

March 31, 2020

Ms. Nicole Thomas, Legal Counsel
Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702

**RE: Proposed Amendment of 17 Ill. Adm. Code 1010
Illinois List of Endangered and Threatened Fauna**

Dear Ms. Thomas:

I offer several comments on this rulemaking.

Comment #1: Part 6 of the “preamble” of the proposed rule suggests the Endangered Species Protection Board is solely responsible for making changes to the List. Such changes must receive the written approval of the Department [520 ILCS 10/6] and can only occur after a public hearing [520 ILCS 10/7]. Part 6 should state these changes have received the written concurrence of the Department, with reference to when that occurred and where the written concurrence can be found, as well as stating when and where the public hearing (or public hearings, if more than one) germane to the changes were held, to demonstrate the changes comply with the statute. Otherwise, the support for these changes is opaque to the public.

Comment #2: Part 11 of the “preamble” of the proposed rule states that unit of local government will not be affected by the rulemaking. I assert this is incorrect. The statute [520 ILCS 10/11] requires units of local government to consult the Department as to whether their proposed actions are likely to adversely affect species listed in Parts 1010 and 1050. The addition or deletion of a species from these lists can have significant impacts on the zoning, development, and public works of local governments. As an example from the past, the addition of the Franklin’s Ground Squirrel to the list has complicated the development of Springfield’s southwest side, affecting public works such as road and sewer construction and maintenance, and requiring a number of developments to obtain Incidental Take Authorizations, including infrastructure improvements such as optic cable upgrades. These are significant effects and should be acknowledged.

Comment #3: The reorganization of the List alphabetically by scientific nomenclature concurrent with listing and de-listing decisions makes it extremely difficult for the public to recognize which species have been added, dropped, or moved from one category to another. The public generally is not knowledgeable of scientific nomenclature and this presentation has the effect of obscuring proposed changes to the List.

Comment #4: It is extremely disappointing that this List revision does not move the Northern Long-Eared Bat to the “endangered” category; and does not add the Little Brown Bat (*Myotis lucifugus*) to the List. The Department’s own data provide ample evidence the Northern Long-Eared Bat is now less common in Illinois than the endangered Indiana Bat, and documents the abrupt and severe reduction of the populations of Little Brown Bats, the reduction of both species, as long ago as 2013, due to the advent of White Nose-Syndrome disease in Illinois.

Both species are also vulnerable to mortality from the operation of utility-scale wind turbines, whose proliferation on the landscape is official State energy policy.

A possible rationale for these omissions by the Board and the Department is the fact the federal government is “considering” the listing of the Little Brown Bat and has listed the Northern Long-Eared Bat as “threatened.” The listing of the latter as “threatened” rather than “endangered,” as originally proposed, was an obvious result of heavy pressure from industries that would have been adversely affected by a federal listing of “endangered, but nevertheless would be subject to “further study.” No “further study” can be expected from the current federal Administration, and the only listings by the US Fish & Wildlife Service in recent years have occurred only as a result of federal litigation to force them. Listing decisions by the Service are now clearly political, not scientific, until forced by the Courts.

There is no requirement—or excuse—for the Board and Department to predicate their listing decisions under the State’s statute on the prospect of federal action. Postponing State listing action for these two species on the basis of chimerical prospective federal action can only result in the continued destruction of these fauna in Illinois.

Comment #5: It is only slightly less disappointing the Board and Department have not considered, let alone listed, the Hoary Bat (*Aeorestes cinereus*, formerly *Lasiurus cinereus*), the Silver-Haired Bat (*Lasionycteris noctivagans*), and the Eastern Red Bat (*Lasiurus borealis*) as “threatened” in Illinois.

The statute [520 ILCS 10/7] states: “The Board may list, as endangered or threatened, species of animals or plants *which have reproduced in or otherwise significantly used, as in migration or overwintering, the area which is now the State of Illinois*, if there is scientific evidence that the species qualify as endangered or threatened as these terms are defined in this Act.”

These three species migrate through Illinois twice yearly and, in the case of the Eastern Red Bat, reproduce in Illinois, and thus are eligible for listing under the statute.

These three species are extremely vulnerable to mortality caused by utility-scale wind turbines, which are proliferating across the continental landscape of North America, as well as within the State of Illinois. Data provided to the Department by operating wind energy facilities illustrate that, on average, 14 bats are killed per turbine per year, with more than 90% belonging to these three species. Biologists have been expressing alarm for years that the reproductive biology of these species cannot sustain such annual losses, threatening the viability of all three species.

