



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: May 18, 2022

TIME: 10:02 AM

WSR 22-11-092

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 20-21-058 on October 14, 2020 and 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.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 24-25, 2022	8:00 a.m.	Natural Resources Building (NRB) - Room 172 1111 Washington Street SE Olympia, WA 98501	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: August 5, 2022 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Wildlife Program

Address: PO Box 43200, Olympia, WA. 98504

Email: RedFoxCR102@PublicInput.com

WhitePelicanCR102@PublicInput.com

Fax: (360) 902-2162

Other: Voicemail Comments: 855-925-2801 Red Fox Project Code 4936

White Pelican Project Code 7748

SEPA Comments: <https://publicinput.com/RedFoxWhitePelican> or email to:

RedFoxWhitePelican@PublicInput.com

Comment Websites: <https://publicinput.com/RedFox102>

<https://publicinput.com/whitepelican102>

By (date) June 27, 2022

Assistance for persons with disabilities:

Contact Title VI/ADA Compliance Coordinator

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

Fax:

TTY: (

Email: Title6@dfw.wa.gov

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

Other:

By (date) June 27, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of the proposed amendments to WAC 220-200-100 if adopted, would classify the Cascade red fox as “threatened” in the state of Washington and reclassify the white pelican from “threatened” to “sensitive”.

If the proposed amendments are adopted by the Commission, the Cascade red fox would be classified as threatened and the American white pelican would be downlisted to “sensitive”. The proposed amendments, if approved, would include the additional regulation and enforcement of wildlife classified as threatened identified in RCW 77.15.120. WDFW would also initiate work on a recovery plan for the species according to WAC 220-610-110.

Reasons supporting proposal: The Cascade red fox (*Vulpes vulpes cascadenis*) is a subspecies of red fox that historically occurred in subalpine meadow, parkland, upper montane forest, and alpine habitats of the Cascade Range of Washington and southern British Columbia. Lack of detections of Cascade red foxes in British Columbia in recent decades indicate that this species is now restricted to Washington. A southward range contraction appears to have occurred within Washington within recent decades, as the only known population now occurs in the South Cascades (south of the I-90 corridor). It now occurs within ≤ 50% of its historical range in the state.

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 and 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: RCWs 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.020 77.12.047, and 77.12.240

Statute being implemented: RCWs 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.020 77.12.047, and 77.12.240

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	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 Cascade red fox and white pelican 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:

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

Explanation of exemptions, if necessary: The addition and downlisting of a periodic status review does not affect small 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: May 18, 2022

Name: Annie Szvetecz

Title: Agency Rules Coordinator

Signature:

A handwritten signature in black ink, appearing to read "Annie Szvetecz". The signature is written in a cursive style with a horizontal line at the end.

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>
<u>Cascade red fox</u>	<u><i>Vulpes vulpes cascadenis</i></u>
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>
<u>American white pelican</u>	<u><i>Pelecanus erythrorhynchos</i></u>
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>

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.