STATE OF WISCONSIN
SUPREME COURT

Appellate Case No. 02-1166

WISCONSIN CITIZENS
CONCERNED FOR CRANES
AND DOVES, JOHN
WIENEKE AND PAT FISHER,

Plaintiffs-Respondents-Petitioners,

v.

WISCONSIN DEPARTMENT
OF NATURAL RESOURCES,

Defendant-Appellant,

and

U.S. SPORTSMEN'S ALLIANCE
FOUNDATION f/k/a WILDLIFE
LEGISLATIVE FUND OF AMERICA,

Defendant-Intervenor-Co-Appellant.

BRIEF OF WISCONSIN CITIZENS CONCERNED FOR CRANES AND DOVES, ET. AL., PLAINTIFFS-RESPONDENTS-PETITIONERS

(SEEKING REVIEW AND REVERSAL OF THE MARCH 27, 2003, DECISION OF THE WISCONSIN COURT OF APPEALS, DISTRICT IV)

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES 1

STATEMENT ON ORAL ARGUMENT 3

STATEMENT OF THE CASE 4

ARGUMENT 7

I. INTRODUCTION 7

II. COURT REVIEW DETERMINES IF ADMINISTRATIVE RULE IS APPROPRIATE EXERCISE OF LEGISLATIVELY DELEGATED AUTHORITY 8

A. COURT'S ANALYSIS OF ENABLING LEGISLATION IS *DE NOVO*, SEARCHING FOR LEGISLATIVE INTENT 8

B. AMBIGUOUS ENABLING LEGISLATION REQUIRES JUDICIAL CONSTRUCTION USING ESTABLISHED METHODOLOGY 10

III. § 29.014, *STATS.* IS AMBIGUOUS, PARTICULARLY AS REGARDS USE OF THE TERM "GAME" 12

IV. THE AMBIGUITY OF THE PERTINENT STATUTES NECESSITATES RESORT TO THE TOOLS OF STATUTORY CONSTRUCTION 19

A. IN HARMONIZING COMPETING STATUTES, THE COURT GIVES PRIMACY TO A MORE SPECIFIC STATUTE 20

B. LEGISLATIVE HISTORY REVEALS THE INTENT THAT THE DOVE BE SPARED FROM THE HUNTER'S GUN 25

C. THE LEGISLATURE HAS DELIMITED DNR'S AUTHORITY WITH RESPECT TO NONGAME SPECIES 28

V. CITIZENS' INTERPRETATION OF CH. 29. *STATS.*, IS IN HARMONY WITH WISCONSIN'S NEWLY RATIFIED "RIGHT TO HUNT" AMENDMENT 32

CONCLUSION 38

APPENDIX:

A. DECISION OF COURT OF APPEALS (MARCH 27, 2003) A-1

B. DECISION OF TRIAL COURT TWO PARTS: JANUARY 14, 2002 ..... A-19
And APRIL 16, 2002 ..... A-30

C. 2001 SENATE JOINT RESOLUTION 2, (CREATING SECTION 26 OF ARTILCE I OF THE WISCONSIN CONSTITUTION) A-33

TABLE OF AUTHORITIES

State Cases

American Motors Corp. v. DILHR
101 Wis.2d 337, 305 N.W.2d 62 (1981) 28

Arbor Vitae-Woodruff Joint School District No. 1 v. Gulf Ins. Co.
250 Wis.2d 637, 639 N. W. 2d 788 (Ct.App.2001) 19

Ball v. District No. 4, Area Bd.
117 Wis.2d 529, 345 N.W.2d 389 (1984) 9

Brown County v. DH & SS
103 Wis.2d 37, 307 N.W.2d 247 (1981)..... 22

Citizens' Utility Board v. PSC
211 Wis.2d 537, 565 N.W.2d 554 (Ct.App. 1997) 11

City of Milwaukee v. Milwaukee County
27 Wis.2d 53, 133 N.W.2d 393 (1965)..... 19

City of Milwaukee v. Kilgore
193 Wis. 2d 168, 532 N.W. 2d 690 (1995) 10, 17

Debeck v. Wisconsin Department of Natural Resources
172 Wis.2d 382, 493 N. W. 2d 234 (Ct. App. 1992),
review denied 497 N.W. 2d 130 .....,..... 22

Grafft v. Wisconsin Department of Natural Resources
238 Wis. 2d 750, 618 N.W. 2d 897 (Ct.App.2000).... 22

Green Bay Redev. Auth. v. Bee Frank, Inc.
120 Wis. 2d 402, 355 N.W. 2d 240 (1984) 10

Grogan v. PSC
109 Wis.2d 75, 324 N.W.2d 82 (Ct.App.1982) 24

Harnischfeger Corp. v. LIRC
196 Wis.2d 650, 539 N.W.2d 98 (1995) 15

Hutson v. State of Wisconsin Personnel Com'n
263 Wis.2d 612, 665 N.W.2d 212 (2003)..... 12

J.A.L.v. State
162 Wis. 2d 940, 471 N. W. 2d 493 (1991)..... 9

Jungbluth v. Hometown, Inc.
310 Wis.2d 320, 548 N.W.2d 519 (1996)..... 19

League of Wisconsin Municipalities v. Dept. of Commerce
256 Wis.2d 183, 647 N.W.2d 301 (2002) 11

Lindsey v. Lindsey
140 Wis.2d 684, 412 N.W.2d 132 (Ct.App.1987) 28

Maple Leaf Farms, Inc. v. D.N.R.
2000 WI App 170, 247 Wis.2d 96, 233 N.W.
2d 720 (2000) 9

Marshall-Wis. Co., Inc. v. Juneau Square Corp.
139 Wis. 2d 112, 406 N. W. 2d 764 (1987) 9

Meyer v. School District of Colby
226 Wis.2d 704, 595 N.W.2d 339 (1999) 9

Seider v. O'Connell
236 Wis.2d 211,612 N.W.2d 659 (2000)..... 9

State v. Beno
116 Wis.2d 122, 341 N.W.2d 668 (1984) 36

State v. Cole
2003 WI 112, 665 N.W.2d 328 (2003) 37

State v. ILHR Department
101 Wis.2d 396, 304 N.W. 2d 758 (1981) 27

State v. Setagord
211 Wis.2d 397, 565 N.W.2d 506 (1997) 19

State v. Sweat
208 Wis.2d 409, 561 N. W. 2d 695 (1997) 10-12

State v. Zawistowski
95 Wis.2d 250, 290 N.W.2d 303 (1980) 24-25

Thompson v. Craney
199 Wis.2d 674, 546 N.W.2d 123 (1996) 35

State Statutes

Wis. Stat. § 29.001 ..... 5, 14, 17

Wis. Stat. § 29.001(30) 18

Wis. Stat. § 29.001(33) 1, 5, 11, 14-18, 34

Wis. Stat. § 29.001(36) 14, 18

Wis. Stat. § 29.001(39) 14, 16, 18

Wis. Stat. § 29.001(41) 18

Wis. Stat. § 29.001(42) 32

Wis. Stat. § 29.001(90) 14, 18

Wis. Stat. § 29.014 ..... 4, 11-13, 21, 23-24, 34

Wis. Stat. § 29.014(1) 1,3, 5-7, 14-16, 18, 24, 38

Wis. Stat. § 29.039 ..... 17, 21, 24, 29, 35

Wis. Stat. § 29.039(1) 6-7, 22

Wis. Stat. § 29.175 (1977) 28-30

Wis. Stat. § 29.415 (1977) 30-31

Wis. Stat. § 169.01 36

Wis. Stat. § 169.01(34) 36

Wis. Stat. § 227.40 ..... 4, 10, 11

State Amendment

Article I, §26 33-34

State Regulations

NR 10.01(1)(h), Wis. Adm. Code 1-5, 10

State Legislative Acts

Laws of 1971, Chapter 129 ..... 26, 31
Laws of 1977, Chapter 370 28-29
2003 Act 55 36

Federal Regulations

50 CFR 10.13 36

Federal Statutes

16 USC 701 to 715S 36

Plaintiffs-Respondents-Petitioners Wisconsin Citizens Concerned For Cranes And Doves, John Wieneke and Pat Fisher ("Citizens"), by their attorneys, George B. Strother IV and Krekeler Strother, S.C., respectfully submit this brief in support of their request for review and reversal, by the Wisconsin Supreme Court, of the decision of the Wisconsin Court of Appeals, District IV, dated and filed March 27, 2003.

STATEMENT OF ISSUES

The issues presented for review are as follows:

1. Does § 29.014(1), *Stats.*, the statute under which the Wisconsin Department of Natural Resources (hereinafter "DNR") may set open seasons for "game", give the DNR authority to adopt an administrative rule, and more particularly Wis. Admin. Code § NR 10.01(1)(h), setting a hunting season for mourning doves?

2. Is the term "game", as defined in term § 29.001(33), *Stats.*, and as utilized in § 29.014(1), *Stats.*, ambiguous because reasonable minds could differ as to its meaning, thereby requiring resort to statutory construction techniques?

3. Do the extrinsic aids of statutory construction, including among others legislative history, harmonization of the relevant statutes, and administrative agency interpretation based upon departmental expertise, demonstrate that Wis. Admin. Code § NR 10.01(1)(h) was adopted in excess of the DNR's statutory authority?

4. How must the Supreme Court account for the recently ratified Wisconsin Constitutional Amendment, popularly known as the "Right to Hunt" Amendment, in reaching a decision in this case?

All but the last of the issues were raised in the Court of Appeals by the Department of Natural Resources and the U.S. Sportsmen's Alliance Foundation, f/k/a Wildlife Legislative Fund of America (collectively in this brief "DNR") in their cooperative challenge to the determination of the trial court. The trial court had concluded that the rule in question was adopted by the DNR in excess of its legislative grant of authority. The statewide mourning dove hunt, under the auspices of Wis. Admin. Code sec. NR 10.01(1)(h), was challenged in the trial court by Citizens pursuant to Chapter 227, *Stats.*, purely as an issue of law, without regard to prudence from a scientific, ecological, or other policy perspective. The fourth and last issue, one of first impression, has yet to be addressed by the parties, but was raised

sua sponte by the Supreme Court in its order granting Citizens' Petition for Review.

The Court of Appeals decided the DNR has legislatively granted authority under § 29.014(1), *Stats.*, to establish a dove hunting season, and that Wis. Admin. Code § NR 10.01(1)(h) represents a valid exercise of that authority; that the enabling statute has a plain and unambiguous meaning, particularly in regard to the use of the term "game"; that resort to extrinsic aids is not necessary to determine legislative intent, but even the extrinsic aids reveal no other meaning than that which is plain on the face of the enabling statute.

STATEMENT ON ORAL ARGUMENT

Oral argument will assist in clarifying and elucidating the parties' respective contentions in regard to the novel and unexpectedly complex nature of the issues raised in this case. The customary limitations and constraints with respect to written appellate briefs limit the ability of each party to explain how the numerous and varied parts of Ch. 29, *Stats.*, may interact to form a comprehensive regulatory scheme, and to give suitable emphasis to essential contentions regarding the existence (or non-existence) of ambiguity in the critical provisions of Ch. 29, *Stats.* Additionally, the impact and implications of the newly- ratified "Right to Hunt" constitutional amendment have not been previously addressed in this lawsuit or elsewhere.

Oral argument will give the Court an opportunity for an early dialogue with counsel who have become informed regarding contemporaneous, concrete, and closely related issues arising under state statutes regulating hunting activity. Oral argument in this meaningful context may therefore assist the Court in achieving a thoughtful and lasting interpretation of the new amendment, and the benefits conferred and limitations imposed thereby.

STATEMENT OF THE CASE

A. Nature of the Case. Citizens challenge, pursuant to § 227.40, *Stats.*, the DNR's administrative rule establishing a hunting season for mourning doves in Wisconsin, on the grounds that the rule was promulgated in excess of the DNR's scope of authority.

B. Procedural Status of the Case. On or about, May 1, 2001, the DNR, under the authority granted by § 29.014, *Stats.*, enacted a rule establishing open and closed hunting seasons for mourning doves. The rule established a 60-day hunting season for mourning doves to commence September 1st of each year. On June 19, 2001, Citizens commenced action in Dane County for judicial review of the rule. Judge Moeser found the rule to have been adopted in excess of the DNR's authority, and granted initially temporary injunctive, and ultimately permanent injunctive, relief. The DNR sought *de novo* review in the Wisconsin Court of Appeals, District IV. The Court of

Appeals' decision of March 27, 2003, reversed the decision of the trial court. Citizens subsequently filed a timely Petition for Review, which was granted by the Wisconsin Supreme Court.

C. **Dispositions in Trial and Appeals Courts.** § 29.014(1), *Stats.* is a legislative grant of authority generally allowing the DNR to establish hunting seasons for "game". However, the trial court determined that the DNR lacks authority under Ch. 29, *Stats.*, to establish a hunt of mourning doves (and therefore that § NR 10.01(1)(h), Wis. Adm. Code, the pertinent enabling regulation, was adopted in excess of the agency's authority). The trial court analyzed § 29.014(1), *Stats.*, and found that provision ambiguous, concluding that reasonable minds could differ as to its meaning. In particular, Judge Moeser found the term "game", as utilized in § 29.014(1), *Stats.*, to be ambiguous, and that legislative history and a harmonization of the statutory scheme of Ch. 29, *Stats.*, indicates that the mourning dove is not "game" for purposes of that provision. The DNR argued it could establish a hunting season for mourning doves because "game", as defined in § 29.001(33), *Stats.*, includes all varieties of wild animals and birds and, therefore, that mourning doves, come within the ambit of § 29.014(1), *Stats.* However, the trial court, examining the various definitions appearing in § 29.001, *Stats.*, found that mourning doves have been classified by the Legislature as a "nongame species." The trial court reasoned that since mourning doves (as well as other species) are both "game" and a "nongame

species", § 29.014(1), *Stats.*, is ambiguous. The trial court proceeded to examine and analyze the entire statutory scheme under Ch. 29, *Stats.*, and ultimately concluded that the Legislature intended to classify mourning doves as the more specific "nongame species", and not as "game".

The trial court found that the DNR is precluded from authorizing the hunting of doves, determining that § 29.039(1), *Stats.*, constrains the DNR's authority as it relates to the "nongame" mourning dove. This provision allows the DNR to "establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species." The trial court reasoned that while "taking is [by statutory definition] one component of hunting", since the Legislature did not use the term "hunting" in § 29.039(1), *Stats.*, the DNR was denied authority to authorize dove hunting pursuant to that section.

The Court of Appeals reversed the trial court, holding that the plain language of § 29.014(1), *Stats.*, (1999-2000) authorizes the DNR to establish seasons for the hunting of mourning doves. The Court of Appeals ultimately found that various competing definitions and provisions of Ch. 29, *Stats.*, were not incongruous as argued by Citizens, but that the mourning dove could be both a "game" and a "nongame species" for purposes of different statutes.

The Court of Appeals concluded that § 29.039(1), *Stats.*, authorizes the hunting of "nongame species", declining to differentiate between "taking" and "hunting", and finding unremarkable in § 29.039(1), *Stats.*, the lack of

language parallel to "establish and maintain open and closed seasons" as enunciated in § 29.014(1), *Stats.* The Court of Appeals concluded that Ch. 29, *Stats.*, sets forth a comprehensive and harmonious scheme granting wide powers to the DNR including designation of species as "endangered" or "threatened", setting of open and closed seasons, and regulation of "game" so as to ensure the citizens of this state "continued opportunities for good... hunting and trapping." § 29.014(1), *Stats.* The Court of Appeals found that Wis. Stat. § 29.039(1), *Stats.*, complements, rather than restricts, the DNR's other powers under Ch. 29, *Stats.*

D. <u>Statement of Facts</u>. This case presents exclusively issues of law. No facts beyond those set forth above, or otherwise presented in the decisions of the trial court and the Court of Appeals, and in the appellate briefs, are necessary to an understanding or resolution of the issues.

ARGUMENT

I. INTRODUCTION.

The fundamental question raised by this case is seductively straightforward and uncomplicated: How broadly has the Legislature delegated to the DNR authority to regulate hunting in the state? Somewhat more narrowly, the question is this: Is the DNR's authority to regulate hunting complete and unfettered as asserted by the DNR, or did the

Legislature intend that there be certain limitations on that authority, and more specifically on the hunting of various wild species, as asserted by Citizens? The answers to these questions turn on an understanding and interpretation of the statutory provisions by which the Legislature has partially relinquished and delegated to the DNR its constitutional control over the state's natural resources.

The existence, or non-existence, of ambiguity in these statutory provisions is the basic legal issue presented. It is the interpretation and harmonization of these apparently contradictory and competing statutory provisions which has caused thoughtful judicial minds, at the trial court level and at the appellate court level, to differ as to their meaning, and which gives rise to ambiguity which calls for a judicial determination, at the highest level, as to the extent to which the Legislature intended to delegate its control over the state's wildlife to the DNR. The particular vehicle for the instant inquiry is the peaceful and familiar mourning dove.

II. COURT REVIEW DETERMINES IF AN ADMINISTRATIVE RULE IS AN APPROPRIATE EXERCISE OF LEGISLATIVELY DELEGATED AUTHORITY.

A. A COURT'S ANALYSIS OF ENABLING LEGISLATION IS *DE NOVO*, SEARCHING FOR LEGISLATIVE INTENT.

Judicial review of the validity of an administrative rule is available pursuant to § 227.40, *Stats.*; a rule is invalid if it exceeds the statutory scope of authority granted to the agency. ***Seider v. O'Connell***, 2000 WI 76, ¶¶24, 28, 236 Wis.2d 211, 612 N.W.2d 659. An administrative agency has only those powers that are expressly conferred or can be fairly implied from the statutes under which it operates; any reasonable doubt as to the existence of an implied power in an agency should be resolved against the exercise of such authority. ***Maple Leaf Farms, Inc. v. D.N.R.***, 2001 WI App 170, ¶13, 247 Wis.2d 96, 633 N.W.2d 720.

Interpretation of the meaning of a statute presents a question of law. ***J.A.L. v. State,*** 162 Wis.2d 940, 962, 471 N.W.2d 493 (1991). In deciding questions of law, the Supreme Court benefits from the analyses of both the circuit court and the Court of Appeals. ***Meyer v. School District of Colby***, 226 Wis.2d 704, 708, 595 N.W.2d 339 (1999). A *de novo* standard of review is employed in ascertaining the intent of the legislature. ***Ball v. District No. 4, Area Bd.,*** 117 Wis.2d 529, 537-38, 345 N.W.2d 389 (1984). The court's first resort is to the plain language of a statute. If the meaning of the statute is plain, the court is prohibited from looking beyond the language to ascertain its meaning, ***Marshall-Wis. Co., Inc v. Juneau Square Corp.,*** 139 Wis.2d 112, 133, 406 N.W.2d 764 (1987), and the duty of the court is merely to apply that meaning to the facts and circumstances of the question presented. ***J.A.L.,*** 162 Wis.2d at 962, 471 N.W.2d 493.

B. AMBIGUOUS ENABLING LEGISLATION REQUIRES JUDICIAL CONSTRUCTION USING ESTABLISHED METHODOLOGY.

A statute is ambiguous if reasonable minds can understand the statute in more than one way. ***State v. Sweat***, 208 Wis.2d 409, 416, 561 N.W.2d 695 (1997). Ambiguity can be found in the words of a statutory provision as they interact with and relate to other provisions in the statute and to other statutes. ***Id.*** *at 416-17*. Single words or phrases to be interpreted must be viewed in light of the entire statute. ***Id.*** *at 416*. Apparently contradictory provisions of a statute must be harmonized if possible so as to give each provision full force and effect. ***City of Milwaukee v. Kilgore***, 193 Wis.2d 168, 184, 532 N.W.2d 690 (1995). If the language of a statute does not clearly or unambiguously set forth the legislative intent, the court will engage in statutory construction so as to ascertain and carry out the legislative intent. ***Green Bay Redev. Auth. V. Bee Frank, Inc.,*** 120 Wis.2d 402, 409, 355 N.W.2d 240 (1984). In such cases, the court examines the history, context, subject matter, scope and object of the statute. ***Id.*** In the exercise of this process, the court is guided by a fundamental axiom of judicial construction, namely avoidance of any result that would be absurd or unreasonable. ***Id.***

The Court of Appeals, citing case law authority, concluded that Citizens bore the burden to convince the court of the invalidity of § NR 10.01(1)(h), Wis. Adm. Code. Ct. App. Decision, ¶6. That conclusion was erroneous, and improperly shifted to Citizens some otherwise undefined

responsibility to persuade. § 227.40, *Stats.*, establishes no burden on any party; it merely places on the shoulders of the reviewing court the responsibility in appropriate cases to review the validity of administrative rules, applying relevant principles of law. The authority cited by the Court of Appeals, ***League of Wisconsin Municipalities v. Dept. of Commerce***, 2002 WI App 137, ¶9, relies upon ***Citizens' Utility Board v. PSC***, 211 Wis.2d 537, 552-3, 565 N.W. 2d 554 (Ct. App. 1997). The latter case, readily distinguished from the circumstances at hand and therefore inapposite, places a burden of persuasion upon a party seeking review of administrative agency action only where that action involves findings of fact, or mixed findings of fact and law (and not, as here, where only issues of law are presented).

The Court of Appeals found that § 29.014, *Stats.*, is not ambiguous. The court concluded that "reasonable minds" could not differ as to the meaning of the term "game", defined in § 29.001(33), *Stats.* and utilized in § 29.014, *Stats.* , and consequently that § 29.014, *Stats.* is plain on its face. The court reached the ultimate conclusion that the DNR has legislatively delegated authority to establish a season for the hunting of the mourning dove, and that rule challenged by Citizens is a proper exercise of that authority. Citizens respectfully disagree with the Court of Appeals, and urges the Supreme Court to determine in the first instance that § 29.014, *Stats.*, seen in the entire context of Ch. 29, *Stats.*, is ambiguous, and then to find that this statute, when analyzed and interpreted according to the rules of statutory

construction, does not delegate the authority which the DNR seeks to exercise.

III. § 29.014, *STATS.* IS AMBIGUOUS, PARTICULARLY AS REGARDS USE OF THE TERM "GAME".

The purpose of statutory interpretation is to discern the intent of the Legislature. The Court of Appeals quite properly considered first the language of § 29.014, *Stats.* to assess the extent to which the language used by the Legislature clearly and unambiguously sets forth its intent. In pertinent part, the statute provides:

> *"The department shall establish and maintain open and closed seasons for fish and game . . . and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping."*

While statutory interpretation begins with the language used, it is well established that courts must not look at a single, isolated sentence or portion of a sentence. ***State v. Sweat***, 208 Wis.2d 409, 416, 561 N.W.2d 695 (1997). Rather, courts look to the role of the relevant language in the context of the entire statute. Moreover, in interpreting a statute, courts must attempt to give effect to every word so as not to render any portion superfluous. ***Hutson v. State of Wisconsin Personnel Com'n,*** 263 Wis.2d 612, 641, 665 N.W.2d 212, 20 IER Cases 161 (2003).

The analysis of the Court of Appeals falls short in two important and closely related respects. First, it focuses narrowly, and too restrictively, on the definition of "game", without adequately acknowledging the entire

context of Ch. 29, *Stats.*, and particularly the contradictory definitional language that applies to the mourning dove. Second, the decision fails to rigorously apply the accepted test of ambiguity, namely whether reasonable minds might differ as to meaning, instead focusing almost exclusively on whether the statutory language used to define "game", taken virtually in isolation, appears to have a plain meaning. Indeed, the analysis of the Court of Appeals uses in practical effect only half of the required test. It finds that a reasonably well-informed person, looking at the language of § 29.014, *Stats.*, in isolation, would find persuasive the interpretation urged upon the court by the DNR. Lacking in the approach of the Court of Appeals, however, is a sufficiently rigorous examination of the entire context of Ch. 29, *Stats.* It is the relationship of § 29.014, *Stats.*, to various other parts of Ch 29, which gives rise to ambiguity in this case, and which requires a concerted effort to harmonize and give meaning to the entire statutory scheme. The Court of Appeals does not explicitly dismiss the possibility that a reasonably well-informed person might understand the statute in more than one sense, but merely finds the interpretation urged by Citizens to be not compelling. This approach begs the question, and fails to credit the fact that the trial judge, presumably a reasonably well-informed individual, in an extensive and analytical decision, found room both to differ with the DNR's interpretation and to see arguable merit in Citizens' analysis. Again, the issue of ambiguity turns not on whether the Court of Appeals finds Citizens' interpretation more

convincing, but on whether reasonable minds might differ as to the meaning of the statute.

The DNR contends that the meaning of §29.014(1), *Stats.*, is plain on its face. The operative term in the statute is "game", a word readily susceptible of more than one meaning. The statutory definition is not contained within § 29.014(1), *Stats*. Instead, one must revert to the definitional section, § 29.001, *Stats*. The DNR argues that the portion of Ch. 29, *Stats.*, necessary to an understanding of § 29.014(1), *Stats.* is a definitional statute plain on its face. The DNR asserts that the court is bound by the ostensibly plain language of the statutory definition and can look no farther. However, the Court in fact must not look at the definitional statute in isolation, but must instead consider the broader context of Ch 29. Citizens is confident that once the Court does this, it will be apparent that the meaning to be found in the definition is not plain, but is susceptible of more than one reasonable interpretation.

§ 29.001(33), *Stats.* defines "game" ("all varieties of wild mammals or birds"), but without the Legislature defining or explaining (there or elsewhere) the terms incorporated within that definition. It perplexing and a source of confusion that the Legislature failed to define these terms with specificity, particularly when apparently related terms, or subsets of the terms, are defined in the same section, e.g. "wild animals", "game birds", "game animals", §§ 29.001(90), (39), (36), *Stats.*, respectively. The Appellate Court agreed with the DNR in finding that §29.001(33), *Stats.*, is

all-inclusive.[1] However, the use of the conjunction "or" in § 29.001(33), *Stats.*, rather than the inclusive term "and", undermines this contention. A reasonable mind might well take flight and wonder whether the "game" to be hunted under the authority of § 29.014(1), *Stats.*, are all varieties of wild mammals or birds, or some otherwise defined subset thereof such as the "game animals" and "game birds". That reasonable mind would perceive ambiguity, and accordingly, neither § 29.014(1), *Stats.* nor § 29.001(33), *Stats.* could be considered unambiguous on its face. This conclusion becomes all the more compelling as one delves further into the required context, namely the other related portions of Ch. 29.

Whether the statutes at issue have plain and clear meanings is a question partially answered by the current disagreement. A statute is ambiguous if it is capable of being understood by a reasonably well-informed person in either of two senses. Citizens acknowledge that the mere fact that parties interpret a statute differently does not compel a finding of ambiguity. However, the Wisconsin Supreme Court has previously recognized that "different yet equally reasonable interpretations by various decision-making bodies are indicative that a statute may support more than one reasonable interpretation. ***Harnischfeger Corp. v. LIRC,*** 196 Wis.2d 650, 662, 539 N.W.2d 98 (1995). The DNR interprets the statutes at issue in keeping with its position, but other decision-making bodies, including the Dane County Circuit Court and the dissent to the Court of Appeals decision, have articulated equally reasonable but different interpretations of the statutes at

[1] § 29.001(33), *Stats.*, provides: "'game' includes all varieties of wild mammals or birds".

issue. Finding the plain meaning of a statute is not a matter of simply reading the statute verbatim and considering that meaning.

The DNR sought to have the trial court and the Court of Appeals limit their inquiries to the reading of §§ 29.014(1) and 29.001(33), *Stats.*, in isolation. However, the trial court refused this invitation, declining to assess statutes in a vacuum. Even the Court of Appeals, notwithstanding its view that the statutes are unambiguous, rather anomalously proceeded with a review of the broader statutory context, an exercise which was apparently unnecessary in light of its announced point of view. One suspects that this betrays a sense of discomfiture on the part of the Court of Appeals with its own conclusion. In any case, the trial court in its analysis appropriately noted the conflict in nomenclature created by § 29.001(39), *Stats.*, which defines "nongame species" as "any species of wild animal (*emphasis added*) not classified as a game fish, game animal, game bird or fur-bearing animal". Indeed, the sole common point of agreement in this case among all parties and both courts is that the mourning dove is not included among fowl specifically identified by the Legislature as "game birds", and that "nongame species" does in fact include the mourning dove. A reasonable mind might well conclude that the mourning dove could not be, at once, both "game" and a "nongame species".

The DNR would have the courts harmonize these patently conflicting statutes by implying the existence of missing language, and more particularly by construing, without further analysis, "nongame species" as a subset of

"game". The Court of Appeals essentially adopted this argument in its decision. However, the terms are clearly and logically incongruous, and nowhere in Ch. 29 do we find legislative directive to support the DNR's effort to so harmonize the conflicting statutes. "Game birds" may logically be a subset of "game"; that "game animals" is a subset is far less clear, and perhaps dubious. A reasonable mind would surely have doubt that the Legislature intended that a wild creature could be simultaneously "game' and a "nongame species".

The term "game" is used throughout Chapter 29, but not in all cases with the connotation or apparent meaning suggested by § 29.001(33), *Stats.* "Nongame species" is highly specific statutory terminology, used but once in Chapter 29 (outside of the definitional statute), more specifically in § 29.039, *Stats.*, where the Legislature very particularly describes the limited authority delegated to the DNR as it relates to "nongame species". In the calculus of statutory construction, one encounters the well-recognized principle that when a general statute conflicts with a specific statute, the specific statute controls. ***City of Milwaukee v. Kilgore***, 193 Wis.2d 168, 184, 532 N.W.2d 690 (1995). This principle does not appear to have been incorporated into the analysis of the Court of Appeals in reaching its decision. However, it can hardly escape notice that § 29.001, *Stats.*, confronts the reader with general definitions juxtaposed against specific definitions. The definition of "game" in § 29.001(33), *Stats.*, which "include[s] all varieties of wild mammals or birds", is broad and general in classifying Wisconsin's fauna. The

Legislature has given us various other more specific terms of art (besides "nongame species") to classify Wisconsin's fauna, e.g. "fur-bearing animals", "game animals", "game birds", "game fish" §§ 29.001(30), (36), (39), (41), *Stats.* respectively. In each case, the Legislature has chosen to specifically list the creatures included within the definition. Similarly, the Legislature chose to define "wild animals" more specifically and inclusively than "game", to "mean any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion, § 29.001(90), *Stats.* "Game birds" includes only certain specifically enumerated species of fowl, among which the mourning dove is not to be found, and it follows then that mourning doves come within the definition of "non-game species". Contrary to the conclusion reached by the Court of Appeals, this in turn seems logically to exclude mourning doves from the definition of "game", particularly insofar as "game" is the more general statutory definition, and "game birds" and "non-game species" are the more specific statutory definitions.

Examining §§ 29.014(1) and 29.001(33), *Stats.*, in the broader context of Ch. 29, a reasonable mind could readily be confused as to the status of the mourning dove. More than one arguably logical conclusion is possible. In the less restrained view of the trial judge, the overall statutory scheme is "clear as mud". A judicial finding of ambiguity is, under the circumstances, compelled.

IV. THE AMBIGUITY OF THE PERTINENT STATUTES NECESSITATES RESORT TO THE TOOLS OF STATUTORY CONSTRUCTION.

If the first step in statutory analysis results in a finding of ambiguity, the analysis moves to the second step, statutory construction. "If the language of the statute renders legislative intent ambiguous, a court resorts to judicial construction". ***Arbor Vitae-Woodruff Joint School Dist. No. 1 v. Gulf Ins. Co.***, 2002 WI App 24, ¶7, 250 Wis.2d 637, 642, 639 N.W.2d 788, 790 (Ct. App.2001). "If and only if the language of the statute does not clearly or unambiguously set forth the legislative intent, however, will this court construe the statute so as to ascertain and carry out the legislative intent. In such case, we examine the history, context, subject matter, scope and object of the statute. In the exercise of this process, we are guided by a fundamental axiom of judicial construction, which is to avoid any result that would be absurd or unreasonable. ***Jungbluth v. Hometown, Inc.***, 310 Wis.2d 320, 327, 548 N.W.2d 519 (1996). "If the language is not plain, but ambiguous--because it is reasonably capable of being interpreted in two or more ways--we may look to the subject matter, object, context, scope, and history of the statute in order to ascertain legislative intent." ***State v. Setagord***, 211 Wis.2d 397, 405-6, 565 N.W.2d 506 (1997). "In doing this, we may look to related statutes, and we are to attempt to harmonize statutes that address the same or similar subject matter", citing ***City of Milwaukee v. Milwaukee County***, 27 Wis.2d 53, 56, 133 N.W.2d 393 (1965).

Because the Court of Appeals found no ambiguity in the pertinent statutory context, it was entirely free of any compulsion to move to the next step. Nevertheless, the Court did resort at length to the tools of statutory construction to support its determination, revealing perhaps some inner doubts about its own analysis and its ultimate finding of no ambiguity.

A. IN HARMONIZING COMPETING STATUTES, THE COURT GIVES PRIMACY TO A MORE SPECIFIC STATUTE.

As noted above, it is a primary tenet of statutory construction that the more specific provision prevails over the more general provision. This is true whether the provision deals with a definition or a grant of authority. In the competing specific and general provisions of Ch. 29, *Stats.*, the Court of Appeals found a comprehensive, harmonious, and well-ordered statutory scheme to regulate the state's natural resources. In those same provisions, the trial court, and apparently the dissent, found a maze of contradictory parts, some clearly more general and some clearly more specific. One man's trash is another man's treasure, and one jurist's comprehensive statutory scheme is another jurist's muddle of more or less specific terms and provisions. However, suffice it to say that the Court of Appeals decision seems to lose sight of the need to give primacy to the more specific terminology classifying mourning doves as something other than "game", in the process of trying to construe all of the parts of Ch. 29 to reflect some

comprehensive regulatory scheme. Not only is the definition of "non-game species" more specific than that of "game", the corresponding statute granting authority to the DNR regarding "non-game" species is more specific than the statute granting authority to the DNR regarding "game".

§ 29.039, *Stats.* provides as follows:

> **Nongame species.**
> *"[T] he Department may conduct investigations of nongame species to develop scientific information relating to population, distribution, habitant needs, and other biological data to determine necessary conservation measures. The Department may develop conservation programs to ensure the perpetuation of nongame species. The Department may require harvest information and may establish limitations relating to taking, possession, transportation, processing and sale or offer for sale of nongame species."*

In comparison, § 29.014, *Stats.* provides for a broad grant of authority to the DNR, never specifically authorizing the DNR to designate what wild animals, birds or fish can be hunted, trapped, or fished. This statutory provision simply allows for the DNR to determine the conditions of a hunt or taking. The DNR is allowed to designate when seasons for such hunting and taking will occur, and the conditions under which this may happen:

> **Rule-making for this chapter. (1)** *The department shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping.*

Unlike § 29.014, *Stats.*, § 29.039, *Stats.* is very specific as to its grant of authority to the DNR. The Legislature specifically allows the DNR to act within carefully and explicitly designated limits to conduct scientific investigations that gather information about the nongame species. The DNR is allowed to develop conservation programs, require harvest information and

set limitations regarding the taking, possession, transportation ... of nongame species. Granting the authority to the DNR to "set limitations" is not synonymous with granting it broad authority to allow a hunt of a nongame species as the DNR argues and as the Court of Appeals agrees. Additionally, as the trial court determined, "taking is not equal to hunting....[it] is one component of hunting, along with shooting, pursuing, taking, capturing, etc." As Judge Moeser noted, "Alternatively, [the Legislature] could have stated that the DNR 'may establish limitations relating to hunting' of nongame species. It did not do so, and the plain language of § 29.039(1), *Stats.*, does not provide for setting seasons for nongame species."

Wisconsin law dictates that when a specific grant of authority to an agency conflicts with a more general grant of authority, the specific statute controls, especially when the specific statute is enacted after the general statute. ***Grafft v. Wisconsin Department of Natural Resources***, 238 Wis.2d 750, 618 N.W.2d 897 (Ct. App. 2000). Generally, "an administrative agency has only those powers as are expressly conferred or necessarily implied from the statutory provisions under which it operates, but acting within that grant of delegated power, an agency effectuates the will of the Legislature." ***Brown County v. DH & SS,*** 103 Wis.2d 37, 43, 307 N.W.2d 247 (1981). Any doubts, however, as to the implied power of an agency are to be resolved against the existence of authority. *See* ***DeBeck v. The DNR,*** 172 Wis.2d 382, 387, 493 N.W.2d 234 (Ct. App. 1992). ***Id.*** *at 755-756.*

Given the general grant of authority to the DNR in § 29.014, *Stats.* and the more specific limitation of its authority in § 29.039, *Stats.*, in conjunction with the broad definition of "game" and the specific definition of "nongame species", the Court of Appeals should have concluded that the Legislature had no intent to authorize the DNR to establish a hunt of nongame species, and in particular, the mourning dove. If nothing else, the articulated policies in the two statutes are inconsistent, and must necessarily reflect a legislative intent to limit the authority of the DNR with regard to "nongame" species.

The DNR's grant of authority in § 29.014, *Stats.* is to "conserve the fish and game supply and ensure the Citizens of this state continued opportunities for good fishing, hunting and trapping". The grant of authority in § 29.039, *Stats.* is of an entirely different and inconsistent character: to determine necessary conservation measures and develop programs to ensure the perpetuation of "nongame species". The trial court disagreed with the DNR's contention that "the removal of mourning doves from the game bird list in 1971 . . . do[es] not signify the Legislature's intent with respect to mourning doves". The DNR argued that the removal of the mourning dove from the "game bird" definition, in conjunction with the Legislature's official designation in 1971, of the mourning dove as the state symbol of peace, is irrelevant to divining the Legislature's intent with respect to The DNR's authority to establish a hunting season for the mourning dove. The Court of Appeals clearly found the DNR's contention in this regard to be persuasive,

as reflected in its decision. Citizens respectfully submit that these events and circumstances are in fact revealing of legislative intent, and should not be disregarded. It is reasonable to infer that removal of the dove from the "game bird" definition was not without purpose, and that the purpose was to prevent the dove from being a hunted species.

When a specific grant of authority to an agency conflicts with a more general grant of authority, the specific statute controls. ***Grogan v. PSC***, 109 Wis.2d 75, 81, 324 N.W.2d 82, 85 (Ct. App.1982). This is especially true when the specific statute is enacted after the general statute. The DNR contends that it has always had the broad authority to regulate "game" and set hunting seasons. However, the 1977 Legislature clearly enunciated its intent regarding the authority to be delegated to the DNR as it concerns "nongame species". Therefore, the more explicit and specific grant of authority regarding "nongame species" found in §29.039, *Stats.*, should be construed as a limitation upon the DNR's generic and broadly stated grant of authority to set open and closed seasons for wild creatures in the "fish" and "game" categories pursuant to §29.014(1), *Stats.*

Similarly, the more specific and explicit definitions found in §29.001, *Stats.*, should be favored over the general and implicit definitions within that section. It is been stated, "There is no rule of construction more reasonable, and none better settled, than that special provisions of a statute in regard to a particular subject will prevail over general provisions in the same or other statutes, so far as there is a conflict." ***State v. Zawistowski***, 95 Wis.2d 250,

263, 290 N.W.2d 303, 310 (1980). The existing case law clearly demonstrates a preference of the specific statute over the general statute.

B. LEGISLATIVE HISTORY REVEALS AN INTENT TO SPARE THE DOVE FROM THE HUNTER'S GUN.

One cannot avoid wondering: Why this resort by the Court of Appeals to the tools of statutory construction (in this case, legislative history) if the statute in question is clear on its face? The answer is simply that the statute is not clear on its face, particularly in light of the 1971 and 1977 changes. This bit of legislative history was a matter of agreement among the parties before the circuit court, and the implications with respect to legislative intent seemed clear to the trial court and apparently to the dissent. Legislative history is an appropriate tool in determining the intent of the legislature, yet the Court of Appeals seems content to readily dismiss, as being of no consequence whatsoever, the one bit of legislative history which is a matter of record as regards Ch. 29, *Stats.*

The DNR argued, and the Court of Appeals agreed, that the removal of mourning doves from the "game bird" list in 1971 did not signify the legislature's intent with respect to whether the DNR may set a hunting season for mourning doves. The DNR also argued against finding any relevance or significance in the Legislature's designation of the mourning dove as the state symbol of peace, without regard to whether this designation would be considered separately or in conjunction with the removal from the "game

bird" list. The Court of Appeals opined that had the Legislature wished to remove the dove from the broad definition of "game", it could have done so, but did not. Similarly, the Court of Appeals noted that other state symbols are "fair game" for hunting or fishing in Wisconsin. On the strength of this analysis, the Court of Appeals found no implication in the action taken with respect to the DNR's authority to allow hunting of the dove, given that the dove remained within the "game" definition.

Citizens respectfully submits that the analyses of the DNR and the Court of Appeals are flawed. A review of the 1971 legislative actions indicates that the Legislature intended to pair the two provisions with respect to the dove. Chapter 129, Laws of 1971 (published November 16, 1971) provides as follows:

> *"AN ACT to amend 1.10 and 29.01 (3) (d) of the statutes, relating to deleting the mourning dove from the definition of game bird and making it the Wisconsin state symbol of peace.*
>
> *1.10 (title) State Song and State Symbols. ....*
> *"The mourning dove is the symbol of peace"...*
>
> *29.01(3) (d) of the statutes is amended to read "Game Birds" includes the following..... and wild turkey; (deleted - <u>and the following columbine birds: mourning doves.</u>)*

The manner in which the Legislature acted gives rise to a compelling inference as to its intent: that the Legislature intended that the symbol of peace not be subjected to destruction by the hunter's gun. This conclusion is inescapable, notwithstanding the fact that the Legislature's action may have arguably been an imperfect legislative expression of that intent. One must also evaluate these legislative actions in the context of Ch. 29 as it

existed in 1971, namely that "nongame species" had not yet been identified as a wildlife category included within the ambit of Ch. 29 regulatory scheme. There is ample authority for Citizens' view in this regard, as Wisconsin's appellate courts have previously held: "[W]here statutes of direct and immediate linkage are enacted in the same legislation, they must be considered *in pari materia* and harmonized if possible. ***State v. ILHR Department,*** 101 Wis.2d 396, 403, 304 N.W.2d 758, 762 (1981).

The Court of Appeals reasons that various animals are state symbols, some of which are hunted or caught by fishing, and so too should the mourning dove be hunted if that is the intent of the DNR. The state symbol that can be hunted is the State Wildlife Animal – the white-tailed deer; never has the Legislature taken action suggesting that it should not be hunted. Similarly, one is allowed to fish the muskellunge, the State Fish; never has the Legislature taken action suggesting that it should not be fished. On the other hand, the State Animal – the badger - has yet to face the hunters' pursuit; neither has the State Bird – the robin - been made the object of hunting for sport. The mourning dove is an official state symbol that reflects a philosophical concept, the pursuit of peace, and which was recognized officially in the context of an acrimonious and unpopular war. That this state symbol represents such a philosophical concept differentiates and distinguishes the dove from various other state symbols, and supports the contention that the Legislature intended that this gentle bird be accorded

special status. So too does the fact that the Legislature in 1971 changed the official status of the creature in a manner suggesting it should not be hunted.

The Court of Appeals found significance in action that the Legislature failed to take. Citizens respectfully asserts, as did Judge Dykman in dissent, that evidence of any action that the Legislature failed to take bears no relevance in the calculus of statutory construction. "[N]on-passage of a bill is not reliable evidence of legislative intent. ***Lindsey v. Lindsey***, 140 Wi.s2d 684, 694 N.8, 412 N.W.2d 132 (Ct. App. 1987). Likewise, committee inaction does not reflect a committee's intent, and most certainly does not reflect legislative intent. See ***American Motors Corp. v. DILHR***, 101 Wis.2d 337, 349, 305 N.W.2d 62 (1981).

C. THE LEGISLATURE HAS LIMITED DNR'S AUTHORITY WITH RESPECT TO NONGAME SPECIES.

In 1977, the Legislature, in Chapter 370, Section 4, Laws of 1977, defined and made provision for "nongame species" in the newly created §29.01 (3) (e), *Stats.*: ". . . any species of wild animal not classified as a game fish, game animal, game bird or fur-bearing mammal." Chapter 370, Section 5, Laws of 1977, created §29.175, *Stats.*, defining DNR's regulatory function with respect to "nongame species", in pertinent part as follows:

> **29.175. Nongame species.** (1) The department may conduct investigations of nongame species in order to develop scientific information relating to population, distribution, habitat needs, and other biological data in order to determine necessary conservation measures. On the basis of these scientific determinations the department may adopt rules and develop conservation programs designed to ensure

> the continued ability of nongame species to perpetuate themselves. The rules may require harvest information and establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, in order to conserve nongame species.

Chapter 370, Section 1, Laws of 1977, provided for appropriations:

> ***Section 1.*** *At the appropriate place in the schedule under section 20.005 of the statutes, insert the following amounts for the purposes indicated:*
>
> | | | *1977-78* | *1978-79* |
> |---|---|---|---|
> | ***Natural resources, department of*** | | | |
> | *Forestry, Wildlife and Recreation* | | | |
> | *(df) Nongame and endangered and threatened species conservation* | *GPR A* | *45,000* | *45,000* |

It is apparent the Legislative intended that the DNR's regulatory activities with respect to "nongame species" be linked to, and be of the same nature and scope as, its regulatory activities with respect to endangered and threatened species.

If one accepts DNR's analysis regarding the scope of the agency's authority with respect to "nongame species" (as did the Court of Appeals), and if one adopts the DNR's interpretations of the various Ch. 29 definitions at issue, endangered and threatened species would be just another type of "game", and therefore subject to the agency's power to establish open and closed hunting seasons. Indeed, the Court of Appeals concluded that "taking", as utilized in §29.039, *Stats.* (the current renumbered successor to §29.175, *Stats.*), includes "hunting", and that §29.039, *Stats.*, should be construed as another legislative delegation, to the DNR, of authority to regulate hunting. However, Citizens respectfully contends that this view lacks persuasive force in light of the history and apparent purposes of the

legislation that created the present-day §29.039, *Stats.* Rather, it far more compelling to conclude that the authority delegated to the DNR, originally by the 1977 state legislature in creating §29.175, *Stats.*, "Nongame species", was limited to the development and implementation of conservational practices with the objective of perpetuating the various "nongame" and endangered species (i.e., the mourning dove, among others).

Chapter 370, Laws of 1977, also amended §29.415, *Stats.* This section, entitled "Endangered and Threatened Species", specifically proclaimed:

> *"[T]he states, however, must also assume their responsibility for conserving these wild animals and wild plants and for restricting the taking, possession, transportation, processing or sale of endangered or threatened wild animals and wild plants within their respective jurisdictions to assure their continued survival and propagation for the aesthetic, recreational and scientific purposes of future generations. The legislature finds that by eliminating the taking, possession or marketing of endangered species in this state and by establishing a program for conservation and restoration of these endangered or threatened species, their potential for continued existence with be strengthened. The legislature further finds that the activities of both individual persons and governmental agencies are tending to destroy the few remaining whole plant-animal communities in this state. Since these communities represent the only standard against which the effects of change can be measured, their preservation is of highest importance, and the legislature urges all persons and agencies to fully consider all decisions in this light.*

In this bill, the Legislature specifically defined the DNR's authority and responsibility regarding threatened and endangered species. The Legislature also provided for prohibitions against the taking, transporting, possessing ... of wild animals that are endangered or threatened. The Legislature additionally amended a statute ((29.415(6)(a), *Stats.*) to allow for the "taking, exportation, transporting, etc. of endangered or threatened

species for "zoological, educational or scientific purposes". At the same time, §29.415(7), *Stats.*, was amended to read, "[T]he department shall conduct research on the endangered and threatened species of this state and shall implement programs directed at conserving, protecting, restoring and propagating selected state-endangered <u>and threatened</u> species to the maximum extent practicable."

Citizens respectfully contends that these simultaneous statutory changes, as part of the legislative history of Ch. 29, *Stats.*, reveal the 1977 Wisconsin Legislature's intent to make "nongame species", and "endangered and threatened species", specialized categories of wild animals for purposes of Ch. 29. The Legislature also apparently intended to establish specific policies regarding the regulation of these species. The policies were intended to perpetuate the species and allowed for conservation actions to be taken. Hunting is not part of the legislative vernacular with respect to the wild creatures included within these specialized categories. In neither case does the legislature speak of "hunting" or any other appropriate destruction measures that could be utilized. Citizens urges the Supreme Court to conclude that this view is consistent with a logical and harmonious interpretation of the entire scope and context of Ch. 29, and that construing §29.039, *Stats.*, as a delegation of authority to regulate hunting is not.

Aside from the examples noted above, the remainder of the definitional statutes in Ch. 29 remain relatively unchanged since 1971. In particular, the definition of "hunting" has remained relatively constant. "'Hunt' or

'hunting' includes shooting, shooting at, pursuing, **taking** *(emphasis added)*, capturing or killing or attempting to capture or kill any wild animal." § 29.001(42), *Stats.* Thus, "taking" is a subset of "hunting", but not *vice versa*. "Taking" is distinct from "killing" and "shooting". By Aristotelian logic, or any logic, "taking" and "hunting" are not synonymous. "Taking" is not individually defined in Ch. 29. The standard dictionary definition of "taking" (*The Merriam Webster Dictionary*, 1995 edition), defines "taking" as "grasping, seizing" or "to lead, carry or cause to go along to another place". This dictionary definition of "taking" fits the Ch. 29 statutory scheme, consistent both with the changes enacted by the 1977 Legislature and with the current version of Ch. 29. Accordingly, Citizens urges the Supreme Court to reject the view adopted by the DNR and the Court of Appeals, wherein "taking" under §29.039, *Stats.*, is but another term for "hunting". Citizens respectfully submits that the Supreme Court should instead rule that the Legislature's intent with respect to "nongame" species is to have the DNR take responsibility for protecting and conserving such species, including the mourning dove, as distinguished from those game species which have historically been subject to being hunted and killed by sportsmen for recreation and food consistent with DNR hunting regulations.

V. CITIZENS' INTERPRETATION OF CH. 29. *STATS.*, IS IN HARMONY WITH WISCONSIN'S NEWLY RATIFIED "RIGHT TO HUNT" AMENDMENT.

Article I, § 26 of the Wisconsin Constitution, as ratified in April 2003, provides, "[T]he people have the right to fish, hunt, trap and take game subject only to reasonable restrictions as prescribed by law." Popularly known as the "Right to Hunt" amendment, this provision allows in a very general way for the Legislature to pass laws which restrict in reasonable ways the manner in which the people of the state may engage in the specified activities.

It follows that the Legislature (and presumably any administrative agency of the Legislature, with a proper delegation of authority) is not prohibited from enacting regulatory legislation which establishes rules and limitations regarding fishing, hunting, trapping, and taking of game, providing the rules and limitations meet a standard of reasonableness. Thus, it would seem that a regulatory scheme, of the general form of Ch. 29, *Stats.*, is contemplated by the amendment. Indeed, the wisdom and reasonableness of allowing the DNR to regulate hunting generally, or of allowing fishing, hunting, trapping or taking by the people of any particular species, is not now, and never has been, at issue in this case. In the view of Citizens, had the Legislature acted so as to unambiguously delegate to its administrative agency the authority to allow and regulate the hunting of the mourning dove, the present controversy would not have arisen. Our analysis of the impact of the amendment upon the issues in this case therefore turns to the portion of the text providing for " . . . the right to fish, hunt, trap and take game . . . ".

The amendment specifically provides constitutional protection to the people of Wisconsin to engage in the identified activities only as they relate to "game". "Game" is not further defined, but appears to include not only those creatures which might be hunted, trapped, and taken, but those which might be fished (*i.e.*, fish). Endangered species, threatened species, non-game species, and other protected species are not referenced. Presumably, the amendment establishes no right to hunt, for example, songbirds. Presumably, the amendment is not intended to override protection afforded to certain migratory wildfowl by federal regulation. It is noteworthy that the amendment does not utilize the more general term "wild animals". Accordingly, it is Citizens' interpretation that "game", as used in the amendment, is more or less a catchall for those species traditionally sought and killed by hunters and trappers, for sport, food, and fur, and further that this interpretation is consistent with the use of the same term in § 29.014, *Stats.* Quite apparently, the amendment contemplates a definition other than the definition currently provided by § 29.001(33), *Stats.* Given the apparent inclusion in the amendment of fish in the term "game", we have a clear signal from the Legislature that its use of that word does not necessarily implicate the more restrictive definition used in § 29.001(33), *Stats.*

The amendment specifically differentiates hunting of game and taking of game. The Court of Appeals, rejecting as unpersuasive the contention of Citizens, implicitly found that "taking" and "hunting" are synonymous within Ch. 29, *Stats.*, largely on the strength of the fact that the term "taking" is

found within the definition of "hunting". However, by thus differentiating among the four specifically identified, the Legislature has unmistakably pronounced that each of these activities is fundamentally different from the others, and that "taking" does not mean "hunting". It follows that if "taking' does not mean hunting, fishing, or trapping, it means something else which logically and by a process of elimination means the acquisition of dominion and control without killing. Assuming Citizens' conclusion in this regard is correct, the terminology used by the Legislature in the amendment fatally undermines the Court of Appeals' basis for the rejection of Citizens' interpretation of the Legislature's intent with respect to § 29.039, *Stats.* Therefore, consistent with this view of the amendment and the statute, the Legislature has designated the mourning dove as, exclusively, a "nongame species" which is to be subject "taking" for the limited purposes specified in § 29.039, *Stats.*, but not subject to being hunted.

The impact of the "Right to Hunt" amendment is indisputably a question of first impression for the Supreme Court to consider *de novo*. "[I]n interpreting a constitutional provision, the court turns to three sources in determining the provision's meaning: the plain meaning of the words in the context used; the constitutional debates and the practices in existence at the time of the writing of the constitution; and the earliest interpretation of the provision by the legislature as manifested in the first law passed following adoption." ***Thompson v. Craney***, 199 Wis.2d 674, 680, 546 N.W.2d 123,

127 (1996), *quoting* ***State v. Beno***, 116 Wis.2d 122, 136-7, 341 N.W.2d 668 (1984).

Ascertaining the plain meaning of the words used in the constitutional amendment is the initial inquiry. Hunting, as commonly understood, means the killing of wild animals by various means (*e.g.*, gun, bow and arrow). To "take" is something of a different character altogether, referring to the act of capturing. "Game", in common usage refers to those animal species traditionally hunted, trapped and fished by sportsmen, other hunters, and trappers. The practices in existence at the time of the writing of the amendment did not provide for a hunting season for any "nongame species", including the mourning dove. While no interpretation of this constitutional provision yet exists, it is noteworthy that legislation passed shortly after the enactment of this amendment included a definition of "taking" that distinguishes this term from "hunting".

§ 169.01, Stats., the definitional statute for a newly-created chapter entitled "Captive Wildlife", published on September 4, 2003 and contained within 2003 Act 55, defines "take" as meaning, "to capture, but does not include killing". §169.01(34), *Stats*. This statute, which provides generally for captive wildlife, makes no reference to "game". It defines the migratory bird by reference to the federal legislation as "a bird of a species on the list in 50 CFR 10.13 that is promulgated under 16 USC 701 to 715S." The mourning dove has a prominent place on that list. §169.01(30m), *Stats*. This definition affords no authority to the Wisconsin Department of Natural

Resources in defining the members of the class of migratory birds, thus reserving for the Legislature the authority to designate the members of the particular class of wild creatures (in this case, migratory birds, by reference to the federal regulations). Accordingly, this new legislation reflects both a legislative purpose to give different meanings to "taking" and "hunting", and a legislative purpose to retain authority to determine which wild creatures will be subject to any specific form of regulation.

"[T]he purpose of construction of a constitutional amendment is to give effect to the intent of the framers and of the people who adopted it; and it is a rule of construction applicable to all constitutions that they are to be construed so as to promote the objects for which they were framed and adopted." ***State v. Cole***, 2003 WI 112, ¶ 10, 665 N.W.2d 328, 333 (2003). In ***Cole,*** the Court also reaffirmed a previous court of appeals ruling which held: "[W]here there is a conflict between the language of a statute and the language of the constitution, the language of the constitution prevails. . . . The constitution or a constitutional amendment is of the highest dignity and prevails over legislative acts and court rule to the contrary. Ordinary acts of the legislature, whether approved before or after the date of the constitution, cannot be given effect if to do so would contravene a substantive provision in the constitution." ***Cole*** at 333.

Given that taking and hunting are constitutionally differentiated activities, the manner in which Citizens has proposed to have the courts harmonize the apparently competing parts of Ch. 29, *Stats.*, is logical, avoids

any absurd result, and leads to a comprehensive regulatory scheme which gives individual meaning to each part of the statute. Perhaps most important, it reveals a legislative intent that the DNR have only limited authority to establish seasons for the hunting of wild creatures, with numerous such creatures, including the mourning dove as a "nongame species", being excepted from that authority.

CONCLUSION

The Legislature's grant of authority under § 29.014(1), Stats., to regulate the hunting of "game" (including by definition all varieties of birds), is not plain on its face, but rather is confusing and ambiguous. The grant of authority is especially ambiguous when one considers other conflicting statutes in Chapter 29. Resort to long-standing rules of statutory construction, in order to resolve the ambiguity, compels precisely the analysis reflected in the Trial Court's Decision and Order of August 28, 2001. As found by the Court of Appeals, the courts owe no deference to the DNR's interpretation of its own authority, since the issue at hand is its scope of legislatively delegated authority.

Given the ambiguity of the enabling statute, it is appropriate to review the context, scope, subject matter and history of the statute to determine the legislative intent. Where the legislative intent is unclear regarding a grant of authority, doubt must be resolved against the existence of such authority. The context, scope, and legislative history with respect to the statute all

demonstrate, at a minimum, doubt that the DNR has authority to allow the hunting of the mourning dove, and in all likelihood, give strong indication that the Legislature intended that the dove be protected from the hunter's gun. This view is amply supported by inferences to be drawn from Wisconsin's new "Right to Hunt" constitutional amendment. Accordingly, the Appellate Court's decision overruling the trial court, and denying declaratory and injunctive relief to Citizens, should be reversed.

Dated this 20th day of October, 2003.

Respectfully Submitted

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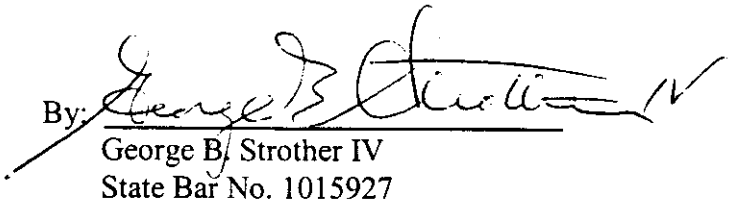

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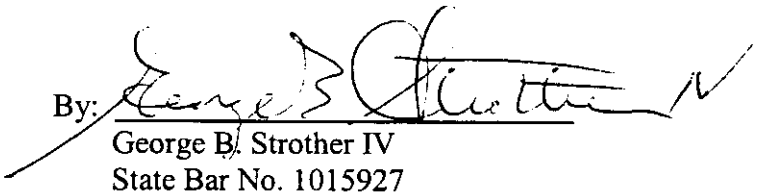
CERTIFICATION

I hereby certify that this pleading conforms to the rules contained in Wis. Stat. 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 9690 words.

Dated this 20th day of October 2003.

By: 

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APPENDIX A

2003 WI App 76

COURT OF APPEALS DECISION DATED AND FILED

March 27, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 02-1166 Cir. Ct. No. 01-CV-1616

STATE OF WISCONSIN **IN COURT OF APPEALS**

WISCONSIN CITIZENS CONCERNED FOR CRANES AND DOVES, JOHN WIENEKE AND PAT FISHER,

PLAINTIFFS-RESPONDENTS,

v.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES,

DEFENDANT-APPELLANT,

U.S. SPORTSMEN'S ALLIANCE FOUNDATION F/K/A WILDLIFE LEGISLATIVE FUND OF AMERICA,

DEFENDANT-INTERVENOR-CO-APPELLANT.

APPEAL from an order of the circuit court for Dane County: DANIEL R. MOESER, Judge. *Reversed.*

Before Vergeront, P.J., Dykman and Deininger, JJ.

¶1 DEININGER, J. The Wisconsin Department of Natural Resources appeals a circuit court order which declared a department rule invalid and prohibited the department from "promulgating an administrative rule setting a hunting season for mourning doves in Wisconsin absent further legislative action authorizing it to do so." We agree with the department that the plain language of WIS. STAT. § 29.014(1) (1999-2000)[1] authorizes it to establish seasons for the hunting of mourning doves. Accordingly, we reverse the appealed order.

BACKGROUND

¶2 The Wisconsin Natural Resources Board in 2001 adopted WIS. ADMIN. CODE § NR 10.01(1)(h) which established an open season, as well as daily bag and possession limits, for mourning doves.[2] The Wisconsin Citizens Concerned for Cranes and Doves and two of its officers filed suit under WIS. STAT. § 227.40 seeking to have the rule declared invalid. The lead plaintiff describes itself as "a public interest organization" with approximately 250 members statewide who have contributed money to further the purpose of, among other things, "promoting the protection" of cranes and doves. We will refer to the plaintiffs-respondents as the Concerned Citizens, or simply as the Citizens.

¶3 The circuit court concluded that the relevant provisions of WIS. STAT. ch. 29 were ambiguous regarding the department's authority to establish a hunting season for mourning doves, and that the legislature did not intend to grant that authority. Accordingly, the court granted injunctive and declaratory relief

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] The Natural Resources Board is not a party to this action. For convenience, and as the circuit court and the parties have done, we will refer in this opinion to the rule and authority at issue as the department's.

prohibiting the department from promulgating a rule setting a hunting season for mourning doves. The department appeals.[3]

ANALYSIS

¶4 A person who wishes to have an administrative rule declared invalid may bring "an action for declaratory judgment as to the validity of such rule" in the Dane County Circuit Court. WIS. STAT. § 227.40(1). "[T]he court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was promulgated without compliance with statutory rule-making procedures." Section 227.40(4)(a). The Concerned Citizens contend that WIS. STAT. ch. 29 does not permit the department to establish an open season on mourning doves. In other words, the Concerned Citizens claim, and the circuit court concluded, that WIS. ADMIN. CODE § NR 10.01(1)(h) is invalid because the rule exceeds the department's statutory authority. *See* ***Seider v. O'Connell***, 2000 WI 76, ¶¶24, 28, 236 Wis. 2d 211, 612 N.W.2d 659.

¶5 Our review is de novo, but in deciding this question of law, we may derive "benefit" from the experience and analysis of an administrative agency which the legislature has empowered to administer a law it has enacted. ***Id.***, ¶¶25-27. Here, the department has obviously concluded that WIS. STAT. ch. 29

[3] The U.S. Sportsmen's Alliance Foundation was permitted to intervene in the circuit court and it is a co-appellant in this appeal. Although we do not separately address the Foundation's arguments for reversal of the appealed order, our references to the department's arguments are intended to include many of the Foundation's arguments. The Foundation makes one argument that the department does not—that the circuit court erred in granting the Concerned Citizens relief from an order of dismissal for lack of standing. Because we reverse the appealed order on its merits, and because neither appellant argues on appeal that the Concerned Citizens in fact lack standing to bring this action, we do not address the circuit court's discretionary decision to grant relief from its original order on standing.

authorizes it to establish a hunting season for mourning doves. We nonetheless have a duty to independently determine whether that is the case. ***Id.*** The department's determination that it was empowered to promulgate the rule is thus *not* entitled to the deference we would accord if the question it had decided were one of fact, or one of law not going to the scope of its authority in promulgating the rule. *See* ***League of Wisconsin Municipalities v. Department of Commerce***, 2002 WI App 137, ¶8, 256 Wis. 2d 183, 647 N.W.2d 301, *review denied*, 2002 WI 121, 257 Wis. 2d 117, 653 N.W.2d 889 (Wis. Sep. 26, 2002) (No. 01-1035).

¶6 Our task is to determine whether WIS. ADMIN. CODE § NR 10.01(1)(h) contradicts "either the language of [WIS. STAT. ch. 29] or legislative intent." ***Seider***, 236 Wis. 2d 211, ¶72. If it conflicts with either, the rule "exceeds the [department]'s statutory authority, and must be invalidated." ***Id.***, ¶73. Conversely, if we find no conflict with either the language of WIS. STAT. ch. 29 or the legislature's intent in enacting the provisions of that chapter, we must conclude that the rule is within the department's authority and valid. ***League of Wisconsin Municipalities***, 256 Wis. 2d 183, ¶9. Put another way, we will invalidate the department's rule only if we are convinced that it contravenes statutory language or a clear expression of legislative intent, and the burden is on the Concerned Citizens to so convince us. *See* ***id.***, ¶10. In our inquiry, the question of whether the department *should* establish a season for mourning doves plays no part, the only issue being whether it *could* do so.

¶7 As with all questions of statutory interpretation, our chief objective is to discern the intent of the legislature. *See* ***Anderson v. City of Milwaukee***, 208 Wis. 2d 18, 25, 559 N.W.2d 563 (1997). We first look to the plain language of the statute to determine what the legislature intended. *See* ***id.*** If the language is ambiguous, we may turn to extrinsic aids such as the legislative history, scope,

context and purpose of the statute to determine legislative intent. *See **id.*** In construing multiple statutes, we must harmonize them if possible, and read them together in a way that will give each full force and effect. *See **City of Milwaukee v. Kilgore***, 193 Wis. 2d 168, 184, 532 N.W.2d 690 (1995).

¶8 The department asserts that its authority to establish a hunting season for mourning doves derives from WIS. STAT. § 29.014(1), which provides as follows:

> The department shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping.

The term "game" is defined in WIS. STAT. § 29.001(33) to include "all varieties of wild mammals or birds." Because mourning doves are wild birds, the department contends they are plainly "game" under § 29.001(33), and thus among the species for which it may establish hunting seasons and related regulations under the plain language of § 29.014(1). We agree with the department that if we were to look no further than the two subsections on which it relies, its authority to promulgate the rule in question would be plainly established, and this would be a very short opinion.

¶9 The Concerned Citizens contend, however, that our inquiry cannot end so quickly because other, arguably related provisions of WIS. STAT. ch. 29 create ambiguity as to whether mourning doves may be deemed "game" within the meaning of WIS. STAT. §§ 29.001(33) and 29.014(1). We agree with the Citizens that ambiguity "can be found in the words of the statutory provision itself, or by the words of the provision as they interact with and relate to other provisions in

the statute and to other statutes." ***State v. Sweat***, 208 Wis. 2d 409, 416, 561 N.W.2d 695 (1997). Thus, we must determine whether "'reasonable minds could differ'" as to whether mourning doves are "game" subject to the department's statutory authority to establish hunting seasons. *See* ***UFE Inc. v. LIRC***, 201 Wis. 2d 274, 283, 548 N.W.2d 57 (1996) (citation omitted). This is a question of law for our independent resolution, and the fact that the parties disagree does not demonstrate that ambiguity exists. *See* ***National Amusement Co. v. DOR***, 41 Wis. 2d 261, 267, 163 N.W.2d 625 (1969). Rather, we must "look to the language of the statute itself to determine whether 'well-informed' persons" could be confused as to the legislature's intent. ***Id.***

¶10 We therefore turn to the statutory provisions which the Concerned Citizens contend render the term "game" ambiguous as applied to the present facts. WISCONSIN STAT. § 29.001, in addition to defining "game" in the manner we have stated, also provides definitions for, among many other things, "game birds" and "nongame species":

> **(39)** "Game birds" includes wild geese, brant, wild ducks, wild swan, rails, coots, gallinules, snipe, woodcock, plovers, sandpipers, ruffed grouse, prairie chicken, sharp-tailed grouse, pheasants, Hungarian partridge, Chukar partridge, bobwhite, quail, crows and wild turkey.
>
> ....
>
> **(60)** "Nongame species" means any species of wild animal not classified as a game fish, game animal, game bird or fur-bearing animal.

Because mourning doves are not specified as a "game bird" in § 29.001(39), the Citizens maintain that these birds are thus a "nongame species" under § 29.001(60), and as such cannot be "game" subject to the department's authority to establish hunting seasons under WIS. STAT. § 29.014(1).

¶11 The department concedes that mourning doves are a "nongame species," but asserts, first, that this does not prevent them from also being "game," and second, that the presence of definitions for terms used in other sections addressing other legislative purposes does not render the term "game" as used in WIS. STAT. § 29.014(1) ambiguous. Moreover, in the department's view, another statute, WIS. STAT. § 29.039, which deals with "nongame species," provides an alternative source for its authority to establish seasons during which mourning doves may be hunted. The department asserts that its interpretation is the only reasonable one, and that it harmonizes §§ 29.014 and 29.039 as part of a comprehensive scheme for regulating the taking of wild animals in Wisconsin. We agree with the department.

¶12 At first blush it seems incongruous to conclude that a given creature could be both "game" and a "nongame species." A reasonably well-informed person, however, would be aware that WIS. STAT. § 29.001 provides detailed definitions of terms employed in WIS. STAT. ch. 29, and that these statutory definitions are meant to supplant common or dictionary definitions of the defined terms. That well-informed person would then observe that the legislature chose to employ the defined term "game" when authorizing the department to establish open and closed seasons under WIS. STAT. § 29.014(1), instead of the (apparently) narrower defined terms "game animals" and "game birds." *See* § 29.001(36) and (39).

¶13 In order to adopt the Concerned Citizens' interpretation that a bird that is not a "game bird" cannot be "game," one would have to rewrite the legislative definition of "game" to read something like this: "'game' means all 'game birds' and 'game animals' and does not include any 'nongame species.'" But that is not how the legislature chose to define "game," defining it instead to

include "all varieties of wild mammals or birds." WIS. STAT. § 29.001(33). We agree with the department that when the legislature goes to the trouble of defining a specific term, and then employs that term in a statute to which the definition applies, a reasonably well-informed person would (and a reviewing court should) apply the definition provided when interpreting the statute, without regard to other terms that are defined differently and used in other statutes for other purposes.[4] *See* ***Republic Airlines, Inc. v. DOR***, 159 Wis. 2d 247, 253, 464 N.W.2d 62 (Ct. App. 1990) ("When words are defined by statute, we look nowhere else for their meaning and apply only the legislature's definition."); ***American Motorists Ins. Co. v. R&S Meats, Inc.***, 190 Wis. 2d 196, 214, 526 N.W.2d 791 (Ct. App. 1994) ("Where the legislature uses similar but different terms in a statute ... we presume it intended those terms to have different, distinct meanings.").

¶14 We therefore conclude that the presence of definitions for "game birds," which the department concedes does not include mourning doves, and for "nongame species," which does include the doves, does not render the term "game" as used in WIS. STAT. § 29.014(1) ambiguous. The legislature has separately and specifically defined the term "game" to include "all varieties of wild mammals or birds." WIS. STAT. § 29.001(33). That definition plainly includes mourning doves, and it is that definition which we must apply in interpreting the scope of the department's authority under § 29.014(1).

¶15 Moreover, we note that WIS. STAT. § 29.001(39) does not say that "game birds" are limited to the enumerated species, but that the term "includes"

[4] The terms "game birds" and "game animals" are employed in statutes relating to game farms, *see, e.g.*, WIS. STAT. § 29.867, and to the possession or transportation of game birds and animals, *see* WIS. STAT. §§ 29.354 and 29.364, but the terms are not found in WIS. STAT. § 29.014.

those species. One might thus argue that the term "game birds" is open ended and could encompass mourning doves. The Concerned Citizens point out, however, that the statutory definition of "game birds" at one time included mourning doves by name, but the legislature removed mourning doves from the definition in 1971 when it designated the mourning dove as the Wisconsin state "symbol of peace." *See* WIS. STAT. § 1.10(3)(a); Laws of 1971, ch. 129. From this, the Citizens would have us conclude that the legislature does not want mourning doves to be hunted. We reject the argument, however, because if that is the result the legislature intended, it could easily have also removed mourning doves from the definition of "game," or enacted a separate prohibition against hunting the birds. Moreover, as the department points out, several other state symbols are "fair game" in Wisconsin. *See, e.g.*, § 1.10(3)(g) and (j) (designating the muskellunge the "state fish," and the white-tailed deer the "state wildlife animal").[5]

¶16 In any event, even though some non-enumerated wild birds might be "game birds" within the facially open-ended definition of WIS. STAT. § 29.001(39), the department does not dispute that mourning doves are a "nongame species" under § 29.001(60), perhaps because of the legislature's action

[5] The dissent relies heavily on the legislature's action in designating mourning doves as the state "symbol of peace" as an indication of its intent that the birds should not be hunted in Wisconsin. If that is its intent, the legislature could have prevented the promulgation of WIS. ADMIN. CODE § NR 10.01(1)(h). *See* WIS. STAT. § 227.19(5)(f). Although committees in both houses of the legislature conducted hearings on the rule, neither took action to prevent its promulgation. *See* § 227.19(4). Moreover, although several bills have been introduced since the promulgation of § NR 10.01(1)(h) to prohibit the department from authorizing an open season for the hunting of mourning doves, none have passed. *See* 2001 S.B. 45; 2001 A.B.190; 2001 A.B. 859. Thus, were it necessary for us to go beyond the plain language of WIS. STAT. ch 29 to ascertain the legislature's intent regarding the department's authority to establish an open season for hunting mourning doves, legislative history would provide support for the conclusion we reach. *See* ***Mallo v. DOR***, 2002 WI 70, ¶¶30-31, 253 Wis. 2d 391, 645 N.W.2d 853 (Where a proposed rule gains significant media coverage, suggesting that the legislature could not ignore its existence, the failure of legislative committees to object to the rule is evidence that the legislature intended to grant the agency authority to promulgate the rule.).

in 1971 to remove mourning doves from the statutory enumeration of "game birds." The department contends, however, that it could establish open and closed seasons for mourning doves by virtue of WIS. STAT. § 29.039(1), which provides as follows:

> The department may conduct investigations of nongame species to develop scientific information relating to population, distribution, habitat needs, and other biological data to determine necessary conservation measures. The department may develop conservation programs to ensure the perpetuation of nongame species. *The department* may require harvest information and *may establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species.*

(Emphasis added.) In the department's view, § 29.039(1) provides an alternate source of its authority to establish open and closed seasons and bag and possession limits for mourning doves. Again, we agree.

