



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: March 20, 2023

TIME: 10:50 AM

WSR 23-07-102

Agency: Washington Department of Fish and Wildlife (WDFW) (P2023-02)]

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

- Preproposal Statement of Inquiry was filed as WSR 23-04-011 on January 19, 2023 ; 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)
PSR American White Pelican
WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 12, 2023	8:00 a.m.	Web Conference Join from a PC, Mac, iPad, iPhone or Android device: Please click this URL to join. https://us06web.zoom.us/j/82426107514 Or One tap mobile: +12532158782,,82426107514# US (Tacoma) +16699006833,,82426107514# US (San Jose)	Information on how to register to testify at the public hearing is available at: http://wdfw.wa.gov/about/commission.meetings , or contact the Commission office at (360)-902-2267.

Date of intended adoption: On or after May 12, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Wildlife Program
Address: PO Box 43200, Olympia, WA 98504
Email: white-pelican@PublicInput.com
Fax: (360) 902-2162
Other: <http://publicinput.com/c5076#1>
or by phone: 855-925-2801 project code: 9587
By (date) May 5, 2023

Assistance for persons with disabilities:

Contact Title VI/ADA Compliance Coordinator
Phone: (360) 902-2349
Fax:
TTY: 1-800-833-6388 or 711
Email: Title6@dfw.wa.gov
Other: <http://wdfw.wa.gov/accessibility/requests-accommodation>
By (date) May 5, 2023

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

This rule amendment proposal, if finalized, would reclassify the American white pelican within WAC 220-200-100 "Wildlife classified as protected shall not be hunted or fished" from threatened to sensitive. Anticipated effects include a lower level of conservation concern for the species and advancement towards their recovery. WAC 220-610-110(11.1) guides WDFW to draft a management plan for sensitive species, rather than a recovery plan (as applicable to endangered and threatened species). If the status change is adopted, white pelican will be removed from the list of threatened species in WAC 220-200-

100 "Wildlife classified as protected shall not be hunted or fished" and added to the list of sensitive species under the same WAC.

This same species was presented and voted on in front of the Fish and Wildlife Commission in the fall of 2022 alongside the cascade red fox status report and listing decision. This proposal will reinstate the same rule making decision on American white pelican that was presented in 2022.

Reasons supporting proposal:

On October 7, 2022, the Fish and Wildlife Commission voted to downlist the American white pelican to a sensitive species as recommended by agency staff. Because of a procedural issue, we need to reinstate rule making with a new vote on this species. The information presented is the same information presented in the fall of 2022 and agency staff are still recommending a downlisting from threatened to sensitive for the American white pelican.

The western population of white pelicans has recovered substantially and given the size of the Badger Island colony and number of non-breeding white pelicans in Washington during the past several years, a change in listing could be considered.

The species remains somewhat vulnerable, however, as only the single colony regularly forms in Washington, and white pelican colonies are highly sensitive to disturbances; adults will desert and/or leave eggs leaving their young exposed to predation following disturbances. We recommend the species be down-listed to Sensitive. A Sensitive species is, "vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range within the state without cooperative management or removal of threats" (WAC 220-610-110).]

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

Statute being implemented: RCW 77.04.012, 77.04.013, 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.

Type of proponent: Private Public Governmental

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

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: This proposal does not require a cost benefit analysis under RCW 34.05.328

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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 19.85.025\(4\)](#) (does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____

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

Signature:

Date: March 20, 2023

Name: Tom McBride

Title: WDFW Agency Rules Coordinator

A handwritten signature in dark ink, appearing to read 'T. McBride', written in a cursive style.

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>
green sea turtle	<i>Chelonia mydas</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
(American white pelican)	<i>Pelecanus erythrorhynchos</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</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
<u>American white pelican</u>	<u><i>Pelecanus erythrorhynchos</i></u>
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>

Common Name	Scientific Name
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.