Fortunately, the operation of wind turbines can be manipulated to reduce bat mortality by more than 50%. However, without listing, such “curtailment” programs remain voluntary with wind turbine operators. Listing these species would allow the Department to require and enforce curtailment programs through Incidental Take Authorizations, conserving these species while permitting the growth and operation of renewable energy facilities.

It is disappointing the Board and the Department have chosen to allow the decimation of these species to continue unabated in the face of ample evidence that conservation action is necessary.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Keith M. Shank". The signature is written in a cursive style with a large, sweeping initial "K".

Keith M. Shank
2324 Westview Drive
Springfield IL 62704
(217) 546-7966



Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271
www.dnr.illinois.gov

JB Pritzker, Governor
Colleen Callahan, Director

April 21, 2020

Keith M. Shank
2324 Westview Dr
Springfield, IL 62704

Dear Mr. Shank:

The Department of Natural Resource is in receipt of your comments on the Proposed Amendment to Ill. 17 Administrative Code 1010, Illinois list of Endangered and Threatened Fauna. We appreciate your time and thoroughness in preparing these comments and will address each one specifically.

Comment 1. You correctly asserted that the Department must approve proposed changes in the Illinois List of Endangered and Threatened Species after a public hearing has been held in compliance with the Statute [520 ILCS 10/6 and 10/7]. The public hearing was held on Friday, October 11, 2019. I don't believe you were suggesting that we failed to comply, and I can assure you that both steps were completed properly. Rather, your suggestion that these events should be documented in Part 6 of the Notice Page is noted and will be considered for future amendments.

Comment 2. This comment contends that the Notice Page incorrectly characterized this Amendment by stating that there is no impact on municipalities. The logic presented is that local municipalities must consult with the Department [520 ILCS 10/11] on proposed actions that may impact species listed in Parts 1010 and 1050. While true, recommendations by the Department are not mandatory but voluntary in nature. The Department maintains that any impacts are indirect and the authority for final decisions is retained by the local units of government.


Comment 3. We agree with your comment that switching the listing format from a Phylogenetic outline to an alphabetical order format may have introduced a level of complexity in understanding which species were added, dropped, or changed. The administrative rule amendment process requires that we show all text modifications, which is why the Board developed a summary of changes to the List and made it available in the online Public Hearing Announcement. <https://www2.illinois.gov/dnr/ESPB/Pages/ESPB-Hearing-Annoucement.aspx>. This file documenting changes from the 2015 List will be retained on the Illinois Endangered Species Protection Board's website for future reference.

Comment 4. We appreciate your concern for the status of both the Little Brown Bat and the Northern Long-eared Bat and share your concern. While the evidence suggests both are in decline, no petition was presented to the Board for either species. Therefore, no action was taken by the Board. The Department continues to expand its monitoring capabilities for gathering information on these species. If data should indicate that listing should proceed outside of the 5-year cycle, the Board and Department can pursue that measure. Contrary to your suggestion that the State is waiting for the Federal Government to act on these species, that is not the case. Illinois' list and listing process are separate and independent from the Federal list, other than the automatic addition of Federal species to the State list. Also, contrary to your comment that no action on these species can be expected from the Federal Government at this time outside of a court-mandated action,

the Department is recently in receipt of a data request and coordination contact from the U.S. Fish and Wildlife Service to begin a Species Status Assessment (SSA) on both of these species.

Comment 5. Regarding your concern for the Hoary Bat, Eastern Red Bat, and the Silvered-haired Bat and potential impact to these species from the growing wind energy industry, we offer the following comments. Again, we share your concern and, as alluded to previously, the Department continues to expand its bat monitoring capacity throughout Illinois. Additionally, we work closely with the wind energy industry on mitigating the impacts associated with bat strikes. This work also includes careful coordination with the U.S. Fish and Wildlife Service on all wind farm installations in Illinois. While we hope impact-avoidance strategies can significantly reduce impacts and avoid listing, the Department will address the status of these species based on the best scientific data available going forward. Again, the status of these bats can be considered by the Board and the Department outside the 5-year cycle for revision of the Illinois List.

Thank you again for your comments.

A handwritten signature in cursive script that reads "Ann Marie Holtrop".

Ann Marie Holtrop
Division of Natural Heritage
Illinois Department of Natural Resources