

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT: Request that the Board approve the Statement of Scope for Emergency Board Order WM-15-21 (E) for proposed rules affecting chapter NR 10 related to establishing the 2022 migratory bird season framework and regulations.

FOR: January 2022 Board meeting

TO BE PRESENTED BY: Scott Karel, Wildlife Regulation Policy Specialist

SUMMARY:

These rules may modify season dates, bag limits, and other regulations. These seasons are part of the federal migratory bird season frameworks and the United States Fish and Wildlife Service needs to be informed of the State of Wisconsin Natural Resources Board's decisions on these seasons by April 30, 2022.
the state.

This is an annual rule that will be consistent with a federal framework and will be consistent with past policies. Migratory game bird hunting is regulated by the U.S. Fish and Wildlife Service in 50 CFR part 20, which will offer a final season framework to Wisconsin in the spring of 2022. The State of Wisconsin's season proposal will be based on the federal framework, flyway agreements, and local conditions.

RECOMMENDATION: That the Board approve the Statement of Scope for Emergency Board Order WM-15-21 (E).

LIST OF ATTACHED MATERIALS (check all that are applicable):

- Statement of Scope
- Governor approval of statement of scope
- Type name of attachment if applicable
- Type name of attachment if applicable

Approved by	Signature	Date
Eric Lobner, Bureau Director	DocuSigned by: <i>Eric Lobner</i> 49A5E090CF88465...	1/12/2022 9:43 AM CST
Keith Warnke, Division Administrator	DocuSigned by: <i>Keith Warnke</i> 9D69747CE78D4CA...	1/12/2022 1:50 PM CST
For Preston D. Cole, Secretary	DocuSigned by: <i>Sarah Barry</i> A7D70DC3770642F...	1/12 2022 12:58 PM CST

cc: Board Liaison – AD/8

DS
WJR

by Sarah Barry

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Tony Evers

Office of the Governor | State of Wisconsin

November 18, 2021

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Dentistry Examining Board, submitted October 14, 2021, relating to definitions (Wis. Admin. Code ch. DE 11); and
- A statement of scope by the Department of Public Instruction, submitted October 7, 2021, relating to tier I, 3-year school district-sponsored license with stipulations (Wis. Admin. Code ch. PI 34); and
- A statement of scope by the Department of Public Instruction, submitted October 7, 2021, relating to grade ranges for school administrators and speech-language pathologists (Wis. Admin. Code ch. PI 34); and
- A statement of scope by the Department of Public Instruction, submitted November 5, 2021, relating to calculation of aid under the achievement gap reduction program (Wis. Admin. Code ch. PI 24); and
- An emergency statement of scope by the Department of Natural Resources, submitted November 16, 2021, relating to establishing the 2022 migratory bird season framework and regulations (Wis. Admin. Code ch. NR 10).

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185:

- A proposed rule by the Department of Natural Resources, submitted October 28, 2021, relating to lake trout harvest and season in Lake Michigan (Wis. Admin. Code ch. NR 20); and
- A proposed rule by the Department of Natural Resources, submitted October 28, 2021, relating to minor changes to fishing regulations on inland, outlying and boundary waters (Wis. Admin. Code chs. NR 19-26); and
- A proposed rule by the Department of Natural Resources, submitted October 27, 2021, relating to implementing electronics recycling program requirements and affecting small business (Wis. Admin. Code chs. NR 502, 520 and 530); and

- A proposed rule by the Department of Natural Resources, submitted November 5, 2021, relating to establishing the 2021 migratory bird season framework and regulations (Wis. Admin. Code ch. NR 10); and
- A proposed emergency rule by the Physical Therapy Examining Board, submitted September 24, 2021, relating to supervision of physical therapist assistants (Wis. Admin. Code chs. PT 1 and 5).

Please direct any questions about this letter to my deputy policy director, Katie Domina.

Sincerely,

A handwritten signature in black ink that reads "Tony Evers". The signature is written in a cursive, flowing style.

