



PROPOSED RULE MAKING

CR-102 (August 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 02, 2018

TIME: 10:44 AM

WSR 18-10-109

Agency: Washington Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 16-13-044 on June 8, 2016 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject)

WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished.

WAC 220-610-010 Wildlife classified as endangered species.

Hearing location(s):

Date: **Time:** **Location:** (be specific) **Comment:**

June 14-16, 2018	8:00 a.m.	Natural Resources Building Room 172 1111 Washington Street SE Olympia, WA 98501	
------------------	-----------	--	--

Date of intended adoption: August 10-11, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Wildlife Program Rules Coordinator

Address: PO Box 43141, Olympia, WA 98504-3200

Email: wildthing@dfw.wa.gov

Fax: (360) 902-2162

Other: <https://www.surveymonkey.com/r/DW6HRK9>

By (date) May 23, 2018

Assistance for persons with disabilities:

Contact Tami Lininger

Phone: (360) 902-2267

Fax:

TTY: (800) 833-6388

Email: tami.lininger@dfw.wa.gov

Other:

By (date) June 7, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The proposal will reclassify the Columbian sharp-tailed grouse from the state's threatened subcategory (WAC 220-200-100) to state endangered (WAC 220-610-010).

In addition, the proposal will reclassify the sea otter from the state endangered (WAC 220-610-010) to the state's threatened subcategory (WAC 220-200-100).

Reasons supporting proposal:

The department has reviewed all relevant data pertaining to the population status of Columbian sharp-tailed grouse and sea otter in Washington.

The Columbian sharp-tailed grouse historically was the most abundant and important game bird in eastern Washington during the 1800's. It was found throughout the grassland and shrub-steppe areas of eastern Washington, but was probably most abundant in Palouse prairie. They are now restricted to parts of Douglas, Okanogan, and Lincoln counties, and the Colville Reservation. The 2017 statewide population estimate based on lek counts was 564 birds.

The Columbian sharp-tailed grouse was state-listed as threatened in 1998, and a state recovery plan was completed in 2012. Habitat quantity, quality, and fragmentation limit Columbian sharp-tailed grouse populations. Historically, the highest densities of Columbian sharp-tailed grouse were in relatively moist grassland and steppe vegetation types, with creeks that have deciduous trees and shrubs that provide berries, buds, and catkins for winter habitat. The remaining local populations of Columbian sharp-tailed grouse in Washington are small, relatively isolated from one another, and may not persist unless they increase in size. Wildfires have had a short-term and unknown impact and habitat connectivity continues to diminish. For these reasons, it is recommended that the Columbian sharp-tailed grouse be reclassified to state endangered in Washington.

Sea otters in Washington historically ranged from the Columbia River to Port Angeles. The species was exploited during the heyday of the fur trade and was extirpated in the state by 1910. Sea otters were reintroduced to Washington in 1969 and 1970. Washington's current sea otter population is restricted to a roughly 130-kilometer stretch of outer coast along the Olympic Peninsula. There is no consensus on why sea otters are not clearly expanding into available habitat. The population has shown strong growth and in 2017 exceeded the downlisting criteria outlined in the 2004 Recovery Plan of 1,640 sea otters over a 3-year period.

Despite a steady increase in numbers and density, the Washington sea otter population is at risk of losing significant numbers should a catastrophic event such as a large oil spill occur off Washington's coast. Sea otters also remain at risk from disease, toxins, and effects of climate change. The sea otter has been classified as a state endangered species in Washington since 1981. Given the steady and substantial increase in numbers and evidence of genetic exchange with the British Columbia sea otter population, it is recommended that the sea otter be reclassified to state threatened in Washington.

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, 77.12.047,

Statute being implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, 77.12.047,

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: (person or organization) Washington Department of Fish and Wildlife. Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Eric Gardner	600 Capitol Way North Olympia, WA 98501	(360) 902-2515
Implementation:	Eric Gardner	600 Capitol Way North Olympia, WA 98501	(360) 902-2515
Enforcement:	Steve Bear	600 Capitol Way North Olympia, WA 98501	(360) 902-2373

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

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:

TTY:

Email:

Other:

No: Please explain: The rule proposal does not require a cost-benefit analysis.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Date: May 2, 2018

Name: Scott Bird

Title: Rules Coordinator

Signature:



WAC 220-200-100 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>
<u>sea otter</u>	<u><i>Enhydra lutris</i></u>
ferruginous hawk	<i>Buteo regalis</i>
green sea turtle	<i>Chelonia mydas</i>
greater sage grouse	<i>Centrocercus urophasianus</i>
((sharp-tailed grouse	<i>Tympanuchus phasianellus</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
American white pelican	<i>Pelecanus erythrorhynchos</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 robustus</i>
Common Loon	<i>Gavia immer</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>Callospermophilus saturatus</i>
golden-mantled ground squirrel	<i>Callospermophilus lateralis</i>
Washington ground squirrel	<i>Uroditellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>

Common Name	Scientific Name
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
Humboldt's flying squirrel	<i>Glaucomys oregonensis</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.

WAC 220-610-010 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
((sea otter	<i>Enhydra lutris</i>))
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
North Pacific right whale	<i>Eubalaena japonica</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
<u>Columbian sharp-tailed grouse</u>	<u><i>Tympanuchus phasianellus columbianus</i></u>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>Charadrius nivosus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylori</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fratercula cirrhata</i>
North American lynx	<i>Lynx canadensis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
Loggerhead sea turtle	<i>Caretta caretta</i>
Yellow-billed cuckoo	<i>Coccyzus americanus</i>