

Notice of Agency Rule-making Proposal

ADVERTISE: October 13, 2021

AGENCY: 09-137 Inland Fisheries and Wildlife

CHAPTER NUMBER AND TITLE: Chapter 29 – Species of Special Concern

PROPOSED RULE NUMBER:

BRIEF SUMMARY: In accordance with Public Law Chapter 65, titled “An Act To Amend Maine’s Wildlife Laws Regarding Species of Special Concern” the Department is proposing new rule Chapter 29 to establish criteria for determining when a species of fish or wildlife that is not an endangered species or a threatened species is of special concern. The proposed rule includes criteria for categories of species of special concern, including a category for species that are rare. The commissioner shall use the list, if adopted, in administering 12 MRS, Section 12152 and may also use the list in administering any other laws or programs or when providing advisory recommendations to other entities or agencies on fish and wildlife matters in accordance with applicable laws or rules. A complete copy of the proposed rule may be requested by contacting the Agency Contact Person.

PUBLIC HEARING: Monday, November 1, 2021 @ 4:00pm – Camden National Bank Ice Vault, 203 Whitten Road, Hallowell, ME.

COMMENT DEADLINE: November 11, 2021

CONTACT PERSON FOR THIS FILING: Becky Orff, Inland Fisheries and Wildlife, 284 State Street 41 SHS, Augusta, ME 04333; phone: 207-287-5202; fax: 207-287-6395; e-mail: Becky.Orff@maine.gov

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (if any): No fiscal impact anticipated.

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS 10105, 12152

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED:

AGENCY WEBSITE: www.maine.gov/ifw

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: Becky.Orff@maine.gov

* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____
(authorized signature)

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
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Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: 09-137 Inland Fisheries and Wildlife

NAME, ADDRESS, PHONE NUMBER, E-MAIL OF AGENCY CONTACT PERSON:

Becky Orff, Inland Fisheries and Wildlife, 284 State Street 41 SHS, Augusta, ME 04333; phone: 207-287-5202; fax: 207-287-6395; e-mail: Becky.Orff@maine.gov

CHAPTER NUMBER AND RULE TITLE: Chapter 29 – Species of Special Concern

TYPE OF RULE (*check one*): Routine Technical Major Substantive

STATUTORY AUTHORITY: 12 MRS 10105, 12152

DATE, TIME AND PLACE OF PUBLIC HEARING: Monday, November 1, 2021 @ 4:00pm – Camden National Bank Ice Vault, 203 Whitten Road, Hallowell, ME.

COMMENT DEADLINE: November 11, 2021

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE:

Public Law Chapter 65, titled “An Act To Amend Maine’s Wildlife Laws Regarding Species of Special Concern” and enacted by the Governor on May 25, 2021, directs the Department to conduct rulemaking to “establish criteria for determining when a species of fish or wildlife that is not an endangered species or a threatened species is of special concern. The rules may include different criteria for categories of species of special concern, including a category for species that are rare. The rules must list the species that meet the criteria established in rule. The commissioner shall use the list in administering section 12152 and may also use the list in administering any other laws or programs or when providing advisory recommendations to other entities or agencies on fish and wildlife matters in accordance with applicable laws or rules.” Prior to this rulemaking proposal, the list of special concern species had existed only in Department policy and did not include an opportunity for review or input by the public. Incorporating the species of special concern criteria and list of species into a Department rule will increase transparency of the list and provide a formal opportunity for public involvement in species designation.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? YES NO

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The proposed rule language will be placed in a new rule Chapter 29. The rule creates a specific definition of “species of special concern” and identifies criteria that must be met for a species to be considered for listing as special concern. The rule identifies population guidelines and other factors that will be considered by the Department when recommending listing and identifies a subcategory of rare species that are used by the Department to provide recommendations and advice on land use activities. Finally, the rule includes a list of species of special concern species organized by taxonomic group, including those that are ‘rare’.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon):

Prior to developing the proposed rule, Department staff reviewed Public Law Chapter 65, including testimony related to the bill from the public and advocacy groups. Department staff reviewed and updated the previous 2011 Special Concern list utilizing criteria in the 2014 listing handbook and completed Maine Endangered and Threatened Species Listing Review Work Sheets for each existing and proposed Special Concern species. Several species were removed from the list and incorporated into the State Wildlife Action Plan list of Species of Greatest Conservation Need. Species were added based on recent distribution findings and vulnerability to emerging stressors.

ESTIMATED FISCAL IMPACT OF THE RULE: No fiscal impact anticipated.

