

Periodic Status Review
WAC 232-12-011 and 232-12-014

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Summary

Meeting dates: November 4-5, 2016

Agenda item: Periodic Status Reviews – Briefing and Public Hearing

Presenter(s): Hannah Anderson, Listing and Recovery Section Manager;
Joe Buchannan, Gerald Hayes, Derek Stinson, Jeff Lewis, Steve
Desimone, Wildlife Biologists

Background summary:

Department staff members will brief the Commission on the Periodic Status Reviews compiled for Bald Eagle, Peregrine Falcon, American White Pelican, Lynx, and Marbled Murrelet in accordance with WAC 232-12-297. These documents on five state listed species outline the current status of the species and include information and comments provided by peer scientists and the public. Staff will provide their recommendations to the Commission to reclassify these species.

Policy issue(s) you are bringing to the Commission for consideration:

- Protect and conserve Washington's native wildlife.
 - Continue recovery actions for these state-listed species.
-

Public involvement process used and what you learned:

On February 11, 2015, the agency sent out a press release and launched a website to solicit information from the public to be included in the periodic status reviews. In accordance with WAC, individuals and organizations had one year to contribute information for the reviews. Staff included this information, as applicable, in the status review documents. The documents were then reviewed by WDFW staff and external species experts before a 90-day public comment period and a concurrent SEPA 90-day comment period began on the document and our findings. The comments were collated, responded to, and included in the final periodic status reviews.

Action requested:

Briefing and public hearing only.

Draft motion language:

Briefing and public hearing only.

Justification for Commission action:

Conserve and recover Washington's state-listed species.

Communications Plan:

WDFW Website
News Releases

Form revised 12/5/12

WAC 232-12-011 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>
North American lynx	<i>Lynx canadensis</i>
ferruginous hawk	<i>Buteo regalis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
green sea turtle	<i>Chelonia mydas</i>
loggerhead sea turtle	<i>Caretta caretta</i>
sage grouse	<i>Centrocercus urophasianus</i>
sharp-tailed grouse	<i>Phasianus columbianus</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
<u>American white pelican</u>	<u><i>Pelecanus erythrorhynchos</i></u>

(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 gibbosus</i>
Common Loon	<i>Gavia immer</i>
bald eagle	<i>Haliaeetus leucocephalus</i>

Common Name	Scientific Name
Peregrine Falcon	<i>Falco peregrinus</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>Spermophilus saturatus</i>
golden-mantled ground squirrel	<i>Spermophilus lateralis</i>
Washington ground squirrel	<i>Spermophilus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</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 damag-

ing 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, 77.12.020, and 77.12.047. 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 Author-

ity: 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 232-12-014 Wildlife classified as endangered species. Endan-

gered species include:

Common Name	Scientific Name
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Martes pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
sea otter	<i>Enhydra lutris</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>
black right whale	<i>Balaena glacialis</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
American white pelican	<i>Pelecanus erythrorhynchos</i>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>charadrius alexandrinus</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>
<u>North American lynx</u>	<u><i>Lynx canadensis</i></u>
<u>marbled murrelet</u>	<u><i>Brachyramphus marmoratus</i></u>

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047. WSR 16-11-023 (Order 16-84), § 232-12-014, filed 5/6/16, effective 6/6/16; WSR 15-10-022 (Order 14-95), § 232-12-014, filed

4/27/15, effective 5/28/15. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 06-04-066 (Order 06-09), § 232-12-014, filed 1/30/06, effective 3/2/06; WSR 04-11-036 (Order 04-98), § 232-12-014, filed 5/12/04, effective 6/12/04. Statutory Authority: RCW 77.12.047, 77.12.655, 77.12.020. WSR 02-11-069 (Order 02-98), § 232-12-014, filed 5/10/02, effective 6/10/02. 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), § 232-12-014, filed 1/24/00, effective 2/24/00. Statutory Authority: RCW 77.12.020. WSR 98-23-013 (Order 98-232), § 232-12-014, filed 11/6/98, effective 12/7/98; WSR 97-18-019 (Order 97-167), § 232-12-014, filed 8/25/97, effective 9/25/97; WSR 93-21-026 (Order 616), § 232-12-014, filed 10/14/93, effective 11/14/93. Statutory Authority: RCW 77.12.020(6). WSR 88-05-032 (Order 305), § 232-12-014, filed 2/12/88. Statutory Authority: RCW 77.12.040. WSR 82-19-026 (Order 192), § 232-12-014, filed 9/9/82; WSR 81-22-002 (Order 174), § 232-12-014, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-014, filed 6/1/81.]



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

Preproposal Statement of Inquiry was filed as WSR 16-13-044 on 6/8/16 & WSR 16-02-115 on 1/6/16 ; 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).