¶17 The Concerned Citizens claim, however, that although WIS. STAT. § 29.039(1) permits the department to regulate the "taking" of mourning doves, the statute does not authorize the department to establish seasons for "hunting" them, and in fact, prohibits the department from doing so. We conclude, however, that such an interpretation would require a strained reading of § 29.039, and it arguably leads to the unreasonable result that the department would be powerless to prevent mourning doves, which the Citizens seek to protect, from being hunted all year long.

¶18 The major premise of the Concerned Citizens' argument is that, even if "nongame species" are a subset of the broader term "game" (which, as we have noted, the Citizens dispute), because the former term is the more specific, WIS. STAT. § 29.039(1) and not WIS. STAT. § 29.014(1) governs what the department

may and may not do regarding human interactions with mourning doves. And, in the Citizens' view, § 29.039 does *not* authorize the department to allow nongame species to be hunted because "hunting" is not mentioned in § 29.039. Rather, the statute refers only to the "taking" of nongame species.[6] Moreover, as the Citizens also point out, § 29.039 does not include authority to "establish and maintain open and closed seasons" as does § 29.014(1), further evincing what is in their view the legislature's intent that "nongame species," such as mourning doves, may not be hunted.

¶19 We reject the Concerned Citizens' restrictive interpretation of WIS. STAT. § 29.039(1). First, as we have discussed, we are not convinced that one need look further than WIS. STAT. § 29.014(1) to determine that the department may establish hunting seasons for mourning doves, because they are "game" within the meaning of that subsection. But, even if § 29.039 must be consulted to determine whether the legislature intended to restrict the authority granted in § 29.014 regarding any "game" that is also a "nongame species," we conclude that the plain language of § 29.039(1) permits the department to regulate when "nongame species" may be hunted. The department may under § 29.039(1) "establish limitations relating to taking" mourning doves. We conclude that this language plainly authorizes the department to confine the "taking" of mourning doves to certain days of the year. It simply makes no sense to say that persons who wish to "take" the doves during those days may not "shoot[] at" or "attempt[]

[6] "Taking" is not defined in WIS. STAT. ch. 29 but is listed among the activities which comprise "hunting" as defined in WIS. STAT. § 29.001(42): "'Hunt' or 'hunting' includes shooting, shooting at, pursuing, taking, capturing or killing or attempting to capture or kill any wild animal."

to capture or kill" the birds, that is, "hunt" them. *See* WIS. STAT. § 29.001(42) (quoted in footnote 6).[7]

¶20 We therefore conclude that, by virtue of its authority under WIS. STAT. § 29.039(1), as well as its authority under WIS. STAT. § 29.014(1), the department may, as it has done in WIS. ADMIN. CODE § NR 10.01(1)(h), declare that mourning doves may be hunted only during September and October. To conclude, as the Concerned Citizens would have us do, that the department lacks authority to set "open" seasons for mourning doves would suggest that the department could also not establish by rule a "closed season" for the birds. This in turn would mean that the hunting or taking of mourning doves could not be limited to a specified season at all under state law.[8] As the supreme court explained almost a century ago:

> [The State] may ordain closed seasons; it may prescribe the manner of taking, the times of taking, and the amount to be taken within a given time, as it may deem best for the purpose of preserving and perpetuating the general stock. *In the absence of legislation, the citizen may doubtless pursue, take, and dispose of fish and game as he sees fit, and without restraint*, so long as he violates no private

[7] Additional evidence that the legislature did not intend the authority to regulate the "taking" of certain species to preclude "hunting" them is found in WIS. STAT. § 29.014(1). The Concerned Citizens do not dispute that § 29.014(1) authorizes the department to establish hunting seasons for some birds, but the statute does *not* expressly say that the "open and closed seasons" which the department may establish are "hunting" seasons. Immediately after the season setting authority, moreover, the statute authorizes the department to establish "conditions governing the *taking* of ... game." ***Id.*** (emphasis added). It is only in the concluding words of the subsection that "hunting" is mentioned, as a part of the legislature's directive that seasons, bag limits and "conditions governing ... taking" should be enacted in order to "ensure the citizens of this state continued opportunities for good fishing, hunting and trapping." ***Id.*** The undefined term "taking" as used in WIS. STAT. ch. 29 thus appears to include, not preclude, such activities as "fishing, hunting and trapping."

[8] The department notes, however, that federal law "limits the taking of migratory birds, including mourning doves," but many other "nongame species" would not have any protection from unlimited "open seasons" were it not for the department's authority under WIS. STAT. § 29.039 to place temporal restrictions on their taking.

> rights; but when the state steps in and makes proper police regulations, the citizen takes his right of fishing or fowling hampered by such regulations; in other words, his right is the right which the state leaves to him, no more and no less.

See ***State v. Nergaard***, 124 Wis. 414, 420, 102 N.W. 899 (1905) (emphasis added).

¶21 Moreover, any asserted ambiguity or conflict in the statutes at issue rapidly evaporates when WIS. STAT. ch. 29 is viewed as creating a comprehensive scheme for the "purposes of regulating the enjoyment, use, disposition, and conservation of [all] wild animals" within the state. WIS. STAT. § 29.011(1). To achieve these purposes, the legislature has granted rule-making authority to the department for a broad range of regulatory activities relating to wild animals. These activities range from the designation by the department of "endangered" and "threatened" species, which may be taken only under very limited circumstances as the department may permit, *see* WIS. STAT. § 29.604, to the establishment of open and closed seasons and such other "game" regulations as will "ensure the citizens of this state continued opportunities for good ... hunting and trapping," WIS. STAT. § 29.014(1).[9]

¶22 Within this range, and as a complement to its other powers and responsibilities, is the department's authority under WIS. STAT. § 29.039 to study "nongame species" present in the state, to develop "conservation programs to

[9] The dissent posits that we should have awaited the outcome of the vote on the proposed amendment to the Wisconsin Constitution that would incorporate a "right to ... hunt, ... subject only to reasonable restrictions as prescribed by law." Dissent at ¶25. Whether the state's constitution is amended in that manner has no bearing on the issue in this appeal, which is whether the department is authorized under present law to establish an open season for the hunting of mourning doves. Should the amendment pass, a citizen who believes the open season and restrictions promulgated in WIS. ADMIN. CODE § NR 10.01(1)(h) are unduly restrictive may be able to advance a constitutional argument regarding the "reasonableness" of the regulation, but the question of the rule's reasonableness is not at issue in this appeal.

ensure [their] perpetuation," and to "establish limitations relating to taking, possession [etc.] ... of nongame species." Viewed in this way, § 29.039 provides additional authority to the department in furtherance of the overall legislative purposes. The statute simply cannot be read as withdrawing from the department authority granted it elsewhere in WIS. STAT. ch. 29.

¶23 Finally, we note that the Concerned Citizens argue that "allowing the hunting of mourning doves is inconsistent with other" department rules. The Citizens point to the department's use of the term "wild animals" instead of "game" in the introduction to WIS. ADMIN. CODE § NR 10.01. They are also critical of the fact that, although § NR 10.01(1) includes the season and bag limits for mourning doves under the category "Migratory Game Birds," the department elsewhere provides a definition of "Migratory Game Birds" which does not include mourning doves. Although the department may be guilty of crafting inconsistently worded administrative rules, that fact has no bearing on the issue of whether it is statutorily authorized to promulgate a rule establishing open and closed seasons for mourning doves.

CONCLUSION

¶24 For the reasons discussed above, we reverse the appealed order and vacate the injunction contained therein.

By the Court.—Order reversed.

¶25 DYKMAN, J. (*dissenting*). In five days, the people of the State of Wisconsin will vote on a constitutional amendment which would amend Article I, Section 26 of the Wisconsin Constitution to provide: "The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law." If this amendment passes, and most predict that it will,[1] the issue in this case will change to the definition of "game," as that word is used in the Constitution, whether doves are game, whether there are any restrictions on dove hunting, and if so, whether the restrictions are reasonable. The question will shift from whether a dove season is permitted to whether one is prohibited. What we say in these opinions will become moot. Were I writing for a majority, I would wait five days, and if the amendment passes, ask the parties to brief the constitutional issue rather than decide this case on laws that will have become largely inapplicable. But this is a dissent, so I must address the issues presented.

¶26 This is not a case about doves. It is a case about how courts discover what the legislature intended when it passed a variety of laws. The birds happen to be the vehicle for an inquiry into legislative intent.

¶27 This is also a case about the power or authority of an administrative agency. Again, it is not a case about doves. The doves are only the focus of an inquiry into the power or authority of the Department of Natural Resources.

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[1] This amendment to Article I, Section 26 of the Wisconsin Constitution passed on April 1, 2003.

¶28 It is telling that the trial court took ten pages to examine the statutes involved in this case and conclude: "The statutes involved in this case are as clear as mud." The majority has spent thirteen pages to conclude the opposite. There are now four judges who have written twenty-six pages trying to discern legislative intent, and they have split, two-to-two. That tells me that this is a close case, and that no matter who wins it, they have barely won it by a nose (or a beak).

¶29 My analysis is not extensive. I start with two long standing rules of administrative law: "[a]n administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates." ***Maple Leaf Farms, Inc. v. Dept. of Natural Resources***, 2001 WI App 170, ¶13, 247 Wis. 2d 96, 633 N.W.2d 720, *review denied*, 2001 WI 117, 247 Wis. 2d 1034, 635 N.W.2d 782 (No. 00-1389). And: "Any reasonable doubt as to the existence of an implied power in an agency should be resolved against the exercise of such authority." ***Id.*** (citation omitted).

¶30 The swamp surrounding the various statutes applicable to this case is murky. There is really no way to say, beyond a reasonable doubt, that the legislature has given the DNR authority to authorize a dove season. Even the majority fails to point to a statute providing in effect: "The DNR has the authority to set a dove season."

¶31 I have a reasonable doubt that the legislature has expressly or impliedly given the DNR that power. I am impressed that the legislature addressed the issue in 1971 by designating the mourning dove as the Wisconsin "symbol of peace," and removing the bird from the definition of "game." Common sense tells me that the legislature would not have done this intending

that the "symbol of peace" would still find a place on someone's dinner table.[2] While the legislature could have been more explicit, what we are looking for is legislative intent. ***Reyes v. Greatway Ins. Co.***, 227 Wis. 2d 357, 365, 597 N.W.2d 687 (1999). That the legislature did not do exactly as the majority would have liked is no reason to conclude that it did the opposite.

¶32 The majority draws "legislative intent" from the inaction of legislative committees, and the failure of the legislature to prohibit dove hunting. The action of a committee is by definition not the action of the legislature. Even the majority does not speak of "committee intent." The supreme court rejected the notion that committee inaction indicated legislative intent in ***American Motors Corp. v. DILHR***, 101 Wis. 2d 337, 349, 305 N.W.2d 62 (1981). Even the joint committee for review of administrative rules lacks the power to enact legislation or rules. WIS. STAT. § 227.19(5)(e) and (f). Non-passage of a bill is even worse evidence of what the legislature intended. "[N]on-passage of a bill is not reliable evidence of legislative intent." ***Lindsey v. Lindsey***, 140 Wis. 2d 684, 694 n.8, 412 N.W.2d 132 (Ct. App. 1987). By saying so, the majority does not transform committee action and legislative non-action into legislative intent. In contrast, the legislature itself told us in 1971 that doves were no longer game birds, and were designated as Wisconsin's "bird of peace." Under the majority's view, non-action by later committees and legislatures effected a repeal of these legislative acts. I do not subscribe to this explanation of how Wisconsin law is made.

[2] I am not as convinced as the majority that muskies and white-tailed deer are analogous. While they are the state fish and state wildlife animal, they were not designated as Wisconsin's "fish of peace" and "deer of peace." And they have always been the object of anglers and hunters because of their culinary and trophy status. Doves have not achieved that status. I have yet to see a stuffed dove hanging on anyone's wall.

¶33 I conclude that the legislature signaled its intent that there should not be a hunting season for doves. Perhaps not as loudly or emphatically as it could have, but enough that this intent is discernible to those who inquire. Certainly, it did not signal the opposite intent beyond any reasonable doubt. Accordingly, the DNR exceeded its authority when it set a hunting season for the birds. The result is that its action is invalid. ***Oneida County v. Converse***, 180 Wis. 2d 120, 125, 508 N.W.2d 416 (1993). Since that is not the opinion of the majority, I respectfully dissent.

APPENDIX B

STATE OF WISCONSIN | CIRCUIT COURT Branch 11 | DANE COUNTY

WISCONSIN CITIZENS CONCERNED FOR CRANES AND DOVES, et al,

Plaintiff(s),

vs.

Case No. 01 CV 1616

WISCONSIN DEPARTMENT OF NATURAL RESOURCES,

Defendant,

and

WILDLIFE LEGISLATIVE FUND OF AMERICA, et al,

Defendant-Intervenors.

MEMORANDUM DECISION AND ORDER

Plaintiff Wisconsin Citizens Concerned for Cranes and Doves ("WCCCD"), a public interest organization, brings this action for declaratory and injunctive relief challenging the authority of the Wisconsin Department of Natural Resources ("DNR") to promulgate an administrative rule setting a hunting season for mourning doves. On August 28, 2001, based upon the information available at the time, this Court issued a Decision and Order granting WCCCD's Motion for a Preliminary Injunction, and denying the DNR's Motion for Judgment on the Pleadings and WCCCD's Motion for Default Judgment. In addition, the Court granted the Motion to Intervene brought by the Wildlife Legislative Fund of American and other similar sporting groups (collectively "WLFA"). Because the filing of this action and the Court's issuance of a preliminary injunction, which was not appealed, resulted in the cancellation of the Wisconsin mourning dove hunting season in September and October of 2001, an explanation of

A-10

the procedural history is appropriate.

WCCCD filed this action on June 19, 2001, and served DNR the same day. DNR took the entire amount of time allowable to file its Answer on July 30, 2001, which contested WCCCD's claims. The Court scheduled a pretrial/scheduling conference for August 22, 2001. Prior to that date all parties filed written arguments on August 20, 2001. The parties appeared by counsel on Wednesday, August 22, 2001, and WCCCD asked for and was granted until Friday, August 24, 2001, to submit any additional written argument. The parties requested a prompt decision as the mourning dove hunting season was set to begin on September 1, 2001. The Court issued a decision on Tuesday, August 28, 2001, so that any adversely affected party could appeal to the court of appeals before September 1, 2001, if a party was so inclined. None of the parties appealed and a briefing schedule was agreed upon to bring this issue to a conclusion.

In this Memorandum Decision the Court addresses the merits of WCCCD's action for declaratory judgment and determines whether the DNR has statutory authority to set a hunting season on mourning doves or if WCCCD is entitled to an order permanently prohibiting the DNR from enforcing its administrative rule.[1]

DISCUSSION

A. Standing

Before reaching the merits the Court must first resolve the issue raised by WLFA regarding WCCCD's standing to bring this action. The test for evaluating whether a party has standing to challenge an administrative rule was set forth by the Wisconsin Supreme Court in

[1]It bears repeating that this case concerns the extent of the DNR's statutory authority and is in no way a review of the public policy considerations underlying DNR's decision to establish an open hunting season on mourning doves.

Wisconsin's Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1, 10 (1975):

> The Wisconsin rule of standing envisions a two-step analysis conceptually similar to the analysis required by the federal rule. The first step under the Wisconsin rule is to ascertain whether the decision of the agency directly causes injury to the interest of the petitioner. The second step is to determine whether the interest asserted is recognized by law.

In the realm of environmental cases, an injury to an aesthetic, recreational and conservational interest is enough to confer standing. Id. The directness requirement is liberally construed so that even if the alleged injury is remote in time or contingent upon a course of events initiated by the agency action, it can still be concluded that such an injury is "a sufficiently direct result of the agency's decision," that the petitioner has standing. Id. at 14. Despite this expansive standard, an injury cannot be so speculative, conjectural or hypothetical "as to strain the imagination." Fox v. DHSS, 112 Wis. 2d 514, 527 (1983)(No standing where claims based on assumption that inmates incarcerated in a prison far from Milwaukee will suffer negative psychological effects resulting in increased recidivism, higher crime rate, and ultimately higher welfare costs in Milwaukee). There must be a causal relationship between the actual or immediate threat of injury and a change in the physical environment. Id. at 529.

WCCCD's complaint alleges that a hunting season on mourning doves, and the expected, if not certain, killing of the birds, will interfere with and impair the rights of its members to see, hear and enjoy mourning doves as well as diminish the environmental and aesthetic benefits provided by the species. (Compl., ¶11)[2] The WDFL contends that these allegations are

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[2]In its Reply Brief the DNR questions whether WCCCD has standing on the grounds that under Wis. Stats. § 29.011(1), legal title to wild animals is vested in with the state. Further, the fact that mourning doves will be hunted will not threaten or impair WCCCD members' interests because opportunities to see, hear and enjoy the birds will not be eliminated by the hunting season. This argument is unavailing.

DNR's contention fails to address the gravamen of WCCCD's allegations: that a hunting season (and the expected reduction in the mourning dove population) will negatively affect the balance of species in the environment. It is well-settled that "the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing." Lujan v. Defenders of Wildlife, 504 U.S. 555, 562-63 (1992).

insufficient to accord WCCCD standing to challenge the DNR's rule.

According to the WDFL, now that this matter has moved beyond the preliminary injunction phase, WCCCD cannot rely solely on the allegations in its complaint to satisfy the requirements for standing. In support, WDFL relies on the language of Wis. Stats. § 227.40(1). It provides in pertinent part:

> Except as provided in sub. (2), the exclusive means of judicial review of the validity of a rule shall be an action for declaratory judgment as to the validity of such rule brought in the circuit court for Dane county. ... The court shall render a declaratory judgment in such action only when it appears from the complaint and the supporting evidence that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff. ...

WDFL interprets the phrase "only when it appears from the complaint and the supporting evidence . . ." in the statute as placing the burden on the plaintiff to supply evidence of injury in addition to the complaint allegations before the court can issue a final declaratory judgment on the merits.

WLFA finds support for this reading of § 227.40(1) in the United States Supreme Court decision in Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). In Lujan, the question presented was whether the plaintiffs, various groups devoted to environmental causes, had standing to seek a declaratory judgment regarding the legality of § 7 of the Endangered Species Act. The Supreme Court held that plaintiffs had failed to produce sufficient evidence of direct injury to defeat the government's motion for summary judgment because their affidavits did not show that individual members would be directly affected by the application of the Act. In reaching this conclusion, the Supreme Court noted that the evidentiary standard is not static:

> Since [the elements of standing requirements] are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with

> the manner and degree of evidence required at the successive stages of the litigation. At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim." In response to a summary judgment motion, however, the plaintiff can no longer rest on such "mere allegations," but must "set forth" by affidavit or other evidence "specific facts," Fed Rule Civ Proc 56(e), which for purposes of the summary judgment motion will be taken to be true. And at the final stage, those facts (if controverted) must be "supported adequately by the evidence adduced at trial."

Lujan, at 561 (citations omitted).

The Court finds WDFL's argument persuasive. When deciding WCCCD's Motion for Preliminary Injunction, the Court was bound, for the purposes of that motion, to accept as true the allegations in the complaint, and those allegations were sufficient for that stage of the proceeding. At this point in the litigation, however, when the Court is rendering a final judgment on the merits and WDFL has put standing at issue, the burden is on WCCCD to bring forth sufficient evidence to support its standing to challenge the DNR's rule. *See,* Okpalobi v. Foster, 190 F.3d 337, 350 (5th Cir. 1999), rev'd on other grounds, 244 F. 3d 405 (5th Cir. 2001); *cf.*, State ex rel. 1st National Bank v. M&I Peoples Bank, 95 Wis. 2d 303, 308-09 (1980)(Injury to plaintiff demonstrated by the great weight and clear preponderance of the evidence and therefore trial court's ruling that plaintiff lacked standing was reversed). In relying upon the allegations in its complaint, without any additional supporting materials, WCCCD has failed to fulfill the higher evidentiary standard in effect at this point in this action.

Furthermore, a party seeking declaratory relief must demonstrate that a justiciable controversy exists. The Wisconsin supreme court has set forth the four conditions that must be met before a declaratory judgment action can be maintained: (1) a controversy in which a claim of right is asserted against one having an interest in contesting it; (2) adverse parties; (3) the party seeking declaratory relief must have a legally protectible interest; and (4) ripeness. Loy v. Bunderson, 107 Wis. 2d 400, 410 (1982). The third factor, a legally protectible interest, has

been equated with standing. Tooley v. O'Connell, 77 Wis. 2d 422, 434 (1977). Thus, if a court applying the Loy factors determines that a justiciable controversy exists, it will often summarily conclude that the plaintiff has standing. *See* Weber v. Town of Lincoln, 159 Wis. 2d 144, 147 (Ct. App. 1990). However, if the defendant in a suit for declaratory relief disputes the plaintiff's allegations regarding the existence of a justiciable controversy, the burden is on the plaintiff to prove that such a controversy exists. G. Heileman Brewing Co., Inc. v. Anheuser-Busch Inc., 676 F. Supp. 1436, 1478, aff'd 873 F.2d 985 (E. D. Wis. 1987). Because WCCCD has not provided any evidence to demonstrate that a justiciable controversy exists, the Court is required to conclude that WCCCD lacks standing to obtain declaratory relief.

B. Statutory Analysis

1. Whether the Statutory Definition of "Game" is Ambiguous

Even though the Court has concluded that WCCCD lacks standing to maintain this action for a declaratory judgment, a discussion of the merits is in order to assist the court of appeals if this case is appealed and, perhaps more importantly, to assist the legislature if it is interested in clarifying its intentions with respect to a mourning dove hunting season in Wisconsin. The crux of this litigation is the definition of the word "game" as used in Wis. Stats. § 29.014(1), the statute authorizing the DNR to set hunting seasons. Section 29.014(1) reads as follows:

> The department shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping.

The DNR and the WDFL assert that this statute permits the setting of a season on mourning doves because under Wis. Stats. § 29.001(33), "'game' includes all varieties of wild animals and birds." However, WCCCD contends that in the case of mourning doves, it is the

more limited definition of "game birds" in Wis. Stats. § 29.001(39) that should be used:

> Game birds" includes wild geese, brant, wild ducks, wild swan, rails, coots, gallinules, snipe, woodcock, plovers, sandpipers, ruffed grouse, prairie chicken, sharp-tailed grouse, pheasants, Hungarian partridge, Chukar partridge, bobwhite, quail, crows and wild turkey.

Because there is no mention of mourning doves in the statute's list of game birds, the WCCCD concludes that the DNR acted beyond its authority in setting a hunting season for doves.

In order to determine the scope of the DNR's authority under § 29.014(1), the Court must first assess whether or not the statute's plain meaning is clear. UFE Inc. v. LIRC, 201 Wis. 2d 274, 281 (1996). If it is, the Court's analysis stops there. Lake City Corp. v. City of Mequon, 207 Wis. 2d 155, 163 (1997). However, if the language of the statute is ambiguous, the court then looks to the rules of statutory construction and extrinsic materials to ascertain the intent of the legislature. In re Interest of Kyle S.-G., 194 Wis. 2d 365, 371 (1995). Because the issue requires that the Court construe statutes involving the scope of the DNR's power, the level of review is *de novo*. Grafft v. DNR, 238 Wis. 2d 750, 754 (Ct. App. 2000).

On its face, it might appear clear that if the DNR is allowed to set hunting season for game, and game "includes all varieties of wild animals and birds," it must follow that mourning doves, as a wild bird, fall within Wis. Stats. § 20.014(1). This is the reasoning advocated by the DNR and the WLFA -- that the meaning of the statute is plain on its face and it is unnecessary to look to the definitions in § 29.001 for "game birds" and "non-game species" for guidance and evidence of legislative intent. DNR and WLFA also argue that the removal of mourning doves from the game bird list in 1971 and the addition of crows to the list in 1997 does not signify the legislature's intent with respect to whether DNR my set a hunting season for mourning doves. The Court disagrees.

A statute is ambiguous when reasonably informed minds can differ as to its meaning.

Seider v. O'Connell, 236 Wis. 2d 211, 227, ¶ 30 (2000). As noted in Beard v. Lee Enterprises, Inc., 225 Wis. 2d 1, 10-11, ¶14 (1999):

> "Ambiguity can be found in the words of the statutory provision itself, or by the words of the provision as they interact with and relate to other provisions in the statute and to other statutes." [State v. Sweat, 208 Wis. 2d 409, 416 (1997)]. When construing a statute, the entire section and related sections are to be considered in its construction or interpretation. Id., State v. Clausen, 105 Wis. 2d 231, 244, 313 N.W.2d 819 (1982).

Here a reasonable person could see that under § 29.014 the DNR has authority to set a season for game, read that § 29.001(33) describes "game" as including all varieties of wild mammals or birds and then conclude that as a wild bird, the mourning dove must fall within the ambit of § 29.014(1). However, an equally reasonable person could note that in addition to "game," § 29.001 contains a definition for "nongame species" in subsection (60). A "nongame species" is "any species of wild animal not classified as a game fish, game animal, game bird or fur-bearing animal." Mourning doves are not currently identified in §29.001(39) as a "game bird," ergo, it may reasonably be concluded that they are "nongame species" and thus not subject to § 29.014(1), the season setting statute. This conflict between the definitions for game and nongame species render the use of game in § 29.014(1) ambiguous.[3]

Chapter 29 of the Wisconsin Statutes is a comprehensive statutory scheme and its provisions must be read together. State Dept. of Natural Resources, Division of Conservation

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[3]Citing the court of appeals decision in State v. Isaac J.R., 220 Wis. 2d 251 (Ct. App. 1998), the DNR argues that the Court cannot look beyond the definition of "game" in Wis. Stats. § 29.001(33). In Isaac J.R., the court held that it was not necessary to refer to the definition of "truancy" given in subsection (c) of § 118.16(1), when determining if a child was a "habitual truant" as described in subsection (a) of the statute, because nothing in subsection (a) referred to subsection (c) and "there is no incompleteness or lack of clarity in the definition of "habitual truant" that makes reference to another section necessary." Isaac J.R., 220 Wis. 2d at 258. However, Isaac J.R. was issued before the Wisconsin supreme court decided Beard, wherein it was acknowledged that, the statute under review was unambiguous when viewed in isolation. Nevertheless, the court stated that ambiguity can result from the way the statutory provision interacts with and relates to other provisions. Beard, 225 Wis. 2d at 10-11, ¶14. Even in Isaac J.R., the court of appeals took pains to explain that if the definition of "truancy" was considered when discerning whether a child was a "habitual truant," there was no conflict between the subsections and therefore no ambiguity was created if both terms were used when construing the statute. Isaac J.R., 220 Wis. 2d at 258.

v. City of Clintonville, 53 Wis. 2d 1, 9 (1971). The DNR's insistence on the all-encompassing "game" definition set forth in § 29.001(33) necessitates a reading of the § 29.001 definitions which places "nongame species" under the "game" classification. Per §29.001(60), the "nongame species" category refers to "any species of **wild animal** not classified as a game fish, game animal, game bird or fur-bearing animal." "Wild animal" is statutorily defined as "any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion." § 29.001(90). Presumably, had the legislature intended that nongame species be a subset of "game," it would have used "game" in § 29.001(60) instead of "wild animal."

For purposes of ch. 29, "nongame species" are defined as wild animals that are not classified as "game fish, game animal, game bird, or fur bearing animal." § 29.001(60). Clearly mourning doves fall within this category. Under the provisions of ch. 29, nongame species are treated differently from game. Section 29.039(1) provides the following limitations on the DNR's authority over nongame species:

> **29.039(1)** The department may conduct investigations of nongame species to develop scientific information relating to population, distribution, habitat needs, and other biological data to determine necessary conservation measures. The department may develop conservation programs to ensure the perpetuation of nongame species. The department may require harvest information and may establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species.

Both the DNR and WDFL argue that because § 29.039(1) allows the DNR to "establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species," it must follow that the DNR can set a hunting season for those species. In support, reference is made to Wis. Stats. § 29.001(42), which states that "'Hunt' or 'hunting' includes shooting, shooting at, pursuing, taking, capturing or killing or attempting to capture or

kill any wild animal."

However, the reliance on the statutory definition of hunting only highlights the narrow scope of the language in Wis. Stats. § 29.039(1). Rather than use "hunting," a statutorily defined term, in describing the DNR's powers over nongame species in § 29.039(1), the legislature chose to use the phrase "may establish limitations related to taking, possession, transportation, processing and sale or offer for sale." Contrary to the DNR and WDFL's reading, taking is not equal to hunting under § 29.001(42); taking is one component of hunting, along with shooting, pursuing, taking, capturing, etc. Since "taking" is not defined in the statutes, it is appropriate to use the dictionary definition. State v. Sample, 215 Wis. 2d 486, 498 (1998). The word "taking," means "to get possession of (as fish or game) by killing or capturing." Webster's Ninth New Collegiate Dictionary, at 1202 (1988). This is not as broad a term as § 29.001(42)'s definition of "hunting," which contemplates activities such as "shooting at" "pursuing" and "attempting to capture or kill" that do not result in possession of wild life.

If the legislature had intended to authorize the DNR to set hunting seasons on nongame species, presumably it would have used the phrase "set a season," and then § 29.039(1) would track the language used in § 29.014(1). Alternately, it could have stated that the DNR "may establish limitations relating to hunting" of nongame species. It did not do so, and the plain meaning of § 29.039(1) does not provide for setting seasons for nongame species.

In summary, WCCCD's failure to submit any affidavits or evidence on the standing issue precludes this Court from granting WCCCD's requested relief.

The statutes involved in this case are as clear as mud. While the parties disagree as to whether the statutes are ambiguous or not ambiguous, all parties resort to involved and convoluted explanations as to why their respective position is correct.

WCCCD argues that the statues involved are ambiguous and that the correct interpretation shows a clear intention of the legislature to not permit DNR to establish a hunting season for mourning doves. DNR and WLFA argue that the statutes involved are not ambiguous and show a clear intention of the legislature to permit DNR to establish a hunting season for mourning doves. It would appear that whichever party is correct would have little difficulty asking the legislature, which is where this issue should be resolved, to reaffirm its clear intention so that further litigation can be avoided and a final decision can be made prior to the next hunting season.

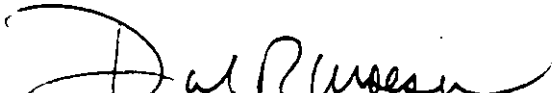
ACCORDINGLY,

The Court finds that WCCCD lacks standing to maintain this action for declaratory relief under Wis. Stat. § 227.40(1). The Preliminary Injunction issued by the Court on August 28, 2001, is hereby dissolved and WCCCD's request for declaratory and injunctive relief is hereby DENIED.

SO ORDERED.

Dated this 14th day of January, 2002.

BY THE COURT:



Hon. Daniel R. Moeser
Circuit Court Judge

cc: Atty. George Strother
Philip Peterson, AAG
Atty. Mark Cameli

STATE OF WISCONSIN | CIRCUIT COURT Branch 11 | DANE COUNTY

WISCONSIN CITIZENS CONCERNED FOR CRANES AND DOVES, etal,

Plaintiffs,

vs. | Case No. 01 CV 1616

WI DEPARTMENT OF NATURAL RESOURCES,

Defendants,

and

WILDLIFE LEGISLATIVE FUND OF AMERICA, et al,

Defendant-Intervenors.

DECISION AND ORDER GRANTING DECLARATORY AND INJUNCTIVE RELIEF

The court issued a decision in this matter on January 14, 2002, in which WCCCD's requests for declaratory and injunctive relief were denied because the court found, on the record before it, that WCCCD lacked standing to bring its claim. A summary of the history of this case is contained in the January 14th decision. Subsequent to that decision WCCCD asked for and was allowed an opportunity to supplement the record with respect to the standing issue. WCCCD had been under the mistaken impression that additional evidence with respect to standing was not necessary.

The court has now reviewed the supplemental materials submitted by WCCCD. DNR and U.S. Sportsmen's Alliance Foundation (USSAF), which was formerly WLFA, have indicated that a further hearing is not necessary.

DNR, by letter dated March 25, 2002, concedes that the supplemental materials are

sufficient to confer standing. USSAF continues to contest standing. Certain portions of the supplemental materials submitted by WCCCD are beyond the affiant's personal knowledge or extraneous to our issues. Those portions have not been considered by the court.

Standing involves determining whether the decision of DNR (1) directly causes an injury to the interest of WCCCD, and (2) the interest asserted is recognized by law. In environmental cases an injury to aesthetic, recreational and conservational interest is enough to confer standing. The directness requirement is to be liberally construed. Wisconsin's Environmental Decade, Inc. v. PSC, 69 Wis. 2d 1. Standing is discussed extensively in the court's January 14, 2002 decision.

WCCCD has now met the requirements of Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), by providing affidavits to support its standing allegations.

The court incorporates the statutory analysis section of the January 14, 2002, memorandum decision and order, which deals with the merits of the case, into this decision (copy of entire January 14th decision attached).

Therefore, IT IS HEREBY ORDERED that WCCCD's request for declaratory and injunctive relief is granted. DNR is prohibited from promulgating an administrative rule setting a hunting season for mourning doves in Wisconsin absent further legislative action authorizing it to do so.

Dated: April 16, 2002.

BY THE COURT:

Daniel R. Moeser
Circuit Judge

cc: Atty. George Strother
Philip Peterson, AAG
Atty. Mark Cameli

APPENDIX C

State of Wisconsin

2001 Senate Joint Resolution 2

ENROLLED JOINT RESOLUTION

To create section 26 of article I of the constitution; **relating to:** the right to fish, hunt, trap, and take game (first consideration).

Resolved by the senate, the assembly concurring, That:

SECTION 1. Section 26 of article I of the constitution is created to read:

[Article I] Section 26. The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.

SECTION 2. **Numbering of new provision.** The new section 26 of article I of the constitution created in this joint resolution shall be designated by the next higher open whole section number in that article if, before the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment has created a section 26 of article I of the constitution of this state. If one or more joint resolutions create a section 26 of article I simultaneously with the ratification by the people of the amendment proposed in this joint resolution, the sections created shall be numbered and placed in a sequence so that the sections created by the joint resolution having the lowest enrolled joint resolution number have the numbers designated in that joint resolution and the sections created by the other joint resolutions have numbers that are in the same ascending order as are the numbers of the enrolled joint resolutions creating the sections.

Be it further resolved, That this proposed amendment be referred to the legislature to be chosen at the next general election and that it be published for 3 months previous to the time of holding such election.

Representative Scott R. Jensen
Speaker of the Assembly

Senator Fred A. Risser
President of the Senate

Date

Donald J. Schneider
Senate Chief Clerk

Article I, §26

Right to fish, hunt, trap, and take game. Section 26. [*As created April 2003*] The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law. [*2001 J.R. 16, 2003 J.R. 8, vote April 2003*]

STATE OF WISCONSIN
IN SUPREME COURT

No. 02-1166

WISCONSIN CITIZENS CONCERNED
FOR CRANES AND DOVES,
JOHN WIENEKE and PAT FISHER,
Plaintiffs-Respondents-Petitioners,

v.

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,
Defendant-Appellant,

U.S. SPORTSMEN'S ALLIANCE FOUNDATION,
f/k/a WILDLIFE LEGISLATIVE FUND OF AMERICA,
Defendant-Intervenor-Co-Appellant.

REVIEW OF A DECISION OF THE WISCONSIN COURT OF APPEALS, DISTRICT IV, REVERSING A DANE COUNTY CIRCUIT COURT DECISION, THE HONORABLE DANIEL R. MOESER, PRESIDING

DEFENDANT-APPELLANT WISCONSIN DEPARTMENT OF NATURAL RESOURCES' BRIEF AND APPENDIX

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TABLE OF CONTENTS

Page

ISSUES PRESENTED 2

POSITION ON ORAL ARGUMENT AND PUBLICATION 3

STATEMENT OF THE CASE 3

COURT OF APPEALS DECISION 4

STANDARD OF REVIEW 5

SUMMARY OF ARGUMENT 7

ARGUMENT 8

I. THE STATUTORY DEFINITION OF "GAME," BROADLY WRITTEN TO INCLUDE "ALL VARIETIES OF WILD . . . BIRDS," SHOULD BE APPLIED WHERE "GAME" APPEARS IN WIS. STAT. § 29.014(1) BECAUSE THE DEFINITION OF "GAME" IS UNAMBIGUOUS AND NOT MADE AMBIGUOUS BY OTHER PROVISIONS OF CH. 29 8

A. Concerned Citizens has the burden to show that DNR lacks rulemaking authority, but, in light of the statute authorizing DNR's setting

Page

hunting seasons for "game" and of the unambiguous statutory definition of "game," it has not met its burden. 8

B. Statutory definitions must be applied, not made superfluous. 11

1. The statutory definition of "game" must be applied as clearly written even if it conflicts with the ordinary meaning of "nongame species." 11

2. "Game," "nongame species," and "game birds" must each be applied where it appears. 12

C. The statutory definition of "game," which is clear and complete, is not made ambiguous by other definitions..... 13

D. Whenever reasonably possible, statutes are interpreted to avoid conflict, and when that is done here, there is no conflict..... 15

1. If reasonably possible, courts interpret statutes in harmony. 16

Page

2. Nothing in Wis. Stat. § 29.039 conflicts with DNR's authority under Wis. Stat. § 29.014 to set a dove hunting season. 16

a. The law supports DNR's position. 16

b. The Concerned Citizens contrary argument fails. 19

3. DNR's setting seasons under Wis. Stat. § 29.039 and Wis. Stat. § 29.014 further shows harmony between the statutes. 19

a. DNR rules set open seasons under Wis. Stat. §§ 29.039 and 29.014. 19

b. DNR's authority is limited. 21

E. The Court should give DNR proper deference on agency rulemaking. 22

1. Deference is owed DNR. 22

Page

2. Policy is not before the Court..... 24

II. THE COURT SHOULD INTERPRET WIS. STAT. § 29.014 USING THE STATUTORY DEFINITION OF "GAME" BECAUSE A SOUND OVERALL INTERPRETATION OF CH. 29 REQUIRES USING THAT DEFINITION AS CLEARLY WRITTEN..... 25

A. As used in ch. 29, "game" has a broader meaning than Concerned Citizens gives it..... 25

B. Using "game" as defined in Wis. Stat. § 29.001(33) is consistent with other provisions of ch. 29..... 26

C. The statutory definition of "hunting" and DNR's broad rulemaking authority under Wis. Stat. § 29.014(2) reinforce DNR's authority under Wis. Stat. § 29.014(1) to set seasons for "game" as broadly defined in Wis. Stat. § 29.001(33)..... 27

III. WISCONSIN STAT. § 29.014 NEED NOT BE CONSTRUED BASED ON ITS LEGISLATIVE HISTORY, BECAUSE DNR'S AUTHORITY TO SET HUNTING SEASONS FOR "GAME" IS UNAMBIGUOUSLY

Page

GIVEN BY STATUTE, BUT IF LEGISLATIVE HISTORY IS EXAMINED, IT FURTHER SUPPORTS THE PLAIN LANGUAGE OF THE STATUTE..... 28

A. Legislative history shows that, for 70 years, DNR and its predecessor agency have had broad authority to set open hunting seasons. 29

B. Legislative history shows that the definitions for "game birds" and "nongame species" were added to ch. 29 after season-setting authority was given to WCC and that those definitions were added for reasons unrelated to restricting DNR's authority under Wis. Stat. § 29.014. 31

1. "Game birds" defined..... 31

2. "Nongame species" defined..... 32

C. During its 1997 session, the Legislature recodified ch. 29 and, in doing so, showed again that DNR has broad authority to set seasons for wild birds..... 34

Page

D. Legislative history shows no link between dove hunting and either deleting doves from the "game birds" definition or making doves the state symbol of peace. 36

IV. THE RIGHT-TO-HUNT AMENDMENT, WIS. CONST. ART. I, § 26, DOES NOT DIMINISH DNR'S STATUTORY AUTHORITY TO SET A HUNTING SEASON FOR DOVES. 39

CONCLUSION 41

Page

TABLE OF AUTHORITIES

CASES CITED

American Motorists Ins. v. R & S Meats, Inc.,
190 Wis. 2d 196, 526 N.W.2d 791
(Ct. App. 1994)..... 12

American Motors Corp. v. ILHR Dept.,
101 Wis. 2d 337, 305 N.W.2d 62 (1981)..... 23, 33

Ball v. District No. 4, Area Board,
117 Wis. 2d 529, 345 N.W.2d 389 (1984)..... 25

Barnes v. DNR,
184 Wis. 2d 645, 516 N.W.2d 730 (1994)..... 6

Beard v. Lee Enterprises, Inc.,
225 Wis. 2d 1, 591 N.W.2d 156 (1999).. 11, 14, 40

County of Columbia v. Bylewski,
94 Wis. 2d 153, 288 N.W.2d 129 (1980)..... 9

Dickie v. City of Tomah,
160 Wis. 2d 20, 465 N.W.2d 262
(Ct. App. 1990)..... 7

Donaldson v. State,
93 Wis. 2d 306, 286 N.W.2d 817 (1980)..... 11

Estate of Matzke,
250 Wis. 204, 26 N.W.2d 659 (1947)..... 37

Fredricks v. Industrial Comm.,
4 Wis. 2d 519, 91 N.W.2d 93 (1958)..... 11

George Williams College v. Williams Bay,
242 Wis. 311, 7 N.W.2d 891(1943)..... 36

Gillen v. City of Neenah,
219 Wis. 2d 806, 580 N.W.2d 628 (1998)..... 17

Page

H. Samuels Co. v. Department of Revenue,
70 Wis. 2d 1076, 236 N.W.2d 250 (1975)..... 11

Harnischfeger Corp. v. LIRC,
196 Wis. 2d 650, 539 N.W.2d 98 (1995)..... 22

Jicha v. DILHR,
169 Wis. 2d 284, 485 N.W.2d 256 (1992)..... 6

Kayden Industries, Inc. v. Murphy,
34 Wis. 2d 718, 150 N.W.2d 447 (1967)..... 39

Kimberly-Clark Corp. v. Public Service Comm.,
110 Wis. 2d 455, 329 N.W.2d 143 (1983)..... 5

Kitten v. Department of Workforce Development,
2002 WI 54, 252 Wis. 2d 561,
644 N.W.2d 649 6

Krenz v. Nichols,
197 Wis. 394, 222 N.W. 300 (1928)..... 9

Le Clair v. Swift,
76 F. Supp. 729, (E. D. Wis. 1948)..... 9

League of Municipalities v. Dept. of Commerce,
2002 WI App 137, 256 Wis. 2d 183,
647 N.W.2d 301, *rev. denied*, 2002 WI 121,
257 Wis. 2d 117, 653 N.W.2d 889..... 5, 22, 23, 24

LeClair v. Natural Resources Board,
168 Wis. 2d 227, 483 N.W.2d 278
(Ct. App. 1992), *rev. denied*,
490 N.W.2d 23 (1992)..... 6

Liberty Homes, Inc. v. DILHR,
136 Wis. 2d 368, 401 N.W.2d 805 (1987)..... 5

Page

Marriage of Lindsey v. Lindsey,
140 Wis. 2d 684, 412 N.W.2d 132
(Ct. App. 1987) 33

Milwaukee & S. T. Corp. v. Public Service Comm.,
268 Wis. 573, 68 N.W.2d 552 (1955)
cert. denied, 350 U.S. 877 (1955) 23

Seider v. O'Connell,
2000 WI 76, 236 Wis. 2d 211,
612 N.W.2d 659 ..... 5, 6

Sewerage Commission of Milwaukee v. DNR,
102 Wis. 2d 613, 307 N.W.2d 189 (1981) 5

State ex rel. Cramer v. Court of Appeals,
2000 WI 86, 236 Wis. 2d 473,
613 N.W.2d 591 ..... 28, 37

State ex rel. Frederick v. McCaughtry,
173 Wis. 2d 222, 496 N.W.2d 177
(Ct. App. 1992) 25

State ex rel. Staples v. DHSS,
115 Wis. 2d 363, 340 N.W.2d 194 (1983) 20

State ex rel. Zimmerman v. Dammann,
201 Wis. 84, 228 N.W. 593 (1930) 39

State v. Cole,
2003 WI 112, 264 Wis. 2d 520,
665 N.W.2d 328 40

State v. Curiel,
227 Wis. 2d 389, 597 N.W.2d 697 (1999) 10

State v. Herwig,
17 Wis. 2d 442, 117 N.W.2d 335 (1962) 6

State v. ILHR Department,
101 Wis. 2d 396, 304 N.W.2d 758 (1981) 38

Page

State v. Isaac J.R.,
220 Wis. 2d 251, 582 N.W.2d 476
(Ct. App. 1998)..... 13, 14, 15, 24

State v. Lipinske,
212 Wis. 421, 249 N.W. 289 (1933)..... 6

State v. Moffett,
2000 WI App 67, 233 Wis. 2d 628,
608 N.W.2d 733, *aff'd*, 2000 WI 130,
239 Wis. 2d 629, 619 N.W.2d 918..... 24

State v. Nergaard,
124 Wis. 414, 102 N.W. 899 (1905)..... 21

State v. Sorenson,
218 Wis. 295, 260 N.W. 662 (1935)..... 21, 30

State v. Szulczewski,
216 Wis. 2d 495, 574 N.W.2d 660 (1998)..... 16

State v. Unnamed Defendant,
150 Wis. 2d 352, 441 N.W.2d 696 (1989)..... 39

State v. Welkos,
14 Wis. 2d 186, 109 N.W.2d 889 (1961)..... 33, 34

Trinwith v. LIRC,
149 Wis. 2d 634, 439 N.W.2d 581
(Ct. App. 1989), *rev. denied*,
443 N.W.2d 312 (1989)..... 6

Weber v. Town of Saukville,
209 Wis. 2d 214, 562 N.W.2d 412 (1997)..... 20

Wis. Elec. Power Co. v. Public Service Comm.,
110 Wis. 2d 530, 329 N.W.2d 178 (1983)..... 9

Page

Wisconsin Citizens Concerned for Cranes and Doves v. Wisconsin Dept. of Natural Resources,
2003 WI App 76, 263 Wis. 2d 370,
661 N.W.2d 858, *rev. granted*, 2003 WI 91,
262 Wis. 2d 500, 665 N.W.2d 375.... 2, 3, 4, 24, 40

Wyss v. Albee,
193 Wis. 2d 101, 532 N.W.2d 444 (1995)..... 16

STATUTES AND RULES CITED

Wis. Stat. ch. 64, Laws of 1931..... 29

Wis. Stat. ch. 129, Laws of 1971..... 36

Wis. Stat. ch. 152, Laws of 1933..... 29

Wis. Stat. ch. 438, Laws of 1939..... 30

Wis. Stat. ch. 668, Laws of 1917..... 29

Wis. Stat. § 1.10 37

Wis. Stat. § 2, ch. 152, Laws of 1933 ..... 29, 30

Wis. Stat. § 2, ch. 366, Laws of 1935 31

Wis. Stat. § 2, ch. 64, Laws of 1931 31

Wis. Stat. § 4, ch. 370, Laws of 1977 32

Wis. Stat. § 5, ch. 370, Laws of 1977 32

Wis. Stat. § 6, ch. 370, Laws of 1977 32

Wis. Stat. § 15.34 3

Wis. Stat. § 23.09(1)..... 18, 21

Page

Wis. Stat. § 24, ch. 221, Laws of 1955 31

Wis. Stat. § 29.001 ..... 14, 15, 18, 21, 27

Wis. Stat. § 29.001(33)..... 4, 9, 10, 11, 12, 14, 19, 25, 26, 27, 28, 30, 38, 39

Wis. Stat. § 29.001(36)..... 20

Wis. Stat. § 29.001(39)..... 20

Wis. Stat. § 29.001(42)..... 18, 27

Wis. Stat. § 29.001(60)..... 11, 12

Wis. Stat. § 29.001(90)..... 27

Wis. Stat. § 29.01(3) (1933)..... 30

Wis. Stat. § 29.011(1)..... 6, 18, 21

Wis. Stat. § 29.014 ..... 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 25, 27, 28, 31, 32, 36, 37, 38, 40

Wis. Stat. § 29.014(1)..... 4, 5, 8, 9, 12, 14, 15, 17, 18, 20, 27

Wis. Stat. § 29.014(2)..... 27

Wis. Stat. § 29.014(2)(b)..... 28

Wis. Stat. § 29.039 ..... 16, 17, 18, 19, 20, 21, 26, 27, 32, 34, 40

Wis. Stat. § 29.039(1)..... 17, 18, 20, 40

Wis. Stat. § 29.174(1) and (2) (1933) 29

Wis. Stat. § 29.174(2) and (9) (1971) 36

Page

Wis. Stat. § 29.174(9) (1933) 30

Wis. Stat. § 29.175 (1931) 29, 31

Wis. Stat. § 29.175 (1953) 31

Wis. Stat. §§ 29.175 – 29.212 (1937) 30

Wis. Stat. §§ 29.175 – 29.212 (1939) 30

Wis. Stat. § 29.18 (1917) 29

Wis. Stat. § 29.19 (1917) 29

Wis. Stat. § 29.334 26

Wis. Stat. § 29.354 31

Wis. Stat. § 29.354(1) 26

Wis. Stat. § 29.364 ..... 26, 31

Wis. Stat. § 29.539(1)(a)(intro.) 26

Wis. Stat. § 29.539(1)(a)1. 26

Wis. Stat. § 29.541(1)(a)(intro.) 26

Wis. Stat. § 29.541(1)(a)1. 26

Wis. Stat. § 29.604 18

Wis. Stat. § 29.604(2)(a) 32

Wis. Stat. § 29.604(2)(b) 32

Wis. Stat. § 29.604(3) 18, 33

Wis. Stat § 29.604(4) 18, 33, 34

Page

Wis. Stat. § 29.604(4)(a) 32

Wis. Stat. § 29.867 31

Wis. Stat. § 29.889(1)(intro.) 25

Wis. Stat. § 29.889(1)(e) 25

Wis. Stat. § 29.921(7) 26

Wis. Stat. § 29.971(3) 26

Wis. Stat. § 29.977(1)(intro.) 26

Wis. Stat. § 29.977(1)(m) 26

Wis. Stat. § 29.983(1)(b)(intro.) 26

Wis. Stat. § 29.983(1)(b)13. 26

Wis. Stat. § 118.16(1) 13

Wis. Stat. § 118.16(1)(a) 13

Wis. Stat. § 118.16(1)(c) 13

Wis. Stat. § 227.19 21

Wis. Stat. § 227.19(4)(d)(intro.) 22

Wis. Stat. § 227.26 ..... 21, 23

Wis. Stat. § 227.40 ..... 3, 5, 7

Wis. Stat. § 227.40(4)(a) 5

Wis. Stat. § 588, ch. 276, Laws of 1969 ..... 9, 30

Wis. Stat. § 902.01 23

Page

Wis. Stat. § 902.01(2)(intro.) 23

Wis. Stat. § 902.01(2)(b) 23

Wis. Stat. § 902.01(4) 23

Wis. Stat. § 902.01(6) 23

Wis. Stat. § 902.03(1)(intro.) 23

Wis. Stat. § 902.03(1)(b) 23

Wis. Admin. Code § NR 10.01(1)(intro.) 3

Wis. Admin. Code § NR 10.01(1)(h) 3

Wis. Admin. Code § NR 10.04 20

Wis. Admin. Code § NR 19.26 20

Wis. Admin. Code § NR 19.27 20

Wis. Admin. Code § NR 19.275 20

CONSTITUTIONAL PROVISIONS

Wis. Const. art I, § 26 ..... 2, 39, 41

FEDERAL REGULATIONS

50 C.F.R. § 10.13 21

Page

OTHER AUTHORITIES

1997 Wisconsin Act 248 34

1997 Wisconsin Act 248, § 400 ..... 35, 36

1997 Wisconsin Act 248, § 78c..... 35

1997 Wisconsin Act 248, § 401 35

2001 Assembly Bill 190 37

2001 Assembly Bill 859 37

2001 Senate Bill 45 37

Wis. Admin. Reg. No. 530 (March 2000)..... 22

1A Norman J. Singer, *Sutherland Statutory Construction* (6th ed. 2000) 11, 20

Thomas Boswell, *The Life of Samuel Johnson, LL.D.* (Robert Maynard Hutchins ed., 44 *Great Books of the Western World* 82, Encyclopedia Britannica, Inc., 1984)..... 10

Reed Dickerson, *Fundamentals of Legal Drafting* 2.3.1 (2d ed. 1986) 13

Richard P. Jones and Peter Maller, *Lawmakers Take No Action On Dove Hunt,* Milwaukee Journal Sentinel, June 22, 2000..... 23

Migratory Bird Treaty Act, 16 U.S.C. § 703 (2000)..... 21

Wisconsin Legislative Reference Bureau, *Wisconsin Bill Drafting Manual,* § 2.01(1)(m) and (15)(a) (2003-04) 13

STATE OF WISCONSIN

IN SUPREME COURT

No. 02-1166

WISCONSIN CITIZENS
CONCERNED FOR
CRANES AND DOVES,
JOHN WIENEKE and PAT FISHER,

Plaintiffs-Respondents-Petitioners,

v.

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Defendant-Appellant,

U.S. SPORTSMEN'S ALLIANCE
FOUNDATION, f/k/a WILDLIFE
LEGISLATIVE FUND OF AMERICA,

Defendant-Intervenor-Co-Appellant.

REVIEW OF A DECISION OF THE WISCONSIN
COURT OF APPEALS, DISTRICT IV, REVERSING A
DANE COUNTY CIRCUIT COURT DECISION, THE
HONORABLE DANIEL R. MOESER, PRESIDING

DEFENDANT-APPELLANT WISCONSIN
DEPARTMENT OF NATURAL RESOURCES'
BRIEF AND APPENDIX

ISSUES PRESENTED

This case concerns the validity of an administrative rule establishing a hunting season for mourning doves in Wisconsin. The case presents two issues.

1. **DNR's Authority to Set Hunting Seasons for "Game."** By statute, the Wisconsin Department of Natural Resources ("DNR") may set hunting seasons for "game." "Game" is statutorily defined to include all varieties of wild birds. Is it reasonable to conclude that the statute under which DNR may set hunting seasons for "game" gives it authority to adopt an administrative rule setting a hunting season for mourning doves?

Circuit court answered: No. Court of appeals answered: Yes. (R. 49:2, P-Ap. 31; *Wisconsin Citizens Concerned for Cranes and Doves v. Wisconsin Dept. of Natural Resources,* 2003 WI App 76, ¶ 1, 263 Wis. 2d 370, 661 N.W.2d 858, *rev. granted,* 2003 WI 91, 262 Wis. 2d 500, 665 N.W.2d 375, P-Ap. 2).

2. **Constitutional Amendment on Right to Hunt.** The Wisconsin Constitution reads in part as follows: "The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law." Wis. Const. art. I, § 26. In its order granting review, the Court directs the parties to address this recent constitutional amendment. What effect, if any, does the right-to-hunt section of the Wisconsin Constitution have on DNR's authority to set a hunting season for mourning doves?

Neither the circuit court nor court of appeals addressed this issue.

POSITION ON ORAL ARGUMENT AND PUBLICATION

DNR asks for oral argument and requests that the opinion be published.

STATEMENT OF THE CASE

DNR has adopted an administrative rule setting a hunting season for mourning doves.[1] Under the rule, an open season for doves lasts from September 1 through October 30. Wis. Admin. Code § NR 10.01(1)(intro.) and (h). The petitioners Wisconsin Citizens Concerned for Cranes and Doves, John Wieneke, and Pat Fisher (collectively "Concerned Citizens") challenge the validity of the dove hunting rule. They seek a ruling under Wis. Stat. § 227.40 declaring that DNR exceeded its statutory authority in adopting a dove hunting rule (R. 2:5-6).

In response, DNR contends it has statutory authority to adopt the rule. The U.S. Sportsmen's Alliance Foundation ("Alliance") intervened as defendant-intervenor. It too contends that DNR has authority to adopt the rule.

The Dane County Circuit Court concluded that DNR lacks statutory authority to adopt a dove hunting rule. By order, it prohibited DNR from adopting the rule absent further legislative authority (R. 49:2, P-Ap. 31). DNR and the Alliance appealed.

On appeal, the court of appeals reversed the circuit court. The court of appeals held that, under plain statutory language, DNR has authority to set a dove hunting season. *Citizens Concerned,* 2003 WI App 76 at ¶ 1. P-Ap. 2. The case is now before this Court for review.

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[1] For easier reference, this brief refers to DNR's adopting the dove hunting rule although, in fact, it was the Natural Resources Board, not DNR, that adopted the rule. By statute, the Board directs and supervises DNR. Wis. Stat. § 15.34.

COURT OF APPEALS DECISION

The court of appeals concluded that, to invalidate the dove hunting rule, the court must be convinced that the rule contravenes a statute or clear expression of legislative intent. It concluded that the burden is on Concerned Citizens to convince the court that there is such contrary legislative intent. *Citizens Concerned,* 2003 WI App 76 at ¶ 6. P-Ap. 4.

The court began its analysis by looking at Wis. Stat. § 29.014(1), which gives DNR authority to set seasons for "game,"[2] and by looking at Wis. Stat. § 29.001(33), which defines "game" to include "all varieties of wild mammals or birds."[3] *Citizens Concerned,* 2003 WI App 76 at ¶ 8. P-Ap. 5. The court of appeals concluded that these two subsections establish DNR's authority to set a dove hunting season. *Id.*

In its court of appeals brief, Concerned Citizens argued that other portions of ch. 29 create ambiguity limiting DNR's authority to set a dove hunting season. *Citizens Concerned,* 2003 WI App 76 at ¶ 9. P-Ap. 5-6. The court of appeals considered and rejected each Concerned Citizens argument. *Id.* at ¶¶ 10-23. P-Ap. 6-14. It concluded that, under plain statutory language, DNR may set a hunting season for doves. *Id.* at ¶¶ 1, 8. P-Ap. 2, 5. It found nothing to negate that authority. *Id.* at ¶¶ 9-23. P-Ap. 5-14.

---

[2] Wis. Stat. § 29.014(1):

> The department shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping.

[3] Wis. Stat. § 29.001(33): "'Game' includes all varieties of wild mammals or birds."

STANDARD OF REVIEW

Rule review method. The exclusive method for a court's reviewing a rule's validity is set forth in Wis. Stat. § 227.40. *Sewerage Commission of Milwaukee v. DNR,* 102 Wis. 2d 613, 629-30, 307 N.W.2d 189 (1981). Under § 227.40, a court may invalidate a DNR rule only if the rule (1) violates the constitution, (2) exceeds DNR's statutory authority, or (3) was adopted in violation of statutory rulemaking procedures. Wis. Stat. § 227.40(4)(a); *Liberty Homes, Inc. v. DILHR,* 136 Wis. 2d 368, 373, 401 N.W.2d 805 (1987). Concerned Citizens proceeds under § 227.40 claiming that DNR exceeded its statutory authority (R. 2:4).

To determine whether a rule is authorized, a court first examines the statute the agency cites as authority for the rule. *Seider v. O'Connell,* 2000 WI 76, ¶ 70, 236 Wis. 2d 211, 612 N.W.2d 659. A court should identify elements of the enabling statute and match the rule against those elements. If the rule matches the elements, the statute authorizes the rule. *Kimberly-Clark Corp. v. Public Service Comm.,* 110 Wis. 2d 455, 461-62, 329 N.W.2d 143 (1983).

A plaintiff challenging a rule has the burden to convince the court that the agency exceeded its statutory authority. *League of Municipalities v. Dept. of Commerce*, 2002 WI App 137, ¶ 10, 256 Wis. 2d 183, 647 N.W.2d 301, *rev. denied,* 2002 WI 121, 257 Wis. 2d 117, 653 N.W.2d 889. Concerned Citizens argues it has no burden. Concerned Citizens br at 10-11. Nonetheless, the law places this burden on it. *League of Municipalities,* 2002 WI App 137 at ¶ 10.

Deference owed DNR. DNR is the state agency to which the Legislature has delegated the authority to set "open and closed seasons for fish and game." Wis. Stat. § 29.014(1). "Ordinarily, when the legislature charges an administrative agency to apply and enforce a particular statute, [the courts] accord 'great weight' to the agency's

construction and interpretation of the statute, and [the court] will not set it aside unless clearly contrary to legislative intent." *Trinwith v. LIRC*, 149 Wis. 2d 634, 640, 439 N.W.2d 581 (Ct. App. 1989), *rev. denied,* 443 N.W.2d 312 (1989). *See also Jicha v. DILHR*, 169 Wis. 2d 284, 290-91, 485 N.W.2d 256 (1992).

When courts "decide questions of law about an administrative rule, [they] benefit from the experience and analysis of the administrative agency that has a duty to execute the law." *Seider,* 2000 WI 76 at ¶ 27. Courts give "great weight" to an agency's statutory interpretation if the Legislature charged it with interpreting the statute, if its interpretation is long-standing, and if its "experience, technical competence, and specialized knowledge" aid in interpreting and applying the statute. Under the "great weight" standard, courts uphold agency decisions if they are reasonable. *Kitten v. Department of Workforce Development,* 2002 WI 54, ¶ 27, 252 Wis. 2d 561, 644 N.W.2d 649.

As sovereign, the State of Wisconsin holds wild animals in trust for the people's benefit. Wis. Stat. § 29.011(1) ("legal title to, and the custody and protection of, all wild animals . . . vested in the state for the purposes of regulating the[ir] enjoyment, use, disposition, and conservation"). *See also State v. Lipinske*, 212 Wis. 421, 424, 249 N.W. 289 (1933). DNR has "responsibility as custodian of Wisconsin's wildlife." *Barnes v. DNR*, 184 Wis. 2d 645, 660, 516 N.W.2d 730 (1994). Its responsibility includes "maintain[ing] a balance between protection of wildlife and exploitation." *Id.* DNR has "wide regulatory authority over the natural resources, fish and game of Wisconsin." *LeClair v. Natural Resources Board*, 168 Wis. 2d 227, 241 n.9, 483 N.W.2d 278 (Ct. App. 1992), *rev. denied,* 490 N.W.2d 23 (1992). In the exercise of the state's police power, DNR may regulate hunting. *State v. Herwig*, 17 Wis. 2d 442, 446, 117 N.W.2d 335 (1962).

The Legislature has for many years charged DNR with interpreting ch. 29. Its interpretation is long-standing. Its "experience, technical competence, and specialized knowledge" aid in interpreting and applying ch. 29. Thus, DNR's adoption of the dove hunting rule under ch. 29 is entitled to "great weight."

SUMMARY OF ARGUMENT

The question for the Court is whether the Legislature empowered DNR to adopt the dove hunting rule. Separation of powers and Wis. Stat. § 227.40 limit the Court's jurisdiction to deciding whether DNR *may*, not whether it *should*, adopt a dove hunting rule. The question whether it *should* adopt a rule involves science, policy, and values and is, therefore, for the legislative or executive branches to decide. The issue for the Court is whether Concerned Citizens meets its burden to show that DNR lacks statutory authority to set a dove hunting season.

The issue comes down to this: By statute, DNR must set open and closed seasons for "game." By statute, "game" includes all varieties of wild birds. Doves are "wild birds." These controlling statutes are unambiguous, and so under controlling case law, they apply as written.

The Court may "not . . . search for ways to find a statute ambiguous when its terms are clear." *Dickie v. City of Tomah*, 160 Wis. 2d 20, 25, 465 N.W.2d 262 (Ct. App. 1990) (citing *State ex rel. Girouard v. Jackson County Circuit Ct.,* 155 Wis. 2d 148, 156, 454 N.W.2d 792, 795 (1990)), *rev. denied,* 468 N.W.2d 27 (1991). It is reasonably possible under ch. 29 to avoid conflict and give effect to the clear statutory language under which DNR may set a hunting season for doves.

Nothing in the recently ratified right-to-hunt amendment to the Wisconsin Constitution diminishes DNR's statutory authority to set a dove hunting season.

Indeed, given the circumstances concerning mourning doves, it may be an unreasonable restriction in violation of the right-to-hunt amendment for DNR not to set a dove hunting season.

Hence, the Court should affirm the court of appeals decision. It should uphold DNR's rule setting a hunting season for doves.

ARGUMENT

I. THE STATUTORY DEFINITION OF "GAME," BROADLY WRITTEN TO INCLUDE "ALL VARIETIES OF WILD . . . BIRDS," SHOULD BE APPLIED WHERE "GAME" APPEARS IN WIS. STAT. § 29.014(1) BECAUSE THE DEFINITION OF "GAME" IS UNAMBIGUOUS AND NOT MADE AMBIGUOUS BY OTHER PROVISIONS OF CH. 29.

The statutory definition of "game" controls. It is clear and complete and not made ambiguous by other definitions. It is reasonably possible to harmonize the definition of "game" with all of ch. 29. Concerned Citizens' contrary arguments fail.

A. Concerned Citizens has the burden to show that DNR lacks rulemaking authority, but, in light of the statute authorizing DNR's setting hunting seasons for "game" and of the unambiguous statutory definition of "game," it has not met its burden.

A court's task in interpreting a statute is to give effect to the Legislature's intent. *County of Columbia v. Bylewski*, 94 Wis. 2d 153, 164, 288 N.W.2d 129 (1980). In determining intent, courts look first to the language of the statute. *Id.* If clear, they look no further. *Wis. Elec. Power Co. v. Public Service Comm.*, 110 Wis. 2d 530, 534, 329 N.W.2d 178 (1983).

Concerning the dove hunting rule, the statutes are clear. Under Wis. Stat. § 29.014(1), DNR may set "open and closed seasons for fish and game." "Game" is statutorily defined to include "all varieties of wild mammals or birds." § 29.001(33). DNR, therefore, has clear statutory authority to set open seasons for "all varieties of wild . . . birds." That necessarily includes doves because they are wild birds.

Both state and federal case law recognize DNR's (and its predecessor agency's) broad authority to act under ch. 29 concerning game. *See, e.g., Krenz v. Nichols,* 197 Wis. 394, 397, 222 N.W. 300 (1928) ("Conservation Commission . . . is given very broad and comprehensive powers in regard to [game]"); *Le Clair v. Swift*, 76 F. Supp. 729, 732 (E. D. Wis. 1948) ("commission was given very broad and comprehensive powers").[4]

Concerned Citizens argues that the court of appeals focused too narrowly on the definition of "game," ignoring the rest of ch. 29, particularly other conflicting definitions. Concerned Citizens br 12-13. It contends that "game" is ambiguous. It says that the Legislature failed to define "wild mammals" or "birds" as used in the "game" definition and that this results in ambiguity. Concerned Citizens br 14-15.

This argument disregards reality and the law. In the preface to his dictionary, Samuel Johnson wrote "nothing can be defined but by the use of words too plain

[4] The Wisconsin Conservation Commission was DNR's predecessor agency, and DNR was given its authority. Wis. Stat. § 588, ch. 276, Laws of 1969.

to admit of definition." Thomas Boswell, *The Life of Samuel Johnson, LL.D.* (Robert Maynard Hutchins ed., 44 *Great Books of the Western World* 82, Encyclopedia Britannica, Inc., 1984). A court "may resort to a dictionary to ascertain the common and approved usage of a term not defined by the statute. [Its] resort to a dictionary to determine the common and approved usage of the term does not render the term ambiguous." *State v. Curiel,* 227 Wis. 2d 389, 404-405, 597 N.W.2d 697 (1999) (citations omitted).

Contrary to the Concerned Citizens argument, it is understandable that the Legislature defined "game birds" and "game animals," but not "wild mammals" or "wild birds." "Wild mammals" and "wild birds" each has a "common and approved usage" ascertainable from a dictionary. In contrast, the usage of "game birds" and "game animals" is less established by common usage. By its nature, it is more subject to a legislatively stipulated definition.

Concerned Citizens further argues that the Legislature's using the disjunctive "or," not the conjunctive "and," in Wis. Stat. § 29.001(33) undermines DNR's contention that "game" is clearly defined. Concerned Citizens br 15. This argument fails. The statute reads as follows: "'Game' includes all varieties of wild mammals or birds." Wis. Stat. § 29.001(33). This is clear and would be no more clear if it read "and" instead of "or." As written, it "includes" all "wild mammals," and it includes all "wild birds," just as it would if it read all "wild mammals [and] birds."

Concerned Citizens argues that its interpretation and DNR's conflicting interpretation are each reasonable interpretations and that this shows ambiguity. Concerned Citizens br 15-16. The Concerned Citizens interpretation, however, is unreasonable when considered in light of the way that the relevant statures must be read under the law. Concerned Citizens, therefore, has not met its burden to show that reasonable minds might differ about the

meaning of the controlling statutes. There is no ambiguity.

B. Statutory definitions must be applied, not made superfluous.

When a term is clearly defined by statute, a court looks nowhere else for its meaning. *Beard v. Lee Enterprises, Inc.*, 225 Wis. 2d 1, 10, 591 N.W.2d 156 (1999). Other rules of construction do not apply. *Id.* at 23. A statute is not construed to make any word superfluous. *Donaldson v. State*, 93 Wis. 2d 306, 315, 286 N.W.2d 817 (1980). Each word is applied, not ignored. *H. Samuels Co. v. Department of Revenue*, 70 Wis. 2d 1076, 1084, 236 N.W.2d 250 (1975). Under Concerned Citizens' interpretation, "game" is superfluous. That interpretation is, therefore, not a sound interpretation.

1. The statutory definition of "game" must be applied as clearly written even if it conflicts with the ordinary meaning of "nongame species."

The statutory definitions for "game" and "nongame species" are controlling although they may conflict with the ordinary meaning and usage of the words. *Fredricks v. Industrial Comm.*, 4 Wis. 2d 519, 522, 91 N.W.2d 93 (1958). *See also* 1A Norman J. Singer *Sutherland Statutory Construction* § 20:8 at p. 132 (6th ed. 2000).

The Court should apply the definition of "game" as it appears in Wis. Stat. § 29.001(33). Although "game" and "nongame species" are mutually exclusive under their lexical definitions in a dictionary, they are not mutually exclusive under their stipulative definitions in ch. 29. Unlike under their lexical definitions, a single species may, under the stipulative definitions in ch. 29, plainly be both "game" and a "nongame species." This is true for the mourning dove. *See* Wis. Stat. § 29.001(33) and (60).

Concerned Citizens says that a reasonable person would doubt that the Legislature intended to include the same species within the definitions of both "game" and "nongame species." Concerned Citizens br 17. They argue that the statutes are, therefore, ambiguous. Concerned Citizens br 18.

As shown here, however, the statutes are unambiguous. The definitions serve different purposes and understandably read differently. Concerned Citizens offers nothing to counter DNR's showing that "game" has the meaning given in Wis. Stat. § 29.001(33).

2. "Game," "nongame species," and "game birds" must each be applied where it appears.

When the Legislature defines terms differently, it intends a different meaning. *American Motorists Ins. v. R & S Meats, Inc.*, 190 Wis. 2d 196, 214, 526 N.W.2d 791 (Ct. App. 1994). Using one term excludes another. Thus, the statutory meaning of "game" must be applied where the word "game" appears in Wis. Stat. § 29.014(1). Otherwise, it would be superfluous.

"Game" has a different meaning from other terms differently defined. It is not synonymous with "game birds" and "game animals" just because those terms do not fall within the scope of "nongame species" as defined in Wis. Stat. § 29.001(60). If the Legislature had meant to limit DNR's season-setting authority to "game birds" and "game animals," rather than to "game," it would have used those other terms in Wis. Stat. § 29.014, not "game" as it has done. DNR's authority to set seasons under Wis. Stat. § 29.014 expressly applies to "game," not to the other terms, including "game birds."

This follows from the "Golden Rule" of drafting: a legislative drafter "always expresses the same idea in the same way and always expresses different ideas differently." Reed Dickerson, *Fundamentals of Legal Drafting* § 2.3.1 (2d ed. 1986); Wisconsin Legislative Reference Bureau, *Wisconsin Bill Drafting Manual,* 47, § 2.01(15)(a) (2003-04) ("Always say the same thing in the same way and say different things in different ways. A change in wording will probably be construed to convey a change in meaning."); *Id.*, 38, § 2.01(1)(m) ("Do not give two or more terms the same meaning. Select one term and use it uniformly.").

