

19. WILDLIFE CLASSIFICATION – RULE BRIEFING AND PUBLIC HEARING

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“GREEN SHEET”

Meeting: December 7-8, 2007

Agenda Item 19: Amend WAC 232-12-011 Wildlife classified shall not be hunted or fished – **Rule Briefing and Public Hearing**

Prepared By: Harriet Allen

Presented By: Harriet Allen, Endangered and Threatened Species Section Manager, Wildlife Program

Background:

The historic early summer population of bald eagles in Washington may have been around 8,800 birds. By 1980, the state's population declined to only 105 known nesting pairs. With 25 years of recovery activities, the population increased to 840 nesting pairs in 2005.

The bald eagle is currently listed as a threatened species in Washington. Population numbers have increased in Washington and primary threats to the eagle such as DDT contamination and habitat destruction have been addressed through existing habitat protection laws. The species was removed from the federal list of endangered and threatened species in 2007. The Department conducted a draft status review of the bald eagle in Washington in 2001 and updated it as a final in 2007. The final was released for a 30-day public review prior to the Commission meeting per WAC 232-12-297 Endangered, threatened, and sensitive wildlife species classification. The status review recommends downlisting the bald eagle from state threatened to state sensitive status.

Policy Issue(s) you are bringing to the Commission for consideration:

Downlisting of the bald eagle in Washington based on the biological status of the species.

Public involvement process used and what you learned:

These proposed recommendations were mailed to approximately 450 organizations and individuals in October for their review and consideration. These organizations and individuals were also informed of the opportunity to provide public testimony at the December 7-8, 2007 Commission meeting in Port Angeles.

The draft status review underwent a 90-day public review in 2001. The final updated report underwent a 30-day public review, per WAC 232-12-297 Endangered, threatened, and sensitive wildlife species classification. Review of the final updated report was mixed; most did not support downlisting; others supported downlisting, as long as nest and roost site habitat continued to be protected via regulation. SEPA review was also conducted on the proposed downlisting.

Action requested (identify the specific Commission decisions you are seeking):

Take public comment. Adoption is planned for the January 11-12, 2008 Commission meeting.

Draft motion language:

Rule briefing only.

Justification for Commission action:

Rule briefing only.

AMENDATORY SECTION (Amending Order 06-09, filed 1/30/06,
effective 3/2/06)

WAC 232-12-011 Wildlife classified as protected shall not be hunted or fished. Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>
Steller (northern) sea lion	<i>Eumetopias jubatus</i>
North American lynx	<i>Lynx canadensis</i>
bald eagle	<i>Haliaeetus leucocephalus</i>
ferruginous hawk	<i>Buteo regalis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
green sea turtle	<i>Chelonia mydas</i>
loggerhead sea turtle	<i>Caretta caretta</i>
sage grouse	<i>Centrocercus urophasianus</i>
sharp-tailed grouse	<i>Phasianus columbianus</i>
Mazama pocket gopher	<i>Thomomys mazama</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
Gray whale	<i>Eschrichtius gibbosus</i>
Common Loon	<i>Gavia immer</i>
bald eagle	<i>Haliaeetus leucocephalus</i>
Peregrine Falcon	<i>Falco peregrinus</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Spermophilus saturatus</i>
golden-mantled ground squirrel	<i>Spermophilus lateralis</i>
Washington ground squirrel	<i>Spermophilus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata;</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order *Cetacea*, including whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

