

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Attachment 2

Oregon Department of Fish and Wildlife (ODFW)	635
Agency and Division	Administrative Rules Chapter Number
Teri Kucera	(503) 947-6033
Rules Coordinator	Telephone

3406 Cherry Ave NE Salem, OR 97303

RULE CAPTION

Amend Rules Relating to Protected Fish and Wildlife Taxonomy and to the Sensitive Species List

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Josephine County Fairgrounds
1451 Fairgrounds RD

September 4, 2009	8:00 AM	Grants Pass, OR 97527	Oregon Fish and Wildlife Commission
Hearing Date	Time	Location	Hearings Officer

Hearing Date	Time	Location	Hearings Officer
<i>Auxiliary aids for persons with disabilities are available upon advance request.</i>			

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.
ADOPT:

AMEND: OAR 635 Divisions 044, 045, and 100

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Other Auth.:

Stats. Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

RULE SUMMARY

Review, update and amend rules relating to protected fish and wildlife and relating to the department's Sensitive Species List. Make amendments to rule that will support a coordinated scientific approach between the Sensitive Species list, the Oregon Conservation Strategy and the Oregon Nearshore Strategy. Specific rule changes include: updating taxonomic standards, updating scientific and common names, clarifying the intent and purpose of the Sensitive Species List, establishing criteria for Sensitive Species, and updating rule requirements.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

September 4, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Liz Bueffel

Printed name

7-8-09

Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Fish and Wildlife (ODFW)

635

Agency and Division

Administrative Rules Chapter Number

Amend Rules Relating to Protected Fish and Wildlife Taxonomy and to the Sensitive Species List

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of Amendment of Rules)	Statutory Authority,
Relating to the Sensitive Species List and)	Statutes Implemented,
Taxonomy related to Protected Fish and)	Statement of Need,
Wildlife.)	Principal Documents Relied Upon,
)	Statement of Fiscal Impact

Statutory Authority: ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Other Authority:

Stats. Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

Need for the Rule(s): These amendments are needed because it is exceedingly difficult to provide a clear, consistent taxonomic standard for the public and law enforcement. The current rules refer to the "Wildlife Diversity Plan" as the taxonomic standard. The technical portion of this Plan has not been updated since November of 1993. These rule changes are also needed to amend the biannual requirement for updating the Sensitive Species List to an updating requirement of every five years, which is more realistic and biologically appropriate. Amending this rule will support a coordinated scientific approach between the Sensitive Species list, the Oregon Conservation Strategy and the Oregon Nearshore Strategy.

Documents Relied Upon and where they are available:

Oregon Conservation Strategy, Oregon Nearshore Strategy, Wildlife Diversity Plan, Native Fish Conservation Policy, Native Fish Status Report, Taxonomic websites (e.g., NatureServe and Integrated Taxonomic Information System) and taxonomic publications:

- (1) Nelson, J. S., E. J. Crossman, H. Espinosa-Perez, L. T. Findley, C. R. Gilbert, R. N. Lea, and J. D. Williams. 2004. Common and scientific names of fishes from the United States, Canada, and Mexico. American Fisheries Society, Special Publication 29, Bethesda, Maryland.
- (2) Behnke, Robert J. 2002. Trout and Salmon of North America. The Free Press. New York.
- (3) Moyle, P. B. 2002. Inland Fishes of California. Revised and expanded. University of California Press. Berkeley, California.
- (3) Crother, B. I., editor. 2008. Scientific and standard English names of amphibians and reptiles of North America north of Mexico, with comments regarding confidence in our understanding. 6th Edition. Society for the Study of Amphibians and Reptiles, Herpetological Circular No. 37.
- (4) Banks, R. C. et al. 2007. Forty-eighth supplement to the American Ornithologists' Union Checklist of North American Birds. *The Auk* 124(3):1109-1115.
- (5) Wilson, D. E., and D. M. Reeder, editors. 2005. Mammal Species of the World. A Taxonomic and Geographic Reference. 3rd Edition. Johns Hopkins University Press.
- (6) Jelks, H.L., S.J. Walsh, N.M. Burkhead, S. Contreras-Balders, E. Diaz-Pardo, D.A. Hendrickson, J. Lyons, N.E. Mandrak, F. McCormick J. S. Nelson, S. P. Platania, B. A. Porter, C.B. Renaud, J.J. Schmitter-Soto, E. B. Taylor, and M. L. Warren, Jr. 2008. Conservation Status of Imperiled North American Freshwater and Diadromous Fishes. *Fisheries*. 33(8): 372-407.

The above documents are available for public inspection in the Department of Fish and Wildlife, Fish Division, Third Floor, 3406 Cherry Avenue NE, Salem, Oregon, between 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

Fiscal and Economic Impact: See Attached

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): See attached
2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: See attached

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: See attached

c. Equipment, supplies, labor and increased administration required for compliance: See attached

How were small businesses involved in the development of this rule?

Administrative Rule Advisory Committee consulted?: No

If not, why?:

The department staff consulted with scientific experts by telephone and email correspondence in the development of these amendments. Correspondence from and testimony by interested and affected persons has been considered in developing the administrative rules.



Liz Bueffel

Printed name

7-8-09

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

Fiscal and Economic Impact Statement for the September 4, 2009 Hearing in the Matter of Rules Relating to the Sensitive Species List

Fiscal and economic impact: Rule changes are being proposed to Review, update and amend rules relating to protected nongame wildlife and relating to the department's Sensitive Species List. Specific rule changes include: updating taxonomic standards, updating scientific and common names, clarifying the intent and purpose of the Sensitive Species List, establishing criteria for Sensitive Species, and updating rule requirements. Currently, the list has a provision that updates be made every two years. The proposed rules would change that interval to five years to allow for long-term trend information to be incorporated when adding or removing species from the sensitive species list. This interval reflects the timeframe necessary for adequate staff review and public input relating to list updates.

The proposed rule changes will affect state agencies, units of local government, and the public, respectively, as discussed below:

- A. The only state agency that might be affected by adoption of these rules is the Oregon Department of Fish and Wildlife (ODFW). Updates of the taxonomy for protected nongame wildlife would not have a cost or cost savings to the department, and just reflect housekeeping changes to keep up with current science and advances in genetic understanding. The change of the interval on which to update the sensitive species list will result in less demand on staff time than current rules. Changes in staff levels are not proposed as part of this rule change, but priorities of existing staff will be shifted. Other changes to the sensitive species list rule are clarifications of existing rules and processes and will not change ODFW expenditures or priorities.
- B. No units of local government are expected to be affected by these rules. No significant changes from the current levels of any local agencies' operations or expenditures are expected as a result of the adoption of these rules.
- C. The public would not be affected by these rules directly. Any changes to the species included on the sensitive species list could affect regulations related to in-water blasting permits and chemical process mining permits. Any changes to the protected nongame wildlife species could affect which unprotected nongame wildlife may be legally captured or killed by the public. However, this rulemaking does not change the number of species on the sensitive species list nor the number of protected nongame wildlife beyond taxonomic updates, so will have no effect on the public.

Most businesses affected by these rules are believed to be "small business."

The rules are believed to be fully compatible with legislative direction on the goals of wildlife management in Oregon.

We do not believe that a less intrusive or less costly alternative adaptation to only small business is consistent with the purpose of the rule.