

SUBJECT: Request approval of the statement of scope for Board Order ER-27-11 related to the Wisconsin Endangered/Threatened Species List

FOR: MARCH 2012 BOARD MEETING

TO BE PRESENTED BY / TITLE: Kurt Thiede, Lands Division Administrator

SUMMARY:

Revision of the Wisconsin Endangered/Threatened Species (E/T) List. The first list of Wisconsin E/T Species was developed in 1972 following enactment of Wisconsin's Endangered Species Law. The E/T list last underwent a major revision in 1997. In 2006, the Bureau of Endangered Resources' (BER) policy team approved the E/T list revision process guidance document, which guided the 2010-2011 comprehensive review of rare species population condition and resulting E/T list revision recommendations.

The E/T list recommendations include the proposed delisting of 16 species, the listing of 8 species, and the scientific name change of 20 species.

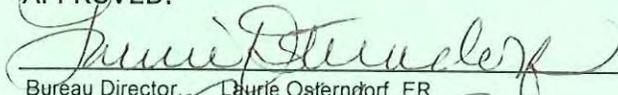
A revision to the E/T list will undoubtedly generate interest and have the potential for some level of controversy that must be resolved through systematic review, discussion, and transparency of the process. Groups likely to be impacted or interested in the issue include: the conservation community, project applicants through the environmental review process, and the general public.

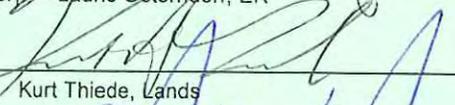
RECOMMENDATION: Approve Scope Statement related to Revision of Chapter NR 27, Wis. Adm. Code, pertaining to the Wisconsin Endangered/Threatened Species List

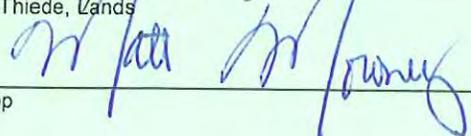
LIST OF ATTACHED MATERIALS:

- | | | | |
|--|---|---|----------|
| No <input checked="" type="checkbox"/> | Fiscal Estimate Required | Yes <input type="checkbox"/> | Attached |
| No <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes <input type="checkbox"/> | Attached |
| No <input type="checkbox"/> | Background Memo | Yes <input checked="" type="checkbox"/> | Attached |

APPROVED:


 Bureau Director, Laurie Osterndorf, ER


 Administrator, Kurt Thiede, Lands


 Secretary, Cathy Stepp

2/21/12
 Date

2/22/12
 Date

2/22/12
 Date

cc: NRB Liaison
DNR Rules Coordinator

Lance Potter ER/6

DATE: February 21, 2012

TO: Natural Resources Board

FROM: Cathy Stepp
Secretary, Department of Natural Resources

SUBJECT: Board Order ER-27-11, revisions to ch. NR 27, Wis. Adm. Code, pertaining to the Wisconsin Endangered/Threatened Species List.

Background

The department is requesting authorization to revise Chapter NR 27, Wis. Adm. Code, pertaining to the Wisconsin Endangered/Threatened (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 4 cave bat species (listed in 2011).

In 2006, the Bureau of Endangered Resources (BER) drafted and the BER Policy Team approved program guidance that lays out the process for reviewing and making recommendations to revise the E/T list. The guidance document recommends conducting a list-wide review at least every 5 years and earlier as needed, based on changes in species population condition. Changes in population condition of species typically occur more frequently than the E/T list is revised, and are reflected in the Natural Heritage Inventory (NHI) Working List and NHI system of global and state rarity ranks. Global and state rarity ranks are assigned to every species following standardized methodology developed by NatureServe, a non-governmental umbrella organization for NHI and similar programs throughout the U.S., Canada, and Latin America. The NHI system of global and state rarity ranks is the primary trigger for initiating a status assessment of a species, which inform the E/T list revision process.

