i>
(e) Turkey	North American Wild	<i>Meleagris gallopavo</i>
(f) Crow	Common American {}	<i>Corvus brachyrhynchos</i>

2. Migratory game birds, which include all species of game birds in 16 U.S.C. §§ 703 to 711, inclusive, including the families Anatidae (wild ducks, geese, brants and swans), Columbidae

(wild doves and pigeons), Gruidae (~~Little brown~~ *sandhill* cranes), Rallidae (rails, coots and gallinules) and Scolopacidae (woodcocks and snipes).

Sec. 8. NAC 503.050 is hereby amended to read as follows:

503.050 Protected birds:

1. Are all species of ~~nongame~~ *wild* birds protected by ~~the provisions of federal law~~ *the Migratory Bird Treaty Act of July 3, 1918 as amended, 16 U.S.C. 703 – 711, and listed in 50 CFR 10.13, not including families and species classified as migratory game birds in subsection 2 of NAC 503.045.*

2. ~~Are all species of the orders Falconiformes (vultures, hawks and falcons) and Stigiformes (owls) and of the family Pelicanidae (pelicans).~~

~~3. Include:~~

	Common Name	Scientific Name
—(a) Eagle	Bald.....	<i>Haliaeetus leucocephalus</i>
	Gold.....	<i>Aquila chrysaetos</i>
—(b) Falcon	Pigeon Hawk	<i>Falco columbarius</i>
	Prairie.....	<i>Falco mexicanus</i>
	Sparrow Hawk	<i>Falco sparverius</i>
—(c) Hawk	Cooper's.....	<i>Accipiter cooperii</i>
	Ferruginous.....	<i>Buteo regalis</i>
	Goshawk.....	<i>Accipiter gentilia</i>
	Harris.....	<i>Parabuteo unicinctus</i>
	Marsh.....	<i>Circus cyaneus</i>
	Red-tailed.....	<i>Buteo jamaicensis</i>
	Rough-legged.....	<i>Buteo lagopus</i>
	Sharp-shinned.....	<i>Accipiter striatus</i>
	Swainson's.....	<i>Buteo swainsoni</i>
—(d) Ibis	White-faced Glossy.....	<i>Plegadis chihi</i>
—(e) Kingfisher		<i>Ceryle alcyon</i>
—(f) Common Nighthawk		<i>Chordeiles minor</i>
—(g) Lesser Nighthawk		<i>Chordeiles acutipennis</i>
—(h) Osprey		<i>Pandion haliaetus</i>
—(i) Owl	Barn.....	<i>Tyto alba</i>
	Burrowing.....	<i>Athene cunicularia</i>
	Great Horned.....	<i>Bubo virginianus</i>
	Long-eared.....	<i>Asio otus</i>

	Common Name	Scientific Name
—(j) Pelican	Short-eared.....	<i>Asio flammeus</i>
	Brown.....	<i>Pelecanus occidentalis</i>
	White.....	<i>Pelecanus erythrorhynchos</i>
—(k) Road Runner		<i>Geococcyx californianus</i>
—(l) Vulture	Turkey.....	<i>Cathartes aura</i>

—4.] Include the following species which are further classified as endangered:

	Common Name	Scientific Name
(a) Eagle	[Southern] Bald.....	<i>Haliaeetus leucocephalus</i> [<i>leucocephalus</i>]
(b) Falcon	Peregrine.....	<i>Falco peregrinus</i>
(c) Rail	<i>Yuma Clapper</i>	<i>Rallus longirostris yumanensis</i>
(d) Flycatcher	<i>Southwestern Willow</i>	<i>Empidonax traillii extimus</i>

Applicable federal law is 16 U.S.C. §§ 703 to 711, inclusive, 16 U.S.C. § 668 and federal regulations adopted pursuant thereto.

