

**Statement of Basis, Specific Statutory Authority, and Purpose  
Amendments to Current Rules of the Colorado Oil and Gas Conservation  
Commission, 2 C.C.R. § 404-1**

**Cause No. IR Docket No. 211200249 High Priority Habitat Map Rulemaking**

This statement sets forth the basis, specific statutory authority, and purpose for amendments (“High Priority Habitat Map Rulemaking”) to the Colorado Oil and Gas Conservation Commission (“Commission”) Rules of Practice and Procedure, 2 CCR 404-1 (“Rules”).

Unless otherwise specified, the new rules and amendments become effective twenty days after publication in the Colorado Register, per C.R.S. § 24-4-103(5).

In adopting amendments to the Rules, the Commission relied upon the entire administrative record for this rulemaking proceeding, which formally began on December 31, 2021, when the Commission submitted its Notice of Rulemaking to the Colorado Secretary of State for revisions to its 100 Series definitions. This record includes public comments, written prehearing statements, written prehearing testimony, and oral testimony and comments provided during public hearings and Commission deliberations.

**Statutory Authority.**

The Commission’s authority to promulgate amendments to the Rules is derived from the following sections of the Colorado Oil and Gas Conservation Act (“Act”), C.R.S. §§ 34-60-101 - 130:

- C.R.S. § 34-60-105(1), (Commission has the power to make and enforce rules);
- C.R.S. § 34-60-106(2.5)(a), (Commission will regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources);
- C.R.S. § 34-60-108, (Commission has authority to adopt rules); and
- C.R.S. § 34-60-128(2), (Commission will minimize adverse impacts to wildlife resources).

**Identification of Amended Rules.**

Consistent with its statutory authority and its legislative mandates, and in accord with the administrative record, the Commission amended the 100 Series definition of High Priority Habitat.

## **Overview of Purpose and Intent.**

During the Commission's Senate Bill 19-181 Rulemaking proceedings in 2020, it developed a definition for High Priority Habitat, which focuses on ensuring healthy wildlife populations by deferring to the expertise of Colorado Parks and Wildlife ("CPW") in identifying the species and habitats for which avoiding, minimizing, and mitigating impacts is critical based on the best available science. In adopting this definition, the Commission chose to use High Priority Habitat as the criteria to initiate certain permitting or review processes and substantive standards in its 300, 400, 900, and 1200 Series Rules. High Priority Habitat is an accepted CPW term that provides certainty that there is known geographic distribution of the habitat and species, impacts from development (oil and gas or otherwise) are well understood, and there is consensus on effective measures to protect the resource.

The definition of High Priority Habitat adopted in 2020 rightfully ascribes deference to CPW and the habitat maps used in their planning and consultation decisions and appropriately incorporates the mitigation hierarchy--avoid, minimize and mitigate adverse impacts to wildlife resources--for protection of wildlife resources through the COGCC planning and permitting processes. The definition of High Priority Habitat clearly relies on the habitat maps, provided by CPW, to establish the land surface areas subject to consultation with CPW and administration under the Rules. Lastly, the definition ensures that the maps will be updated frequently to ensure that consistent, accurate, and up-to-date data and information are available to the regulated community, federal, state, and local government agencies, and external stakeholders so that appropriate consultations and decisions can be made. This need for a routine and periodic update keeps the map update process narrow, tailored, and apolitical. This also ensures that multiple management agencies are all relying on the same data from which to base their land use decisions.

The annual High Priority Habitat map updates from CPW incorporate updates to raptor nest data, grouse habitat, and CPW Species Activity Maps ("SAM").

There are two types of habitats in the 1200 Series Rules for the protection of habitat for grouse and prairie chickens: leks and production areas. Lek monitoring and surveys for all grouse and prairie chicken species are completed each spring based on species-specific protocols. Lek locations and activity status are updated in CPW's database each year for these 1202.c. No Surface Occupancy ("NSO") habitats. Production areas under 1202.d. in the rules are either mapped habitat layers or are lek buffers expanded beyond the NSO to protect additional nesting and brood rearing habitats. CPW assesses these maps each year based on monitored and surveyed lek locations and activity.

CPW utilizes multiple statewide sources for information on raptor nest locations and status to update the raptor active nest layer and NSO buffers included in the High Priority Habitat maps. Raptor nest locations are derived primarily from CPW's raptor nest database, collected by CPW biologists and CPW volunteer monitoring

programs. The raptor nest maps may also include data shared from federal land management partners and groups that have data-sharing agreements with CPW, as well as certain counties, municipalities, or open space programs with a long history of collaboration with CPW. These are all organizations with qualified wildlife biologists using established survey methodologies and data verification, and are considered to be trusted data sources. Additional raptor data can be collected from, or provided by, other sources: consultants, developers, operators, landowners, non-governmental organizations, land trusts, and the public. These data are verified by CPW; either via field verification or a review of the data provided to CPW. Only after CPW confirms these locations as active nests are they included in the High Priority Habitat maps.