Concerned Citizens fails to counter DNR's showing that, as defined by statute, "game" is not synonymous with "game birds," "game animals," and "fur bearing animals." It fails to counter DNR's showing that "game," not these other terms, applies where "game" appears in Wis. Stat. § 29.014.

C. The statutory definition of "game," which is clear and complete, is not made ambiguous by other definitions.

In applying the definition of "game," a court may not look beyond the definition of "game" and consider other definitions. That is error. *See State v. Isaac J.R.*, 220 Wis. 2d 251, 582 N.W.2d 476 (Ct. App. 1998). In *Isaac J.R.,* the defendant argued that Wis. Stat. § 118.16(1) was ambiguous because it included conflicting definitions for "habitual truant" and "truancy." *Isaac J.R.*, 220 Wis. 2d at 256. The court rejected the argument concluding that the definition of "habitual truant" in § 118.16(1)(a) was clear and complete when read alone without referring to the definition of "truancy" in § 118.16(1)(c). *Id.* at 257. The reasoning of the court in *Isaac J.R.* is relevant here:

> There is no reason to look beyond the definition of "habitual truant" in para. (a). Nothing in the definition of "habitual truant" refers to para. (c), and there is no incompleteness or lack of clarity in the definition of "habitual truant" that makes reference to another section necessary.

Id. at 258. As in *Isaac J.R.*, this Court should apply the definition of "game" to Wis. Stat. § 29.014(1) and not look to the definition of "nongame species" to create ambiguity in § 29.014(1).

The requisite analysis stops with a plain statutory definition. Referring to another definition is unnecessary. *Isaac J.R.*, 220 Wis. 2d at 258. "Where a word or phrase is specifically defined in a statute, its meaning is as defined in the statute, and no other rule of statutory construction need be applied." *Beard v. Lee Enterprises, Inc.,* 225 Wis. 2d at 23. Here, since Wis. Stat. § 29.001(33) specifically defines "game" for use in ch. 29, the meaning of "game" in § 29.014(1) is as clearly and completely defined in § 29.001(33). The Court should not create ambiguity by looking to another definition.

Concerned Citizens argues that statutory context may make a statute ambiguous. Concerned Citizens br 21-25. It cites cases. All are distinguishable. None involves conflicting statutory definitions. As in *Isaac J.R.,* a clear statutory definition is not made ambiguous by a conflicting statutory definition.

Concerned Citizens argues that, under the definitions in Wis. Stat. § 29.001, doves are not a "game bird" and that it follows that they are a "nongame species." Indeed, as Concerned Citizens says, the parties agree that they are a "nongame species." Concerned Citizens br 16. From this, Concerned Citizens argues that it is reasonable to conclude that doves are not "game." Concerned Citizens br 16. This is the central Concerned Citizens contention, but it construes definitions in Wis. Stat. § 29.001 contrary to *Isaac J.R.* Consistent with *Isaac J.R.,* the plainly written definition of "game" applies in Wis. Stat. § 29.014.

Concerned Citizens argues that the definition of "nongame species" is more specific than the definition of "game" and that, therefore, "nongame species" controls. Concerned Citizens br 17-18. But "game" applies in Wis. Stat. § 29.014. The Court may not look beyond "game" to consider other definitions not directly used in § 29.014. *Isaac J.R.,* 220 Wis. 2d at 257-58. Substituting a more specifically defined term ("nongame species") for the term actually used ("game") by the Legislature in the substantive statute (§ 29.014) would rewrite the law contrary to legislative intent.

The Concerned Citizens argument fails to apply the clear definition of "game." It argues that DNR "impl[ies] the existence of missing language" because some definitions in Wis. Stat. § 29.001 are not consistent with each other. Concerned Citizens br 16. Concerned Citizens substitutes the dictionary definitions for the statutory definitions of "game" and "nongame" when it argues that a species cannot be both "game" and "nongame." But all one needs to do here is read and apply the statutory definitions. They can be applied as written in ch. 29 without "implying the existence of missing language," and they are used consistently in the chapter. Nothing requires that the meaning of each statutory definition must be consistent with its dictionary definition. To so conclude conflicts with *Isaac J.R.*

D. Whenever reasonably possible, statutes are interpreted to avoid conflict, and when that is done here, there is no conflict.

As shown, "game" is defined clearly and completely, so there is no need to look further. Nonetheless, even looking beyond the definition of "game" and its use in Wis. Stat. § 29.014(1) does not create conflict.

1. If reasonably possible, courts interpret statutes in harmony.

Conflict between statutes is disfavored. *Wyss v. Albee*, 193 Wis. 2d 101, 110, 532 N.W.2d 444 (1995). A court may not look for conflict but must, if reasonably possible, harmonize related statutes. *State v. Szulczewski,* 216 Wis. 2d 495, 503, 574 N.W.2d 660 (1998).

Here there is no conflict. Because it is "game," the mourning dove is subject to DNR's authority to set a hunting season under Wis. Stat. § 29.014. Because it is also a "nongame species," the mourning dove is also subject to Wis. Stat. § 29.039. But nothing in ch. 29 presents a conflict that may not reasonably be avoided by the harmonizing that case law requires. Concerned Citizens offers nothing to the contrary.

2. Nothing in Wis. Stat. § 29.039 conflicts with DNR's authority under Wis. Stat. § 29.014 to set a dove hunting season.

a. The law supports DNR's position.

"Nongame species" appears in just one substantive section of ch. 29. The section is Wis. Stat. § 29.039[5], and it is reasonably possible to read that section to avoid conflict with Wis. Stat. § 29.014.

First, nothing in § 29.039 prohibits hunting "nongame species." Consequently, § 29.039 presents no conflict for the hunting of "game," including doves, under § 29.014. The need to apply § 29.014 as plainly written and to interpret § 29.039 as not interfering with it is further supported by the rule of statutory construction holding that a specific statutory provision controls over a less specific one. *Gillen v. City of Neenah*, 219 Wis. 2d 806, 822, 580 N.W.2d 628 (1998). Section 29.014 is more specific concerning DNR's authority to set hunting seasons than is § 29.039. Hence, § 29.014(1) controls over § 29.039.

Second, not only does § 29.039 not prohibit hunting "nongame species," it actually authorizes their hunting. Under it, DNR "may require harvest information and may establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species." This expressly authorizes the "harvest" and "taking" of "nongame species."

Comparing parallel language in § 29.014 and § 29.039 is instructive. Under § 29.014, DNR may set "bag limits, size limits, rest days and conditions governing the *taking* of fish and game." Under § 29.039, DNR "may

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[5] Wis. Stat. § 29.039(1):

> The department may conduct investigations of nongame species to develop scientific information relating to population, distribution, habitat needs, and other biological data to determine necessary conservation measures. The department may develop conservation programs to ensure the perpetuation of nongame species. The department may require harvest information and may establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species.

establish limitations relating to *taking* [and] possession" of nongame species. The "bag limits, size limits, rest days and conditions" noted in § 29.014 correspond to the "limitations relating to *taking* [and] possession" authorized in § 29.039. This corresponding language shows that § 29.039 also empowers DNR to set a hunting season for doves.

Notably, "taking" appears in both § 29.014 and § 29.039. The argument that "taking" as used in both § 29.014 and § 29.039 includes hunting is bolstered by the definition of "hunting" in ch. 29. "Hunting" is defined disjunctively to include the "taking" of "any wild animal." Wis. Stat. § 29.001(42).[6] The Concerned Citizens contrary argument is unpersuasive. Concerned Citizens br 31-32.

Third, § 29.039 gives DNR authority to establish a management program for species that do not fall within other definitions of § 29.001 – that is, species not defined as "game birds," "game animals," "game fish," or "fur-bearing animals." Wis. Stat. § 29.039(1). Section 29.039 does not ban the hunting or taking of "nongame species" as § 29.604 does for endangered or threatened species. Wis. Stat. § 29.604(4). But even there under § 29.604, DNR still has statutory authority to determine and designate by rule the particular species to be listed as endangered or threatened and that may not, therefore, be hunted. Wis. Stat. § 29.604(3).

Fourth, § 29.039 calls for "conservation measures" and "conservation programs" for "nongame species." But conservation does not conflict with open seasons for wild birds. *See, e.g.,* Wis. Stat. §§ 23.09(1) and 29.011(1) (conservation includes regulated use of wild animals); Wis. Stat. § 29.014(1) ("establish and maintain open and closed seasons for fish and game . . . that will *conserve* the fish and game supply" and ensure "good fishing, hunting, and trapping").

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[6] Wis. Stat. § 29.001(42): "'Hunt' or 'hunting' includes shooting, shooting at, pursuing, taking, capturing or killing or attempting to capture or kill any wild animal."

b. The Concerned Citizens contrary argument fails.

Concerned Citizens argues that the definition of "game" is less specific than that of "nongame species" and that Wis. Stat. § 29.014 is less specific than Wis. Stat. § 29.039. It contends that § 29.014 "never specifically authoriz[es] the DNR to designate what wild animals, birds or fish can be hunted." Concerned Citizens br 21. Under § 29.014, however, DNR is expressly given broad authority to set "open and closed seasons" for "game," which is defined in § 29.001(33) to include all varieties of wild birds. This shows that, on setting hunting seasons for "game," § 29.014 is more specific than § 29.039.

Admittedly, § 29.039 is more specific than § 29.014 on some points: developing scientific information to conserve nongame species and establishing limits on taking, possessing, transporting, processing, or selling nongame species. But § 29.039 is not more specific than § 29.014 on setting "open and closed seasons" for "game." On setting seasons for "game," § 29.014 is more specific and, thus, on that topic, controls over the less specific § 29.039.

3. DNR's setting seasons under Wis. Stat. § 29.039 and Wis. Stat. § 29.014 further shows harmony between the statutes.

a. DNR rules set open seasons under Wis. Stat. §§ 29.039 and 29.014.

First, under Wis. Stat. § 29.039, DNR by rule has set seasons for frogs, crayfish, and turtles. *See* Wis. Admin. Code §§ NR 19.26, NR 19.27, and NR 19.275. These rules have the full "force and effect of law." *State ex rel. Staples v. DHSS,* 115 Wis. 2d 363, 367, 340 N.W.2d 194 (1983). Because they are neither fish nor game, these species do not fall within DNR's authority to set open seasons under Wis. Stat. § 29.014. Thus, if season dates, harvest methods, and bag limits were not "limitations relating to taking [and] possession" under Wis. Stat. § 29.039(1), there would be no authority for DNR's setting seasons for those species, such as reptiles and amphibians, which are not wild mammals, birds, or fish. That would be an unreasonable result.

Second, Concerned Citizens argues that DNR must confine its season-setting authority under Wis. Stat. § 29.014(1) to species listed as "game birds" in Wis. Stat. § 29.001(39) or "game animals" in Wis. Stat. § 29.001(36). This argument does not withstand analysis. DNR would not have authority to set seasons and bag limits on coyotes and other species not listed. By their terms, the definition lists are not exhaustive. They read "'game animals' includes" and "'game birds' includes." Wis. Stat. § 29.001(36) and (39). "Includes" is a term of inclusion, not exclusion. *See Weber v. Town of Saukville,* 209 Wis. 2d 214, 226, 562 N.W.2d 412 (1997); 1A *Sutherland Statutory Construction* § 47.07 at p. 231-32 ("includes" is a term of enlargement allowing inclusion of other items not listed).

The appropriateness of DNR's interpretation is further illustrated by noting the other birds not listed in the "game birds" definition for which DNR has, nonetheless, set a year-round hunting season by rule under Wis. Stat. § 29.014: starlings, English sparrows, and coturnix quail. Wis. Admin. Code § NR 10.04. Correspondingly, there are other birds listed in the "game birds" definition for which DNR has not set open hunting seasons: prairie chickens, wild swans, and sandpipers.

In sum, the Legislature has not used the "game birds," "game animals," "game fish," or "fur-bearing animals" definitions to list all species for which DNR may set open seasons. Absent state regulation, hunters may take game without restraint. *State v. Nergaard*, 124 Wis. 414, 420, 102 N.W. 899 (1905). If Concerned Citizens were correct and DNR lacked authority under Wis. Stat. §§ 29.014 or 29.039 to set seasons for species not listed in the "game fish," "game animal," "game bird," or "fur-bearing animal" definitions in Wis. Stat. § 29.001, not only could there not be an open season for any non-listed species, but there could also not be a closed season. That would be an unacceptable result and contrary to Concerned Citizens' own objective in this case.

b. DNR's authority is limited.

The law limits DNR's authority to set hunting seasons for wild animals.

First, "[t]he legal title to, and the custody and protection of, all wild animals within this state is vested in the state for the purposes of regulating the enjoyment, use, disposition, and conservation of these wild animals." Wis. Stat. § 29.011(1). *See also* Wis. Stat. § 23.09(1). This limits DNR's discretion. *State v. Sorenson*, 218 Wis. 295, 299, 260 N.W. 662 (1935) (agency's purpose declared by statute to be protection, development, and use of game, and this sets standards to govern exercise of power).

Second, the Migratory Bird Treaty Act, 16 U.S.C. § 703 (2000), limits DNR's authority over migratory birds, such as robins, hummingbirds, and eagles. Under the Migratory Bird Treaty Act, they may not be hunted. *See* 50 C.F.R. § 10.13.

Third, the Legislature may object to a proposed rule. Wis. Stat. § 227.19. It may suspend a rule after promulgation. Wis. Stat. § 227.26.

E. The Court should give DNR proper deference on agency rulemaking.

1. Deference is owed DNR.

Because of (1) DNR's extensive rulemaking proceedings, (2) hearings around the state, and (3) numerous comments received about the rule, deference is owed DNR's decision to adopt the dove hunting rule. *League of Municipalities*, 2002 WI App 137 at ¶ 8 n.4. The rulemaking proceedings were extensive. Hearings were held in all 72 counties. Over 30,000 people attended. The vote was 21,167 in favor and 6,036 opposed (R. 6:16, DNR-Ap. 102; Wis. Admin. Reg. No. 530, 42-45 (March 2000), DNR-Ap. 115-118). Numerous comments about dove hunting were received by the Natural Resources Board (R. 6:16-24, DNR-Ap. 102-110). This included testimony by petitioners Pat Fisher and John Wieneke (R. 6:20, DNR-Ap. 106).

The deference owed DNR's adopting the rule is further strengthened by the Legislature's interest in the rule. *See Harnischfeger Corp. v. LIRC,* 196 Wis. 2d 650, 660-61, 539 N.W.2d 98 (1995). During rulemaking, the Legislature may object to a proposed rule for reasons including: "absence of statutory authority," "failure to comply with legislative intent," or "conflict with state law." Wis. Stat. § 227.19(4)(d)(intro.) 1., 3., 4. Committees in both legislative houses – the Senate Committee on Agriculture, Environmental Resources, and Campaign Finance Reform and the Assembly Committee on Natural Resources – held public hearings on the rule. Each committee then allowed the rule to take effect

(R. 19:26-27, DNR-Ap. 119-120).[7] Beyond this, although it has clear authority to do so, the Legislature has not suspended the dove hunting rule after its promulgation. Wis. Stat. § 227.26.

Concerned Citizens fails to give due significance to DNR's rulemaking hearings. *League of Municipalities*, 2002 WI App 137 at ¶ 8 n.4. Notably, they fail to do this even though petitioners Pat Fisher and John Wieneke both appeared and spoke against the rule during the State Natural Resources Board meeting on the rule (R. 6:20, DNR-Ap. 106). Concerned Citizens also fails to give appropriate weight to the legislative involvement in the rulemaking. Committee hearings were held in both houses (R. 19:26-27, DNR-Ap. 119-120). The focus was the dove hunting rule. Over 150 people testified. Richard P. Jones and Peter Maller, *Lawmakers Take No Action on Dove Hunt,* Milwaukee Journal Sentinel, June 22, 2000, at 15B, *available at* 2000 WL 3865799 (DNR-Ap. 121-124); Record of Committee (DNR-Ap. 125-128). The record of committee proceedings before the Assembly Committee on Natural Resources shows that plaintiff John Wieneke spoke against the rule at the committee hearing (DNR-Ap. 125).[8]

All this further shows that petitioners were heard and that the Legislature concurs in DNR's determination that it has legislative authority to adopt the dove hunting rule. *See American Motors Corp. v. ILHR Dept.*, 101 Wis. 2d 337, 355, 305 N.W.2d 62 (1981).

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[7] The Court may judicially notice the order adopting the rule. Wis. Stat. §§ 902.01(2)(intro.) and (b), (4), (6) and 902.03(1)(intro.) and (b). *See also Milwaukee & S. T. Corp. v. Public Service Comm.*, 268 Wis. 573, 578, 68 N.W.2d 552 (1955), *cert. denied*, 350 U.S. 877 (1955).

[8] The Court may take judicial notice of the newspaper article and the committee record. Wis. Stat. § 902.01.

2. Policy is not before the Court.

The Court should not consider any "arguments about the unreasonable results of the plain language of the statute, because those are essentially policy arguments and must be addressed to the legislature." *Isaac J.R.*, 220 Wis. 2d at 259. "[The court] will not substitute [its] judgment for that of [a] department regarding the wisdom of the rule it adopted." *League of Municipalities*, 2002 WI App 137 at ¶ 27.

> Even where the plain language of a statute creates an incongruous – or even an unreasonable – result, [a court] can't change that language – or that result – by judicial fiat; "th[e]se are essentially policy arguments [which] must be addressed to the legislature."

State v. Moffett, 2000 WI App 67, ¶ 16, 233 Wis. 2d 628, 608 N.W.2d 733 (*quoting Isaac J.R.*, 220 Wis. 2d at 259), *aff'd,* 2000 WI 130, 239 Wis. 2d 629, 619 N.W.2d 918.

The circuit court below agreed, stating that this case "is in no way a review of the public policy considerations underlying DNR's decision to establish an open hunting season on mourning doves" (R. 33:2 n.1, P-Ap. 20). The court of appeals reached the same conclusion. "In our inquiry, the question of whether [DNR] *should* establish a season for mourning doves plays no part, the only issue being whether it *could* do so." *Citizens Concerned,* 2003 WI App 76 at ¶ 6, P-Ap. 4.

II. THE COURT SHOULD INTERPRET WIS. STAT. § 29.014 USING THE STATUTORY DEFINITION OF "GAME" BECAUSE A SOUND OVERALL INTERPRETATION OF CH. 29 REQUIRES USING THAT DEFINITION AS CLEARLY WRITTEN.

In reviewing a statute, a court presumes the Legislature carefully chose its terms to express its intent. *Ball v. District No. 4, Area Board,* 117 Wis. 2d 529, 539, 345 N.W.2d 389 (1984). A court presumes the Legislature means what it says when it uses a particular word. *See State ex rel. Frederick v. McCaughtry*, 173 Wis. 2d 222, 226, 496 N.W.2d 177 (Ct. App. 1992). In ch. 29, the Legislature defined "game" to "include[] all varieties of wild mammals or birds" (§ 29.001(33)) and then used "game" in ch. 29 where it intended that broad meaning. Failing to apply the statutory definition of "game" where it appears throughout ch. 29, as Concerned Citizens advocates, conflicts with a sound and consistent interpretation of ch. 29.

A. As used in ch. 29, "game" has a broader meaning than Concerned Citizens gives it.

Several provisions of ch. 29 plainly show that the Legislature intended to give "game" a broader meaning than it has collectively given "game birds" and "game animals."

- Wis. Stat. § 29.889(1)(intro.) and (e) expressly recognizes that DNR may authorize the "hunting of sandhill cranes." Sandhill cranes, however, are not listed as a "game bird" or "game animal" in ch. 29. This conflicts with the Concerned Citizens interpretation under which DNR may set open seasons only for birds listed in the "game birds" definition. The Legislature has expressly recognized

that sandhill cranes fall under DNR's season-setting authority although they are a "nongame species" under Wis. Stat. § 29.039 because they are not listed as a "game bird" in ch. 29. The circumstances are the same for the mourning dove.

- Wis. Stat. § 29.971(3) provides a penalty for violating the law related to "hunting, taking, transportation or possession of game." If "game" were interpreted as narrowly as Concerned Citizens urges – to include only "game birds" and "game animals" – then "game" violations concerning other species not listed in those definitions would not be subject to this penalty. This is an unreasonable result. The illegal "hunting, taking, transportation or possession" of any "wild mammal or bird" should be penalized. It is unreasonable to conclude that the Legislature intended otherwise.

B. Using "game" as defined in Wis. Stat. § 29.001(33) is consistent with other provisions of ch. 29.

The terms "game birds" and "game animals" are used in ch. 29 in ways consistent with using "game" in accordance with its statutory definition.

The following provisions apply to "game birds" or "game animals": § 29.334 requires that "game animal[s]" must be killed or released when taken; § 29.354(1) requires a license or permit to possess or control a "game bird or game animal;" § 29.364 limits transporting "game birds;" § 29.539(1)(a)(intro.) and 1. limits the sale of "game bird[s];" § 29.541(1)(a)(intro.) and 1. limits commercially serving meat from a "game bird;" § 29.921(7) concerns dogs that destroy "game birds" or their eggs or nests; §§ 29.977(1)(intro.) and (m) and 29.983(1)(b)(intro.) and 13. concern penalties and

assessments for violating ch. 29 regarding game animals or game birds.

Hence, "game" can be interpreted and applied in accordance with its plain statutory definition, and yet the other statutory definitions – "nongame species," "game birds," and "game animals" – remain intact for use elsewhere in ch. 29 as well. These other definitions can be applied as shown above without any conflict. None of these provisions refers to or restricts DNR's season-setting authority under Wis. Stat. § 29.014. The different terms have different purposes and different uses that do not conflict when the terms and their relationships are properly understood and applied.

C. The statutory definition of "hunting" and DNR's broad rulemaking authority under Wis. Stat. § 29.014(2) reinforce DNR's authority under Wis. Stat. § 29.014(1) to set seasons for "game" as broadly defined in Wis. Stat. § 29.001(33).

"Hunting" is statutorily defined, in relevant part, as the "taking" of "any wild animal." "'Wild animal' means any mammal, bird, fish, or other creature of a wild nature." Wis. Stat. § 29.001(42) and (90). These two definitions, by their plain terms, when read together, contemplate "hunting" more than what are listed as "game birds," "game animals," and "fur-bearing animals." This reinforces DNR's argument that the statutory definitions in Wis. Stat. § 29.001 and the requirements in Wis. Stat. § 29.039, which refer to the "taking" of "nongame species," are consistent with Wis. Stat. § 29.014 and with the broad statutory definition of "game." There is no conflict.

In Wis. Stat. § 29.014(2)(b), DNR's broad rulemaking authority is recognized. By express statutory language, DNR's rules are "prima facie reasonable and lawful" until finally determined otherwise by a court. Concerned Citizens' narrow interpretation of DNR's season-setting authority conflicts with this broad rulemaking authority.

III. WISCONSIN STAT. § 29.014 NEED NOT BE CONSTRUED BASED ON ITS LEGISLATIVE HISTORY, BECAUSE DNR'S AUTHORITY TO SET HUNTING SEASONS FOR "GAME" IS UNAMBIGUOUSLY GIVEN BY STATUTE, BUT IF LEGISLATIVE HISTORY IS EXAMINED, IT FURTHER SUPPORTS THE PLAIN LANGUAGE OF THE STATUTE.

"The well established tenets of the plain meaning rule preclude courts from resorting to legislative history to uncover ambiguities in a statute otherwise clear on its face." *State ex rel. Cramer v. Court of Appeals*, 2000 WI 86, ¶ 37, 236 Wis. 2d 473, 613 N.W.2d 591. Nonetheless, if examined, legislative history supports the clear language of Wis. Stat. §§ 29.014 and 29.001(33).

Concerned Citizens sees the court of appeals' discussion of legislative history as showing the court's discomfort or doubt about the meaning of the controlling statutes. Concerned Citizens br 16, 20, 25. But Concerned Citizens misses the alternative nature of DNR's argument and of the court of appeals decision. The Concerned Citizens argument fails for multiple reasons. That is to say, the Concerned Citizens argument fails, not only because it conflicts with the controlling statutes, but also because it is contrary to the legislative history.

A. Legislative history shows that, for 70 years, DNR and its predecessor agency have had broad authority to set open hunting seasons.

Chapter 29 of the Wisconsin Statutes was created by ch. 668, Laws of 1917. Under this act, the Legislature itself set hunting seasons by statute. *See, e.g.,* Wis. Stat. §§ 29.18 and 29.19 (1917). Statutorily-set hunting seasons continued until 1931 when the Legislature enacted ch. 64, Laws of 1931. That act created Wis. Stat. § 29.175 (1931), which gave the Wisconsin Conservation Commission ("WCC"), DNR's predecessor, authority to set seasons for "any variety of upland birds:"

> The conservation commission, upon first making an investigation and finding, is authorized to designate, at any time, an open season for any variety of upland birds, within a designated area when the supply of such birds warrants an open season.

In its next session, the Legislature enacted ch. 152, Laws of 1933, delegating still broader authority to WCC to phase in agency-established seasons for game:

> (1) There shall be established and maintained, as hereinafter provided, such open and close seasons for the several species of fish and game . . . as will conserve the fish and game supply . . . .
>
> (2) It shall be the duty of the [WCC] and it shall have power and authority to establish open and close seasons . . . governing the taking of fish or game.

Wis. Stat. §§ 29.174(1) and (2) (1933), as created by § 2, ch. 152, Laws of 1933. When these subsections were enacted in 1933, "game" was defined, as it is now, to include "all varieties of wild mammals or birds." *Compare*

Wis. Stat. § 29.01(3) (1933) with Wis. Stat. § 29.001(33) (2001-02).

The extensive authority granted WCC to set seasons is further shown by the following statutory provision:

> The present statutes regulating open and close seasons . . . and other conditions governing the taking of fish or game shall continue in full force and effect *until modified by orders of the [WCC]* as provided in this section, or by subsequent acts of the legislature.

Wis. Stat. § 29.174(9) (1933), as created by § 2, ch. 152, Laws of 1933 (emphasis added).

Under this statute, WCC could set seasons for fish, wild mammals, and wild birds, even if it superceded an existing statute. The Legislature recognized that this authority was delegated to WCC when it repealed some season-setting statutes superceded by the seasons set by WCC. *See, e.g.,* ch. 438, Laws of 1939. *Compare* Wis. Stat. §§ 29.175-29.212 (1937) with Wis. Stat. §§ 29.175–29.212 (1939). Concerning the constitutionality of the WCC's authority to supercede prior legislatively set seasons, *see Sorenson*, 218 Wis. at 298-99.

Later in reorganizing state government, the Legislature gave DNR the authority formerly exercised by WCC to set seasons for game. Wis. Stat. § 588, ch. 276, Laws of 1969.

B. Legislative history shows that the definitions for "game birds" and "nongame species" were added to ch. 29 after season-setting authority was given to WCC and that those definitions were added for reasons unrelated to restricting DNR's authority under Wis. Stat. § 29.014.

The Legislature delegated season-setting authority to WCC for all varieties of wild birds before there were any statutory definitions for "game birds" or "nongame species" in ch. 29. Hence, any limitation on DNR's authority, such as Concerned Citizens urges, did not exist when that authority was delegated to WCC. No such limitations were added later.

1. "Game birds" defined.

The Legislature first defined "game birds" in § 2, ch. 366, Laws of 1935. The definition was added for purposes unrelated to "game" as defined in ch. 29 and as used since 1933 in § 29.014 (formerly § 29.174). The definition of "game birds" was added for use principally concerning possession or transportation of game birds and concerning game farms. *See* Wis. Stat. §§ 29.354, 29.364, and 29.867.

Nothing shows that the "game birds" definition was added to limit WCC's season-setting authority for "upland birds," such as doves. The version of § 29.175 in place from 1931 until 1955 empowered WCC to set an "open season for any variety of upland birds." *See* Wis. Stat. §§ 29.175 (1931) and 29.175 (1953) (created by § 2, ch. 64, Laws of 1931, and repealed by § 24, ch. 221, Laws of 1955). Hence, even after the Legislature added the "game birds" definition in 1935, WCC continued to have express statutory authority to set open seasons for upland birds.

The "game bird" definition has never been amended to refer to or restrict DNR's rulemaking authority under Wis. Stat. § 29.014 (formerly § 29.174).

2. "Nongame species" defined.

The Legislature did not add the definition for "nongame species" until its 1977 session. § 4, ch. 370, Laws of 1977. Then it also created the substantive section on nongame species, which is numbered Wis. Stat. § 29.039 (formerly § 29.175). § 5, ch. 370, Laws of 1977. The relating clause of ch. 370, Laws of 1977, states that this "nongame species" legislation relates "to establishing a nongame, threatened and endangered species conservation program in the department of natural resources," but it makes no reference to limiting the hunting of any species under Wis. Stat. § 29.014 (formerly § 29.174).

The legislative history does not reveal any ambiguity in DNR's authority under Wis. Stat. § 29.014 to set hunting seasons for "game." There could not be any ambiguity created by the "nongame species" provisions before 1977 because that was when the Legislature first enacted those provisions. And nothing in ch. 370, Laws of 1977, or in any subsequent legislation, limits DNR's longstanding authority to set seasons for wild birds.

This is conclusively shown by the endangered and threatened species provisions enacted by the same act in § 6, ch. 370, Laws of 1977 (now codified in Wis. Stat. § 29.604(4)(a)). "Endangered species" or "threatened species" are statutorily defined terms that are not synonymous with "nongame species." Wis. Stat. § 29.604(2)(a) and (b). With exceptions irrelevant to the argument here, no person may "take" or "possess" a species listed as endangered or threatened. Wis. Stat. § 29.604(4)(a). Significantly, there is no similar prohibition for "nongame species."

If the Legislature had intended a similar prohibition for "nongame species," it would have so provided. "[W]here a statute with respect to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant in showing that a different intention existed." *State v. Welkos,* 14 Wis. 2d 186, 192, 109 N.W.2d 889 (1961).[9]

Concerned Citizens argues that the Legislature intended to link "nongame species" with "endangered and threatened species." It attempts to support its conclusion by citing an appropriation section from the 1977 legislative session. Concerned Citizens br 29. The cited 1977 legislation is, however, not supporting authority. Concerned Citizens says that, under DNR's argument and the court of appeals analysis, endangered and threatened species could be hunted. But that is untrue. Hunting endangered or threatened species is expressly prohibited by Wis. Stat. § 29.604(4). And that is the point. This prohibition on hunting distinguishes endangered and threatened species from "nongame species."[10] There is no such prohibition against hunting "nongame species." If the legislature had intended such a prohibition, it would have so provided by statute. *Welkos,* 14 Wis. 2d at 192. The Concerned Citizens argument lacks merit.

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[9] Concerned Citizens erroneously criticizes the court of appeals for finding significance in the Legislature's failure to enact legislation. Neither case it cites, however, negates the authority of *Welkos.* Both cases it cites are distinguishable. *Marriage of Lindsey v. Lindsey,* 140 Wis. 2d 684, 694 n.8, 412 N.W.2d 132 (Ct. App. 1987), involved the Legislature's failure to pass certain retirement legislation. *American Motors Corp. v. ILHR Dept.,* 101 Wis. 2d 337, 349, 305 N.W.2d 62 (1981), involved an employment act amendment that died in committee. In contrast, *Welkos,* which remains good law, involved one statutory section with a given provision and another similar statutory section concerning a related subject without that provision. The difference in the statutes shows a different legislative intention. *Welkos,* 14 Wis. 2d at 192.

[10] As shown above in section I.D.2.a. of this brief, even for endangered and threatened species, DNR has rulemaking authority to determine and designate what species are endangered or threatened. Wis. Stat. § 29.604(3).

Concerned Citizens goes through the endangered and threatened species legislation, noting the statutory prohibition on taking, transporting, and possessing those species. Concerned Citizens br 30-31. *See also* Wis. Stat. § 29.604(4). Rather than furthering the Concerned Citizens argument, however, this defeats it. There is no hunting prohibition for "nongame species." This shows a legislative intent to allow its hunting. *Welkos,* 14 Wis. 2d at 192.

Finally, Concerned Citizens argues for a dictionary definition of "taking" that excludes the "hunting" of "nongame species" under Wis. Stat. § 29.039. Concerned Citizens br 32. That is, however, contrary to § 29.039 itself. *See* section I.D.2. above.

C. During its 1997 session, the Legislature recodified ch. 29 and, in doing so, showed again that DNR has broad authority to set seasons for wild birds.

A prefatory note in 1997 Wisconsin Act 248 says that, in reviewing the history of fish and game regulation, a special legislative committee has made the following observations about ch. 29:

> 1. The DNR's predecessor agency, the conservation commission, was first given authority to adopt orders governing hunting, fishing and trapping in 1933. Prior to that time, the statutes provided all regulatory detail necessary to administer the various fish and game programs. Much of this detail is more appropriate for rules, rather than statutes, but the statutes have not been systematically amended to remove details and thus allow the DNR to address by rule the specific requirements of each subject of regulation.

1997 Wisconsin Act 248 (prefatory note).

Several explanative notes are also found in 1997 Wisconsin Act 248, § 78c. The first emphasizes DNR's authority to promulgate rules under ch. 29. The second says the Legislature intends to grant rulemaking authority to DNR for all provisions of ch. 29 and then refers to the "legislature's broad grant of authority to the DNR under ch. 29 to regulate fish and game."[11]

Similarly, 1997 Wisconsin Act 248, §§ 400 and 401, has explanative notes referring to the "transition from regulation of fish and game entirely by statute to regulation of fish and game by rule by the conservation commission." This transition to DNR of the season-

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[11] The second note in 1997 Wisconsin Act 248, § 78c, reads as follows:

> NOTE: One of the disadvantages, for the purposes of statutory interpretation, of individual examples of permissive rule-making authority, is the potential for an implication that by granting permissive rule-making authority for some provisions of ch. 29, the legislature did not intend to grant rule-making authority for other provisions of the chapter. This is clearly not the case, and such an implication would in fact be contrary to the *legislature's broad grant of authority to the DNR under ch. 29 to regulate fish and game*.

(emphasis added).

setting authority that the Legislature once had is long since completed.[12]

Although these legislative notes are unnecessary to apply the unambiguous statutory provisions that control, they could be used if there were ambiguity. *George Williams College v. Williams Bay*, 242 Wis. 311, 315, 7 N.W.2d 891(1943).

D. Legislative history shows no link between dove hunting and either deleting doves from the "game birds" definition or making doves the state symbol of peace.

By enacting ch. 129, Laws of 1971, the Legislature deleted doves from the definition of "game birds" and designated them Wisconsin's symbol of peace. By this, the Legislature did not restrict DNR's longstanding authority, spelled out in Wis. Stat. § 29.174(2) and (9) (1971), to set seasons for wild birds. The Legislature could have prohibited dove hunting. It could have modified Wis. Stat. § 29.014 to limit DNR's authority to set hunting seasons. It did not.

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[12] The note in 1997 Wisconsin Act 248, § 400, reads as follows:

> NOTE: The current text of s. 29.174(9) is as follows:
>
> "29.174(9) The present statutes regulating open and close seasons, bag limits, size limits, rest days and other conditions governing the taking of fish or game shall continue in full force and effect until modified by rules of the department, as provided in this section, or by subsequent acts of the legislature."
>
> This provision was enacted to provide for the transition from regulation of fish and game entirely by statute to regulation of fish and game by rule by the conservation commission. It is no longer necessary.

The dove's status as Wisconsin's state symbol of peace is irrelevant here. Numerous animals are state symbols. Wis. Stat. § 1.10. The state fish is the muskellunge. The state wildlife animal is the white-tailed deer. *Id.* Yet both are caught or hunted. Their listing as state symbols does not change this. There is no connection between Wis. Stat. §§ 1.10 and 29.014. The Legislature could have linked the mourning dove's designation as the state symbol of peace to a prohibition on its hunting. It has not.

Some may have wished for more in 1971, but this is all the Legislature enacted. *See Estate of Matzke*, 250 Wis. 204, 208, 26 N.W.2d 659 (1947) ("legislative acts must be construed from their own language, uninfluenced by what the persons introducing or preparing the bill actually intended to accomplish"). The Court may not accept Concerned Citizens' conjecture about the Legislature's reasons for removing the dove from the "game birds" list or for listing it as the state symbol of peace. *Cramer*, 236 Wis. 2d 473 at ¶ 37. The Court may not go beyond what the law provides.

Contrary to what Concerned Citizens says, DNR does not argue that doves may be hunted because there are hunting or fishing seasons for other state symbols. Concerned Citizens br 27-28. Instead, DNR notes that deer and muskie may be hunted and fished despite their listing as state symbols and that, similarly, doves may also be hunted despite their listing as a state symbol. The dove's listing as a state symbol does not mean that doves may not be hunted.

Concerned Citizens questions the appropriateness of hunting doves, but it must do that in a political, not judicial, forum. Some state legislators introduced legislation that, if enacted, would prohibit DNR's setting a dove hunting season. 2001 Senate Bill 45 (DNR-Ap. 129-130); 2001 Assembly Bill 190 (DNR-Ap. 131-132). *See also* 2001 Assembly Bill 859 (DNR-Ap. 133-134).

These bills expressly recognized DNR's authority to set a dove hunting season and proposed to prohibit DNR from doing so. Each bill, however, failed to pass (DNR-Ap. 135, 136, 137).

Concerned Citizens fails to address DNR's specific arguments. Instead it offers conjecture and inferences about what the Legislature might have meant when it made the dove Wisconsin's "symbol of peace" and deleted it from the "game birds" definition. Concerned Citizens br 26.

Concerned Citizens cites *State v. ILHR Department,* 101 Wis. 2d 396, 403, 304 N.W.2d 758 (1981), as authority for concluding that the Legislature's action in 1971 must be considered *in pari materia* with the statutes in question here. Concerned Citizens br 27. In *ILHR Department,* however, the two statutes were *in pari materia* because one statutory section made "explicit mention of its direct and immediate relationship" to the other. *Id.* at 403. That is not true here. Here Concerned Citizens relies only on conjecture and inferences, not on any explicit statutory language, to establish a claimed link.

In the face of the clear language in Wis. Stat. § 29.014 and of the clear definition of "game" in Wis. Stat. § 29.001(33), Concerned Citizens argues that the way the Legislature changed the law in 1971 "suggest[s] [that the dove] should not be hunted." Concerned Citizens br 28. That is not enough. The Legislature could have prohibited dove hunting. It did not. The Court may not use conjecture and inferences to ignore what the statutes expressly say.

IV. THE RIGHT-TO-HUNT AMENDMENT, WIS. CONST. ART. I, § 26, DOES NOT DIMINISH DNR'S STATUTORY AUTHORITY TO SET A HUNTING SEASON FOR DOVES.

The right-to-hunt amendment to the Wisconsin Constitution reads as follows: "The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law." Wis. Const. art. I, § 26 (ratified by referendum April 2003).

In reading a constitutional amendment, the Court looks first to its plain language. *State v. Unnamed Defendant,* 150 Wis. 2d 352, 361, 441 N.W.2d 696 (1989). Ordinarily "words used in constitutions . . . should be given their obvious and ordinary meaning." *State ex rel. Zimmerman v. Dammann,* 201 Wis. 84, 89, 228 N.W. 593 (1930). When the constitutional language is clear, judicial construction is unnecessary. The Court may not go beyond the plain meaning to create ambiguity. *Kayden Industries, Inc. v. Murphy,* 34 Wis. 2d 718, 732, 150 N.W.2d 447 (1967).

In contrast to the right to hunt, now protected by the Wisconsin Constitution, Concerned Citizens seeks to make hunting doves illegal. The amendment, therefore, does not advance its argument. If anything, contrary to what Concerned Citizens advocates, the amendment extends the right to hunt. For sure, it does not restrict it, as Concerned Citizens seeks to do. Thus, Wis. Const. art. I, § 26, does not support Concerned Citizens' opposition to the dove hunting rule.

In its brief, Concerned Citizens focuses on the term "game" in the amendment. It argues that "game" is a "catchall" for "species traditionally sought and killed by hunters." Concerned Citizens br 34, 36. But even if that were true for the amendment, that would not change the definition of "game" as defined in Wis. Stat. § 29.001(33).

That statutory definition is used in Wis. Stat. § 29.014. As outlined above, that definition applies in this case. *Beard,* 225 Wis. 2d at 23 (word defined in a statute is used as defined in the statute, and no other construction is applied).

Concerned Citizens argues that the right-to-hunt amendment distinguishes between "hunting" and "taking." It argues that "taking" means acquiring control without killing, and then it argues that it follows that Wis. Stat. § 29.039 allows for "taking" but not for "hunting" doves. Concerned Citizens br 35-36. This is not a sound analysis. As shown in section I.D.2. of this brief, a sound interpretation of Wis. Stat. § 29.039 requires interpreting "taking" to include "hunting." Under § 29.039(1), DNR may "establish limitations relating to taking, possession, transportation, processing and sale." As the court of appeals notes, the Concerned Citizens argument would lead to a strained reading of § 29.039 and would lead to the "unreasonable result" that DNR would also be unable to prohibit hunting nongame species, including the doves that Concerned Citizens seeks to protect from being hunted. *Citizens Concerned,* 2003 WI App 76 at ¶ 17. P-Ap. 10.

Concerned Citizens cites recently created Wis. Stat. ch. 169, created by 2001 Wisconsin Act 56. Concerned Citizens br 36. That chapter concerns captive wild animals, however, and is unrelated to the issues arising in this case. The Concerned Citizens arguments based on ch. 169 are irrelevant here.

Concerned Citizens cites and quotes *State v. Cole* for the proposition that the constitution prevails over a statute. 2003 WI 112, 264 Wis. 2d 520, 665 N.W.2d 328. Concerned Citizens br 37. But here the right-to-hunt constitutional amendment does not conflict with the statutes. Since there is no conflict, *State v. Cole* is irrelevant.

Under the right-to-hunt amendment, DNR may set only "reasonable restrictions" on hunting. In light of what is known about mourning doves, however, it would be an unreasonable restriction for DNR not to set an open hunting season for doves. That would violate the right-to hunt amendment. Wis. Const. art. I, § 26.

The evidence shows that mourning dove hunting in Wisconsin will cause no injury to the dove population. The U.S. Fish and Wildlife Service estimates that the current North American mourning dove population in the fall migration is over 400 million. It estimates that 5.2 million doves migrate from Wisconsin each fall. DNR biologists estimate that hunting doves in Wisconsin will take less than 4 percent of this population each year. Due to hunting in other states and other factors, including predators, disease, accidents, or extreme weather, about six of every ten doves die each year regardless whether Wisconsin has a dove hunting season. The high dove reproduction rate, however, more than offsets their annual mortality. Thus, dove hunting in Wisconsin will not harm the dove population in either Wisconsin or elsewhere in North America. At least 37 other states have open hunting seasons for mourning doves (R. 6:16-17, 19, DNR-Ap. 102-103, 105).

CONCLUSION

For the reasons argued above, DNR respectfully asks the Court to affirm the court of appeals decision. It asks the Court to direct that, on remand to the circuit court, judgment be entered in DNR's favor upholding the dove hunting rule.

In clear statutory language, the Legislature has given DNR authority to set open hunting seasons for "game," which by statute is defined to include all wild birds. Under the rules of statutory interpretation, courts do not look for conflict between statutes. Rather they seek to avoid conflict by harmonizing related statutes whenever reasonably possible.

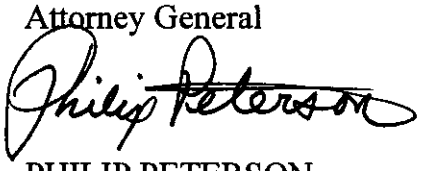
As shown above, it is reasonably possible to read the statutory provisions in question here to avoid conflict. Concerned Citizens has not met its burden to show that DNR lacks statutory authority to adopt the dove hunting rule.

In addition, the constitutional amendment recognizing the people's right to hunt does not support the Concerned Citizens argument.

Dated this 20th day of November, 2003.

Respectfully Submitted,

PEGGY A. LAUTENSCHLAGER
Attorney General



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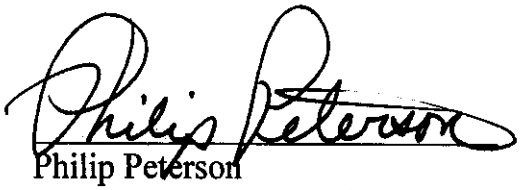
CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 10,648 words.

Dated this 20th day of November, 2003.



Philip Peterson
Assistant Attorney General

APPENDIX

INDEX TO APPENDIX

Natural Resources Board Minutes for May 23-24, 2000, Meeting 101-114

Wisconsin Administrative Register, No. 530, pp. 42-45 115-118

Bulletin of the Proceedings of the Wisconsin Legislature 1999-2000 Season (Period Ending January 1, 2001), pp. 87-88 119-120

Milwaukee Journal Sentinel article "Lawmakers Take No Action On Dove Hunt" 121-124

Assembly Record of Committee Proceedings, Committee on Natural Resources 125-128

2001 Senate Bill 45 129-130

2001 Assembly Bill 190 131-132

2001 Assembly Bill 859 133-134

History of Senate Bill 45 135

History of Assembly Bill 190 136

History of Assembly Bill 859 137

EXHIBIT 1

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held Tuesday and Wednesday, May 23-24, 2000, in the Conference Room of the Shawano City Hall, 125 South Sawyer Street, Shawano, Wisconsin. The meeting was called to order at 8:30 a.m. for action on Items 1 and 2. The meeting was recessed at 8:35 a.m. and reconvened at 3:45 p.m.

PRESENT: Trygve A. Solberg, Chair
James E. Tiefenthaler, Jr., Vice Chair
Gerald W. O'Brien, Secretary
Herbert F. Behnke
Howard D. Poulson
Catherine L. Stepp
Stephen D. Willett

* * * * *

ORDER OF BUSINESS

1. Minutes to be approved.

1.A Full Board Minutes of April 26, 2000.

Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, approval of the Full Board minutes of April 26, 2000, as written. The motion was carried unanimously.

Committee of the Whole Minutes of April 26, 2000.

Mr. Tiefenthaler MOVED, seconded by Mr. O'Brien, approval of the Committee of the Whole minutes of April 26, 2000, as written. The motion was carried unanimously.

1.B Agenda for May 23-24, 2000.

There being no changes, Mr. Poulson MOVED, seconded by Mr. O'Brien, approval of the agenda for May 23-24, 2000. The motion was carried unanimously.

2. Ratification of acts of the Department Secretary.

2.A Real estate transactions.

Mr. Tiefenthaler MOVED, seconded by Mr. O'Brien, approval of the real estate transactions, as printed. The motion was carried unanimously.

3. Committee of the Whole.

3.A Approval of the Joint Agency Management Plan for the Chippewa Flowage.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, approval of the Joint Agency Management Plan for the Chippewa Flowage. The motion was carried unanimously.

3.B Retirement resolutions.

1. Harland Carlson.
2. Terrance Hupf.
3. Ronald Theis.
4. Paul Willihnganz.

Mr. Willett MOVED, seconded by Mr. Behnke, approval of the retirement resolutions, as presented. The motion was carried unanimously.

3.C Adoption of Order WM-1-00(b) – revision of Chapter NR 10, Wis. Adm. Code, pertaining to establishing a season on mourning doves, resulting from the 2000 Spring Fish and Wildlife Hearings.

Keith Warnke, Upland Wildlife/Outdoor Heritage Specialist, Bureau of Wildlife Management, presented the Department's proposal and justification to establish a season to hunt mourning doves in Wisconsin. He summarized public input the Department has received, presented a brief overview of dove biology, outlined the rule proposal and addressed some of the issues that would be presented during public testimony.

The DNR held public hearings on the season proposal in all 72 counties on April 10. Final attendance at the spring conservation hearings was 30,785 persons. The vote was 21,167 in favor of the proposed season to 6,036 in opposition to the proposal. Over six thousand written comments were received during the written comment period which closed April 14. Additionally, the Department received more than 3 dozen valid written comments from individuals who were turned away at the public hearings due to overcrowding of meeting rooms or absence of ballots, and were given an additional week to submit comments. The total was 3,106 written comments in favor and 2,959 comments in opposition. Mr. Warnke indicated that phone calls and E-mails were not tabulated as part of the hearing record; however, individuals were advised to submit written comments.

Mr. Warnke presented slides depicting population and abundance of mourning doves. He indicated that the U.S. Fish and Wildlife Service (USFWS) call count survey, the breeding bird survey, and banding and harvest data are used to track the dove population. The current continent-wide population estimate is over 400 million in the fall migration. Estimates indicate that 5.2 million doves migrate from Wisconsin each fall.

Mr. Willett inquired about call count surveys conducted north of Highway 10. Mr. Warnke presented a slide on breeding bird survey routes throughout Wisconsin. He indicated that dove populations are monitored along 71 breeding bird survey routes annually. The breeding bird survey annually records numbers of various birds, including mourning doves, observed along the survey routes. According to U.S. Fish and Wildlife Service estimates, there are more mourning doves in Wisconsin in the Wisconsin fall population estimate than there are in many other states including Louisiana, Florida and Pennsylvania. This population estimate ranks Wisconsin 14 in estimated number of doves within the 27-state Eastern Management Unit.

According to data collected by the North American Breeding Bird Survey, Mr. Warnke continued, the Wisconsin dove population has shown an increasing trend of 1 percent per year over the past 33 years (USFWS 1999). The trend over the past 10 years shows a slight decrease.

Mr. Warnke stated that the Department does not expect that mourning dove hunting will result in an increase in the number of licenses sold, nor is it expected that the dove harvest will be at the level of states to the south. Using a rough estimate that approximately 20,000-30,000 people may choose to hunt doves and harvest an average of 5 doves per hunter, the resulting harvest prediction is 100,000-150,000 doves from the fall population. After adjusting for the documented crippling rate, the estimate is 130,000-200,000 doves annually. Mr. Warnke said this figure would be well below the 12-18 percent of the population harvested nation-wide each year.

The mourning dove season proposal and rule change follows one of the options offered by the USFWS through the Federal Migratory Game Bird framework in 1999. The Department has selected a season framework of 60 days with a daily bag limit of 15 birds and a possession limit of 30 birds. Also contained in the rule is a provision to allow only the use of non-toxic shot for mourning dove hunting. Mr. Warnke assured the Board that the Department has sufficient knowledge and management specifications in place to protect the mourning dove resource, which he said is the Department's first priority.

In conclusion, Mr. Warnke stated that hunting doves in Wisconsin will not negatively impact the population, nor will it have a negative impact on the continental mourning dove population. In addition, he indicated that the legal authority to hunt mourning doves has been thoroughly investigated by both Department and Legislative Council attorneys and they are in agreement that the Department's legal authority to establish a season clearly exists.

Mr. Willett noted the protected species designation of the mourning dove in Wisconsin and asked if the Department was required to remove the bird from the protected species list and designate it a game species

prior to establishing a season. Tim Andryk, Attorney with the Department's Bureau of Legal Services, responded: "All birds in Wisconsin are protected from hunting by administrative rules unless we list them as a hunted species and have a season established for them, or if we list them as unprotected. When we opened the season on wild turkeys, we removed them from the protected species list and set the season dates in the administrative rules. We did the same thing with the dove rule package. One part of the rule is to remove them from the "protected from hunting" list; the second part of the rule establishes the season and bag limits; and the third part of the rule requires nontoxic shot for hunting. It's all part of the rule package that went out to the spring hearings. It was in the hearing notice that we were removing them from the "protected from hunting" list in the administrative code and it was in the rule package that was approved by the Board in January." It was Mr. Willett's opinion that the Department did not conduct a hearing on removing the mourning dove from the protected species list nor was there a question on the spring questionnaire asking the public if the mourning dove should be removed from the protected species list. Mr. Andryk stated that the Department considered it the same issue and noted that it was contained in the hearing notice as well as the rule package, but that the question did not specifically state that it was a protected species. Since the mourning dove is statutorily designated as the state's bird of peace, it was Mr. Willett's opinion that the Department would first be required to have that designation removed by statute. Mr. Andryk stated that it would still remain as the state's bird of peace, even though a hunting season is being proposed.

Mr. Behnke asked why the Department has proposed the use of non-toxic shot for hunting mourning doves. Mr. Warnke indicated that evidence shows that mourning doves consume lead shot and are impacted by its consumption. Mr. Behnke asked if the non-toxic shot was a Federal requirement. Mr. Warnke said it was not. In response to further questions by Mr. Behnke, Mr. Warnke presented information on where and how to hunt mourning doves.

Mr. Willett asked if Department staff had contacted disabled Americans, or the VFW for their position on the proposal to hunt mourning doves. Mr. Warnke stated they did not.

David Doulton, Wildlife Biologist with the U.S. Fish & Wildlife Service, stated that the USFWS is responsible for coordinating the call-count survey, analyzing the data and preparing status reports. He distributed copies of the "*Mourning Dove Breeding Population Status, 1999*" report for the Board's review. USFWS management experience suggests a dove hunting season in Wisconsin is viable. Dove harvest will be monitored through the nation-wide harvest information program. If exploitation levels are too great, then the management community will respond with restrictions to reduce harvest consistent with dove population status.

In summary, Mr. Doulton stated that the mourning dove is considered a legitimate game species in international migratory bird treaties. Through the authority of the U.S. Fish & Wildlife Service, Wisconsin may choose to select a mourning dove season. When properly regulated, he said, mourning dove hunting has not been shown to have a significant effect on breeding population levels of doves in the Eastern Management Unit. An important aspect of the regulations process is that any state may always be more restrictive than federal regulations allow. "From the information available to me, I conclude that the hunting of mourning doves in Wisconsin would not be detrimental to the population of doves in the state or in the Eastern Management Unit. Monitoring programs should be able to detect a significant change in the population if it occurs. Finally, the regulatory mechanisms are in place, both federally and in-state, to lessen the harvest through restrictive regulations if such a need were to arise in the future."

In response to questions from Ms. Stepp, Mr. Doulton explained the difference between the call-count survey and the breeding bird survey, and advised Ms. Stepp there is no monetary or profit gains if a dove season is established in Wisconsin.

Mr. Behnke asked if planting a field of sunflowers for the purpose of attracting mourning doves was considered baiting and if baiting was legal. Mr. Doulton stated that baiting mourning doves was illegal; however, he said "crop manipulation..... is legal for mourning doves. Landowners can plant sunflowers, millet, whatever, mow the crop and hunt over the seeds that have fallen to the ground."

Mr. O'Brien asked if other states experienced a similar situation to Wisconsin's when proposing a dove season. Mr. Doulton said yes and gave a few examples. The state of Vermont opted to not have a season after intense opposition, while other states such as North and South Dakota approved a season. He added that opposition in the Dakotas evaporated once people discovered that harvest numbers were not high.

There was considerable discussion about the population decline over the past 10 years, as indicated in the USFWS "*Mourning Dove Breeding Population Status, 1999*" report. Mr. Doulton indicated there are factors other than hunting for the decline such as clean farming practices, changes in crops, timing of crops, expansion of urban areas, backyard bird feeders, etc.

Mike Budzig, Chief, Division of Wildlife, Ohio Department of Natural Resources, presented information on the process the State of Ohio followed to establish a dove hunting season in 1994. Mr. Budzig shared population estimates in recent years: Ohio's estimated fall population equals or exceeds 4 million birds; the 1999 population index increased less than 1 percent from 1998; 1998 population index increased 17.1 percent compared to 1997; 1997 population index up 5.2 percent compared to 1996. Overall, he said, the dove population in Ohio has increased. Mr. Budzig added there was no backlash from establishing the dove season; in fact, he said the issue strengthened the Division of Wildlife's image and enhanced the Division's credibility with most of its constituent groups.

Mr. Willett noted a discrepancy in Ohio's population numbers since the season was established. While Mr. Budzik indicated that the population had increased, the USFWS document indicated a downward trend in population in both the 34-year trend and the 10-year trend. Mr. Doulton of the USFWS responded: "There is no 10-year decline evident; it's got a minus, but again because of the statistical significance we cannot say with certainty that there is a decline. There appears to be a tendency toward a decline, but you will notice by the stars in the 34-year, I mean that's a minor point but I wanted to correct what you were saying there. Yes, there is a decline over 34 years but there is no trend indicated over the most recent 10 years because there are no stars by it which indicates statistical significance."

Mr. Willett read from the USFWS report: "On page 5, it's very clear..... It says, 'Between 1966 and 1999, a downward trend is noted in Ohio." Mr. Budzik indicated that he would have Ohio's Upland Research Biologist check this out and forward the information to Secretary Meyer with copies to the Board. Mr. Doulton indicated that the USFWS is currently embarking on a research project which involves most of the states in the Eastern Management Unit, including Wisconsin, to develop dove population models. The purpose of the study, he said, is to give the Fish & Wildlife Service a better understanding of dove population dynamics and to help do a better job of managing harvest levels. Mr. Doulton stated that the study would be initiated later this year with a final report anticipated in 2002.

Brent Manning, Director, Illinois Department of Natural Resources, (also member of the International Association of Fish and Wildlife Agencies' Executive Committee and Chair of the Board of Natural Resources and Conservation in the State of Illinois) discussed the State of Illinois' sport harvest and encouraged Wisconsin to establish a season on mourning doves. In response Mr. Willett, Mr. Manning stated that the mourning dove had never been a protected species in the State of Illinois.

Dave Ladd, Dodgeville, Wisconsin Conservation Congress, did not make a formal presentation but stated his support for the establishment of a dove hunting season.

Steve Oestreicher, Chair, Wisconsin Conservation Congress, expressed support for the dove season. He indicated that the spring Conservation Congress hearings demonstrated that "not only did the mourning dove win, the vote was a vote for hunting in general. ... If you choose to go against this voice, you will effectively demolish the DNR spring hearing process. .... I would not want to be remembered as a part of the Natural Resources Board that chose to ignore our citizens when they spoke and in doing so, successfully destroyed the spring hearing process." In response to Chairman Solberg, Mr. Oestreicher reviewed the Conservation Congress' intentions to form an ad hoc committee to review the spring hearing process, including scheduling larger meeting rooms, reviewing the ballot system used in Dane County to see if it can be used in other counties that anticipate large audiences, setting up a training session for the 72-county chairs, etc.

Jim Weix, Mukwonago, Wisconsin Dove Hunters Association, stated the Association's support for the dove hunt. In response to Mr. O'Brien, Mr. Weix stated there are approximately 1100 members in his organization.

Gen Ebert, Mukwonago, President of AWARE (A Wisconsin Alliance for Resources and the Environment), said she conducted a survey asking women for their input and said women were not opposed to dove hunting as long as there are rules and regulations. In response to Mr. Willett's question about

polling veterans for their opinion, Ms. Ebert read the following excerpt from a statement prepared by her father: "I'm an 80-year old man now and I left our family farm as a young man who went to war. I landed on a place called Okinawa Beach. You know the story. Somehow I made it home, but I must say there were two dreams that kept me going. One was to plow the fields at home and the other was to take my gun and to hunt. And I have done both. I do know there are doves of peace, but they're buried on foreign land and they will never come back to hunt again. So, I have done my job. Gentlemen, do yours and allow the boys to hunt."

Jerry Knuth, Plover, Second Vice-President of the Wisconsin Wildlife Federation, stated support for the dove hunting proposal, indicating that more birds die of natural causes than numbers harvested. In response to Mr. Tiefenthaler, Mr. Knuth stated there are about 9000 members in the Wisconsin Wildlife Federation.

Rob Kieckhefer, Milwaukee, Wisconsin Waterfowl Association, stated the Association's support for a dove hunt. He conducted a survey within the Association, which resulted in a ratio of 5-1 in favor. He felt the Board should go along with the vote of the Conservation Congress spring hearing vote. In response to Ms. Stepp, Mr. Kieckhefer stated that approximately 2000 were in attendance at the Milwaukee County hearing. In 1999, he thought attendance was between 300-400 persons. He added that the dove issue was the 142nd issue on the agenda and the vote took place at about midnight.

Rachel Jordon, Dodgeville, stated her support for a dove season in Wisconsin. She reported on the mourning vote in Iowa County in which 221 voted in favor of a season. She indicated that 22 percent of attendees left after the dove vote.

Arnold Baer, representing The Humane Society, felt the proposal before the Board was not about mourning doves, but rather about hunters thinking their hunting rights were being taken away. He termed that "hollow" thinking. He asked the Board to consider making the dove issue a ballot question and play by general election rules and have the polls remain open between 9 a.m. and 8 p.m. to allow senior citizens and others the opportunity to vote. He asked the Board to vote no to a dove hunt in Wisconsin. (A copy of Mr. Baer's statement is incorporated in the official Board minutes.) In response to Mr. Tiefenthaler, Mr. Baer discussed his organization's activities in Wisconsin. Although Mr. Baer said he and his organization are against hunting, they would not oppose the harvest of animals that are a nuisance or affect public safety.

Mr. Behnke made the following statement to clarify the rules under which the Natural Resources Board functions: "This is not an issue that is decided by a popular vote. This has been designated by the Legislature to be handled by a citizen boa - the Natural Resources Board. Therefore, it is solely within the jurisdiction of the Natural Resources Board to make this decision with oversight from the Legislature. The Legislature is obviously elected by the public and if they see fit to override any decision by the Natural Resources Board on an administrative rule, they will do so. ...."

Keith Olson, Harshaw, stated his support for a dove season in Wisconsin. He asked that the issue of nontoxic shot be looked at, indicating that the availability of nontoxic shot in the appropriate shot size is minimal.

Donna Liljegren, Campbellsport, former Conservation Congress delegate, spoke in support for the dove hunt. As a responsible hunter, Ms. Liljegren said she practice shoots on clay targets rather than sparrows or bluebirds, so that her shot is accurate and the animal will not suffer. She added that the "practice of hunting mourning doves in 37 other states buttresses the fact they can thrive in a controlled hunting atmosphere."

Dan Small, Belgium, urged the Board to support the mourning dove season.

Noel Cutright, Milwaukee, Wisconsin Society for Ornithology (WSO), said he would have liked to have heard from the Iowa DNR. The State of Iowa has decided not to establish a hunt, as did the State of Michigan. A survey of WSO members indicated approximately 90 percent in opposition. He indicated that WSO opposes a mourning dove hunting season, but pointed out the organization is not anti-hunting. He felt there were too many unanswered questions including declining population numbers, productivity of Wisconsin's population, varying population estimates, also felt that a mourning dove season will harm relationships with various groups. He urged the Board not to approve the Department's recommendation.

Ann Frisch, Professor at UW-Oshkosh, spoke in opposition to a dove season in Wisconsin.
Frank Zuern, Oshkosh, spoke in support for a 3-year study prior to establishing a dove season.

Charles Burke, Westby, spoke in support for a dove season.

Steve Williams, Waukesha, Wern Valley Sportsmen's Club, spoke in support for a dove season.

Dan Dessecker, Senior Biologist for the Ruffed Grouse Society, spoke in support for a mourning dove season.

Ed Frank, Madison, spoke in support for a mourning dove season.

Richard Shepard, Oshkosh Bird Club, spoke in opposition to a mourning dove season.

Scott Slajus, representing the National Wild Turkey Federation, spoke in support for a dove season.

Craig Johnson, Hudson, Wildlife Legislative Fund of America, spoke in support for a dove season.

Neal Niemuth, Professor of Wildlife, UW-Stevens Point, spoke in support for a dove season.

Pat Fisher, New London, spoke in opposition to a dove season.

John Wieneke, New London, Wisconsin Citizens Concerned for Cranes and Doves, spoke in opposition to a dove season; signed a petition with 23,000 other people in the state who are opposed to a dove season who are not anti-hunters; did not agree with the Department's legal interpretation with regard to the definition of "protected" and "game" birds in Chapter 29, Wis. Stats. He suggested that the Department "look for ways to reach out to the rest of the nature loving public – the animal lovers, the birdwatchers, the hikers – find a way to include them in your decision-making process. They are ready, willing and able to pay their way too." In response to Ms. Stepp, Mr. Wieneke stated that the question on the petition included both cranes and doves.

Jeannie Lord, Fredonia, spoke in opposition to a dove season.

Don Cash, New London, spoke in opposition to a dove season.

Chuck Zorn, Elkhart Lake, President of the National Wild Turkey Federation, spoke in support for a dove season in Wisconsin.

Rick Young, River Falls, representing Pheasants Forever, spoke in support for a dove season.

Barbara Klug, Wausau, spoke in opposition, but indicated she was not in agreement with PETA or any other extreme anti-hunting group and was not opposed to hunting.

Eldon McLaury, Madison, representing the Wisconsin Chapter of the Wildlife Society, spoke in support for a dove season.

Tina Kaske, Madison, representing the Alliance for Animals, spoke in opposition to the dove season. In response to Mr. Tiefenthaler, Ms. Kaske stated that the Alliance for Animals has between 1200 and 1500 members statewide. Ms. Kaske indicated that her group would be interested in serving on the task force to review the Conservation Congress process.

Susan Fuller, Madison, Wisconsin Wildlife Coalition, was not present, but Tina Kaske indicated she was opposed to a dove season.

Dave Miller, West Bend, spoke in support for a dove season.

Chuck Sauer, Marathon, retired wildlife biologist, spoke in support for a dove season.

Lynn Dreissen, Appleton, spoke in opposition to a dove season. In response to Mr. Tiefenthaler, Ms. Dreissen stated the following reasons for the Board not approving a dove season - decline in the mourning

dove population; additional pressure of hunting to a bird that already has a high mortality rate; and the small amount of meat on the mourning dove. Ms. Stepp: "I'm just a little—insulted is probably too strong a word --- it concerns me that you feel that it is a done deal and that no one is listening to your side. I know I've received easily over 150 letters and I was going to say 100,000 calls but that would be joking, but it felt like that, but I do want to stress that we all have a great deal of respect for everyone on both sides of the issue. That's how I feel about it. We do understand that the DNR is in favor of this and they have given us a lot of science and I've received a lot of science from outside sources as well that we all will be taking into consideration. I just wanted to make sure that that statement was out there." Ms. Dreissen said she has been attending the Conservation Congress hearings for the past several years and feels shut out of the process and in particular this year and has experienced quite a bit of hostility. She hesitates speaking out at the hearings because "I'm not listened to and basically shouted down when I do express my views and they're not radical ones and I am not an anti-hunter. I just want to make that clear."

Wendy Auphaus, Appleton, expressed opposition to the dove proposal. She felt the views of the nonhunting public were not being heard. She indicated she was turned away at the Outagamie County Conservation Congress hearing.

Cathy Wiesman, Appleton, stated her opposition to the dove proposal and indicated that she too was turned away at the Outagamie County hearing. In response to Ms. Stepp, Ms. Wiesman indicated that the hearing room was not large enough to accommodate all those attending the Outagamie County hearing. Ms. Stepp asked if Ms. Wiesman submitted written comments to which she responded no, that she didn't think it would do any good. Ms. Stepp said it was her understanding that the written comment period was extended to accommodate all those who were turned away at the various county hearings. Secretary Meyer said that was correct. Ms. Stepp added that the Board received copies of all the letters, both for and against, that were mailed to the Department's address from Judy Scullion, the Board's Secretary.

Jan Modenhauer, Oshkosh, spoke in opposition to the dove proposal.

Karin EtterHale, representing the Madison Audubon Society, stated her opposition to the dove proposal; felt the issue has "taken up many individuals valuable time which could have been spent working on common goals toward habitat protection for all species, both game and nongame species alike;" feels the general public is very much opposed to a dove hunting season in Wisconsin. She indicated that the "Audubon Society has not typically opposed or promoted hunting. We try to pick our issues. I was hoping to maybe not take a position on this, but I didn't think that was possible and I tried to write an article for a newsletter that brought out a lot of the different viewpoints on the issue, a lot of information on it, trying not to be judgmental and then because I really wasn't sure---so we took a poll and those results showed that 86 percent of our members did not support a hunting season on doves. Seven percent said yes and seven percent said they were neutral or undecided. The other thing I did was to ask if people wanted to say if they were nonhunters, anti-hunters or hunters because I knew we had all three in our membership. Fifty-five percent said they were nonhunters; 10 percent said they were anti-hunters and 33 percent characterized themselves as hunters. Some of them put down two different things. But 67 percent of hunters who voted said they were opposed to a season and I think that points to what the general public believes also.

"I don't believe that the vote would have been the same if it had been either a closed vote or if this had not been such an anti-hunter/hunters' rights issue. I think under more normal circumstances that a lot of those hunters who came to the meetings would have voted against hunting doves. ....."

Ms. EtterHale concluded her presentation by quoting from an article that Jay Reed wrote in 1971: "There is no good and sufficient reason why Wisconsin should not have a mourning dove hunt. None. But to obtain it would require going to war with those who oppose hunting, as well as with nonhunters, bird fanciers and a bunch of plainly, good people who would turn against hunters and hunting. Maybe you could win the battle, but you would lose the war for certain. Mourning dove hunting plainly and simply is not worth it."

Mr. Tiefenthaler stated that Jay Reed subsequently followed with an article within approximately 4 to 6 weeks later and he said, "I now understand that there are a bunch of anti-hunter people behind this and every hunter in this state should come to these hearings and should have their voice heard and better damn well do it because it's the right thing to do for hunting."

Dick Koerner, Neenah, Migratory Study Committee, spoke in support for the dove season proposal.

Art Seidel, Waukesha, Waukesha County Conservation Alliance, spoke in support for the dove season.

Len Wurman, Wausau, spoke in support for the dove season.

Mitch Bent, Antigo, discussed the Conservation Congress hearing in Langlade County where the vote on the dove proposal was very close and "I can say with surety that the majority of the people who voted against were not anti-hunting, but they had a feeling about it. I didn't agree with that feeling, but I have a right and a duty to respect those feelings. .... When you make your decision, if you make your decision one way or the other I can live with it. ..... I kind of would like the opportunity to hunt doves. My world is not going to end if you decide not to, but when you make your decision think of those people who have come before us and created this heritage that we have. If you vote yes on it based upon that, fine. If you vote no on it based on that heritage and what those people have done, I, as a writer will applaud you too either way provided that it's a predicate that you use. ..." He asked the Board to approve the use of nontoxic shot if the vote is affirmative on the dove season proposal.

Marge Mundigler, Shawano, spoke in opposition to the dove season proposal.

Paul Busch, Appleton, spoke in support for a dove season.

Marge Gibson, Antigo, spoke in opposition to the dove season.

Don Gibson, Antigo, spoke in opposition to the dove season.

Mr. Tiefenthaler MOVED, seconded by Ms. Stepp, that the Board approve Order WM-1-00(b) to establish a mourning dove season in Wisconsin, as recommended by the Department.

Mr. Behnke MOVED an amendment to eliminate the use of nontoxic shot requirement in the green sheet proposal. Mr. Tiefenthaler seconded the motion. The vote on the amendment:

Affirmative – Messrs. Solberg, Tiefenthaler, O'Brien, Behnke and Ms. Stepp.
Negative – Messrs. Poulson and Willett.

The motion was carried.

Mr. Behnke: First of all, I would like to compliment the Board for the courtesy that you have shown today to all of these people who took the time and the expense and drove a long way to be here to give us their honest opinion on what we ought to hear from them. This is the third time that I have gone through the mourning dove issue. I was on the Natural Resources Board back in 1971 at the time this bird was made the symbol of peace, a bill introduced by Senator LeFave at that time. I would just like to address the fluff that is connected with this issue at this time. The Natural Resources Board has a decision to make relative to a single issue and that is, whether we hunt or not hunt mourning doves in Wisconsin. Philosophically, I have been opposed to a mourning dove season and primarily, for a number of reasons not the least of which is the emotional turmoil---and this erupts each time it is proposed. As I indicated in 1971, it got so bad that the State Legislature got involved. Mourning dove hunting in other states may be a gigantic event, but I doubt that would ever be true in Wisconsin, and at best it may be equal to a crow season, about which one-half of one percent of all the people who buy a small game license participate in each year. The number of doves killed in Wisconsin by hunters would probably be far less than the number killed each year by domestic house cats. Recent research suggests, and I have a pamphlet here by John Coleman, Stanley Temple and Scott Craven, that talks about the cat as a predator on wildlife. This suggests that rural, free-ranging domestic cats in Wisconsin may be killing 39 million birds in the state each year and many of them are bound to be mourning doves.

