



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: June 22, 2021

TIME: 11:02 AM

WSR 21-13-139

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 20-21-057 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 220-200-100 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:
August 6-7, 2021	8:00 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 instruction on how to join the meeting

Date of intended adoption: August 27, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Wildlife Program

Address: PO Box 43200, Olympia, WA. 98504

Email: 24884@PublicInput.com

Fax: (360) 902-2162

Other: Website for Public Comments: <https://publicinput.com/T4554>

Questions about this rule proposal: heather.bonagofski@dfw.wa.gov

By (date) July 15, 2021

Assistance for persons with disabilities:

Contact Title VI/ADA Compliance Coordinator

Phone: (360) 902-2349, TTY (711)

Fax: N/A

TTY: 360) 902-2349, TTY (711)

Email: Title6@dfw.wa.gov

Other: For more information see <https://wdfw.wa.gov/accessibility/requests-accommodation>

By (date) July 30, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rule proposal reclassifies the ferruginous hawk from threatened to endangered in the state of Washington under WAC 220-610-010. Anticipated effects include the additional recognition and prioritization of the conservation need and actions around ferruginous hawk. If the status change is adopted, ferruginous hawk will be removed from WAC 220-200-100 "Wildlife classified as protected shall not be hunted or fished," and added to WAC 220-610-010 "Wildlife classified as endangered species."

Reasons supporting proposal: The Ferruginous Hawk is largely restricted to grasslands and shrubsteppe habitats. Conversion of native grasslands and arid shrublands to agriculture, urbanization, and the degradation of rangelands have contributed to the loss of nesting and foraging habitat on its breeding range in Washington. Degradation of fall and winter ranges frequented by Washington's hawks in migration and the nonbreeding period has been documented through satellite monitoring. Reductions in prey base on the breeding range and depressed prey populations encountered during migration on fall and winter ranges are likely a significant factor in the decline of Washington's breeding population of Ferruginous Hawks.

The breeding population of Ferruginous Hawks in Washington is in sustained decline. Between 1974 and 2016, there have been significant declines in nesting territory occupancy, nest success, and productivity. Additionally, the percentage of surveyed nesting territories supporting breeding pairs has significantly declined in the core breeding range of the species in Benton and Franklin counties. The distribution of breeding pairs statewide also appears to have contracted since the 1990s. There has been no improvement in habitat conditions or amelioration of primary threats, and therefore the recommendation is to reclassify the Ferruginous Hawk from threatened to endangered status in Washington.

For more information see the *Periodic Status Review for the Ferruginous Hawk* at: <https://wdfw.wa.gov/publications/02210>

An environmental review under the State Environmental Policy Act (SEPA) has been done for this proposal. These documents are at <https://wdfw.wa.gov/licenses/environmental/sepa/open-comments>

Statutory authority for adoption: RCWs 77.04.012, 77.04.13, 77.04.055, 77.12.020, and 77.12.047

Statute being implemented: RCWs 77.04.012, 77.04.13, 77.04.055, 77.12.020, and 77.12.047

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: 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	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: The proposed PSR for the ferruginous hawk does not require a cost benefit analysis per RCW 34.05.328.

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 RCW 19.85.025(4).

Explanation of exemptions, if necessary: The proposed rule does not affect small businesses because the change from threatened to endangered status does not result in additional costs or regulatory requirements for any businesses.

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: June 22, 2021
Name: Annie Szvetecz
Title: Agency Rules Coordinator

Signature: 

AMENDATORY SECTION (Amending WSR 18-17-153, filed 8/21/18, effective 9/21/18)

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>
sea otter	<i>Enhydra lutris</i>
ferruginous hawk	<i>Buteo regalis</i>
green sea turtle	<i>Chelonia mydas</i>
greater sage grouse	<i>Centrocercus urophasianus</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>Urocitellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
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.

AMENDATORY SECTION (Amending WSR 21-07-019, filed 3/5/21, effective 4/5/21)

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

Endangered species include:

Common Name	Scientific Name
Oregon vesper sparrow	<i>Pooecetes gramineus affinis</i>
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>

Common Name	Scientific Name
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>
Greater sage grouse	<i>Centrocercus urophasianus</i>
<u>Ferruginous hawk</u>	<u><i>Buteo regalis</i></u>