Between January 2010 and August 2011, BER initiated and completed a review of Wisconsin's rare species using the 2006 E/T list revision document as guidance. The review resulted in over 1000 state rarity rank changes and a list of recommended revisions to the E/T species list. Biologists from a variety of state and national agencies, organizations, and universities, as well as naturalists throughout the state with taxonomic expertise provided new or updated information on the population condition and distribution of rare species in the state.

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 (ESL) would be effective in their protection. Because minimal protection is afforded to plants through Wisconsin's application of the ESL, it was decided that no plants would be proposed for listing at this time regardless of rarity. The process was documented including the creation of a database to capture the recommendations and information provided. Status assessments were conducted and resulted in the following proposed changes to the Wisconsin's E/T list. Also included is a summary statement supporting the E/T list change.

Rule Summary

Proposed E/T List Changes¹

Proposed Delist (16 species):

Barn Owl (*Tyto alba*), END - SNA

DELIST: Species has always been edge of range in WI. Not considered a regular breeder in the state.

Bewick's Wren (*Thryomanes bewickii*), END - SXB

DELIST: Extirpated. Species has not been observed breeding in WI or neighboring states for over 40 years.

Snowy Egret (*Egretta thula*), END - SNA

DELIST: Species has always been edge of range in WI. Not considered a regular breeder in the state.

Greater Redhorse (*Moxostoma valenciennesi*), THR - S3

DELIST: Species appears stable in WI. Found consistently in multiple watersheds.

Blanding's Turtle (*Emydoidea blandingii*), THR - S3S4

DELIST: Species still slightly declining in WI, however large population numbers and wide distribution. Not at risk of extirpation.

Butler's Gartersnake (*Thamnophis butleri*), THR - S3S4

DELIST: Species appears stable in WI. New information on abundance, range, and hybridization support delisting.

Pygmy Snaketail (*Ophiogomphus howei*), THR - S4

DELIST: Species appears stable in WI. New populations found using modeling of habitat and targeted surveys.

American Fever-few (*Parthenium integrifolium*), THR - S3S4

DELIST: Population in WI appears stable. Reproducing well on managed sites.

Bog Bluegrass (*Poa paludigena*), THR - S3

DELIST: Population in WI appears stable. New records have resulted from inventories.

Canada Horse-balm (*Collinsonia canadensis*), END - SX

DELIST: Extirpated. Only two native occurrences known in the state. One is presumed extirpated and the other has not been observed for 150 years. Species is conspicuous and easy to identify.

Drooping Sedge (*Carex prasina*), THR - S3

DELIST: Population in WI stable. Narrow habitat preference, however fairly wide distribution

¹ Format: Common name (*Scientific name*), current listing status – current state rarity rank

and found regularly in suitable habitat.

Hemlock Parsley (*Conioselinum chinense*), END - SX

DELIST: Extirpated. Only six native occurrences known in the state. All are presumed extirpated or historical. Species is conspicuous and easy to identify.

Prairie Indian-Plantain (*Cacalia tuberosa*), THR - S3

DELIST: Population in WI stable to increasing. Has responded well to prairie management.

Snowy Champion (*Silene nivea*), THR - S2

DELIST: Population in WI appears stable. Able to persist with reed canary grass and in degraded streamside habitats. Species no longer imperiled.

Yellow Gentian (*Gentiana alba*), THR - S4

DELIST: Population in WI increasing. Most of the population expansion and increases have occurred in old fields.

Yellow Giant Hyssop (*Agastache nepetoides*), THR - S3

DELIST: Population in WI stable to increasing. Has responded well to savanna management and restoration.

Proposed List (8 species):

Black Tern (*Chlidonias niger*), SC/M - S2B

LIST - Endangered: Species declining in WI. Surveys indicate declines as much as 36% in recent years and a 78% decline over 30 years. Once reported at 79 sites; found only 7 breeding colonies in 2010.

Kirtland's Warbler (*Dendroica kirtlandii*), SC/FL - S1B

LIST - Endangered: Species nesting in WI consistently since 2007. Historic records of individuals in the state. Twelve new populations. Global rank is G1 ("critically imperiled").