"A dove hunting season was shot down by the Natural Resources Board and the Legislature in 1971 and again in 1989. The DNR resurrected it yet again in 1999, but instead of justifying the rule by supplying the public, the Conservation Congress and the Natural Resources Board with a basic science and biology that would support a hunting season, they mounted it into a political type campaign. The campaign headquarters took on a 'future of hunting' flavor. Their propaganda machine motivated a record attendance at this year's Conservation Congress meetings on April 10 not to vote on a dove season but to protect their right to hunt. Secretary Meyer put on his political hat on May 12 when he told 350 delegates at the

Conservation Congress meeting, 'each of you should let the Natural Resources Board know that 21,067 who took a night out of their life to stand up for the future of hunting should not be ignored.' Still quoting, 'you will notice I didn't say the future of dove hunting, I said the future of hunting.' And I resent the fact that the Secretary would sic a number of people on the Board to say you better vote the way we want you to. We're voting today gentlemen and ladies on the mourning dove season, not the future of hunting. Now as a member of the Board, I expect the DNR to provide the scientific and biological facts and it is the Board's responsibility to make policy decisions based on those factors, after gauging honest citizen feedback from the public hearing process. Obviously, the Congress was mislead on the mourning dove issue which prompted record attendance at the county hearings to vote on the right to hunt. This kind of activity by proponents and the DNR added to my philosophical opposition to hunting mourning doves and that was reinforced each day as I received a new batch of the yellow cards in the mail. Jerry O'Brien got 2000 of them and I got about the same amount. Now contrast this, 'sign and drop in the mail concept' with the many hundreds of individuals messages from throughout the state that came from the heart. This was not a form letter that I got. Each person sat down and wrote out their thoughts to me. Some of them said the same thing, 'we don't think you ought to hunt them." But these were individual letters that came to me and they mean a lot more to me than a petition or a preprinted card or a form letter. .....

"I kind of had my mind made up to vote no on this until last Saturday and Mr. Seidel kind of talked about the same thing when the "Journal-Sentinel" reported PETA's new anti-milk add campaign aimed at teens showing a greasy, haired kid with pimples, which they claim was caused by drinking milk. ..... I really sympathize with these people who don't want you to shoot their backyard bird feeder pets. On the other hand I also don't like the people who also join in and say look what we did; we shot down hunting. So I think I'm inclined to vote yes on this issue today."

Mr. O'Brien: I don't want to repeat what Herb said, but I have a lot of the same feelings that he just expressed and I would second most of them but I think I do want to make remarks based upon the fact that Herb said I received lots of letters. I received lots of phone calls and I received lots of yellow cards and I have to respond to that. I was really dismayed—if in fact the anti-hunters used this as an opportunity to try and polarize the hunting versus anti-hunting and stop hunting in general. I am dismayed with them, but by the same token I know for a fact that the hunting groups overreacted in trying to believe in a very, paranoid way that their rights to hunt everything in the world was going to be cut off. .... My vote is not going to be based at all on either one. I am not worried that the anti-hunters are going to stop hunting and I'm not worried that anything is going to happen to our great hunting tradition that we have. I, like so many, don't know why anybody would want to hunt doves. I wouldn't. The people who are opposed to dove hunting just don't include anti-hunters. I've talked to many, many hunters who say they don't want to see dove hunting, one because they're not interested in hunting doves themselves and two, they were very upset about the polarization that developed over this thing and the battle between the parties. They said all this is going to get is black eye on the hunters and on the DNR itself. I'm going to put all this aside when voting. I am going to vote strictly on the dove hunting issue itself. If we're told that biologically we can sustain it, and I don't have a doubt in my mind but that we can. Nobody has told us today that we can't. .... I think we have a situation that both parties can have what they want. People can still have their backyard doves and hunters can still have the opportunity to hunt them, so my vote will be based upon that alone."

Secretary Meyer: A couple of comments were made today---yes, I am pro-hunting. And I am a hunter, but in terms of any recommendations I've made during this whole decision-making process, I have to take that out of the equation. Let me just make sure the record is clear. There was a large turnout at the spring hearings that was not generated by the Department of Natural Resources or any of its employees. We knew there would be a large turnout and we tried to serve that. I did not take a public position on this until after the vote of the Conservation Congress. I hold two things in great esteem in terms of conservation in this state. They're reflective, as was mentioned by Mr. Gibson from California, the great concern of citizens for conservation on all sides of this issue. They become reflected in terms of policy in the state on two institutions – the Conservation Congress and this Natural Resources Board. And I have had great respect for both those organizations throughout my career and I respect them today making these difficult decisions.

"When I first took a position publicly on this issue was after the Conservation Congress hearings when 21,000 against 6000 votes were taken. At that point in time, I felt it very important to speak out loudly and strongly on this because my great fear was that those 21,000 votes would not be recognized by this Board because if they had not, I can't imagine hunters and anglers or any citizen from the state coming forward in future Conservation Congress hearings. And that is such a dramatic vote. If that vote had been close or

against, I would have recommended to you not to have a dove season. But I do not want to see the wonderful institution that's been created in this state, the Conservation Congress. And that's why I've taken the actions I have. It's not out of disrespect for this Board. It's out of respect for the overall process of governing conservation in the state."

Mr. Poulson: I'm going to vote no. It has nothing to do with hunting privileges of anyone. I'm not a hunter, but I allow hunting on my land. I just don't quite understand why you would want to hunt doves; we hunt 40 species already and one more I just don't quite see it. My bigger concern in all of this is that I hope no one closes their land because of this. We need all of the land we can get to hunt on and I don't want to see divisiveness grow to the point where we don't allow hunting because of something of this type and emotion. My farm will be open to hunting and when my sons have gotten their game, it will be open to the next guy. ...."

Mr. Willett: With all due respect to Secretary Meyer, I don't agree that the Department has been fair in this instance and I think that they in this instance have done a disfavor to the State of Wisconsin. When it first came up a year ago, I told you that I felt this was going to be an extremely divisive issue, that the history of the State of Wisconsin was one of stewardship, one of trust and belief in each other and that the Department has had a long-standing history of being responsible and being a representative of all peoples. And that this one sole issue could in fact divide the house---and in fact, it has divided the house. It has divided it to the point where I'm concerned. We had a couple of presentations that said it more eloquently than I can---that there is a middle group of people who in fact trust us, believe in us and allow us to hunt even though they don't. They allow us to hunt because we have done so responsibly and we have done so respecting them. You can play down all you want the fact that the dove is a symbol, but it is a symbol to some people. Some people have passionately talked about dying for that symbol and it doesn't seem to me to be worth alienating those people to hunt mourning doves. We can talk about the issue of the role of the Department. I have a number of questions concerning the role of the Department. In the first instance, I'm not sure it's legal to do what we do. I'm not sure that the Legislature doesn't need to reclassify the dove. I'm not sure that the question put to the Conservation Congress, which I think is a wonderful organization, and I am very proud to be associated with them, but I'm not sure the Department was fair with them because the first question would have been, do we change the classification? And I also feel the Department has made it a divisive issue. Unfortunately, this issue has become a hunter versus the anti-hunters. And I feel extremely sad about that because I am a hunter. .... I am a sixth generation member of this state and I think this state has been built on true love and concern for our environment and the ethics by which we live. I think that those all have now needlessly been called into question. ....

"It is my belief that the Legislature will take this up and carry on the debate. .... And it is also my belief that we will now have needlessly exposed ourselves to them stepping into areas where they need not. And once they get a hold of it, who knows where they're going to go. Who knows what further restrictions some of them can come up with. And I am going to vote against this because I think we were wrong and irresponsible by bringing it forth and creating a controversy where we didn't need to."

Chairman Solberg called for vote on the motion, as amended, to approve Order WM-1-00 (b) to establish a dove-hunting season in Wisconsin. The vote on the motion:

Affirmative – Messrs. Solberg, Tiefenthaler, O'Brien, Behnke and Ms. Stepp.
Negative – Messrs. Poulson and Willett.
The motion was carried.

4. Board Members' Matters.

4.A Rattlesnake experiment at the Necedah Refuge Wildlife Area.

This item was brought up during the Committee of the Whole meeting.

5. Special Committees' Reports.

There were no Special Committees' Reports this month.

6. Operating Committees.

6.A Air, Waste and Water/Enforcement Committee.

6.A-1 Minutes of April 26, 2000.

The minutes were approved as written.

6.A-2 Adoption of Order SW-18-95 – creation of Chapter NR 135, Wis. Adm. Code, pertaining to nonmetallic mining reclamation. (Items 3.C, Min. of September 23, 1998; 3.C, Min. of October 28, 1998; 3.B, Min. of October 27, 1999; and 3.B, Min. of December 8, 1999).

The Committee recommended and Mr. Willett MOVED adoption of Order SW-18-00, as presented. Mr. Poulson seconded the motion. The motion was carried unanimously.

6.A-3 Adoption of Emergency Order CF-29-00(E) and authorization for hearing on permanent rules to create Chapter NR 168, Wis. Adm. Code, pertaining to the brownfield site assessment grant program.

The Committee recommended and Willett MOVED adoption of Emergency Order CF-29-00(E) and hearing authorization on permanent rules, as presented. Mr. Poulson seconded the motion. The motion was carried unanimously.

6.A-4 Adoption of Order AM-30-99 – revision of Chapters NR 216, 300 and 406, Wis. Adm. Code, which would require the Department to refund license or approval fees if it fails to make a determination on an application within specified time limits.

The Committee recommended and Mr. Willett MOVED adoption of Order AM-30-00, as presented. Mr. Poulson seconded the motion.

Mr. Behnke asked if the Committee was confident the Department would follow through within specified time limits. Mr. Willett indicated that the Association of Wisconsin Manufacturers and Commerce, whose members are WPDES permitholders, would monitor this program closely. Ms. Stepp added that the Committee asked that the Department report back in one year on how the rule is working and on the Department's progress in issuing permits.

When put to a vote, the motion was carried unanimously.

6.A-5 Authorization for hearing on revision of Chapters NR 406, 407 and 422, Wis. Adm. Code, pertaining to auto body refinishing operations.

The Committee recommended and Mr. Willett MOVED that the Board authorize public hearings. Mr. Poulson seconded the motion. The motion was carried unanimously.

6.A-6 Authorization for hearing on revision of Chapters NR 400, 410, 429-425, 428, 439 and 485, Wis. Adm. Code, pertaining to nitrogen oxide and volatile organic compound emission reductions to address a comprehensive and federally-enforceable State Implementation Plan (SIP) to ensure one-hour ozone attainment in Wisconsin.

The Committee recommended and Mr. Willett MOVED that the Board authorize public hearings. Ms. Stepp seconded the motion.

Mr. Willett reported on the Committee's discussion of this item. The proposed rules contain provisions to achieve reductions in emissions of volatile organic compounds (VOC) and nitrogen oxides (Nox) from various categories of sources. Controversies regarding the proposed plan involve the need for the degree of, and location of Nox controls to attain the 1-hour ozone standard in Wisconsin. The proposed plan to be taken to public hearing includes several options for dealing with these controversies. The schedule for finalizing the plan and related rule revisions includes a series of public hearings and workshops in June, followed by adoption of the plan at the September Board meeting and completion of legislative review before December, to meet the submittal deadline of December 31, 2000.

Mr. Willett stated that the Committee asked for a legal opinion before final Board approval because of questions raised about the applicability of the rate of progress requirements as they apply to southeastern Wisconsin, if modeling shows that upwind states' reductions of Nox in response to federal requirements will bring Wisconsin into attainment.

Mr. O'Brien asked if the regulations, as currently drafted, require controls in the ozone maintenance region as well as in the primary ozone control region. Lloyd Eagan, Director, Bureau of Air Management, stated that the Department has proposed minimum performance standards for new industrial facilities in the ozone maintenance region which will become a comprehensive requirement in 2007. Between 2001 – 2006, these requirements would be proposed as targets to new facilities in the ozone maintenance region but not strictly required. In the secondary ozone control region, the Department has proposed one to one offsets for major Nox sources and minimum performance standards for new facilities starting in 2001. (The New Source Performance Standard would apply to facilities that are not already covered by existing regulations.) She added that the "big difference between the primary and the secondary ozone control areas is that the primary area also requires reductions from existing sources." Mr. O'Brien asked if there were reductions required in the secondary and the maintenance ozone. Ms. Eagan indicated there is no rate of progress reduction requirement in the secondary ozone area or in the ozone control maintenance region area.

When put to a vote, the motion was carried unanimously.

6.A-7 Establishment of the Turtle Valley Wildlife Area in Walworth County, with an acreage goal of 5,550 acres.

The Committee recommended and Mr. Willett MOVED that the Board approve the Feasibility Study and Environmental Analysis to establish the Turtle Valley Wildlife Area in Walworth County, including an acquisition goal of 5,550 acres. Mr. Poulson seconded the motion.

Mr. Willett explained the Committee's concerns over this proposed project, including impacts, if any, to area landowners and placing a boundary around agricultural lands. He indicated the Committee also had concerns about the Department's process—that the Committee was being asked to approve a boundary it did not authorize. The Department agreed that it would review and formalize a process for involving the Board in establishing boundaries for Department projects.

When put to a vote, the motion was carried unanimously.

6.A-8 Turtle Valley Wildlife Area land acquisition – Walworth County.

The Committee recommended and Mr. Willett MOVED that the Board approve the purchase of 1,728 acres from VanderVeen Farms, Inc. for $934,500. Mr. Poulson seconded the motion. The motion was carried unanimously.

6.A-9 DONATION – 101.5 acres from the Kinnickinnic River Land Trust, Inc. for the Streambank Protection Program (Kinnickinnic River) in St. Croix County.

The Committee recommended and Mr. Willett MOVED that the Board accept the donation. Ms. Stepp seconded the motion. The motion was carried unanimously.

6.A-10 DONATION – 96.7 acres from Pheasants Forever for the Statewide Wildlife Habitat Program in St. Croix and Pierce Counties.

The Committee recommended and Mr. Willett MOVED that the Board accept the donation. Mr. Poulson seconded the motion. The motion was carried unanimously.

6.B Land Management, Recreation and Fisheries/Wildlife Committee.

6.B-1 Minutes of April 26, 2000.

The minutes were approved as written.

6.B-2 Adoption of Order WM-1-00(a) – proposed wildlife regulation changes resulting from the 2000 Spring Fish and Wildlife Hearings (all rule proposals except for mourning dove proposal).

The Committee recommended and Mr. Behnke MOVED approval of Order WM-1-00(a), as presented. Mr. Tiefenthaler seconded the motion. The motion was carried unanimously.

6.B-3 Adoption of Order FH-3-00 – proposed fishing regulation changes resulting from the 2000 Spring Fish and Wildlife Hearings.

The Committee recommended and Mr. Behnke MOVED that the Board approve Order FH-3-00 with the following changes: (1) The opening date for the special early catch and release trout season was modified after the hearings, from March 1 to the first Saturday in March, to ensure compliance with s. 29.053(1), Wisconsin Statutes; (2) NR 20.15(b)(2) No person may use ~~*or possess*~~ any hooks, baits or lures other than artificial lures with barbless hooks while fishing for any species of fish on trout streams specified in para. (a). ~~**(Drafter's Note: The words "or possess" are included in this draft because s. NR 20.15 is being repealed and recreated. If 1999 Assembly Bill 561 is passed and signed into law, the words will be deleted from this paragraph.)**~~

Mr. Tiefenthaler seconded the motion. The motion was carried unanimously.

6.B-4 Authorization for hearing on the revision of Chapter NR 10, Wis. Adm. Code, to establish the 2000 migratory game bird season.

The Committee recommended and Mr. Behnke MOVED that the Board authorize public hearings. Mr. O'Brien seconded the motion. The motion was carried unanimously.

6.B-5 Authorization for hearing on revision of Chapter NR 25, Wis. Adm. Code, to expand areas open to chub fishing during the winter period (January 16 through the end of February every year).

The Committee recommended and Mr. Behnke MOVED that the Board authorize public hearings. Mr. Tiefenthaler seconded the motion. The motion was carried unanimously.

6.B-6 Statewide Public Access Program land acquisition – Oconto County.

The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 0.58 acre on the Pensaukee River in Oconto County from Donna Lipp for $209,000. Mr. O'Brien seconded the motion. The motion was carried unanimously.

6.B-7 Kickapoo Wildlife Area/Lower Wisconsin State Riverway land acquisition – Crawford County.

The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 281.34 acres from Donald Preston for $253,200. Mr. O'Brien seconded the motion. The motion was carried unanimously.

6.B-8 Streambank Protection Program land acquisition – Dane County; and acceptance and recognition to Dane County for its donation of $100,000 to be used toward the purchase.

The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 197.69 acres from Porter Sibs Enterprises, LLC for $750,000 for the Streambank Protection Fee Program and recognize Dane County for contributing $100,000 of that cost. Mr. Tiefenthaler seconded the motion. The motion was carried unanimously.

6.B-9 Approval to purchase 16.04 acres from the Pamperin Trust for $455,000 for replacement location of the Northeast Region Headquarters in Brown County.

The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 16.04 acres from Elizabeth S. Pamperin Trust for $455,000. Mr. O'Brien seconded the motion. It was noted that the item will be submitted to the State Building Commission in June. When put to a vote, the motion was carried unanimously.

6.B-10 Streambank Protection Program (Onion River) land acquisition – Sheboygan County.

The Committee recommended and Mr. Behnke MOVED that the Board approve the purchase of 59 acres from the Abraham Estate for $200,600. Mr. O'Brien seconded the motion. The motion was carried unanimously.

6.B-11 Nevin Fish Hatchery land exchange – Dane County.

The Committee recommended and Mr. Behnke MOVED the exchange of a 78.07-acre state tract no longer needed for conservation purposes for 78.07 acres of land from the Wisconsin Alumni Research Foundation. (This will be an even trade and there is no net value difference to be paid by either party.) Mr. Tiefenthaler seconded the motion. The motion was carried unanimously.

6.B-12 Approval to establish the Brillion to Forest Junction State Trail in Calumet County, with an acreage goal of 60 acres.

The Committee recommended and Mr. Behnke MOVED that the Board approve the Brillion to Forest Junction State Trail as a new project with an acreage goal of 60 acres. Mr. O'Brien seconded the motion. The motion was carried unanimously.

7. Department Secretary's Matters.

7.A DONATION – $5,000 from the R.K. Mellon Family Foundation to be used toward the publication of a book titled, "Sandhill Whitetails: Providing New Perspectives for Deer Management."

Mr. Tiefenthaler MOVED, seconded by Mr. O'Brien, acceptance of the donation. When put to a vote, the motion was carried unanimously.

* * * * *

The Board Meeting was recessed at 12:05 p.m.

Notice of Hearing

Insurance

[CR 00–40]

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in under s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the attached proposed rulemaking order affecting Section Ins 6.59 (4) (av), Wis. Adm. Code, relating to the exemption of attorneys seeking licensure for title insurance from certain testing requirements.

Hearing Information

March 22, 2000	**Room 6, OCI**
Wednesday	**121 East Wilson Street**
10:00 a.m., or as soon thereafter as the matter may be reached	**Madison, WI**

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Robert Luck, OCI, PO Box 7873, Madison WI 53707

Fiscal Estimate

There will be no state or local government fiscal effect.

Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

Contact Person

A copy of the full text of the proposed rule changes and fiscal estimate may be obtained from the OCI internet WEB site at http://www.state.wi.us/agencies/oci/ocirules.htm or by contacting Tammi Kuhl, Services Section, Office of the Commissioner of Insurance, at (608) 266–0110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707–7873.

Notice of Hearings

Natural Resources

(Fish, Game, etc., Chs. NR 1–)

[CR 00–31 and CR 00–33]

Notice is hereby further given that pursuant to ss. 29.014, 29.041 and 227.11(2)(a), Stats., interpreting ss. 29.014, 29.041 and 29.177, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 10, 11, 15 and 16, Wis. Adm. Code, relating to hunting, trapping and captive wildlife. The proposed rules:

1. Eliminate the New Auburn subzone for migratory birds.

2. Establish a mourning dove hunting season, daily bag limit and possession limit; remove the mourning dove from the protected animal list and require non–toxic shot for hunting of mourning doves.

3. Establish a snowshoe hare hunting season, daily bag limit and possession limit.

4. Allow unfilled gun deer licenses to be used during the muzzleloader deer season and allow deer of either sex to be harvested with the unfilled deer tag in the Mississippi River block units during the muzzleloader season.

5. Change the area closed to coyote hunting during the gun deer season.

6. Create hunting hour areas and zones to more accurately reflect the intended opening and closing time.

7. Establish hunting hours for gun bear, bow deer, deer with firearms and small game.

8. Repeal old hunting hours table.

9. Allow the same cartridges that are legal to hunt deer or bear in a rifle to be legal in a handgun.

10. Lengthen legal trapping hours.

11. Establish timely registration of bobcat, fisher and otter harvest.

12. Create wolf management zones.

13. Modify the Horicon zone boundary.

14. Add portions of Eau Claire and Pepin counties to the pheasant management zones.

15. Eliminate the Pine Island wildlife refuge.

16. Create a closed season for resting waterfowl in the Winx Flowage area.

17. Require game farm mute swans to be penned or sterlilized.

Notice is hereby given that pursuant to ss. 29.014(1), 29.041 and 227.11(2), Stats., interpreting ss. 29.014(1) and 29.041, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 20, 22 and 26, Wis. Adm. Code, relating to fishing regulations on inland and boundary waters and fish refuges on inland waters. The proposed rules:

1. Add several streams and stream reaches to the definition of "Lake Michigan tributaries" to include waters that are accessible to anadromous trout and salmon.

2. Modify the special early catch and release trout season.

3. Establish special regulations for walleye, sauger and their hybrids, largemouth and smallmouth bass, and catfish in Yellowstone lake, Lafayette county, with a daily bag limit of 2 of these species in total, with a minimum length limit of 12"and a maximum length limit of 14".

4. Establish a minimum length limit of 18" and a daily bag limit of one for largemouth and smallmouth bass on Christner lake, Sawyer county.

5. Reduce the daily bag limit from 25 in total to 10 in total for panfish on Chetac, Birch, Christner, Moose and Nelson lakes, Sawyer and Washburn counties.

6. Establish a minimum length limit of 18" and a daily bag limit of one for largemouth and small bass on Big and Little Gerber lakes, Sheboygan county.

7. Establish a minimum length limit of 18" and a daily bag limit of one for largemouth and smallmouth bass on Lake Twelve; establish a 40–inch minimum length limit with a daily bag limit of one for northern pike on Beg Cedar and Gilbert lakes, and reduce the daily bag limit from 25 in total to 10 in total for panfish on Lake Twelve, Washington county.

8. Extend the prohibition on night fishing and on hook with gaps larger than one–half inch on Lake Michigan tributaries by one month, beginning on September 1 rather than October 1, and prohibit fishing in any manner from one–half hour after sunset to one–half hour before sunrise on Lake Michigan tributaries during the period from September 1 to December 31.

9. Establish a closed season from April 2 to May 21 for yellow perch in Lake Superior.

10. Establish a minimum length limit of 26" and a daily bag limit of 2 for northern pike on Lake Michigan waters south of a line running east from the eastern terminus of Waldo boulevard in the city of Manitowoc and on the entire Manitowoc river.

11. Establish a minimum length limit of 15 inches and a daily bag limit of 5 for walleye, sauger and hybrids on Lake Michigan waters south of U.S. highway 10.

12. Establish a daily bag limit of 25 of each species for white or yellow bass, crappies, rock bass, sunfish or bluegills and yellow perch on the Wisconsin–Iowa boundary waters.

13. Establish a fish refuge from March 1 to the Friday preceding the first Saturday in May on the Lake Hallie outlet stream, Chippewa county.

14. Establish a fish refuge from July 15 to October 31 on the Bayfield Hatchery outlet ditch, Bayfield county.

15. Establish a fish refuge on Yellowstone lake sub–impoundment and rearing pond, Lafayette county, at any time while posted closed to fishing with department signs.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Hearing Information

At **7:00 p.m. on April 10, 2000**, the County Conservation Congress for each county will hold its election of delegates. Upon completion of the delegate election, the joint spring hearing/Conservation Congress meeting will convene to take comments on the above rule modifications.

Notice is hereby further given that the hearings will be held on **Monday, April 10, 2000 at 7:00 p.m.** in the following locations:

Adams	Adams Co. Courthouse County Board Room 402 Main St. Friendship
Ashland	Ashland High School 1900 Beaser Ave. Ashland
Barron	Barron Co. Courthouse Auditorium 303 E. LaSalle Barron
Bayfield	Bayfield Co. Courthouse Board Room 117 E. 5th Washburn
Brown	Franklin Middle School Auditorium 1234 W. Mason St. Green Bay
Buffalo	Alma Area High School Auditorium S1618 STH '35' Alma
Burnett	Burnett County Government Center 7410 Co. Rd. K Siren
Calumet	Calumet County Courthouse Room 025 206 Court Street Chilton
Chippewa	Chippewa Falls Middle School Auditorium A 750 Tropicana Blvd. Chippewa Falls
Clark	Greenwood Elementary School Cafeteria 708 E. Division Greenwood
Columbia	Columbia County Admin. Building Basement 400 De Witte St. Portage
Crawford	Crawford County Courthouse Circuit Courtroom Prairie du Chien
Dane	Dane County Expo Center Madison
Dodge	Horicon Senior High School 841 Gray St. Horicon
Door	Door County Courthouse Room A150 421 Nebraska Sturgeon Bay
Douglas	Superior High School 2600 Catlin Ave. Superior
Dunn	Dunn County Fish/Game Club 1900 Pine Ave. Menomonie
Eau Claire	Eau Claire Co. Exposition Center 5530 Fairview Dr. Eau Claire
Florence	DNR Natural Resources Center Lower Large Conf. Room Hwys. 2 & 101 Florence
Fond du Lac	Theisen Jr. High School Auditorium 525 E. Pioneer Rd. Fond du Lac
Forest	Crandon Elementary School 9750 U.S. Hwy. 8 Crandon
Grant	Lancaster High School Hillary Auditorium 806 E. Elm Street Lancaster
Green	Pleasant View Annex Auditorium N3150 Hwy. 81 Monroe
Green Lake	Green Lake High School Multi Purpose Room 612 Mill St. Green Lake

Iowa	Dodgeville Elementary School Gymnasium 404 N. Johnson Dodgeville
Iron	Iron County Courthouse Hurley
Jackson	Jackson County Courthouse County Board Room 307 Main Black River Falls
Jefferson	Jefferson Public Library 321 S. Main St. Jefferson
Juneau	Juneau County Courthouse Courtroom 220 E. State St. Mauston
Kenosha	Kenosha County Center Hearing Room 19600 75th St. Bristol
Kewaunee	Kewaunee County Courthouse 613 Dodge St. Circuit Court Room 212 Kewaunee
La Crosse	Onalaska High School Auditorium 700 Hilltop Pl. Onalaska
Lafayette	Darlington Community High School Cafeteria 11838 Center Hill Rd. Darlington
Langlade	Langlade County Courthouse Courtroom 800 Clermont Antigo
Lincoln	Merrill High School 1201 North Sals St. Merrill
Manitowoc	UW Center–Manitowoc Room E125 705 Viebahn St. Manitowoc
Marathon	Marathon High School Auditorium 204 East St. Marathon
Marinette	Wausaukee High School Cafeteria N11941 Hwy. 141 Wausaukee
Marquette	Marquette County Courthouse 77 W. Park Montello
Menominee	Menominee County Courthouse Basement Meeting Room Keshena
Milwaukee	Nathan Hale High School Auditorium 11601 W. Lincoln Ave. West Allis
Monroe	Sparta High School Auditorium 506 N. Black River St. Sparta
Oconto	Suring High School Cafeteria 411 E. Algoma Suring
Oneida	James William Junior High 915 Acacia Lane Rhinelander
Outagamie	Jefferson High School 1000 S. Mason Street Appleton
Ozaukee	American Legion Hall 435 N. Lake Street Port Washington
Pepin	Pepin County Government Centu County Board Room 740 7th Ave. W., Durand
Pierce	Ellsworth Senior High School Auditorium 323 Hillcrest Ellsworth
Polk	Polk Co. Government Center 100 Court Plaza Balsam Lake
Portage	Ben Franklin Junior High School Auditorium 2000 Polk St. Stevens Point
Price	Price County Courthouse County Board Room Phillips
Racine	Union Grove High School 3433 S. Colony Ave. Union Grove
Richland	Richland County Courthouse Circuit Court Room Richland Center
Rock	Rock County Health Care Center Auditorium 3530 N. Hwy F. Janesville
Rusk	Ladysmith High School Auditorium Ladysmith
St. Croix	WI Indianhead Technical College Cashman Auditorium 1019 S Knowles Ave. New Richmond

Sauk	UW – Baraboo Campus A4 Lecture Hall 1006 Connie Rd. Baraboo
Sawyer	Winter High School Auditorium Winter
Shawano	Shawano Middle School 1050 S. Union St. Room LGI Shawano
Sheboygan	Sheboygan Falls High School Cafeteria 220 Amherst Ave. Sheboygan Falls
Taylor	Taylor County Fairgrounds Multi–purpose Bldg. Medford
Trempealeau	Whitehall City Center Community Room 36245 Park St. Whitehall
Vernon	Viroqua Middle School Large Lecture Room Blackhawk Drive Viroqua
Vilas	Plum Lake Community Building Golf Course Rd. Sayner
Walworth	National Guard Armory 401 E. Fair St. Elkhorn
Washburn	Agriculture Research Station Hwy. 70E Spooner
Washington	UW–Washington County Campus Theater 400 University Dr. West Bend
Waukesha	Waukesha County Expo Center 4848 Northview Rd. Waukesha
Waupaca	Baymont Inn and Suites 110 Grand Seasons Dr. Waupaca
Waushara	Waushara County Courthouse 209 S. St. Marie Wautoma
Winnebago	Oshkosh North High School Auditorium 1100 W. Smith Oshkosh
Wood	Pittsville High School Auditorium 5407 1st Ave. Pittsville

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Candy Knutson at (608) 267–3134 with specific information on your request at least 10 days before the date of the scheduled hearing.

Written Comments

Written comments on the proposed rules may be submitted to Mr. Al Phelan, Conservation Congress Liaison, P.O. Box 7921, Madison, WI 53707 no later than **April 14, 2000**. Written comments will have the same weight and effect as oral statements presented at the hearings. Written comments will NOT, however, be counted as spring hearing votes.

Copies of Rule and Contact Information

A copy of the proposed rules [WM–1–00] and [FH–4–00] and fiscal estimates may be obtained from Ms. Candy Knutson, Bureau of Legal Services, P.O. Box 7921, Madison, WI 53707 or by calling (608) 267–3134.

Fiscal Estimate

There is no fiscal effect.

Notice of Hearing

Natural Resources
(Fish, Game, etc., Chs. NR 1–)
[CR 00–32]

Notice is hereby given that pursuant to ss. 29.014, 29.089, 29.327, 29.053(3) and 227.11(2)(a), Stats., interpreting ss. 29.014, 29.089, 29.327 and 29.053(3), Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 10, Wis. Adm. Code, relating to hunting, trapping and wildlife research. The changes involve clarifications, definitions, increasing management efficiency and altering limitations on hunters.

1. In order to have control over the placement and subsequent removal of waterfowl hunting blinds, owners are required to put their names on the blind. The requirement of placing only a name on the blind is not adequate to help locate a person violating this section. This proposal requires all blinds on state–owned property to be permanently labeled with the owner's name and address in English letters one–inch square or larger.

2. Current rules allow for the registration of fisher and bobcat in whole condition, without pelt removal, if plans are to have a taxidermist mount the animal. This proposal adds otters to the existing rule. Currently rules also do not specify a return time for department receipt of necessary carcasses. This proposal establishes a 30–day requirement.

3. A proposal adds bobcat to an existing rule which requires a registration tag to be locked to the head of the pelt prior to transferring, giving, trading, selling or purchasing the pelt.

4. Clarifies the current rule on state park deer seasons applies only to those portions of the referenced state parks which are owned by the department.

5. The current rule regarding disabled hunts and special hunt authorizations does not specifically describe what tags may be used during these hunts. Currently zone T tags cannot be used during a disabled hunt. This proposal authorizes zone T permits to be filled during disabled hunts.

6. Allows for research to be conducted on lands and waters of the university of Wisconsin arboretum and university bay. The university shall provide a list of research projects annually for Department approval.

Initial Regulatory Flexibility Analysis

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may

Clearinghouse Rule 00–024

AN ORDER to amend DWD 290.155, relating to the annual adjustment of thresholds for application of the prevailing wage rates for state or local public works projects.

Submitted by **Department of Workforce Development**

02–02–00. Received by Legislative Council.
02–18–00. Report sent to Agency.

ASSEMBLY ACTION

04–18–00. Report received from Agency 928
04–25–00. Referred to committee on Labor and Employment 928
05–25–00. No action taken.

SENATE ACTION

04–18–00. Report received from Agency 594
04–20–00. Referred to committee on Labor 594
05–20–00. No action taken 625
08–02–00. Effective date 8–1–2000 654

Clearinghouse Rule 00–025

AN ORDER to create chapter NR 153, relating to the runoff management grant program.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–09–00. Report sent to Agency.

Clearinghouse Rule 00–026

AN ORDER to create chapter NR 152, relating to model ordinances for construction site erosion control and storm water management.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–07–00. Report sent to Agency.

Clearinghouse Rule 00–027

AN ORDER to create chapter NR 151, relating to runoff management.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–07–00. Report sent to Agency.

Clearinghouse Rule 00–028

AN ORDER to repeal and recreate chapter NR 120, relating to the priority watershed management program.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–07–00. Report sent to Agency.

Clearinghouse Rule 00–029

AN ORDER to create chapter NR 135, relating to reclamation of nonmetallic mining sites.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–06–00. Report sent to Agency.

ASSEMBLY ACTION

05–30–00. Report received from Agency 969
06–06–00. Referred to committee on Environment 969
07–06–00. No action taken.

SENATE ACTION

05–30–00. Report received from Agency 625
05–31–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 625
09–15–00. No action taken 674
10–04–00. Effective date 10–1–2000 678

Clearinghouse Rule 00–030

AN ORDER to create chapter NR 195, relating to establishing river protection grants.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–09–00. Report sent to Agency.

ASSEMBLY ACTION

07–18–00. Report received from Agency 982
07–28–00. Referred to committee on Environment 982
08–28–00. No action taken.

SENATE ACTION

07–18–00. Report received from Agency 648
07–19–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 648
09–12–00. No action taken 674
11–01–00. Effective date 11–1–2000 687

Clearinghouse Rule 00–031

AN ORDER to repeal NR 10.01 (1) (g) 1. d., 2. d. and 3. d., 10.06 (3), (4) and (5), 10.31 (1) (d), 11.02 (2) (a) and 15.022 (11) (a); to amend NR 10.01 (3) (c) and (es), 10.02 (5), 10.06 (2) (a) and (b) and (8) (a) and (b), 10.09 (1) (c) 1. c., 10.12 (5) (d) (intro.) and 1., 10.13 (3) (a) and 10.145 (5) (a) 1.; to repeal and recreate NR 10.01 (3) (h) 1. a., 10.31 (3) (a) and 10.34 (1); and to create NR 10.01 (1) (h), 10.06 (2) (c), 10.20, 11.05 (2) and 16.02 (5) (e), relating to hunting, trapping and captive wildlife.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.

03–06–00. Report sent to Agency.

ASSEMBLY ACTION

05–30–00. Report received from Agency 969
06–06–00. Referred to committee on Natural Resources .. 969
06–21–00. Public hearing held.
07–12–00. No action taken.

SENATE ACTION

05–30–00. Report received from Agency 625
05–31–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 625
06–30–00. No action taken 647
07–12–00. Public hearing held.
10–04–00. Effective date (part) 11–18–2000, (part) 5–1–2001 678

Clearinghouse Rule 00–032

AN ORDER to amend NR 10.145 (5) (d) and (6) (b), 10.27 (intro.), 10.40 (3) (f) and 15.13 (title) and (intro.); and to create NR 10.12 (12), relating to hunting, trapping and wildlife research.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
02–29–00. Report sent to Agency.

ASSEMBLY ACTION

05–10–00. Report received from Agency 958
05–16–00. Referred to committee on Natural Resources .. 958
06–16–00. No action taken.

SENATE ACTION

05–10–00. Report received from Agency 613
05–10–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 613
09–15–00. No action taken 674
10–04–00. Effective date (part) 10–1–2000, (part) 3–1–2001 678

Clearinghouse Rule 00–033

AN ORDER to repeal NR 22.04 (5); to amend NR 20.03 (18), 20.20 (33) (a) 1., (b) 2. and (g) 2., (57) (d) 1. and (73) (a) 3. a., (j) 5. a., (i) 1. and 2. and (o) 2. and 3.; to repeal and recreate NR 20.15 and 22.04 (4); and to create NR 20.20 (58) (f) 2., (60) (b) 2. and (cm), (66) (dm) and (67) (ag), (am) and (as), 22.04 (4), 26.08 (9), 26.10 (4) and 26.31, relating to sport fishing regulations on inland and boundary waters and fish refuges on inland waters.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–07–00. Report sent to Agency.

ASSEMBLY ACTION

05–30–00. Report received from Agency 969
06–06–00. Referred to committee on Natural Resources .. 969
06–21–00. Public hearing held.
06–21–00. Executive session held.
06–21–00. Modifications requested, Ayes 10, Noes 1.
06–21–00. Modifications requested, Ayes 11, Noes 0.
07–06–00. Modifications received.
07–20–00. No action taken.

SENATE ACTION

05–30–00. Report received from Agency 625
05–31–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 625
09–15–00. No action taken 674
10–04–00. Effective date (part) 3–1–2001, (part) 4–1–2001 678

Clearinghouse Rule 00–034

AN ORDER to repeal and recreate chapter NR 243, relating to animal feeding operations.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–09–00. Report sent to Agency.

Clearinghouse Rule 00–035

AN ORDER to amend NR 216.002 (2), (8) and (12), 216.04 (5) (b) (intro.), 216.06 (1), (2) (a) and (8), 216.23 (9), 216.26 (2), 216.27 (3) (j) 1., 216.29 (7), 216.30, 216.41, 216.43 (1), (2), (4) and (6), 216.46 (2) and (4) (a), (f) and (g) and 216.55 (2) and (3); and to create NR 216.07 (7m), 216.27 (3) (hm), 216.42 (2m), 216.46 (1m) and (6) (i) and (j) and 216.47 (4), relating to stormwater discharge.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–08–00. Report sent to Agency.

Clearinghouse Rule 00–036

AN ORDER to create chapter NR 154, relating to best management practices, conditions and technical standards.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–09–00. Report sent to Agency.

Clearinghouse Rule 00–037

AN ORDER to amend Tour 1.03 (3) (a), relating to the joint effort marketing program.

Submitted by **Department of Tourism**

Citation Search Result Rank(R) 18 of 107 Database
6/22/00 MLWK 015B WINEWS
6/22/00 Milwaukee J. & Sentinel 015B
2000 WL 3865799

The Milwaukee Journal Sentinel
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Thursday, June 22, 2000

News

Lawmakers take no action on **dove hunt**
RICHARD P. JONES AND PETER MALLER
Journal Sentinel staff

Lawmakers take no action on **dove hunt**

They hear from residents for, against new rule

By RICHARD P. JONES AND PETER MALLER

of the Journal Sentinel staff

Thursday, June 22, 2000

Madison -- Sporting blaze orange ribbons, hunters on Wednesday demanded the right to shoot mourning doves, but their opponents urged lawmakers to say no to hunting the state symbol of peace.

Both sides of the contentious issue had their say at separate hearings by Assembly and Senate committees. One hunt opponent even arrived carrying a mourning dove in a cage.

But despite the pleas of animal rights activists and mourning dove fanciers, neither committee voted to halt plans for a **dove hunt** next year.

After nearly eight hours of testimony, Sen. Alice Clausing (D-Menomonie), chairwoman of the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform, said she didn't know when she would put the **dove hunt** rule to a vote, if at all.

"I had the hearing because in my district it was just obvious that the general public became very incensed over this, mainly because they felt they didn't have an opportunity to be heard," she said.

Clausing said she wanted to review the testimony and talk to committee members to see if they want to accept, reject or change the dove hunting rule approved last month by the Natural Resources Board.

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6/22/00 MLWK 015B

The Assembly Natural Resources Committee, which held a five-hour hearing Wednesday, also did not vote on the issue.

If the Legislature ultimately takes no action on the rule -- it has until the end of the month to object -- a hunt would begin next year, from Sept. 1 to Oct. 30.

However, it's unlikely the issue will even get to the Legislature, said Rep. DuWayne Johnsrud (R-Eastman), the Assembly committee's chairman.

An outspoken supporter of a mourning **dove hunt,** Johnsrud said after the hearing that any attempt to send the rule to the full Legislature for a vote would fail because his committee could stall the issue indefinitely.

Johnsrud said he would call the committee into executive session next week to discuss portions of the rule that deal with daily bag limits and whether hunters should be required to use non-toxic shotgun shells. The Natural Resources Board approved hunting with lead pellets.

When Clausing began the Senate hearing, the 160-seat room was full. By the end of the day, 221 **dove hunt** opponents signed in at the Senate committee hearing, including 97 who testified. There were 58 **dove hunt** backers, including 20 who testified.

A smaller-than-expected crowd attended the Assembly hearing -- 29 testified against a hunt and 12 in favor.

Clausing imposed a three-minute limit on comments. But during testimony by Natural Resources Secretary George Meyer and Keith Warnke of the DNR's Bureau of Wildlife Management, Clausing and other senators grilled them for roughly an hour.

Defending the hunt rule, Meyer noted that the mourning **dove hunt** was approved overwhelmingly, 21,067 to 6,036, during Conservation Congress hearings this spring.

Meyer also appeared at the Assembly hearing, where he told committee members that because the mourning **dove hunt** passed by such a large margin, the DNR must support the will of the people.

But Rep. Frank Boyle (D-Superior) said his mail was running 20-to-1 against the hunt. The outcome of the Conservation Congress hearings represented mainly hunters, not the general population, Boyle said.

"I think you're terribly wrong on your feel for the public on this issue," Boyle told Meyer.

Warnke estimated that 20,000 to 30,000 people would take part in

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the hunt, killing 120,000 to 150,000 mourning doves. He said the U.S. Fish & Wildlife Service estimated 5.2 million mourning doves migrate from Wisconsin each fall.

Noting that six out of 10 birds don't survive from year to year, Warnke said the birds destined to be shot by hunters probably wouldn't survive anyway.

As seven TV cameras rolled, Patrick C. Kane of Colfax walked in the Senate meeting room carrying a mourning dove in a cage. He said he found the bird in his driveway suffering from a broken leg. A veterinarian determined it had been shot.

"I don't know how much meat you're going to get out of this bird," said Kane, who plans to release the animal when it recovers. "I'm not in favor of a dove season. I feed birds in my backyard, and I like to watch them. I'm not an animal rights person. I just wanted to show the people what they want to hunt."

Jim Fendry of Greendale, speaking for the Wisconsin Pro-Gun Movement and the National Rifle Association, said lawmakers should let the dove hunting rule stand. He said there are 100,000 NRA members in Wisconsin.

"The dove hunting issue is a gift that they will thank you for and remember all year long," Fendry said.

With this being an election year, another speaker was less subtle in warning lawmakers not to thwart the will of the Conservation Congress.

"I would not want to be remembered as part of a Senate committee that chose to ignore our citizens when they spoke, and in doing so, successfully destroyed the spring hearing process," said Steven Oestreicher of Harshaw, chairman of the Wisconsin Conservation Congress.

---- INDEX REFERENCES ----

NAMED PERSON: CLAUSING, ALICE; JOHNSRUD, DUWAYNE; MEYER, GEORGE; WARNKE, KEITH; BOYLE, FRANK

NEWS SUBJECT: Human Rights and Civil Liberties; Political and General News (GHUM GCAT)

REGION: United States - Wisconsin; Central U.S.; United States; Nort America; Pacific Rim; Wisconsin; North America; United States (USWI USC USA NAM PACRM WI NME US)

EDITION: STATE

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Assembly

Record of Committee Proceedings

Committee on Natural Resources

Clearinghouse Rule 00-031

Relating to hunting, trapping and captive wildlife.
Submitted by the Department of Natural Resources.

June 6, 2000 Referred to committee on Natural Resources.

June 21, 2000 **PUBLIC HEARING HELD**

Present: (12) Representatives Johnsrud, Gunderson, Handrick, Kedzie, Ott, Powers, Brandemuehl, Boyle, Hubler, Gronemus, J. Lehman and Steinbrink.

Absent: (0) None.

Appearances for

- Ben Breitenbach, Rothschild
- Art Seidel, Wis. Wildlife Federation, Waukesha Co. Conservation Alliance, Brookfield
- Jeanette Noemoec, Mukwonago
- Jim Weix, Wis. Dove Hunters Association, Mukwonago
- Dick Keorner, Conservation Congress Migratory Committee, Neenah
- John Becker, Monona
- Gen Ebert, AWARE Dove Committee, Waukesha
- Paul O'Brien, Madison
- Dennis From, Lodi
- Steven Oestreicher, WI Conservation Congress Chairman, Harshaw
- Jim Fendry, GreenDale, WI Pro-Gun Movement
- William Howe, Crawford County Conservation Congress, Prairie du Chien

Appearances against

- Diane Iverson, Madison
- Sally Konnak, NewGlarus
- Ron Socwell, Whitewater
- Patricia Randolph, WI Wildlife Coalition, Madison
- Susan Chapin, Woodville
- Don Klongland, Madison
- Elaine Husld, Menomonie
- Sharon Stewart, Menomonie
- Karen Dahl, Vernon Co. Humane Society, Viroqua
- Ken Sedbrook, Juda
- John Wieneke, Wisconsin Citizens Concerned for Cranes and Doves, New London
- Arnold Baer, Humane Society of United States, Milwaukee
- Linda Das, Superior
- Duane Tessmer, Madison
- Mary Sue Divine, Livingston

- Tina Kaske, Alliance for Animals, Madison
- Stanley Kowalski, New Glarus
- Don Cashmore, New London
- Ken Ring, Madison
- Doug Maierhafer, Milwaukee
- Margaret Gebhard, Milwaukee
- Gory Albrightson, Woodville
- John Porath, Ripon
- Laura Karel, New Berlin
- Randy Albert, Onalaska
- Frank Zuern, Oshkosh
- Jane Furchgott, Lone Rock
- Janet Moldenhauer, Oshkosh
- Julie Seymour, Hillpoint

Appearances for Information Only

- Gordon Bradley, Oshkosh

Registrations for

- Scott Loomans, Waunakee
- John Kraus, Muscoda
- Scott Mayes, Oregon
- Elmere Prenzlow, Theinsville
- Scott Slajus, Wausau
- Dave Bergstrum, Cedarburg
- John Clayton, Madison
- James Day, Madison
- Ernol Schluter, Oconomowoc
- Jerry Knuth, Plover
- Tom Williams, Waukesha
- Thomas Soilea, Wales
- Steven Williams, Waukesha
- Scott Zimmerman, Dodge Co. Conservation Congress, Reeseville
- Gary Epple, Milawaukee
- Henry DeBoer, WI Hunter Ed. Instructors Assoc., Wauwatosa
- Richard Baudhuin, WI Bear Hunters Assoc.
- Joan Baudhuin, Sturgeon Bay
- Bernard Cupp, Madison
- Gen Ebert, AWARE Dove Committee, Waukesha
- Paul Sussek, WI Wildlife Federation, Waukesha County Alliance, Waukesha
- Rodney Crowe, West Allis
- Roger Perlewitz, Grafton
- Nina Thumser, West Allis
- Sue Misiola, National Rifle Association, Fairfax, VA,
- Al Phelan, Madison
- Jerry Solsrud, Deleafield
- Jim March, Dane County Conservation Congress, Verona
- Rep. Mark Pettis, 28th Assembly District
- Mary Seefelt, Amherst Junction
- Charles Barke, Westy
- Jim Shurts, AWARE, Madison
- Edward Frank, Madison
- Rick Tischaefer, WI Trappers Assoc., Portage
- Christine Tischaefer, Portage
- Steve Miller, WDNR, Madison

Registrations against

- Tom Kirchdoerfer, Oregon
- Debra Roe, Madison
- Rachael Heal, Madison
- Ellen Neone, Madison
- Shirley reek, Marchfield
- Wally Rech, Marshfield
- Frank Woods, Brooklyn
- Dtie Ping Woods, Brooklyn
- Ted Thousand, Sauk City
- Bob Jaeger, Madison
- Traci Peloquin, Montello

- Marlene Kowalski, New Glarus
- Irene Wren, Madison
- Kevin Knutson, Madison
- Hilary Husom, Rio
- John Obrien, Madison
- Sandra Steiner, Rio
- Marianne, Thompson, Stoughton
- Kate Franzmann, Sierra Club, Mt. Horeb
- Karen Etter Hale, Madison Audabon Society, Madison
- Rozan Withrow, Delafield
- Stanley withrow, Delefield
- Charmayne Brown, Waunakee
- Barbara Keating, Madison
- Shelly Young, Madison
- Joy Steward, Madison
- Lois Anderson, Middleton
- Janie Zmrazek, Madison
- Anna Louise Ogden-Nussbaum, Madison
- Genie Ogden, Madison
- Karen Woods, Brooklyn
- richard Dubiolz, Madison
- Jennifer Firgriel, Madison
- David Amrhein, Evansville
- Rep. David Cullen, 13th Assembly District
- Ed Seefelt, Amherst Junction
- Carolyn Shaffer, Madison
- Erik Nielson, Madison
- Rep. Marlin Schneider, 72nd Assembly District
- Susan Broden, Madison
- Leslie Hutchins, Oregon
- Tom Becher, Oregon
- Leola Wettskin, Madison
- Elizabeth Uhr, Madison
- Barbora Meyer, Madison
- Helen Luschnigg, Belleville
- Jayes Koller, Madison
- Pat Koller, Madison
- Pam Woffle, Reedsburg
- Mike Lowry, Waunakee
- John Washa, Madison
- Stephen Schmidt, Madison
- Ann Peterson, Madison
- Ken Crocker, Madison
- Lesley Arena, Madison
- Bette Sedbrook, Juda
- Susan Leute, Madison
- Robert Chesney, Cederburg
- Jim Rehbein, Wild Rose
- Annette Rehbein, Wild Rose
- Patricia Lowry, Waunakee
- Paula Rinelli, Madison
- Carol Poore, Madison
- Howard Seifert, Madison
- Jodi Zirbel, De Forest
- Dorothy Crenshaw, Madison
- Amy Kornkuen, Helenville
- Jeanne Briggs, Sun Prairie
- Dan Ross, Madison
- Darlene White, Madison
- Howard Wattsten Jr., Madison
- Jason Meeks, no address listed
- Ardith Nack, Sheboygan
- Jane Vriesacker, Reedsburg
- Lu Kummerow, New Glarus
- Linda Tobl, Cottage Grove

July 11, 2000 **EXECUTIVE SESSION**
The executive session was canceled on July 10 and no action was taken.

July 12, 2000 **NO ACTION TAKEN**

Scott D. Loomans

Scott Loomans
Committee Clerk

Assembly

Committee Report

The committee on **Natural Resources**, reports and recommends:

Clearinghouse Rule 00-031

Relating to hunting, trapping and captive wildlife.
Submitted by the Department of Natural Resources.

Representative DuWayne Johnsrud
Chair

2001 SENATE BILL 45

February 7, 2001 – Introduced by Senators MOEN, BURKE, RISSER, JAUCH and GEORGE, cosponsored by Representatives BOYLE, RICHARDS, REYNOLDS, SCHNEIDER, POCAN, GRONEMUS, CARPENTER, WILLIAMS, RILEY, COLON and BERCEAU. Referred to Committee on Environmental Resources.

1 AN ACT *to create* 29.318 of the statutes; **relating to:** prohibiting the hunting of
2 the bird that is the symbol of peace for this state.

Analysis by the Legislative Reference Bureau

Under rules promulgated by the department of natural resources (DNR), there is an open season for the hunting of mourning doves. The mourning dove represents the symbol of peace for the state of Wisconsin.

This bill prohibits DNR from authorizing an open season for the hunting of mourning doves and imposes a specific ban against the hunting of these birds.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 29.318 of the statutes is created to read:

4 **29.318 Hunting doves. (1)** Notwithstanding s. 29.001 (42), in this section
5 "hunt" means to shoot, shoot at, take, capture, or kill, or pursue for the purpose of
6 shooting, shooting at, taking, capturing, or killing.

1 **(2)** The department may not establish or authorize an open season for the
2 hunting of the bird that is the symbol of peace for this state, as specified in s. 1.10
3 (3) (a), and no person may hunt these birds at any time.
4 **(END)**

2001 ASSEMBLY BILL 190

March 8, 2001 - Introduced by Representatives BOYLE, SCHNEIDER, CARPENTER, RICHARDS, POCAN, SINICKI, BERCEAU, REYNOLDS, CULLEN, COLON, GRONEMUS, WILLIAMS and RILEY, cosponsored by Senators MOEN, BURKE, RISSER, GEORGE and JAUCH. Referred to Committee on Natural Resources.

1 AN ACT *to create* 29.318 of the statutes; **relating to:** prohibiting the hunting of
2 the bird that is the symbol of peace for this state.

Analysis by the Legislative Reference Bureau

Under rules promulgated by the department of natural resources (DNR), there is an open season for the hunting of mourning doves. The mourning dove represents the symbol of peace for the state of Wisconsin.

This bill prohibits DNR from authorizing an open season for the hunting of mourning doves and imposes a specific ban against the hunting of these birds.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 29.318 of the statutes is created to read:

4 **29.318 Hunting doves. (1)** Notwithstanding s. 29.001 (42), in this section
5 "hunt" means to shoot, shoot at, take, capture, or kill, or pursue for the purpose of
6 shooting, shooting at, taking, capturing, or killing.

1 **(2)** The department may not establish or authorize an open season for the
2 hunting of the bird that is the symbol of peace for this state, as specified in s. 1.10
3 (3) (a), and no person may hunt these birds at any time.

4 **(END)**

2001 ASSEMBLY BILL 859

February 26, 2002 - Introduced by Representatives BOYLE, RICHARDS, SINICKI, REYNOLDS, SCHNEIDER, POCAN and BERCEAU. Referred to Committee on Natural Resources.

1 AN ACT *to create* 29.318 of the statutes; **relating to:** prohibiting the hunting of
2 mourning doves and requiring a referendum.

Analysis by the Legislative Reference Bureau

Under rules promulgated by the department of natural resources (DNR), there is an open season for the hunting of mourning doves.

This bill prohibits DNR from authorizing an open season for the hunting of mourning doves and imposes a specific ban against the hunting of these doves.

The bill, however, does not take effect until there is submitted to the vote of the electors at the general election in November 2002 the question "Shall section 1 of 2001 Wisconsin Act .... (this act), which prohibits the hunting of mourning doves, become law effective January 1, 2003?," and the question is approved by a majority of all votes cast on the question at the election.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 29.318 of the statutes is created to read:

1 **29.318 Hunting doves. (1)** Notwithstanding s. 29.001 (42), in this section
2 "hunt" means to shoot, shoot at, take, capture, or kill, or pursue for the purpose of
3 shooting, shooting at, taking, capturing, or killing.
4 **(2)** The department may not establish or authorize an open season for the
5 hunting of mourning doves and no person may hunt mourning doves at any time.
6 **SECTION 2. Nonstatutory provisions.**
7 (1) REFERENDUM. There shall be submitted to the vote of the electors at the
8 general election in November 2002 the following question: "Shall section 1 of 2001
9 Wisconsin Act .... (this act), which prohibits the hunting of mourning doves, become
10 law effective January 1, 2003?." If the question is approved by a majority of all votes
11 cast on the question at the election, SECTION 1 of this act shall become law; otherwise,
12 SECTION 1 of this act shall not take effect.
13 **SECTION 3. Effective dates.** This act takes effect on the day after publication,
14 except as follows:
15 (1) The treatment of section 29.318 of the statutes takes effect on January 1,
16 2003, if the condition set forth in SECTION 2 (1) of this act is satisfied.
17 **(END)**

History of Senate Bill 45

SENATE BILL 45
An Act to create 29.318 of the statutes; relating to: prohibiting the hunting of the bird that is the symbol of peace for this state.

2001

02-07. S. Introduced by Senators Moen, Burke, Risser, Jauch and George; cosponsored by Representatives Boyle, Richards, Reynolds, Schneider, Pocan, Gronemus, Carpenter, Williams, Riley, Colon and Berceau.

02-07. S. Read first time and referred to committee on Environmental Resources 59

03-22. S. Public hearing held.

2002

03-20. S. Failed to pass pursuant to Senate Joint Resolution 1 652

Search for another history

Back to Legislation Page

Back to Legislature Home Page

DNR-Ap. 135

History of Assembly Bill 190

ASSEMBLY BILL 190
An Act to create 29.318 of the statutes; relating to: prohibiting the hunting of the bird that is the symbol of peace for this state.

2001

03-08. A. Introduced by Representatives Boyle, Schneider, Carpenter, Richards, Pocan, Sinicki, Berceau, Reynolds, Cullen, Colon, Gronemus, Williams and Riley; cosponsored by Senators Moen, Burke, Risser, George and Jauch.

03-08. A. Read first time and referred to committee on Natural Resources 132

2002

03-26. A. Failed to pass pursuant to Senate Joint Resolution 1 810

Search for another history

Back to Legislation Page

Back to Legislature Home Page

History of Assembly Bill 859

ASSEMBLY BILL 859
An Act to create 29.318 of the statutes; relating to: prohibiting the hunting of mourning doves and requiring a referendum. (FE)
2002

02-26. A. Introduced by Representatives Boyle, Richards, Sinicki, Reynolds, Schneider, Pocan and Berceau.
02-26. A. Read first time and referred to committee on Natural Resources 681
03-26. A. Failed to pass pursuant to Senate Joint Resolution 1 810

Search for another history

Back to Legislation Page

Back to Legislature Home Page

DNR-Ap. 137

STATE OF WISCONSIN
SUPREME COURT

WISCONSIN CITIZENS
CONCERNED FOR CRANES AND
DOVES, JOHN WIENEKE
AND PAT FISHER,

Plaintiffs-Respondents-Petitioners,

vs.

Appeal No. 02-1166
Circuit Court No.
01CV1616

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Defendant-Appellant,

and

U.S. SPORTSMEN'S ALLIANCE
FOUNDATION f/k/a WILDLIFE
LEGISLATIVE FUND OF AMERICA

Defendant-Intervenor-Co-Appellant.

U.S. SPORTSMEN'S ALLIANCE FOUNDATION'S RESPONSE BRIEF

Review of a Decision of the Wisconsin Court of Appeals,
District IV, Reversing a Dane County Circuit Court Decision,
The Honorable Daniel R. Moeser, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES 1

POSITION ON ORAL ARGUMENT AND PUBLICATION 1

INTRODUCTION 2

STATEMENT OF THE CASE 4

STANDARD OF REVIEW 6

ARGUMENT 9

I. WISCONSIN ADMINISTRATIVE CODE SECTION NR 10.01(1)(h) IS CONSISTENT WITH THE PLAIN LANGUAGE AND LEGISLATIVE INTENT OF CHAPTER 29. 9

A. Wisconsin Statute Sections 29.014(1) and 29.001(33) in Conjunction Authorize DNR to Set Open and Closed Seasons for the Mourning Dove. 10

B. The Mourning Dove is Both a "Game" and a "Nongame Species" under Chapter 29. 11

C. Wisconsin Statute Section 29.039(1) Provides DNR Further Authority to Establish Open and Closed Seasons for the Mourning Dove. 14

D. Conflicting Decisions by Courts Do Not Indicate Ambiguity. 16

II. EVEN IF THIS COURT FINDS AMBIGUITY IN CHAPTER 29, THE STATUTE'S LEGISLATIVE HISTORY SUPPORTS THE AUTHORITY OF DNR TO ESTABLISH A DOVE SEASON. 19

III. THIS COURT SHOULD DEFER TO DNR'S REASONABLE INTERPRETATION OF THE STATUTE. 22

IV. THE RECENTLY RATIFIED "RIGHT TO HUNT" AMENDMENT TO THE WISCONSIN CONSTITUTION REINFORCES DNR'S AUTHORITY TO SET OPEN AND CLOSED SEASONS FOR THE MOURNING DOVE. 24

A. The Plain Meaning of the "Right To Hunt" Amendment Underscores DNR's Authority to Issue Wisconsin Administrative Code Section NR 10.01(1)(h). 25

1. The "Right to Hunt" Amendment's Plain Meaning Supports Construing "Take" and "Hunt" as Subsets of One Another. 27

2. The Amendment's Plain Meaning Does Not Conflict with other State and Federal Regulations Involving the Mourning Dove. 28

B. The Circumstances Surrounding the Enactment of the "Right To Hunt" Amendment Confirms DNR's Authority to Issue Wisconsin Administrative Code Section NR 10.01(1)(h). 31

C. Legislation Passed after the "Right To Hunt" Amendment Does Not Contradict DNR's Authority to Issue Wisconsin Administrative Code Section NR 10.01(1)(h). 34

CONCLUSION 35

FORM AND LENGTH CERTIFICATION

CERTIFICATE OF FILING AND SERVICE

TABLE OF AUTHORITIES

CASES

Anderson v. City of Milwaukee
208 Wis. 2d 18, 559 N.W.2d 563 (1997)..... 8, 9, 19, 20, 21

Appointment of Counsel in State v. Wittig
198 Wis. 2d 1, 542 N.W.2d 458 (Ct. App. 1995)..... 6

Citizens Utility Bd. v. Public Serv. Comm'n
211 Wis. 2d 537, 565 N.W.2d 554 (Ct. App. 1997)..... 7, 23

City of Milwaukee v. Kilgore
193 Wis. 2d 168, 532 N.W.2d 690 (1995)..... 12, 14

Cook v. Cook
208 Wis. 2d 183, 560 N.W.2d 246 (1997)..... 7

Cook v. Industrial Comm'n
31 Wis. 2d 232, 142 N.W.2d 827 (1966)..... 21

DeBeck v. DNR,
172 Wis. 2d 382, 493 N.W. 2d 234 (Ct. App. 1992)..... 24

Dodgeland Educ. Ass'n. v. WERC
2002 WI 22, 250 Wis. 2d 357, 639 N.W.2d 733 7

Estate of Cameron
249 Wis. 531, 25 N.W.2d 504 (1946)..... 21

Harnischfeger Co. v. LIRC
196 Wis. 2d 650, 539 N.W.2d 98 (1995)..... 7, 16, 17, 18, 19

Hirsch v. S.C. Johnson, Inc.
90 Wis. 2d 379, 280 N.W.2d 129 (1979)..... 33

In re Isaac J.R.
220 Wis. 2d 251, 582 N.W.2d 476
(Ct. App. 1998) 8, 9, 19

Knight v. LIRC
220 Wis. 2d 137, 582 N.W.2d 448
(Ct. App. 1998) 8, 22

League of Wis. Municipalities v. Dep't of Commerce
2002 WI App 137, 256 Wis. 2d 183,
647 N.W.2d 301 ..... 7, 9, 10, 23

Mallo v. Wis. Dep't of Revenue
2002 WI 70, 253 Wis. 2d 391,
645 N.W.2d 853 ..... 12, 16, 21, 22

National Amusement Co. v. Dep't of Taxation
41 Wis. 2d 261, 163 N.W.2d 625 (1969) 17

Seider v. O'Connell
2000 WI 76, ¶ 73, 236 Wis. 2d 211, 247,
612 N.W.2d 659 ..... 6, 7, 8, 9, 19, 21

State ex rel. Cramer v. Schwarz
2000 WI 86, 236 Wis.2d 473, 613 N.W.2d 591 19

State ex rel. Ehern v. Zimmerman
187 Wis. 180, 204 N.W.803 (1925) 33

State v. Cole
2003 WI 112, 264 Wis. 2d 520, 530, 665 N.W.2d 328 31

State v. Harvey
2001 WI App 59, 242 Wis.2d 189, 625 N.W.2d 892 33

State v. Nergaard
124 Wis. 414, 102 N.W. 899 (1905) 18, 33

State v. Pratt
36 Wis. 2d 312, 153 N.W.2d 18 (1967) 17

State v. Setagord
211 Wis. 2d 397, 565 N.W.2d 506 (1997) 8, 18

Wagner v. Milwaukee County Election Comm'n
2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816 25

WEPCO v. Public Serv. Comm'n
110 Wis. 2d 530, 329 N.W.2d 178 (Wis. 1983) 7

Wisconsin Concerned Citizens v. DNR
2003 WI App 76, 263 Wis. 2d 370,
661 N.W.2d 858 ..... passim

STATUTES AND REGULATIONS

Wis. Admin. Code § NR 10.01(1)(h) ..... passim

Wis. Admin. Code § NR 10.08(5) 17

Wis. Stat. § 29.001(33) 10

Wis. Stat. § 29.001(42) 14

Wis. Stat. § 29.001(60) 11

Wis. Stat. § 29.014(1) ..... passim

Wis. Stat. § 29.039(1) ..... passim

Wis. Stat. § 29.604 28

Wis. Stat. § 29.604(2)(B) 29

Wis. Stat. § 29.604(4) 29

Wis. Stat. § 169.01 34

Wis. Stat. § 169.01(34) 34

Wis. Stat. § 227.19(4) 21

Wis. Stat. § 227.40 6

Wis. Stat. § 227.40(4)(a) 6

CONSTITUTION

WIS. CONST., Art. 1, § 26 ..... passim

Endangered Species Act of 1973 29

Migratory Bird Treaty Act
16 U.S.C. § 703 ..... 4, 30

50 C.F.R. Part 20 ..... 4, 30

OTHER SOURCES

Bulletin of the Proceedings of the
Wis. Legislative 1999-2000 Session 5, 20

Legislative Brief 02-3 33

Minutes, Natural Resource Board Meeting,
May 23-24, 2000 ..... passim

New Webster's Dictionary (1993) 25

Milwaukee Journal Sentinel, "*The right to hunt, fish, trap*" 33

United States Fish and Wildlife Serv.
Mourning Dove Population, 2003 29

STATEMENT OF ISSUES

1. Did the Department of Natural Resources ("DNR") act within its authority under Wisconsin Statute section 29.014(1) when it promulgated Wisconsin Administrative Code section NR 10.01(1)(h) establishing open and closed hunting seasons for the mourning dove?

Court of Appeals: Yes.

Circuit Court: No.

2.. Does the recent amendment to Wisconsin Constitution article I, section 26 (the "Right to Hunt" amendment), which provides that "The people have the right to fish, hunt, trap and take game subject only to reasonable restrictions as prescribed by law" support DNR's authority to issue Wisconsin Administrative Code section NR 10.01(1)(h) establishing open and closed hunting seasons for the mourning dove?

Not addressed below.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Defendant Intervenor U.S. Sportsmen's Alliance Foundation ("USSAF") requests oral argument and acknowledges that oral argument has been scheduled in this case on January 15, 2004 at 9:45 a.m. USSAF also requests that the opinion be published, as it will confirm the extent of

DNR's authority, particularly in light of the new constitutional right to hunt.

INTRODUCTION

This case involves Wisconsin Concerned Citizens for Cranes and Doves' ("WCCCD's") challenge to DNR's authority under Wisconsin Statute Chapter 29 to issue a rule setting a hunting season for the mourning dove. Chapter 29 articulates a comprehensive scheme for regulating the enjoyment, use, disposition and conservation of all wild animals. WCCCD, however, attempts to insert ambiguity in Chapter 29's clear mandate through lengthy analyses of unrelated statutes and conjecture as to the statute's legislative intent. WCCCD, however, ignores the clearest manifestation of the legislative intent: the statute's plain language.

While the circuit court[1] looked beyond the language of the statute to find ambiguity, the court of appeals[2] overturned that decision. The court of appeals ruled that the plain language of Chapter 29 unequivocally authorized DNR to set a dove hunting season and that DNR's dove hunting rule is consistent with both the language and legislative intent of Wisconsin Statute Chapter 29. While disagreeing with the majority's plain meaning

[1] WCCCD v. DNR (Dove I), Case No. 1 CV 1616 (January 14, 2002).

analysis, even the dissenting judge recognized that the recent "Right to Hunt" amendment to the Wisconsin Constitution would confirm DNR's authority to set hunting seasons for the mourning dove.

The court of appeals carefully examined the plain language in Chapter 29, as well as the distinctions, purposes, and interplays between various provisions of that Chapter and reached two conclusions. First, the court of appeals concluded that the mourning dove is "game" for purposes of section 29.014(1), which authorizes DNR to establish a hunting season for "game." Second, the court of appeals concluded that the mourning dove is a "nongame species" for purposes of section 29.039(1), which authorizes DNR to set restrictions on the taking of "nongame species" and that "taking" includes "hunting."

The court of appeals also recognized that while citizens are free to disagree with policy decisions made by the legislative or executive branches, the judiciary may not be used to alter that policy. Consequently, this case is not about whether there should be a dove hunting season. It is simply whether there can be such a season in Wisconsin. A plain language analysis of the provisions of Chapter 29 results in a resounding "Yes."

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[2] WCCCD v. DNR ("Dove II"), 2003 WI App 76, 263 Wis. 2d 370, 661 N.W.2d 858.

STATEMENT OF THE CASE

On May 1, 2001, DNR, pursuant to its rule-making authority, established a limited and controlled mourning dove hunting season in the State of Wisconsin. Wis. Admin. Code § NR 10.01(1)(h) (also referred to as the "dove hunting rule"). *See* US-App. at 103. The dove hunting rule set daily bag and possession limits consistent with federal migratory bird hunting standards.[3] *See* US-App. at 104. In exercising its authority to manage the mourning dove in this manner, DNR evaluated numerous scientific studies and surveys of the mourning dove and reviewed thousands of public comments. *See Minutes from Natural Resources Board Meeting,* (May 23-24, 2000) (*"Board Minutes"),* US-App. at 114-123. Among the information DNR reviewed was material submitted by the Bureau of Wildlife Management demonstrating that the proposed dove season would not negatively impact the dove population in Wisconsin nor have an

[3] Doves are hunted in at least 37 states pursuant to applicable state laws and the federal Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712 and related regulations, 50 C.F.R. Part 20. The U.S. Fish and Wildlife Service estimated that the annual dove population in the fall migration exceeds 400 million and that the proposed Wisconsin dove hunt would harvest approximately 200,000 doves out of a migrating population of 5.2 million. *See* Minutes from Natural Resources Board Meeting, (May 23-24, 2000) ("Board Minutes"), US-App. at 118, 115.

adverse impact on the continental mourning dove population. *See id.,* US-App. at 115.

In addition to scientific evaluations, DNR held public hearings on the proposed rule in all 72 counties of Wisconsin. Over 21,000 of the 30,000 attendees of these hearings supported creating a dove hunting season. *See id.* Petitioners Pat Fisher and John Wieneke testified against the rule at these rulemaking hearings. *See id.,* US-App. at 119.

In 2002, pursuant to Wisconsin Statute section 227.19, DNR submitted the proposed dove hunting rule to the Assembly Committee on Natural Resources and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform for review. *See Bulletin of the Proceedings of the Wisconsin Legislature,* (Period Ending Jan. 1, 2001, 1999-2000 Session), US-App. at 125. While hearings on the proposed rule were held in both committees, neither committee acted to modify, alter or suspend the proposed rule. *See id.*, US-App. at 126.

In 2001, the legislature rejected three bills that would have prohibited the dove hunt. *See* 2001 S.B. 45, 2001 A.B. 190, and 2001 A.B. 859, US-App. at 131-139. Moreover, between 2001 and 2003, the legislature passed legislation to amend the Wisconsin Constitution to

guarantee the people of Wisconsin the "right to fish, hunt, trap and take game subject only to reasonable restrictions as provided by law." *See* J. Res., US-App. at 140-147. The "Right to Hunt" amendment was enacted pursuant to an overwhelming vote in a statewide referendum in 2003. Wis. Const. art. I, § 26. *See* US-App. at 148.

STANDARD OF REVIEW

Judicial review of an administrative rule's validity is determined under Wisconsin Statute section 227.40(4). *See Appointment of Counsel in State v. Wittig*, 198 Wis. 2d 1, 6, 542 N.W.2d 458 (Ct. App. 1995). Section 227.40 provides that a court may invalidate a DNR rule only if the rule (1) violates the constitution, (2) exceeds DNR's statutory authority, or (3) was adopted in violation of statutory rulemaking procedures. Wis. Stat. § 227(40)(4)(a).

To determine whether the DNR exceeded its statutory authority under Wisconsin Statute Chapter 29 when it issued Wisconsin Administrative Code section NR 10.01(1)(h) establishing open and closed seasons for the mourning dove, this Court must determine whether section NR 10.01(1)(h) contradicts the language or legislative intent of Chapter 29. *Seider v. O'Connell,* 2000 WI 76, ¶ 73, 236 Wis. 2d 211, 612 N.W.2d 659.

A court will invalidate an administrative rule only if the court "is convinced that it contravenes an unambiguous statutory requirement or a clear expression of legislative intent . . . ." *League of Wis. Municipalities v. Dep't of Commerce*, 2002 WI App 137, ¶ 10, 256 Wis. 2d 183, 647 N.W.2d 301. The party challenging the rule (*i.e.*, WCCCD) has the burden to demonstrate to the court that the agency exceeded its statutory authority in issuing the rule.[4] *See id.*; *Harnischfeger Co. v. LIRC*, 196 Wis. 2d 650, 661, 539 N.W.2d 98 (1995).

