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 Sequence Number: _____
 Rule ID(s): _____
 File Date: _____
 Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Tennessee Wildlife Resources Agency
Division:	Biodiversity
Contact Person:	Lisa Crawford
Address:	PO Box 40747, Nashville, TN
Zip:	37204
Phone:	615-781-6606
Email:	Lisa.Crawford@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1660-01-32	Rules and Regulation for In Need of Management, Threatened, and Endangered Species
Rule Number	Rule Title
1660-01-32-.01	Adoption of Federal Endangered Species Act
1660-01-32-.02	Threatened and Endangered Species Lists and Rules
1660-01-32-.03	Wildlife In Need of Management List and Rules

New Rules

1660-01-32-.01, Adoption of Federal Endangered Species Act, is added as a new rule to read as follows:

- (1) The Tennessee Wildlife Resources Agency hereby adopts by reference the species and subspecies protected by the Federal Endangered Species Act of 1973, as amended, 16 USCA, Ch. 35. A list of Tennessee's Federally threatened and endangered species under the Endangered Species Act may be found at 50 C.F.R. §17.11.

Authority: T.C.A. §§70-1-206, 70-8-104, 70-8-106 and 70-8-107. **Administrative History:** Original rule filed _____; effective _____.

1660-01-32-.02, Threatened and Endangered Species Lists and Rules, is added as a new rule to read as follows:

- (1) The following species or subspecies are listed as state endangered.
- (a) Crayfish

Common Name	Scientific Name
Big South Fork Crayfish	<i>Cambarus bouchardi</i>
Mountain Crayfish	<i>Cambarus conasaugaensis</i>
Conasauga Blue Burrower	<i>Cambarus cymatilis</i>
Valley Flame Crayfish	<i>Cambarus deweesae</i>
Chickamauga Crayfish	<i>Cambarus extraneus</i>
Obey Crayfish	<i>Cambarus obeyensis</i>
Pristine Crayfish	<i>Cambarus pristinus</i>
Speckled Crayfish	<i>Cambarus lentiginosus</i>
Hatchie Burrowing Crayfish	<i>Creaserinus horti</i>
Blood River Crayfish	<i>Faxonius burri</i>
Flint River Crayfish	<i>Faxonius cooperi</i>
Tennessee Cave Crayfish	<i>Orconectes incomptus</i>
Hardin Crayfish	<i>Faxonius wrighti</i>

- (b) Fish

Common Name	Scientific Name
Lake Sturgeon	<i>Acipenser fulvescens</i>
Ashy Darter	<i>Etheostoma cinereum</i>
Crown Darter	<i>Etheostoma corona</i>
Barrens Darter	<i>Etheostoma forbesi</i>
Tuckasegee Darter	<i>Etheostoma gutselli</i>
Egg-mimic Darter	<i>Etheostoma pseudovulatum</i>
Barrens Topminnow	<i>Fundulus julisia</i>
Coosa Chub	<i>Macrhybopsis sp. 1</i>
Silverjaw minnow	<i>Notropis buccatus</i>

(c) Amphibians

Common Name	Scientific Name
Streamside Salamander	<i>Ambystoma barbouri</i>
Hellbender	<i>Cryptobranchus alleganiensis</i>

(d) Birds

Common Name	Scientific Name
Bachman's Sparrow	<i>Peucaea aestivalis</i>

(2) The following species or subspecies are listed as state threatened.

(a) Crayfish

Common Name	Scientific Name
Tennessee Bottlebrush Crayfish	<i>Barbicambarus simmonsii</i>
Hiwassee Crayfish	<i>Cambarus hiwasseeensis</i>
Greensaddle Crayfish	<i>Cambarus manningi</i>
Cocoa Crayfish	<i>Cambarus stockeri</i>
Brawleys Fork Crayfish	<i>Cambarus williamsi</i>
Crescent Crayfish	<i>Faxonius taylori</i>

(b) Fish

Common Name	Scientific Name
Western Sand Darter	<i>Ammocrypta clara</i>
Blue sucker	<i>Cycleptus elongatus</i>
Coppercheek Darter	<i>Etheostoma aquali</i>
Holiday Darter	<i>Etheostoma brevirostrum</i>
Coldwater Darter	<i>Etheostoma ditrema</i>
Redlips Darter	<i>Etheostoma maydeni</i>
Striated Darter	<i>Etheostoma striatulum</i>
Trispot Darter	<i>Etheostoma trisella</i>
Saddled Madtom	<i>Noturus fasciatus</i>
Frecklebelly Madtom	<i>Noturus munitus</i>
Longhead Darter	<i>Percina macrocephala</i>
Sickle Darter	<i>Percina williamsi</i>