SUMMARY OF WRITTEN PUBLIC INPUT

Fish and Wildlife Commission Meeting

December 7-8, 2007

WAC 232-12-011 Wildlife classified as protected shall not be hunted or fished

# RECEIVED	COMMENTS	AGENCY RESPONSE
4	I support the down-listing of bald eagles to sensitive.	Thank you for your comment.
3	I support the down-listing of bald eagles to sensitive as long as management plans are still required and nests are still protected. I would not support down-listing if it means forest practices or land-use practices could again have significant impacts.	We share your concern that protections for eagles and their habitat should remain in effect. The bald eagle protection rules requiring a management plan (WAC 232-12-292) will remain in effect if the species is down-listed to sensitive.
14	I do not think the Bald Eagle should be down-listed to sensitive, but kept as threatened.	We share your concern that protections for eagles and their habitat should remain in effect. As long as habitat protections remain in effect and the threats to the population are reduced, then the Washington population no longer meets the definition of threatened as defined in WAC 232-12-297.
1	I do not think the Bald Eagle should be down-listed to sensitive, but kept as threatened for a few more years because threats (e.g. contaminants, habitat destruction, poaching) are still present.	Despite being affected by several factors including those you mention, bald eagles have been increasing about 9% per year, and the Washington population no longer meets the definition of threatened as defined in WAC 232-12-297.
1	I think the Bald Eagle should be kept as threatened because it helps protect wildlife habitat from developers and loggers. Now is not time to lessen protection of wildlife.	WAC 232-12-297 requires that the species listing status be based “solely on the biological status of the species,” so the protection of habitat for other species can’t be considered.
1	I do not think the Bald Eagle should be down-listed without strong protection from development.	We share your concern that protections for eagles and their habitat should remain in effect, but the Washington population no longer meets the definition of threatened as defined in WAC 232-12-297.
1	I do not think the Bald Eagle should be down-listed to sensitive until there is an increase in food supply. Otherwise, we may have to re-list them as salmon populations dwindle.	Many of the salmon runs that are most important for eagles (chum, pinks) are very healthy, therefore declines in native stocks of other salmon are not a major influence on bald eagle populations.
1	The fact that the eagle has rebounded somewhat is no basis for lessening their protection. With the expansion of human populations and the destruction of viable habitat, it is essential that the American Bald Eagle receive the highest level of protection under the law.	We share your concern that protections for eagles and their habitat should remain in effect. As long as habitat protections remain in effect and the threats to the population are reduced, then the Washington population no longer meets the definition of threatened as defined in WAC 232-12-297.

# RECEIVED	COMMENTS	AGENCY RESPONSE
1	The think the current eagle protection rules (WAC) are adequate. They have been removed from the ESA, why do you need them on your own special list?	We agree that the current eagle protection rules are adequate. The federal de-listing was based on the bald eagle’s population status in the 48 states as a whole. Unlike the federal ESA, which has only two categories, Washington has a third category, ‘sensitive’ that best fits the current population status of bald eagles in the state.
1	Has the proposal been reviewed by outside experts? I think that down-listing should await such input.	The status report and our recommendation to down-list the species to sensitive was reviewed by outside regional and national experts on the Bald Eagle, both in 2001 and 2007. They concur that this change is warranted and appropriate, provided habitat protections remain in place.
4	Recovery is complete; they should be de-listed from all categories.	Although bald eagles have rebounded dramatically, less than 1,000 pairs in a state the size of Washington is not a large number. For the reasons outlined in the report, including conflicts with shoreline development, forest practices, contaminants, black market in parts, etc., we, and peer reviewers, believe that the population best fits the definition of ‘sensitive’ as defined in WAC 232-12-297, which still requires cooperative management to prevent the species from declining again.



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR 07-18-044 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____ ; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
WAC 232-12-011 Wildlife classified as protected shall not be hunted or fished

Hearing location(s):
Red Lion Hotel
221 North Lincoln
Port Angeles, WA 98362
(360) 452-9215

Date: December 7-8, 2007 Time: 8:00 am

Date of intended adoption: January 10-12, 2008
(Note: This is NOT the effective date)

Submit written comments to:
Name: Wildlife Program Commission Meeting Public Comments
Address: 600 Capitol Way North, Olympia WA 98501-1091
e-mail Wildthing@dfw.wa.gov
fax (360) 902-2162

By: Monday, November 19, 2007

Assistance for persons with disabilities:
Contact: Susan Yeager by December 5, 2007
TTY (800) 833-6388 or (360) 902-2267

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
Protected wildlife are designated into three subcategories: threatened, sensitive, and other. The proposed rule would change the classification of the bald eagle from state threatened to state sensitive status.

Reasons supporting proposal:
The bald eagle is currently listed as a threatened species in Washington. Population numbers have increased in Washington and primary threats to the eagle such as DDT contamination and habitat destruction have been addressed through existing habitat protection laws. The bald eagle was removed from the federal list of endangered and threatened species in 2007. The Department conducted a draft status review of the bald eagle in Washington in 2001 and updated it as a final in 2007. The final will be released for a 30-day public review prior to the Commission meeting per WAC 232-12-297 Endangered, threatened, and sensitive wildlife species classification. The status review recommends downlisting the bald eagle from state threatened to state sensitive status.

Statutory authority for adoption: 77.12.047; 77.12.020

Statute being implemented: 77.12.047; 77.12.020

- Is rule necessary because of a:
- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION: Yes No

DATE
October 23, 2007

NAME
Lori Preuss

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **October 23, 2007**
TIME: **9:57 AM**

WSR 07-21-123

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization)

Washington Fish and Wildlife Commission

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Dave Brittell	Natural Resources Building, Olympia	(306) 902-2504
Implementation.... Dave Brittell	Natural Resources Building, Olympia	(360) 902-2504
Enforcement..... Bruce Bjork	Natural Resources Building, Olympia	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

These rules regulate recreational hunters and do not directly regulate small business.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain: Not hydraulics rules.