

## Updating Wildlife Taxonomy and Sensitive Species List Rules, Staff Summary

### Issue 1: Update taxonomy standards and common and scientific names.

#### **Background**

Taxonomy is the science, process, and structure of classifying species. It is a hierarchal structure that defines scientific nomenclature (naming) and how species are related to each other.

Implementation of Oregon Administrative Rules governing holding and protection of wildlife require clear taxonomic standards. However, it is very difficult to provide a clear, consistent standard for the public and law enforcement, while staying current with taxonomic updates. Currently, Division 44 (635-044-0002) refers to the Wildlife Diversity Plan for a taxonomic standard. The technical portion of the Wildlife Diversity Plan has not been updated since being adopted in 1993. Since 1993, there have been many taxonomic name changes that are now widely accepted by the scientific community. The Oregon Conservation Strategy is currently the department's technical document guiding conservation priorities, including nongame wildlife. Because the department does not plan on updating the technical portion of the Wildlife Diversity Plan, the Plan should not be the taxonomic standard for Division 44.

While taxonomy does change over time, the law requires that the Commission set fish and wildlife policy through rulemaking. In consultation with the Department of Justice, staff has concluded that the best way to accommodate taxonomic changes while complying with legal requirements is to periodically ask the Commission to amend its rules concerning species classification and name changes. Staff's proposed amendments caution the reader that we will use certain classifications and names (reflected in specific scientific source materials) until the Commission decides to amend its rules in the future to track the latest science. This approach should ensure enforceability and consistency.

#### **Example Problem**

The Nongame Wildlife Protected rule lists protected species. Except as provided by other rules, it is unlawful for any person to hunt, trap, pursue, kill, take, catch, angle for, or have in possession, either dead or alive, whole or in part, any threatened, endangered or protected species.

The spotted frog (*Rana pretiosa*) is listed as Nongame Wildlife Protected under 635-044-130. In 1997, the species was split into the Oregon spotted frog (*R. pretiosa*) and Columbia spotted frog (*Rana luteiventris*) [Green, D.M., H. Kaiser, T.F. Sharbel, J. Kearsley, and K.R. McAllister. 1997. Cryptic species of spotted frogs, *Rana pretiosa* Complex, in western North America. *Copeia*. 1-8]. This species split is universally recognized by herpetologists and state and federal biologists. Both the Oregon and Columbia spotted frog are Candidate Species for listing under the federal Endangered Species Act and are included on Oregon's Sensitive Species List.

In recent years we have had two issues regarding protection of Columbia spotted frogs:

- Campers were shooting frogs at a pond near a campground. The U.S. Forest Service decided not to post an educational sign (telling campers not to shoot the frogs) because U.S. Forest Service law enforcement interpreted our rules as the frogs not being protected.

- An enterprising boy was selling Columbia spotted frogs for personal profit. His parents questioned whether the species was protected under 635-044-0130. However, because sale of all native wildlife is clearly illegal in Oregon, the family found a legal nonnative species for the boy to sell.

The intent of 635-044-0130 was to protect the spotted frog throughout Oregon, and that intent has not changed with the species split.

### **Proposed Changes and Next Steps**

Staff looked at several alternatives for providing a taxonomic standard in rule. Based on analysis and consultations with the Attorney General's office, the best option is to adopt widely-accepted references in rule, as was done in the Wildlife Integrity Rules (e.g., 635-056-0000). The proposed draft rules also update the scientific and common names to reflect the new taxonomic standard. In some cases, only the common name is provided for fish species that do not have a consistently-accepted scientific name in the literature.

It is important to note that the department did not review or change the species on the protected species list other than (1) remove species that are no longer taxonomically recognized, (2) add species created through taxonomic splits, and (3) remove the Washington Ground Squirrel, which has since been listed under the threatened and endangered species rules [so falls under 635-044-0130(a) not 635-044-0130(b)]. The department recognizes that the protected species list needs a thorough review. However, such a review will require a much more involved process with a high degree of public involvement. The intent of the proposed rule changes is to fix a technical problem caused by scientific changes in taxonomy.

The references in the proposed draft rules will continue to be updated over time. As a result, Division 44 will need to be updated periodically. An appropriate time period is approximately every 5 years, which is how frequently the herpetological reference is updated. To help deal with inevitable taxonomic changes between rule updates, the draft rules have language stating that taxonomy remains as cited in rule.