In interpreting a statute, a court's ultimate goal is to determine the intent of the legislature. *Dodgeland Educ. Ass'n. v. WERC,* 2002 WI 22, ¶ 21, 250 Wis. 2d 357, 376, 639 N.W.2d 733. Courts first look to the plain meaning. *Id.* If a statute is clear on its face, courts will not look beyond the language of the statute for meaning. *WEPCO v. Public Serv. Comm'n,* 110 Wis. 2d 530, 534, 329 N.W.2d 178 (Wis. 1983). If the language of the

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[4] WCCCD disputes having the burden, as the challenger, to prove that Wisconsin Administrative Code section NR 10.01(1)(h) contravenes Chapter 29 or legislative intent. Yet, the court of appeals in *League of Wis.* squarely held that the burden is on the party seeking to invalidate the rule. The fact that the *League of Wis.* court "compares" *Citizens' Utility Bd. v. Public Serv. Comm'n*, 211 Wis. 2d 537, 552-53, 565 N.W.2d 554 (Ct. App. 1997), which involves mixed issues of laws and fact, does not alter the force or effect of the *League of Wis.* conclusion. Cognizant of *League of Wis.*, the court of appeals was bound to follow it in *Dove II. See Cook v. Cook*, 208 Wis. 2d 183, 560 N.W.2d 246 (1997) (court of appeals bound to follow published decisions of court of appeals, until modified or overruled by supreme court).

statute is unclear or ambiguous, a court will examine its scope, history, context, subject matter and purposes to determine the legislature's intent. *See Anderson v. City of Milwaukee*, 208 Wis. 2d 18, 25, 559 N.W.2d 563 (1997). A statute is ambiguous when reasonably well-informed persons can interpret the language differently, *see In re Isaac J.R.*, 220 Wis. 2d 251, 256, 582 N.W.2d 476 (Ct. App. 1998), but a disagreement between two courts or litigants does not automatically mean there is ambiguity. *State v. Setagord,* 211 Wis. 2d 397, 565 N.W.2d 506 (1997) Courts should resolve statutory ambiguities to advance the legislature's basic purpose in enacting the legislation. *Anderson*, 208 Wis. 2d at 26. If the statute is ambiguous, the court may look to the interpretation of the administrative agency that has been charged with enforcing the statute. *Knight v. LIRC,* 220 Wis. 2d 137, 155, 582 N.W.2d 448 (Ct. App. 1998).

Courts independently review whether authority exists to adopt an administrative rule, but benefit from the experience and analysis of the agency empowered by the legislature to administer the laws it enacts. *Seider*, 2000 WI 76, ¶¶ 26-27. More specifically, an agency's decision to adopt a rule is entitled to a "measure of judicial deference" if the agency has "(1) 'engaged in extensive rule-making proceedings before

promulgation of its final rules'; (2) 'held several hearings around the state'; and (3) 'received numerous comments about its draft rules, including comments about the central issue in this case.'" *League of Wis.*, 2002 WI App 137, ¶ 8 n. 4, citation omitted.

ARGUMENT

I. WISCONSIN ADMINISTRATIVE CODE SECTION NR 10.01(1)(h) IS CONSISTENT WITH THE PLAIN LANGUAGE AND LEGISLATIVE INTENT OF CHAPTER 29.

The court of appeals held as a matter of law that Wisconsin Statute Chapter 29 clearly authorized DNR to adopt Wisconsin Administrative Code section NR 10.01(1)(h) establishing open and closed seasons for the mourning dove. Specifically, the court of appeals determined that WCCCD could not meet its burden to prove that section NR 10.01(1)(h) contravenes the plain language or intent of Chapter 29. *Dove II*, 2003 WI App 76, ¶ 22-23. This Court's independent review likewise will affirm that the plain language and intent of section 29.014(1) and other provisions within Chapter 29 demonstrate that DNR possesses authority to set open and closed seasons for the mourning dove, and that Wisconsin Administrative Code section NR 10.01(1)(h) is valid.

A. Wisconsin Statute Sections 29.014(1) and 29.001(33) in Conjunction Authorize DNR to Set Open and Closed Seasons for the Mourning Dove.

The court of appeals correctly determined that Wisconsin Statute sections 29.014(1) and 29.001(33) in conjunction authorized the DNR to promulgate the mourning dove hunting rule. *See Dove II,* 2003 WI App 76, ¶ 8. DNR's rule-making authority is set forth in Section 29.014(1), which authorizes the DNR to:

> establish and maintain *open and closed seasons* for fish and game . . . and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this State continued opportunities for good fishing, *hunting* and trapping.

(Emphasis added). Section 29.001(33) defines the term "game" to include "all varieties of wild mammals or birds." Because the mourning dove is a "wild bird" the mourning dove is "game" for purposes of section 29.014(1).

The court of appeals concluded that the plain meaning of sections 29.014(1) and 29.001(33) unequivocally establishes DNR's authority to set open and closed seasons for the mourning dove. However, to confirm that other provisions of Chapter 29 do not create ambiguity in sections 29.014(1) and 29.001(33), the court of appeals proceeded to examine the allegedly "related" provisions advanced by WCCCD. *Dove II*, 2003 WI App 76, ¶ 9.

B. The Mourning Dove is Both a "Game" and a "Nongame Species" under Chapter 29.

The fact that the mourning dove is regulated under both Wisconsin Statute sections 29.014(1) (as "game") and 29.039(1) (as a "nongame species") does not render the statute ambiguous or limit DNR's authority to set a hunting season for the mourning dove. As discussed above, the mourning dove is a wild bird and, therefore, "game" under section 29.001(33). The mourning dove also is a "nongame species" under section 29.001(60), which is defined as "any species of wild animal not classified as a game fish, game animal, game bird or fur-bearing animal." Because the mourning dove is not listed in the definition of "game bird" in section 29.001(39), it is a "nongame species."

As "game," the mourning dove is subject to Wisconsin Statute section 29.014(1) and DNR is authorized to establish a hunting season for it. As a "nongame species," the mourning dove is subject to section 29.039(1) and DNR is authorized to investigate; develop conservation programs for; require harvest information on; and regulate the taking, possession, transportation, processing or sale of the mourning dove.

At issue is DNR's authority to set a hunting season for the mourning dove. Therefore, this court must look to section 29.014(1) to determine

DNR's authority. In that section, the legislature chose to use the term "game" in delineating DNR's authority to regulate hunting. As explained above, the legislature broadly defined "game" to encompass all "wild birds," including the mourning dove. When drafting statutes, the legislature usually chooses words very carefully. *Mallo v. Wis. Dep't of Revenue*, 2002 WI 70, ¶ 26, 253 Wis. 2d 391, 645 N.W.2d 853. Therefore, the legislature clearly intended to extend DNR's authority to establish hunting seasons to include the mourning dove.

The fact that DNR may also regulate the mourning dove under section 29.039(1) by, for instance, requiring harvesting information on the dove, does not alter DNR's authority under section 29.014(1). In fact, the two statutes complement one another. Moreover, even if the two statutes could be read as conflicting with one another, courts will read the statutes to avoid such conflict. *See City of Milwaukee v. Kilgore*, 193 Wis. 2d 168, 184, 532 N.W.2d 690 (1995)(multiple statutes are to be read together so as to give each full force and effect). DNR's and USSAF's plain meaning interpretation properly harmonizes sections 29.014(1) and 29.039(1).

WCCCD urges this Court to ignore these well-established rules of statutory construction. It asks this Court instead to read conflict into

Wisconsin Statute sections 29.014(1) and 29.039(1) and then defer to section 29.039(1), which WCCCD argues is the more specific statute and only allows the "taking" and not the "hunting" of "nongame species." Yet, as explained above, there is no conflict between these two provisions and, therefore, no need to defer to one provision over the other. Even if this Court concludes that sections 29.014(1) and 29.039(1) somehow conflict, the issue before this Court is whether DNR has authority under Chapter 29 to establish a "hunting" season for the mourning dove. To answer that question, Wisconsin Statute section 29.014(1), which expressly and specifically covers DNR's authority to set hunting seasons for game, is the more specific statute.

Section 29.039(1) does not limit DNR's authority under section 29.014(1). If the legislature had intended to limit DNR's authority to set open and closed seasons for "nongame species" it had several options. It could have applied the narrower terms "game animals" or "game birds" in section 29.014(1), or could have specifically excluded "nongame species" from section 29.014(1). However, the legislature did none of those things. Consequently, the legislative purpose remains plain – the legislature did not intend section 29.039(1) to limit DNR's authority to set open and closed

seasons under section 29.014(1). This interpretation properly harmonizes the allegedly conflicting provisions in sections 29.014(1) and 29.039(1).

C. Wisconsin Statute Section 29.039(1) Provides DNR Further Authority to Establish Open and Closed Seasons for the Mourning Dove.

The plain language of Wisconsin Statute section 29.039(1), which governs the regulation of "nongame species," provides DNR further authority to establish open and closed seasons for the mourning dove. Section 29.039(1) provides in relevant part that:

> The department may develop conservation programs to ensure the perpetuation of nongame species. The department may require harvest information and may establish limitations relating to *taking*, possession, transportation, processing and sale or offer for sale, of nongame species.

(Emphasis added).

Thus, section 29.039(1) authorizes the DNR to establish limits related to "taking" of "nongame species." While "taking" is not defined in the statute, it is listed among the activities that constitute "hunting." The term "hunting" is defined to include "pursuing, *taking*, capturing or *killing* . . . any wild animal." Wis. Stat. § 29.001(42) (emphasis added).

The court of appeals recognized that section 29.039(1) authorizes DNR to confine the "taking" of the mourning dove to certain days of the year. The court's practical assessment was that it "simply makes no sense

to say that persons who wish to 'take' the doves during those days may not 'shoot[] at' or 'attempt[] to capture or kill' the birds, that is, 'hunt' them." *Dove II*, 2003 WI App 76, ¶ 19. Similarly, it makes no sense to say that DNR may collect "harvest" information, but not allow for the "harvesting" of "nongame species."

If the legislature intended to exclude "hunt" as a subset of "take," it would have provided a statutory definition providing that "take" does not include "hunt." However, the legislature did not do this. Rather it used the term "take" along with "hunt," "trap," and "fish." As a result, "[t]he undefined term "taking" as used in Chapter 29 thus appears to include, not preclude, such activities as "fishing, hunting and trapping." *Dove II*, 2003 WI App 76, ¶ 19. Indeed, in the hunting context "take" must include "hunt." The only lawful way to possess game is to "kill" that animal pursuant to a valid hunting license. *See* Wis. Admin. Code § NR 10.08(5) ("no person may possess any live game"). To possess a wild animal while it is alive requires a "captive animal" license under Wisconsin Statute Chapter 169.

To accept WCCCD's interpretation would render the terms "take," "hunt," "trap" and "fish" mutually exclusive, which is an unreasonable

construction as "trapping" and "fishing" certainly involve "taking." Moreover, under the canon of construction *noscitur a socis,* a word takes some of its meaning from the words with which it is used. Because the terms "hunt" and "take" are listed together, the terms derive meaning from one another and, therefore, unless specifically defined otherwise, "take" should be construed to include "hunt" and vice versa.

For all the reasons set forth above, the plain language of Chapter 29 confers on DNR authority to set open and closed hunting seasons for mourning dove as "game" under section 29.014(1) and as a "nongame species" under section 29.039(1).

D. Conflicting Decisions by Courts Do Not Indicate Ambiguity.

WCCCD spends several pages of its brief trying to create a presumption of ambiguity, simply because the court of appeals overruled the circuit court. *See* WCCCD Br. at 10-18. But that is not the state of Wisconsin jurisprudence. While conflicting decisions by various decision-making bodies may be indicative that a statute may support more than one reasonable interpretation, *Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650, 662, 539 N.W.2d 98 (1995), such conflicting decisions do not render the statute ambiguous *per se*. *See Mallo,* 2002 WI 70, ¶ 18 (reversing circuit

court decision that statute was ambiguous and applying plain meaning of statute). This Court has already confirmed that a disagreement as to the meaning of a statute, whether it be the parties or judges who disagree, does not *ipso facto* render the statute ambiguous. *State v. Setagord*, 211 Wis. 2d at 406-08.

Courts look to the "language of the statute itself to determine if 'well-informed persons' should have become confused." *National Amusement Co. v. Dep't of Taxation*, 41 Wis. 2d 261, 267, 163 N.W.2d 625 (1969). If the language is clear, a "court is not at liberty to disregard the plain, clear words of the statute." *Id.* at 268 (citing *State v. Pratt,* 36 Wis. 2d 312, 317, 153 N.W.2d 18 (1967)). Because the language in Wisconsin Statute section 29.014(1) is clear, the court of appeals was bound to apply the plain meaning, and its decision should be affirmed.

Moreover, even under the *Harnischfeger* analysis, conflicting decisions are only indicative of ambiguity when such decisions involve a "reasonable" interpretation of the statute. The circuit court's decision in this case, however, is not a reasonable interpretation of section 29.014(1). Rather, the circuit court disregarded the plain meaning of that statute; sought ambiguity in construing sections 29.014(1) and 29.001(33) and

other provisions of the statute; erroneously relied on dictionary definitions or meanings of "game" and "nongame" rather than applying the statutory definitions provided by the legislature; and failed to recognize that the DNR has the authority to establish hunting seasons for the mourning dove as "nongame species" under section 29.039(1) as well as "game" under section 29.014(1). Moreover, the circuit court's and WCCCD's interpretation that Chapter 29 does not authorize DNR to set "open" seasons for "nongame species" including the mourning dove, also would remove DNR's authority to set "closed" seasons on "nongame species." Because this reading would remove state regulation of hunting and taking of the mourning dove[5], it is an unreasonable interpretation of Chapter 29, and must be rejected.

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[5] *See State v. Nergaard,* 124 Wis. 414, 420, 102 N.W. 899 (1905)("In the absence of legislation, the citizen may doubtless pursue, take and dispose of fish and game as he sees fit, and without restraint . . . (until the state issues regulations limiting such activities.)").

II. EVEN IF THIS COURT FINDS AMBIGUITY IN CHAPTER 29, THE STATUTE'S LEGISLATIVE HISTORY SUPPORTS THE AUTHORITY OF DNR TO ESTABLISH A DOVE SEASON.

Even if this Court were to find ambiguity within Wisconsin Statute Chapter 29, an examination of the statute's legislative history demonstrates an intent to authorize DNR to set open and closed seasons for the mourning dove. If the language of the statute is unclear, a court must examine its scope, history, context, subject matter and purposes to determine the legislature's intent. *See Anderson*, 208 Wis. 2d at 25. A statute is ambiguous when reasonably well-informed persons can interpret the language differently. *In re Isaac J.R.*, 220 Wis. 2d at 256. A court should resolve statutory ambiguities to advance the legislature's basic purpose in enacting the legislation. *Anderson*, 208 Wis. 2d at 25. Even if a statute is clear, a reviewing court may consult legislative history, in order to verify that the court's understanding conforms with the legislative history. *State ex rel. Cramer v. Schwarz*, 2000 WI 86, ¶ 37, 236 Wis. 2d 473, 613 N.W.2d 591; *Seider,* 2000 WI 76, ¶ 51 ("Although the [plain meaning rule] prevents courts from tapping legislative history to show that an unambiguous statute is ambiguous, there is no converse rule that statutory history cannot be used

to reinforce and demonstrate that a statute plain on its face, when reviewed historically, is indeed unambiguous.").

The Wisconsin Legislature intended to grant DNR broad authority to manage Wisconsin's wildlife. Wisconsin Statute section 227.19(4) provides for legislative review of administrative rules and allows the legislature to: (1) review and object to; (2) ask for changes in; or (3) suspend the administrative rule. *See* Wis. Stat. § 227.19(4). Despite this power to reject administrative rules, upon review of Wisconsin Administrative Code section NR 10.01(1)(h), committees in both houses of the legislature (Senate Committee on Agriculture, Environmental Resources, and Campaign Finance Reform and Assembly Committee on Natural Resources) held public hearings on the rule and took no action to alter, amend or suspend the rule. *See Bulletin of the Proceedings of the Wisconsin Legislature, Administrative Rules* pp. 87-88 (Period Ending Jan. 1, 2001, 1999-2000 Session, US-App. at 126.

The legislature's affirmative decision not to take action pursuant to Chapter 227, demonstrates the legislature's ratification of Wisconsin Administrative Code section NR 10.01(1)(h). "Under proper circumstances, a subsequent repudiation of a decision or inaction by the

legislature may be evidence of legislative intent." *See Mallo,* 2002 WI 70, ¶ 31 (deriving legislative intent from legislature's failure to take action to change or modify a proposed rule "even though legislators knew of, and some of them actually funded, a challenge to the emergency rule")(citing *Estate of Cameron*, 249 Wis. 531, 542, 25 N.W.2d 504 (1946)). Similarly here, the legislature was well aware of the highly publicized dove hunting rule.

The legislature's failure to adopt legislation overturning the rule also is indicative of its intent. *See Cook v. Industrial Comm'n*, 31 Wis. 2d 232, 243, 142 N.W.2d 827 (1966) (holding that the legislature "actively indicated that it approved the construction placed on [the statute]" by failing to pass bills that would change the construction of the statute). The legislature has rejected all proposed legislation since the issuance of section NR 10.01(1)(h) that would prohibit the hunting of the mourning dove. *See* 2001 S.B. 45; 2001 A.B. 190; 2001 A.B. 859, US-App. at 131-139.

Moreover, in the months leading up to the court of appeals decision, legislative affirmance of DNR's authority to set open and closed seasons for the mourning dove has increased. Between 2001 and 2003, two successive legislatures adopted resolutions to amend Article I, Section 26

of the Wisconsin Constitution to guarantee the citizens "the right to fish, *hunt*, trap, and *take game.*" *See J. Res.*, US-App. at 140-147. Those resolutions were overwhelmingly approved in a statewide referendum in April 2003. *See* Wis. Const., art. I § 26, US-App. at 148. By amending the constitution to ensure citizens' "right to hunt game," there is no doubt that the legislature intended to grant DNR broad authority to set open and closed seasons for the mourning dove.

In sum, the legislature's decisions to (1) issue the rule after hearing testimony from both sides of the issue; (2) reject three proposals to overturn the rule; and (3) enact legislation after the rule to make "hunting" a constitutional right, manifest its intent to grant DNR authority to set open and closed hunting seasons for the mourning dove.

III. THIS COURT SHOULD DEFER TO DNR'S REASONABLE INTERPRETATION OF THE STATUTE.

This Court should accord a measure of judicial deference to DNR's reasonable interpretation of Wisconsin Statute Chapter 29. *See Knight v. LIRC*, 220 Wis. 2d at 155, ("If a statute is ambiguous, and if an administrative agency has been charged with enforcement of the statute, this court may look to the agency interpretation."). An agency's decision to

adopt a rule is entitled to a "measure of judicial deference" if the agency has "(1) 'engaged in extensive rule-making proceedings before promulgation of its final rules'; (2) 'held several hearings around the state'; and (3) 'received numerous comments about its draft rules, including comments about the central issue in this case.'" *League of Wis.*, 2002 WI App 137, ¶ 8 n. 4, citation omitted.

Here, the legislature has empowered DNR to administer Wisconsin Statute Chapter 29. Moreover, prior to setting the dove season, DNR's experts analyzed scientific data including population, migration, and breeding of mourning doves, held public hearings on the proposed rule in all 72 counties of Wisconsin, and considered thousands of public comments, including testimony from Petitioners Pat Fisher and John Wieneke. *See Bd. Mins.*, US-App. at 114-123. Over 21,000 of the 30,000 attendees of these hearings supported creating a dove hunting season. *See id.*, US-App. at 115. Based upon its thorough review and analysis, DNR's experts determined that the dove hunt was appropriate and would result in only a 4% reduction of the mourning dove population. *See id.* Because DNR engaged in extensive proceedings and public meetings regarding Wisconsin Administrative Code section NR 10.01(1)(h), DNR's

interpretation of Chapter 29 is entitled to a "measure of judicial deference." The DNR properly interpreted section 29.014(1) to limit the establishment of open and closed seasons for the mourning dove and, therefore, this Court should adopt DNR's interpretation and affirm the court of appeals decision.[6]

IV. THE RECENTLY RATIFIED "RIGHT TO HUNT" AMENDMENT TO THE WISCONSIN CONSTITUTION REINFORCES DNR'S AUTHORITY TO SET OPEN AND CLOSED SEASONS FOR THE MOURNING DOVE.

In April 2003, a majority of Wisconsin voters approved, in a statewide referendum, the so-called "Right to Hunt" amendment to the Wisconsin constitution. The "Right to Hunt" amendment guarantees citizens of Wisconsin "the right to fish, *hunt*, trap, and take *game* subject only to reasonable restrictions as prescribed by law." *See* Wis. Const., art. I, § 26, US-App. at 148 (emphasis added)). The "Right to Hunt" amendment is wholly consistent with DNR's authority to regulate game under section 29.014(1), and further demonstrates the legislature's as well

[6] Because both Wisconsin Statute sections 29.014(1) and 29.039(1) provide ***explicit*** and unequivocal authority to DNR to regulate the "hunting" and "taking" of both "game" and "nongame species" in Wisconsin, WCCCD's reliance on *DeBeck v. DNR*, 172 Wis. 2d 382, 387, 493 N.W.2d 234 (Ct. App. 1992) — that "any doubts as to the *implied power* of an agency are to be resolved against the existence of authority" — has no bearing here. (Emphasis added.)

as the citizens' intent to grant DNR broad authority to regulate game, particularly the mourning dove, in the State of Wisconsin.

Constitutional provisions are reviewed *de novo*. *Wagner v. Milwaukee County Election Comm'n,* 2003 WI 103, ¶ 18 263 Wis. 2d 709, 666 N.W.2d 816. When interpreting a constitutional provision, courts look to the following: (1) "the plain meaning of the words in the context used; [2] constitutional debates and the practices in existence at the time of the writing of the constitution; and [3] the earliest interpretation of the provision by the legislature as manifested in the first law passed following adoption." *Id.* (citation omitted). Accordingly, these factors are addressed below.

A. The Plain Meaning of the "Right To Hunt" Amendment Underscores DNR's Authority to Issue Wisconsin Administrative Code Section NR 10.01(1)(h).

The amendment's plain meaning is straightforward: "The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law." Wis. Const., art. I, § 26. The "Right to Hunt" amendment does not define "game." However, the dictionary defines game as "wild animals or birds hunted for sport or food." New Webster's Dictionary (1993). Because the mourning dove is a wild bird

hunted for sport or food, the mourning dove constitutes "game" under the "Right To Hunt" amendment. Therefore, the plain language of the "Right to Hunt" amendment guarantees the citizens of Wisconsin the "right to hunt" the mourning dove ("game") subject only to reasonable regulation. Wisconsin Administrative Code section NR 10.01(1)(h) is such a reasonable regulation.

Moreover, the legislature was aware of the broad definition of "game" in Wisconsin Statute section 29.014 when it initiated the "Right to Hunt" amendment. Had the legislature wanted the people of Wisconsin to limit DNR's authority over "nongame species," its proposed amendment would have defined the term "game" more narrowly or would have expressly excluded "nongame species" from the amendment. The legislature did not do this.

WCCCD's attempt to characterize the "Right to Hunt" amendment as a "limiting" provision (*i.e.*, one that "allows" the legislature to "restrict" hunting) would turn the "Right to Hunt" amendment into a "Right to Restrict Hunting" amendment. Clearly this is contrary to the fundamental purpose and common sense understanding of the "Right to Hunt" amendment. Even Judge Dykman in his dissent recognized that the effect

of the amendment to Article I, Section 26 of the Wisconsin Constitution would shift the question "from whether a dove season is permitted to whether one is prohibited." *Dove II,* 2003 WI App 76, ¶ 25. In short, this Court should reject WCCCD's strained reading of the "Right to Amendment" as one that limits DNR's authority to regulate Wisconsin's wildlife.

1. The "Right to Hunt" Amendment's Plain Meaning Supports Construing "Take" and "Hunt" as Subsets of One Another.

WCCCD's argument that "hunt" and "take" are "constitutionally differentiated" activities and, therefore, "take" cannot include "hunt" is without merit. To accept WCCCD's interpretation would render the terms "take," "hunt," "trap" and "fish" mutually exclusive, which is an unreasonable construction. The terms "trapping" and "fishing" certainly involve "taking." Moreover, under the canon of construction *noscitur a socis* a word takes some of its meaning from the words with which it is used. Because the terms "hunt" and "take" are listed together, the terms derive meaning from one another and, therefore, unless specifically defined otherwise, "take" should be construed to include "hunt" and vice versa.

2. The Amendment's Plain Meaning Does Not Conflict with other State and Federal Regulations Involving the Mourning Dove.

WCCCD's argument that applying the plain meaning to the "Right To Hunt" amendment conflicts with regulations pertaining to endangered and threatened species and migratory birds is likewise flawed. First, WCCCD attempts to link the regulation of "nongame species" to that of "endangered and threatened species." WCCCD relies on a clause in a 25-year-old ***appropriations*** statute providing funds to "Nongame and endangered and threatened species conservation" and contends that the inclusion there of "nongame" species indicates the legislature's intent that "'nongame species" be linked to, and be of the same nature and scope as, its regulatory activities with respect to endangered and threatened species." *See* WCCCD Br. at 29. But the mere fact that that these categories of species were grouped together in an appropriations provision in 1977 does not establish the legislature's intent that "nongame species" be regulated as if they were "endangered" or "threatened" species.

In fact, a review of Wisconsin Statute section 29.604, which governs endangered and threatened species, disposes of WCCCD's thesis. First, section 29.604 does not relate to or make reference to the term "nongame

species." Second, the provision prohibiting "take" in that statute only covers wild animals included in the state's endangered and threatened species list, and the mourning dove is not on that list. Wis. Stat. § 29.604(4). As there are an estimated 400 million mourning doves in the United States, it is hardly a "threatened species."[7] *See United States Fish and Wildlife Service "Mourning Dove Population Status, 2003"* ("The mourning dove is one of the most widely distributed and abundant birds in North America"), US-App. at 151. Third, Wisconsin Statute section 29.039(1), which governs "nongame species" has no similar "take" prohibition.

While neither sections 29.604 or 29.039(1) define the term "take," the Endangered Species Act of 1973, 16 U.S.C. 1531-1544, 87 Stat. 884, as amended, Pub. L. 93-205, defines the term "take" to mean "harass, harm, pursue, *hunt, shoot*, wound, *kill*, capture, or collect . . . ." 16 U.S.C. § 1532(19)(emphasis added) ("ESA"). WCCCD would have this Court apply the dictionary definition of "take" throughout Chapter 29, including section 29.604, even though such interpretation contradicts the statutorily defined

[7] "Threatened species" are defined as "any species of wild animals . . . which appears likely, within the foreseeable future, on the basis of scientific evidence to become endangered." Wis. Stat. § 29.604(2)(b).

term "take" in the ESA. Thus, even if this Court decides to entertain WCCCD's unwieldy assertion that the legislature intended "nongame species" to be regulated the same way as "endangered and threatened species," an examination of both state and federal law governing endangered and threatened species confirm, not contradict, DNR's and USSAF's plain interpretation of Chapter 29 that "take" also means "hunt." Consequently, DNR has clear authority to set open and closed seasons for the mourning dove under both the state constitution and Chapter 29.

Next, WCCCD argues that the Migratory Bird Treaty Act of 1918 ("MBTA"), as amended, 16 U.S.C. 701-715s, is inconsistent with the "Right To Hunt" amendment. *See* MBTA, US-App. at 178. First, the MBTA authorizes annual hunting seasons, limits, and shooting hours for the mourning dove and, therefore, is wholly consistent with Wisconsin Administrative Code section NR 10.01(1)(h). *See* MBTA, 16 U.S.C. § 703; 50 C.F.R. § 20.103, US-App. 178, 113. The United States Fish and Wildlife Service authorizes mourning dove hunting under the MBTA — indeed at least 37 other states have mourning dove seasons. US-App. 118. Therefore, the constitutional amendment in no way conflicts with federal regulation of the mourning dove under the MBTA.

B. The Circumstances Surrounding the Enactment of the "Right To Hunt" Amendment Confirms DNR's Authority to Issue Wisconsin Administrative Code Section NR 10.01(1)(h).

An examination of the constitutional debates and practices in existence during passage of the "Right to Hunt" amendment shows that the "Right to Hunt" amendment meant to ensure the citizens the ***right to hunt*** the mourning dove. "The purpose of construction of a constitutional amendment is to give effect to the intent of the framers and of the people who adopted it; and it is a rule of construction applicable to all constitutions that they are to be construed so as to promote the objects for which they were framed and adopted." *State v. Cole*, 2003 WI 112, ¶ 10, 264 Wis. 2d 520, 665 N.W.2d 328.

Here, the intent of the framers and the citizens who adopted the "Right to Hunt" amendment is patent. On May 1, 2001, DNR, pursuant to its rulemaking authority under Chapter 29, issued Wisconsin Administrative Code section NR 10.01(1)(h) establishing open and closed hunting seasons for the mourning dove. On June 19, 2001, WCCCD filed its complaint seeking to invalidate the dove rule, and on August 28, 2001, the circuit court granted WCCCD's request to enjoin DNR from implementing the rule.

As this litigation was pending, the State Assembly and Senate voted in 2001 and 2003 to enact the "right to hunt" amendment, and the citizens voted overwhelmingly to approve it in a statewide referendum. *See* J. Res., Wis. Const., art. I, § 26, US-App. at 140-147, 148. Thus, the fact that the "Right to Hunt" amendment was enacted with tremendous support by both houses of the legislature as well as the citizens of Wisconsin strongly suggests this amendment was enacted to prevent interference with DNR's ability to regulate Wisconsin's wildlife. The legislature could have drafted the amendment so as not to extend DNR's authority to set hunting seasons for the mourning dove. Yet it did not do so. To the contrary, the legislature rejected all legislation proposed during this period that would have prohibited the hunting of the mourning dove. *See* 2001 S.B. 45, 2001 A.B. 190, and 2001 A.B. 859, US-App. at 131-139. The juxtaposition of this lawsuit with the passage of the amendment and the legislature's multiple decisions not to enact legislation prohibiting the dove hunt, evidences its intent to confirm DNR's broad authority to establish hunting seasons.

Legislative history and news articles published during the amendment's consideration and passage further demonstrate that the

amendment was intended to confirm DNR's authority to establish a mourning dove hunting season. Legislative history shows that proponents of the amendment were concerned that certain interest groups would seek to increase restrictive hunting regulation and that the opponents of the amendment consisted mostly of animal rights activists who opposed making the killing of animals a constitutional right. *See* Legislative Brief 02-3, 2002, US-App. at 180. After the amendment's approval in the statewide referendum, news articles reported that the amendment arose, at least in part, "in light of the contentious debate a few years ago over hunting mourning doves." *See "The right to hunt, fish, trap,"* Milwaukee Journal Sentinel, April 2, 2003, US-App. at 181.[8]

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[8] Wisconsin Statute section 902.01 permits judicial notice of adjudicative facts. Adjudicative facts are those facts that affect the who, what, where, when, how and why the parties involved in the litigation acted. *See State v. Harvey*, 2001 WI App 59, ¶ 7, 242 Wis. 2d 189, 625 N.W.2d 892, *aff'd on other grounds*, 2003 WI 93, ¶ 33, 254 Wis. 2d 442, 647 N.W.2d 189. As part of USSAF's effort to answer the issue originally posed by this Court as to whether the Right to Hunt amendment affects the DNR's authority to establish a dove season, newspaper articles describing events occurring during passage of the resolutions and referendum approving the amendment may be judicially noticed. Those articles report facts affecting the who, when and how the legislature and citizens of Wisconsin came to vote as they did. *See also, Hirsch v. S.C. Johnson, Inc.*, 90 Wis. 2d 379, 384, 280 N.W.2d 129 (1979), where this court took judicial notice of a newspaper report of the nickname of a litigant; and *State ex rel. Ekern v. Zimmerman*, 187 Wis. 180, 204 N.W. 803, 806 (1925), where this court took judicial notice of common knowledge of available transportation improvements and of public desire to amend the constitution to permit highway improvements.

The circumstances surrounding the amendment's enactment reveal that the amendment was intended to secure hunters' rights to hunt game, including the mourning dove. Consequently, restricting DNR's authority to set open and closed seasons for the mourning dove under section 29.014(1) would be an unreasonable restriction on "hunting" and, therefore, a violation of Article I, Section 26 of the Wisconsin Constitution.

C. Legislation Passed after the "Right To Hunt" Amendment Does Not Contradict DNR's Authority to Issue Wisconsin Administrative Code Section NR 10.01(1)(h).

USSAF has found no legislation enacted since the adoption of the "Right to Hunt" amendment that sheds additional light on the legislature's interpretation of the "Right to Hunt" amendment, particularly as it relates to DNR's authority to set open and closed seasons for the mourning dove. While WCCCD attempts to link the definition of "take" in Wisconsin Statute section 169.01(34) to the term "take" as used in the "Right to Hunt" amendment, the linkage fails. Section 169.01 merely regulates "captive wildlife" and thus has no bearing on the "taking" of "game" under the "Right to Hunt" amendment.

CONCLUSION

The DNR has authority to establish hunting seasons for "game" and for "nongame species." The DNR properly exercised its authority in this case to allow Wisconsin hunters to join the ranks of hunters in 37 other states who hunt mourning doves. WCCCD is entitled to disagree with DNR policy, but it cannot use the courts to undermine that policy. For all the reasons set forth above, USSAF respectfully requests this Court affirm the court of appeals decision and rule Wisconsin Administrative Code section NR 10.01(1)(h) valid.

Respectfully submitted this 20th day of November, 2003.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Section 809.19(8)(b) and (c) of the Wisconsin Statutes for a brief produced with a proportional serif font. The length of this brief is 6,982 words.

Dated this 20th day of November, 2003.

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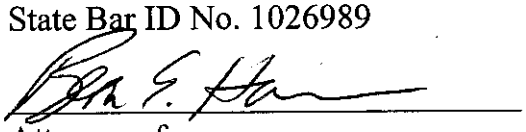

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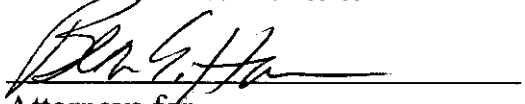

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STATE OF WISCONSIN
SUPREME COURT

WISCONSIN CITIZENS
CONCERNED FOR CRANES AND
DOVES, JOHN WIENEKE
AND PAT FISHER,

Plaintiffs-Respondents-Petitioners,

vs.

Appeal No. 02-1166
Circuit Court No.
01CV1616

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Defendant-Appellant,

and

U.S. SPORTSMEN'S ALLIANCE
FOUNDATION f/k/a WILDLIFE
LEGISLATIVE FUND OF AMERICA

Defendant-Intervenor-Co-Appellant.

U.S. SPORTSMEN'S ALLIANCE FOUNDATION'S
APPENDIX

Review of a Decision of the Wisconsin Court of Appeals,
District IV, Reversing a Dane County Circuit Court Decision,
The Honorable Daniel R. Moeser, Presiding

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APPENDIX TO RESPONSE BRIEF OF
DEFENDANT-INTERVENOR-CO-APPELLANT
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Item	Description	Appendix Page
1.	Wisconsin Administrative Code section NR 10.01(1)(h)	101
2.	50 C.F.R. Part 20	113
3.	Natural Resources Board Meeting Minutes, May 23-24, 2000	114
4.	Bulletin of the Proceedings of the Wisconsin Legislature, 1999-2000 Session	124
5.	2001 Senate Bill 45	131
6.	2001 Assembly Bill 190	134
7.	2001 Assembly Bill 859	137
8.	2001 Senate Joint Resolution 2	140
9.	2003 Assembly Joint Resolution 1	144
10.	Wis. Const. art. I, § 26	148
11.	U.S. Fish and Wildlife Service Mourning Dove Population, 2003	149
12.	Migratory Bird Treaty Act of 1918, sec. 703	178
13.	Legislative Brief 02-3, corrected October 2, 2002	179
14.	Milwaukee Journal Sentinel article, *The right to hunt, fish, trap*, April 2, 2003	181

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Chapter NR 10

GAME AND HUNTING

NR 10.001	Definitions.
NR 10.01	Open and closed seasons.
NR 10.02	Protected wild animals.
NR 10.04	Unprotected wild animals.
NR 10.05	Highways.
NR 10.06	Hunting hours.
NR 10.07	General hunting.
NR 10.08	Possession of game.
NR 10.09	Guns, ammunition and other devices.
NR 10.10	Deer and bear hunting.
NR 10.101	Bear hunting.
NR 10.102	Bear hunting quota and license issuance.
NR 10.103	Deer hunting.
NR 10.104	Deer population management.
NR 10.105	Transportation of deer and bear.
NR 10.106	Recording deer and bear.
NR 10.12	Migratory game bird hunting.
NR 10.125	Canada goose hunting.
NR 10.13	Furbearing animals.
NR 10.145	Bobcat, fisher and otter.
NR 10.15	Horicon national wildlife refuge.
NR 10.16	Necedah national wildlife refuge, Juneau county.
NR 10.20	Wolf management zones.
NR 10.22	Sandhill wildlife demonstration area, Wood county.
NR 10.23	Grand River experimental hunting area.
NR 10.24	Bong state recreation area hunting zone.
NR 10.25	Wild turkey hunting.
NR 10.26	Sharp–tailed grouse hunting.
NR 10.27	State park deer hunting.
NR 10.275	State park small game and migratory game bird hunting.
NR 10.28	Deer population management units.
NR 10.29	Wild turkey hunting zones.
NR 10.30	Black bear hunting zones.
NR 10.31	Canada goose management zones.
NR 10.32	Migratory game bird hunting zones.
NR 10.33	Ruffed grouse management zones.
NR 10.34	Pheasant management zones.
NR 10.35	Beaver management zones.
NR 10.36	Otter zones.
NR 10.40	Disabled hunters; special hunt authorizations.

Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999, No. 522.

NR 10.001 Definitions. (1) "Antlerless deer" means any deer without antlers or with both antlers less than 3 inches in length.

(1h) "Accompanied by", for the purposes of s. 29.304, Stats., means within sight and voice contact, without the aid of any mechanical or electronic amplifying device other than a hearing aid.

(1k) For the purpose of s. 29.184 (3) (a), (bg) and (br), Stats., "activity" includes but is not limited to the use of electronic communications, telemetry devices, checking bear baits, supplying or handling dogs to track or trail bear, possession of dog handling equipment, possession of baiting equipment, dragging roads, checking for bear tracks, transporting hounds, equipment and other persons engaged in locating bear.

(1L) "Adult bear", means a bear measuring 42 inches or greater measured in a straight line from the tip of the nose to the base of the tail.

(1m) "Assisting", for the purpose of bear hunting, means helping a bear harvest permittee hunt a bear by handling dogs, tracking, trailing or locating the bear, or otherwise aiding while with the permittee or baiting.

(2) For the purposes of this chapter, "bait" means honey and any solid or nonliquid material attractive to wildlife.

(3) "Bear eco–tourism" means the business of observing bear for compensation, but does not involve hunting.

(3h) "Bearded turkey" means a turkey with a bristle–like appendage protruding from the upper part of the breast.

(3m) "Black bear hunting zone" means a zone established in s. NR 10.30.

(3s) "Blind", for the purpose of goose hunting in zones established in s. NR 10.31, means any framed enclosure or pit not more than 15 feet in its greatest dimension and camouflaged to provide concealment to hunters.

(3t) "Bonus deer hunting permit" for purposes of s. 29.181, Stats., means any additional carcass tags issued under s. NR 10.01 (3) (ez), any antlerless deer permits issued under s. NR 10.104 (6) (a) for gun deer season zone B as described in s. NR 10.01 (3) (e), and any antlerless permits issued under s. NR 10.104 (8) (c) and (d).

(4) "Bow" means any bow, drawn and held by and through the effort of the person releasing it, but does not include crossbow.

(5) "Buck deer" means any deer with an antler not less than 3 inches in length.

(5m) "Canada goose management zones and subzones" means those established in s. NR 10.31.

(5p) "Capable of drowning" means a set designed to allow the trapped animal to travel to water of sufficient depth to cause drowning. Slide wires or poles, locking devices, slip chains, weighted traps and traps staked in deep water are commonly used in drowning sets.

(5r) "Class A permit" means a permit as defined in s. 29.193 (2) (c) 1., Stats.

(5t) "Class C permit" means a permit issued to the visually handicapped as defined in s. 29.193 (2) (a) 5., Stats.

(6) "Crossbow" means any device using a bow which, once drawn, is held solely by means other than the effort of the person firing it.

(6m) "Current validated deer carcass tag", for purposes of s. 29.347 (2), Stats., means an unused tag of the current year validated according to the requirements of s. NR 10.103 (2).

(7) "Daily bag limit" means the maximum number of a game species which may be reduced to a person's possession in one day.

(7m) "Deer management unit" means a zone established in s. NR 10.28.

(8) "Department" means the department of natural resources.

(9) For the purposes of s. 29.314 (3) (b) 3. and (5) (b) 1., Stats., "educational purposes" means observing or studying bear in conjunction with a college or university or in conjunction with bear eco–tourism.

Note: Subsection (9) does not remove the requirement of ss. 29.089 and 167.31, Stats., to enclose bows or crossbows in carrying cases. The rule does not apply to bows or crossbows only because the natural resources board recognizes that certain designed bow cases may allow portions of the bow, for instance the handle, to be exposed and yet still render the bow inoperable.

(9b) "Enclosed trigger trap" means any trap with a pull–activated trigger, inside an enclosure, and recessed $1^1/_4$ inches or more, from an opening that is no greater than $1^3/_4$ inches in diameter.

(9c) For the purposes of ss. 29.091, 29.089 (2), 29.621 (4) and 167.31, Stats., "enclosed within a carrying case" for firearms means completely contained in a gun case expressly made for that purpose which is fully enclosed by being zipped, snapped, buckled, tied, or otherwise fastened, with no portion of the firearm exposed.

(9e) "Established range" means an existing facility that has target shooting with firearms as its major purpose.

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(9k) "Explosive tips" means any arrow that expels compressed gases upon contact with an object or otherwise utilizes an explosive reaction. Compressed gasses can be caused by, but not limited to, the chemical reaction of explosive material or through compressed gas contained within or on the arrow shaft or tip.

(9m) For the purpose of administering the Canada goose hunting permit system, "Exterior goose management zone" or the "Exterior zone" means all that part of the state outside of the Collins and Horicon goose management zones described in s. NR 10.31, and includes the Mississippi River, Brown County, Burnett County, New Auburn and Rock Prairie subzones which shall be treated as separate management subzones for other purposes.

(10) "Firearm season" means an open season for hunting with any of the following firearms loaded with a single slug or ball: rifle, muzzle–loader, shotgun or handgun for deer or bear hunting described in s. NR 10.09 (1) (c) 1. c.

(10m) "Fully automatic firearm" means any firearm which continues to fire or is manufactured to continue to fire as long as the trigger is depressed.

Note: This definition does not include a semi–automatic firearm which fires a single shot with each pull of the trigger, then ejects the spent cartridge case and reloads without effort on the part of the shooter.

(13) "Liquid" means a substance, neither solid or gaseous, that flows freely and takes the shape of its container at a temperature of 70°F.

(14) "Liquid scent" means any nonsolid material except honey.

(15) "Migratory game birds" means any bird which is migratory and on which an open season has been prescribed in this chapter and belonging to one of the following families:

(a) *Anatidae.* (wild ducks, geese and brant),

(b) *Rallidae.* (rails, coots and gallinules),

(c) *Scolopacidae.* (woodcock and Wilson's snipe (jacksnipe)).

(16) "Molest" means any activity which results in physical damage or destruction of an object.

(17) For the purpose of hunting deer and bear, "muzzle–loader" means any smoothbore muzzle–loading firearm of not less than .45 caliber and any rifled muzzle–loading firearm of not less than .40 caliber, discharged from the shoulder.

(18) For the purpose of hunting wild animals other than deer and bear,"muzzle–loader" means any caliber of any muzzle–loading firearm. Muzzle–loading handguns shall have a minimum barrel length of 4 inches measured from the muzzle to the breech face.

(19) "Nontoxic shot" means steel shot and copper, nickel, zinc chloride and zinc chromate plated steel shot with the plating not exceeding .0002 inches or 1% or less of shot by weight, or other shot approved by the U.S. fish and wildlife service for waterfowl hunting in 50 CFR 20.21.

(19m) "Openly exposed" means to view by a person in a passing vehicle.

(20) "Open water" means any water beyond a natural growth of vegetation rooted to the bottom and extending above the water surface of such height as to offer whole or partial concealment for the hunter. Dead stumps and dead trees in water do not constitute a natural growth of vegetation.

(21) "Permanent abode" means a person's principal or ordinary home or dwelling place as distinguished from a temporary abode.

(22) "Possession limit" means the maximum number of a game species which may be reduced to a person's possession in 2 days or more.

(23) "Preservation facility" means any permanent abode, cold storage facility, locker plant, taxidermy establishment, hunting club or place of business which receives or possesses any game belonging to another person for the purposes of picking, cleaning, freezing, processing, storage or shipment.

(23m) "Shotgun" means a smoothbore barrelled firearm designed to shoot pellets. Rifled shotgun barrels of at least 18″ in length are considered to be shotguns for the purpose of hunting deer or bear if they fire a single projectile and are of the following gauges: 10, 12, 16, 20, 28.

(24) "Shotgun season" means an open season for hunting with any of the following firearms, as provided in s. NR 10.09, loaded with a single slug or ball:

(a) For hunting deer, muzzle–loader, shotgun and handgun; or

(b) For hunting other game, muzzle–loader or shotgun.

(25) "Sight exposed bait" means any bait which can be seen from above the bait.

(25e) "Snare" means a non–spring activated noose used for catching furbearers.

(25m) "Tag authorized for use on the type of deer killed", for purposes of s. 29.347 (2), Stats., means a tag issued to the hunter killing the deer or an individual satisfying the provisions of s. 29.324, Stats., which, based on the approvals of the person tagging the deer, is valid for the type of deer killed.

(26) "Temporary abode" means a transient place of abode or dwelling such as a hunting club, or any clubhouse, cabin, tent, or trailer used as a hunting club, or any hotel, motel or rooming house used during a hunting trip.

(27) "Unforked antler" means a polished antler consisting of a single spike without branches or tines.

(29) "Water set" means any trap which is set or staked in such a manner as to permit the trap or trapped animal to reach water at any point.

(30) "Waterfowl" means any migratory game bird of the family *Anatidae* including wild ducks, geese and brant.

(31) "Wild turkey hunting zone" means a zone established in s. NR 10.29.

History: Cr. Register, October, 1975, No. 238, eff. 11–1–75; cr. (2), Register, May, 1977, No. 257, eff. 6–1–77; cr. (3) to (5), Register, February, 1978, No. 266, eff. 3–1–78; cr. (6) and (7), Register May, 1978, No. 269, eff. 6–1–78; renum. 10.07s (1) (c) to be (8) and (9), Register, August, 1978, No. 272, eff. 9–1–78; cr. (10) to (16), Register, August, 1979, No. 284, eff. 9–1–79; cr. (17), Register, September, 1979, No. 285, eff. 10–1–79; emerg. cr. (18), eff. 9–12–81; cr. (18), (19) and (20), Register, March, 1982, No. 315, eff. 4–1–82; am. (11), Register, April, 1982, No. 316, eff. 5–1–82; cr. (22), Register, September, 1982, No. 321, eff. 10–1–82; cr. (21), Register, October, 1982, No. 322, eff. 11–1–82; cr. (23), Register, November, 1982, No. 323, eff. 12–1–82; cr. (24), Register, May, 1983, No. 329, eff. 6–1–83; cr. (25), Register, September, 1983, No. 333, eff. 10–1–83; cr. (26) and (27), Register, October, 1984, No. 346, eff. 11–1–84; am. (23), Register, March, 1985, No. 351, eff. 4–1–85; renum. (1), (3) to (18), (20) to (27) to be (8), (20), (30), (15), (14), (12), (4), (6), (16), (10), (24), (17), (18), (7), (22), (29), (28), (11), (9), (27), (3), (25), (13), (5) and (1) and r. and recr. (7) and (22), cr. (21), (23) and (26), Register, September, 1985, No. 357, eff. 10–1–85; cr. (1m) and r. (12), Register, June, 1986, No. 366, eff. 7–1–86; r. (28), Register, January, 1987, No. 373, eff. 2–1–87; emerg. am. (19), eff. 9–25–87; r. and recr. (24), Register, October, 1987, No. 382, eff. 1–1–88; am. (19), Register, December, 1987, No. 384, eff. 1–1–88; cr. (3m), (3s), (5m), (7m), (9m) and (31), r. (11), Register, July, 1988, No. 391, eff. 8–1–88; cr. (1h), (6m), (23m) and (25m), Register, October, 1988, No. 394, eff. 11–1–88; emerg. am. (5m) and (9m), eff. 9–15–89; emerg. cr. (25e), eff. 10–16–89; am. (5m) and (9m), Register, March, 1990, No. 411, eff. 4–1–90; cr. (25e), Register, May, 1990, No. 413, eff. 6–1–90; cr. (10m), Register, July, 1990, No. 415, eff. 8–1–90; cr. (9e), Register, September, 1990, No. 417, eff. 10–1–90; cr. (5r) and (5t), Register, June, 1991, No. 426, eff. 7–1–91; am. (10) and (23m), Register, October, 1991, No. 430, eff. 11–1–91; am. (1), cr. (3t), Register, May, 1993, No. 449, eff. 6–1–93; cr. (5p), Register, July, 1993, No. 451, eff. 8–1–93; emerg. am. (19), eff. 9–1–93; am. (19), Register, January, 1994, No. 457, eff. 2–1–94; am. (9m), Register, August, 1994, No. 464, eff. 9–1–94; emerg. am. 9–1–95; emerg. am. (19), eff. 9–12–97; am. (1), Register, October, 1997, No. 502, eff. 3–1–98; am. (19), Register, December, 1997, No. 504, eff. 1–1–98; corrections in (3t) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1998, No. 507; renum. (3) and (9) to be (3h) and (9c), cr. (1k), (3) and (9), Register, July, 1998, No. 511, eff. 8–1–98; correction in (5r) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1999, No. 525; corrections in (9c) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2001, No. 543; CR 01–008: cr. (1L) and (9b), Register October 2001 No. 550, eff. 4–1–02; emerg. renum. (1m), cr. (1n), (6n), (6p), (6t), (6w), (19e), (23g) and (24m), eff. 7–3–02; CR 02–018: cr. (9k) Register September 2002 No. 561, eff. 10–1–02; correction in (9e) made under s. 13.93 (2m) (b) 7., Stats., Register September 2002 No. 561.

NR 10.01 Open and closed seasons. A closed season is established year–round for each species of wild animal named in this section, except during the specified open season. Seasons open to legal hunting and trapping apply to the entire locality described, except as otherwise provided in chs. NR 11 and 15. Whenever open and closed season areas are defined by highways, the boundary shall be the highway center line. No person may hunt, take, catch or kill any animal specified in this section except during the specified open season.

(1) MIGRATORY GAME BIRDS. See Table (1).

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table (1)

Kind of animal		Locality	Open season (all dates inclusive)	Daily bag limit	Possession limit
(b)	*All species of wild duck except pintail and canvasback*	Entire state	As established by zone	As established by season and zone	Double the daily bag limit through the entire season, except opening day when it is the same as the daily bag limit.
		Northern zone as established in s. NR 10.32	Sept. 28 at 12:00 noon — Nov. 26	6 ducks to include not more than 4 mallards of which only one may be a hen mallard, one black duck, 2 redheads, 2 wood ducks, and 3 scaup. In addition 5 mergansers to include not more than one hooded merganser. From Oct. 19 — Nov. 26 the bag may include 2 hen mallards.	
		Southern zone as established in s. NR 10.32	Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Dec. 8	6 ducks to include not more than 4 mallards of which only one may be a hen mallard, one black duck, 2 redheads, 2 wood ducks, and 3 scaup. In addition 5 mergansers to include not more than one hooded merganser. From Oct. 19 — Dec. 8 the bag may include 2 hen mallards.	
(c)	*Coots and gallinules*	Entire state	Concurrent with the open season for ducks as established in par. (b)	10	20
(d)	*Pintail*	Northern zone as established in s. NR 10.32	Sept. 28 at 12:00 noon — Oct. 27	1	2
		Southern zone as established in s. NR 10.32	Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Nov. 8	1	2
(dm)	*Canvasback*	Entire state	None	None	None
(e)	*Sora and Virginia rails*	Entire state	Concurrent with the open season for ducks as established in par. (b)	25	25
(f)	*1. Snipe*	Entire state	Concurrent with the opening season for ducks as established in par. (b)	8	16
	2. Woodcock	Entire state	Beginning on the Saturday nearest Sept. 22 and continuing for 45 consecutive days	3	6
(g)	*Geese* *1. Canada geese and its subspecies*	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32 except for the subzone described in subd. 1. b.	Sept. 21 — Sept. 27 and Sept. 28 at 12:00 noon — Dec. 23	1	2
		b. Brown county subzone	Sept. 21 — Sept. 27 and Sept. 28 at 12:00 noon — Dec. 23	1	2
		c. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 1. d. to k.	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct 19 — Jan. 2	1	2
		d. Burnett county subzone	None	None	None
		g. Horicon zone	Four permit periods:		The possession limit is equivalent to the number of carcass tags issued.
			Sept. 16 — Oct 4 and Oct. 5 at 12:00 noon — Oct. 20	2	
			Sept. 30 — Oct. 4 and Oct. 5 at 12:00 noon — Nov. 3	2	
			Oct. 12 — Nov. 15	2	
			Nov. 2 — Dec. 18	2	
		h. Collins zone	Three permit periods:		The possession limit is equivalent to the number of carcass tags issued.
			Sept. 16 — Oct. 4 and Oct. 5 at 12:00 noon — Oct. 6	2	
			Oct. 7 — Oct. 27	2	
			Oct. 28 — Nov. 22	2	
		i. Rock Prairie subzone	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Jan. 2	1	2

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table (1) — Continued

Kind of animal	Locality	Open season (all dates inclusive)	Daily bag limit	Possession limit
	k. Mississippi river subzone	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Dec. 11	1	2
	L. Early goose hunt subzone A as established in s. NR 10.31 (11)	Sept. 1 — Sept. 15 excluding the Saturday, Sunday and Monday of Labor Day weekend	5	10
	m. Early goose hunt subzone B as established in s. NR 10.31 (11), excluding the Burnett county subzone as described under s. NR 10.31 (1) (b).	Sept. 1 — Sept. 15 excluding the Saturday, Sunday and Monday of Labor Day weekend	3	6
2. Snow or blue and Ross' geese	Entire state	As established by zone	10	20
	a. All that part of the exterior zone lying within the northern subzone established in s. NR 10.32 except for the subzone described in subd. 2. b.	Sept. 21 — Sept. 27 and Sept. 28 at 12:00 noon — Dec. 23		
	b. Brown county subzone	Sept. 21 — Sept. 27 and Sept. 28 at 12:00 noon — Dec. 23		
	c. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 2. d. to k.	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Jan. 2		
	d. Burnett county subzone	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Jan. 2		
	g. Horicon zone	Sept. 16 — Oct. 4 and Oct. 5 at 12:00 noon — Dec. 18		
	h. Collins zone	Sept. 16 — Oct. 4 and Oct. 5 at 12:00 noon — Nov. 22		
	i. Rock Prairie subzone	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Jan. 2		
	k. Mississippi river subzone	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Dec. 11		
	n. Entire state	Youth waterfowl hunting season as described under par. (v).	10	Double the daily bag limit.
3. All other geese and brant	Entire state	As established by zone	1 white–fronted goose and 1 brant	2 white–fronted geese and 2 brant
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32 except for the subzone described in subd. 3. b.	Sept. 21 — Sept. 27 and Sept. 28 at 12:00 noon — Dec. 23		
	b. Brown county subzone	Sept. 21 — Sept. 27 and Sept. 28 at 12:00 noon — Dec. 23		
	c. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 3. d. to k.	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Jan. 2		
	d. Burnett county subzone	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Jan. 2		
	g. Horicon zone	Sept. 16 — Oct. 4 and Oct. 5 at 12:00 noon — Dec. 18		
	h. Collins zone	Sept. 16 — Oct. 4 and Oct. 5 at 12:00 noon — Nov. 22		
	i. Rock Prairie subzone	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Jan. 2		
	k. Mississippi river subzone	Sept. 28 — Oct. 4, Oct. 5 at 12:00 noon — Oct. 13 and Oct. 19 — Dec. 11		
	n. Entire state	Youth waterfowl hunting season as described under par. (v).	1 white–fronted goose and 1 brant	Double the daily bag limit.
(h) *Mourning dove*	Entire state	Sept. 1— Oct. 30	15	30

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(u) *Falconry special season.* Any person possessing a valid falconry permit and hunting license shall be restricted to the following migratory game bird seasons:

Kind of animal	Locality	Open season (all dates inclusive)	Daily bag limit	Possession limit
1. *All species of wild ducks, mergansers and coots except pintails and canvasbacks*	Northern zone as established in s. NR 10.32	Sept. 21 — Sept. 22, Sept. 28 at 12:00 noon — Nov. 26 and Jan. 25 — Mar. 10	3 in aggregate with those species listed under subd. 2.	6 in aggregate with those species listed under subd. 2.
	Southern zone as established in s. NR 10.32	Sept. 21 — Sept. 22, Oct. 5 at 12:00 noon — Oct. 13, Oct. 19 — Dec. 8 and Jan. 25 — Mar. 10	3 in aggregate with those species listed under subd. 2.	6 in aggregate with those species listed under subd. 2.
2. *Gallinules, Sora rail, Virginia rail, common snipe and woodcock*	Entire state	Sept. 1 — Dec. 16	3 in aggregate with those species listed under subd. 1.	6 in aggregate with those species listed under subd. 1.

(v) *Special youth waterfowl hunt event.* Persons 12 years of age or older but under 16 years of age who possess a certificate of accomplishment under s. 29.591, Stats., or its equivalent from another state or province, may hunt all species of wild duck, mergansers, geese, coots, and gallinules for 2 consecutive days starting on September 21. Approvals under ch. 29, Stats., are not required pursuant to s. 29.197 (1), Stats., except for registration in the harvest information program under s. NR 10.12 (11) and a Canada goose hunting permit for the zone where goose hunting, as listed in par. (g) 1., if hunting Canada geese. Daily bag limits are those described under pars. (b), (c), (d), (dm) and (g) and all other waterfowl hunting regulations apply. Hunters shall be accompanied by an adult 18 years of age or older. One adult may not accompany more than 2 hunters.

(2) GAME BIRDS. See Table (2).

Table (2)

Kind of animal and locality	Open season (all dates inclusive)	Limit
(a) *Ruffed grouse*		
1. Zone A as established under s. NR 10.33.	Beginning on the Saturday nearest September 15 and continuing through December 31.	Daily bag 5; possession 10
2. Zone B as established under s. NR 10.33.	Beginning on the Saturday nearest September 15 and continuing through January 31	Daily bag 5; possession 10
3. Zone C as established under s. NR 10.33.	Beginning on the Saturday nearest October 17 and continuing through December 8.	Daily bag 2; possession 4
4. Mill Bluff, Mirror Lake and Newport state parks.	Nov. 1 – Dec. 15 in 2003, 2004 and 2005.	Daily bag 5; possession 10
(b) *Sharp–tailed grouse*		
1. All deer management units as described in s. NR 10.28 for which a sharp–tailed grouse harvest quota has been established under s. NR 10.26.	Beginning on the Saturday nearest October 17 and continuing for 23 consecutive days.	One sharp–tailed grouse per carcass tag issued. The possession limit corresponds to the number of carcass tags issued
Note: Reporting cards are available at most DNR license outlets within the areas open to sharp–tailed grouse hunting.		
4. *Reporting requirements.* Each person possessing a sharp–tailed grouse hunt reporting card shall complete and submit the reporting card to the department within 5 days after the close of the season.		
(c) *Pheasants*		
1. Cocks only		
a. In all counties of the state except the properties specified in subds. 1. b. and 2. and s. NR 10.24.	Early season—Beginning on the Saturday nearest October 17 at 12:00 noon and continuing for 2 consecutive days	Daily bag 1; possession 2
	Late season—Beginning on the day immediately after the season described above and continuing through December 31	Daily bag 2; possession 4
b. Governor Dodge, Mill Bluff and Newport state parks.	Nov. 1 – Dec. 15 in 2003, 2004 and 2005.	Daily bag 2; possession 4
2. Cocks and hens—Within the following named properties as posted with department signs:	Same as in subd. 1. a.	Same as in subd. 1. a.
a. Avoca (Iowa county) b. Scuppernong (Waukesha county) c. C.D. "Buzz" Besadny fish and wildlife area (Kewaunee county) d. Pine River (Richland county) e. Vernon (Waukesha county) f. Boscobel unit of the Lower Wisconsin Riverway (Grant county) g. Kickapoo valley reserve (Vernon county) h. Kettle Moraine state forest (Waukesha county) i. Tom Lawin wildlife area (Chippewa county)		
3. Permit and tag requirement. No person may hunt cock or hen pheasants within the posted areas established in subd. 2. without possessing a current pheasant hunting permit decal, pheasant tags and valid Wisconsin hunting license. Permits and tags are valid only for the year of issue.		
4. Permit application procedure. Application forms supplied by the department shall be completed and submitted by the applicant. No person may submit more than one application per year or an application containing false information.		
5. Permit and tag issuance procedure. Permits and tags are not transferable or replaceable and may not be reused, altered or defaced. The department shall issue a numbered pheasant hunting permit and 10 tags to each applicant.		
6. Permit validation. The numbered pheasant hunting permit decal shall be attached to the applicant's current year Wisconsin hunting license to be valid for use as described in this paragraph. Failure to follow the validation procedure invalidates the permit and tags.		
7. Tagging requirement. When a cock or hen pheasant is killed on any lands described in subd. 2. and before it is carried by hand or transported in any manner, the hunter shall completely attach and seal the carcass tag, utilizing its own adhesive, around the leg of the pheasant.		

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table (2) — Continued

Kind of animal and locality		Open season (all dates inclusive)	Limit
8.	Pheasant stamp. No person may hunt pheasants in the pheasant management zones established by s. NR 10.34 without a valid state pheasant stamp required under s. 29.191, Stats., with the signature of the licensee written in ink across its face and firmly affixed by its own adhesive to the back of a valid small game or sports license unless the person is carrying a valid conservation patron license, senior citizen recreation card, free military small game license or first year hunter education certificate.		
Note:	Special rules for the Bong state recreation area are established in s. NR 10.24.		
(d)	*Gray (Hungarian) partridge*		
1.	In all counties of the state except in the areas listed in subd. 2.	Beginning on the Saturday nearest October 17 at 12:00 noon and continuing through December 31.	Daily bag 3; possession 6
2.	Clark, Marathon and Taylor counties.	None	None
(e)	Bobwhite quail		
1.	In all counties of the state except in the parks listed in subd. 2.	Beginning on Saturday nearest October 17 at 12:00 noon and continuing for 54 consecutive days	Daily bag 5; possession 10
2.	Mirror Lake and Newport state parks.	Beginning on November 1 to the close of the season listed in subd. 1. in 2003, 2004 and 2005.	Daily bag 5; possession 10
(f)	*Wild turkey.*		
1.	All wild turkey hunting zones as described in s. NR 10.29, excluding state parks for which a quota has been established under s. NR 10.25 (5).	Spring seasons beginning on Wednesday nearest April 13 and continuing Wednesday through Sunday for 6 consecutive 5–day time periods, except on Ft. McCoy military reservation where the season continues for 40 consecutive days.	Only male or bearded turkeys may be killed. The possession limit corresponds to the number of carcass tags issued.
2.	All wild turkey hunting zones as described in s. NR 10.29 and Mill Bluff state park portions of zones 9 and 13, excluding all other state parks, for which a quota has been established under s. NR 10.25 (5).	Fall season beginning on the Saturday nearest October 10 and continuing for 30 consecutive days.	Either sex of turkey may be killed. The possession limit corresponds to the number of carcass tags issued.
3.	Zones 4A, 5A, 10A, 13A, 15A, 15C, and the Mill Bluff state park portions of zones 9 and 13 as described in s. NR 10.29.	Spring season beginning on the Wednesday nearest April 13 and continuing Wednesday through Sunday for 3 consecutive 5–day time periods.	Only male or bearded turkeys may be killed. The possession limit corresponds to the number of carcass tags issued.
4.	Newport, Willow River and Interstate state parks.	Spring season beginning on the Wednesday nearest April 13 and continuing Wednesday through Sunday for 3 consecutive 5–day time periods in 2003, 2004 and 2005.	Only male or bearded turkeys may be killed. The possession limit corresponds to the number of carcass tags issued.
(g)	*Crow*		
1.	Statewide except in the parks listed in subd. 2.	Beginning on the Saturday nearest September 15 and continuing through the Thursday immediately preceding the gun deer season for Zone A. in s. NR 10.01 (3) (e) and reopening in January and continuing through March 20. The date of reopening in January shall be established each year by the department to allow for a 124–day crow season.	Daily bag 15; possession 30
2.	Governor Dodge, Mill Bluff and Newport state parks.	Beginning on Nov. 1 and continuing through the Thursday immediately preceding the gun deer season for Zone A in s. NR 10.01 (3) (e) in 2003, 2004 and 2005.	Daily bag 15; possession 30

(3) UPLAND GAME ANIMALS. See Table (3).

Table (3)

Kind of animal and locality		Open season (all dates inclusive)	Limit
(a)	*Gray and fox squirrels*		
1.	In all counties of the state except in the parks listed in subd. 2.	Beginning on the Saturday nearest September 15 and continuing through January 31.	Daily bag (total of both species) 5; possession 10
2.	Governor Dodge, Mill Bluff, Mirror Lake and Newport state parks.	Nov. 1 – Dec. 15 in 2003, 2004 and 2005.	Daily bag (total of both species) 5; possession 10
(b)	*Raccoon (resident hunting and trapping)*		
	In all counties of the state	Beginning on the Saturday nearest October 17 and continuing through January 31.	None
(bm)	*Raccoon (non–resident hunting)*		
	In all counties of the state	Beginning on the Saturday nearest November 1 and continuing through January 31.	None
(bt)	*Raccoon (state park resident and non–resident hunting)*		
	Governor Dodge, Mill Bluff, Mirror Lake and Newport state parks.	Nov. 1 – Dec. 15 in 2003, 2004 and 2005.	None
(c)	*Cottontail, jackrabbit and snowshoe hare*		
1.	Snowshoe hare		
a.	Mill Bluff and Newport state parks.	Nov. 1 – Dec. 15 in 2003, 2004 and 2005.	None
b.	In all other parts of the state.	All year	None
2.	Cottontail		
a.	All that part of Wisconsin lying north of U. S. highway 10 from Prescott to Waupaca and state highway 54 from Waupaca to Algoma	Beginning on the Saturday nearest September 15 and continuing through February 28.	Daily bag 3; possession 6

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Table (3) — Continued

Kind of animal and locality		Open season (all dates inclusive)	Limit
b.	Governor Dodge, Mill Bluff, Mirror Lake and Newport state parks.	Nov. 1 – Dec. 15 in 2003, 2004 and 2005.	Daily bag 3; possession 6
c.	In addition, there shall be an open season for hunting cottontails, except with the use of firearms, in Milwaukee county	All year	None
d.	In all other parts of the state	Beginning on the Saturday nearest October 17 at 12:00 noon and continuing through February 28.	Daily bag 3; possession 6
3.	Jackrabbit		
	In all counties of the state	Beginning on the Saturday nearest October 17 at 12:00 noon and continuing through November 15	Daily bag 3; possession 6
(d)	*Bobcat (wildcat; hunting and trapping)*		
1.	All that part of Wisconsin north of state highway 64	Beginning on the Saturday nearest October 17 and continuing through December 31	One per season by permit
2.	Remainder of the state	None	None
(e)	*Gun deer season.* As established by county and deer management unit.		The season limit is one deer unless the hunter possesses additional antlerless deer permits issued under s. NR 10.104.
1.	Zone "A"		
a.	In the counties or parts of counties and deer management units of Brown, Calumet, Dane, Dodge, Door (Detroit, Plum, Rock, and Washington Islands only), Dunn (unit 59B portion), Fond du Lac, Green, Jefferson, Kenosha, Kewaunee, Lafayette, Manitowoc, Outagamie, Ozaukee, Pierce (unit 59B, 60 and 60A portions), Racine, Rock, St. Croix (unit 59B and 60 portions), Sheboygan, Shawano (south of highway 29), Walworth, Washington, Waukesha, Waupaca, and Winnebago.	Shotgun season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days	One buck deer or as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.
b.	Deer management unit 79 except Long island	Muzzleloading firearm season October 1–31.	One deer either sex.
c.	Deer management unit 82	Firearm season beginning on the Saturday preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One buck deer with an unforked antler only or as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.
d.	The Pepin county portion of unit 59B.	Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One buck deer or as authorized by hunter's choice and antlerless permits issued under s. NR 10.104.
e.	All other parts of Zone "A".	Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One buck deer or as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.
2.	Zone "B" Mississippi River Units		
	Deer management units 59D, 61, 74A and 74B.		
a.	The Buffalo, Trempealeau and Pepin county portions of deer management unit 61.	Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One deer of either sex and as authorized by antlerless deer permits issued under s. NR 10.104.
b.	The Pierce county portion of deer management unit 61.	Shotgun season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One deer of either sex and as authorized by antlerless deer permits issued under s. NR 10.104.
c.	The Jackson, La Crosse and Monroe county portions of unit 59D, and the La Crosse county portion of 74A.	Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One deer of either sex and as authorized by antlerless deer permits issued under s. NR 10.104.
	All that part of the state not otherwise listed in season zones "B" through "F".		
d.	Trempealeau national wildlife refuge.	Shotgun season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	Sex and type of deer is as specified on permit issued by federal refuge facility.
e.	The Vernon county portions of deer management units 59D and 74A, and the Vernon and Crawford county portion of unit 74B.	Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One deer of either sex and as authorized by antlerless deer permits issued under s. NR 10.104.
3.	Zone "C"—State Parks		
a.	Governor Dodge (unit 70C), Blue Mound (unit 70D), Perrot (unit 61A) and Peninsula (unit 80C) state parks.	Muzzle loading firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for up to 9 consecutive days as indicated on the permit.	One deer as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.
b.	Natural Bridge (unit 70F) and Wyalusing (73A) state parks.	Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for up to 9 consecutive days as indicated on the permit.	One deer as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table (3) — Continued

Kind of animal and locality		Open season (all dates inclusive)	Limit
c.	The following state parks and trails: Big Bay, Devil's Lake, Elroy–Sparta, Hartman Creek, Interstate, the Plum Island portion of Grand Traverse Islands, Kinnickinnic, Mill Bluff, Mirror Lake, Newport, Rock Island, Tuscobia–Park Falls and Willow River.	The firearm type and season length is the same as authorized for the surrounding deer management unit.	The bag limit is the same as authorized for the surrounding deer management unit.
cm.	Rocky Arbor state park	The firearm type and season length is the same as authorized for the surrounding deer management unit.	The bag limit is the same as authorized for the surrounding deer management unit.
d.	Loew Lake Unit – Kettle Moraine state forest (unit 77D), Wildcat Mountain (unit 72A), Yellowstone (unit 75B), Rib Mountain (unit 57D), Harrington Beach (unit 69C) and Brunet Island (unit 23A) state parks.	Muzzleloading firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for up to 16 consecutive days as indicated on the permit.	One deer as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.
e.	Council Grounds state park (unit 52A)	Shotgun season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days followed by a muzzle loading firearm season beginning on the following Monday and continuing for 7 consecutive days.	One deer as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.
4.	Zone "D"		
	Badger army ammunition plant in Sauk county, Fort McCoy military reservation in Monroe county and Volk field military facility in Juneau county.	Firearm season type as established by military permit and approved by the department by August 1 annually.	Sex and type of deer is as specified on permit issued by military permit.
Note: The department does not issue deer hunting permits for Badger army ammunition plant, Fort McCoy and Volk field military facilities. Hunters must apply directly to these facilities for a deer hunting permit and are limited to the type of deer specified on the permit.			
5.	Zone "E"		
	Menominee county (unit 48)	Firearm season type as established by the Menominee tribe for tribal members only.	As established by the Menominee tribe.
6. a.	Deer management units 59M, 60M, 64M, 76M and 77M.	Shotgun season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One buck deer or as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.
		Shotgun season beginning on the day immediately following the season described above and continuing through the second Sunday in December.	One antlerless deer per hunter's choice or antlerless deer permit issued under s. NR 10.104.
b.	Deer management unit 1M.	Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One buck deer or as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.
		Firearm season beginning on the day immediately following the season described above and continuing through the second Sunday in December.	One antlerless deep per hunter's choice or antlerless deer permit issued under s. NR 10.104.
(em)	*Deer bow season*		
1.	Statewide except as established under s. NR 10.01 (3) (em) 2. and 3.	Beginning on the Saturday nearest September 15 and continuing through the 2nd day immediately prior to the opening of the deer gun season described in par. (e).	One deer of either sex and one antlerless deer per hunter's choice and per bonus permit issued under s. NR 10.104.
		Reopening on the day immediately after the deer gun season described in par. (e) and continuing through January 3.	One deer of either sex and one antlerless deer per hunter's choice and per bonus permit issued under s. NR 10.104.
2.	Badger army ammunition plant in Sauk county, Fort McCoy military reservation in Monroe county and Volk field military facility in Juneau county.	Bow season as established by military permit and approved by the department by August 1 annually.	Sex and type of deer is as specified on permit issued by military facility.
3.	M, M–1, M–2, M–3 Deer management units 1M, 59M, 60M, 64M, 76M and 77M.	Beginning on the Saturday nearest September 15 and continuing through the Thursday immediately prior to the opening of the deer gun season and reopening on the Saturday immediately preceding the Thanksgiving holiday and continuing through January 31.	One deer of either sex and one antlerless deer per hunter's choice and bonus permit issued under s. NR 10.104.
Note: The department does not issue deer hunting permits for Badger army ammunition plant, Fort McCoy and Volk field military facilities. Hunters must apply directly to these facilities for a deer hunting permit and are limited to the type of deer specified on the permit.			
(es)	*Muzzleloader deer season*		
1.	Entire state, except for the areas described in subd. 2.	Beginning on the Monday immediately following the Thanksgiving holiday and continuing for 10 consecutive days.	One buck deer or as authorized by hunter's choice and antlerless deer permits issued under s. NR 10.104.
2.	Zone B Mississippi river units as described in par. (e) 2.	Beginning the Monday immediately following the Thanksgiving holiday and continuing for 10 consecutive days.	One deer of either sex and additional antlerless deer as authorized by antlerless deer permits issued under s. NR 10.104.

