

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 27, Wisconsin's List of Endangered/Threatened Species NR 27.03(2) and (3).

3. Subject

Revisions to NR 27.03 list of Endangered/Threatened Species [Board Order ER-27-11] to add 8 animals and remove 16 plants and animals, and to update 20 scientific names.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

State statute, s. 29.604 (3) (b) Wis. Stats., gives the DNR the authority to periodically review and, after public hearing, to revise the Endangered and Threatened species (E/T) list.

Updating the E/T list to focus conservation efforts and avoidance/minimization measures on WI's most at risk species will ultimately save money. All actions that the Department conducts, funds or approves on public or private lands must be screened for potential impacts to rare species. Most often the public and small businesses become aware of the endangered species law through one of DNR's permitting processes. Wisconsin's endangered species law is implemented by the department in that any activity that the department conducts, funds or approves must consider impacts to listed species (s.29.604 Wis. Stats.). Both endangered and threatened species have the same level of legal protection. Under Wisconsin's law listed animals are protected on all public and private land. Plants are only protected on public land and agricultural, forestry, and utility activities are exempt from this protection (s. 29.604 Wis. Stats.).

Endangered Resources Screening relies on Natural Heritage Inventory (NHI) data for records of rare species occurrences. The number of NHI records for species proposed for addition to the E/T list is far fewer than the number of records for species proposed for delisting – eight species are proposed for listing (with a total of 217 NHI occurrences) versus 16 species proposed for delisting (with a total of 1055 NHI occurrences). Reducing the number of E/T species records will lessen regulatory impacts to businesses and individuals.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Groups likely to be impacted or interested in the issue include the conservation community, project applicants through the environmental review process, and the general public. Affected constituencies include agricultural and forestry industries, commercial and development businesses, natural resources consultants, utilities, road builders and wildlife rehabilitators.

11. Identify the local governmental units that participated in the development of this EIA.

Pursuant to s. 227-137 Wis. Stats., the department was required to solicit comments on the economic impact of the

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proposed rule, and if requested to coordinate with local governments in the preparation of an Economic Impact Analysis (EIA). The notice to solicit comments was sent to the county and town associations in the state. Comments were collected between 9/24/2012 and 10/24/2012. A total of 18 comments were received; 8 were economic comments that were incorporated into the EIA. No local governments submitted comments or requested we coordinate with them in the preparation of the EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The economic cost of listing and delisting a species is highly dependant on its range and distribution, seasonal occurrence, habitat requirements, management needs, sensitivity to disturbance, etc. Effects of listing/delisting will be highly variable among different types of businesses and their locations and hard to predict, however the overall economic impact of the proposed revisions will be reduced because of the location and number of NHI records. The 16 species being proposed for removal from the endangered and threatened species list have a total of 1055 records in the NHI database which is used for conducting an endangered resources review. There are a total of 217 records in the NHI database for the eight species being proposed for addition.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Updating the E/T list to focus conservation efforts and avoidance/minimization measures on WI's most at risk species will ultimately save money. All actions that the Department conducts, funds or approves on public or private lands must be screened for potential impacts to rare species. Endangered Resources Screening relies on NHI data for records of rare species occurrences. The number of NHI records for species proposed for addition to the E/T list is far fewer than the number of records for species proposed for delisting – eight species are proposed for listing (with a total of 217 NHI occurrences) versus 16 species proposed for delisting (with a total of 1055 NHI occurrences). Reducing the number of E/T species records will lessen regulatory impacts to businesses and individuals.

14. Long Range Implications of Implementing the Rule

The primary short-term and long-term effects of this 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. 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 removal and addition of species to the list will likely require increased consultation with Department staff during environmental assessments and reviews. Enforcement requirements will not be significantly increased.

15. Compare With Approaches Being Used by Federal Government

The United States Fish and Wildlife Service maintains the list of Federal endangered and threatened species. The Kirtland's Warbler (*Dendroica (=Setophaga) kirtlandii*) is the only Federally Listed species that is being proposed for state listing in Wisconsin under this proposal.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota, Illinois, Iowa, and Michigan all have an endangered species law and maintain a state list of endangered and threatened plants and animals. Sixteen of the 24 species being proposed for addition or removal from the list are listed or are being considered for listing in a neighboring state.

17. Contact Name

Erin Crain

18. Contact Phone Number

608/267-747

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

[Detailed EIA report attached]

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Bureau of Endangered Resources staff; WDNR's Economist; and from the public comments received during the EIA comment period.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

Because this rule does not create new regulatory requirements of small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Most often the public and small businesses become aware of the endangered species law through one of DNR's permitting processes. Wisconsin's endangered species law is implemented by the department in that any activity that the department conducts, funds or approves must consider impacts to listed species (s.29.604 Wis. Stats.). Both endangered and threatened species have the same level of legal protection. Under Wisconsin's law listed animals are protected on all public and private land. Plants are only protected on public land and agricultural, forestry, and utility activities are exempt from this protection (s. 29.604 Wis. Stats.).

In most instances, a permit applicant provides a description of the proposed project. Department staff perform an endangered resources review utilizing the NHI database to determine if 1) there is a listed species that may be present, and if 2) the project area has suitable habitat for that species. If either of these criteria are not present the applicant is informed that there is no potential impact and the project proceeds. Over 2/3 of projects fall into this category. If both the species is known to be in the area and there is suitable habitat on the project site, the department works with the applicant to see if impacts to a listed species may be avoided through seasonal adjustments, temporary removals or barriers. If it can, the project proceeds. If impacts can't be avoided, an incidental take permit is issued to the applicant that allows take of the species. State law requires that all projects under an incidental take permit must minimize and mitigate these impacts. (s.29.604 Wis. Stats.). When the minimization and mitigation measures are in place, the permit is publicly noticed the project may proceed. Very few projects require an incidental take permit, typically fewer than 20 a year are issued. The department has also created several broad incidental take permits to provide blanket incidental take coverage for routine activities. A broad incidental take permit, unlike an individual incidental take permit, does not require an application, processing time or a fee. The most recent broad incidental take permits cover grassland management and cave bats.

The removal and addition of species to the list will likely require increased consultation with Department staff during environmental assessments and reviews.

5. Describe the Rule's Enforcement Provisions

Enforcement and administration programs for rules and permits are already in place. No changes are expected in rule enforcement costs or the costs of issuing permits for endangered and threatened species. Increases can be expected in the amount of time required to administer the resulting list of endangered and threatened species, but costs are expected to be absorbed within existing DNR budgets. Management and protection costs will increase with the addition of new

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species to the list and decrease with removals; given the number of species and records of occurrences, it is expected that costs will decrease.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No