(c) Amphibians

Common Name	Scientific Name
Berry Cave Salamander	<i>Gyrinophilus gulolineatus</i>
Tennessee Cave Salamander	<i>Gyrinophilus palleucus</i>
Pale Salamander	<i>Gyrinophilus palleucus palleucus</i>
Big Mouth Cave Salamander	<i>Gyrinophilus palleucus necturoides</i>

(d) Reptiles

Common Name	Scientific Name
Alligator Snapping Turtle	<i>Macrolemys temminckii</i>
Northern Pine Snake	<i>Pituophis melanoleucus</i>
Western Pigmy Rattlesnake	<i>Sistrurus miliarius streckeri</i>

(e) Birds

Common Name	Scientific Name
Henslow's Sparrow	<i>Ammodramus henslowii</i>
Golden-winged Warbler	<i>Vermivora chrysoptera</i>

(f) Mammals

Common Name	Scientific Name
Little Brown Bat	<i>Myotis lucifugus</i>
Tri-colored Bat	<i>Perimyotis subflavus</i>

Authority: T.C.A. §§70-1-206, 70-8-104, 70-8-106 and 70-8-107. **Administrative History:** Original rule filed _____; effective _____.

New Rule

1660-01-32-.03, Wildlife In Need of Management List and Rules, is added as a new rule to read as follows:

(1) The following species or subspecies are listed as state wildlife in need of management

(a) Crayfish

Common Name	Scientific Name
Bottlebrush Crayfish	<i>Barbicambarus cornutus</i>
Short Mountain Crayfish	<i>Cambarus clivosus</i>
Prickly Cave Crayfish	<i>Cambarus hamulatus</i>

Spiny Scale Crayfish	<i>Cambarus jezerinaci</i>
Florence Crayfish	<i>Cambarus andersoni</i>
Alabama Crayfish	<i>Faxonius alabamensis</i>
Barren River Crayfish	<i>Faxonius barrenensis</i>
Cumberland Plateau Cave	<i>Orconectes barri</i>
Mammoth Cave Crayfish	<i>Orconectes pellucidus</i>

(b) Fish

Common Name	Scientific Name
Naked Sand Darter	<i>Ammocrypta beanii</i>
Scaly Sand Darter	<i>Ammocrypta vivax</i>
American Eel	<i>Anguilla rostrata</i>
Alligator Gar	<i>Atractosteus spatula</i>
Highfin Carpsucker	<i>Carpiodes velifer</i>
Tennessee Dace	<i>Chrosomus tennesseensis</i>
Rugby Dace	<i>Chrosomus sp 1</i>
Smoky Dace	<i>Clinostomus funduloides ssp. 1</i>
Emerald Darter	<i>Etheostoma baileyi</i>
Teardrop Darter	<i>Etheostoma barbouri</i>
Splendid Darter	<i>Etheostoma barrenense</i>
Orangefin Darter	<i>Etheostoma bellum</i>
Chickasaw Darter	<i>Etheostoma cervus</i>
Golden Darter	<i>Etheostoma denoncourti</i>
Redband Darter	<i>Etheostoma luteovinctum</i>
Smallscale Darter	<i>Etheostoma microlepidum</i>
Lollypop Darter	<i>Etheostoma neopterum</i>
Sooty Darter	<i>Etheostoma olivaceum</i>
Firebelly Darter	<i>Etheostoma pyrrhogaster</i>
Arrow Darter	<i>Etheostoma sagitta</i>
Tippecanoe Darter	<i>Etheostoma tippecanoe</i>
Tuscumbia Darter	<i>Etheostoma tuscumbia</i>
Wounded Darter	<i>Etheostoma vulneratum</i>
Golden Topminnow	<i>Fundulus chrysotus</i>
Flame Chub	<i>Hemitremia flammea</i>
Plains Minnow	<i>Hybognathus placitus</i>
Lined Chub	<i>Hybopsis lineapunctata</i>
Southern Brook Lamprey	<i>Ichthyomyzon gagei</i>
Silver Lamprey	<i>Ichthyomyzon unicuspis</i>
Sturgeon Chub	<i>Macrhybopsis gelida</i>
Sicklefin Chub	<i>Macrhybopsis meeki</i>
Rainbow Shiner	<i>Notropis chrosomus</i>
Bigmouth Shiner	<i>Notropis dorsalis</i>
Bedrock Shiner	<i>Notropis rupestris</i>
Piebald Madtom	<i>Noturus gladiator</i>
Tangerine Darter	<i>Percina aurantiaca</i>

Blotchside Logperch	<i>Percina burtoni</i>
Slenderhead Darter	<i>Percina phoxocephala</i>
Olive Darter	<i>Percina squamata</i>
Frecklebelly Darter	<i>Percina stictogaster</i>
Riffle Minnow	<i>Phenacobius catostomus</i>
Blackfin Sucker	<i>Thoburnia atripinnis</i>
Southern Cavefish	<i>Typhlichthys subterraneus</i>