Upland Sandpiper (*Bartramia longicauda*), SC/M - S2B

LIST - Threatened: Species declining in WI. Some of the largest in its range. Once reported at 55 sites. May disappear from WI without large blocks of idle and/or grazed grasslands.

Beach-dune Tiger Beetle (*Cicindela hirticollis rhodensis*), SC/N - S1

LIST - Endangered: Species rare and declining in WI (30%). Once reported from 9-10 sites statewide, however only one known viable population remains.

Ottoe Skipper (*Hesperia ottoe*), SC/N - S1

LIST - Endangered: Species very rare and declining in WI. Once known to 16 sites; as of 2011 only 4 are extant (a 75% decline since the mid-1990s). Many populations gone rangewide. Very few sites have the size, quality-structure-connectivity to sustain this species.

A Leafhopper (*Attemipyga vanduzeei*), SC/N - S1

LIST - Endangered: Species very rare in WI. Only 4 extant populations known. Restricted to the highest quality prairie remnants. Poor dispersal ability and sensitive to management and woody encroachment.

An Issid Planthopper (*Fitchiella robertsoni*), SC/N - S1S2

LIST - Threatened: Species very rare in WI. Only 4 extant populations known. Restricted to high quality prairie remnants, which are extremely rare.

Fawnsfoot (*Truncilla donaciformis*), SC/P - S1S2

LIST - Threatened: Species declining in WI. Populations disappearing rangewide. Once widespread and abundant, this species is rarely found in recent years. Numbers have greatly declined in the WI's remaining viable populations (St. Croix and Lower WI Rivers).

Proposed Scientific Name Update (20 species)

Northern Cricket Frog (*Acris crepitans blanchardi*), END - S1

Update Scientific Name: *Acris crepitans**

Worm-eating Warbler (*Helmitheros vermivorus*), END - S1B

Update Scientific Name: *Helmitheros vermivorum*

Pallid Shiner (*Notropis amnis*), END - S1

Update Scientific Name: *Hybopsis amnis*

Shoal Chub (*Macrhybopsis aestivalis*), THR - S2

Update Scientific Name: *Macrhybopsis hyostoma*

Spatterdock Darner (*Aeshna mutata*), THR - S1

Update Scientific Name: *Rhionaeschna mutata**

Beak Grass (*Diarrhena americana*), END - S2

Update Scientific Name: *Diarrhena obovata**

Canada Gooseberry (*Ribes oxycanthoides*), THR - S2

Update Scientific Name: *Ribes oxycanthoides ssp. oxycanthoides*

Cliff Cudweed (*Gnaphalium obtusifolium var saxicola*), THR - S2

Update Scientific Name: *Pseudognaphalium saxicola*

Early Anemone (*Anemone multifida var hudsoniana*), END - S1

Update Scientific Name: *Anemone multifida var. multifida*

Forked Aster (*Aster furcatus*), THR - S3

Update Scientific Name: *Eurybia furcata*

Green Spleenwort (*Asplenium viride*), END - S1

Update Scientific Name: *Asplenium trichomanes-ramosum*

Hall's Bulrush (*Scirpus hallii*), END - S1

Update Scientific Name: *Schoenoplectus hallii*

Lanceolate Whitlow-cress (*Draba lanceolata*), END - S1

Update Scientific Name: *Draba cana*

Large-leaved Sandwort (*Moehringia macrophylla*), END - S1
Update Scientific Name: *Arenaria macrophylla*

Long-beaked Baldrush (*Psilocarya scirpoides*), THR - S2
Update Scientific Name: *Rhynchospora scirpoides*

Plains Ragwort (*Senecio indecorus*), THR - S1
Update Scientific Name: *Packera indecora*

Sticky False-asphodel (*Tofieldia glutinosa*), THR - S2S3
Update Scientific Name: *Triantha glutinosa*

Tea-leaved Willow (*Salix planifolia*), THR - S2
Update Scientific Name: *Salix planifolia ssp. planifolia*

Thickspike (*Elymus lanceolatus ssp psammophilus*), THR - S2
Update Scientific Name: *Elytrigia dasystachya*

Tufted Bulrush (*Scirpus cespitosus*), THR - S2
Update Scientific Name: *Trichophorum cespitosum*

Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Wisconsin Adm. Codes, NR 27 and NR 10.02 and State statute, s. 29.604 (3) (b) Wis. Stats.
No new policies proposed.