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table (3) — Continued

Kind of animal and locality	Open season (all dates inclusive)	Limit
(ev) *Special youth antlerless deer hunt event.* Persons 12 years of age or older but under the age of 16 years of age who possess a certificate of accomplishment under s. 29.591, Stats., or its equivalent from another state or province, may hunt antlerless deer with a gun on the Saturday of a herd control hunt defined under s. NR 10.01 (3) (ez) 1. a. in deer management units, except state park units, not included in a deer herd control hunt under s. NR 10.01 (3) (ez). Allowable types of guns are those authorized on the first day of the regular gun deer season under s. NR 10.01 (3) (e). The bag limit is one antlerless deer per hunter's choice or antlerless deer permit issued under s. NR 10.104. Youth who are first time graduates of the hunter education program may use their certificates of accomplishment in place of a hunter's choice permit issued under s. 29.177, Stats., to take an antlerless deer. Hunters shall be accompanied by an adult 18 years of age or older. One adult may not accompany more than 2 hunters and all other hunting regulations apply. Blaze orange requirements under s. 29.301 (2), Stats., apply to all hunters on this day except waterfowl hunters.		
(ez) *Special deer herd control hunt.* 1. The department may, upon making the findings in subd. 2., modify the deer hunting seasons and deer permit issuance procedures as described in this paragraph for any deer management unit to reduce the deer population nearer to the overwinter population goals established in s. NR 10.104. Modifications to the deer season shall consist of:		
a. A 4–day antlerless only deer season allowing the use of bows and guns beginning on the Thursday nearest October 27 and continuing for 4 consecutive days. Allowable types of guns are those authorized on the first day of the regular gun deer season under s. NR 10.01 (3) (e). Antlerless deer may be tagged with the back tag issued with each deer license, a special permit under this subd. 1. b., or bonus permits issued under s. 29.181, Stats. This subdivision paragraph does not apply to state parks and state park deer management units.		
am. A 4 day antlerless only deer season allowing the use of bows and guns starting on the second Thursday following the Thanksgiving holiday and continuing through the following Sunday. All deer management units in the December deer hunt zone, as described in s. NR 10.28 (1), meeting the findings listed under subd. 2. are included in this hunt. Allowable types of guns are those authorized on the first day of the regular gun deer season under par. (e). Antlerless deer may be tagged with the carcass tag issued with each deer license, a special permit under subd. 1. b., or bonus permits issued under s. 29.181, Stats. This subdivision paragraph does not apply to state parks and state park deer management units.		
b. Special permits for antlerless deer under s. 29.177, Stats., shall be issued free of charge at the rate of one permit per license authorizing deer hunting or 2 permits per conservation patron license. The permits may be used to hunt and tag deer during any of that year's deer seasons for the units specified under subd. 1.		
c. The carcass tag issued with a regular gun deer license is valid for taking and tagging a deer of either sex during the gun season under par. (e). The carcass tag issued with the bow deer license is valid for only an antlerless deer during the seasons described in this subd. 1. a., am. or d.		
d. If after 2 consecutive seasons, as described in this subd. 1. a. and am., the department determines a third season, as described under this subd. 1. a. and am., is unlikely to reduce the deer population to within 20% of the overwinter population goal established in s. NR 10.104 for the same deer management unit or units in the subsequent year, hunters shall harvest or tag an antlerless deer in that unit or units with either a bow or a gun during any deer season or with an agricultural shooting permit, before they may harvest a buck with either weapon in that unit or units. One antlerless deer is required to authorize harvest of one buck in that unit or units, or in state parks with gun deer seasons that are within or adjoining these units, for each archery and gun deer license. Deer harvested as described in this paragraph shall be transported in accordance with s. NR 10.105 (3). The gun deer season shall continue to include the time periods specified in subdivision paragraphs a. and am.		
e. If after a season as described in this subd. 1. d., the department determines a season as described in this subd. 1. a. and am., is unlikely to reduce the deer population to within 20% of the overwinter population goal, established in s. NR 10.104, for the same deer management unit or units in the subsequent year, hunters may only hunt deer in accordance with this subd. 1. d.		

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table (3) — Continued

Kind of animal and locality		Open season (all dates inclusive)	Limit
2.	*Findings.* The department shall, prior to making any modification for a deer management unit under subd. 1., find that it is unlikely the deer population for the deer management unit will be reduced to within 20% of the overwinter population goal established in s. NR 10.104 under the established deer hunting rules. In making this determination, the department shall compare the deer harvest required to reduce the deer population to goal to the deer harvest likely to occur under the existing season structure.		
3.	Modification by the department under subd. 1. shall become effective upon issuance of an order and publication in the official state newspaper. In addition, a notice of the order shall be provided to newspapers, legislators and hunting license outlets in the area affected.		
(f)	*Fox, all species*		
1.	North zone—All that part of Wisconsin north of state highway 64	Beginning on the Saturday nearest October 17 and continuing through February 15.	None
2.	South zone—All that part of Wisconsin south of state highway 64	Beginning on the Saturday nearest October 28 and continuing through February 15.	None
3.	Governor Dodge, Mill Bluff, Mirror Lake and Newport state parks.	Nov. 1 – Dec. 15 in 2003, 2004 and 2005.	None
(g)	*Black bear (gun and bow seasons).*		
1.	Those portions of bear management zones A and B as described in s. NR 10.30 where the use of dogs for bear hunting is authorized as described in s. NR 10.10 (1) (b).	With aid of dogs only, beginning on the first Wednesday following Labor Day and continuing for 28 consecutive days in odd–numbered years and beginning on the second Wednesday following Labor Day for 28 days in even–numbered years.	One adult bear per permit issued under s. NR 10.102.
		All methods not utilizing the aid of dogs, beginning on the first Wednesday following Labor Day and continuing for 28 consecutive days in even–numbered years and beginning on the second Wednesday following Labor Day for 28 days in odd–numbered years.	One adult bear per permit issued under s. NR 10.102.
2.	Those portions of bear management zones A, B and C as described in s. NR 10.30 where the use of dogs for bear hunting is prohibited as described in s. NR 10.10 (1) (b).	All methods not utilizing the aid of dogs, beginning on the first Wednesday following Labor Day and continuing for 35 consecutive days.	One adult bear per permit issued under s. NR 10.102.
(h)	*Coyote*		
1.	Hunting		
a.	Wolf management zone 1, as described in s. NR. 10.20.	All year except closed during the gun deer seasons as established under s. NR 10.01 (3) (e), (es) and (ez).	None
b.	Governor Dodge, Mill Bluff, Mirror Lake and Newport state parks.	Nov. 1 – Dec. 15 in 2003, 2004 and 2005.	None
c.	Remainder of the state	All year	None
2.	Trapping		
a.	North zone—All that part of Wisconsin north of state highway 64	Concurrent with the fox season established in s. NR 10.01 (3) (f) 1.	None
b.	South zone—All that part of Wisconsin south of state highway 64	Concurrent with the fox season established in s. NR 10.01 (3) (f) 2.	None

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

(4) FURBEARING ANIMALS. See Table (4).

Table (4)

Kind of animal and locality		Open season (all dates inclusive)	Limit
(a)	*Muskrat trapping.*		
1.	'North zone'—All that part of Wisconsin north of state highway 64	Beginning on the Saturday nearest October 21 and continuing through the last day of February	None
2.	'Central zone'—All that part of Wisconsin south of state highway 64 and north of the line beginning at the junction of U.S. highway 18 with the western boundary of the state, then east along highway 18 to its junction with U.S. highway 51, then north along highway 51to its junction with state highway 60, then east along highway 60 to its junction with Ozaukee county highway Q extended east to Lake Michigan except as described in subd. 3.	Beginning on the Saturday nearest October 28 and continuing through the last day of February	None
3.	'Winnebago zone'—All that part of Dodge county lying north of state highway 60, Fond du Lac, Outagamie, Waupaca, Waushara and Winnebago counties	Beginning on the Saturday nearest October 28 and continuing through March 15	None
4.	'Mississippi River zone'—All that part of Buffalo, Crawford, Grant, LaCrosse, Trempealeau, and Vernon counties lying east of the Chippewa river and west of the Burlington Northern railway	Beginning on the second Monday in November or the day following the close of the open season for ducks as established under sub. (1) (b) 1., whichever occurs first, and continuing through the last day of February.	None
5.	'South zone'—All other parts of the state	Beginning on the Saturday nearest November 4 and continuing through the last day of February	None
(b) *Incidental take of muskrats.* During the closed season for muskrats, licensed trappers may retain for salvage any muskrats taken incidentally while trapping for beaver in the portions of the state open to beaver trapping as described in par. (c).			
(c)	*Beaver trapping.*		
1.	Zone A as described in s. NR 10.35.	Beginning on the Saturday nearest October 21 and continuing through April 30.	None
2.	Zone B as described in s. NR 10.35.	Beginning on Saturday nearest October 21 and continuing through April 30.	None
3.	Zone C as described in s. NR 10.35.	Beginning on the Saturday nearest November 4 and continuing through April 30.	None
4.	Zone D as described in s. NR 10.35.	Beginning on the day following the close of the open season for ducks as established under sub. (1) (b) 1. and continuing through March 15.	None
(d)	*Otter trapping.*		
1.	North zone as described in s. NR 10.36	Beginning on the first Saturday in December and continuing through April 30.	The possession limit corresponds to the number of pelt tags issued.
2.	Central zone as described in s. NR 10.36	Beginning on the first Saturday in December and continuing through the first Sunday in March.	The possession limit corresponds to the number of pelt tags issued.
3.	South zone as described in s. NR 10.36	Beginning on the first Saturday in December and continuing through the first Sunday in March.	The possession limit corresponds to the number of pelt tags issued.
(dm)	*Fisher trapping.*		
1.	Management zone A—Deer management units 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 22, 78 and 79 as described in s. NR 10.28	Nov. 1–Dec.31	The possession limit corresponds to the number of pelt tags issued.
2.	Management zone B—Deer management units 6, 7, 13, 14, 18,19, 20, 23, 24, 25, 26, 28, 29A and 30 as described in s. NR 10.28	Nov. 1–Dec. 31	The possession limit corresponds to the number of pelt tags issued.
3.	Management zone C—Deer management units 29B, 31, 32, 33, 34, 35, 36, 37 and 52 as described in s. NR 10.28	Nov. 1–Dec.31	The possession limit corresponds to the number of pelt tags issued.
4.	Management zone D—Deer management units 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49A, 49B, 50, 51A and 51B as described in s. NR 10.28	Nov. 1–Dec. 31	The possession limit corresponds to the number of pelt tags issued.
5.	Management zone E—Deer management units 27, 53, 55, 56, 57, 57A, 57B, 57C, 58 and 59A as described in s. NR 10.28	Nov. 1–Dec. 31	The possession limit corresponds to the number of pelt tags issued.
6.	Management zone F—Remainder of the state	Nov. 1–Dec. 31	The possession limit corresponds to the number of pelt tags issued.
(e)	*Mink trapping.*		
1.	'North zone' – All that part of Wisconsin north of state highway 64	Beginning on the Saturday nearest October 21 and continuing through December 31.	None
2.	'Central zone' – All that part of Wisconsin south of state highway 64 and north of the line beginning at the junction of U.S. highway 18 with the western boundary of the state, then east along highway 18 to its junction with U.S. highway 51, then north along highway 51 to its junction with state highway 60, then east along highway 60 to its junction with Ozaukee county highway "Q" extended east to Lake Michigan except as described in subd. 3.	Beginning on the Saturday nearest October 28 and continuing through December 31.	None

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

Table (4) — Continued

Kind of animal and locality		Open season (all dates inclusive)	Limit
3.	'Winnebago zone' – All that part of Dodge county lying north of state highway 60, Fond du Lac, Outagamie, Waupaca, Waushara and Winnebago counties	Beginning on the Saturday nearest October 28 and continuing through March 15.	None
4.	'Mississippi River zone' – All that part of Buffalo, Crawford, Grant, LaCrosse, Trempealeau, and Vernon counties lying east of the Chippewa river and west of the Burlington Northern railway	Beginning on the second Monday in November or the day following the close of the open season for ducks as established under sub. (1) (b) 1., whichever occurs first, and continuing through January 15.	None
5.	'Sough zone' – All other parts of the state	Beginning on the Saturday nearest November 4 and continuing through December 31.	None

Note: For a complete history of s. NR 10.01 from 1–2–56 through 11–30–73 see the history note following s. NR 10.01 published in November 1973, Register. For a complete history of s. NR 10.01 from 12–1–73 through 7–31–85 see the history note following s. NR 10.01 published in the July, 1985 Register. For a complete history of s. NR 10.01 from 8–1–85 through 5–31–2000 see the history note following s. NR 10.01 published in the May, 2000 Register.

History: 1–2–56; cr. (3) (e) 3. e., Register, May, 2000, No. 533, eff. 6–1–00; emerg. r. and recr. (1) (b), (c), (g) 1. a. to k., 2., 3., (u) 1. and 2, cr. (1) (g) 1. n., 2. n. and 3. n. and am. (1) (v) eff 9–1–00; r. and recr. (1) (b), (c), (g) 1. a. to k., (g) 2., 3., (u) 1. and 2., cr. (1) (g) 1. n., 2. n. and 3. n. and am. (1) (v), Register, December, 2000, No. 540, eff. 1–1–01; CR 01–006: am. (1) (g) 1. m., Register August 2001 No. 548, eff. 9–1–01; r. (1) (g) 1. d., (g) 2. d. and 3. d., cr. (1) (h), r. and recr. (3) (h) 1. a., eff. 5–1–01; am. (3) (es), eff. 11–18–00; Register, September, 2000, No. 537; emerg. r. and recr (1) (b), (g) 1. a. to k., 2.a. to b., 3. a. to e., cr. 1. and 2., cr. (1) (d), am. (1) (v), eff. 9–1–01; CR 01–008: am. (1) (g) 1. h., (2) (f) 3., (3) (e) 1. d., 2., 3. c., (es), Register October 2001 No. 550, all eff. 4–1–02 except for (2) (f) 3. which is eff. 11–1–01; CR 01–066: r. and recr. (1) (b), (g) 1. a. to k. and n., 2. a. to k., 3. a. to k., (u) 1. and 2. and cr. (1) (d), Register November 2001 No. 551, eff. 12–1–01; CR 00–154: r. and recr. (3) (e) 6., am. (3) (em), (es), and (h) 1. a. and cr. (3) (ev) and (ez), Register January 2002 No. 553, eff. 2–1–02; emerg. am. (3) (e) 1. intro., 3. a., c. and d., 6. a., (em) 1. and 3., (es) 1. and (ev), r. (3) (e) 3. cm., cr. (3) (et) and (ez) 3., eff. 7–3–02; CR 00–154: am. (3) (em) 1. (ez) 1. c., d. and e., cr. (3) (ez) 1. am., Register July 2002 No. 559, eff. 8–1–02; CR 02–017: am. (2) (c) 2. and (f) 2.; CR 02–018: am. (3) (ev), cr. (3) (ez) 3. Register September 2002 No. 561, eff. 10–1–02 except (2) (c) 2. eff. 1–5–03; CR 02–075: r. and recr. (1) (b), (d), (g) 1. a. to k., 2. a. to k., 3. a. to k., (u) 1. and 2., cr. (1) (dm), r. (1) (g) 1. n., am. (1) (v) Register December 2002 No. 564, eff. 1–1–03; CR 02–089: cr. (2) (a) 4., (c) 1. b. and (f) 4., (3) (bt), (c) 2. b., (f) 3. and (h) 1. b., am. (2) (c) 1. a., r. and recr. (2) (e), (g), (3) (a) and (c) 1., renum. (3) (c) 2. b. and (h) 1. b. to be (3) (c) 2. d. and (h) 1. c. Register February 2003 No. 566, eff. 3–1–03; **CR 03–015: am. (3) (e) 2. (intro.), (ez) 1. a. and d. Register July 2003 No. 571, eff. 8–1–03.**

NR 10.02 Protected wild animals. The following wild animals are designated protected. No person may take, attempt to take, transport or possess any protected wild animal at any time unless expressly authorized by the department.

(1) Cougar, Canada lynx, badger, moose, elk, wolverine and flying squirrel.

(2) Endangered or threatened species listed in ch. NR 27.

(3) Albino or white deer which are white except for the hooves, tarsal glands, head and parts of the head.

(4) Woodchuck except as provided in s. 29.337, Stats.

(5) Prairie chicken, Canada spruce grouse (spruce hen), swans, cranes, bitterns, plovers, kingfishers, cormorants, herons, sandpipers and grebes.

(6) Eagles, hawks, falcons, and owls except as provided in ch. NR 18.

(7) Hen pheasants except as expressly provided in this chapter.

(8) Any other wild bird not specified in this chapter.

(9) Timber rattlesnake, except that a timber rattlesnake may be killed in emergency situations involving an immediate threat to human life or domestic animals. It is requested that each person who kills a rattlesnake under this provision provide to the department no later than 48 hours after the kill, not to include Saturdays, Sundays and holidays, factual information related to the kill including the location, date of the kill and the name and address of the person who killed it.

Note: Possession of the timber rattlesnake or any part lawfully taken in Wisconsin prior to April 1, 1998, lawfully purchased or lawfully taken outside the state of Wisconsin is not prohibited by this section, but the person possessing it has an obligation under s. 29.971, Stats., to prove such facts.

Note: The department's conservation program for the timber rattlesnake, under s. 29.039 (1), Stats., includes a department response and assistance element for occupants or owners of land, or other persons, requesting assistance because of the presence of rattlesnakes. In addition, upon complaint, the department may, under s. 29.885, Stats., investigate and authorize removal, relocation or destruction if the species constitutes a nuisance. Requests for assistance, or complaints, should be directed to the Bureau of Endangered Resources, Department of Natural Resources, P.O. Box 7921, Madison, WI 53707, telephone 1–888–74SNAKE.

(10) Bullsnakes *Pituophis melanoleucus sayi*, black rat snakes *Elaphe obsoleta* and the racer snakes *Coluber constrictor*.

History: 1–2–56; am. (2), Register, August, 1956, No. 8, eff. 9–1–56; am. (1), Register, August, 1957, No. 20, eff. 9–1–57; am. (1) and (2), Register, August, 1958, No. 32, eff. 9–1–58; am. (1) emerg. eff. 9–20–58; am. (1), Register, August, 1959, No. 44, eff. 9–1–59; am. (2), cr. (3), Register, September, 1965, No. 117, eff. 10–1–65; am. (2), Register, March, 1966, No. 123, eff. 4–1–66; am. (1), Register, August, 1967, No. 140, eff. 9–1–67; renum. to be NR 10.02; am. (2), Register, June, 1970, No. 174, eff. 7–1–70; am. (1), Register, September, 1972, No. 201, eff. 10–1–72; r. (3), Register, December, 1977, No. 264, eff. 1–1–78; r. and recr. Register, August, 1979, No. 284, eff. 9–1–79; am. (1), Register, September, 1983, No. 333, eff. 10–1–83; am. (1), Register, July, 1985, No. 355, eff. 8–1–85; cr. (intro.) Register, September, 1985, No. 357, eff. 10–1–85; r. and recr. (3), Register, August, 1996, No. 488, eff. 9–1–96; cr. (9), Register, March, 1998, No. 507, eff. 4–1–98; am. (1), Register, September, 1998, No. 513, eff. 10–1–98; cr. (10), Register, May, 2000, No. 533, eff. 6–1–00; am. (5), Register, September, 2000, No. 537, eff. 5–1–01.

NR 10.04 Unprotected wild animals. The following wild animals are designated unprotected. No closed season, bag limit, size limit or possession limit applies to these animals.

(1) Opossum, skunk and weasel.

(2) Starlings, English sparrows, coturnix quail and chukar partridge.

(3) Any other wild animal not specified in this chapter.

Note: Persons taking unprotected animals must possess a hunting or trapping license and comply with all method of taking requirements of this chapter unless otherwise authorized by the department in writing or exempted under ch. NR 12.

History: 1–2–56; am. (1) Register, August, 1957, No. 20, eff. 9–1–57; am. (2), Register, August, 1958, No. 32, eff. 9–1–58; renum. to be NR 10.04; am. (1) and (2), Register, June, 1970, No. 174, eff. 7–1–70; am. (1), Register, August, 1972, No. 200, eff. 9–1–72; r. and recr. Register, No. 251, eff. 12–1–76; r. and recr. Register, August, 1979, No. 284, eff. 9–1–79; am. (1), Register, October, 1980, No. 298, eff. 11–1–80; cr. (intro.), Register, September, 1985, No. 357, eff. 10–1–85.

NR 10.05 Highways. (1) GENERAL HUNTING. No person may hunt within 50 feet of a roadway's center except as provided in s. 167.31, Stats.

Note: The exceptions provided by s. 167.31, Stats., allows any person to legally hunting small game with a muzzle–loading firearm or shotgun loaded with shotshells containing shot size BB or smaller if the roadway is surfaced with anything other than concrete or blacktop.

(2) WATERFOWL AND COOT HUNTING. No person may hunt waterfowl or coot from any public roads or railroads including the respective rights–of–way along or within the area described as the Horicon zone in s. NR 10.31 (3).

History: 1–2–56; am. (1) and (2), Register, August, 1956, No. 8, eff. 9–1–56; am. (1) and (2), Register, August, 1957, No. 20, eff. 9–1–57; r. (1) and (2) and recr. (1), Register, August, 1958, No. 32, eff. 9–1–58; cr. (2), Register, September, 1960, No. 57, eff. 10–1–60; cr. (3), Register, August, 1963, No. 92, eff. 9–1–63; r. and recr. (2), Register, September, 1966, No. 129, eff. 10–1–66; emerg. am. (2), eff. 9–1–67; emerg. am. (2), eff. 9–30–68; emerg. am. (2), eff. 8–30–69; am. (2), Register, November, 1969, No. 167, eff. 12–1–69; renum. to be NR 10.05; cr. (4) and (5), Register, June, 1970, No. 174, eff. 7–1–70; emerg. am. (2), eff. 9–19–73; emerg. am. (2), eff. 9–24–75; am. (2), Register, May, 1976, No. 245, eff. 6–1–76; r. and recr. (1) am. (2) and r. (3), (4) and (5), Register, May, 1977, No. 257, eff. 6–1–77; am. (2), Register, February, 1978, No. 266, eff. 3–1–78; am. (1), Register, September, 1979, No. 285, eff. 10–1–79; am. (2), Register, July, 1989, No. 403, eff. 8–1–89; am. (2), Register, August, 1994, No. 464, eff. 9–1–94.

NR 10.06 Hunting hours. (1) GENERAL HUNTING. All hunting hours, when specified in this chapter, mean Central Standard Time, and the daily opening (a.m.) and closing (p.m.) hours listed shall apply to the entire state.

(2) HUNTING ZONES. (a) *General.* Two general hunting hour areas are established as follows: Northern area: all of the following counties and all counties north of them; Pierce, Dunn, Eau Claire, Clark, Marathon, Shawano, Oconto and Door. Southern

are established for seasons, daily bag and possession limits, and shooting (or hawking) hours. Migratory game bird population levels, including production and habitat conditions, vary annually. These conditions differ over North America, and within the United States, by flyways, States, and frequently areas within States. Thus, it is necessary to make annual adjustments in the schedules to limit the harvests of migratory game birds to permissible levels.

(b) The development of these schedules involves annual data gathering programs to determine migratory game bird population status and trends, evaluations of habitat conditions, harvest information, and other factors having a bearing on the anticipated size of the fall flights of these birds. The proposed hunting schedules are announced early in the spring, and following consideration of additional information as it becomes available, as well as public comment, they are modified and published as supplemental proposals. These are also open to public comment. Public hearings are held for the purpose of providing additional opportunity for public participation in the rulemaking process.

[44 FR 7147, Feb. 6, 1979]

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

This section provides for the annual hunting of certain doves, pigeons, ducks, coots, gallinules and snipe in Puerto Rico; and for certain doves, pigeons and ducks in the Virgin Islands. In these Commonwealths, the hunting of waterfowl and coots (and other certain species, as applicable) must be with the use of nontoxic shot beginning in the 1991–92 waterfowl season.

[53 FR 24290, June 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 20.102 Seasons, limits, and shooting hours for Alaska.

This section provides for the annual hunting of certain waterfowl (ducks, tundra swans, geese, and brant), common snipe, and sandhill cranes in Alaska. In Alaska, the hunting of waterfowl must be with the use of nontoxic shot beginning in the 1991–92 waterfowl season.

[55 FR 35267, Aug. 28, 1990]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

This section provides for the annual hunting of certain doves and pigeons in the 48 contiguous United States. The mourning dove hunting regulations are arranged by the Eastern, Central, and Western Management Units.

[44 FR 7147, Feb. 6, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common (Wilson's) snipe.

This section provides for the annual hunting of certain rails, woodcock, and snipe in the 48 contiguous United States.

[44 FR 7148, Feb. 6, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting annual regulatory schedules for this section, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 20.105 Seasons, limits and shooting hours for waterfowl, coots, and gallinules.

This section provides for the annual hunting of certain waterfowl (ducks, geese [including brant]), coots and gallinules in the 48 contiguous United States. The regulations are arranged by the Atlantic, Mississippi, Central and Pacific Flyways. These regulations often vary within Flyways or States, and by time periods. Those areas of the

United States outside of State
aries, i.e., the United States'
torial waters seaward of county
aries, and including coastal
claimed by the separate States
already included under the zon
tained in § 20.108, are designated
purposes of § 20.21(j) as nontox
zones for waterfowl hunting be
in the 1991–92 season.

[53 FR 24290, June 28, 1988, as amend
FR 22102, May 13, 1991]

EDITORIAL NOTE: For FEDERAL REG
tations affecting annual regulator
ules for this section, see the List of
tions Affected, which appears in the
Aids section of the printed volume
GPO Access.

§ 20.106 Seasons, limits, and s hours for sandhill cranes.

This section provides for the
hunting of sandhill cranes
ignated portions of the 48 con
United States.

[55 FR 35267, Aug. 28, 1990]

EDITORIAL NOTE: For FEDERAL REG
tations affecting annual regulator
ules for this section, see the List of
tions Affected, which appears in the
Aids section of the printed volume
GPO Access.

§ 20.107 Seasons, limits, and s hours for tundra swans.

This section provides for the
hunting of tundra swans in des
portions of the 48 contiguous
States.

[55 FR 39829, Sept. 28, 1990]

EDITORIAL NOTE: For FEDERAL REG
tations affecting annual regulator
ules for this section, see the List of
tions Affected, which appears in the
Aids section of the printed volum
GPO Access.

§ 20.108 Nontoxic shot zones.

Beginning September 1, 1991,
tiguous 48 United States,
States of Alaska and Hawaii, th
tories of Puerto Rico and the V
lands, and the territorial water
United States, are designated
purpose of § 20.21(j) as nonto
zones for hunting waterfowl, c
certain other species. "Certai
species" refers to those specie
than waterfowl or coots, that

EXHIBIT
1

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held Tuesday and Wednesday, May 23-24, 2000, in the Conference Room of the Shawano City Hall, 125 South Sawyer Street, Shawano, Wisconsin. The meeting was called to order at 8:30 a.m. for action on Items 1 and 2. The meeting was recessed at 8:35 a.m. and reconvened at 3:45 p.m.

PRESENT: Trygve A. Solberg, Chair
James E. Tiefenthaler, Jr., Vice Chair
Gerald W. O'Brien, Secretary
Herbert F. Behnke
Howard D. Poulson
Catherine L. Stepp
Stephen D. Willett

* * * * *

ORDER OF BUSINESS

1. Minutes to be approved.

1.A Full Board Minutes of April 26, 2000.

Mr. Tiefenthaler MOVED, seconded by Mr. Poulson, approval of the Full Board minutes of April 26, 2000, as written. The motion was carried unanimously.

Committee of the Whole Minutes of April 26, 2000.

Mr. Tiefenthaler MOVED, seconded by Mr. O'Brien, approval of the Committee of the Whole minutes of April 26, 2000, as written. The motion was carried unanimously.

1.B Agenda for May 23-24, 2000.

There being no changes, Mr. Poulson MOVED, seconded by Mr. O'Brien, approval of the agenda for May 23-24, 2000. The motion was carried unanimously.

2. Ratification of acts of the Department Secretary.

2.A Real estate transactions.

Mr. Tiefenthaler MOVED, seconded by Mr. O'Brien, approval of the real estate transactions, as printed. The motion was carried unanimously.

3. Committee of the Whole.

3.A Approval of the Joint Agency Management Plan for the Chippewa Flowage.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler, approval of the Joint Agency Management Plan for the Chippewa Flowage. The motion was carried unanimously.

3.B Retirement resolutions.

1. Harland Carlson.
2. Terrance Hupf.
3. Ronald Theis.
4. Paul Willihnganz.

Mr. Willett MOVED, seconded by Mr. Behnke, approval of the retirement resolutions, as presented. The motion was carried unanimously.

3.C Adoption of Order WM-1-00(b) – revision of Chapter NR 10, Wis. Adm. Code, pertaining to establishing a season on mourning doves, resulting from the 2000 Spring Fish and Wildlife Hearings.

Keith Warnke, Upland Wildlife/Outdoor Heritage Specialist, Bureau of Wildlife Management, presented the Department's proposal and justification to establish a season to hunt mourning doves in Wisconsin. He summarized public input the Department has received, presented a brief overview of dove biology, outlined the rule proposal and addressed some of the issues that would be presented during public testimony.

The DNR held public hearings on the season proposal in all 72 counties on April 10. Final attendance at the spring conservation hearings was 30,785 persons. The vote was 21,167 in favor of the proposed season to 6,036 in opposition to the proposal. Over six thousand written comments were received during the written comment period which closed April 14. Additionally, the Department received more than 3 dozen valid written comments from individuals who were turned away at the public hearings due to overcrowding of meeting rooms or absence of ballots, and were given an additional week to submit comments. The total was 3,106 written comments in favor and 2,959 comments in opposition. Mr. Warnke indicated that phone calls and E-mails were not tabulated as part of the hearing record; however, individuals were advised to submit written comments.

Mr. Warnke presented slides depicting population and abundance of mourning doves. He indicated that the U.S. Fish and Wildlife Service (USFWS) call count survey, the breeding bird survey, and banding and harvest data are used to track the dove population. The current continent-wide population estimate is over 400 million in the fall migration. Estimates indicate that 5.2 million doves migrate from Wisconsin each fall.

Mr. Willett inquired about call count surveys conducted north of Highway 10. Mr. Warnke presented a slide on breeding bird survey routes throughout Wisconsin. He indicated that dove populations are monitored along 71 breeding bird survey routes annually. The breeding bird survey annually records numbers of various birds, including mourning doves, observed along the survey routes. According to U.S. Fish and Wildlife Service estimates, there are more mourning doves in Wisconsin in the Wisconsin fall population estimate than there are in many other states including Louisiana, Florida and Pennsylvania. This population estimate ranks Wisconsin 14 in estimated number of doves within the 27-state Eastern Management Unit.

According to data collected by the North American Breeding Bird Survey, Mr. Warnke continued, the Wisconsin dove population has shown an increasing trend of 1 percent per year over the past 33 years (USFWS 1999). The trend over the past 10 years shows a slight decrease.

Mr. Warnke stated that the Department does not expect that mourning dove hunting will result in an increase in the number of licenses sold, nor is it expected that the dove harvest will be at the level of states to the south. Using a rough estimate that approximately 20,000-30,000 people may choose to hunt doves and harvest an average of 5 doves per hunter, the resulting harvest prediction is 100,000-150,000 doves from the fall population. After adjusting for the documented crippling rate, the estimate is 130,000-200,000 doves annually. Mr. Warnke said this figure would be well below the 12-18 percent of the population harvested nation-wide each year.

The mourning dove season proposal and rule change follows one of the options offered by the USFWS through the Federal Migratory Game Bird framework in 1999. The Department has selected a season framework of 60 days with a daily bag limit of 15 birds and a possession limit of 30 birds. Also contained in the rule is a provision to allow only the use of non-toxic shot for mourning dove hunting. Mr. Warnke assured the Board that the Department has sufficient knowledge and management specifications in place to protect the mourning dove resource, which he said is the Department's first priority.

In conclusion, Mr. Warnke stated that hunting doves in Wisconsin will not negatively impact the population, nor will it have a negative impact on the continental mourning dove population. In addition, he indicated that the legal authority to hunt mourning doves has been thoroughly investigated by both Department and Legislative Council attorneys and they are in agreement that the Department's legal authority to establish a season clearly exists.

Mr. Willett noted the protected species designation of the mourning dove in Wisconsin and asked if the Department was required to remove the bird from the protected species list and designate it a game species

prior to establishing a season. Tim Andryk, Attorney with the Department's Bureau of Legal Services, responded: "All birds in Wisconsin are protected from hunting by administrative rules unless we list them as a hunted species and have a season established for them, or if we list them as unprotected. When we opened the season on wild turkeys, we removed them from the protected species list and set the season dates in the administrative rules. We did the same thing with the dove rule package. One part of the rule is to remove them from the "protected from hunting" list; the second part of the rule establishes the season and bag limits; and the third part of the rule requires nontoxic shot for hunting. It's all part of the rule package that went out to the spring hearings. It was in the hearing notice that we were removing them from the "protected from hunting" list in the administrative code and it was in the rule package that was approved by the Board in January." It was Mr. Willett's opinion that the Department did not conduct a hearing on removing the mourning dove from the protected species list nor was there a question on the spring questionnaire asking the public if the mourning dove should be removed from the protected species list. Mr. Andryk stated that the Department considered it the same issue and noted that it was contained in the hearing notice as well as the rule package, but that the question did not specifically state that it was a protected species. Since the mourning dove is statutorily designated as the state's bird of peace, it was Mr. Willett's opinion that the Department would first be required to have that designation removed by statute. Mr. Andryk stated that it would still remain as the state's bird of peace, even though a hunting season is being proposed.

Mr. Behnke asked why the Department has proposed the use of non-toxic shot for hunting mourning doves. Mr. Warnke indicated that evidence shows that mourning doves consume lead shot and are impacted by its consumption. Mr. Behnke asked if the non-toxic shot was a Federal requirement. Mr. Warnke said it was not. In response to further questions by Mr. Behnke, Mr. Warnke presented information on where and how to hunt mourning doves.

Mr. Willett asked if Department staff had contacted disabled Americans, or the VFW for their position on the proposal to hunt mourning doves. Mr. Warnke stated they did not.

David Doulton, Wildlife Biologist with the U.S. Fish & Wildlife Service, stated that the USFWS is responsible for coordinating the call-count survey, analyzing the data and preparing status reports. He distributed copies of the "*Mourning Dove Breeding Population Status, 1999*" report for the Board's review. USFWS management experience suggests a dove hunting season in Wisconsin is viable. Dove harvest will be monitored through the nation-wide harvest information program. If exploitation levels are too great, then the management community will respond with restrictions to reduce harvest consistent with dove population status.

In summary, Mr. Doulton stated that the mourning dove is considered a legitimate game species in international migratory bird treaties. Through the authority of the U.S. Fish & Wildlife Service, Wisconsin may choose to select a mourning dove season. When properly regulated, he said, mourning dove hunting has not been shown to have a significant effect on breeding population levels of doves in the Eastern Management Unit. An important aspect of the regulations process is that any state may always be more restrictive than federal regulations allow. "From the information available to me, I conclude that the hunting of mourning doves in Wisconsin would not be detrimental to the population of doves in the state or in the Eastern Management Unit. Monitoring programs should be able to detect a significant change in the population if it occurs. Finally, the regulatory mechanisms are in place, both federally and in-state, to lessen the harvest through restrictive regulations if such a need were to arise in the future."

In response to questions from Ms. Stepp, Mr. Doulton explained the difference between the call-count survey and the breeding bird survey, and advised Ms. Stepp there is no monetary or profit gains if a dove season is established in Wisconsin.

Mr. Behnke asked if planting a field of sunflowers for the purpose of attracting mourning doves was considered baiting and if baiting was legal. Mr. Doulton stated that baiting mourning doves was illegal; however, he said "crop manipulation..... is legal for mourning doves. Landowners can plant sunflowers, millet, whatever, mow the crop and hunt over the seeds that have fallen to the ground."

Mr. O'Brien asked if other states experienced a similar situation to Wisconsin's when proposing a dove season. Mr. Doulton said yes and gave a few examples. The state of Vermont opted to not have a season after intense opposition, while other states such as North and South Dakota approved a season. He added that opposition in the Dakotas evaporated once people discovered that harvest numbers were not high.

There was considerable discussion about the population decline over the past 10 years, as indicated in the USFWS "*Mourning Dove Breeding Population Status, 1999*" report. Mr. Doulton indicated there are factors other than hunting for the decline such as clean farming practices, changes in crops, timing of crops, expansion of urban areas, backyard bird feeders, etc.

Mike Budzig, Chief, Division of Wildlife, Ohio Department of Natural Resources, presented information on the process the State of Ohio followed to establish a dove hunting season in 1994. Mr. Budzig shared population estimates in recent years: Ohio's estimated fall population equals or exceeds 4 million birds; the 1999 population index increased less than 1 percent from 1998; 1998 population index increased 17.1 percent compared to 1997; 1997 population index up 5.2 percent compared to 1996. Overall, he said, the dove population in Ohio has increased. Mr. Budzig added there was no backlash from establishing the dove season; in fact, he said the issue strengthened the Division of Wildlife's image and enhanced the Division's credibility with most of its constituent groups.

Mr. Willett noted a discrepancy in Ohio's population numbers since the season was established. While Mr. Budzik indicated that the population had increased, the USFWS document indicated a downward trend in population in both the 34-year trend and the 10-year trend. Mr. Doulton of the USFWS responded: "There is no 10-year decline evident; it's got a minus, but again because of the statistical significance we cannot say with certainty that there is a decline. There appears to be a tendency toward a decline, but you will notice by the stars in the 34-year, I mean that's a minor point but I wanted to correct what you were saying there. Yes, there is a decline over 34 years but there is no trend indicated over the most recent 10 years because there are no stars by it which indicates statistical significance."

Mr. Willett read from the USFWS report: "On page 5, it's very clear..... It says, 'Between 1966 and 1999, a downward trend is noted in Ohio." Mr. Budzik indicated that he would have Ohio's Upland Research Biologist check this out and forward the information to Secretary Meyer with copies to the Board. Mr. Doulton indicated that the USFWS is currently embarking on a research project which involves most of the states in the Eastern Management Unit, including Wisconsin, to develop dove population models. The purpose of the study, he said, is to give the Fish & Wildlife Service a better understanding of dove population dynamics and to help do a better job of managing harvest levels. Mr. Doulton stated that the study would be initiated later this year with a final report anticipated in 2002.

Brent Manning, Director, Illinois Department of Natural Resources, (also member of the International Association of Fish and Wildlife Agencies' Executive Committee and Chair of the Board of Natural Resources and Conservation in the State of Illinois) discussed the State of Illinois' sport harvest and encouraged Wisconsin to establish a season on mourning doves. In response Mr. Willett, Mr. Manning stated that the mourning dove had never been a protected species in the State of Illinois.

Dave Ladd, Dodgeville, Wisconsin Conservation Congress, did not make a formal presentation but stated his support for the establishment of a dove hunting season.

Steve Oestreicher, Chair, Wisconsin Conservation Congress, expressed support for the dove season. He indicated that the spring Conservation Congress hearings demonstrated that "not only did the mourning dove win, the vote was a vote for hunting in general. ...If you choose to go against this voice, you will effectively demolish the DNR spring hearing process. .... I would not want to be remembered as a part of the Natural Resources Board that chose to ignore our citizens when they spoke and in doing so, successfully destroyed the spring hearing process." In response to Chairman Solberg, Mr. Oestreicher reviewed the Conservation Congress' intentions to form an ad hoc committee to review the spring hearing process, including scheduling larger meeting rooms, reviewing the ballot system used in Dane County to see if it can be used in other counties that anticipate large audiences, setting up a training session for the 72-county chairs, etc.

Jim Weix, Mukwonago, Wisconsin Dove Hunters Association, stated the Association's support for the dove hunt. In response to Mr. O'Brien, Mr. Weix stated there are approximately 1100 members in his organization.

Gen Ebert, Mukwonago, President of AWARE (A Wisconsin Alliance for Resources and the Environment), said she conducted a survey asking women for their input and said women were not opposed to dove hunting as long as there are rules and regulations. In response to Mr. Willett's question about

polling veterans for their opinion, Ms. Ebert read the following excerpt from a statement prepared by her father: "I'm an 80-year old man now and I left our family farm as a young man who went to war. I landed on a place called Okinawa Beach. You know the story. Somehow I made it home, but I must say there were two dreams that kept me going. One was to plow the fields at home and the other was to take my gun and to hunt. And I have done both. I do know there are doves of peace, but they're buried on foreign land and they will never come back to hunt again. So, I have done my job. Gentlemen, do yours and allow the boys to hunt."

Jerry Knuth, Plover, Second Vice-President of the Wisconsin Wildlife Federation, stated support for the dove hunting proposal, indicating that more birds die of natural causes than numbers harvested. In response to Mr. Tiefenthaler, Mr. Knuth stated there are about 9000 members in the Wisconsin Wildlife Federation.

Rob Kieckhefer, Milwaukee, Wisconsin Waterfowl Association, stated the Association's support for a dove hunt. He conducted a survey within the Association, which resulted in a ratio of 5-1 in favor. He felt the Board should go along with the vote of the Conservation Congress spring hearing vote. In response to Ms. Stepp, Mr. Kieckhefer stated that approximately 2000 were in attendance at the Milwaukee County hearing. In 1999, he thought attendance was between 300-400 persons. He added that the dove issue was the 142nd issue on the agenda and the vote took place at about midnight.

Rachel Jordon, Dodgeville, stated her support for a dove season in Wisconsin. She reported on the mourning vote in Iowa County in which 221 voted in favor of a season. She indicated that 22 percent of attendees left after the dove vote.

Arnold Baer, representing The Humane Society, felt the proposal before the Board was not about mourning doves, but rather about hunters thinking their hunting rights were being taken away. He termed that "hollow" thinking. He asked the Board to consider making the dove issue a ballot question and play by general election rules and have the polls remain open between 9 a.m. and 8 p.m. to allow senior citizens and others the opportunity to vote. He asked the Board to vote no to a dove hunt in Wisconsin. (A copy of Mr. Baer's statement is incorporated in the official Board minutes.) In response to Mr. Tiefenthaler, Mr. Baer discussed his organization's activities in Wisconsin. Although Mr. Baer said he and his organization are against hunting, they would not oppose the harvest of animals that are a nuisance or affect public safety.

Mr. Behnke made the following statement to clarify the rules under which the Natural Resources Board functions: "This is not an issue that is decided by a popular vote. This has been designated by the Legislature to be handled by a citizen boa - the Natural Resources Board. Therefore, it is solely within the jurisdiction of the Natural Resources Board to make this decision with oversight from the Legislature. The Legislature is obviously elected by the public and if they see fit to override any decision by the Natural Resources Board on an administrative rule, they will do so. ...."

Keith Olson, Harshaw, stated his support for a dove season in Wisconsin. He asked that the issue of nontoxic shot be looked at, indicating that the availability of nontoxic shot in the appropriate shot size is minimal.

Donna Liljegren, Campbellsport, former Conservation Congress delegate, spoke in support for the dove hunt. As a responsible hunter, Ms. Liljegren said she practice shoots on clay targets rather than sparrows or bluebirds, so that her shot is accurate and the animal will not suffer. She added that the "practice of hunting mourning doves in 37 other states buttresses the fact they can thrive in a controlled hunting atmosphere."

Dan Small, Belgium, urged the Board to support the mourning dove season.

Noel Cutright, Milwaukee, Wisconsin Society for Ornithology (WSO), said he would have liked to have heard from the Iowa DNR. The State of Iowa has decided not to establish a hunt, as did the State of Michigan. A survey of WSO members indicated approximately 90 percent in opposition. He indicated that WSO opposes a mourning dove hunting season, but pointed out the organization is not anti-hunting. He felt there were too many unanswered questions including declining population numbers, productivity of Wisconsin's population, varying population estimates, also felt that a mourning dove season will harm relationships with various groups. He urged the Board not to approve the Department's recommendation.

Ann Frisch, Professor at UW-Oshkosh, spoke in opposition to a dove season in Wisconsin.
Frank Zuern, Oshkosh, spoke in support for a 3-year study prior to establishing a dove season.

Charles Burke, Westby, spoke in support for a dove season.

Steve Williams, Waukesha, Wern Valley Sportsmen's Club, spoke in support for a dove season.

Dan Dessecker, Senior Biologist for the Ruffed Grouse Society, spoke in support for a mourning dove season.

Ed Frank, Madison, spoke in support for a mourning dove season.

Richard Shepard, Oshkosh Bird Club, spoke in opposition to a mourning dove season.

Scott Slajus, representing the National Wild Turkey Federation, spoke in support for a dove season.

Craig Johnson, Hudson, Wildlife Legislative Fund of America, spoke in support for a dove season.

Neal Niemuth, Professor of Wildlife, UW-Stevens Point, spoke in support for a dove season.

Pat Fisher, New London, spoke in opposition to a dove season.

John Wieneke, New London, Wisconsin Citizens Concerned for Cranes and Doves, spoke in opposition to a dove season; signed a petition with 23,000 other people in the state who are opposed to a dove season who are not anti-hunters; did not agree with the Department's legal interpretation with regard to the definition of "protected" and "game" birds in Chapter 29, Wis. Stats. He suggested that the Department "look for ways to reach out to the rest of the nature loving public – the animal lovers, the birdwatchers, the hikers – find a way to include them in your decision-making process. They are ready, willing and able to pay their way too." In response to Ms. Stepp, Mr. Wieneke stated that the question on the petition included both cranes and doves.

Jeannie Lord, Fredonia, spoke in opposition to a dove season.

Don Cash, New London, spoke in opposition to a dove season.

Chuck Zorn, Elkhart Lake, President of the National Wild Turkey Federation, spoke in support for a dove season in Wisconsin.

Rick Young, River Falls, representing Pheasants Forever, spoke in support for a dove season.

Barbara Klug, Wausau, spoke in opposition, but indicated she was not in agreement with PETA or any other extreme anti-hunting group and was not opposed to hunting.

Eldon McLaury, Madison, representing the Wisconsin Chapter of the Wildlife Society, spoke in support for a dove season.

Tina Kaske, Madison, representing the Alliance for Animals, spoke in opposition to the dove season. In response to Mr. Tiefenthaler, Ms. Kaske stated that the Alliance for Animals has between 1200 and 1500 members statewide. Ms. Kaske indicated that her group would be interested in serving on the task force to review the Conservation Congress process.

Susan Fuller, Madison, Wisconsin Wildlife Coalition, was not present, but Tina Kaske indicated she was opposed to a dove season.

Dave Miller, West Bend, spoke in support for a dove season.

Chuck Sauer, Marathon, retired wildlife biologist, spoke in support for a dove season.

Lynn Dreissen, Appleton, spoke in opposition to a dove season. In response to Mr. Tiefenthaler, Ms. Dreissen stated the following reasons for the Board not approving a dove season - decline in the mourning

dove population; additional pressure of hunting to a bird that already has a high mortality rate; and the small amount of meat on the mourning dove. Ms. Stepp: "I'm just a little—insulted is probably too strong a word --- it concerns me that you feel that it is a done deal and that no one is listening to your side. I know I've received easily over 150 letters and I was going to say 100,000 calls but that would be joking, but it felt like that, but I do want to stress that we all have a great deal of respect for everyone on both sides of the issue. That's how I feel about it. We do understand that the DNR is in favor of this and they have given us a lot of science and I've received a lot of science from outside sources as well that we all will be taking into consideration. I just wanted to make sure that that statement was out there." Ms. Dreissen said she has been attending the Conservation Congress hearings for the past several years and feels shut out of the process and in particular this year and has experienced quite a bit of hostility. She hesitates speaking out at the hearings because "I'm not listened to and basically shouted down when I do express my views and they're not radical ones and I am not an anti-hunter. I just want to make that clear."

Wendy Auphaus, Appleton, expressed opposition to the dove proposal. She felt the views of the nonhunting public were not being heard. She indicated she was turned away at the Outagamie County Conservation Congress hearing.

Cathy Wiesman, Appleton, stated her opposition to the dove proposal and indicated that she too was turned away at the Outagamie County hearing. In response to Ms. Stepp, Ms. Wiesman indicated that the hearing room was not large enough to accommodate all those attending the Outagamie County hearing. Ms. Stepp asked if Ms. Wiesman submitted written comments to which she responded no, that she didn't think it would do any good. Ms. Stepp said it was her understanding that the written comment period was extended to accommodate all those who were turned away at the various county hearings. Secretary Meyer said that was correct. Ms. Stepp added that the Board received copies of all the letters, both for and against, that were mailed to the Department's address from Judy Scullion, the Board's Secretary.

Jan Modenhauer, Oshkosh, spoke in opposition to the dove proposal.

Karin EtterHale, representing the Madison Audubon Society, stated her opposition to the dove proposal; felt the issue has "taken up many individuals valuable time which could have been spent working on common goals toward habitat protection for all species, both game and nongame species alike;" feels the general public is very much opposed to a dove hunting season in Wisconsin. She indicated that the "Audubon Society has not typically opposed or promoted hunting. We try to pick our issues. I was hoping to maybe not take a position on this, but I didn't think that was possible and I tried to write an article for a newsletter that brought out a lot of the different viewpoints on the issue, a lot of information on it, trying not to be judgmental and then because I really wasn't sure---so we took a poll and those results showed that 86 percent of our members did not support a hunting season on doves. Seven percent said yes and seven percent said they were neutral or undecided. The other thing I did was to ask if people wanted to say if they were nonhunters, anti-hunters or hunters because I knew we had all three in our membership. Fifty-five percent said they were nonhunters; 10 percent said they were anti-hunters and 33 percent characterized themselves as hunters. Some of them put down two different things. But 67 percent of hunters who voted said they were opposed to a season and I think that points to what the general public believes also.

"I don't believe that the vote would have been the same if it had been either a closed vote or if this had not been such an anti-hunter/hunters' rights issue. I think under more normal circumstances that a lot of those hunters who came to the meetings would have voted against hunting doves. ....."

Ms. EtterHale concluded her presentation by quoting from an article that Jay Reed wrote in 1971: "There is no good and sufficient reason why Wisconsin should not have a mourning dove hunt. None. But to obtain it would require going to war with those who oppose hunting, as well as with nonhunters, bird fanciers and a bunch of plainly, good people who would turn against hunters and hunting. Maybe you could win the battle, but you would lose the war for certain. Mourning dove hunting plainly and simply is not worth it."

Mr. Tiefenthaler stated that Jay Reed subsequently followed with an article within approximately 4 to 6 weeks later and he said, "I now understand that there are a bunch of anti-hunter people behind this and every hunter in this state should come to these hearings and should have their voice heard and better damn well do it because it's the right thing to do for hunting."

Dick Koemer, Neenah, Migratory Study Committee, spoke in support for the dove season proposal.

Art Seidel, Waukesha, Waukesha County Conservation Alliance, spoke in support for the dove season.

Len Wurman, Wausau, spoke in support for the dove season.

Mitch Bent, Antigo, discussed the Conservation Congress hearing in Langlade County where the vote on the dove proposal was very close and "I can say with surety that the majority of the people who voted against were not anti-hunting, but they had a feeling about it. I didn't agree with that feeling, but I have a right and a duty to respect those feelings. .... When you make your decision, if you make your decision one way or the other I can live with it. ..... I kind of would like the opportunity to hunt doves. My world is not going to end if you decide not to, but when you make your decision think of those people who have come before us and created this heritage that we have. If you vote yes on it based upon that, fine. If you vote no on it based on that heritage and what those people have done, I, as a writer will applaud you too either way provided that it's a predicate that you use. ..." He asked the Board to approve the use of nontoxic shot if the vote is affirmative on the dove season proposal.

Marge Mundigler, Shawano, spoke in opposition to the dove season proposal.

Paul Busch, Appleton, spoke in support for a dove season.

Marge Gibson, Antigo, spoke in opposition to the dove season.

Don Gibson, Antigo, spoke in opposition to the dove season.

Mr. Tiefenthaler MOVED, seconded by Ms. Stepp, that the Board approve Order WM-1-00(b) to establish a mourning dove season in Wisconsin, as recommended by the Department.

Mr. Behnke MOVED an amendment to eliminate the use of nontoxic shot requirement in the green sheet proposal. Mr. Tiefenthaler seconded the motion. The vote on the amendment:

Affirmative – Messrs. Solberg, Tiefenthaler, O'Brien, Behnke and Ms. Stepp.
Negative – Messrs. Poulson and Willett.

The motion was carried.

Mr. Behnke: First of all, I would like to compliment the Board for the courtesy that you have shown today to all of these people who took the time and the expense and drove a long way to be here to give us their honest opinion on what we ought to hear from them. This is the third time that I have gone through the mourning dove issue. I was on the Natural Resources Board back in 1971 at the time this bird was made the symbol of peace, a bill introduced by Senator LeFave at that time. I would just like to address the fluff that is connected with this issue at this time. The Natural Resources Board has a decision to make relative to a single issue and that is, whether we hunt or not hunt mourning doves in Wisconsin. Philosophically, I have been opposed to a mourning dove season and primarily, for a number of reasons not the least of which is the emotional turmoil---and this erupts each time it is proposed. As I indicated in 1971, it got so bad that the State Legislature got involved. Mourning dove hunting in other states may be a gigantic event, but I doubt that would ever be true in Wisconsin, and at best it may be equal to a crow season, about which one-half of one percent of all the people who buy a small game license participate in each year. The number of doves killed in Wisconsin by hunters would probably be far less than the number killed each year by domestic house cats. Recent research suggests, and I have a pamphlet here by John Coleman, Stanley Temple and Scott Craven, that talks about the cat as a predator on wildlife. This suggests that rural, free-ranging domestic cats in Wisconsin may be killing 39 million birds in the state each year and many of them are bound to be mourning doves.

"A dove hunting season was shot down by the Natural Resources Board and the Legislature in 1971 and again in 1989. The DNR resurrected it yet again in 1999, but instead of justifying the rule by supplying the public, the Conservation Congress and the Natural Resources Board with a basic science and biology that would support a hunting season, they mounted it into a political type campaign. The campaign headquarters took on a 'future of hunting' flavor. Their propaganda machine motivated a record attendance at this year's Conservation Congress meetings on April 10 not to vote on a dove season but to protect their right to hunt. Secretary Meyer put on his political hat on May 12 when he told 350 delegates at the

Conservation Congress meeting, 'each of you should let the Natural Resources Board know that 21,067 who took a night out of their life to stand up for the future of hunting should not be ignored.' Still quoting, 'you will notice I didn't say the future of dove hunting, I said the future of hunting.' And I resent the fact that the Secretary would sic a number of people on the Board to say you better vote the way we want you to. We're voting today gentlemen and ladies on the mourning dove season, not the future of hunting. Now as a member of the Board, I expect the DNR to provide the scientific and biological facts and it is the Board's responsibility to make policy decisions based on those factors, after gauging honest citizen feedback from the public hearing process. Obviously, the Congress was mislead on the mourning dove issue which prompted record attendance at the county hearings to vote on the right to hunt. This kind of activity by proponents and the DNR added to my philosophical opposition to hunting mourning doves and that was reinforced each day as I received a new batch of the yellow cards in the mail. Jerry O'Brien got 2000 of them and I got about the same amount. Now contrast this, 'sign and drop in the mail concept' with the many hundreds of individuals messages from throughout the state that came from the heart. This was not a form letter that I got. Each person sat down and wrote out their thoughts to me. Some of them said the same thing, 'we don't think you ought to hunt them." But these were individual letters that came to me and they mean a lot more to me than a petition or a preprinted card or a form letter. .....

"I kind of had my mind made up to vote no on this until last Saturday and Mr. Seidel kind of talked about the same thing when the "Journal-Sentinel" reported PETA's new anti-milk add campaign aimed at teens showing a greasy, haired kid with pimples, which they claim was caused by drinking milk. ..... I really sympathize with these people who don't want you to shoot their backyard bird feeder pets. On the other hand I also don't like the people who also join in and say look what we did; we shot down hunting. So I think I'm inclined to vote yes on this issue today."

Mr. O'Brien: I don't want to repeat what Herb said, but I have a lot of the same feelings that he just expressed and I would second most of them but I think I do want to make remarks based upon the fact that Herb said I received lots of letters. I received lots of phone calls and I received lots of yellow cards and I have to respond to that. I was really dismayed—if in fact the anti-hunters used this as an opportunity to try and polarize the hunting versus anti-hunting and stop hunting in general. I am dismayed with them, but by the same token I know for a fact that the hunting groups overreacted in trying to believe in a very, paranoid way that their rights to hunt everything in the world was going to be cut off. .... My vote is not going to be based at all on either one. I am not worried that the anti-hunters are going to stop hunting and I'm not worried that anything is going to happen to our great hunting tradition that we have. I, like so many, don't know why anybody would want to hunt doves. I wouldn't. The people who are opposed to dove hunting just don't include anti-hunters. I've talked to many, many hunters who say they don't want to see dove hunting, one because they're not interested in hunting doves themselves and two, they were very upset about the polarization that developed over this thing and the battle between the parties. They said all this is going to get is black eye on the hunters and on the DNR itself. I'm going to put all this aside when voting. I am going to vote strictly on the dove hunting issue itself. If we're told that biologically we can sustain it, and I don't have a doubt in my mind but that we can. Nobody has told us today that we can't. .... I think we have a situation that both parties can have what they want. People can still have their backyard doves and hunters can still have the opportunity to hunt them, so my vote will be based upon that alone."

Secretary Meyer: A couple of comments were made today---yes, I am pro-hunting. And I am a hunter, but in terms of any recommendations I've made during this whole decision-making process, I have to take that out of the equation. Let me just make sure the record is clear. There was a large turnout at the spring hearings that was not generated by the Department of Natural Resources or any of its employees. We knew there would be a large turnout and we tried to serve that. I did not take a public position on this until after the vote of the Conservation Congress. I hold two things in great esteem in terms of conservation in this state. They're reflective, as was mentioned by Mr. Gibson from California, the great concern of citizens for conservation on all sides of this issue. They become reflected in terms of policy in the state on two institutions – the Conservation Congress and this Natural Resources Board. And I have had great respect for both those organizations throughout my career and I respect them today making these difficult decisions.

"When I first took a position publicly on this issue was after the Conservation Congress hearings when 21,000 against 6000 votes were taken. At that point in time, I felt it very important to speak out loudly and strongly on this because my great fear was that those 21,000 votes would not be recognized by this Board because if they had not, I can't imagine hunters and anglers or any citizen from the state coming forward in future Conservation Congress hearings. And that is such a dramatic vote. If that vote had been close or

against, I would have recommended to you not to have a dove season. But I do not want to see the wonderful institution that's been created in this state, the Conservation Congress. And that's why I've taken the actions I have. It's not out of disrespect for this Board. It's out of respect for the overall process of governing conservation in the state."

Mr. Poulson: I'm going to vote no. It has nothing to do with hunting privileges of anyone. I'm not a hunter, but I allow hunting on my land. I just don't quite understand why you would want to hunt doves; we hunt 40 species already and one more I just don't quite see it. My bigger concern in all of this is that I hope no one closes their land because of this. We need all of the land we can get to hunt on and I don't want to see divisiveness grow to the point where we don't allow hunting because of something of this type and emotion. My farm will be open to hunting and when my sons have gotten their game, it will be open to the next guy. ...."

Mr. Willett: With all due respect to Secretary Meyer, I don't agree that the Department has been fair in this instance and I think that they in this instance have done a disfavor to the State of Wisconsin. When it first came up a year ago, I told you that I felt this was going to be an extremely divisive issue, that the history of the State of Wisconsin was one of stewardship, one of trust and belief in each other and that the Department has had a long-standing history of being responsible and being a representative of all peoples. And that this one sole issue could in fact divide the house---and in fact, it has divided the house. It has divided it to the point where I'm concerned. We had a couple of presentations that said it more eloquently than I can---that there is a middle group of people who in fact trust us, believe in us and allow us to hunt even though they don't. They allow us to hunt because we have done so responsibly and we have done so respecting them. You can play down all you want the fact that the dove is a symbol, but it is a symbol to some people. Some people have passionately talked about dying for that symbol and it doesn't seem to me to be worth alienating those people to hunt mourning doves. We can talk about the issue of the role of the Department. I have a number of questions concerning the role of the Department. In the first instance, I'm not sure it's legal to do what we do. I'm not sure that the Legislature doesn't need to reclassify the dove. I'm not sure that the question put to the Conservation Congress, which I think is a wonderful organization, and I am very proud to be associated with them, but I'm not sure the Department was fair with them because the first question would have been, do we change the classification? And I also feel the Department has made it a divisive issue. Unfortunately, this issue has become a hunter versus the anti-hunters. And I feel extremely sad about that because I am a hunter. .... I am a sixth generation member of this state and I think this state has been built on true love and concern for our environment and the ethics by which we live. I think that those all have now needlessly been called into question. ....

"It is my belief that the Legislature will take this up and carry on the debate. .... And it is also my belief that we will now have needlessly exposed ourselves to them stepping into areas where they need not. And once they get a hold of it, who knows where they're going to go. Who knows what further restrictions some of them can come up with. And I am going to vote against this because I think we were wrong and irresponsible by bringing it forth and creating a controversy where we didn't need to."

Chairman Solberg called for vote on the motion, as amended, to approve Order WM-1-00 (b) to establish a dove-hunting season in Wisconsin. The vote on the motion:

Affirmative – Messrs. Solberg, Tiefenthaler, O'Brien, Behnke and Ms. Stepp.
Negative – Messrs. Poulson and Willett.
The motion was carried.

4. Board Members' Matters.

4.A Rattlesnake experiment at the Necedah Refuge Wildlife Area.

This item was brought up during the Committee of the Whole meeting.

5. Special Committees' Reports.

There were no Special Committees' Reports this month.

ADMINISTRATIVE RULES

BULLETIN

of the

PROCEEDINGS

of the

Wisconsin Legislature

1999–2000 Session

Period Ending January 1, 2001

EXHIBIT

Clearinghouse Rule 00–024

AN ORDER to amend DWD 290.155, relating to the annual adjustment of thresholds for application of the prevailing wage rates for state or local public works projects.

Submitted by **Department of Workforce Development**

02–02–00. Received by Legislative Council.
02–18–00. Report sent to Agency.

ASSEMBLY ACTION

04–18–00. Report received from Agency 928
04–25–00. Referred to committee on Labor and Employment 928
05–25–00. No action taken.

SENATE ACTION

04–18–00. Report received from Agency 594
04–20–00. Referred to committee on Labor 594
05–20–00. No action taken 625
08–02–00. Effective date 8–1–2000 654

Clearinghouse Rule 00–025

AN ORDER to create chapter NR 153, relating to the runoff management grant program.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–09–00. Report sent to Agency.

Clearinghouse Rule 00–026

AN ORDER to create chapter NR 152, relating to model ordinances for construction site erosion control and storm water management.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–07–00. Report sent to Agency.

Clearinghouse Rule 00–027

AN ORDER to create chapter NR 151, relating to runoff management.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–07–00. Report sent to Agency.

Clearinghouse Rule 00–028

AN ORDER to repeal and recreate chapter NR 120, relating to the priority watershed management program.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–07–00. Report sent to Agency.

Clearinghouse Rule 00–029

AN ORDER to create chapter NR 135, relating to reclamation of nonmetallic mining sites.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–06–00. Report sent to Agency.

ASSEMBLY ACTION

05–30–00. Report received from Agency 969
06–06–00. Referred to committee on Environment 969
07–06–00. No action taken.

SENATE ACTION

05–30–00. Report received from Agency 625
05–31–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 625
09–15–00. No action taken 674
10–04–00. Effective date 10–1–2000 678

Clearinghouse Rule 00–030

AN ORDER to create chapter NR 195, relating to establishing river protection grants.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–09–00. Report sent to Agency.

ASSEMBLY ACTION

07–18–00. Report received from Agency 982
07–28–00. Referred to committee on Environment 982
08–28–00. No action taken.

SENATE ACTION

07–18–00. Report received from Agency 648
07–19–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 648
09–12–00. No action taken 674
11–01–00. Effective date 11–1–2000 687

Clearinghouse Rule 00–031

AN ORDER to repeal NR 10.01 (1) (g) 1. d., 2. d. and 3. d., 10.06 (3), (4) and (5), 10.31 (1) (d), 11.02 (2) (a) and 15.022 (11) (a); to amend NR 10.01 (3) (c) and (es), 10.02 (5), 10.06 (2) (a) and (b) and (8) (a) and (b), 10.09 (1) (c) 1. c., 10.12 (5) (d) (intro.) and 1., 10.13 (3) (a) and 10.145 (5) (a) 1.; to repeal and recreate NR 10.01 (3) (h) 1. a., 10.31 (3) (a) and 10.34 (1); and to create NR 10.01 (1) (h), 10.06 (2) (c), 10.20, 11.05 (2) and 16.02 (5) (e), relating to hunting, trapping and captive wildlife.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.

03–06–00. Report sent to Agency.

ASSEMBLY ACTION

05–30–00. Report received from Agency 969
06–06–00. Referred to committee on Natural Resources .. 969
06–21–00. Public hearing held.
07–12–00. No action taken.

SENATE ACTION

05–30–00. Report received from Agency 625
05–31–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 625
06–30–00. No action taken 647
07–12–00. Public hearing held.
10–04–00. Effective date (part) 11–18–2000, (part) 5–1–2001 678

Clearinghouse Rule 00–032

AN ORDER to amend NR 10.145 (5) (d) and (6) (b), 10.27 (intro.), 10.40 (3) (f) and 15.13 (title) and (intro.); and to create NR 10.12 (12), relating to hunting, trapping and wildlife research.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
02–29–00. Report sent to Agency.

ASSEMBLY ACTION

05–10–00. Report received from Agency 958
05–16–00. Referred to committee on Natural Resources .. 958
06–16–00. No action taken.

SENATE ACTION

05–10–00. Report received from Agency 613
05–10–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 613
09–15–00. No action taken 674
10–04–00. Effective date (part) 10–1–2000, (part) 3–1–2001 678

Clearinghouse Rule 00–033

AN ORDER to repeal NR 22.04 (5); to amend NR 20.03 (18), 20.20 (33) (a) 1., (b) 2. and (g) 2., (57) (d) 1. and (73) (a) 3. a., (j) 5. a., (i) 1. and 2. and (o) 2. and 3.; to repeal and recreate NR 20.15 and 22.04 (4); and to create NR 20.20 (58) (f) 2., (60) (b) 2. and (cm), (66) (dm) and (67) (ag), (am) and (as), 22.04 (4), 26.08 (9), 26.10 (4) and 26.31, relating to sport fishing regulations on inland and boundary waters and fish refuges on inland waters.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–07–00. Report sent to Agency.

ASSEMBLY ACTION

05–30–00. Report received from Agency 969
06–06–00. Referred to committee on Natural Resources .. 969
06–21–00. Public hearing held.
06–21–00. Executive session held.
06–21–00. Modifications requested, Ayes 10, Noes 1.
06–21–00. Modifications requested, Ayes 11, Noes 0.
07–06–00. Modifications received.
07–20–00. No action taken.

SENATE ACTION

05–30–00. Report received from Agency 625
05–31–00. Referred to committee on Agriculture, Environmental Resources and Campaign Finance Reform 625
09–15–00. No action taken 674
10–04–00. Effective date (part) 3–1–2001, (part) 4–1–2001 678

Clearinghouse Rule 00–034

AN ORDER to repeal and recreate chapter NR 243, relating to animal feeding operations.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–09–00. Report sent to Agency.

Clearinghouse Rule 00–035

AN ORDER to amend NR 216.002 (2), (8) and (12), 216.04 (5) (b) (intro.), 216.06 (1), (2) (a) and (8), 216.23 (9), 216.26 (2), 216.27 (3) (j) 1., 216.29 (7), 216.30, 216.41, 216.43 (1), (2), (4) and (6), 216.46 (2) and (4) (a), (f) and (g) and 216.55 (2) and (3); and to create NR 216.07 (7m), 216.27 (3) (hm), 216.42 (2m), 216.46 (1m) and (6) (i) and (j) and 216.47 (4), relating to stormwater discharge.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–08–00. Report sent to Agency.

Clearinghouse Rule 00–036

AN ORDER to create chapter NR 154, relating to best management practices, conditions and technical standards.

Submitted by **Department of Natural Resources**

02–10–00. Received by Legislative Council.
03–09–00. Report sent to Agency.

Clearinghouse Rule 00–037

AN ORDER to amend Tour 1.03 (3) (a), relating to the joint effort marketing program.

Submitted by **Department of Tourism**

29.863 Game farms; license.
29.865 Pheasant and quail farms.
29.867 Game bird and animal farms.
29.869 Fur animal farms.
29.871 Deer farms; venison serving permits.
29.873 Domestic fur–bearing animal farms.
29.875 Disposal of escaped deer.
29.877 Wildlife exhibit licenses.
29.879 Humane, adequate and sanitary care of wild animals.
29.881 Giving predatory animals to public zoos.

SUBCHAPTER XII
WILDLIFE DAMAGE

29.885 Removal of wild animals.
29.887 Wildlife control in urban communities.
29.889 Wildlife damage abatement program; wildlife damage claim program.
29.89 Venison processing grants.

SUBCHAPTER XIII
ENFORCEMENT

29.921 Warrants; arrests; police powers.
29.924 Investigations; searches.
29.927 Public nuisances.
29.931 Seizures.
29.934 Sale of confiscated game and objects.
29.936 Distribution of fish and game to food distribution services.
29.941 Assistance of law enforcement officers.
29.944 Exemption from liability.
29.947 Law enforcement aid program; spearfishing.
29.951 Resisting a warden.
29.954 False impersonation of warden.
29.957 Breaking seals of department.
29.961 Incorrect information.
29.964 Changing approval.
29.967 Prohibitions during periods of suspension or revocation.
29.969 Larceny of game.
29.971 General penalty provisions.
29.974 Penalties; repeaters.
29.977 Civil actions for damages caused by law violations.
29.981 Parties to a violation.
29.983 Wild animal protection assessments.
29.985 Fishing shelter removal assessment.
29.987 Natural resources assessments.
29.989 Natural resources restitution payments.

Cross–reference: See definitions in s. 24.01.

NOTE: Chapter 29 was substantially renumbered and revised by 1997 Wis. Act 248. A conversion table showing the location of the content of the prior statutes in the new chapter is located at the end of this chapter. However, there is not a direct correspondence between the current statutes and the prior statutes.

SUBCHAPTER I

DEFINITIONS

29.001 Definitions. In this chapter, unless the context requires otherwise:

(3) "Address" means a street name and number or post–office box number, the name of the city, village or town, the state and the zip code.

(6) "Aircraft" means any contrivance invented, used or designed for navigation of or flight in the air.

(9) "All–terrain vehicle" has the meaning given in s. 340.01 (2g).

(12) "Approval" means any type of approval or authorization issued by the department under this chapter including any license, permit, certificate, card, stamp or tag unless the context requires a different meaning.

(15) "Attending boat" means an open boat used to transport equipment, crew or catch of a licensed boat, provide assistance in the operation of fishing gear by the licensed boat or provide other assistance in the commercial fishing operations of a boat licensed under s. 29.519.

(16) "Boat" means any device capable of being used as a means of transportation on water.

(18) "Carcass" means the dead body of any wild animal, including any part of the wild animal or the eggs of the wild animal.

(21) "Documented boat" means a licensed commercial fishing boat with valid federal documentation under s. 30.51 (2) (c) 2.