Original Notice

Supplemental Notice to WSR

Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

The department is proposing to amend existing rules regarding wildlife.
WAC 232-12-011 Wildlife classified as protected shall not be hunted or fished
WAC 232-12-014 Wildlife classified as endangered species

Hearing location(s):

Fish and Wildlife Commission Meeting
Natural Resources Building, Room 172
1111 Washington St., SE
Olympia, WA 98501

Date: Friday, November 4-5, 2016 Time: 8:00 a.m.

Submit written comments to:

Online: <http://wdfw.wa.gov/about/regulations/development.html>
Name: Wildlife Program
Attn: Administrative Rule Public Comments
Address: 600 Capitol Way N
Olympia, WA 98501-1091
E-mail: wildthing@dfw.wa.gov
fax (360)902-2162 by (date) October 14, 2016

Assistance for persons with disabilities: Contact

Tami Lininger by October 14, 2016

TTY (800) 833-6388 or (360) 902-2267

Date of intended adoption: on or after December 9, 2016

(Note: This is **NOT** the **effective** date)

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

The proposal will remove bald eagle and peregrine falcon from the state's sensitive species subcategory (WAC 232-12-011). However, as non-game birds the bald eagle and peregrine falcon shall remain protected species under WAC 232-12-011. These species will also continue to be protected under the federal Migratory Bird Treaty Act and the bald eagle is also protected under the federal Golden and Bald Eagle Act.

The proposal will reclassify American white pelican from state endangered (WAC 232-12-014) to the state's threatened species subcategory (WAC 232-12-011).

In addition, the proposal will reclassify the North American (Canada) lynx and marbled murrelet from the state's threatened species subcategory (WAC 232-12-011) to state endangered (WAC 232-12-014).

Reasons supporting proposal:

See Attachment A

Statutory authority for adoption: RCWs 77.04.012, 77.04.013, 77.04.055, and 77.12.047

Statute being implemented: RCWs 77.04.012, 77.04.013, 77.04.055, 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:

DATE September 19, 2016

NAME (type or print)
Scott Bird

SIGNATURE *Scott Bird*

TITLE Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 19, 2016

TIME: 3:15 PM

WSR 16-19-068

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

None

Name of proponent: (person or organization)

- Private
- Public
- Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Eric Gardner	600 Capitol Way N Olympia, WA 98501-1091	(360)902-2339
Implementation....	Eric Gardner	600 Capitol Way N Olympia, WA 98501-1091	(360)902-2339
Enforcement.....	Chief Chris Anderson	600 Capitol Way N Olympia, WA 98501-1091	(360)902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No. Explain why no statement was prepared.

These rule changes do not impact small businesses

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 () _____

e-mail _____

No: Please explain: No hydraulics are involved in these rule changes.

Attachment A

The department has reviewed all relevant data pertaining to the population status of bald eagle, peregrine falcon, American white pelican, North American (Canada) lynx, and marbled murrelet in Washington. Protection measures to recover the bald eagle have abated primary threats allowing the species to make an incredible recovery both within Washington as well as nationally. While there are still potential threats across the landscape, the preponderance of evidence suggests that the bald eagle population continues to grow despite those threats. Like bald eagle, primary threats to peregrine falcons have been ameliorated and the current population demographics and positive growth trajectory warrant removal from the State's list of endangered, threatened, and sensitive species.

Concurrent with range wide increases, the numbers of American white pelicans observed in Washington have increased substantially in the last 30 years, although with just a single population in Washington the species remains vulnerable.

Information on the North American (Canada) lynx indicates that the state population has declined likely largely from the loss of suitable habitat due to wildfires. Washington's marbled murrelet population has continued to decline due to a number of factors, including loss and fragmentation of suitable nesting habitat, nest predation, and changes in availability of prey in the marine environment.

WAC 232-12-011 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>
((North American lynx	<i>Lynx canadensis</i>))
ferruginous hawk	<i>Buteo regalis</i>
((marbled murrelet	<i>Brachyramphus marmoratus</i>))
green sea turtle	<i>Chelonia mydas</i>
loggerhead sea turtle	<i>Caretta caretta</i>
sage grouse	<i>Centrocercus urophasianus</i>
sharp-tailed grouse	<i>Phasianus columbianus</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
<u>American white pelican</u>	<u><i>Pelecanus erythrorhynchos</i></u>

(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 gibbosus</i>
Common Loon	<i>Gavia immer</i>
((bald eagle	<i>Haliaeetus leucocephalus</i>
Peregrine Falcon	<i>Falco peregrinus</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>

Common Name	Scientific Name
Cascade golden-mantled ground squirrel	<i>Spermophilus saturatus</i>
golden-mantled ground squirrel	<i>Spermophilus lateralis</i>
Washington ground squirrel	<i>Spermophilus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</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.

WAC 232-12-014 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Martes pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
sea otter	<i>Enhydra lutris</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>
black right whale	<i>Balaena glacialis</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
(American white pelican	<i>Pelecanus erythrorhynchos</i>)
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>charadrius alexandrinus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
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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>
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<u>marbled murrelet</u>	<u><i>Brachyramphus marmoratus</i></u>