

Clearinghouse Rule 13-010

Report to
Legislative Council Rules Clearinghouse
NR 27, Wis. Adm. Code
Natural Resources Board Order No. ER-27-11

Wisconsin Statutory Authority

Section ss. 29.604 (3)(b), Wis. Stats.

Federal Authority

These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations. All of the birds in this proposal are given protections under the Migratory Bird Treaty Act of 1918, but our proposed rule changes are not in conflict with federal regulations

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

Comparison of Adjacent States

Minnesota, Illinois, Iowa, and Michigan all have an endangered species law and maintain a state list of endangered and threatened plants and animals: Illinois (1972 law, list last revised in 2009/2010), Iowa (1975 law, list last amended in 2009), Michigan (1974/1994 law, list last revised in 2009), Minnesota (1972 law, list last revised in 1996 and is currently undergoing a formal rule revision process to update the list).

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

No new policies are proposed. Wisconsin's endangered and threatened species list is governed by Wisconsin Adm. Codes, NR 27 and NR 10.02 and State statute, s. 29.604 (3) (b) Wis. Stats.

State statute, s. 29.604 (3) (b) Wis. Stats., gives the DNR the authority to periodically review and, after public hearing, to revise the E/T 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 4 cave bat species (listed in 2011).

The Department's Bureau of Endangered Resources initiated and completed a review of Wisconsin's rare species, and now proposes changes to Ch. NR 27, Wis. Admin. Code, which will add 8 species and remove 16 species in Wisconsin to the Wisconsin endangered and threatened species list, and will update 20 scientific names.

The 8 species the state proposes to add to the endangered and threatened list are:

Upland Sandpiper (*Bartramia longicauda*), a bird, is found primarily in the southwest, northwest sands, and northeastern part of the state. Other secondary areas are in the central, southeast, and western parts of the state. This species prefers large, open

landscapes with short to mid-height grassy vegetation, including remnant prairie, lightly grazed pastures, barrens, old fields, and other idle grasslands, and hay fields. This species is in decline in Wisconsin, some of the largest declines in its range; once reported at 55 sites. It may disappear from Wisconsin without large blocks of idle and/or grazed grasslands. Add to threatened list [NR27.03(3)].

Black Tern (*Chlidonias niger*), a bird, is found in northern, eastern, and central Wisconsin in marshes, river sloughs, rivers, lakeshores, impoundments, and wet meadows, typically in sites with mixture of emergent vegetation and open water. The species is in decline in Wisconsin. Surveys indicate declines as much as 36% in recent years and a 78% decline over 30 years. Once reported at 79 sites, was found only at 7 breeding colonies in 2010. Add to endangered list [NR27.03(2)].

Kirtland's Warbler (*Dendroica* (= *Setophaga*) *kirtlandii*), a bird, is found in Adams and Marinette counties in areas at least 30 hectares in size, where scrubby jack pine (2 to 6 meters high) is interspersed with many small openings and minimal ground cover. This species is considered to be "critically imperiled" globally and is currently on the Federal list of endangered species. This species has nested in Wisconsin consistently since 2007; twelve new populations are now known. There are historic records of individuals in the state. Add to endangered list [NR27.03(2)].

Beach-dune Tiger Beetle (*Cicindela hirticollis rhodensis*), a beetle also known as the "hairy-necked tiger beetle", is found on beaches of Lakes Superior and Michigan. This species is rare and declining in Wisconsin (30%). Once reported from 9-10 sites statewide, now only one known viable population remains. Add to endangered list [NR27.03(2)].

Fawnsfoot (*Truncilla donaciformis*), a freshwater mussel, is only known from the Mississippi River and portions of its major tributaries in Wisconsin (St. Croix and Wisconsin River). This species is in decline in Wisconsin. Populations are disappearing range wide. Once widespread and abundant, this species is rarely found in recent years. Numbers have greatly declined in WI's remaining viable populations (St. Croix and Lower Wisconsin Rivers). Add to threatened list [NR27.03(3)].