Statutory authority for the rule (including the statutory citation and language):

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.

Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

The Department anticipates that approximately 700 hours (over 2 years) of staff time will be needed to develop the rule. It is anticipated that minimal funding is needed for public hearings.

Description of all entities that may be impacted by the rule:

A revision to the E/T list will likely generate a large amount of interest that will be addressed through systematic review, discussion, and transparency of the process. 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.

The regulatory impact of listing a species:

- E/T species are checked for when department staff conduct, fund or approve an activity. Avoidance measures are provided to project applicants to enable them to avoid take of the species.
- For projects that are not able to avoid take, Wisconsin's endangered species law allows for the issuance of incidental take permits. Incidental take permits allow for projects to occur where take of an endangered or threatened species is likely and where take can also be minimized and mitigated.
- 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.

Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

There are no known federal regulations or decisions.

The only Federal Endangered, Threatened, or Candidate species proposed for a change is Kirtland's Warbler, which is currently Federally Endangered.

Preliminary estimate of Economic Impact (Level 1 - \$20 million and over; Level 2 - less than \$20 million; Level 3 - little or no economic impact):

Level 2: Less than \$20 million

The economic cost of listing a species is highly dependant on its range and distribution, seasonal occurrence, habitat requirements, management needs, sensitivity to disturbance etc. An economic impact assessment will be required for every proposed list change. Two examples from currently listed species:

- Henslow's Sparrow (*Ammodramus henslowii*) - Since only the species is protected and not its habitat, impacts to birds can easily be avoided by scheduling activity outside of the breeding season. Henslow's sparrow does not often come into conflict with development projects because of the location and distribution of this species in the state. Little to no economic impact.
- Ellipse mussel (*Venustaconcha ellipsiformis*) – Since mussels occupy the same site annually with little movement, relocations are often necessary for projects impacting the ellipse, such as bridge repairs or replacements, utility crossings, and other river alterations. Modest costs.

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 listing – eight species are proposed for listing (with a total of 195 NHI occurrences) versus 16 species proposed for delisting (with a total of 1071 NHI occurrences). Reducing the number of E/T species records will lessen regulatory impacts to businesses and individuals.

Contact Person:

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E-mail: Laurie.Osterndorf@wisconsin.gov

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: ER-27-11

Relating to: Revision of Chapter NR 27, Wis. Adm. Code, pertaining to the Wisconsin Endangered/Threatened Species List

1. Description of the objective of the rule:

The department is requesting authorization to revise Chapter NR 27, Wis. Adm. Code, pertaining to the Wisconsin Endangered/Threatened (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 4 cave bat species (listed in 2011).

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sites statewide, however only one known viable population remains.

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Proposed Scientific Name Update (20 species)

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Update Scientific Name: *Acris crepitans**

Worm-eating Warbler (*Helmitheros vermivorus*), END - S1B

Update Scientific Name: *Helmitheros vermivorum*

Pallid Shiner (*Notropis amnis*), END - S1

Update Scientific Name: *Hybopsis amnis*

Shoal Chub (*Macrhybopsis aestivalis*), THR - S2

Update Scientific Name: *Macrhybopsis hyostoma*

Spatterdock Darner (*Aeshna mutata*), THR - S1

Update Scientific Name: *Rhionaeschna mutata**

Beak Grass (*Diarrhena americana*), END - S2

Update Scientific Name: *Diarrhena obovata**

Canada Gooseberry (*Ribes oxycanthoides*), THR - S2

Update Scientific Name: *Ribes oxycanthoides* ssp. *oxycanthoides*

Cliff Cudweed (*Gnaphalium obtusifolium* var. *saxicola*), THR - S2

Update Scientific Name: *Pseudognaphalium saxicola*

Early Anemone (*Anemone multifida* var. *hudsoniana*), END - S1

Update Scientific Name: *Anemone multifida* var. *multifida*

Forked Aster (*Aster furcatus*), THR - S3
Update Scientific Name: *Eurybia furcata*