## **Issue 2: Update and clarify rules pertaining to the Sensitive Species List (SSL).**

### **Background**

The department currently has 3 means by which at-risk species are identified and managed. First, the Oregon Conservation Strategy takes a comprehensive, proactive non-regulatory approach for conservation, identifying a broad suite of species and habitats on which to focus investments. Second, the Sensitive Species List takes a narrower, but generally non-regulatory, approach. It helps focus fish and wildlife management and research activities to prevent species from declining to the point of qualifying as "threatened" or "endangered" under the Oregon Threatened and Endangered species rules. Lastly, the department maintains the Oregon Threatened and Endangered Species List, as outlined in OAR 635-100-0080 through 635-100-194. Threatened and Endangered species are at some degree of risk of becoming extinct. As stated in OAR 635-100-0080, the Commission's long-term goal for species listed as threatened or endangered under the state Endangered Species Act is to manage the species and their habitats so that the status of the species improves to a point where listing is no longer necessary. This goal is accomplished through voluntary and regulatory means (e.g., incentives, species management, coordinated planning, and habitat protection and restoration).

As stated previously, the department primarily uses the Sensitive Species List as a non-regulatory tool. However, the Sensitive Species List is referenced in the department’s Chemical Process Mining Consolidated Application and Permit Review Standards (OAR 635 Division 420) and In-Water Blasting Permits (OAR 635 Division 425). Also, department biologists provide scientific review of a variety of proposed land and water management actions based in part on Sensitive Species List priorities.

The Sensitive Species List was established in 1988, through the Sensitive Species Rule (OAR 635-100-0040). The list was updated in 1991, 1993, 1995, 1997 and 2008. During the last update, the department identified strategic changes to the Sensitive Species List rule that would clarify the purpose and intent for the Sensitive Species List, as well as the process and criteria for updating it. In addition, the department proposes to lengthen the time between updates to the list.

The department intends to fully align and/or merge the Sensitive Species List with the Conservation Strategy when the Conservation Strategy undergoes a complete review and update. The proposed rule changes will support a more coordinated approach between priority lists.

**Proposed Changes**

The proposed draft rules include the following changes:

<b>Proposed Change</b>	<b>Purpose and Intent</b>
Add shellfish and “animals living intertidally on the bottom” to the definition of “wildlife” for the purposes of the Wildlife Diversity Plan.	The definition of “wildlife” currently used in Division 100 (Wildlife Diversity Plan) includes fish but does not refer to marine species. Adding marine species to the Sensitive Species List will provide another tool for prioritizing marine research and management efforts and will facilitate potential merger of the Sensitive Species List, Oregon Conservation Strategy, and Oregon Nearshore Strategy during the next Conservation Strategy update. This particular definition of wildlife will only apply to Division 100.
Clarify purpose and definition of sensitive species.	The wording suggests that the Sensitive Species List is a candidate, or “watch,” list of species that the department is considering for listing as threatened or endangered. The current wording causes confusion and concern with some stakeholders. The department has never used the Sensitive Species List in this way, but rather as a tool to focus conservation efforts and funding. The new definition also clarifies that the purpose of the Sensitive Species List is to prevent <i>state</i> listing (the current wording could be interpreted to apply to either the state or federal endangered species list).

<b>Proposed Change</b>	<b>Purpose and Intent</b>
Change update period from “biannually” to every five years.	The Sensitive Species List is intended to be updated every two years (although OAR 635-100-0040 actually says “biannually” rather than the intended “biennially”). Biennial updates are not supported biologically, and they are logistically unrealistic. The status of populations rarely changes that quickly, and significant new data are generally not available. In addition, due to the need for increased participation and review by department staff and external entities, updating the list represents a significant investment of staff time. The proposed five year update period for the Sensitive Species List mirrors the Oregon Conservation Strategy update requirement.
Move to earlier in the rule the description of how species qualify for inclusion on the Sensitive Species List.	This improves the logical flow by applying the description broadly to the Sensitive Species List rather than narrowly to when individual people request that a species be included on or deleted from the Sensitive Species List.
Add consideration of factors described in 635-100-0105 (criteria for listing as threatened or endangered) when determining whether a species is included on the sensitive species list.	Currently there are no specific criteria or considerations for inclusion on the Sensitive Species List. Specifying criteria will provide some guidance, consistency and credibility. Because the intent of the Sensitive Species List is to prevent species from qualifying for listing under the state Threatened and Endangered Species rules, it is appropriate to cite the factors described in those rules.
Clarify that the department may add or remove a species from the list at any time based on new or additional information on species population status, habitat or threats.	The department recognizes that emerging issues (e.g., white-nose syndrome in bats) can arise quickly, so the rules should clearly allow adjustment between regular updates. Conversely, new survey data may indicate that a species is more common than previously thought and should be removed from the Sensitive Species List. Because the department proposes to lengthen the interval between updates, it is important to clarify that the department is able to adjust the list in response to new information. In scoping conversations with partners and stakeholders, having this provision increased support for lengthening the update interval period.