Ottoe Skipper (*Hesperia ottoe*), a butterfly, is found in nine counties in the southwestern corner of the state on dry to dry-mesic hill prairies, sand prairies, and sand barrens. This species is very rare and in decline in Wisconsin. Once known to 16 sites; as of 2011 only 4 are extant (a 75% decline since the mid-1990s). Many populations are gone range wide. Very few sites have the size, quality, structure, or connectivity to sustain this species. Add to endangered list [NR27.03(2)].

A Leafhopper (*Attenuipyga vanduzeei*), a small terrestrial insect also known as "a prairie leafhopper" or "shovel-headed leafhopper", is found in the highest quality prairie remnants near the Mississippi and Lower Wisconsin Rivers. This species is very rare in Wisconsin. Only 4 extant populations are known. This species has poor dispersal ability and is sensitive to management and woody encroachment. Add to endangered list [NR27.03(2)].

An Issid Planthopper (*Fitchiella robertsoni*), a small terrestrial insect also known as "Fitch's Elephanthopper" or "Robertson's Flightless Planthopper" or "Fitch's Planthopper", is found in high quality remnant dry to dry-mesic grasslands in the bluffs along the Mississippi River and in the sand country of northwest Wisconsin. This species is very rare in Wisconsin. Only 4 extant populations are known. Add to threatened list [NR27.03(3)].

The 16 species the state proposes to remove from the endangered and threatened list are:

Barn Owl (*Tyto alba*), an owl, has a scattered and irregular distribution in the state, mostly the southern half. The species has always been on the edge of its range in Wisconsin and is not considered a regular breeder. In their range, they are found in rural lands or grasslands with some combination of wet meadows, wetland edges, pastures, old-fields, grain crops, hayfields, hedges, and fencerows; usually within 1-2km of permanent water and

adjacent to woodlot edge. Nest sites include concrete-domed silos, barns, tree cavities, abandoned farm buildings, church steeples, bank or cliff cavities, and barn owl nest boxes. Remove from the endangered list [NR27.03(2)].

Bewick's Wren (*Thryomanes bewickii*), a small migratory bird, has not been observed breeding in Wisconsin or neighboring states for over 40 years; it is extirpated. Remove from the endangered list [NR27.03(2)].

Snowy Egret (*Egretta thula*), a waterbird, utilizes a wide variety of wetland habitats in their range, but does not breed in Wisconsin. The species has always been on the edge of its range in Wisconsin and is not considered a regular breeder in the state. Remove from the endangered list [NR27.03(2)].

Greater Redhorse (*Moxostoma valenciennesi*), a large fish, is found in widely scattered locations in the Lake Michigan and Mississippi River basins. The species appears stable in WI; found consistently in multiple watersheds. Remove from the threatened list [NR27.03(3)].

Blanding's Turtle (*Emydoidea blandingii*), a turtle, is often found in slow moving rivers, streams, ponds, lakes, marshes, swamps, sloughs, and backwater areas, as well as adjacent terrestrial habitats found in the majority of Wisconsin's counties, except for the north-central tier. Species still slightly declining in WI, however large population numbers and wide distribution. Species is not imperiled in the state. Remove from the threatened list [NR27.03(3)].

Butler's Gartersnake (*Thamnophis butleri*), a snake, is found in open to semi-open canopy wetland and upland habitat, including prairies, sedge meadows, shrub carr, wet meadows, marshes, grasslands, savannas, old fields, pastures, grassy roadsides, and vacant lots in Dodge, Fond du Lac, Milwaukee, Ozaukee, Sheboygan, Washington, and Waukesha counties. Species appears stable in WI. New information on abundance, range, and hybridization support delisting. Remove from the threatened list [NR27.03(3)].

Pygmy Snaketail (*Ophiogomphus howei*), a small dragonfly, is found in clean, fast flowing, medium to large streams with abundant gravel or sand substrates in northern Wisconsin. These streams are also in largely forested watersheds. Species appears stable in the state. New populations found using modeling of habitat and targeted surveys. Remove from the threatened list [NR27.03(3)].