(24) "Farm–raised deer" has the meaning given in s. 95.001 (1) (a).

(25) "Farm–raised fish" means a fish that is kept on a fish farm for propagation purposes or reared on a fish farm and that has not been introduced, stocked or planted into waters outside a fish farm or that has not escaped from a fish farm.

(26) "Fish farm" has the meaning given in s. 95.60 (1) (a), except that "fish farm" does not include a state or municipal fish hatchery or a private fishing preserve.

(27) "Fishing" includes taking, capturing or killing fish, other than farm–raised fish, or attempting to take, capture or kill fish, other than farm–raised fish. When "fish" is used as a verb, it has the same meaning as "fishing".

(28) "Food distribution service" means a program that provides food or serves meals directly to individuals with low incomes or to elderly individuals, or that collects and distributes food to persons who provide food or serve meals directly to these individuals.

(29) "Freeze–out pond" means a natural, self–contained body of water in which freezing or anoxic conditions prevent the body of water from naturally sustaining a fish population at least twice every 5 years.

(30) "Fur–bearing animals" includes otter, beaver, mink, muskrat, marten, fisher, skunk, raccoon, fox, weasel, opossum, badger, wolf, coyote, bobcat, cougar and lynx.

(33) "Game" includes all varieties of wild mammals or birds.

(36) "Game animals" includes deer, moose, elk, bear, rabbits, squirrels, fox and raccoon.

(39) "Game birds" includes wild geese, brant, wild ducks, wild swan, rails, coots, gallinules, snipe, woodcock, plovers, sandpipers, ruffed grouse, prairie chicken, sharp–tailed grouse, pheasants, Hungarian partridge, Chukar partridge, bobwhite, quail, crows and wild turkey.

(41) "Game fish" includes all varieties of fish except rough fish and minnows.

(42) "Hunt" or "hunting" includes shooting, shooting at, pursuing, taking, capturing or killing or attempting to capture or kill any wild animal.

(45) "Inland waters" means all waters not classified as outlying waters, including the bays, bayous and sloughs of the Mississippi River bottoms.

(51) "Licensed boat" means a boat, other than an attending boat, included under a commercial fishing license.

(54) "Minnow" includes a sucker not listed as endangered or threatened under s. 29.604 (3), central mudminnow, tadpole madtom, stonecat, banded killifish, blackstripe topminnow, brook silverside, brook stickleback, ninespine stickleback, trout–perch, darter, log perch, sculpin. "Minnow" includes any minnow family cyprinid that is not listed as endangered or threatened under s. 29.604 (3) and that is not a goldfish, grass carp, common carp or rudd. "Minnow" does not include any sucker, darter, sculpin or minnow species that is designated as detrimental under s. 29.424.

(57) "Motor vehicle" means a self–propelled vehicle, including a combination of 2 or more vehicles or an articulated vehicle. "Motor vehicle" includes a snowmobile or an all–terrain vehicle. "Motor vehicle" does not include an aircraft or a vehicle operated exclusively on rails.

(60) "Nongame species" means any species of wild animal not classified as a game fish, game animal, game bird or fur–bearing animal.

(63) "Outlying waters" means Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor and the Fox River from its mouth up to the dam at De Pere.

(64) "Preexisting fish rearing facility" means a body of water that is a fish farm or part of a fish farm and that is not a self–

contained body of water but that was licensed as a private fish hatchery, or as part of a private fish hatchery, under s. 29.52, 1995 stats., on January 1, 1998 and that has been continuously used to rear fish since that date.

(66) "Registered boat" means a boat having a valid certificate of number issued under s. 30.51.

(69) "Resident" means a person who has maintained his or her place of permanent abode in this state for a period of 30 days immediately preceding his or her application for an approval. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in this state. Mere ownership of property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitation, the location where the person votes, pays personal income taxes or obtains a driver's license.

(72) "Resident senior citizen" means a resident who has attained the age of 65 years.

(74) "Rough fish" includes suckers, not listed as endangered or threatened under s. 29.604 (3), common carp, goldfish, freshwater drum, burbot, bowfin, garfish, sea lamprey, alewife, gizzard shad, rainbow smelt and mooneye.

(75) "Self–contained body of water" means a body of water that has no inlet from or outlet to a natural body of water, except that it may have pipes or similar conduits to put in or withdraw water that are equipped with barriers that prevent the passage of fish between the body of water and the other waters of the state.

(76) "Self–contained fish rearing facility" means any of the following:

(a) An artificial, self–contained body of water that is a fish farm or part of a fish farm.

(b) A freeze–out pond for which a permit is issued under s. 29.733 (2).

(78) "Snowmobile" has the meaning given in s. 340.01 (58a).

(81) "Sturgeon Bay" means that body of water lying south and east of a line commencing at the most northerly point of section 23, township 28 north, range 25 east, and running in a northeasterly direction to the water's edge on north line of section 13, same township and range.

(84) "Trapping" includes the taking, or the attempting to take, of any wild animal by means of setting or operating any device that is designed or made to close upon, hold fast, or otherwise capture a wild animal. When "trap" is used as a verb, it has the same meaning as "trapping".

(87) "Vehicle" means any device for moving persons or property or pulling implements from one place to another on land or rails or in the air.

(90) "Wild animal" means any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion.

History: 1997 a. 248 ss. 39 to 47, 49 to 75, 84; 1999 a. 9.

SUBCHAPTER II

GENERAL FISH AND GAME REGULATION

29.011 Title to wild animals. (1) The legal title to, and the custody and protection of, all wild animals within this state is vested in the state for the purposes of regulating the enjoyment, use, disposition, and conservation of these wild animals.

(2) The legal title to a wild animal or carcass, taken or reduced to possession in violation of this chapter, remains in the state. The title to a wild animal or carcass, lawfully acquired, is subject to the condition that upon the violation of this chapter relating to the possession, use, giving, sale, barter or transportation of a wild animal or carcass by the owner, the ownership shall revert, as a result of the violation, to the state.

History: 1997 a. 248 s. 87.

29.014 Rule–making for this chapter. (1) The department shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping.

(2) (b) All of the rules promulgated under this chapter are prima facie reasonable and lawful until found to be otherwise in a final determination by a court.

(c) Any reference to this chapter includes any rules promulgated under this chapter and any reference to any provision of this chapter includes any rules promulgated under that provision.

(3) Any rule of the department is subject to review in the manner provided in ch. 227, except that if the rule affects only the county in which the appellant resides, the appeal shall be to the circuit court of that county.

(4) No person may challenge the validity of a rule promulgated under this chapter in any prosecution of that person for a violation of this chapter or rules promulgated under this chapter unless the person has previously brought a separate action under s. 227.40 seeking a declaratory judgment on the validity of the rule.

History: 1997 a. 248 ss. 77 to 79, 383, 397, 399.

29.024 Approvals; forms; issuing agents. (1) APPROVALS REQUIRED. Except as specifically provided in this chapter, no person may hunt or trap in this state, fish in the waters of this state or engage in any of the activities regulated under this chapter unless the appropriate approval is issued to the person. A person shall carry the required approval with him or her at all times while hunting, trapping or fishing or engaged in regulated activities unless otherwise required by this chapter or unless otherwise authorized or required by the department. A person shall exhibit the approval to the department or its wardens on demand.

(2) CONDITIONS AND RESTRICTIONS ON APPROVALS. (a) A hunting, trapping or fishing approval may be issued only to and obtained only by a natural person entitled to the approval.

(b) Except as provided under s. 29.194 (1), a resident hunting, trapping or fishing approval may be issued only to a person who presents to the issuing agent or the department definite proof of his or her identity and that he or she is a resident.

(c) No more than one of the same series of approval may be issued to the same person for the same hunting or fishing season in any year except as authorized by the department.

(d) Except as provided under s. 29.519 (2) (d) or by rule, no person may transfer his or her approval or permit the use of any approval by any other person.

(e) No person while hunting, trapping or fishing may use or carry any approval issued to another person, except that a person who accompanies and is assisting a disabled person may carry the disabled person's approval.

(f) 1. Except as provided under subd. 2. and as authorized by rules promulgated under sub. (5) (a) 2., no person may obtain a hunting, trapping or fishing approval for another person.

2. A person who assists a disabled person may obtain an approval for a disabled person.

(g) No approval authorizing hunting, trapping, fishing or any other activity regulated by this chapter may be issued to any person who is prohibited from obtaining this type of an approval under this chapter.

(2g) DENIAL AND REVOCATION OF APPROVALS BASED ON CHILD SUPPORT DELINQUENCY. (a) *Social security numbers required.* Except as provided in par. (am), the department shall require an applicant who is an individual to provide his or her social security number as a condition of applying for, or applying to renew, any of the following approvals:

1. Any license issued under this chapter except for any group fishing license issued under s. 29.193 (5).

(5) FORMS OF APPROVALS. (a) *Department rules.* The department shall promulgate rules regulating the issuance of approvals. The rules shall include all of the following:

1. The signature requirements, if any, for each type of approval.

2. The conditions, if any, under which a person may be issued an approval for another person.

3. The authorized forms for stamps, which may include facsimiles, and the methods of attaching stamps to or imprinting stamps on other approvals issued under this chapter.

(b) *Blanks.* The department shall prepare, procure the printing of and supply all necessary blanks for applications and approvals issued under this chapter and related applications for approvals.

(6) ISSUANCE OF APPROVALS BY DEPARTMENT AND BY AGENTS. (a) In issuing approvals under this section, the department may do any of the following for each type of approval:

1. Directly issue the approvals.

2. Appoint, as an agent of the department, the clerk of one or more counties to issue the approvals.

3. Appoint persons who are not employees of the department to issue the approvals as agents of the department.

4. Contract with persons who are not employees of the department to operate a statewide automated system for issuing approvals.

(am) In reserving deer hunting back tag numbers, the department may do any of the following:

1. Directly reserve the numbers.

2. Appoint, as an agent of the department, the clerk of one or more counties to reserve the numbers.

3. Appoint, as agents of the department, persons who are not employees of the department to reserve the numbers.

(b) The clerk of each county appointed under par. (a) 2. or (am) 2. may accept the appointment.

(c) The department shall promulgate rules for each type of approval under this chapter that specify which persons appointed under par. (a) shall issue that type of approval.

(d) The department may promulgate rules regulating the activities of persons appointed under pars. (a) 2., 3. and 4. and (am) 2. and 3.

(7) DUPLICATES. If any license, permit, certificate or card is lost, the person to whom the license, permit, certificate or card was issued may apply to the department for a duplicate by submitting an affidavit proving loss. The department may accept information in a form other than an affidavit. The department shall make an inquiry and investigation as it considers necessary. If the department is satisfied that the loss has been proven, the department may issue a duplicate license, permit, certificate or card to the applicant. Back tags and other tags issued with a license, permit, certificate or card are parts of the license, permit, certificate or card and loss of any part is considered to be loss of the entire license, permit, certificate or card. Upon applying for a duplicate license, permit, certificate or card, the applicant shall surrender all parts of the original remaining in his or her possession to the department. No duplicate stamp may be issued and if a stamp is lost, the person to whom it was issued is required to apply and pay the regular fee in order to receive a new stamp.

(8) RECORD OF APPROVALS ISSUED. The department shall keep a complete record of all approvals issued.

(9) TAGS. The department shall provide all tags required under this chapter and shall specify their form and numbering.

(10) STAMPS; ARTWORK. The department may design and produce waterfowl hunting stamps, pheasant hunting stamps, wild turkey hunting stamps, inland waters trout stamps and Great Lakes trout and salmon stamps. The department may select artwork for stamps through a contest or otherwise may acquire original artwork for stamps.

History: 1997 a. 248 ss. 90, 91, 123 to 134, 161; 1997 a. 249 ss. 1, 2; 1999 a. 9, 32.

29.035 Report of department. On or before March 15 of each even-numbered year, the department shall submit to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3), to the governor and to the Wisconsin conservation congress a report identifying the accomplishments of the department under this chapter that relate to fish and wildlife in the previous biennium and identifying the department's use and expenditure of all fishing, hunting and trapping approval fees collected under this chapter in the previous biennium.

History: 1997 a. 248 ss. 94, 404.

29.037 Fish and wildlife restoration. This state assents to the provisions of the acts of congress entitled "An act to provide that the United States shall aid the states in wildlife-restoration projects, and for other purposes," approved September 2, 1937 (Public Law No. 415, 75th Congress), and "An act to provide that the United States shall aid the states in fish restoration management projects, and for other purposes," approved August 9, 1950 (Public Law No. 681, 81st Congress). The department is authorized and directed to perform any acts necessary to establish cooperative-wildlife restoration and cooperative fish restoration projects, as defined in the acts of congress, in compliance with the acts and with regulations promulgated by the secretary of the interior. No funds accruing to this state from license fees paid by hunters and from sport and recreation fishing license fees may be diverted for any other purpose than those provided by the department.

History: 1997 a. 248 s. 402.

29.038 Local regulation of wild animals. (1) In this section:

(a) "Local governmental unit" has the meaning given in s. 16.97 (7).

(b) "Political subdivision" means a city, village, town or county.

(2) No local governmental unit may enact any ordinance or adopt any regulation, resolution or other restriction for the purpose of regulating the hunting, fishing, trapping or management of wild animals, except as follows:

(a) A local governmental unit may enact an ordinance or adopt any regulation, resolution or other restriction that is authorized under this chapter.

(b) A local governmental unit may enact an ordinance or adopt any regulation, resolution or other restriction that restricts or prohibits access for hunting, fishing or trapping in any portion of land that it owns or leases.

(3) A local governmental unit may enact an ordinance or adopt a regulation, resolution or other restriction that has an incidental effect on hunting, fishing or trapping, but only if the primary purpose is to further public health or safety.

(4) If the department determines that an ordinance, regulation, resolution or other restriction enacted or adopted by a local governmental unit exceeds the authority granted to local governmental units in this section, the department may issue a notice to the local governmental unit of the department's intent to issue an order under this subsection. The department shall hold an informal hearing on the matter if a hearing is requested by the local governmental unit within 30 days after it receives the notice. The informal hearing is not a contested case under ch. 227. Following the hearing or following the failure of the local governmental unit to request a hearing within 30 days after it receives the notice, the department may issue an order declaring the ordinance, regulation, resolution or other restriction void.

History: 1997 a. 170; 1999 a. 32 s. 42; Stats. 1997 s. 29.038.

29.039 Nongame species. (1) The department may conduct investigations of nongame species to develop scientific information relating to population, distribution, habitat needs, and other biological data to determine necessary conservation measures. The department may develop conservation programs to

ensure the perpetuation of nongame species. The department may require harvest information and may establish limitations relating to taking, possession, transportation, processing and sale or offer for sale, of nongame species.

(2) Any rules promulgated or programs developed under this section may not impede, hinder or prohibit the utilization of lands for the construction, operation or maintenance of utility facilities otherwise authorized or permitted.

History: 1977 c. 370; 1979 c. 154; 1985 a. 332 s. 251 (1); 1997 a. 248 s. 405; Stats. 1997 s. 29.039.

29.041 Department to regulate hunting and fishing in interstate waters. The department may regulate hunting and fishing on and in all interstate boundary waters, and outlying waters.

History: 1983 a. 27 s. 2202 (38); 1997 a. 248 s. 118; Stats. 1997 s. 29.041.

29.042 Agreements to retire licenses. (1) Beginning on January 1, 1998, the department may not enter into any agreement to make payments to persons holding approvals issued under s. 29.501, 29.503, 29.506, 29.509, 29.512, 29.514, 29.519, 29.523, 29.526, 29.529, 29.531, 29.533, 29.537, 29.607, 29.611, 29.614, 29.865, 29.867, 29.869, 29.871 or 29.877 in exchange for the retirement of the approval or for the temporary or permanent cessation of any activity authorized under the approval.

(2) Notwithstanding sub. (1), an agreement entered into by the department before October 14, 1997, to make payments to persons holding commercial fishing licenses in exchange for the retirement of the licenses or for the permanent or temporary cessation of commercial fishing shall remain valid except that no moneys may be expended from the conservation fund to make payments under the agreement.

History: 1997 a. 27; 1997 a. 248 ss. 119, 120; Stats. 1997 s. 29.042.

29.043 Interstate comity. (1) Whenever any other state confers upon the officers of this state reciprocal powers, any officer of the other state, who is authorized to enforce the laws of that state relating to the protection of wild animals, is designated an agent of that state within this state. The officer may follow any wild animal or carcass unlawfully shipped or taken from the officer's state into this state, and seize and convey it back to the officer's state. The laws of the state concerning the wild animal or carcass from which the wild animal or carcass was brought into this state are adopted as the laws of this state. Transportation companies shall deliver to the officer, upon submission of proper proof of the officer's official capacity, any wild animal or carcass that is seized by the officer. The officer may dispose of a wild animal or carcass within this state, in accordance with the laws of the officer's state, under the supervision of the department. Expenses for the department's assistance shall be a lien upon the wild animal or carcass, or proceeds of the sale.

(2) Except as provided in sub. (1), the department may seize, hold and dispose, according to the laws of this state, of any wild animal or carcass brought or shipped into or through this state, or attempted to be carried through this state, in violation of the laws of any other state.

(3) The officers of every other state charged with enforcing the laws of another state relating to wild animals are designated agents of this state for the taking possession, seizing, holding and disposing, within the other state, of any wild animal or carcass protected by the laws of this state.

(4) If any other state confers upon the officers of this state reciprocal powers, the department may appoint persons who are charged with enforcing the laws of the other state relating to wild animals to act as wardens of this state, but without compensation from this state.

History: 1971 c. 164; 1991 a. 316; 1997 a. 248 s. 117; Stats. 1997 s. 29.043.

29.045 Interstate license privileges. (1) FISHING PRIVILEGES. If the state of Michigan, Minnesota or Iowa confers upon the fishing licensees of this state reciprocal rights, privileges and immunities, a fishing license issued by the other state entitles the licensee to the rights, privileges and immunities, in and upon the boundary waters between the states, of the holder of an equivalent license issued by this state, but subject to the duties, responsibilities and liabilities imposed on its own licensees by this state.

(2) COMMERCIAL CLAMMING PRIVILEGES. If the state of Michigan, Minnesota or Iowa confers upon the commercial clamming licensees of this state reciprocal rights, privileges and immunities, any commercial clamming license issued by the other state entitles the licensee to the rights, privileges and immunities, in and upon the boundary waters between Michigan, Minnesota and Iowa and this state, of the holder of an equivalent license issued by this state, but subject to the duties, responsibilities and liabilities imposed on licensees by this state.

History: 1985 a. 289; 1997 a. 248 s. 377; Stats. 1997 s. 29.045.

29.047 Interstate transportation of game. (1) (a) In this subsection:

1. "Transport" includes to cause to be transported, to deliver or offer to deliver for transportation and to receive or offer to receive for transportation.

2. "Game" means any wild animal, wild bird or game fish.

(b) No person in this state may transport into or through this state any game, or its carcass, from any other state in violation of any law of the other state.

(c) No person in this state may transport, possess or control in this state any game, or its carcass, that was taken in another state in violation of any restriction on open and closed seasons established under this chapter or of any bag, possession or size limit established under this chapter unless all of the following apply:

1. The game was lawfully taken in and lawfully transported from the other state.

2. The person holds a license issued by the other state that authorized the person to transport, possess or control the game or its carcass.

(1m) Unless prohibited by the laws of an adjoining state, any person who has lawfully killed a deer in this state may take the deer or its carcass into the adjoining state and ship the deer or carcass from any point in the adjoining state to any point in this state.

(2) Subsection (1) does not apply to any of the following:

(a) A person who has a valid taxidermist permit and who possesses, transports, causes to be transported, delivers or receives, or offers to deliver or receive, a wild animal carcass in connection with his or her business.

(b) The possession, transportation, delivery or receipt of farm–raised deer or farm–raised fish.

History: 1985 a. 29; 1991 a. 269, 316; 1995 a. 79; 1997 a. 27; 1997 a. 248 ss. 95, 96, 518 to 521; Stats. 1997 s. 29.047.

29.053 Specific open and closed seasons. (1) All fishing seasons on inland waters shall open on a Saturday.

(2) The department may exercise its authority under s. 29.014 with reference to the state as a whole, or for any specified county or part of a county, or for any lake or stream or part of a lake or stream.

(a) The department may establish a fishing season on specified bodies of water in certain urban areas, as determined by rule by the department, that allows fishing only by persons who are under 16 years old or who are disabled and can produce the evidence specified in s. 29.193 (3) (a), (b) or (c), subject to all of the following conditions:

1. The department may not designate a body of water under this subsection that is 25 acres or greater in area.

2. The department may not designate a body of water under this subsection without the written agreement of each private owner of shoreline and of each city, village, town, county, federal agency or other state agency that owns shoreline.

3. The department shall post notice of the restricted fishing season at each designated body of water.

2001 SENATE BILL 45

February 7, 2001 – Introduced by Senators MOEN, BURKE, RISSER, JAUCH and GEORGE, cosponsored by Representatives BOYLE, RICHARDS, REYNOLDS, SCHNEIDER, POCAN, GRONEMUS, CARPENTER, WILLIAMS, RILEY, COLON and BERCEAU. Referred to Committee on Environmental Resources.

1 AN ACT *to create* 29.318 of the statutes; **relating to:** prohibiting the hunting of
2 the bird that is the symbol of peace for this state.

Analysis by the Legislative Reference Bureau

Under rules promulgated by the department of natural resources (DNR), there is an open season for the hunting of mourning doves. The mourning dove represents the symbol of peace for the state of Wisconsin.

This bill prohibits DNR from authorizing an open season for the hunting of mourning doves and imposes a specific ban against the hunting of these birds.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 29.318 of the statutes is created to read:

4 **29.318 Hunting doves. (1)** Notwithstanding s. 29.001 (42), in this section
5 "hunt" means to shoot, shoot at, take, capture, or kill, or pursue for the purpose of
6 shooting, shooting at, taking, capturing, or killing.

1 (2) The department may not establish or authorize an open season for the
2 hunting of the bird that is the symbol of peace for this state, as specified in s. 1.10
3 (3) (a), and no person may hunt these birds at any time.
4

(END)

History of Senate Bill 45

SENATE BILL 45
An Act to create 29.318 of the statutes; relating to: prohibiting the hunting of the bird that is the symbol of peace for this state.

2001

02-07. S. Introduced by Senators Moen, Burke, Risser, Jauch and George; cosponsored by Representatives Boyle, Richards, Reynolds, Schneider, Pocan, Gronemus, Carpenter, Williams, Riley, Colon and Berceau.

02-07. S. Read first time and referred to committee on Environmental Resources 59

03-22. S. Public hearing held.

2002

03-20. S. Failed to pass pursuant to Senate Joint Resolution 1 652

Search for another history

Back to Legislation Page

Back to Legislature Home Page

2001 ASSEMBLY BILL 190

March 8, 2001 – Introduced by Representatives BOYLE, SCHNEIDER, CARPENTER, RICHARDS, POCAN, SINICKI, BERCEAU, REYNOLDS, CULLEN, COLON, GRONEMUS, WILLIAMS and RILEY, cosponsored by Senators MOEN, BURKE, RISSER, GEORGE and JAUCH. Referred to Committee on Natural Resources.

1 AN ACT *to create* 29.318 of the statutes; **relating to:** prohibiting the hunting of
2 the bird that is the symbol of peace for this state.

Analysis by the Legislative Reference Bureau

Under rules promulgated by the department of natural resources (DNR), there is an open season for the hunting of mourning doves. The mourning dove represents the symbol of peace for the state of Wisconsin.

This bill prohibits DNR from authorizing an open season for the hunting of mourning doves and imposes a specific ban against the hunting of these birds.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 29.318 of the statutes is created to read:

4 **29.318 Hunting doves. (1)** Notwithstanding s. 29.001 (42), in this section
5 "hunt" means to shoot, shoot at, take, capture, or kill, or pursue for the purpose of
6 shooting, shooting at, taking, capturing, or killing.

1 (2) The department may not establish or authorize an open season for the
2 hunting of the bird that is the symbol of peace for this state, as specified in s. 1.10
3 (3) (a), and no person may hunt these birds at any time.
4 (END)

History of Assembly Bill 190

ASSEMBLY BILL 190
An Act to create 29.318 of the statutes; relating to: prohibiting the hunting of the bird that is the symbol of peace for this state.

2001

03-08. A. Introduced by Representatives Boyle, Schneider, Carpenter, Richards, Pocan, Sinicki, Berceau, Reynolds, Cullen, Colon, Gronemus, Williams and Riley; cosponsored by Senators Moen, Burke, Risser, George and Jauch.

03-08. A. Read first time and referred to committee on Natural Resources 132

2002

03-26. A. Failed to pass pursuant to Senate Joint Resolution 1 810

Search for another history

Back to Legislation Page

Back to Legislature Home Page

2001 ASSEMBLY BILL 859

February 26, 2002 - Introduced by Representatives BOYLE, RICHARDS, SINICKI, REYNOLDS, SCHNEIDER, POCAN and BERCEAU. Referred to Committee on Natural Resources.

1 AN ACT *to create* 29.318 of the statutes; **relating to:** prohibiting the hunting of
2 mourning doves and requiring a referendum.

Analysis by the Legislative Reference Bureau

Under rules promulgated by the department of natural resources (DNR), there is an open season for the hunting of mourning doves.

This bill prohibits DNR from authorizing an open season for the hunting of mourning doves and imposes a specific ban against the hunting of these doves.

The bill, however, does not take effect until there is submitted to the vote of the electors at the general election in November 2002 the question "Shall section 1 of 2001 Wisconsin Act .... (this act), which prohibits the hunting of mourning doves, become law effective January 1, 2003?," and the question is approved by a majority of all votes cast on the question at the election.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 29.318 of the statutes is created to read:

1 **29.318 Hunting doves. (1)** Notwithstanding s. 29.001 (42), in this section
2 "hunt" means to shoot, shoot at, take, capture, or kill, or pursue for the purpose of
3 shooting, shooting at, taking, capturing, or killing.
4 **(2)** The department may not establish or authorize an open season for the
5 hunting of mourning doves and no person may hunt mourning doves at any time.
6 **SECTION 2. Nonstatutory provisions.**
7 (1) REFERENDUM. There shall be submitted to the vote of the electors at the
8 general election in November 2002 the following question: "Shall section 1 of 2001
9 Wisconsin Act .... (this act), which prohibits the hunting of mourning doves, become
10 law effective January 1, 2003?." If the question is approved by a majority of all votes
11 cast on the question at the election, SECTION 1 of this act shall become law; otherwise,
12 SECTION 1 of this act shall not take effect.
13 **SECTION 3. Effective dates.** This act takes effect on the day after publication,
14 except as follows:
15 (1) The treatment of section 29.318 of the statutes takes effect on January 1,
16 2003, if the condition set forth in SECTION 2 (1) of this act is satisfied.
17

(END)

History of Assembly Bill 859

ASSEMBLY BILL 859
An Act to create 29.318 of the statutes; relating to: prohibiting the hunting of mourning doves and requiring a referendum. (FE)
2002

02-26. A. Introduced by Representatives Boyle, Richards, Sinicki, Reynolds, Schneider, Pocan and Berceau.
02-26. A. Read first time and referred to committee on Natural Resources 681
03-26. A. Failed to pass pursuant to Senate Joint Resolution 1 810

Search for another history

Back to Legislation Page

Back to Legislature Home Page

2001 SENATE JOINT RESOLUTION 2

January 12, 2001 – Introduced by Senators BAUMGART, DECKER, SCHULTZ, SHIBILSKI, ZIEN, BRESKE, A. LASEE, BURKE, HARSDORF, M. MEYER, GEORGE and PLACHE, cosponsored by Representatives GUNDERSON, OTT, REYNOLDS, MUSSER, PLOUFF, PETROWSKI, PLALE, KREUSER, BALOW, F. LASEE, SUDER, KRAWCZYK, PETTIS, JOHNSRUD and GRONEMUS, by request of the Sheboygan County Conservation Association.. Referred to Committee on Environmental Resources.

1 *To create* section 26 of article I of the constitution; **relating to:** the right to fish,
2 hunt, trap, and take game (first consideration).

Analysis by the Legislative Reference Bureau

This proposed constitutional amendment, proposed to the 2001 legislature on first consideration, provides that the people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.

A constitutional amendment requires adoption by 2 successive legislatures, and ratification by the people, before it can become effective.

---

3 ***Resolved by the senate, the assembly concurring, That:***

4 SECTION 1. Section 26 of article I of the constitution is created to read:

5 [Article I] Section 26. The people have the right to fish, hunt, trap, and take
6 game subject only to reasonable restrictions as prescribed by law.

7 SECTION 2. **Numbering of new provision.** The new section 26 of article I of
8 the constitution created in this joint resolution shall be designated by the next higher
9 open whole section number in that article if, before the ratification by the people of
10 the amendment proposed in this joint resolution, any other ratified amendment has

1 created a section 26 of article I of the constitution of this state. If one or more joint
2 resolutions create a section 26 of article I simultaneously with the ratification by the
3 people of the amendment proposed in this joint resolution, the sections created shall
4 be numbered and placed in a sequence so that the sections created by the joint
5 resolution having the lowest enrolled joint resolution number have the numbers
6 designated in that joint resolution and the sections created by the other joint
7 resolutions have numbers that are in the same ascending order as are the numbers
8 of the enrolled joint resolutions creating the sections.

9 ***Be it further resolved, That*** this proposed amendment be referred to the
10 legislature to be chosen at the next general election and that it be published for 3
11 months previous to the time of holding such election.

12 **(END)**

History of Senate Joint Resolution 2

SENATE JOINT RESOLUTION 2
To create section 26 of article I of the constitution; relating to: the right to fish, hunt, trap, and take game (first consideration).
2001

01-12. S. Introduced by Senators Baumgart, Decker, Schultz, Shibilski, Zien, Breske, A. Lasee, Burke, Harsdorf, M. Meyer, George and Plache; cosponsored by Representatives Gunderson, Ott, Reynolds, Musser, Plouff, Petrowski, Plale, Kreuser, Balow, F. Lasee, Suder, Krawczyk, Pettis, Johnsrud and Gronemus, by request of the Sheboygan County Conservation Association..
01-12. S. Read first time and referred to committee on Environmental Resources 4
02-01. S. Public hearing held.
02-06. S. Public hearing held.
02-08. S. Public hearing held.
02-15. S. Senate substitute amendment 1 offered by Senator Baumgart 85
02-20. S. Executive action taken.
02-28. S. Report Senate substitute amendment 1 adoption recommended by committee on Environmental Resources, Ayes 5, Noes 0 99
02-28. S. Report adoption as amended recommended by committee on Environmental Resources, Ayes 5, Noes 0 99
02-28. S. Available for scheduling.
02-28. S. Placed on calendar 3-6-2001 by committee on Senate Organization.
03-06. S. Read a second time 106
03-06. S. Senate amendment 1 to Senate substitute amendment 1 offered by Senator Risser 106
03-06. S. Senate amendment 1 to Senate substitute amendment 1 rejected, Ayes 29, Noes 2 106
03-06. S. Senate amendment 2 to Senate substitute amendment 1 offered by Senator Shibilski 109
03-06. S. Placed at the foot of the calendar of 3-6-2001 109
03-06. S. Senate amendment 2 to Senate substitute amendment 1 rejected, Ayes 16, Noes 15 110
03-06. S. Senate substitute amendment 1 adopted 110
03-06. S. Ordered to a third reading 110
03-06. S. Rules suspended 110
03-06. S. Read a third time and adopted, Ayes 31, Noes 0 110
03-06. S. Senator Hansen added as a coauthor 110
03-06. S. Ordered immediately messaged 111
03-08. A. Received from Senate 133
03-08. A. Read first time and referred to committee on Natural Resources 134
03-13. S. Senator Farrow added as a coauthor 125
05-01. A. Rules suspended to withdraw from committee on Natural Resources and take up 219
05-01. A. Assembly substitute amendment 1 offered by Representatives Gunderson, Johnsrud, Pettis, Jensen, Suder, Wade, Starzyk, Kedzie, Lippert, Hoven, Hundertmark, Seratti, Nass, Kaufert, Petrowski, Kestell, Loeffelholz, Huebsch, Freese, Musser, Stone, Krawczyk, Ladwig, Vrakas, Hahn, Owens, Sykora, Gundrum, Ward, Rhoades, McCormick, Leibham, Montgomery, F. Lasee, J. Fitzgerald, Underheim

and Jeskewitz 219
05-01. A. Assembly substitute amendment 1 **adopted** 219
05-01. A. Ordered to a third reading 219
05-01. A. Rules suspended 219
05-01. A. Read a third time and concurred in as amended, Ayes 93, Noes 4 219
05-01. A. Ordered immediately messaged 219
05-03. S. Received from Assembly amended and concurred in as amended, Assembly substitute amendment 1 **adopted** 177
05-03. S. Available for scheduling.
05-03. S. Placed on calendar 5-8-2001 by committee on Senate Organization.
05-08. S. Assembly substitute amendment 1 **concurred in**, Ayes 32, Noes 1 190
05-08. S. Action ordered immediately messaged 192
05-16. S. Report correctly enrolled on 5-10-2001 197
05-16. S. Deposited in the office of the Secretary of State on 5-15-2001. Enrolled Joint Resolution 16. 197
05-23. S. Published 5-29-2001, 8-6-2002, 9-3-2002, 10-1-2002 200

Search for another history

Back to Legislation Page

Back to Legislature Home Page

2003 ASSEMBLY JOINT RESOLUTION 1

January 22, 2003 – Introduced by Representatives GUNDERSON, TOWNS, SUDER, PETTIS, JOHNSRUD, GARD, ALBERS, BALOW, BIES, J. FITZGERALD, FREESE, FRISKE, GOTTLIEB, GRONEMUS, GROTHMAN, HAHN, HINES, HUEBSCH, HUNDERTMARK, JENSEN, JESKEWITZ, KAUFERT, KERKMAN, KESTELL, KRAWCZYK, KREIBICH, LADWIG, F. LASEE, LASSA, M. LEHMAN, LEMAHIEU, LOEFFELHOLZ, MCCORMICK, D. MEYER, MUSSER, NASS, OTT, OWENS, PETROWSKI, PLOUFF, POWERS, SERATTI, SHERMAN, SHILLING, STONE, TOWNSEND, UNDERHEIM, VAN ROY, VRAKAS, WARD, WEBER, WIECKERT, M. WILLIAMS, GUNDRUM and NISCHKE, cosponsored by Senators ZIEN, LEIBHAM, STEPP, BROWN, WELCH, ERPENBACH, KEDZIE, SCHULTZ, A. LASEE, ROESSLER, HARSDORF, KANAVAS, BRESKE, REYNOLDS, S. FITZGERALD, DARLING, HANSEN, M. MEYER and LAZICH. Referred to Committee on Natural Resources.

1 ***To create*** section 26 of article I of the constitution; **relating to:** the right to fish,
2 hunt, trap, and take game (2nd consideration).

Analysis by the Legislative Reference Bureau

EXPLANATION OF PROPOSAL

This proposed constitutional amendment, to be given 2nd consideration by the 2003 legislature for submittal to the voters in November 2004, was first considered by the 2001 legislature in 2001 Senate Joint Resolution 2, which became 2001 Enrolled Joint Resolution 16.

PROCEDURE FOR 2ND CONSIDERATION

When a proposed constitutional amendment is before the legislature on 2nd consideration, any change in the text approved by the preceding legislature causes the proposed constitutional amendment to revert to first consideration status so that 2nd consideration approval would have to be given by the next legislature before the proposal may be submitted to the people for ratification [see joint rule 57 (2)].

If the legislature approves a proposed constitutional amendment on 2nd consideration, it must also set the date for submitting the proposed constitutional amendment to the people for ratification and must determine the question or questions to appear on the ballot.

---

3 Whereas, the 2001 legislature in regular session considered a proposed
4 amendment to the constitution in 2001 Senate Joint Resolution 2, which became

1 2001 Enrolled Resolution 16, and agreed to it by a majority of the members elected
2 to each of the 2 houses, which proposed amendment reads as follows:

> **SECTION 1.** Section 26 of article I of the constitution is created to read:
>
> [Article I] Section 26. The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.
>
> **SECTION 2. Numbering of new provision.** The new section 26 of article I of the constitution created in this joint resolution shall be designated by the next higher open whole section number in that article if, before the ratification by the people of the amendment proposed in this joint resolution, any other ratified amendment has created a section 26 of article I of the constitution of this state. If one or more joint resolutions create a section 26 of article I simultaneously with the ratification by the people of the amendment proposed in this joint resolution, the sections created shall be numbered and placed in a sequence so that the sections created by the joint resolution having the lowest enrolled joint resolution number have the numbers designated in that joint resolution and the sections created by the other joint resolutions have numbers that are in the same ascending order as are the numbers of the enrolled joint resolutions creating the sections.

3 ***Now, therefore, be it resolved by the assembly, the senate concurring,***
4 ***That*** the foregoing proposed amendment to the constitution is agreed to by the 2003
5 legislature; and, be it further
6 ***Resolved, That*** the foregoing proposed amendment to the constitution be
7 submitted to a vote of the people at the general election to be held on November 2,
8 2004; and, be it further
9 ***Resolved, That*** the question concerning ratification of the foregoing proposed
10 amendment to the constitution be stated on the ballot as follows:
11 **QUESTION 1: "Right to fish, hunt, trap, and take game.** Shall section 26
12 of article I of the constitution be created to provide that the people have the right to
13 fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed
14 by law?"
15 **(END)**

History of Assembly Joint Resolution 1

ASSEMBLY JOINT RESOLUTION 1 LC Amendment Memo

To create section 26 of article I of the constitution; relating to: the right to fish, hunt, trap, and take game (2nd consideration).

2003

01-22. A. Introduced by Representatives Gunderson, Towns, Suder, Pettis, Johnsrud, Gard, Albers, Balow, Bies, J. Fitzgerald, Freese, Friske, Gottlieb, Gronemus, Grothman, Hahn, Hines, Huebsch, Hundertmark, Jensen, Jeskewitz, Kaufert, Kerkman, Kestell, Krawczyk, Kreibich, Ladwig, F. Lasee, Lassa, M. Lehman, LeMahieu, Loeffelholz, McCormick, D. Meyer, Musser, Nass, Ott, Owens, Petrowski, Plouff, Powers, Seratti, Sherman, Shilling, Stone, Townsend, Underheim, Van Roy, Vrakas, Ward, Weber, Wieckert, M. Williams, Gundrum and Nischke; cosponsored by Senators Zien, Leibham, Stepp, Brown, Welch, Erpenbach, Kedzie, Schultz, A. Lasee, Roessler, Harsdorf, Kanavas, Breske, Reynolds, S. Fitzgerald, Darling, Hansen, M. Meyer and Lazich.

01-22. A. Read first time and referred to committee on Natural Resources 25

01-22. A. Assembly amendment 1 offered by Representative Black 25

01-22. A. Public hearing held.

01-22. A. Executive action taken.

01-22. A. Assembly amendment 2 offered by committee on Natural Resources 25

01-23. A. Report Assembly Amendment 2 adoption recommended by committee on Natural Resources, Ayes 10, Noes 0 28

01-23. A. Report adoption as amended recommended by committee on Natural Resources, Ayes 10, Noes 0 28

01-23. A. Referred to committee on Rules 28

01-23. A. Placed on calendar 1-28-2003 by committee on Rules.

01-28. A. Read a second time 32

01-28. A. Assembly amendment 2 **adopted** 32

01-28. A. Representatives Kreuser, Hebl, Montgomery, Gielow, Lothian, J. Wood and Vruwink added as coauthors 32

01-28. A. Ordered to a third reading 32

01-28. A. Rules suspended 32

01-28. A. Read a third time and adopted, Ayes 94, Noes 3 32

01-28. A. Ordered immediately messaged 33

01-28. S. Received from Assembly 48

01-28. S. Read and referred to committee on Judiciary, Corrections and Privacy 48

01-28. S. Rules suspended to withdraw from committee on Judiciary, Corrections and Privacy and take up 49

01-28. S. Read a second time 49

01-28. S. Senator Wirch added as a cosponsor 49

01-28. S. Senator Panzer added as a cosponsor 49

01-28. S. Ordered to a third reading 49

01-28. S. Rules suspended 49

01-28. S. Read a third time and concurred in, Ayes 30, Noes 1 49

01-28. S. Senator Ellis added as a cosponsor 49

01-28. S. Ordered immediately messaged 49

01-30. A. Received from Senate concurred in 38

02-13. A. Report correctly enrolled 61

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02-18.  A. Deposited in the office of the Secretary of State.
             Enrolled Joint Resolution 8 ............................ 69
02-18.  A. Published 2-28-2003 ...................................... 69
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Search for another history

Back to Legislation Page

Back to Legislature Home Page

any parochial or private school or institution of learning. [*1965 J.R. 46, 1967 J.R. 13, vote April 1967*]

Use of school buildings. SECTION 24. [*As created April 1972*] Nothing in this constitution shall prohibit the legislature from authorizing, by law, the use of public school buildings by civic, religious or charitable organizations during nonschool hours upon payment by the organization to the school district of reasonable compensation for such use. [*1969 J.R. 38, 1971 J.R. 27, vote April 1972*]

Right to keep and bear arms. SECTION 25. [*As created Nov. 1998*] The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose. [*1995 J.R. 27, 1997 J.R. 21, vote November 1998*]

Right to fish, hunt, trap, and take game. SECTION 26. [*As created April 2003*] The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law. [*2001 J.R. 16, 2003 J.R. 8, vote April 2003*]

ARTICLE II.

BOUNDARIES

State boundary. SECTION 1. It is hereby ordained and declared that the state of Wisconsin doth consent and accept of the boundaries prescribed in the act of congress entitled "An act to enable the people of Wisconsin territory to form a constitution and state government, and for the admission of such state into the Union," approved August sixth, one thousand eight hundred and forty–six, to wit: Beginning at the northeast corner of the state of Illinois—that is to say, at a point in the center of Lake Michigan where the line of forty–two degrees and thirty minutes of north latitude crosses the same; thence running with the boundary line of the state of Michigan, through Lake Michigan, Green Bay, to the mouth of the Menominee river; thence up the channel of the said river to the Brule river; thence up said last–mentioned river to Lake Brule; thence along the southern shore of Lake Brule in a direct line to the center of the channel between Middle and South Islands, in the Lake of the Desert; thence in a direct line to the head waters of the Montreal river, as marked upon the survey made by Captain Cramm; thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the center of Lake Superior to the mouth of the St. Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicollet's map; thence due south to the main branch of the river St. Croix; thence down the main channel of said river to the Mississippi; thence down the center of the main channel of that river to the northwest corner of the state of Illinois; thence due east with the northern boundary of the state of Illinois to the place of beginning, as established by "An act to enable the people of the Illinois territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," approved April 18th, 1818.

Enabling act accepted. SECTION 2. [*As amended April 1951*] The propositions contained in the act of congress are hereby accepted, ratified and confirmed, and shall remain irrevocable without the consent of the United States; and it is hereby ordained that this state shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations congress may find necessary for securing the title in such soil to bona fide purchasers thereof; and in no case shall nonresident proprietors be taxed higher than residents. Provided, that nothing in this constitution, or in the act of congress aforesaid, shall in any manner prejudice or affect the right of the state of Wisconsin to 500,000 acres of land granted to said state, and to be hereafter selected and located by and under the act of congress entitled "An act to appropriate the proceeds of the sales of the public lands, and grant pre–emption rights," approved September fourth, one thousand eight hundred and forty–one. [*1949 J.R. 11; 1951 J.R. 7; vote April 1951*]

ARTICLE III.

SUFFRAGE

Electors. SECTION 1. [*As amended Nov. 1882, Nov. 1908, Nov. 1934; repealed April 1986; created April 1986*] Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district. [*1881 J.R. 26 A, 1882 J.R. 5, 1882 c. 272, vote Nov. 1882; 1905 J.R. 15, 1907 J.R. 25, 1907 c. 661, vote Nov. 1908; 1931 J.R. 91, 1933 J.R. 76, vote Nov. 1934; 1983 J.R. 30, 1985 J.R. 14, vote April 1986*]

Implementation. SECTION 2. [*As repealed April 1986; created April 1986*] Laws may be enacted:

(1) Defining residency.

(2) Providing for registration of electors.

(3) Providing for absentee voting.

(4) Excluding from the right of suffrage persons:

(a) Convicted of a felony, unless restored to civil rights.

(b) Adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside.

(5) Subject to ratification by the people at a general election, extending the right of suffrage to additional classes. [*1983 J.R. 30, 1985 J.R. 14, vote April 1986*]

Secret ballot. SECTION 3. [*As repealed April 1986; created April 1986*] All votes shall be by secret ballot. [*1983 J.R. 30, 1985 J.R. 14, vote April 1986*]

Residence saved. SECTION 4. [*Repealed April 1986; see 1983 J.R. 30, 1985 J.R. 14, vote April 1986.*]

Military stationing does not confer residence. SECTION 5. [*Repealed April 1986; see 1983 J.R. 30, 1985 J.R. 14, vote April 1986.*]

Exclusion from suffrage. SECTION 6. [*Repealed April 1986; see 1983 J.R. 30, 1985 J.R. 14. vote April 1986.*]

ARTICLE IV.

LEGISLATIVE

Legislative power. SECTION 1. The legislative power shall be vested in a senate and assembly.

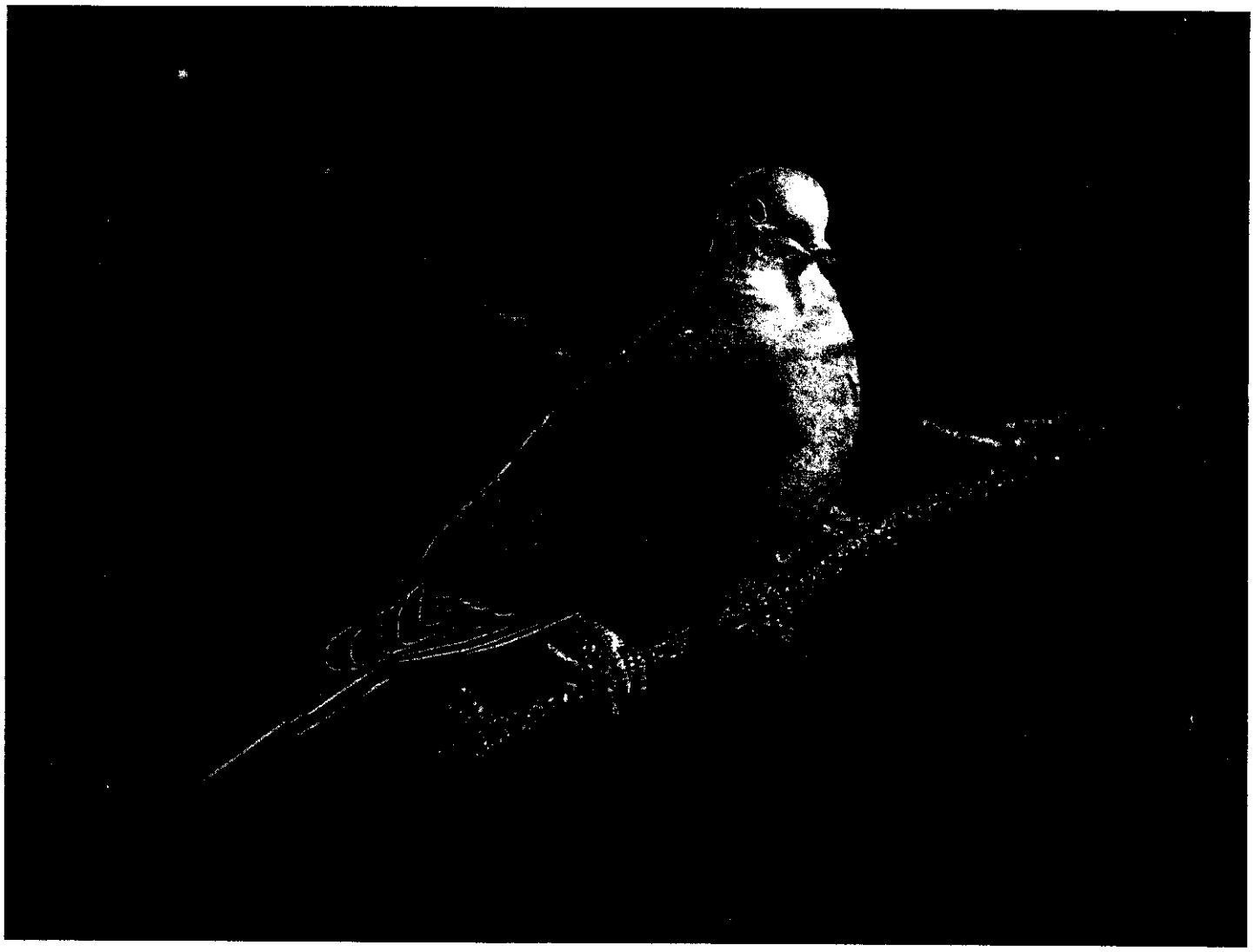
Legislature, how constituted. SECTION 2. The number of the members of the assembly shall never be less than fifty–four nor more than one hundred. The senate shall consist of a number not more than one–third nor less than one–fourth of the number of the members of the assembly.

Apportionment. SECTION 3. [*As amended Nov. 1910, Nov. 1962 and Nov. 1982*] At its first session after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants. [*1907 J.R. 30, 1909 J.R. 55, 1909 c. 478, vote Nov. 1910; 1959 J.R. 30, 1961 J.R. 32, vote Nov. 6, 1962; 1979 J.R. 36, 1981 J.R. 29, vote Nov. 1982*]

U. S. Fish and Wildlife Service

Mourning Dove

Population Status, 2003



Suggested citation:

Dolton, D.D., and R.D. Rau. 2003. Mourning dove population status, 2003. U.S. Fish and Wildlife Service, Laurel, Maryland. 27 pp.

MOURNING DOVE BREEDING POPULATION STATUS, 2003

DAVID D. DOLTON, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, PO Box 25486 DFC, Denver, CO 80225-0486
REBECCA D. RAU, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Patuxent Wildlife Research Center, 11500 American Holly Dr., Laurel, MD 20708-4016

Abstract: This report includes Mourning Dove Call-count Survey information gathered over the last 38 years within the conterminous United States. Trends were calculated for the most recent 2- and 10-year intervals and for the entire 38-year period. Between 2002 and 2003, the average number of doves heard per route decreased significantly in the Eastern Management Unit. No change was detected in the Central and Western Units. Over the most recent 10 years, no trend was indicated for doves heard in any management unit. Over the 38-year period, all 3 units exhibited significant declines. In contrast, for doves seen over the 10-year period, a significant increase was found in the Eastern Unit while no trends were found in the Central and Western Units. Over 38 years, no trend was found for doves seen in the Eastern and Central Units while a decline was indicated for the Western Unit.

The mourning dove (*Zenaida macroura*) is a migratory bird, thus, authority and responsibility for its management is vested in the Secretary of the Interior. This responsibility is conferred by the Migratory Bird Treaty Act of 1918 which, as amended, implements migratory bird treaties between the United States and other countries. Mourning doves are included in the treaties with Great Britain (for Canada) and Mexico. These treaties recognize sport hunting as a legitimate use of a renewable migratory bird resource. In recent years, less than 6% of the fall population of mourning doves was estimated to have been harvested annually. As one of the most abundant species in both urban and rural areas of North America, it is familiar to millions of people. Maintenance of mourning dove populations in a healthy, productive state is a primary management goal. To this end, management of doves includes assessment of population status, regulation of harvest, and habitat management. Call-count surveys are conducted annually in the 48 conterminous states by state and federal biologists to monitor mourning dove populations. The resulting information on status and trends is used by wildlife administrators in setting annual hunting regulations.

The primary purpose of this report is to facilitate the prompt distribution of timely information. Results are preliminary and may change with the inclusion of additional data.

George Andrejko, Arizona Game and Fish Department, provided the cover photo for this report.

DISTRIBUTION AND ABUNDANCE

Mourning doves breed from the southern portions of Canada throughout the United States into Mexico, Bermuda, the Bahamas and Greater Antilles, and scattered locations in Central America (Fig. 1). Although some mourning doves winter throughout most of the breeding range, except for central Canada and the north-central U.S., the majority migrate south, wintering in the southern United States and south throughout most of Mexico and Central America to western Panama (Aldrich 1993, Mirarchi and Baskett 1994).

The mourning dove is one of the most widely distributed and abundant birds in North America (Peterjohn et al. 1994, Fig. 1). Although not known precisely, the fall population has been estimated to be about 475 million (Dunks et al. 1982, Tomlinson et al. 1988). However, as there is evidence of population decreases since this estimate was made from data collected in the 1970's, we believe that the mourning dove population has declined to slightly more than 400 million in the United States.

POPULATION MONITORING

The Mourning Dove Call-count Survey was developed to provide an annual index to population size (Dolton 1993). This survey is based on work by McClure (1939) in Iowa. Field studies demonstrated the feasibility of the survey as a method for detecting annual changes in mourning dove breeding populations (Foote and Peters

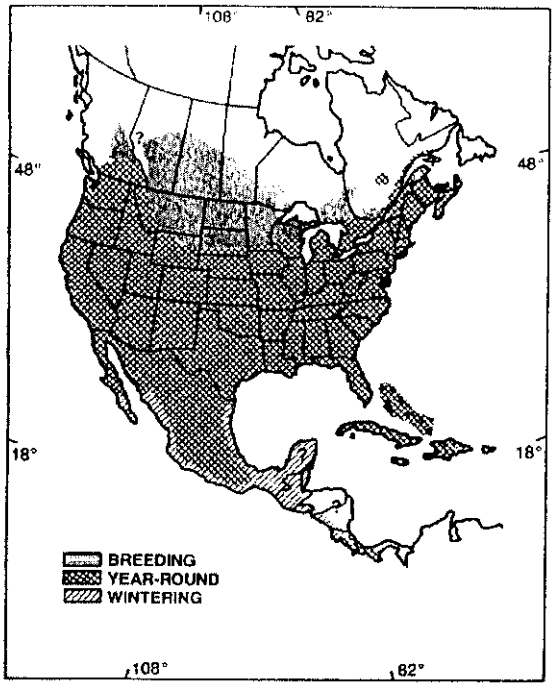


Fig. 1. Breeding and wintering ranges of the mourning dove (adapted from Mirarchi and Baskett 1994).

1952). In the United States, the survey currently includes more than 1,000 randomly selected routes, stratified by physiographic region. The total number of doves heard on each route is used to determine trends in populations and provides the basis for determining an index to population size during the breeding season. Indices for doves seen are also presented in this report, but only as supplemental information for comparison with indices of doves heard. Even though both the numbers of doves heard and seen are counted during the survey, they are recorded separately.

Within the United States, there are 3 zones that contain mourning dove populations that are largely independent of each other (Kiel 1959). These zones encompass the principal breeding, migration, and U.S. wintering areas for each population. As suggested by Kiel (1959), these 3 areas were established as separate management units in 1960 (Kiel 1961). Since that time, management decisions have been made within the boundaries of the Eastern (EMU), Central (CMU), and Western (WMU) Management Units (Fig. 2).

The EMU was further divided into 2 groups of states for analyses. States permitting dove hunting were combined into one group and those prohibiting dove hunting into another. Additionally, some states were grouped to increase sample sizes. Maryland and Delaware were combined; Vermont, New Hampshire, Maine, Massachusetts, Connecticut, and Rhode Island were combined to form a New England group. Due to its small size, Rhode Island, which is a hunting state, was included in this nonhunting group of states for analysis.

METHODS

The Call-count Survey

Each call-count route is usually located on secondary roads and has 20 listening stations spaced at 1-mile intervals. At each stop, the number of doves heard calling, the number seen, and the level of disturbance (noise) that impairs the observer's ability to hear doves are recorded. The number of doves seen while driving between stops is also noted.

Counts begin one-half hour before sunrise and continue for about 2 hours. Routes are run once between 20 May and 5 June. Intensive studies in the eastern United States (Foote and Peters 1952) indicated that dove calling is relatively stable during this period. Surveys are not made when wind velocities exceed 12 miles per hour or when it is raining.

Estimation of Population Trends

A population trend is defined as the ratio of the dove population in an area in one year to the population in the preceding year. For more than 2 years of data, the trend is expressed as an average annual rate of change. A trend was first estimated for each route by numerically solving a set of estimating equations (Link and Sauer 1994). Observer data were used as covariables to adjust for differences in observers' ability to hear or see doves. The reported sample sizes are the number of routes on which a given trend estimate is based. This number may be less than the actual number of routes surveyed for several reasons. The estimating equations approach requires at least 2 non-zero counts by at least one observer for a route to be used. Routes that did not meet this requirement during the interval of interest were not included in the sample size. State and management unit trends were obtained by calculating a mean of all route trends weighted by land area, within-route variance in counts, and density (mean numbers of doves counted on each route). Variances of state and management unit trends were estimated by using route trends and a

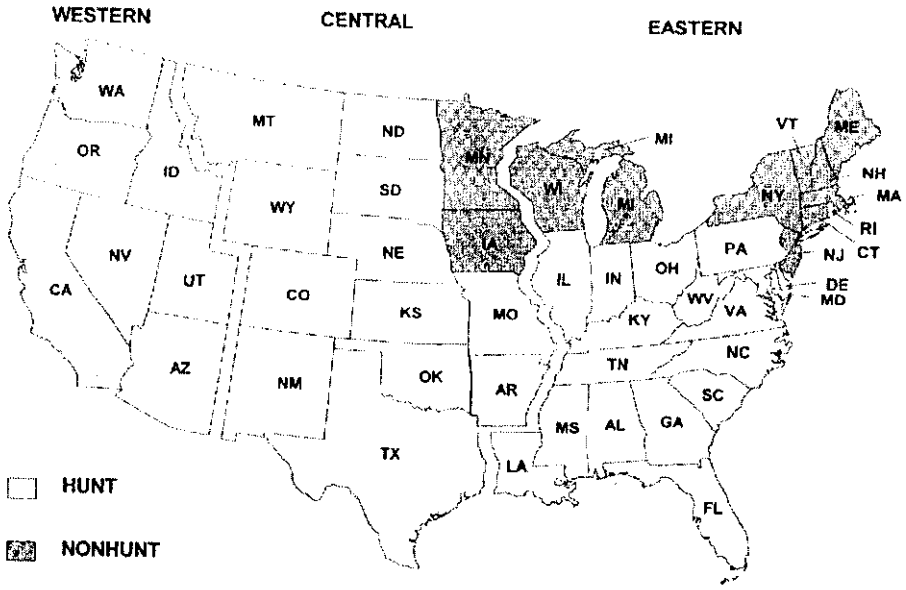


Fig. 2. Mourning dove management units with 2002 hunting and nonhunting states.

statistical procedure known as bootstrapping (Geissler and Sauer 1990).

The annual change, or trend, for each area in doves heard over the most recent 2- and 10-year intervals and for the entire 38-year period were estimated. Additionally, trends in doves seen were estimated over the 10- and 38-year periods as supplemental information for comparison.

For purposes of this report, statistical significance was defined as $P<0.05$, except for the 2-year comparison where $P<0.10$ was used because of the low power of the test. Significance levels are approximate for states with less than 10 routes.

Estimation of Annual Indices

Annual indices show population fluctuations about fitted trends (Sauer and Geissler 1990). The estimated indices were determined for an area (state or management unit) by finding the deviation between observed counts on a route and those predicted on the route from the area trend estimate. These residuals were averaged by year for all routes in the area of interest. To adjust for variation in sampling intensity, residuals were weighted by the land area of the physiographic regions within each state. These weighted average residuals were then added to the fitted trend for the area to produce the annual index of abundance. This method of determining indices superimposes yearly variation in counts on the long-term fitted trend. These indices should provide an accurate representation of the fitted trend for regions that are adequately sampled by survey routes. Additionally, only data from within an area are incorporated into the area's index. Since the indices are adjusted for observer differences and trend, the index for an area may be quite different from the actual count. In order to estimate the percent change from 2001 to 2002, a short-term trend (2 years) was calculated. The percent change estimated from this short-term trend analysis is the best estimator of annual change. Attempts to estimate short-term trends from the breeding population indices (which were derived from residuals of the long-term trends) will yield less precise results. The annual index value incorporates data from a large number of routes that are not comparable between the two years 2002 and 2003, i.e., routes not run by the same observers. Therefore, the index is much more variable than the trend estimate.

In a separate analysis, the mean number of doves heard calling per route in 2003 was calculated for each state or groups of states. In contrast to the estimated annual indices presented in Table 2 (which illustrate population changes over time based on the regression line), the estimated densities shown in Figs. 3, 7, and 11 illustrate the average *actual* numbers of doves counted in 2002 and 2003.

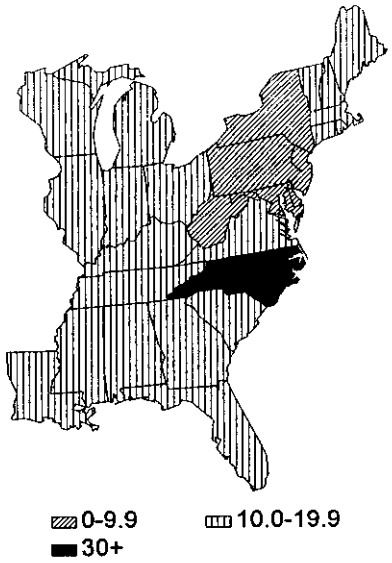


Fig 3. Mean number of mourning doves heard per route by state in the Eastern Management Unit, 2002-3003.

RESULTS

Eastern Management Unit

The Eastern Management Unit includes 27 states comprising 30% of the land area of the United States. Dove hunting is permitted in 18 states, representing 74% of the land area of the unit (Fig. 2).

2002-2003 Population Distribution.—North Carolina had the highest count in the Nation with 38 actual doves heard per route over the 2 years (Fig. 3). Delaware/Maryland, Pennsylvania, West Virginia, New Jersey, and New York averaged < 10 per route. All other states had mean counts in the range of 10-20 doves heard per route.

2002 to 2003 Population Changes.—No significant change was detected for the Unit although the average number of doves heard per route increased 6.4% (Table 1). The population decreased significantly between years in the combined hunting states (-5.6%). The index for the combined nonhunting states did not change significantly (9.4%).

The 2003 population index of 16.2 doves heard per route for the Unit, is slightly above the predicted count based on the long-term estimate of 15.8 (Fig. 4, Table 2). In the hunting states, the index of 16.9 is only slightly below the predicted estimate of 17.0 while, in the nonhunting states, the index of 14.1 is above the predicted estimate of 12.8.

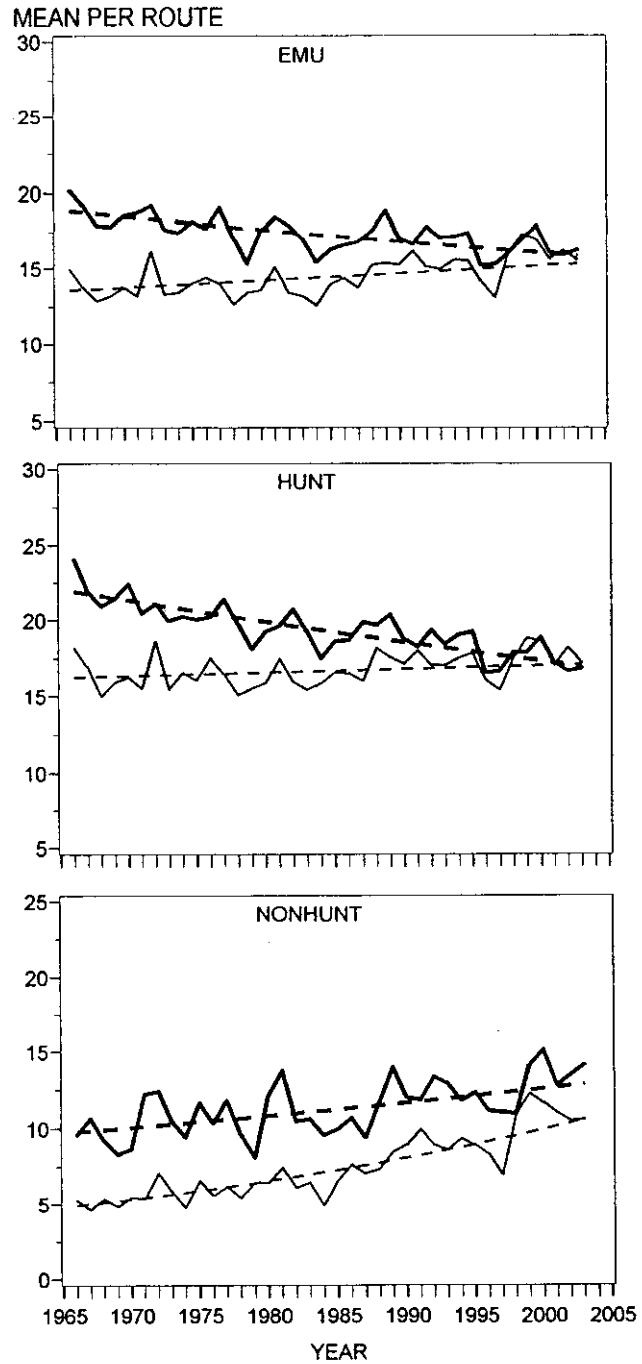


Fig. 4. Population indices and trends of breeding mourning doves in the Eastern Management Unit (EMU), combined EMU hunting states (HUNT), and combined EMU nonhunting states (NONHUNT), 1966-2003. Heavy solid line = doves heard; light solid line = doves seen. Light and heavy dashed lines = predicted trends.

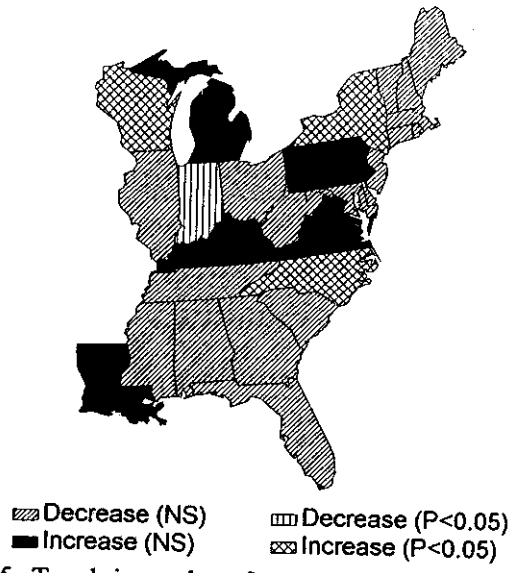


Fig. 5. Trends in number of mourning doves heard per route by state in the Eastern Management Unit, 1994-2003.

The population increased significantly in Kentucky and Wisconsin states while it decreased in Alabama, North Carolina, Virginia, West Virginia, Michigan, and the New England states (Table 1). No significant changes were detected for the other states.

Population Trends: 10 and 38-year.—Analyses indicated significant declines over the most recent 10 and 38-year periods for the combined hunting states (Table 1). In the combined nonhunting states, a significant increase was found over 10 years while no trend was indicated for 38 years. For the Unit, no significant trend was found over 10 years, but a significant decline was indicated for the long-term period. Annual indices both for doves heard and seen are shown in Fig. 4. In contrast to doves heard, an analysis of doves seen indicated a significant increasing trend for the Unit and 2 groups over 10 years. Over 38 years, a significant increase was detected for the combined nonhunting states; no trend was shown for the combined hunting states or the Unit.

State population trends for doves heard are shown in Fig. 5 (10-year interval) and Fig. 6 (38-year interval) and Table 1). Over 10 years, increases were found for North Carolina, New York and Wisconsin while Indiana showed a decline. Between 1966 and 2003, an increase was noted in New England while a downward trend was noted in Delaware/Maryland, Georgia, Indiana, Ohio, South Carolina, and Tennessee.

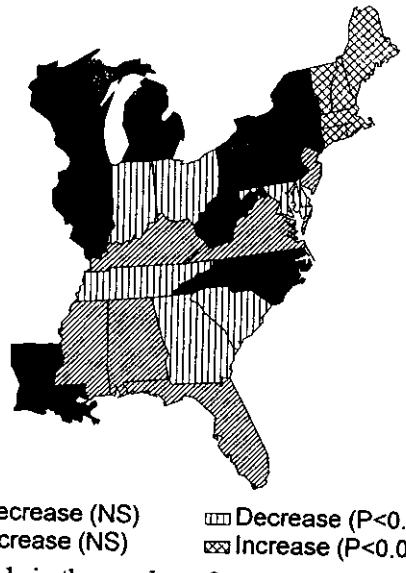


Fig. 6. Trends in the number of mourning doves heard per route by state in the Eastern Management Unit, 1966-2003.

Central Management Unit

The Central Management Unit consists of 14 states, containing 46% of the land area in the U.S. It has the highest population index of the 3 units. Within the unit, dove hunting is permitted in 12 states (Fig. 2).

2002-2003 Population.—Kansas, Nebraska and North Dakota had the highest actual average number of doves heard per route over the 2 years (34, 34, and 38, respectively) (Fig. 7). Historically, North Dakota and Kansas often have the highest average counts in the Nation (Table 2). New Mexico and Wyoming were the only states with less than 10 doves per route. The remaining states had intermediate values.

2002 to 2003 Population Changes.—The average number of doves heard per route in the Unit did not change significantly between the 2 years (+2.7%; Table 1). The 2003 index for the Unit of 21.5 doves heard per route is slightly below the predicted long-term trend estimate of 21.8 (Fig. 8, Table 2).
The population increased significantly in Iowa, Nebraska, and Oklahoma (Table 1). A decrease was noted for Minnesota, South Dakota, and Wyoming.

Population Trends: 10 and 38-year.—No significant trend in doves heard was indicated for the Unit over the short term, but a decline was indicated over the long term (Table 1). In contrast, trends in doves seen were not significant for either time period.

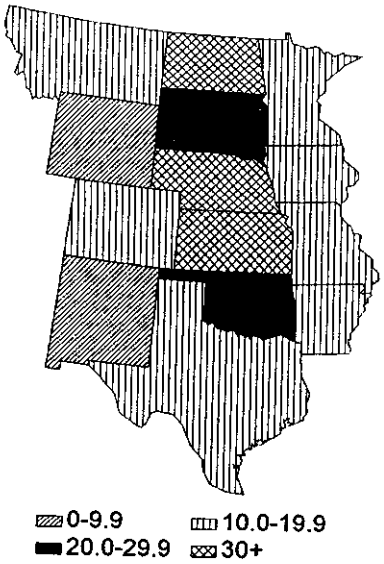


Fig. 7. Mean number of mourning doves heard per route by state in the Central Management Unit, 2002-2003.

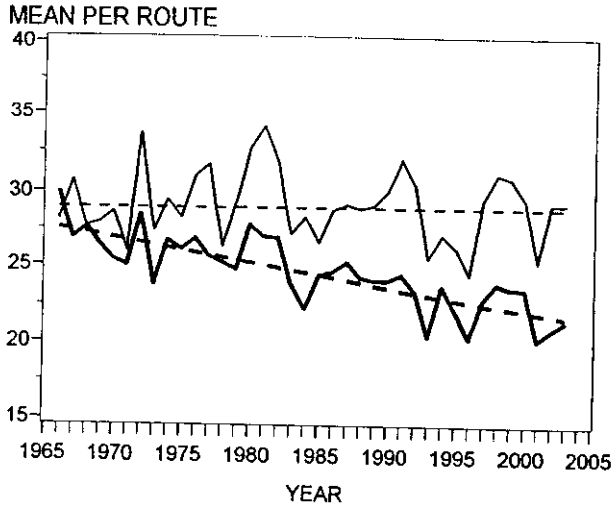


Fig. 8. Population indices and trends of breeding mourning doves in the Central Management Unit, 1966-2003. Heavy solid line = doves heard; light solid line = doves seen. Heavy solid light dashed lines = predicted trends.

State trends over 10 years are illustrated in Fig. 9 and Table 1. Montana showed an increase while Colorado, Minnesota, and Missouri had declines during this time. Fig. 10 portrays trends over 38 years. No significant upward trend was found in doves heard for any state, but a significant downward trend was found in Minnesota, Missouri, Nebraska, and Wyoming (Table 1).

Western Management Unit

Seven states comprise the Western Management Unit and represent 24% of the land area in the United States. All states within the unit permit mourning dove hunting.

2002-2003 Population Distribution.—Arizona and California averaged 14 and 13 actual doves heard per route, respectively (Fig. 11). The other states in the Unit averaged < 10 birds per route.

2002 to 2003 Population Changes.—The average number of doves heard per route did not change significantly between years although the index decreased by 7.4% (Table 1). The 2003 population index of 8.9 doves heard per route is above the predicted count of 8.2 based on the long-term estimate (Fig. 12, Table 2).

The number of doves heard per route decreased significantly in California (Table 1). No significant differences were found in other states.

