

## Report From Agency

### REPORT TO LEGISLATURE

NR 27, Wis. Adm. Code

Relating to the revision of the Wisconsin endangered and threatened species list

Board Order Number: ER-27-11

Clearinghouse Rule Number: CR 13-010

### **Basis and Purpose of the Proposed Rule**

Wisconsin's endangered and threatened species list [NR 27.03 (2) and (3)] was created in 1975 in order to provide legal protection for those species of plants and animals whose populations are critically low and are in danger of becoming extirpated from the state. Subsection 29.604 (3) (b) requires the Department of Natural Resources to periodically review and revise the E/T species list.

Since the first list of Wisconsin E/T species was developed in 1972, the list has been revised 10 times. The major list revisions, where greater than 5 species were removed or added, took place in 1978-1979, 1985, 1989, and 1997. While the last major list revision was in 1997, the list has been occasionally revised for individual species: Gray Wolf (delisted in 2004), Bald Eagle (delisted in 2007), Osprey (delisted in 2009), Trumpeter Swan (delisted in 2009), and four cave bat species (listed in 2011).

Between January 2010 and August 2011, the Department initiated and completed a review of Wisconsin's rare species. Department biologists focused attention and resources on conducting status assessments on species that are at risk of extirpation in the state and where application of Wisconsin's Endangered Species Law would be effective in their protection. The rare species review resulted in the following proposed changes to Ch. NR 27, Wis. Admin. Code, adding eight species to and removing 15 species from the Wisconsin endangered and threatened species list, and updating 20 scientific names.

- Add 8 Animals: A Leafhopper (*Attenuipyga vanduzeei*), Upland Sandpiper, Black Tern, Beach-dune Tiger Beetle, Kirtland's Warbler, An Issid Planthopper, Ottoe Skipper, and Fawnsfoot.
- Remove 7 Animals: Snowy Egret, Blanding's Turtle, Greater Redhorse, Pygmy Snaketail, Butler's Gartersnake, Bewick's Wren, and Barn Owl.
- Remove 8 plants: Yellow Giant Hyssop, Prairie Indian-Plantain, Drooping Sedge, Canada Horse-balm, Yellow Gentian, American Fever-few, Bog Bluegrass, and Snowy Campion.
- Update 20 scientific names

The proposed scientific name changes reflect current understanding of the scientific community and include mostly placement of species into a different Genus or taxonomic group. Several discrepancies in spelling are also corrected. All of the species are still regarded as valid species.

The primary short-term and long-term effects of this proposed list revision are to provide greater protection for those plants and animals that are critically rare in Wisconsin and will likely be lost or undergo severe population declines if not granted protection, by focusing conservation efforts and avoidance/minimization measures on the most at risk species. And remove the protection for those that are no longer considered critically rare.

Groups likely to be impacted by the proposed list revision include the conservation community, project applicants through the environmental review process, and the general public, including agricultural and forestry industries, commercial and development businesses, natural resources consultants, utilities, road builders and wildlife rehabilitators. The Department believes the impact of these proposed rule changes on businesses and

municipalities will be minimal. As the endangered species law (s. 29.415, Stats.) is already in effect, there will be no change in Department policy regarding means to conserve these species.

The addition of eight species and removal of 15 species would bring the total number of plants and animals on the Wisconsin endangered and threatened species list from 239 to 232.

### **Summary of Public Comments**

Public hearings were held in March 2013. A public hearing was held on March 6<sup>th</sup> at the Marathon County Public Library in Wausau. Due to the potential for severe winter weather the public hearings on March 5<sup>th</sup> were rescheduled to March 11<sup>th</sup> at the DNR building in Madison with the option to participate remotely via LiveMeeting for those who could not attend in person. Representing the Department were Hearing Examiner Mike Foy, Bureau of Natural Heritage Conservation (formerly Endangered Resources) staff members William A. Smith, Kelly S. Kearns, Rori Paloski, and Terrell Hyde.

A total of 14 people attended and eight provided verbal comment at a public hearing/meeting. Of the 14, seven indicated their position was "as interest may appear", one indicated "in support", three indicated "in opposition", and three did not mark a position on the slip. None of the attendees indicated that they represented a small business as defined by s. 227.114, Wis. Stats. The Department received a total of 38 written comments (five public hearing/meeting attendees also submitted written comments/speaking notes). Written comments were accepted through March 11, 2013.