AMEND SOS WEBPAGE <https://www.maine.gov/sos/cec/rules/09/chaps09.htm> AS FOLLOWS:

State of Maine
Rule Chapters for the Department of Inland Fisheries and Wildlife

09 137 Department of Inland Fisheries and Wildlife - General

Ch. 1 Open Water and Ice Fishing Regulations
Ch. 1-A State Heritage Fish Waters
Ch. 2 Rules Pertaining to Commercial Fishing, Fish Culture and Fishing Derbies and Tournaments
Ch. 3 Public Interaction and Conflicts with Wildlife (Feeding of Deer)
Ch. 4 Falconry
Ch. 5 State Owned Wildlife Management Areas, Shooting Ranges and Boat Launch Facilities
Ch. 6 Educational and Scientific Collection Permit Rule
Ch. 7 Rules for Importation, Possession, Propagation, Rehabilitation, and Exhibition of Wildlife
Ch. 8 Endangered Species
Ch. 9 General Snowmobile and ATV (All-terrain Vehicles) Regulations
Ch. 10 Significant Wildlife Habitat
Ch. 11 Protection and Safety of Spectators at Snowmobile Races
Ch. 12 All-Terrain Vehicle Plates and Renewal Stickers
Ch. 13 Watercraft Rules
Ch. 14 Commercial Whitewater Rafting
Ch. 15 Interstate Wildlife Violations Compact
Ch. 16 Hunting
Ch. 17 Trapping
Ch. 18 State Game Farm
Ch. 19 Operation of Motor Vehicles on a Public Water Supply
Ch. 20 Taxidermy License
Ch. 21 Licensing and Registration Agents
Ch. 22 Rules Pertaining to Department Publications
Ch. 23 Youth Camp Trip Leader Permits and Junior Maine Guide Program
Ch. 24 Licensed Guides
Ch. 25 Leashed Dog Tracking Permit Rules
Ch. 26 Commercial Wildlife Permit for Amphibians or Nonmarine Invertebrates
Ch. 27 Animal Damage Control Agent Certificate
Ch. 28 Educational Trip Leader Rules
Ch. 29 Species of Special Concern

ADD NEW RULE CHAPTER 29 AS FOLLOWS:

09-137 DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

Chapter 29: SPECIES OF SPECIAL CONCERN

29.01 Scope of Rules

Pursuant to 12 MRSA §10105, sub-§19, the Commissioner has the authority to develop a list of species of special concern, which are any species of fish or wildlife that does not meet the criteria as Endangered or Threatened but is particularly vulnerable, and could easily become an Endangered, Threatened, or Extirpated species due to restricted distribution, low or declining numbers, specialized habitat needs or limits, or other factors. Species of special concern are defined by 12 MRSA

§10001 and used by the Department for planning and informational purposes, including when providing recommendations and advice on land use activities.

29.02 Designation of Species of Special Concern

A. In determining whether a species meets one or more of the standards for designating a species of special concern, qualifications for consideration, population guidelines, and other factors will be considered. For the purposes of this chapter, "species" will mean "species" or "subspecies" and "populations" will mean all individuals of the species, statewide.

1. Qualifications for Consideration

A species may only be recommended for listing as a state Special Concern species if it meets all of the following qualifications:

- a. It is a species of mammal, bird, fish, amphibian, reptile, or invertebrate wild by nature as distinguished from domestic species;
- b. It is an indigenous species to Maine, meaning it is not an exotic deliberately or accidentally introduced into Maine, the United States, or North America.
- c. It is a species that spends some portion of its annual cycle in Maine, including breeding, migration, or wintering, but is not a vagrant or accidental visitor;
- d. It is a species that has not expanded into Maine within the past 50 years as part of a general range expansion, unless it historically occurred in Maine, is threatened or declining throughout a significant portion of its total range, or other significant risk factors have been identified;
- e. It is a species that has not been reintroduced into Maine as part of an experimental wildlife management program, unless listing is part of the reintroduction plan; and
- f. It is taxonomically classified no finer than a subspecies, unless federally Endangered or Threatened.

2. Population Guidelines

The following population characteristics, when available, will be considered by the Commissioner when determining whether a species meets the definition of a species of special concern in accordance with 12 M.R.S.A. §10001.

- a. Population vulnerability,
- b. Population trend,
- c. Population distribution,
- d. Population fragmentation,
- e. Endemism, meaning the species entirely or largely occurs only in Maine and immediate bordering jurisdictions, and
- f. Regional concern

3. Other Factors

In addition to population guidelines (2) above, other factors, including range or habitat loss, disease, predation, over-utilization, inadequacy of regulations, and other natural or human-related factors as measured through observation, inference, or projection, will be considered when determining whether to include a species on the list of species of special concern.

