



PROPOSED RULE MAKING

CR-102 (December 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: December 21, 2020

TIME: 4:12 PM

WSR 21-01-187

Agency: Washington Department of Fish and Wildlife (WDFW Order 20-265)

Original Notice

Supplemental Notice to WSR

Continuance of WSR

Preproposal Statement of Inquiry was filed as WSR 20-21-058 filed on October 14, 2020; 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); or

Proposal is exempt under RCW.

Title of rule and other identifying information: (describe subject) WAC 220-610-010 Wildlife classified as endangered species.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 28-30, 2021	8 a.m.	Webinar	This meeting will take place by webinar. The public may participate in the meeting. Visit our website at http://wdfw.wa.gov/about/commission/meetings or contact the Commission office at (360) 902-2267 or commission@dfw.wa.gov for instructions on how to join the meeting.

Date of intended adoption: February 12, 2021 (Note: This is NOT the effective date)

Submit written comments to:

Name: Wildlife Program

Address: PO Box 43200, Olympia, WA. 98504

Email: rules.coordinator@dfw.wa.gov

Fax: (360) 902-2162

Other: Rule Comments: <https://www.surveymonkey.com/r/VesperSparrow>

SEPA Comments: Email SEPADesk2@dfw.wa.gov

By (date) January 19, 2021

Assistance for persons with disabilities:

Contact Dolores Noyes

Phone: (360) 902-2346

Fax:

TTY: (360) 902-2207

Email: dolores.noyes@dfw.wa.gov

Other:

By (date) January 21, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: We are proposing to classify the Oregon vesper sparrow as endangered in the state of Washington under WAC 220-610-010. Anticipated effects include the additional regulation and enforcement of wildlife classified as endangered identified in RCW 77.15.120. WDFW will initiate work on a recovery plan for the species according to WAC 220-610-110.

Reasons supporting proposal: The estimated population of Oregon Vesper Sparrows in Washington is approximately 300 birds, with most (~75%) of them on a single site, Joint Base Lewis-McChord's 91st Division Prairie. There have been several recent local extirpations at sites that supported a few pairs, the remaining sites with a few pairs are at great risk, and there has been no recent establishment of populations at sites with remnant prairie or savannah or with ongoing restoration.

The factors of habitat loss and degradation that historically precipitated population declines continue, but populations are now likely affected by demographic and genetic factors related to their small numbers (e.g., isolation of subpopulations, reduced genetic variability, and greater susceptibility to stochastic events). Nest predation has a greater impact in fragmented habitat, and seeds coated with neonicotinoid pesticides may be affecting Washington birds during migration and at wintering sites. Land use and disturbance activities are variable and sometimes intense during the breeding season depending on the site; thus, potentially negatively affecting reproductive success and putting small populations at extreme risk of extirpation.

Research recently initiated on limiting factors will provide essential direction for appropriate conservation actions. However, given the extremely small population size in Washington, the majority of that population at one location, the many recent local extirpations or near-extirpations, and a variety of habitat, disturbance, and potentially demographic factors that continue to negatively affect them, it is recommended that Oregon vesper sparrow be classified as an endangered species in Washington.

Statutory authority for adoption: RCWs 77.04.012, 77.04.013, 77.04.055, and 77.12.020.

Statute being implemented: RCWs 77.04.012, 77.04.013, 77.04.055, and 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: []

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

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	1111 Washington St. SE Olympia, WA. 98501	(360) 902-2515
Implementation:	Eric Gardner	1111 Washington St. SE Olympia, WA. 98501	(360) 902-2515
Enforcement:	Steve Bear	1111 Washington St. SE 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: []

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: [December 21, 2020]	Signature: 
Name: [Ben Power]	
Title: [DWF Rules Coordinator]	

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

Common Name	Scientific Name
<u>Oregon vesper sparrow</u>	<u><i>Pooecetes gramineus affinis</i></u>
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</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>
Columbian sharp-tailed grouse	<i>Tympanuchus phasianellus columbianus</i>
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>
Pinto abalone	<i>Haliotis kamtschatkana</i>