The raptor nest database is dynamic, adjusting to both variable activity status and changing locations. Nests may fail or be destroyed, rebuilt in a slightly different location, be one of several alternate nests within a territory, or the species of raptor using the nest may change. Annual updates to the High Priority Habitat maps as referenced in the SB-181 rules are important to capture these dynamic nest status changes each year. While these High Priority Habitat map layers are the primary trigger for a CPW consultation for an oil and gas location, Rule 309.e accounts for the complexities of CPW's raptor database that may result from unpublished locations, lags in survey data, and changes in activity status of known nests, by providing CPW with alternative processes for requesting a consultation.

The remaining updated High Priority Habitat layers are based on CPW SAM. SAM covers a broad range of habitats and information that is used in all CPW land use comments, as well as federal and local planning processes. An applicable subset of those maps are utilized for COGCC rulemaking and updated annually. SAM sessions are held each year, generally focused in one of the four CPW regions where CPW GIS staff works with district wildlife managers, area biologists, and other local staff. Existing maps are displayed, then overlaid with aerial photographs and maps to look at underlying landscape and potential changes, as well as all available biological data to assess whether revisions are necessary. Years of professional experience and multiple sources of information are captured in these maps: ground observations; information shared by wildlife watchers, landowners, and hunters; flight survey data, collar data, and research data as available; and habitat and vegetation changes. These maps reflect decades of observations and data, as well as collective professional expertise that summarizes wildlife use of the landscape. SAM definitions and data are publicly available from CPW GIS links on their website.

Maps showing spatial data identifying the individual and combined extents of the High Priority Habitat areas were provided by CPW and attached to the 1200 Series Rules as Appendix VII. As stated in the 100 Series definition of High Priority Habitat, the Commission intended to coordinate with CPW to determine the current and relevant data upon which it will base the High Priority Habitat maps and to periodically update the maps. The extent of the High Priority Habitat is subject to periodic updates, but no more frequent than on an annual basis and will be modified only through the Commission's rulemaking process described in Rule 529. The Commission will notice the rulemaking proceeding at the beginning of each year (as

amended, by February 28) with the intent of updating the maps and spatial data annually.

In summary, the underlying purpose of the COGCC regularly adopting CPW current High Priority Habitat map updates is to ensure (1) that the Commission's wildlife data does not become outdated and (2) that CPW's maps and recommendations apply statewide to all consultations. Under previous mapping processes, COGCC adopted habitat maps in 2008 that were updated only once in 2013. This left the COGCC relying on outdated information resulting in CPW, COGCC staff, and the regulated community managing two sets of consultation maps, and sensitive habitat areas that lacked appropriate protective measures. The data contained in the High Priority Habitat map layers, and included in this 2022 update are intended to ensure the reasonable and necessary regulation of the industry and ensure the protection of wildlife resources through the application of the mitigation hierarchy. COGCC first seeks to avoid impacts to habitat from oil and gas development through alternative location selection, consolidation, and other avoidance measures. If development without avoidance is not possible, then the Oil and Gas Development Plan permit process ensures that adverse impacts, whether Direct or Indirect, are minimized through operational and best management practices established during the CPW consultation process. And lastly, where there are unavoidable direct or indirect impacts, Rule 1203.d provides that offsetting mitigation, through compensatory fees or projects, be provided to mitigate those impacts.

### **Amendments and Additions to Rules.**

#### ***100 Series Definition of High Priority Habitat.***

The 100 Series definition of High Priority Habitat is amended to provide that notice of the High Priority Habitat map rulemaking will be provided by February 28 of each year.

The High Priority Habitat maps set forth in Appendix VII are amended to reflect the current understanding of wildlife habitat use in Colorado for the species identified as High Priority Habitat in its 300, 400, 900, and 1200 Series Rules. These proposed updates are a result of inventories and monitoring to determine the status and extent of the following High Priority Habitat areas: raptor nests and roost sites, grouse and prairie chicken lek sites and occupied ranges, bat hibernacula, migration corridors, production areas, severe winter ranges, winter concentration areas, and winter ranges. These updates also reflect changes to any CPW-owned State Wildlife Areas and State Parks within the State of Colorado.

**Effective Date.**

The Commission adopted the proposed amendments at its hearing on April 6, 2022, in Cause No. IR, Docket No. 211200249. These amendments will become effective, per C.R.S. § 24-4-103(5), twenty days after publication in the Colorado Register.