Of the 47 people who attended a hearing or provided written comment, 39 represented themselves and eight represented the following organizations: The Botanical Club of Wisconsin, Dairyland Power Company, Menominee Indian Tribe of Wisconsin, Northwoods Alliance and Timberwolf Alliance, Turtles for Tomorrow, Wisconsin Society for Ornithology, Wisconsin Builders Association, and Wisconsin Wildlife Federation.

Of the 49 comments, 10 noted support and 23 noted opposition for all or portions of the proposed rule. Species specific comments and position (support:oppose) were made on the following species: barn owl (1:3), Bewick's wren (1:0), black tern (2:0), Blanding's turtle (3:18), Butler's gartersnake (3:4), Canada horse-balm (0:2), fawnsfoot (1:0), greater redhorse (1:0), hemlock parsley (0:2), Kirtland's warbler (2:0), snowy egret (1:2), and upland sandpiper (3:0).

Eleven non-rule related comments/questions were received. Two comments were received regarding additional listing recommendations and one NR 27 edit, that could not be considered under the current rule revision process due to the Scope Statement.

The Department made one change to the proposed rule, based on public comments. The Department recommends keeping Hemlock parsley (*Conioselinum chinense*), a plant considered extirpated, on the E/T list until a thorough survey of recently discovered potential habitat is made.

Given the number of comments on the Blanding's turtle population status in Wisconsin, the Department reanalyzed the species population condition and state conservation rank using the feedback and input received. The revised conservation rank, using the public comments, was calculated as S3S4 ("uncommon-apparently secure"). Given the number of populations with excellent-good viability, the Department feels delisting is warranted. General turtle regulations will remain in place that limits collection to five individuals and harvest to July-November. Additionally, the Department will propose listing the Blanding's turtle as a Protected Wild Animal under s. NR 10.02, Wis. Admin. Code.

### **Modifications Made**

The Department made one change to the proposed rule, based on public comments. The Department recommends keeping Hemlock parsley (*Conioselinum chinense*), a plant considered extirpated, on the E/T list until a thorough survey of recently discovered potential habitat is made.

Under a subsequent administrative rule process, the Department will propose listing the Blanding's turtle as a Protected Wild Animal under s. NR 10.02, Wis. Admin. Code.

### **Appearances at the Public Hearing**

A total of 14 people attended and eight provided verbal comment at a public hearing/meeting. Of the 14, seven indicated their position was “as interest may appear”, one indicated “in support”, three indicated “in opposition”, and three did not mark a position on the slip. None of the attendees indicated that they represented a small business as defined by s. 227.114, Wis. Stats.

### **Changes to Rule Analysis and Fiscal Estimate**

Hemlock parsley (*Conioselinum chinense*) was removed from the Plain Language Analysis and Board Order Format sections.

Pursuant to s. 227.137, Wis. Stats., the Department solicited comments on the economic impact of proposed rule. Comments were collected between September 24, 2012 and October 24, 2012. A total of 18 comments were received. Eight of the comments included economic impacts and were incorporated into an Economic Impact Analysis (EIA). No small businesses submitted comments and no local governments submitted comments or requested we coordinate with them in the preparation of the EIA. No comments were received during the comment period on the rule. The number of species proposed for removal from the endangered and threatened list was changed from 16 to 15, reflecting the removal of Hemlock parsley. No changes were made to the fiscal estimate.

### **Response to Legislative Council Rules Clearinghouse Report**

Comments from the Legislative Council Rules Clearinghouse were received on February 21, 2013. A total of ten comments or suggested changes were made: Seven comments addressing Form, Style, and Placement in Administrative Code; and three addressing Clarity, Grammar, Punctuation and Use of Plain Language. All comments and suggested changes have been accepted and the proposed rule order revised accordingly.

### **Final Regulatory Flexibility Analysis**

A final regulatory flexibility analysis was not prepared since the proposed rule does not impose compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.114(6) or 227.14(2g). A review by the Small Business Regulatory Review Board was not required under 227.19(3)(h).