3. Include the following species which are further classified as sensitive:

	Common Name	Scientific Name
(a) Goshawk	<i>Northern</i>	<i>Accipiter gentilis</i>
(b) Cuckoo	<i>Yellow-billed</i>	<i>Coccyzus americanus</i>
(c) Shrike	<i>Loggerhead</i>	<i>Lanius ludovicianus</i>
(e) Thrasher	<i>Sage</i>	<i>Oreoscoptes montanus</i>
(e) Sparrow	<i>Brewer's</i>	<i>Spizella breweri</i>

Sec. 9. NAC 503.080 is hereby amended to read as follows:

503.080 1. The following reptiles are classified as protected:

	Common Name	Scientific Name
Lizard	Gila Monster.....	<i>Heloderma suspectum</i>
	<i>Sierra Alligator</i>	<i>Elgaria coerulea palmeri</i>
	<i>Shasta Alligator</i>	<i>Elgaria coerulea shastaensis</i>
Snake	<i>Sonoran Mountain King</i>	<i>Lampropeltis pyromelana</i>

2. The following protected reptiles are further classified as threatened:

	Common Name	Scientific Name
Tortoise	Desert.....	<i>Gopherus agassizi</i>

3. All species of reptiles which are not classified as protected, sensitive, threatened or endangered are unprotected.

Sec. 10. NAC 503.090 is hereby amended to read as follows:

503.090 1. There is no open season on those species of wild ~~[animal]~~ *mammal*, wild bird, fish, reptile or amphibian classified as protected.

2. There is no closed season on those species of wild ~~[animals]~~ *mammals* or wild birds classified as unprotected.

Sec. 11. NAC 503.093 is hereby amended to read as follows:

503.093 1. Except as otherwise provided in subsection 2 *and* 3, a person shall not hunt or take any wildlife which is classified as protected, or possess any part thereof, without first obtaining the appropriate license, permit or written authorization from the Department.

2. Such a license, permit or authorization is not required for:

(a) The possession of a desert tortoise which:

(1) Was held in captivity on or before August 4, 1989; or

(2) Is acquired through an adoption program approved by the United States Fish and Wildlife Service.

(b) The possession of any species of wildlife *classified as protected in Nevada* which is:

(1) ~~[Classified as protected in Nevada;~~

~~—(2)]~~ Lawfully killed in another state and imported to Nevada; and

~~[(3)]~~ (2) Possessed under the authority of the other state's appropriate license, tag, permit or other authorization.

(c) *The taking of a protected:*

(1) *Mammal, known to be a vector for diseases transmittable to humans; or*

(2) Reptile which is venomous

that is located inside a residence, school, or building open to the public, or if the killing of the animal is necessary to protect the life of any person in imminent danger of being attacked or bitten by the animal.

3. As used in this section, wildlife that is classified as “protected” includes wildlife that is classified as sensitive, threatened or endangered.

Sec. 12. NAC 503.103 is hereby amended to read as follows:

503.103 A species or subspecies of wildlife may be further classified as protected if the Department determines, from available information, that one or more of the following criteria exists:

1. The wildlife is found only in this State and its population, distribution or habitat is limited.
2. The wildlife has a limited population or distribution within this State that is likely to decline as a result of human or natural causes.
3. The population of the wildlife is threatened as a result of the deterioration or loss of its habitat.
4. The wildlife has ecological, scientific, educational or other value that justifies its classification as protected.
5. The available data is not adequate to determine the exact status of the population of the wildlife, but does indicate a limited population, distribution or habitat.
6. The wildlife ~~[is listed by the United States Fish and Wildlife Service in the Federal Register as a Category 1, 2 or 3 species, or it]~~ is classified as ~~[threatened or endangered]~~ *endangered, threatened, or a candidate species* in the federal Endangered Species Act of 1973, as amended.
7. Other evidence exists to justify classifying the wildlife as protected.

Sec. 13. NAC 503.104 is hereby amended to read as follows:

503.104 A species or subspecies of wildlife may be further classified as sensitive if the Department determines, from available information, that one or more of the following criteria exists:

1. The population or distribution of the wildlife is in a significant decline.
2. The population of the wildlife is threatened as a result of disease or predation or ecological or human causes.
3. The primary habitat of the wildlife is deteriorating.
4. The wildlife ~~[is listed by the United States Fish and Wildlife Service in the Federal Register as a Category 1, 2 or 3 species, or it]~~ is classified as ~~[threatened or endangered]~~ *endangered, threatened, or a candidate species* in the federal Endangered Species Act of 1973, as amended.