4. Listing Handbook

The Department shall utilize the “Endangered and Threatened Species Listing Handbook” that will provide scientifically based listing guidelines and criteria based on Sections A-1, 2, and 3 of this rule to guide the listing process.

29.03 Designation of Rare Species of Special Concern

The Commissioner of Inland Fisheries and Wildlife shall designate a subcategory of species identified as being of special concern that are classified as rare and may be used for advisory recommendations to other entities or agencies on fish and wildlife matters in accordance with applicable laws or rules.

Rare species shall be those Special Concern species that are dependent on specific habitat types or limited breeding locations known to be particularly vulnerable to loss or disturbance; a species that is geographically limited (e.g. < 10 sites in the state); a species identified as vulnerable (NatureServe G3 or higher, IUCN VU or higher); or that qualifies for MESA status.

29.04 List of Species of Special Concern

<u>BIRDS</u>	
Leach's Storm-petrel (<i>Oceanodroma leucorhoa</i>)	<u>Special Concern</u>
Great Blue Heron (<i>Ardea Herodias</i>)	<u>Special Concern - RARE</u>
Greater Scaup (<i>Aythya marila</i>)	<u>Special Concern</u>
Northern Harrier (<i>Circus cyaneus</i>)	<u>Special Concern</u>
American Coot (breeding population only) (<i>Fulica americana</i>)	<u>Special Concern - RARE</u>
Lesser Yellowlegs (<i>Tringa flavipes</i>)	<u>Special Concern - RARE</u>
American Oystercatcher (<i>Haematopus palliatus</i>)	<u>Special Concern - RARE</u>
Whimbrel (<i>Numenius phaeopus</i>)	<u>Special Concern - RARE</u>
Red Knot (<i>Calidris canutus</i>)	<u>Special Concern - RARE</u>
Red-necked Phalarope (<i>Phalaropus lobatus</i>)	<u>Special Concern</u>
Semipalmated Sandpiper (<i>Calidris pusilla</i>)	<u>Special Concern - RARE</u>
Purple Sandpiper (<i>Calidris maritima</i>)	<u>Special Concern - RARE</u>
Bonaparte's Gull (breeding population only) (<i>Chroicocephalus Philadelphia</i>)	<u>Special Concern - RARE</u>
Laughing Gull (<i>Larus atricilla</i>)	<u>Special Concern</u>
Common Murre (<i>Uria aalge</i>)	<u>Special Concern</u>
Eastern Whip-poor-will (<i>Antrostomus vociferus</i>)	<u>Special Concern - RARE</u>
Chimney Swift (<i>Chaetura peligra</i>)	<u>Special Concern</u>
Olive-sided Flycatcher (<i>Empidonax minimus</i>)	<u>Special Concern - RARE</u>
Least Flycatcher (<i>Empidonax minimus</i>)	<u>Special Concern</u>
Eastern Kingbird (<i>Tyrannus tyrannus</i>)	<u>Special Concern</u>