American Fever-few (*Parthenium integrifolium*), a composite plant also known as Wild Quinine, is found in dry-mesic to mesic (sometimes wet-mesic) prairie and savanna in mostly loamy to moderately sandy soils in the southwest and southeast corners of the state. The population in Wisconsin appears stable. It is reproducing well on managed and restored sites, and on newly planted sites. Remove from the threatened list [NR27.03(3)].

Bog Bluegrass (*Poa paludigena*), a grass, is found most often growing on banks and atop hummocks, tussocks, and moss-covered logs along small creeks, rivulets, and pools in black ash/yellow birch, black ash/red maple, and black ash/elm swamps throughout the state, perhaps most common in west-central and northwestern Wisconsin in areas bordering the driftless region. Population in Wisconsin appears stable. New records have resulted from inventories. Remove from the threatened list [NR27.03(3)].

Canada Horse-balm (*Collinsonia canadensis*), is a plant in the mint family is also known as Stoneroot, and is considered extirpated in Wisconsin. Elsewhere in its range it has been found in rich beech-maple deciduous forests, as well as occasionally in swampy deciduous forests or oak-hickory and sassafras forests. Documented at only 2 locations in Wisconsin; one is presumed extirpated and the other has not been observed for 150 years. This species is conspicuous and easy to identify. Remove from the endangered list [NR27.03(2)].

Drooping Sedge (*Carex prasina*), a plant in the sedge family, is found in good-quality, mesic hardwood forests encompassing seepages, spring heads, and streamlets and has been

found in 11 counties mostly representing widely scattered populations. The population in Wisconsin is stable. It has a narrow habitat preference; however it has a fairly wide distribution and is found regularly in suitable habitat. Remove from the threatened list [NR27.03(3)].

Hemlock Parsley (*Conioselinum chinense*), a plant in the parsley family is considered extirpated. It was found in low, springy, marly ground and old tamarack bogs in Waukesha, Walworth, and Milwaukee counties. Only six native occurrences were known in the state; All are presumed extirpated or historical. Species is conspicuous and easy to identify. Remove from the endangered list [NR27.03(2)].

Prairie Indian-Plantain (*Arnoglossum plantagineum* = *Cacalia tuberosa*), a plant in the aster family, is found in open, deep-soiled wet to wet-mesic to dry prairies that are usually calcareous; has been reported from the southern two tiers of counties in Wisconsin, including Grant, Crawford, Lafayette, Iowa, Green, Dane, Rock, Jefferson, Walworth, Waukesha, Kenosha, and Racine counties. It inhabits moist prairies on lakeplains, outwash plains and low moraines in southeastern Wisconsin as well as dry oak openings and bluff prairies in central and southwestern Wisconsin. The population in Wisconsin is stable to increasing; It has responded well to prairie management. Remove from the threatened list [NR27.03(3)].

Snowy Campion (*Silene nivea*), a plant in the pink family, is found in rich woods and alluvial, disturbed floodplains and streambanks, old grasslands, sand prairie, and roadsides. Primarily known from the Driftless area in south-central, southwestern, and western portion of the state. The population in Wisconsin appears stable. It is able to persist with reed canary grass and in degraded streamside habitats and roadside, railroad and utility rights-of-way. Species no longer considered imperiled. Remove from the threatened list [NR27.03(3)].

Yellow Gentian (*Gentiana alba*), a plant in the gentian family is also known as Yellowish Gentian, and is found in dry to moist prairies, savannas and open woods in a wide variety of soil types. In Wisconsin it has been found in 32 counties, mostly in the south-central portion of the state. The population in Wisconsin is increasing. Most of the population expansion and increases have occurred in old fields. Remove from the threatened list [NR27.03(3)].