Tony Evers
Governor

cc: Ryan Nilsestuen, chief legal counsel (ryan.nilsestuen1@wisconsin.gov)
Katie Domina, deputy policy director (katherine.domina1@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spmail.wi.gov)
DSPS (DSPSAdminRules@wisconsin.gov)
Carl Bryan, DPI (carl.bryan@dpi.wi.gov)
Emma Esch, DNR (emma.esch@wisconsin.gov)

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WM-15-21 (E)

Relating to: Establishing the 2022 migratory bird season framework and regulations in Ch. NR 10 Wis. Admin. Code

Rule Type: Emergency

1. Finding/nature of emergency (Emergency Rule only):

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to states until the same year that the regulations must be implemented in order to have annual migratory bird hunting seasons. This order is designed to bring state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the promulgation of permanent rules prior to when the seasons should be open. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

2. Detailed description of the objective of the proposed rule:

These rule orders will establish the migratory bird hunting season framework which primarily includes hunting seasons and regulations for ducks and geese.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

These rules may modify season dates, bag limits, and other regulations for the duck and goose hunting seasons, most of which begin in September. These seasons are part of the federal migratory bird season frameworks and the United States Fish and Wildlife Service needs to be informed of the State of Wisconsin Natural Resources Board decisions on these seasons by late April, 2022.

In previous years, the department has adopted rules as late as August after receiving the final federal framework in late July. Beginning in 2016, states received the same season's federal framework information as early as March and could adopt rules in April. While this new timeline affords states additional time to prepare for migratory bird hunting seasons, the adoption of emergency rules is still necessary under this timeline. Publication and the effective date of a permanent rule is unlikely to occur prior to the start of many of the fall seasons in September of the same year.

Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20, who will offer a final season framework to Wisconsin in the spring of 2022. The State of Wisconsin's season proposal will be based on the federal framework, flyway agreements, and local conditions. The season framework implemented by the emergency rule and companion permanent rule will remain in effect until superseded by future rule-making.

These rules may make additional updates such as correcting cross-reference citations, updating road names on maps, changes needed in order to update application forms, or revisions which are necessary for consistency with recently enacted legislation.

Migratory birds include wild ducks, geese, brant, doves, rails, coots, gallinules, woodcock, Wilson's snipe and jacksnipe.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The chapter on wild animals and plants, in s. 29.014, "rule making for this chapter", establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to promulgate rules related to migratory game bird hunting and hunting and trapping for other species.

Special regulations on the taking of certain wild animals are authorized under s. 29.192, including specific language that authorizes rules related to Canada goose hunting.

The establishment of migratory game bird refuges is authorized in s. 23.09(2)(b) relating to the department's ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

Wisconsin's boundary waters with other states are popular waterfowl hunting locations. Specific authority to regulate hunting in and on all interstate boundary waters and outlying waters is established in s. 29.041.

Sections 23.11 and 29.014, Stats. allow for the protection of natural resources on state lands such as migratory bird refuges, establish general department powers, and authority to establish hunting and trapping regulations on department managed lands.

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

Approximately 420 hours will be needed by the department prior to and following the hearings.

6. List with description of all entities that may be affected by the proposed rule:

These rules will impact migratory game bird hunters and those who enjoy viewing waterfowl in Wisconsin.

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

Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20. Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually through the USFWS regulations process. As part of the federal rule process, the service annually evaluates migratory game bird populations and breeding habitat in cooperation with state provincial agencies and the Canadian Wildlife Service. After considering recommendations from the flyway councils of states and the guidance of cooperatively developed harvest strategies, the USFWS establishes annual frameworks within flyway or bird populations regions. States can then establish hunting seasons within the sideboards for each species and region. As a result, the hunting seasons of neighboring states are similar to Wisconsin migratory game bird hunting regulations because they are subject to the same federal frameworks.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

No economic impacts are anticipated. The hunting season frameworks proposed in this rule will be comparable to those in place during the previous season. These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding several public hearings around the state in March 2022. Exact hearing dates and locations are to be determined.

Contact Person: Taylor Finger, Migratory Bird Specialist, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, (608) 266-8841, taylor.finger@wisconsin.gov

DocuSigned by:

Todd Ambros

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For Preston D. Cole, Secretary

11/4/2021 | 2:09 PM CDT

Date Submitted