



# 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: May 02, 2023  
TIME: 4:06 PM

WSR 23-10-080

**Agency:** Washington Department of Fish and Wildlife (WDFW) (P2023-09)

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 20-21-057** 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)

PSR Western gray squirrel  
WAC 220-200-100 and 220-610-010.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
June 23-24, 2023	8:00 a.m.	Seattle WA. or join remote: Please click the link below to join the webinar: <a href="https://us06web.zoom.us/j/85432269613">https://us06web.zoom.us/j/85432269613</a> Webinar ID: 854 3226 9613 Or Telephone: 253 215 8782 US	Information on how to register to testify at the public hearing is available at: <a href="http://wdfw.wa.gov/about/commission.meetings">http://wdfw.wa.gov/about/commission.meetings</a> , or contact the Commission office at (360)-902-2267.

**Date of intended adoption:** On or after June 23, 2023. (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Wildlife Program  
 Address: PO Box 43200, Olympia, WA 98504  
 Email: [gray-squirrel@PublicInput.com](mailto:gray-squirrel@PublicInput.com)  
 Fax: (360) 902-2162  
 Other: Phone: 855-925-2801 project code: 6483  
 Public Comment URL: <https://publicinput.com/gray-squirrel>  
 SEPA Email: [gray-squirrel-sepa@PublicInput.com](mailto:gray-squirrel-sepa@PublicInput.com)  
 By (date) June 22, 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](mailto:Title6@dfw.wa.gov)  
 Other: <http://wdfw.wa.gov/accessibility/requests-accommodation>  
 By (date) June 2, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This rule amendment proposal, if adopted, reclassifies the western gray squirrel from threatened to endangered.

Anticipated effects include communicating a higher level of conservation concern for the species, their conservation needs, and recovery actions with partners and the public. Additionally, there is also an increased penalty for unlawful taking under RCW 77.15.120.

Finally, the western gray squirrel already has a recovery plan required by WAC 220-610-110.

If the status change is adopted, western gray squirrel 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 endangered species under WAC 220-610-010.

**Reasons supporting proposal:** Important known threats to the western gray squirrel populations in Washington are:

- Habitat loss.
- Degradation and fragmentation.
- Small population size and isolation.
- Disease and highway mortality.

Western Gray Squirrel habitat loss linked to logging, wildfire, land conversion, and fire. Climate change is both a current and potential future threat to habitat. Examples include stand-replacement fire, changes in resulting stand composition, and effects on food supply such as production of fungi and seeds.

The southern Puget Trough population has increased since 2007s recovery plan. It is still very limited in size and constrained by the area and fragmentation of its' habitat.

Because of the species' small total population size and the isolation of the three populations; Continuing threats of wildfires and timber harvest; and a likely decline in habitat of >20% in both the North Cascades and Klickitat regions, it is recommended that the Western Gray Squirrel be uplisted to endangered in Washington.

**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?            | <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.

**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:

- |   |  |
|---|--|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((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:

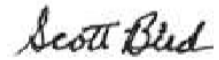
Other:

**Date:** May 2, 2023

**Name:** Scott Bird

**Title:** WDFW Agency Rules Coordinator

**Signature:**

A handwritten signature in black ink that reads "Scott Bird". The signature is written in a cursive style with a loop at the end of the last name.

AMENDATORY SECTION

**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
<del>western gray squirrel</del>	<del><i>Sciurus griseus</i></del>
sea otter	<i>Enhydra lutris</i>
green sea turtle	<i>Chelonia mydas</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
( <del>American white pelican</del>	<del><i>Pelecanus erythrorhynchos</i></del> )
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 Name	Scientific Name
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>
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.

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.08.030. WSR 23-06-035 (Order 22-13), § 220-200-100, filed 2/23/23, effective 3/26/23. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.020. WSR 21-20-010 (Order 21-196), § 220-200-100, filed 9/23/21, effective 10/24/21. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 21-13-032 (Order 21-60), § 220-200-100, filed 6/10/21, effective 7/11/21. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, and 77.12.047. WSR 18-17-153 (Order 18-207), § 220-200-100, filed 8/21/18, effective 9/21/18. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 17-20-030 (Order 17-254), § 220-200-100, filed 9/27/17, effective 10/28/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-200-100, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055,

77.12.020, and 77.12.047. WSR 17-02-084 (Order 17-02), § 232-12-011, filed 1/4/17, effective 2/4/17; WSR 15-10-021 (Order 14-95), § 232-12-011, filed 4/27/15, effective 5/28/15. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 08-03-068 (Order 08-09), § 232-12-011, filed 1/14/08, effective 2/14/08; WSR 06-04-066 (Order 06-09), § 232-12-011, filed 1/30/06, effective 3/2/06. Statutory Authority: RCW 77.12.047, 77.12.655, 77.12.020. WSR 02-11-069 (Order 02-98), § 232-12-011, filed 5/10/02, effective 6/10/02. Statutory Authority: RCW 77.12.047. WSR 02-08-048 (Order 02-53), § 232-12-011, filed 3/29/02, effective 5/1/02; WSR 00-17-106 (Order 00-149), § 232-12-011, filed 8/16/00, effective 9/16/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770. WSR 00-10-001 (Order 00-47), § 232-12-011, filed 4/19/00, effective 5/20/00. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-04-017 (Order 00-05), § 232-12-011, filed 1/24/00, effective 2/24/00. Statutory Authority: RCW 77.12.020. WSR 98-23-013 (Order 98-232), § 232-12-011, filed 11/6/98, effective 12/7/98. Statutory Authority: RCW 77.12.040. WSR 98-10-021 (Order 98-71), § 232-12-011, filed 4/22/98, effective 5/23/98. Statutory Authority: RCW 77.12.040 and 75.08.080. WSR 98-06-031, § 232-12-011, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 77.12.020. WSR 97-18-019 (Order 97-167), § 232-12-011,



filed 8/25/97, effective 9/25/97. Statutory Authority: RCW 77.12.040, 77.12.020, 77.12.030 and 77.32.220. WSR 97-12-048, § 232-12-011, filed 6/2/97, effective 7/3/97. Statutory Authority: RCW 77.12.020. WSR 93-21-027 (Order 615), § 232-12-011, filed 10/14/93, effective 11/14/93; WSR 90-11-065 (Order 441), § 232-12-011, filed 5/15/90, effective 6/15/90. Statutory Authority: RCW 77.12.040. WSR 89-11-061 (Order 392), § 232-12-011, filed 5/18/89; WSR 82-19-026 (Order 192), § 232-12-011, filed 9/9/82; WSR 81-22-002 (Order 174), § 232-12-011, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-011, filed 6/1/81.]

**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>
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>
Greater sage grouse	<i>Centrocercus urophasianus</i>
Ferruginous hawk	<i>Buteo regalis</i>
Cascade red fox	<i>Vulpes vulpes cascadenis</i>
<u>western gray squirrel</u>	<u><i>Sciurus griseus</i></u>