LCB File No. R133-04

**PROPOSED REGULATION OF THE BOARD OF
WILDLIFE COMMISSIONERS**

STATEMENT OF EMERGENCY

NOTICE OF INTENT TO ACT UPON A REGULATION

**Notice of Hearing for The (Adoption/Amendment/Repeal) of Regulations of The
Nevada Board Of Wildlife Commissioners**

The Board of Wildlife Commissioners will hold a public hearing ___TBA___ a.m., on ___TBA___ at the _____. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulation CGR 327 Species Classification (LCB File R133-04) pertaining to Chapter 503 of the Nevada Administrative Code.

1. The need for and purpose of the proposed regulation: Updating “Classification and Taking of Wildlife” section – definitions, species nomenclature, addition of species to “Endangered”, “Sensitive”, and “Protected” categories.

2. Text of the proposed regulation: see attachment

3A. The estimated economic effect of the regulation on the business which it is to regulate:

(a) Adverse effect - The protection of bats that use mines for roosts could require owners of inactive mine shafts, adits, etc. to provide for pre-closure bat surveys and the implementation of mine closure protocols ensuring the safe exit of protected bats prior to permanent closure of mine structures deemed unsafe to the public. Commercial collectors of reptiles will be unable to collect or sell individuals of the species of reptiles being proposed for protection.

(b) Beneficial effect – The protection of bat species at risk could provide the necessary collaborative conservation strategy between the mining industry and the conservation community sufficient to avoid more restrictive federal species listings in the future, the effects of which could be even more expensive.

(c) Immediate effect – The placement of bat species on the Protected list will necessitate the notification of mine structure owners, particularly those with permanent safety closures scheduled for their properties. Protocols for pre-closure bat survey and exclusion acceptable to both the agency and the industry will have to be devised through consensus. The proposed species of protected reptiles will be immediately unavailable for capture and commerce.

(d) Long-term effect – By providing a modicum of protection for bat species considered to be “at risk” prior to the discovery of alarming negative trends, the State should be able to avoid costly and more restrictive federal listing actions on those species in the future. Protected reptile species are not likely to be made available for collection and commerce until populations are demonstrated to be able to withstand harvest.

3B. The estimated economic effect of the regulation on the public which it is to regulate:

(a) Adverse effect – None for protecting bats. Through these proposed changes, the public will still be able to address wildlife control issues in their homes and places of business as those incidents pose risk to public health (disease control). None for hobby collection of reptiles, since no economic activity is associated with it.

(b) Beneficial effect – Protection of species may set conservation strategies in place that will preclude the need for costly and restrictive federal listings, resulting in a decrease in the public tax burden.

(c) Immediate effect – None.

(d) Long-term effect – Less resources expended resolving costly federal endangered species issues.

4. Estimated cost to the Department of Wildlife for enforcement of the proposed regulation: Costs in program development time to develop and implement pre-mine closure survey and exclusion protocols. Reptile species protections are not expected to provide an enforcement burden greater than the current effort.

5. A description of and citation to any regulations of other state or local government agencies which the proposed regulation overlaps or duplicates, n/a. The duplication or overlapping is necessary because n/a. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency: U.S. Fish and Wildlife Service.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law

n/a

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions: n/a

8. The proposed regulation establishes a new fee or increases an existing fee: No Yes

Persons wishing to comment upon the proposed action of the Board of Wildlife Commissioners may appear at the scheduled public hearing or may address their comments, data,

views or arguments, in written form, to the Secretary, Board of Wildlife Commissioners, 1100 Valley Road, Reno, Nevada 89512. Written submissions must be received by the Secretary, Board of Wildlife Commissioners, at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board of Wildlife Commissioners may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library and Archives, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the regulations to be adopted will be available for inspection and may be copied at the following locations:

Nevada Department of Wildlife
1100 Valley Road
Reno, Nevada
(775) 688-1500

Western Region Field Office
380 W. "B" Street
Fallon, NV 89406
(775) 423-3171

Eastern Region
60 Youth Center Road
Elko, NV 89801
(775) 777-2300

Southern Region
4747 Vegas Drive
Las Vegas, NV 89108
(702) 486-5127

The regulations will be available for inspection at all county main public libraries. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations are prepared and published monthly by the Legislative Council Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the above locations.