Green Spleenwort (*Asplenium viride*), END - S1
Update Scientific Name: *Asplenium trichomanes-ramosum*

Hall's Bulrush (*Scirpus hallii*), END - S1
Update Scientific Name: *Schoenoplectus hallii*

Lanceolate Whitlow-cress (*Draba lanceolata*), END - S1
Update Scientific Name: *Draba cana*

Large-leaved Sandwort (*Moehringia macrophylla*), END - S1
Update Scientific Name: *Arenaria macrophylla*

Long-beaked Baldrush (*Psilocarya scirpoides*), THR - S2
Update Scientific Name: *Rhynchospora scirpoides*

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Update Scientific Name: *Packera indecora*

Sticky False-asphodel (*Tofieldia glutinosa*), THR - S2S3
Update Scientific Name: *Triantha glutinosa*

Tea-leaved Willow (*Salix planifolia*), THR - S2
Update Scientific Name: *Salix planifolia ssp. planifolia*

Thickspike (*Elymus lanceolatus ssp psammophilus*), THR - S2
Update Scientific Name: *Elytrigia dasystachya*

Tufted Bulrush (*Scirpus cespitosus*), THR - S2
Update Scientific Name: *Trichophorum cespitosum*

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Wisconsin Adm. Codes, NR 27 and NR 10.02 and State statute, s. 29.604 (3) (b)
Wis. Stats. No new policies proposed.

3. Statutory authority for the rule (including the statutory citation and language):

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.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

The Department anticipates that approximately 700 hours (over 2 years) of staff time will be needed to develop the rule. It is anticipated that minimal funding is needed for public hearings.

5. Description of all entities that may be impacted by the rule:

A revision to the E/T list will likely generate a large amount of interest that will be addressed through systematic review, discussion, and transparency of the process. 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.

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6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

There are no known federal regulations or decisions.

The only Federal Endangered, Threatened, or Candidate species proposed for a change is Kirtland's Warbler, which is currently Federally Endangered.

7. Preliminary estimate of Economic Impact (Level 1 - \$20 million and over; Level 2 - less than \$20 million; Level 3 - little or no economic impact):

Level 2: Less than \$20 million

The economic cost of listing a species is highly dependant on its range and distribution, seasonal occurrence, habitat requirements, management needs, sensitivity to disturbance etc. An economic impact assessment will be required for every proposed list change. Two examples from currently listed species:

- Henslow's Sparrow (*Ammodramus henslowii*) - Since only the species is protected and not its habitat, impacts to birds can easily be avoided by scheduling activity outside of the breeding season. Henslow's sparrow does not often come into conflict with development projects because of the location and distribution of this species in the state. Little to no economic impact.
- Ellipse mussel (*Venustaconcha ellipsiformis*) – Since mussels occupy the same site annually with little movement, relocations are often necessary for projects impacting the ellipse, such as bridge repairs or replacements, utility crossings, and other river alterations. Modest costs.

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 listing – eight species are proposed for listing (with a total of 195 NHI occurrences) versus 16 species proposed for delisting (with a total of 1071 NHI occurrences). Reducing the number of E/T species records will lessen regulatory impacts to businesses and individuals.

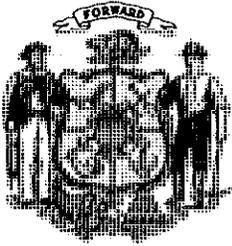
Contact Person:

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Department Head Signature



Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

November 14, 2011

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Statement of Scope for Modifications to Chapter NR 27

Dear Secretary Stepp,

I hereby approve the Statement of Scope submitted on November 3, 2011, pursuant to Wisconsin Statutes § 227.135, in regards to modifications to Chapter NR 27 of the Wisconsin Administrative Code. You may send the Statement of Scope to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes §§ 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Walker", with a stylized flourish at the end.

Scott Walker
Governor