Eastern Wood-Pewee (<i>Contopus virens</i>)	<u>Special Concern</u>
Loggerhead Shrike (<i>Lanius ludovicianus</i>)	<u>Special Concern</u>
Horned Lark (breeding population only) (<i>Eremophila alpestris</i>)	<u>Special Concern - RARE</u>
Purple Martin (<i>Progne subis</i>)	<u>Special Concern - RARE</u>
Barn Swallow (<i>Hirundo rustica</i>)	<u>Special Concern</u>
Northern Rough-winged Swallow (<i>Stelgidopteryx serripennis</i>)	<u>Special Concern - RARE</u>
Cliff Swallow (<i>Petrochelidon pyrrhonota</i>)	<u>Special Concern - RARE</u>
Bank Swallow (<i>Riparia riparia</i>)	<u>Special Concern - RARE</u>
Tree Swallow (<i>Tachycineta bicolor</i>)	<u>Special Concern</u>
Bicknell's Thrush (<i>Catharus bicknelli</i>)	<u>Special Concern - RARE</u>
Wood Thrush (<i>Hylocichla mustelina</i>)	<u>Special Concern</u>
Veery (<i>Catharus fuscescens</i>)	<u>Special Concern</u>
Brown Thrasher (<i>Toxostoma rufum</i>)	<u>Special Concern</u>
American Redstart (<i>Setophaga ruticilla</i>)	<u>Special Concern</u>
Bay-breasted Warbler (<i>Setophaga castanea</i>)	<u>Special Concern</u>
Cape May Warbler (<i>Setophaga tigrina</i>)	<u>Special Concern - RARE</u>
Blackpoll Warbler (<i>Setophaga striata</i>)	<u>Special Concern - RARE</u>
Common Nighthawk (<i>Chordeiles minor</i>)	<u>Special Concern - RARE</u>
Canada Warbler (<i>Wilsonia canadensis</i>)	<u>Special Concern</u>
Tennessee Warbler (<i>Vermivora peregrina</i>)	<u>Special Concern</u>
Yellow Warbler (<i>Dendroica petechia</i>)	<u>Special Concern</u>
Fox Sparrow (breeding population only) (<i>Passerella iliaca</i>)	<u>Special Concern - RARE</u>
Nelson's Sparrow (<i>Ammodramus nelsoni</i>)	<u>Special Concern - RARE</u>
Saltmarsh Sparrow (<i>Ammodramus caudacutus</i>)	<u>Special Concern - RARE</u>
Vesper Sparrow (<i>Pooecetes gramineus</i>)	<u>Special Concern - RARE</u>
American Kestrel (<i>Falco sparverius</i>)	<u>Special Concern</u>
Eastern Towhee (<i>Pipilo erythrrophthalmus</i>)	<u>Special Concern</u>
Rusty Blackbird (<i>Euphagus carolinus</i>)	<u>Special Concern - RARE</u>
Eastern Meadowlark (<i>Sturnella magna</i>)	<u>Special Concern - RARE</u>
Orchard Oriole (<i>Icterus spurius</i>)	<u>Special Concern</u>
Evening Grosbeak (breeding population only) (<i>Coccothraustes vespertinus</i>)	<u>Special Concern</u>
Field Sparrow (<i>Spizella pusilla</i>)	<u>Special Concern</u>
Dark-eyed Junco (<i>Junco hyemalis</i>)	<u>Special Concern</u>
Bobolink (<i>Dolichonyx oryzivorus</i>)	<u>Special Concern</u>
Wood Thrush (<i>Hylocichla mustelina</i>)	<u>Special Concern</u>
American Three-toed Woodpecker (<i>Picoides dorsalis</i>)	<u>Special Concern - RARE</u>
<u>INVERTEBRATES</u>	
<u>Mayflies</u>	
Brown's Comb Minnow Mayfly (<i>Ameletus browni</i>)	<u>Special Concern - RARE</u>
<u>Bumble Bees</u>	
Rusty Patched Bumble Bee (<i>Bombus affinis</i>)	<u>Special Concern - RARE</u>
Lemon Cuckoo Bumble Bee (<i>Bombus citrinus</i>)	<u>Special Concern</u>
Ashton's Cuckoo Bumble Bee (<i>Bombus ashtoni</i>)	<u>Special Concern - RARE</u>