(c) Amphibians

Common Name	Scientific Name
Cumberland Dusky Salamander	<i>Desmognathus abditus</i>
Seepage Salamander	<i>Desmognathus aeneus</i>
Black Mountain Salamander	<i>Desmognathus welteri</i>
Pygmy Salamander	<i>Desmognathus wrighti</i>
Junaluska Salamander	<i>Eurycea junaluska</i>
Four-toed Salamander	<i>Hemidactylium scutatum</i>
Wehrle's Salamander	<i>Plethodon wehrlei</i>
Weller's Salamander	<i>Plethodon welleri</i>

(d) Reptiles

Common Name	Scientific Name
Mississippi Green Water Snake	<i>Nerodia cyclopion</i>
Eastern Slender Glass Lizard	<i>Ophisaurus attenuatus longicaudus</i>
Coal Skink	<i>Plestiodon anthracinus</i>

(e) Birds

Common Name	Scientific Name
Golden Eagle	<i>Aquila chrysaetos</i>
Little Blue Heron	<i>Egretta caerulea</i>
Wood Thrush	<i>Hylocichla mustelina</i>
Least Bittern	<i>Ixobrychus exilis</i>
Loggerhead Shrike	<i>Lanius ludovicianus</i>
Swainson's Warbler	<i>Limnothlypis swainsonii</i>
Black-crowned Night-heron	<i>Nycticorax nycticorax</i>
King Rail	<i>Rallus elegans</i>
Cerulean Warbler	<i>Setophaga cerulea</i>
Bewick's Wren	<i>Thryomanes bewickii</i>

(f) Mammals

Common Name	Scientific Name
Star-nosed Mole	<i>Condylura cristata</i>
Rafinesque's Big-eared Bat	<i>Corynorhinus rafinesquii</i>
Southern Rock Vole	<i>Microtus chrotorrhinus carolinensis</i>

Eastern Small-footed Bat	<i>Myotis leibii</i>
Southern Appalachian Woodrat	<i>Neotoma floridana haematoreia</i>
Eastern Woodrat	<i>Neotoma floridana illinoensis</i>
Allegheny Woodrat	<i>Neotoma magister</i>
Hairy-tailed Mole	<i>Parascalops breweri</i>
Long-tailed Shrew	<i>Sorex dispar</i>
American Water Shrew	<i>Sorex palustris</i>
Southern Bog Lemming	<i>Synaptomys cooperi</i>

Authority: T.C.A. §§70-1-206, 70-8-104, 70-8-106 and 70-8-107. **Administrative History:** Original rule filed _____; effective _____.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chad Baker					
Angie Box					
Jeff Cook					
Bill Cox					
Dennis Gardner					
Kurt Holbert					
Connie King					
Brian McLerrin					
Tony Sanders					
James Stroud					
Bill Swan					
Kent Woods					
Jamie Woodson					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 12/08/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/06/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 12/08/2017

Date: _____

Signature: _____

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: 03-10-2019

All rulemaking hearing rules provided for herein (Rule 1660-01-32, Rules and Regulation for In Need of Management, Threatened, and Endangered Species) have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

SS-7039 (June 2016)

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RDA 1693

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

PUBLIC COMMENTS AND RESPONSES

Comment: No written or verbal comments were received by the Commission.

Response: N/A

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

This rule would have minimal impact on small business. The impact to small business would in most instances occur during construction projects when any of the following permits are required Aquatic Resources Alteration Permit, General Construction Permit, National Pollution Discharge Elimination System Permit, or Injection Well Permit; a 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers; or they are required to develop an Environmental Impact Statement or Environmental Assessment where impacts could occur to listed species. Any entity obtaining federal funds is also required to consult with state and federal wildlife agencies per the National Environmental Policy Act on species that could be impacted within the project area. Small business that would potentially be impacted would include construction, real estate, manufacturing, utilities, and mining. We estimate that less than 50 small businesses a year potentially could be impacted by this rule.

Small businesses that would directly benefit from this rule are consulting firms which are contracted by other business, local governments, or the state to complete surveys for In Need of Management, Threatened, or Endangered species that may occur within the boundaries of a project that could be impacted by that projects activities. We estimated that at least 15 small businesses annually could benefit from this rule.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record;

This rule requires a skill set found in most wildlife consulting firms and carried out by a wildlife biologist. The skills include knowledge of species and subspecies habitats, surveying techniques for listed species, proper handling techniques of species in order to minimize stress, and the use of geographic information systems to map habitat. Also skills are needed to write necessary reports.