Yellow Giant Hyssop (*Agastache nepetoides*), a plant in the mint family, is found in areas with partial sun within dry and dry mesic forests, oak woodlands, oak openings, alluvial forests, as well as the edges of meadows, fencerows, and thickets; primarily found in southern Wisconsin in Crawford, Grant, Lafayette, Green, Rock, Walworth, Racine, Jefferson, Dane, and Columbia counties. The population in Wisconsin is stable to increasing. It has responded well to savanna management and restoration. Remove from the threatened list [NR27.03(3)].

The 20 species the state proposes for a scientific name change are:

- Northern Cricket Frog also known as Blanchard's Cricket Frog (*Acris blanchardii* change to *Acris crepitans*), endangered
- Worm-eating Warbler (*Helmitheros vermivorus* change to *Helmitheros vermivorum*), endangered
- Pallid Shiner (*Notropis annis* change to *Hybopsis annis*), endangered
- Shoal Chub also known as Speckled Chub (*Macrhybopsis aestivalis* change to *Macrhybopsis hyostoma*), threatened
- Spatterdock Darner Dragonfly (*Aeshna mutata* change to *Rhionaeschna mutata*), threatened
- Obovate Beak Grass (*Diarrhena americana* change to *Diarrhena obovata*), endangered
- Canada Gooseberry also known as Hawthorn-leaved Gooseberry (*Ribes oxycanthoides* change to *Ribes oxycanthoides* ssp. *oxycanthoides*), threatened

- Cliff Cudweed (*Gnaphalium saxicola* change to *Pseudognaphalium saxicola*), threatened
- Early Anemone (*Anemone multifida* change to *Anemone multifida* var. *multifida*), endangered
- Forked Aster (*Aster furcatus* change to *Eurybia furcata*), threatened
- Green Spleenwort (*Asplenun trichomanes-namosum* change to *Asplenium trichomanes-ramosum*), endangered
- Hall's Bulrush (*Scirpus hallii* change to *Schoenoplectus hallii*), endangered
- Hoary Whitlow-cress (*Draba lanceolata* change to *Draba cana*), endangered
- Large-leaved Sandwort (*Moehringia macrophylla* change to *Arenaria macrophylla*), endangered
- Long-beaked Baldrush also known as Bald Rush (*Rhynchosjsora scirysoides* change to *Rhynchospora scirpoides*), threatened
- Plains Ragwort (*Senecio indecorus* change to *Packera indecora*), threatened
- Sticky False-asphodel also known as False Asphodel (*Tofieldia glutinosa* change to *Triantha glutinosa*), threatened
- Tea-leaved Willow also known as Flat-leaved Willow (*Salix planifolia* change to *Salix planifolia* ssp. *planifolia*), threatened
- Thickspike also known as Thickspike Wheatgrass (*Elymus lonceolatus* ssp. change to *Elytrigia dasystachya* ssp. *psammophilus*), threatened
- Tufted Bulrush also known as Tussock Bulrush (*Scirpus cespitosus* change to *Trichophorum cespitosum*), threatened

The primary short-term and long-term effects of this revision are to provide greater protection for the species 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. 29.604, Stats.) is already in effect, there will be no change in Department policy regarding means to conserve these species. However, the species receiving those protections will change. The removal and addition of species to the endangered and threatened (E/T) list will likely require increased consultation initially with Department staff during environmental assessments and endangered resources reviews. Overtime there will be a net decrease, as the proposed list revision reduces the number of regulated species. Enforcement requirements will not be significantly increased.

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.).

Pursuant to s. 227-137 Wis. Stats., the Department was required to solicit comments on the economic impact of the proposed rule, and if requested to coordinate with local governments in the preparation of an EIA. Comments were collected between September 24, 2012 and October 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 that the Department coordinate with them in the preparation of the EIA. A summary of the EIA

comments and a detailed EIA report are included with the Fiscal Estimate and Economic Impact Analysis form (DOA-2049).

The economic cost of listing/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 records in the Natural Heritage Inventory (NHI) Database. 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.

Agency Procedures for Promulgation

Public hearing, Natural Resources Board final adoption, Governor's Office of Regulatory Compliance final approval, followed by legislative review

Description of any Forms (attach copies if available)

None.

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