Yellow Bumble Bee (<i>Bombus fervidus</i>)	Special Concern - RARE
Indiscriminate Cuckoo Bumble Bee (<i>Bombus insularis</i>)	Special Concern - RARE
Butterflies	
Dusted Skipper (<i>Atrytonopsis hianna</i>)	Special Concern - RARE
Early Hairstreak (<i>Erora laeta</i>)	Special Concern - RARE
Leonard's Skipper (<i>Hesperia leonardus</i>)	Special Concern - RARE
Cobweb Skipper (<i>Hesperia metea</i>)	Special Concern - RARE
Spicebush Swallowtail (<i>Papilio troilus</i>)	Special Concern - RARE
Northern Blue (<i>Plebejus idas scudderii</i>)	Special Concern - RARE
Crowberry Blue (<i>Plebejus idas empetri</i>)	Special Concern - RARE
Satyr Comma (<i>Polygonia satyrus</i>)	Special Concern - RARE
Coral Hairstreak (<i>Satyrium titus</i>)	Special Concern - RARE
Hoary Elfin (<i>Callophrys polios</i>)	Special Concern - RARE
Silvery Checkerspot (<i>Chlosyne nycteis</i>)	Special Concern - RARE
Short-tailed Swallowtail (<i>Papilio brevicauda gaspeensis</i>)	Special Concern - RARE
Monarch (<i>Danaus plexippus</i>)	Special Concern
Moths	
Barrens Itame (<i>Macaria exonerata</i> ; f. <i>Itame</i> sp. 1 nr. <i>inextricata</i> , <i>Speranza</i>)	Special Concern - RARE
Bold-based Zale Moth (<i>Zale lunifera</i> ; f. <i>Z. sp. 1</i> nr. <i>lunifera</i>)	Special Concern - RARE
Eastern Buckmoth (<i>Hemileuca maia maia</i>)	Special Concern - RARE
Broad Sallow Moth (<i>Xylotype capax</i>)	Special Concern - RARE
Oblique Zale (<i>Zale obliqua</i>)	Special Concern - RARE
Red-winged Sallow (<i>Xystopeplus rufago</i>)	Special Concern - RARE
Similar Underwing (<i>Catocala similis</i>)	Special Concern - RARE
Damselflies	
New England Bluet (<i>Enallagma laterale</i>)	Special Concern - RARE
Citrine Forktail (<i>Ishnura hastata</i>)	Special Concern - RARE
Dusky Dancer (<i>Argia translata</i>)	Special Concern - RARE
Tule Bluet (<i>Enallagma carunculatum</i>)	Special Concern - RARE
Big Bluet (<i>Enallagma durum</i>)	Special Concern - RARE
Scarlet Bluet (<i>Enallagma pictum</i>)	Special Concern - RARE
Dragonflies	
Canada Whiteface (<i>Leucorrhinia patricia</i>)	Special Concern - RARE
Southern Pygmy Clubtail (<i>Lanthus vernalis</i>)	Special Concern - RARE
Sedge Darner (<i>Aeshna juncea</i>)	Special Concern - RARE
Arrowhead Spiketail (<i>Cordulegaster obliqua</i>)	Special Concern - RARE
Swamp Darner (<i>Epiaeschna heros</i>)	Special Concern - RARE
Cobra Clubtail (<i>Gomphus vastus</i>)	Special Concern - RARE
Pygmy Snaketail (<i>Ophiogomphus howei</i>)	Special Concern - RARE
Common Sanddragon (<i>Progomphus obscurus</i>)	Special Concern - RARE
Spatterdock Darner (<i>Rhionaeschna mutata</i>)	Special Concern - RARE
Ringed Emerald (<i>Somatochlora albicincta</i>)	Special Concern - RARE
Quebec Emerald (<i>Somatochlora brevicincta</i>)	Special Concern - RARE
Arrow Clubtail (<i>Stylurus spiniceps</i>)	Special Concern - RARE
Tiger Beetles	

White Mountain Tiger Beetle (<i>Cicindela ancocisconensis</i>)	<u>Special Concern - RARE</u>
Salt Marsh Tiger Beetle (<i>Cicindela marginata</i>)	<u>Special Concern - RARE</u>
Snails	
Bigmouth Pond Snail (<i>Stagnicola mighelsi</i>)	<u>Special Concern - RARE</u>
Malleated Vertigo (<i>Vertigo malleata</i>)	<u>Special Concern - RARE</u>
HERPETOFAUNA	
Reptiles	
Wood Turtle (<i>Glyptemys insculpta</i>)	<u>Special Concern - RARE</u>
Ribbon Snake (<i>Thamnophis sauritus</i>)	<u>Special Concern - RARE</u>
Amphibians	
Northern Spring Salamander (<i>Gyrinophilus porphyriticus</i>)	<u>Special Concern - RARE</u>
Northern Leopard Frog (<i>Lithobates pipiens</i>)	<u>Special Concern</u>
INLAND FISH	
Arctic Charr	<u>Special Concern - RARE</u>
Bridal Shiner	<u>Special Concern - RARE</u>
Creek Chubsucker	<u>Special Concern - RARE</u>
Longnose Dace	<u>Special Concern - RARE</u>
Lake Whitefish	<u>Special Concern - RARE</u>
MAMMALS	
Carnivores	
Canada Lynx (<i>Lynx canadensis</i>)	<u>Special Concern</u>
Bats	
Big Brown Bat (<i>Eptesicus fuscus</i>)	<u>Special Concern</u>
Red Bat (<i>Lasius borealis</i>)	<u>Special Concern</u>
Hoary Bat (<i>Lasius cinereus</i>)	<u>Special Concern</u>
Silver-haired Bat (<i>Lasionycteris noctivigans</i>)	<u>Special Concern</u>
Tri-colored Bat (<i>Perimyotis subflavus</i>)	<u>Special Concern - RARE</u>
Rodents	
Penobscot Meadow Vole (<i>Microtus pennsylvanicus shattucki</i>)	<u>Special Concern - RARE</u>