(3) A statement of the probable effect on impacted small businesses and consumers;

There will be minimal impact to small businesses and consumers. The cost of surveys and mitigations will typically be less than \$5,000 and will likely only impact business during construction or other activities that could impact threatened, endangered, and in need of management species habitat or directly impact individuals; and when any of the following permits are required Aquatic Resources Alteration Permit, General Construction Permit, National Pollution Discharge Elimination System Permit, or Injection Well Permit; a 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers; or they are required to develop an Environmental Impact Statement or Environmental Assessment where impacts could occur to listed species. Any entity obtaining federal funds is also required to consult with state and federal wildlife agencies per the National Environmental Policy Act on species that could be impacted with in the project area

We expect minimal impact to consumers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business;

Due to the minimal cost associated with this rule we do not see any alternative methods that would reduce the burden on small businesses while still reducing impacts to those species listed in the rule.

(5) A comparison of the proposed rule with any federal or state counterparts; and

The Federal Endangered Species Act of 1973 makes it unlawful for a person to take a listed animal without a permit. Take defined in the federal endangered species act is defined as to harass, harm, pursue, hunt, shoot wound, kill trap, capture, or collect or attempt to engage in any such activity. The act makes it unlawful to significantly modify habitat or degrade habitat where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The federal law allows

landowners, citizens, corporations, and states take through section 10 permits. Current Tennessee T.C.A. makes it unlawful for take of state listed species. This rule like the federal section 10 permits will allow small business, corporations, local government to continue projects while working to minimize impacts to species listed in the rule.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Due to the number of different small businesses that may have impact on state listed in need of management, threatened, and endangered species it would be very difficult to exempt small business from all or part of the rule. Exempting small businesses would still mean that they would be required to meet federal endangered species act requirements in many parts of Tennessee. It would also be difficult to exempt some business due to both state and federal law requirements for taking into consideration listed species during the permitting process.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

Will passage of this rule have a projected financial impact on local governments?

The Commission is aware that the passage of this rule could have a small financial impact on local government.

Please describe the increase in expenditures or decrease in revenues:

The increase in expenditures is in relations to performing surveys and mitigation of listed species in relation to those that may occur within a proposed construction projects footprint. It is not expected that there will be a decrease in revenues as this rule mainly effects projects during construction. Once a project is completed and efforts are made to reduce or mitigate impacts on listed species it is not expected that the entity will be further impacted by this rule.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule lists threatened, endangered, and in need of management species or subspecies indigenous to Tennessee. The only changes to previous regulations which were set out in Tennessee Wildlife Resources Agency proclamations 00-14 and 00-15 were changes in the species or subspecies listed.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §70-8-104 Nongame species Promulgation of regulations prohibited acts (a) states that the executive director shall conduct investigation on nongame wildlife in order to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of this information the fish and wildlife commission shall issue regulations and development management programs to ensure the continued ability of nongame, endangered, or threatened wildlife. Such regulations shall set forth species or subspecies of nongame wildlife that the executive director deems in need of management. T.C.A. 70-8-105 Endangered or threatened species list on the basis of investigation on nongame wildlife in 70-8-104, and other scientific data and after consultation with other agencies and organizations the fish and wildlife commission shall by regulation propose a list of species or subspecies indigenous to the state that are determined to be endangered or threatened. The commission shall conduct a review of the state list no more than two years form effective date and every two years after. In the event the United States' List of Endangered Native fish and Wildlife is modified subsequent to 1974 the commission may accept such modification for the state. T.C.A. 70-8-107 Rule making authority, The fish and wildlife commission shall issue regulations as necessary to carry out the purposed of 70-8.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule will have a direct impact on any entity required to obtain Aquatic Resources Alteration Permit, General Construction Permit, National Pollution Discharge Elimination System Permit, or Injection Well Permit from TDEC, obtain a 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers, or required to develop an Environmental Impact Statement or Environmental Assessment where impacts could occur to listed species. Any entity obtaining federal funds is also required to consult with state and federal wildlife agencies per the National Environmental Policy Act on species that could be impacted with in the project area. Due to both State and Federal law requiring consultation on listed species this rule would be supported by those entities affected as it clarifies protected species and dealing with impacts to those species and allows permitting to meet state and federal law. Tennessee Wildlife Resources Agency will be directly impacted by this rule as it is required by law to working with entities to mitigate impacts to listed species. TWRA urges the adoption of the rule as it defines listed species and allows for mitigation.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

We are not aware of any opinions of the attorney general or any judicial ruling that directly relate to this rule.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The impact to state government revenues and expenditures is minimal as cost to contract surveys and to mitigate impacts is typically <\$5,000 as related to state listed species. There will be no increase in revenue from this rule.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Andrea English, Assistant Chief of Biodiversity (Pandy.English@tn.gov); Brian Flock, Wildlife Diversity Coordinator, (brian.flock@tn.gov)

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, Chris.Richardson@tn.gov

- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

n/a