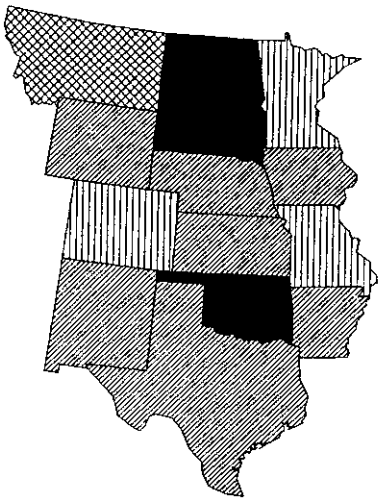


Fig. 9. Trends in number of mourning doves heard per route by state in the Central Management Unit, 1994-2003.

Population Trends: 10 and 38-year.— No significant trend in numbers of doves heard was indicated over 10 years although a significant decline was apparent over 38 years (Table 1). Analyses of doves seen gave the same results.

Trends by state are illustrated in Figs. 13 and 14, and Table 1. Utah is the only state that shows a decline over 10 years while all states in the Unit except Washington have a decline between 1966 and 2003.

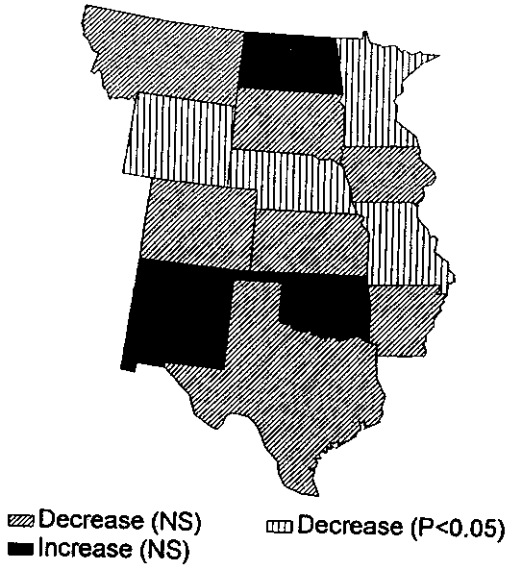


Fig. 10. Trends in mourning doves heard per route by state in the Central Management Unit, 1966-2003.

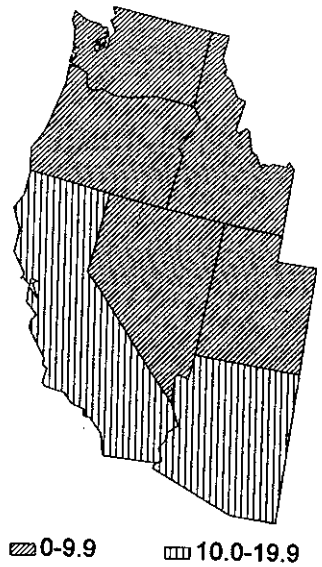


Fig. 11. Mean number of mourning doves heard per route by state in the Western Management Unit, 2002-2003.

Breeding Bird Survey Results

There has been considerable discussion about utilizing the North American Breeding Bird Survey (BBS) as a measure of mourning dove abundance. Consequently, we are including trend information in this report to enable readers to compare BBS results with the Mourning Dove Call-count Survey (CCS) results from last year's mourning dove status report (Dolton and Holmes 2002). Sauer et al. (1994) discussed the differences in the methodology of the 2 surveys. The BBS is based on 50-stop routes that are surveyed in June. Also with the BBS, data for doves heard and seen are combined for analyses while those data are analyzed separately with the CCS. Unfortunately, BBS data are not available in time for use in regulations development during the year of the survey. Trends calculated from BBS data for the 10-year period (1993-2002) and over 37 years (1966-2002) are presented in Table 3.

In general, trends indicated by the BBS tend to indicate fewer declines. The major differences occur in the Eastern Unit. This is likely due to the larger sample size of BBS survey routes and greater consistency of coverage by BBS routes in the Unit (Sauer et al. 1994), although additional analyses are needed to clarify some differences in results between surveys within states.

For the 10-year period, 1993-02 the CCS indicated a significant decline ($P<0.05$) in doves heard for the

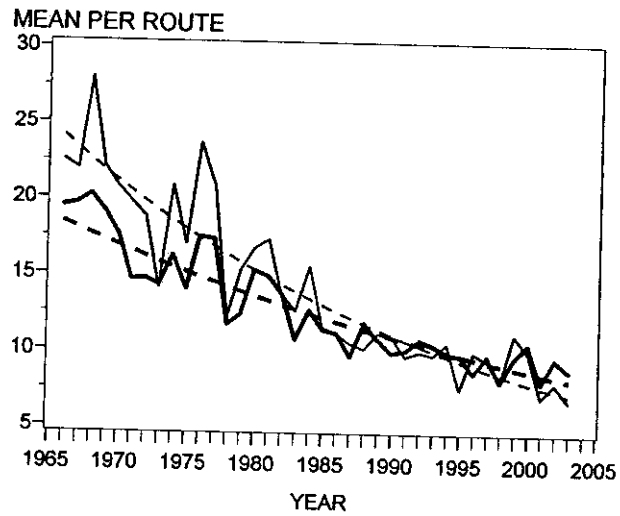


Fig. 12. Population indices and trends of breeding mourning doves in the Western Management Unit, 1966-2003. Heavy solid line = doves heard; light solid line = doves seen. Light and heavy dashed lines = predicted trends.

combined hunting sates in the EMU while the BBS showed no trend ($P>0.10$). For the nonhunting states, the CCS showed a tendency for an increase ($P<0.10$) while the BBS showed a significant increase ($P<0.05$). For the EMU as a whole, there no trend indicated with the CCS ($P>0.10$) while the BBS showed a significant increase ($P<0.05$). For the CMU, the CCS showed a significant decline ($P<0.05$) while the BBS showed no trend ($P>0.10$). In the WMU, the CCS indicated a significant decline ($P<0.01$) while the BBS showed no

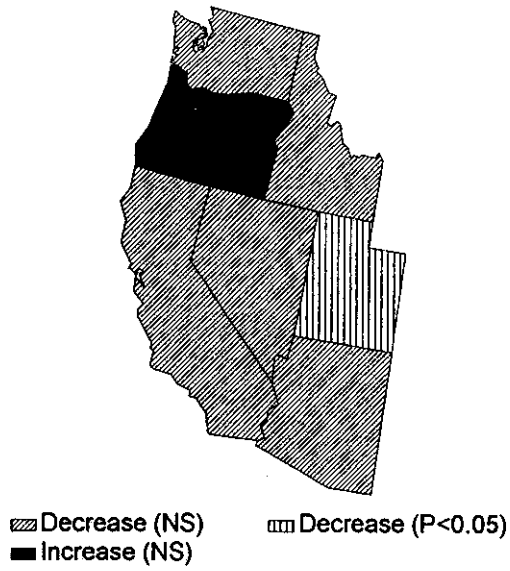


Fig. 13. Trends in number of mourning doves heard per route by state in the Western Management Unit, 1994-2003.

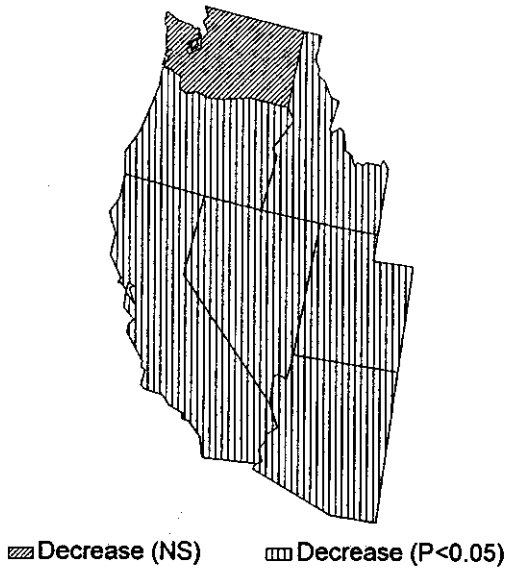


Fig. 14. Trends in number of mourning doves heard per route by state in the Western Management Unit, 1966-2003.

trend (P>0.10).

Over 37 years, results were very similar with both surveys for the Central and Western Management Units with both surveys indicating significant declines (CCS: P<0.01 for both units; BBS: P<0.05 for both Units;). In the Eastern Unit, CCS analyses indicated a significant decline (P<0.05) over the period. In contrast, the BBS showed a significant increase (P<0.05). For the combined hunting states of the EMU, the CCS showed a significant decline (P<0.05) compared with no trend (P>0.10) with the BBS. The nonhunting states of the EMU were different also. The CCS showed no trend (P>0.10), but BBS data indicated a significant increase (P<0.05).

HARVEST ESTIMATES

State Surveys

In past years, a compilation of non-uniform, periodic state harvest surveys has been used to obtain rough estimates of the number of mourning doves killed and the number of dove hunters. Although those data are no longer used, a summary provided by Sadler (1993) is reviewed here for historical purposes. In general, mourning dove harvest in the EMU was relatively constant from 1966-87, with between 27.5 and 28.5 million birds taken. The latest estimate, a 1989 survey, indicated harvest had dropped to about 26.4 million birds shot by an estimated 1.3 million hunters. In the CMU, although hunting pressure and harvest varied widely among states, dove harvest in the Unit generally increased between 1966-87 to an annual average of about 13.5 million birds. In 1989, almost 11 million doves were taken by about 747,000 hunters. Dove harvest in the WMU has declined significantly over the years following a decline in the breeding population. In the early 1970's, about 7.3 million doves were taken by an estimated 450,000 hunters. By 1989, the harvest had dropped to about 4 million birds shot by approximately 285,000 hunters.

In summary, it appears that the dove harvest throughout the United States is on the decrease. However, the mourning dove remains an extremely important game bird, as more doves are harvested than all other migratory game birds combined. A 1991 survey indicated that doves provided about 9.5 million days of hunting recreation for 1.9 million people (U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census 1993). A survey conducted in 1996 estimated that doves were hunted about 8.1 million days by 1.6 million people (U.S. Department of the Interior, Fish and Wildlife Service and U.S. Department of Commerce, Bureau of the Census 1997).

Harvest Information Program (HIP)

Wildlife professionals have long recognized that reliable harvest estimates are needed to monitor the impact of hunting. To remedy problems associated with state surveys, the U.S. Fish and Wildlife Service and the state wildlife agencies initiated the national, cooperative Harvest Information Program in 1992. This program is designed to enable the Service to conduct nationwide surveys that provide reliable annual estimates of the harvest of mourning doves and other migratory game bird species. Under the Harvest Information Program, states provide the Service with the names and addresses of all licensed migratory bird hunters each year, and the Service conducts surveys to estimate the harvest in each state. All states except Hawaii are participating in the program.

Preliminary results of the mourning dove harvest survey for the 2001-02 hunting season are presented in Table 4 and preliminary results for the 2002-03 season are shown in Table 5. The total estimated harvest for the 2002-03 season by management unit and for the U.S. are as follows: Eastern: 9,943,600 ± 7%; Central: 10,366,500 ± 7%; Western: 2,392,100 ± 5%; and, U.S.: 22,702,100 ± 5%. It is important to note that these estimates do not necessarily indicate that the harvest has declined from past years when harvest estimates were compiled from state surveys. And, they cannot be compared directly with the earlier estimates since they are based on a different sampling scheme. The reliability of these estimates depends primarily upon the quality of the sample frame provided by each participating state. If a state's sample frame does not include all migratory bird hunters in that state, the survey results underestimate hunter activity and harvest for the state.

The Harvest Surveys Section is continuing to work with states to improve the accuracy and precision of the harvest estimates.

ACKNOWLEDGMENTS

Personnel of state wildlife agencies and the U.S. Fish and Wildlife Service (USFWS) cooperated in collecting the data presented in this report. T. Nguyen and H. Bellary (FWS) played vital roles in web site and database development. W. L. Kendall (BRD) and J. R. Sauer (BRD) analyzed the data and provided statistical support. P. I. Padding (USFWS) provided the HIP data and explanation. J. Bladen (USFWS) reviewed a draft of parts or all of this report.

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Table 1. Trends (% change[a] per year as determined by linear regression) in number of mourning doves heard along call-count survey routes, 1966-2003.

	2 year (2002-2003)					10 year (1994-2003)					38 year (1966-2003)				
	N	% Change[b]		90% CI		N	% Change[b]		90% CI		N	% Change[b]		90% CI	
EASTERN UNIT															
Hunt															
AL	23	-21.7	***	-34.6	-8.7	28	-1.7		-3.4	0.0	42	-0.6		-1.5	0.3
DE/MD	11	17.8		-7.9	43.5	14	-2.5		-5.9	0.9	19	-1.9	***	-3.0	-0.7
FL	22	-7.6		-21.3	6.1	23	-2.3	*	-4.6	0.0	28	-0.1		-0.9	0.8
GA	21	6.6		-19.9	33.0	25	-2.5	*	-4.9	-0.1	31	-1.0	**	-1.7	-0.4
IL	14	-0.9		-22.3	20.6	20	-1.6		-4.2	1.0	22	0.3		-0.9	1.5
IN	11	2.5		-13.6	18.6	15	-3.4	***	-5.6	-1.3	18	-1.6	***	-2.5	-0.6
KY	17	10.3	**	2.7	17.9	21	1.7		-0.4	3.8	26	-0.2		-1.5	1.0
LA	19	20.2		-2.9	43.3	19	3.0		-0.1	6.2	23	1.2	*	0.2	2.3
MS	19	7.8		-16.1	31.8	23	-2.9		-6.6	0.8	31	-1.9	*	-3.5	-0.2
NC	21	-11.7	*	-23.2	-0.2	21	1.8	***	0.8	2.8	24	0.0		-0.9	1.0
OH	34	-8.0		-18.7	2.8	37	-1.0		-3.4	1.3	57	-1.1	***	-1.6	-0.5
PA	12	-8.5		-22.3	5.2	17	1.2		-2.8	5.3	17	0.9		-0.9	2.7
SC	18	-10.5		-30.6	9.6	21	-1.8		-3.6	0.1	27	-1.1	**	-2.0	-0.3
TN	16	2.0		-21.2	25.1	24	-2.6	*	-5.1	0.0	32	-1.6	**	-2.6	-0.5
VA	21	-32.5	***	-47.3	-17.7	33	0.2		-1.8	2.3	33	-1.9		-3.9	0.1
WV	10	-39.2	***	-56.8	-21.6	10	-2.6		-6.0	0.8	11	1.4		-0.5	3.2
Subunit	289	-5.6	*	-11.0	-0.1	351	-1.3	***	-2.1	-0.5	441	-0.7	***	-1.1	-0.3
Nonhunt															
MI	12	-23.2	**	-39.4	-6.9	22	2.0		-1.5	5.4	23	0.4		-0.9	1.6
N.England[c]	35	-13.3	**	-24.1	-2.5	42	-0.3		-2.0	1.4	76	1.7	***	0.9	2.5
NJ	10	-12.8		-29.6	3.9	11	-2.5		-6.6	1.5	20	-2.1		-5.0	0.8
NY	8	-16.3		-41.0	8.4	17	6.0	***	3.7	8.3	20	1.7		-0.4	3.8
WI	15	33.3	***	13.4	53.3	22	5.6	***	3.5	7.7	23	0.5		-0.9	1.9
Subunit	80	-9.4		-19.0	0.2	114	2.5	**	0.8	4.2	162	0.7	*	0.0	1.4
Unit	369	-6.4	**	-11.3	-1.6	465	-0.6		-1.3	0.1	603	-0.5	**	-0.8	-0.1
CENTRAL UNIT															
AR	13	20.2		-7.5	47.8	17	-2.7		-5.6	0.2	18	-0.9		-2.2	0.5
CO	13	8.7		-8.1	25.6	16	-3.1	**	-5.5	-0.6	21	-0.9	*	-1.8	-0.1
IA	11	65.1	**	19.3	111.0	16	-0.1		-3.0	2.9	18	0.0		-0.8	0.7
KS	21	14.8		-2.7	32.3	28	-2.1		-6.4	2.1	34	-0.4		-1.0	0.2
MN	9	-46.4	***	-62.4	-30.5	12	-5.6	***	-7.5	-3.7	13	-2.1	**	-3.5	-0.6
MO	16	28.5		-4.9	61.8	20	-6.3	***	-8.3	-4.2	28	-2.2	***	-3.4	-1.0
MT	11	2.2		-29.6	34.0	18	4.0	**	0.7	7.3	28	-2.0	*	-3.9	-0.1
NE	21	16.8	**	4.3	29.3	24	-1.4		-3.2	0.3	27	-0.9	**	-1.6	-0.3
NM	18	11.4		-16.6	39.4	28	-0.1		-4.6	4.5	31	0.5		-0.5	1.5
ND	21	8.7		-6.5	23.9	27	0.1		-1.7	1.9	30	0.1		-1.4	1.5
OK	14	34.1	***	21.3	46.8	16	1.6		-1.8	5.1	25	0.2		-3.4	3.8
SD	12	-22.7	***	-32.0	-13.4	19	1.0		-2.8	4.8	28	-0.7		-2.4	1.1
TX	113	-3.4		-12.1	5.3	143	-1.0		-2.4	0.3	206	-0.4		-1.1	0.3
WY	11	-20.8	***	-33.2	-8.4	16	-4.9	*	-9.3	-0.5	22	-3.5	**	-6.0	-1.0
Unit	304	2.7		-2.8	8.1	400	-1.0	*	-1.9	-0.1	529	-0.6	***	-1.0	-0.3
WESTERN UNIT															
AZ	39	-0.7		-20.7	19.3	55	-0.6		-2.5	1.3	69	-1.2	***	-1.9	-0.4
CA	52	-14.0	**	-24.1	-3.9	59	-1.3	*	-2.5	0.0	82	-2.5	***	-3.6	-1.4
ID	16	-15.3		-40.2	9.7	23	-1.0		-5.1	3.2	28	-2.8	**	-4.8	-0.8
NV	17	5.5		-67.5	78.5	24	-1.3		-5.1	2.6	31	-4.8	***	-6.7	-2.9
OR	13	-1.6		-25.1	21.9	20	2.7		-0.4	5.8	25	-1.9	**	-3.4	-0.5
UT	11	-17.6		-42.0	6.8	15	-4.6	***	-6.9	-2.4	19	-3.7	**	-6.5	-1.0
WA	12	13.7		-21.0	48.4	21	-0.5		-7.5	6.5	26	-2.4	*	-4.5	-0.3
Unit	160	-7.4		-18.2	3.5	217	-1.0		-2.0	0.0	280	-2.2	***	-2.8	-1.6

[a] Mean of route trends weighted by land area and population density. The estimated count in the next year is (%/100+1) times the count in the current year where % is the annual change. Note: Extrapolating the estimated trend statistic (% change per year) over time (e.g., 38 years) may exaggerate the total change over the period.

[b] *$P<0.1$; **$P<0.05$; ***$P<0.01$.

[c] New England consists of CT, ME, MA, NH, RI, and VT.

Table 2. Breeding population indices[a] based on mourning doves heard along Call-count routes, 1966-2003.

Management unit/state	year								
	1966	1967	1968	1969	1970	1971	1972	1973	1974
EASTERN UNIT									
Hunt									
AL	25.9	23.1	20.8	21.1	21.4	17.5	25.1	22.0	16.7
DE/MD	17.4	21.2	14.8	15.7	19.4	16.4	17.9	17.7	18.6
FL	12.1	11.6	9.9	10.5	13.3	11.2	11.5	11.6	13.9
GA	30.3	28.4	24.4	26.1	33.0	26.0	24.8	27.2	28.1
IL	23.2	20.0	23.8	20.6	23.8	21.7	22.3	21.9	18.5
IN	37.9	34.9	34.3	33.1	32.0	43.2	37.7	33.7	32.1
KY	23.3	21.1	20.6	21.6	26.0	23.3	19.6	23.3	27.2
LA	10.2	10.4	9.8	11.4	7.7	10.3	11.3	8.8	10.3
MS	41.2	35.4	30.0	27.8	30.5	31.0	34.5	30.9	24.7
NC	34.7	28.1	29.7	42.3	48.8	28.5	23.1	43.9	25.1
OH	24.5	23.0	20.8	23.7	23.5	24.3	25.3	20.1	24.5
PA	8.6	9.2	8.5	8.1	5.3	6.1	8.6	5.6	8.3
SC	33.4	36.5	37.2	35.9	33.8	29.6	26.3	30.0	28.0
TN	32.0	23.3	23.9	23.7	32.1	22.7	28.7	21.8	23.3
VA	25.6	21.4	24.2	21.4	27.4	22.1	13.2	15.6	21.3
WV	6.5	5.5	5.6	6.1	5.6	5.1	6.7	3.9	4.2
Subunit	24.0	21.9	20.9	21.5	22.4	20.5	21.1	20.0	20.3
Nonhunt									
MI	13.7	14.8	9.8	10.0	8.1	16.0	16.6	13.2	11.2
N.England[b]	5.8	6.3	5.8	5.0	5.8	6.1	6.8	8.0	5.1
NJ	20.0	17.1	21.2	19.5	26.3	24.8	26.0	23.0	22.2
NY	6.3	6.4	6.0	6.0	7.4	8.6	6.8	7.0	7.2
WI	10.5	13.5	13.6	10.4	11.2	16.3	17.0	11.2	11.9
Subunit	9.6	10.7	9.2	8.3	8.7	12.2	12.4	10.5	9.5
Unit	20.2	19.2	17.9	17.9	18.6	18.8	19.2	17.7	17.5
CENTRAL UNIT									
AR	22.0	23.0	22.0	21.2	22.9	23.0	21.6	24.3	22.4
CO	24.3	23.8	21.7	29.6	29.6	21.5	27.2	16.8	26.7
IA	31.7	28.5	30.6	27.6	20.0	24.6	32.7	30.8	24.5
KS	50.8	50.8	52.7	53.4	49.0	49.9	55.8	49.1	48.6
MN	32.6	25.9	27.8	20.5	16.2	23.2	26.7	20.1	28.0
MO	40.0	37.8	47.3	28.6	39.4	33.1	44.8	33.6	28.7
MT	29.4	27.1	21.3	23.4	18.7	26.4	21.0	15.1	17.5
NE	46.3	40.6	51.8	50.6	48.9	46.4	44.5	42.6	44.1
NM	15.3	11.3	15.8	12.1	11.8	11.1	12.7	9.1	11.1
ND	38.3	36.8	50.3	41.8	37.1	38.3	39.6	43.7	42.4
OK	20.0	24.7	29.1	28.2	22.1	16.8	27.5	25.9	27.3
SD	50.2	31.4	43.0	36.6	43.5	38.3	38.1	40.2	48.1
TX	26.8	22.2	21.9	19.8	21.0	20.3	27.2	21.8	23.3
WY	23.3	24.5	12.7	20.5	19.5	11.0	14.7	14.6	21.0
Unit	30.0	26.9	27.7	26.3	25.4	25.0	28.5	23.8	26.7
WESTERN UNIT									
AZ	29.8	29.9	26.6	31.7	31.7	21.4	24.0	28.9	25.0
CA	27.5	26.0	24.0	23.7	23.1	17.3	21.1	20.2	21.9
ID	18.3	18.8	16.8	17.6	16.4	12.9	12.3	15.1	12.6
NV	12.4	11.3	26.7	18.2	13.1	7.9	10.6	7.4	9.9
OR	14.6	9.7	11.5	10.5	8.0	7.0	6.9	6.9	12.1
UT	21.7	33.2	16.8	15.9	18.5	25.9	15.1	13.1	14.9
WA	11.0	16.2	15.2	12.1	12.3	14.5	10.3	9.4	11.7
Unit	19.5	19.7	20.3	19.2	17.7	14.6	14.7	14.3	16.2

[a]Annual indices are the predicted value from the trend analysis plus the deviation from the expected value in a year. Large but nonsignificant changes due to small sample sizes produce exaggerated indices over the 38-year period.
[b] New England consists of CT, ME, MA, NH, RI, and VT.

Table 2. Breeding population indices[a] based on mourning doves heard along Call-count routes, 1966-2003.

Management unit/state	year								
	1975	1976	1977	1978	1979	1980	1981	1982	1983
EASTERN UNIT									
Hunt									
AL	21.3	20.5	22.6	24.8	23.8	23.9	22.8	23.3	23.4
DE/MD	13.2	16.0	14.7	15.3	14.9	14.1	13.5	14.1	10.0
FL	14.4	13.3	14.6	11.4	12.4	9.9	9.0	10.5	12.2
GA	30.6	24.1	25.0	27.5	24.0	24.4	27.0	29.0	25.9
IL	25.7	25.2	26.9	20.6	18.0	18.4	20.7	25.2	25.9
IN	33.8	33.9	37.7	20.4	21.7	27.5	31.6	22.3	19.2
KY	19.3	24.3	22.8	24.5	16.8	16.3	27.9	24.1	13.5
LA	10.8	10.9	9.0	10.6	9.0	12.5	10.8	13.5	12.4
MS	26.1	26.5	27.3	30.7	26.2	24.7	24.8	31.2	26.2
NC	14.1	17.2	46.0	24.6	29.1	28.3	27.8	23.3	27.6
OH	37.4	27.3	26.1	13.9	13.4	16.1	19.5	18.6	19.8
PA	5.7	5.8	4.7	5.8	6.4	7.7	9.1	8.7	8.6
SC	27.7	27.4	23.3	30.8	26.1	32.9	32.0	33.0	31.4
TN	22.2	22.0	24.1	29.7	20.4	22.1	18.6	24.9	19.3
VA	23.8	22.9	30.6	22.6	20.0	19.5	16.9	18.6	18.5
WV	2.4	6.0	5.7	6.5	7.2	8.4	6.7	6.4	6.1
Subunit	20.1	20.2	21.4	19.7	18.1	19.3	19.7	20.7	19.3
Nonhunt									
MI	12.6	12.8	10.8	12.4	7.3	13.4	15.3	11.2	9.9
N.England[b]	4.9	4.6	8.5	7.3	6.1	7.6	9.2	7.5	8.0
NJ	15.9	20.0	21.9	17.4	18.5	17.2	14.2	16.1	19.2
NY	12.8	7.6	7.5	9.1	6.1	10.9	9.3	9.9	9.2
WI	14.9	14.9	19.6	7.9	11.6	14.9	20.2	11.2	13.1
Subunit	11.7	10.4	11.8	9.6	8.1	12.1	13.7	10.5	10.6
Unit	18.2	17.8	19.1	17.1	15.3	17.6	18.5	18.0	17.1
CENTRAL UNIT									
AR	21.5	26.1	21.3	15.0	12.2	20.2	22.1	25.7	19.3
CO	19.5	27.7	25.6	28.2	23.3	26.9	30.3	29.3	16.1
IA	22.8	28.0	21.8	24.4	20.8	28.1	31.0	22.4	16.0
KS	46.2	50.7	48.0	37.4	53.9	58.4	55.7	53.0	59.6
MN	30.3	26.3	30.1	29.0	29.5	31.6	27.7	24.3	21.0
MO	33.7	29.8	34.5	22.1	21.0	32.7	27.6	24.3	23.5
MT	23.8	17.2	20.9	20.0	20.0	18.2	17.0	21.6	17.3
NE	41.5	46.8	47.3	38.9	41.7	53.0	50.3	49.1	44.7
NM	13.6	13.3	11.9	11.9	8.1	13.1	12.9	10.1	13.6
ND	31.0	49.8	41.2	44.0	41.2	46.6	47.2	44.2	42.2
OK	24.7	26.1	33.6	25.8	25.2	26.2	26.0	27.2	27.9
SD	40.6	43.6	38.2	41.2	40.3	40.4	36.4	43.3	37.4
TX	21.1	20.6	19.7	20.4	25.3	24.2	22.0	21.3	19.7
WY	18.5	17.0	10.8	17.0	12.8	11.5	12.6	16.2	10.8
Unit	26.1	26.8	25.7	25.2	24.8	27.8	27.0	26.9	23.9
WESTERN UNIT									
AZ	27.4	28.3	25.3	25.3	24.7	22.0	24.8	28.3	22.0
CA	18.5	22.1	17.0	15.3	11.8	20.0	16.6	20.5	12.7
ID	8.7	16.0	19.6	10.8	10.4	10.8	11.9	12.2	9.3
NV	6.2	10.0	10.3	6.1	8.8	12.5	9.0	5.0	4.5
OR	9.2	9.6	10.9	5.8	6.0	9.1	7.8	7.6	5.8
UT	15.9	18.4	21.6	9.5	11.8	14.2	18.8	11.4	11.4
WA	12.7	12.2	13.3	8.6	12.0	8.2	9.8	9.2	7.7
Unit	14.0	17.5	17.4	11.7	12.4	15.3	14.9	13.7	10.8

[a]Annual indices are the predicted value from the trend analysis plus the deviation from the expected value in a year. Large but nonsignificant changes due to small sample sizes produce exaggerated indices over the 38-year period.
[b] New England consists of CT, ME, MA, NH, RI, and VT.

Table 2. Breeding population indices[a] based on mourning doves heard along Call-count routes, 1966-2003.

Management unit/state	year								
	1984	1985	1986	1987	1988	1989	1990	1991	1992
EASTERN UNIT									
Hunt									
AL	19.5	25.0	22.7	20.2	22.3	19.1	17.9	16.7	19.2
DE/MD	11.3	12.4	14.7	12.8	11.8	16.2	7.8	12.0	15.3
FL	8.4	10.8	12.6	11.4	13.7	12.4	11.3	12.1	12.3
GA	21.0	27.0	24.1	25.2	25.4	25.8	26.5	22.0	31.0
IL	21.0	18.1	24.9	24.4	27.5	27.1	26.4	26.7	27.6
IN	20.9	18.3	24.4	24.5	29.5	24.9	27.1	27.3	24.1
KY	21.7	22.6	20.4	25.1	20.0	27.7	23.2	22.0	17.5
LA	11.9	10.7	9.8	14.0	10.4	16.1	11.5	11.8	15.7
MS	19.3	25.6	25.1	22.3	26.4	24.6	20.8	17.2	22.4
NC	30.9	21.5	30.1	29.2	26.9	31.6	28.8	24.4	23.8
OH	18.3	17.2	16.8	18.3	21.0	19.7	18.1	19.4	20.4
PA	7.9	8.6	9.2	10.4	7.0	9.0	9.0	9.1	10.2
SC	28.5	28.6	24.2	35.5	28.0	26.9	29.1	23.6	23.2
TN	16.5	21.2	16.1	19.8	19.4	17.6	15.5	18.6	18.2
VA	18.0	16.9	13.7	14.5	15.8	15.4	13.1	13.8	12.2
WV	5.4	6.7	6.3	6.6	7.6	8.2	10.8	9.2	7.4
Subunit	17.5	18.6	18.7	19.9	19.7	20.4	18.8	18.3	19.4
Nonhunt									
MI	10.6	11.7	14.9	12.2	14.7	18.4	13.9	11.3	13.2
N.England[b]	6.9	7.7	8.3	7.9	7.4	7.8	8.7	9.5	10.1
NJ	12.1	12.4	14.6	13.3	12.9	15.8	12.6	15.2	9.7
NY	9.0	8.3	6.9	9.2	7.4	11.5	10.0	12.6	10.8
WI	10.3	10.6	11.4	7.5	17.8	17.8	14.2	12.7	19.4
Subunit	9.6	10.0	10.7	9.4	11.8	14.0	12.0	11.9	13.4
Unit	15.4	16.3	16.6	16.8	17.7	18.9	17.1	16.7	17.9
CENTRAL UNIT									
AR	13.7	13.6	14.7	13.7	15.2	21.4	16.6	15.0	18.2
CO	20.1	23.9	22.9	24.5	26.5	29.8	26.8	17.7	13.4
IA	23.5	25.9	23.4	22.5	30.4	27.4	31.4	23.1	31.0
KS	47.0	60.4	41.6	45.0	51.9	46.7	40.7	56.7	55.3
MN	17.9	19.5	17.6	22.5	22.9	17.9	14.5	17.9	20.8
MO	22.3	21.3	22.1	24.9	25.0	24.5	19.8	21.6	22.6
MT	13.1	17.9	18.6	17.8	14.6	18.6	20.2	13.2	14.1
NE	42.6	43.8	36.5	36.0	36.0	40.0	39.8	40.6	38.1
NM	14.6	12.4	14.9	17.9	13.4	14.9	16.3	14.9	9.8
ND	33.2	43.4	40.1	46.0	43.4	45.2	43.8	48.3	51.8
OK	21.0	20.5	23.0	25.5	22.5	17.0	22.3	22.6	25.3
SD	41.6	39.0	36.3	31.7	37.6	40.5	41.9	43.9	35.5
TX	19.4	20.0	21.6	21.3	21.9	16.8	17.8	24.7	22.6
WY	9.8	11.2	13.7	11.0	7.1	8.4	8.4	8.9	9.1
Unit	22.3	24.4	24.6	25.3	24.3	24.1	24.1	24.5	23.5
WESTERN UNIT									
AZ	27.0	21.7	25.7	17.3	19.3	23.9	18.2	23.2	24.9
CA	17.6	12.5	14.4	11.0	14.8	10.9	10.9	10.7	11.6
ID	10.9	10.0	7.1	7.2	9.4	9.3	10.0	9.1	8.4
NV	4.4	5.5	3.6	4.2	5.7	4.9	3.4	4.5	3.8
OR	7.4	8.1	6.6	6.0	7.5	6.2	7.1	4.4	7.0
UT	12.8	8.4	11.7	10.2	10.5	11.0	9.4	8.5	10.9
WA	6.7	8.5	10.1	8.0	8.0	6.9	7.2	9.0	7.9
Unit	12.7	11.4	11.2	9.7	11.9	10.8	9.9	10.1	10.8

[a]Annual indices are the predicted value from the trend analysis plus the deviation from the expected value in a year. Large but nonsignificant changes due to small sample sizes produce exaggerated indices over the 38-year period.
[b] New England consists of CT, ME, MA, NH, RI, and VT.

Table 2. Breeding population indices[a] based on mourning doves heard along Call-count routes, 1966-2003.

Management unit/state	year										
	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
EASTERN UNIT											
Hunt											
AL	20.9	21.7	22.9	17.8	16.6	18.4	17.7	18.9	18.2	21.1	16.9
DE/MD	10.4	12.6	11.2	10.5	8.7	12.1	8.7	8.2	8.1	7.0	10.9
FL	11.0	10.3	12.0	11.2	10.4	12.9	13.6	13.1	10.0	10.5	11.1
GA	19.1	22.0	26.3	22.1	19.1	18.3	18.5	16.4	22.5	12.3	19.3
IL	24.1	26.9	27.7	21.9	22.2	22.3	20.5	26.9	22.4	24.1	24.6
IN	25.5	30.3	24.5	21.0	20.7	20.9	21.8	23.5	20.8	19.6	19.9
KY	22.6	21.9	21.4	18.3	17.1	21.8	22.1	23.8	19.4	22.8	22.7
LA	12.0	13.0	14.8	12.0	12.3	13.9	14.6	17.2	18.1	14.3	16.6
MS	24.5	20.6	18.8	17.7	16.8	17.1	20.6	17.8	16.1	13.7	15.4
NC	24.7	24.9	27.1	27.6	30.2	29.5	30.2	35.8	39.9	33.7	32.4
OH	17.3	19.2	17.5	14.1	14.0	16.4	17.1	18.2	14.9	17.1	16.1
PA	11.2	10.6	10.2	9.9	9.2	11.0	9.0	10.5	9.9	10.0	9.2
SC	27.2	24.5	19.7	24.9	23.8	26.9	24.6	23.2	24.4	21.7	23.0
TN	15.9	19.6	18.1	15.4	16.5	15.9	16.0	17.6	14.1	15.1	14.7
VA	13.7	13.6	14.7	11.8	14.9	14.1	14.5	15.5	12.5	14.6	11.3
WV	8.7	9.5	9.8	4.9	10.2	8.4	9.9	9.4	6.4	9.4	5.8
Subunit	18.4	19.1	19.3	16.6	16.7	17.9	17.9	18.9	17.2	16.7	16.9
Nonhunt											
MI	12.2	11.5	12.9	13.2	12.8	14.6	14.3	17.5	14.3	14.6	15.2
N.England[b]	10.7	9.6	12.1	8.3	8.3	9.1	10.5	11.1	9.3	12.0	9.6
NJ	15.6	13.6	10.1	13.1	7.0	11.5	9.3	12.4	6.4	11.4	9.5
NY	9.5	9.6	10.7	10.1	10.9	9.5	12.6	14.4	12.0	12.0	12.5
WI	18.5	15.3	13.1	11.8	12.3	9.8	18.9	16.5	15.9	14.1	19.2
Subunit	12.9	11.8	12.3	11.1	11.1	10.9	14.1	15.1	12.8	13.5	14.1
Unit	17.1	17.2	17.5	15.2	15.3	16.0	17.0	18.0	16.1	15.9	16.2
CENTRAL UNIT											
AR	16.7	20.0	18.5	18.8	19.3	19.3	17.6	17.3	16.6	13.4	17.5
CO	12.9	22.9	19.1	14.3	19.4	20.2	22.0	22.1	14.3	17.7	17.9
IA	22.9	24.1	25.5	32.5	26.7	29.4	27.2	23.7	22.6	24.6	33.4
KS	38.2	51.0	60.8	32.4	57.7	53.9	65.6	49.9	34.5	44.3	39.1
MN	14.9	18.0	17.5	16.7	17.7	16.5	14.8	15.2	13.0	16.4	9.3
MO	21.8	26.1	22.7	22.3	21.8	19.6	18.0	18.5	15.7	17.2	17.2
MT	10.3	9.5	12.1	12.2	11.3	14.0	12.8	14.0	10.6	12.6	11.8
NE	40.0	37.2	40.6	33.9	31.2	39.5	36.2	36.2	30.3	28.9	37.3
NM	10.9	13.7	12.4	10.7	14.1	11.8	13.8	15.5	16.0	11.6	15.2
ND	45.1	38.9	40.7	42.6	37.8	35.7	46.8	47.0	36.9	31.2	44.5
OK	21.8	28.5	21.5	22.8	21.9	31.5	28.5	23.9	24.9	23.8	30.8
SD	32.0	34.9	36.4	36.5	31.0	33.4	34.9	36.5	33.1	35.5	35.4
TX	20.6	22.8	17.2	14.8	22.1	22.4	22.1	19.5	19.5	18.9	19.0
WY	6.6	8.6	6.3	7.2	7.0	7.3	5.5	7.7	5.0	6.0	4.9
Unit	20.5	23.8	22.2	20.4	23.0	24.0	23.7	23.6	20.3	20.9	21.5
WESTERN UNIT											
AZ	27.0	22.3	21.1	12.4	19.0	21.8	23.8	24.9	17.1	18.1	16.7
CA	14.1	11.7	11.4	11.6	10.2	10.6	11.0	10.2	9.7	11.5	9.1
ID	7.3	7.2	6.5	6.2	8.8	5.2	6.9	6.3	5.0	8.0	6.2
NV	3.1	2.8	4.7	4.3	3.9	3.3	4.0	3.2	2.8	3.0	3.0
OR	5.8	6.8	5.7	5.6	5.6	4.3	4.4	7.1	5.1	5.6	6.6
UT	9.2	9.6	6.2	7.1	8.9	5.2	8.2	13.1	5.6	7.9	7.2
WA	6.8	7.0	7.8	5.2	6.4	4.6	6.2	7.1	6.7	6.7	7.4
Unit	10.4	9.9	9.8	8.7	9.8	8.1	9.6	10.5	8.0	9.6	8.9

[a]Annual indices are the predicted value from the trend analysis plus the deviation from the expected value in a year.
Large but nonsignificant changes due to small sample sizes produce exaggerated indices over the 38-year period.
[b] New England consists of CT, ME, MA, NH, RI, and VT.

Table 3. Trends (% change[a] per year as determined by linear regression) in number of mourning doves heard and seen along Breeding Bird Survey routes, 1966-2002.

	10 year (1993-02)					37 year (1966-02)				
	N	% Change[b]		90% CI		N	% Change[b]		90%CI	
EASTERN UNIT										
Hunt										
AL	92	-0.8		-2.3	0.8	97	-1.2	**	-2.0	-0.3
DE/MD	68	-0.7		-2.2	0.9	78	0.5		-0.2	1.1
FL	70	1.3		-0.1	2.7	82	2.7	**	1.8	3.7
GA	60	-2.1	**	-3.5	-0.7	67	-1.3	*	-2.4	-0.2
IL	93	0.5		-0.8	1.9	93	0.6		-0.4	1.5
IN	54	-0.9		-2.7	0.8	58	-0.2		-0.7	0.4
KY	36	2.8	**	1.3	4.2	49	0.5		-0.3	1.2
LA	50	7.0	**	3.7	10.3	66	2.3	**	0.8	3.7
MS	26	-5.1	*	-9.7	-0.5	34	-1.5	**	-2.5	-0.5
NC	64	-0.7		-2.7	1.3	74	-0.3		-1.3	0.7
OH	66	1.6	*	0.2	3.0	77	0.6		-0.1	1.4
PA	101	2.6	**	1.1	4.0	120	2.3	**	1.4	3.2
SC	31	3.3	*	0.3	6.2	37	-0.1		-1.1	1.0
TN	41	0.8		-1.3	3.0	46	-0.6		-1.7	0.4
VA	49	-0.4		-1.8	1.1	55	-0.5		-1.2	0.2
WV	50	6.1	**	3.9	8.2	55	5.7	**	4.6	6.8
Subunit	951	0.4		-0.1	1.0	1088	0.1		-0.3	0.5
Nonhunt										
MI	65	3.6	**	1.8	5.3	78	0.6		-0.1	1.3
N.England[c]	135	1.3	*	0.0	2.6	152	3.5	**	2.6	4.5
NJ	27	0.1		-2.0	2.2	37	0.5		-0.9	1.9
NY	101	3.4	**	1.9	4.9	115	2.9	**	2.4	3.5
WI	89	2.3	**	1.0	3.5	91	1.2	*	0.1	2.2
Subunit	417	2.5	**	1.8	3.2	473	1.8	**	1.3	2.3
Unit	1368	0.8	**	0.4	1.3	1561	0.5	**	0.1	0.8
CENTRAL UNIT										
AR	31	3.1	**	1.1	5.0	34	0.4		-1.1	1.8
CO	118	2.2		-0.3	4.7	126	1.0		-0.2	2.2
IA	34	0.9		-1.5	3.3	37	-0.9		-1.9	0.1
KS	55	-0.9		-2.9	1.2	56	-0.1		-1.1	0.8
MN	59	0.7		-2.0	3.4	67	-1.1		-2.4	0.1
MO	52	-1.2		-2.5	0.1	63	-2.3	**	-3.1	-1.5
MT	49	-0.9		-3.8	2.0	53	-1.1	*	-2.0	-0.1
NE	38	-0.5		-2.2	1.1	45	-0.9	*	-1.6	-0.2
NM	65	1.6		-1.5	4.7	72	-0.5		-2.3	1.3
ND	44	-2.5	*	-4.6	-0.5	46	1.0	**	0.3	1.7
OK	55	1.7		-0.5	3.9	60	-1.5	**	-2.3	-0.7
SD	35	0.8		-0.9	2.6	47	0.6		-0.3	1.6
TX	168	0.5		-1.1	2.1	193	-1.4	**	-2.0	-0.8
WY	78	0.8		-2.0	3.7	99	0.2		-1.5	1.9
Unit	881	0.4		-0.3	1.0	998	-0.6	**	-0.9	-0.3
WESTERN UNIT										
AZ	53	-2.2		-5.3	1.0	71	-1.5		-3.5	0.6
CA	165	1.5		-0.2	3.2	213	-1.0	*	-1.9	-0.2
ID	39	3.6		-0.2	7.4	43	-1.1	*	-2.0	-0.1
NV	21	4.0	**	1.0	7.1	32	3.6	**	1.3	5.9
OR	80	1.9		-1.5	5.4	95	-2.2	*	-4.0	-0.3
UT	82	-0.9		-3.7	1.9	85	-1.8	*	-3.4	-0.2
WA	60	-0.1		-3.3	3.1	65	0.0		-1.8	1.9
Unit	500	0.6		-0.8	1.9	604	-1.2	**	-1.8	-0.5

[a]Mean of route trends weighted by land area and population density. The estimated count in the next year is (%/100+1) times the count in the current year where % is the annual change. Note: Extrapolating the estimated trend statistic (% change per year) over time (e.g., 37 years) may exaggerate the total change over the period.

[b]*$P<0.1$; **$P<0.05$; ***$P<0.01$.

[c]New England consists of CT, ME, MA, NH, RI, and VT.

Table 4. Preliminary estimates of the number of hunters, days hunted, total bag, and confidence intervals for each from Harvest Information Program surveys for the 2001-02 season.

Management Unit	Hunters	95% CI	Days hunted	95% CI	Birds bagged	95% CI
EASTERN						
AL	53,600	8%	148,800	12%	917,900	14%
DE	3,500	20%	11,800	20%	66,900	19%
FL	17,900	28%	56,600	33%	335,400	45%
GA	66,300	14%	249,900	20%	1,638,300	20%
IL	37,400	10%	118,300	15%	632,800	14%
IN	16,900	15%	52,100	15%	342,500	22%
KY	39,600	12%	117,400	17%	896,000	20%
LA	25,200	21%	78,700	36%	465,400	27%
MD	12,900	23%	36,100	23%	219,800	35%
MS	25,400	14%	79,800	29%	627,000	32%
NC	62,100	14%	166,900	16%	891,100	17%
OH	17,700	33%	64,800	22%	224,900	21%
PA	39,200	17%	155,100	20%	387,700	17%
RI	600	102%	1,100	64%	1,400	58%
SC	36,200	11%	127,200	21%	733,200	11%
TN	37,800	41%	103,500	29%	795,000	38%
VA	24,300	10%	74,900	14%	417,900	16%
WV	1,900	25%	5,100	24%	26,600	37%
Unit	518,500		1,648,100	6%	9,619,800	6%
CENTRAL						
AR	41,600	16%	125,300	20%	932,900	23%
CO	16,700	13%	42,900	16%	206,300	14%
KS	38,200	7%	138,500	11%	636,300	11%
MO	33,700	15%	105,900	22%	475,000	24%
MT	2,400	56%	6,400	67%	31,300	80%
NE	16,400	10%	62,600	13%	294,400	12%
NM	9,200	14%	46,300	23%	232,400	23%
ND	3,900	31%	13,600	21%	66,500	19%
OK	22,300	19%	62,300	30%	327,800	38%
SD	10,100	25%	32,800	25%	159,700	26%
TX	289,400	10%	1,280,400	15%	7,593,000	21%
WY	3,300	35%	8,000	41%	29,200	24%
Unit	487,200		1,925,000	10%	10,984,900	15%
WESTERN						
AZ	47,200	5%	165,200	9%	1,107,900	9%
CA	71,800	6%	214,200	7%	1,136,000	8%
ID	10,400	26%	33,700	38%	126,500	51%
NV	4,800	23%	12,100	30%	37,700	29%
OR	7,400	16%	21,500	19%	66,000	24%
UT	12,800	18%	29,800	22%	76,300	21%
WA	7,900	39%	20,700	42%	66,100	20%
Unit	162,300		497,300	6%	2,616,600	6%
U.S.	1,168,000 [a]		4,070,400	5%	23,221,200	7%

[a]This total is slightly exaggerated because people are counted more than once if they hunted in more than one state.

Table 5. Preliminary estimates of the number of hunters, days hunted, total bag, and confidence intervals for each from Harvest Information Program surveys for the 2002-03 season.

Management Unit	Hunters	95% CI	Days hunted	95% CI	Birds bagged	95% CI
EASTERN						
AL	57,200	7%	164,900	10%	1,225,400	12%
DE	3,600	19%	12,700	22%	81,600	25%
FL	18,300	22%	70,300	31%	366,900	31%
GA	56,400	12%	192,300	20%	1,249,700	20%
IL	32,900	9%	118,100	15%	687,500	18%
IN	18,200	15%	62,100	17%	362,800	20%
KY	35,700	10%	109,500	17%	730,200	15%
LA	29,300	24%	77,400	23%	499,300	28%
MD	9,300	21%	30,700	32%	179,800	39%
MS	28,400	12%	92,400	15%	816,100	14%
NC	41,300	15%	108,800	21%	688,100	25%
OH	20,000	25%	88,700	31%	300,500	14%
PA	31,500	16%	133,700	18%	451,700	28%
RI	200	118%	500	66%	2,000	88%
SC	42,700	13%	142,700	20%	953,700	23%
TN	62,500	46%	166,500	48%	914,300	54%
VA	27,600	9%	81,400	12%	412,000	14%
WV	1,700	19%	4,600	25%	22,200	22%
Unit	516,800		1,657,400	7%	9,943,600	7%
CENTRAL						
AR	42,700	15%	126,600	17%	919,100	17%
CO	17,600	9%	55,600	15%	254,500	17%
KS	37,400	7%	136,000	10%	853,800	11%
MO	27,800	26%	91,000	29%	520,800	36%
MT	2,100	41%	4,600	38%	16,400	27%
NE	15,800	10%	52,400	11%	290,100	12%
NM	8,700	19%	34,100	25%	251,900	34%
ND	6,100	34%	17,900	39%	89,400	50%
OK	25,600	19%	75,700	33%	423,700	36%
SD	9,100	23%	28,600	21%	135,400	23%
TX	292,400	10%	1,177,300	11%	6,580,700	10%
WY	2,900	29%	6,200	35%	30,800	42%
Unit	488,200		1,806,000	8%	10,366,500	7%
WESTERN						
AZ	35,400	5%	121,500	8%	777,500	9%
CA	80,500	6%	240,300	8%	1,216,200	8%
ID	10,700	17%	28,300	18%	108,100	19%
NV	5,200	21%	17,800	37%	70,700	51%
OR	7,000	14%	20,100	18%	67,000	17%
UT	12,400	14%	35,700	20%	95,300	16%
WA	5,600	29%	14,400	33%	57,100	21%
Unit	156,800		478,000	5%	2,392,000	5%
U.S.	1,161,800 [1]		3,941,300	5%	22,702,100	5%

[1]This total is slightly exaggerated because people are counted more than once if they hunted in more than one state.

CURRENT RESEARCH ACTIVITIES (PROGRESS TO DATE)

Harvest Dynamics of Mourning Doves in South Carolina

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Call-count surveys indicate the mourning dove (*Zenaida macroura*) populations in South Carolina and in the Eastern Management Unit declined during 1966-2002. Although reasons for this negative trend are not known, annual survival, particularly that of juveniles, appears to have decreased in South Carolina between the 1970s and 1990s. Thus, there was a need to investigate patterns of mortality during periods within the annual cycle when the mortality rate is thought to be particularly high.

The role that various sources of direct mortality and their interactions have played in the population dynamics of mourning doves is sometimes unclear. Because South Carolina is thought to have had a relatively high dove harvest historically and the role of hunting in this decline is unknown, we initiated a study to examine population parameters at 3 Upper Coastal Plain sites thought to have had different levels of hunting pressure. The objectives of this study are to: (1) assess the influence of subcutaneously-implanted radiotransmitters on the health and survival of doves, (2) compare harvest rate estimates derived from banding and telemetry data, (3) determine whether site-, year-, and age-specific differences in period survival rates (PSR) exist, (4) estimate cause-specific mortality rates from July-November, (5) estimate the crippling rate of doves, and (6) examine the influence of various factors on indices of annual production.

We used telemetry and banding data to estimate period and annual survival rates, respectively. Telemetry was also used to estimate crippling rates and the magnitude and timing of various sources of mortality. We collected harvest age ratio data at organized dove hunts within 5 km of the 3 study sites as an index to site- and year-specific reproductive success. This 5-km buffer zone surrounding the core study sites defined the boundaries of each study site.

We elected to attach radiotransmitters to birds using the subcutaneous implantation (STI) method of Schulz et al. (1998) because traditional methods of transmitter attachment have been unsuccessful in doves. In both a cage experiment and in *a posteriori* analyses of the field study data, we assessed possible negative influences of the STI method on the health and survival of doves. In the field study, 16.9% of all post-release mortalities occurred during the first 3 days after release, with the number of mortalities per day decreasing abruptly after that time. We observed that the dehiscence rate in the cage experiment and field study birds were 0% and 9%, respectively. Although STI birds had lost weight at 3 weeks post-implantation in the cage experiment, radiomarked birds that were re-encountered during the field study had gained weight since the day of surgery. There may have been an interaction between captivity and radiomarking that contributed to weight loss in the cage experiment birds.

Next, we calculated the mid-July - early September (45-day) PSRs of radiomarked juveniles (HY) and adults (AHY) with the Kaplan-Meier product limit estimator method (Kaplan and Meier 1958, Pollock et al. 1989). To facilitate comparisons between our summer survival rates and those of a northcentral Missouri study which attached transmitters with body-loop harnesses (Schulz et al. 1996), we converted all PSR estimates and associated confidence intervals to mean daily survival rates (MDSR) estimates. The AHY and HY doves with transmitter implants had MDSR estimates of 0.9996 (0.9988 - 1.0004, 95% CI) and 0.9977 (0.9952 - 1.0002, 95% CI), respectively. Doves in northcentral Missouri had an estimated MDSR of 0.997 (0.996 - 0.998, 95% CI) during April - August. The slightly higher MDSR of doves with subcutaneously-implanted transmitters suggests that this attachment method may be preferable to body-loop harnesses.

To determine whether radiomarked birds were particularly susceptible to any source of mortality in the field study, we examined the proportion of mortality from each source observed. After 3 days post-release, the sources of mortality for STI birds during the study period in which they were released were hunting (65.3%), predators (22.4%), unretrieved hunter kills (10.2%), and unknown causes of death (2.0%). We then compared the recovery and annual survival rates of STI and leg-band only birds to ascertain whether doves telemetered during the prehunting season were more susceptible to hunter harvest than were leg-banded birds. We fit our 1998-2000 marking and recovery data to a series of models in Program MARK (White and Burnham 1999). We allowed recovery and annual survival rates to vary by age (AHY or HY) and marking method (radiomarked or leg-banded), and used information-theoretic methods (Burnham and Anderson 1998) to select the most parsimonious model. Our best model was that in which recovery and survival rates were constant over age and marking method. Under this model, recovery and annual survival rate estimates were 0.129 (0.093 - 0.178, 95% CI) and 0.215 (0.082 - 0.454). Thus, marking method appears to not have any influence on the susceptibility of doves to hunter harvest.

In our analysis of dead recoveries of marked birds from 1992-2000, recovery and annual survival both varied by age in the most parsimonious model examined. The recovery rate estimates were 0.0933 (0.0740-0.1171, 95% CI) and 0.1467 (0.1212- 0.1764, 95% CI) for AHY and HY birds respectively. The annual survival rates of AHY and HY birds were 0.3957 (0.3141-0.4835, 95% CI) and 0.1128 (0.0579-0.2082, 95% CI), respectively. Preliminary estimates of the mid July - late November PSR estimates (131 days) varied little during each year of the study. Year-specific PSR estimates (all age and site cohorts pooled) were for 0.5258 (0.3554-0.6962, 95% CI), 0.5273 (0.3245-0.7300, 95% CI), and 0.5797 (0.4105-0.7489, 95% CI) in 1998, 1999, and 2000, respectively. Site-specific PSR estimates (all year and age cohorts pooled) were 0.3300 (0.1624-0.4976, 95% CI), 0.6196 (0.4525-0.7868, 95% CI), and 0.7085

(0.52370.8934, 95% CI) for sites with heavy, moderate, and light hunting pressure, respectively.

Age-specific PSR estimates (all year and site cohorts pooled) were 0.7110 (0.5884 - 0.8335, 95% CI), 0.4197 (0.2592 - 0.5802), and 0.7991 (0.6226 - 0.9756) for AHY, HY, and unknown age birds, respectively. The PSR of birds of unknown age may have been deceptively high because most of these birds were entered into the population at-risk after a period of high mortality (i.e., the first split of hunting season). The overall PSR estimate was 0.5394 (0.4346-0.6442).

The corrected age ratios ([number of harvested HYs : number of harvested AHYs] / [HY direct recovery rate : AHY direct recovery rate]) of harvested birds were 1.448:1, 1.326:1, and 1.404:1 during 1998, 1999 and 2000, respectively. These ratios are well below most previous estimates from the Carolinas (Haas 1978, McGowan and Otis 1998). To determine whether harvest age ratios varied by study site during 1998-2000, we compared site-specific uncorrected ratios. If doves used a reproductive mechanism to compensate for hunting losses, higher harvest age ratios would be expected at sites at sites with greater hunting pressure. Harvest age ratio varied by site in one year only, when this ratio was greatest at the site with the lowest hunting pressure. It appears that there was little evidence of compensatory natality during this study. We will investigate how biotic and abiotic factors influence variation in corrected harvest age ratios from several studies conducted in the Carolinas in future analyses.

We submitted a manuscript entitled *The Influence of Subcutaneous Transmitter Implants on the Health and Survival of Wild Mourning Doves* to a peer-reviewed journal for review and possible publication. We are finalizing the development of models of PSR estimates and cause-specific mortality rates from telemetry data. Funding for this study was provided by the 1996 and 2000 Migratory Game Bird Research Program (U.S. Fish and Wildlife Service and U.S. Geological Survey - Biological Resources Division), South Carolina Department of Natural Resources, South Carolina Public Service Authority (Santee-Cooper), Safari Club International, Clemson University, and the South Carolina Cooperative Fish and Wildlife Research Unit

Monitoring the Presence and Annual Variation of *Trichomonas gallinae* in Mourning Dove Populations

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Trichomonas gallinae is a pear-shaped flagellated protozoan which sometimes causes a fatal disease called trichomoniasis in mourning doves, other columbids, and some raptors. The disease is thought to be transmitted when infected adult doves feed nestlings, and/or contaminate drinking water and food sources (i.e., bird feeders or baths) used by other doves. Weather conditions may contribute to disease transmission; e.g., extended hot dry weather may force birds to use limited but contaminated food and water supplies. Trichomonads are usually found in the oral-nasal cavity, or anterior end of the digestive and respiratory tracts of infected birds. Symptoms include difficulty flying, listlessness, swollen necks, and cheesy yellowish lesions in the oral cavity. Death occurs when the lesions block the trachea and oral cavity making eating and respiration impossible. Our objectives were to determine the presence of *Trichomonas gallinae* in a local mourning dove population using hunter killed-birds on the James A. Reed Memorial Wildlife Area (JARMWA), Missouri, 1998-2002, and to evaluate the practicality of a large-scale program to monitor *Trichomonas gallinae* trends. Our goal was to attempt to sample 1,000 hunter-killed birds annually using the InPouch® TF (BioMed Diagnostics, San Jose, CA, USA) culture system for detecting trichomonads. To help achieve our desired sample, we gave away a limited number of commemorative baseball caps to the first 100 participating hunters. Using 3 captive mourning doves from another study, which died from trichomoniasis, we tested how long trichomonads lived in the dead birds. Viable trichomonads were found >36 hrs after the birds died and were left at ambient temperature showing that hunter killed-birds would prove useful in detecting the presence of the parasite. During 1998-2002, we examined 3,169 hunter-killed mourning doves and found no visible trichomoniasis lesions; however, 5.8% of all birds tested positive for carrying the protozoan parasite.

During the 5-year study, we received 156 credible reports of the disease from the general public, most of which were associated with urban/suburban bird feeder stations. Results of the large-scale monitoring program, however, proved problematic for several reasons. Press releases about the project, and request for help from the public, generated an abundance of telephone and email responses, but many were directly unrelated to the project (e.g., many people just wanted to report having observed a mourning dove at their bird feeder). Each time a press released came out we received a pulse of responses that appeared more related to press releases than to observable changes in the disease's presence. Also, different news services and local papers recycled the press releases several times throughout the summer months, and thus generating more small-scale local pulses in responses from the public. Other confounding factors include differing amounts of among volunteers in looking for the disease symptoms, memory bias (e.g., "I just saw your story in the paper, and I remember seeing some dead birds by my bird feeder 2 months ago."), and varying levels of interest in looking for the diagnostic lesion in the oral cavity.

Given the relatively low cost of this study, we are considering continuing the monitoring of hunter killed doves beyond 2002. A longer term monitoring program would provide more insights into annual variation in the presence of the disease, and more certainty concerning factors that relate to causes of the annual variation. These preliminary results represent the fifth year of a 5-year study. The final report for the first 5 years study will be available by June 2003. Funding and assistance for this study was provided by 1998 Webless Migratory Game Bird Research Program (U.S. Fish and Wildlife Service and the U.S. Geological Survey-Biological Resources Division), Missouri Department of Conservation-Conservation Research Center (Federal Aid in Wildlife Restoration Project W-13-R-52), and BioMed Diagnostics (San Jose, CA).

Lead Exposure in Mourning Doves

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Final Report

To evaluate lead exposure in mourning doves (*Zenaida macroura*), we examined carcasses of 4,884 hunter-killed doves from Arizona, Georgia, Missouri, Oklahoma, Pennsylvania, South Carolina, and Tennessee. One or more ingested lead pellets were found in 2.5% of 4,229 carcasses collected at hunting areas where the use of lead shot was permitted, with ingestion rates among areas varying from 0% to 20.8%. Ingested steel shot were found in 2.4% of 655 carcasses collected from two areas requiring the use of nontoxic shot. Of the 4,511 dove carcasses for which age was determined, 69.9% were hatch year and 30.1% were after hatch year. All doves, except one, with ingested shot were hatch year birds. The proportions of hatch year males and females (3.4% and 3.0%, respectively) with ingested lead shot did not differ significantly. Doves with ingested lead shot had from one (in 42% of the birds) to 43 pellets in their gizzards, with 3.8% having ≥15 lead pellets. Of the birds with ingested steel shot, 25% had ≥15 steel pellets in their gizzards. Ingested lead shot were found in gizzards of 2.3% of the doves collected early in the hunting season (September 1 through September 7) and in 3.0% of the birds collected later in the season (September 8 through December 24). From the areas where lead shot was used for hunting, 8.3% of doves had liver lead concentrations ≥6 ppm dry weight and 26.8% had ≥20 ppm dry weight of lead in their wing bones, concentrations often used as indicators of lead exposure above normal background levels. Where steel shot was required for hunting, 2.0% of doves ha liver lead concentrations ≥6 ppm dry weight and 11.1% had bone lead concentrations ≥20 ppm dry weight. The median liver and bone lead concentrations in doves with ingested lead shot were 36.89 ppm dry weight and 89.33 ppm dry weight, respectively. Median liver and bone lead concentrations in doves without ingested shot were <1.0 ppm dry weight and <3.0 ppm dry weight, respectively. In doves without ingested lead shot, th median concentration of lead in wing bones of after hatch year birds was significantly greater than the median in wing bones of hatch year birds.

This is the abstract from the final report of this study which was funded by the 1998 Webless Migratory Game Bird Research Program (U.S. Fish and Wildlif Service), U.S. Geological Survey, Arizona Game an Fish Department, Georgia Department of Natural Resources, Oklahoma Department of Wildlife Conservation, Missouri Department of Conservation Pennsylvania Game Commission, South Carolina Department of Natural Resources, and the Tennessee Wildlife Resources Agency. Additional cooperators included the South Carolina Cooperative Fish and Wildlife Research Unit.

Development and Evaluation of Mourning Dove Population Models for Optimizing Harvest Management Strategies in the Eastern, Central, and Western Management Units

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Introduction and Objectives

An informed harvest management process for mourning doves will require development of one or more population models that synthesize existing knowledge of basic life history parameters and how these parameters may be affected by intrinsic and extrinsic factors such as harvest rate, weather, and habitat conditions. Such models allow predictions c effects of different harvest prescriptions on long ter population and harvest levels, and can ultimately be used to define decision criteria for implementing

alternative harvest strategies. This modeling effort represents an initial step in a process to an improved decision making process for mourning doves, and strives to place mourning dove harvest management in an objective and quantitative framework.

Understanding the effects of harvest on mourning dove populations is a multi-faceted challenge, and this effort is only one of many steps in increasing our knowledge. Upon completion of the project, we expect to have advanced the process of developing an improved system of dove harvest management by 1) improving our understanding of dove population dynamics, 2) prioritizing population monitoring data needs within the context of a long term harvest management system, and 3) recommending surveys and studies to fill information gaps that constrain development of more useful and realistic population models.

Contemporary information about dove population demographics and the relationship of mortality and reproductive rates to extrinsic and intrinsic factors is clearly inadequate to support sophisticated modeling fitting or adaptive modeling efforts at this point in time. However, it is necessary to begin development and evaluation of rudimentary models that represent a first step toward a long term objective of improved dove harvest management strategies that are grounded in credible population models and that guide improved population monitoring programs that will be necessary to support management efforts.

Progress to Date

Re-analysis of the 1965 -1975 banding experiment on increased bag limits in the EMU has been completed and a manuscript published. The analysis revealed that the increase in bag limits during experimental years did not result in increased harvest rates, and thus the study could not provide any rigorous insight into the relationship between harvest and annual survival. There was a high degree of association between annual survival rates from banding data and harvest rate estimates derived from mail survey data collected during the study. Dove populations from groups of non-hunting states in the Northeast and Upper Mideast had much higher annual survival rates. However, this phenomenon can also be at least partially explained by a hypothesis of an intrinsic latitudinal gradient in annual survival of mourning doves.

Re-analysis of the 1965-1975 banding studies in the EMU, CMU and WMU was completed, and a set of survival models for each management unit was constructed based primarily on these analyses. The models are distinguished by the functional form of the relationship between annual survival and harvest rate, which ranges from completely additive to totally compensatory. A manuscript based on this work has been published.

Published results of studies of various parameters of the breeding cycle of mourning doves date back at least 80 years, and several summaries of these results have been compiled. This collection of small scale, relatively short term studies serves to establish bounds on such parameters as length of the nesting season, young fledged per breeding pair, and nest density. Estimates of annual recruitment, in terms of number of juveniles (HY) per adult (AHY) in the pre-harvest population, can be derived from age ratios observed in the harvest, corrected for differential harvest vulnerability of age classes. Harvest age ratios are usually from collection of wings from surveyed hunters, and long term surveys are conducted by the U.S. Fish and Wildlife Service for waterfowl species and woodcock (Scolopex minor). In the case of waterfowl, age ratio data from wing surveys is a key component in development of reproductive models used in the adaptive harvest management program (Johnson et al. 1997). However, no long term program has been instituted for mourning doves. Thus, no long-term, large-scale monitoring programs or datasets are available to serve as the basis for development of quantitative models that predict annual production as a function of weather, habitat, and/or population density. Based on a review of the dove literature and a more general review of relevant ornithological literature, I derived a predicted range of per capita reproductive rates for each of several large geographical subregions. These estimates are based on a simple model that is a function of breeding season length, nest success, and length of the nesting cycle of successful and unsuccessful nests. A manuscript based on this work has been accepted for publication.

Contemporary and statistically reliable estimates of harvest rates are fundamental in the evaluation of population models and the harvest regulation process. In cooperation with a consortium of 25 states, the U.S. Fish and Wildlife Service, and the USGS Bird Banding Laboratory, a 3-year reward banding study has been designed to be implemented in 2003-2005.

The design involves banding 25,000-35,000 birds in each year, to achieve the following objectives: 1) estimate harvest rates in a representative sample of multi-state regions, 2) estimate current band reporting rates, which can be used to convert direct recovery rate estimates to harvest rates from other regions and presumably for all regions in the foreseeable future, 3) serve as a pilot study for a future coordinated nationwide banding program designed to produce comprehensive estimates of harvest and survival rates, 4) provide information on geographical distribution of harvest, and initial estimates of annual survival and breeding site fidelity from a sample of breeding populations. Estimates generated from this study will be used to update and improve population models developed to support harvest management strategies. A proposal for funding of the project has been submitted to the U.S. Fish and Wildlife Service.

Future Work

Work in the next year will primarily focus on:
1) Integration of survival and reproductive models ir population models, and comparison of model predictions to long term Call Count Survey and Breeding Bird Survey trends.

2) Coordination of efforts to obtain funding for the proposed reward banding study. If funding is obtained, banding workshops will be conducted for participating agencies, and direction and coordinatic of field work for 2003 will be done.

3) Communication of project status and direction to technical committees and working groups in dove management unit and flyways.

These are results from the third year of a multi-year study funded by the USFWS Webless Migratory Ga Bird Program and more than 20 cooperating state wildlife agencies.

Evaluation of Physiological and Pathological Effects of Subcutaneously Implanted Radiotransmitters on Captive Wild Mourning Doves

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Our on-going and long-term research plan is aimed at achieving reliable information for improving harvest management decisions for mourning doves. Part of the information needed for improving the harvest management decision-making process will include regional estimates of demographic parameters (e.g., survival and/or recruitment) used in population modeling exercises for each of the three management units across the United States. Many of the demographic estimates will be obtained from studies using mourning doves instrumented with miniature radio transmitters. It is critical that data obtained from radio marked individuals must be reflective of the overall population of interest. Thus, the impact of attaching and carrying radio transmitters must be thoroughly evaluated so that the resulting data can used in the proper context.

Our first project showed that subcutaneous transmitters with external antennas were a preferre alternative to intra-abdominal implants with extern antennas when comparing heterophil:lymphocyte (H:L) ratios. Note, heterophils and lymphocytes a two types of avian white blood cells, and their rela ratio in the blood stream is considered to be a chro measure of physiological stress. The H:L ratio dat from our second implant evaluation was not as conclusive, however, our data suggested that

subcutaneous implants are superior to glue attachment based on retention time, and superior to harnesses based on pathological effects. Due to multiple practical and experimental considerations, the size of the cages used during the first two implant projects were about the size of shoe boxes (24 × 18 × 18 cm in 1996; 24 × 40 × 18 cm in 1998), and the birds were housed indoors with climate controlled rooms. Currently, our third project is evaluating the efficacy of field surgery techniques, and subcutaneous radio-transmitter implants using much larger captive facilities which allow the birds to fly and be exposed to the out-of-doors; compared to previously used cages, current cages are approximately 183 × 183 × 183 cm and 61 cm above the ground. Field work for the third mourning dove radio transmitter implant evaluation has been completed, and we are in the beginning stages of data analysis.

An interesting observation from our preliminary analysis is the dramatic decrease in the relative H:L ratios from the previous two implant evaluations compared to the third implant project. The data dramatically show that birds housed in larger cages, and maintained in the out-of-doors, are under much less stress than birds in small in-door cages. In addition captive doves held outside appear to show different stress levels between summer and winter. Although there may be experimental difference between implant and control birds during the summer session, it is important to look at the relative scale of H:L ratios from previous projects. For example, due to the statistical power of our study design, we may have been able to detect differences that may not biologically important; however, that is only conjecture at this point. This is only the first attempt to look at the numerous data collected during this project. Other data to look at include body temperature cycles of implanted birds, blood plasma chemistry profiles, changes in fecal glucocorticoid stress hormones levels as an independent and non-invasive measure of physiological stress, and changes in body mass.

Funding for this study was provided by 2001 Webless Migratory Game Bird Research Program (U.S. Fish and Wildlife Service and the U.S. Geological Survey-Biological Resources Division), Missouri Department of Conservation-Conservation Research Center (Federal Aid in Wildlife Restoration Project W-13-R-56), University of Missouri (Department of Fisheries and Wildlife Sciences; Veterinary Medical Teaching Hospital; Veterinary Diagnostic Laboratory), and Advanced Telemetry Systems (Isanti, Minnesota).

Studies of Native Columbiformes in Tucson, Arizona

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Field investigations for a pilot study of three native columbids in suburban Tucson, Arizona were conducted from 1 January 2000 through 31 December 2002. Species studied through banding, examination of live birds, and observations of free-flying individuals were Inca dove (*Columbina inca)*, mourning dove (*Zenaida macroura)*, and white-winged dove (*Zenaida asiatica)*. Objectives were to examine timing of breeding, apparent abundance, timing of migration, survival rates, and characteristics of primary feather length and body mass.

Inca doves occurred in the study area in small numbers within a scattered distribution. Breeding occurred primarily from March through August but may occur earlier and later. Only 41 individuals were banded (12 repeats) with no reported recoveries or recaptures away from the trap site. Site fidelity was high but few individuals were at the trap site from May through September each year. Measurement data were too sparse for comparison and techniques for separation of gender are not reliable. Intensive studies of Inca doves would need multiple sites over an area of at least 25 km^2.

Mourning doves were the most abundant species in the area and may number in excess of 2 million birds within the greater Tucson area. During the 3-year pilot effort, 3,500 individuals were banded using one 1-m^2 trap at one location. Repeat captures increased each year and totaled > 1,200 for the period. Three recoveries (none reported as shot) and no recaptures elsewhere were reported. Thus, the original hypotheses of multiple populations of mourning doves moving to, through, and from the Tucson area were

rejected. This resident population began breeding activity between 5 and 10 January each year and continued into late August. Immature doves first appeared in trap samples in late March with numbers captured increasing through September and into October. HY doves could still be identified in trap samples into December. Measurements of primary feathers (10 and 1) appear useful to separate genders and recording of secondary feathers retained was useful in identifying HY and AHY birds into late December. Analyses of all measurement data will be completed in 2003. Future efforts could be directed at measuring the size of foraging areas. Negative data (no recaptures of any of the mourning doves banded in this study) from a trap site 8.0 km distant suggest the foraging radius of mourning doves in the Tucson area is less than this distance. With numbers banded of 1300, 1100, and 1100 during the three years, apparent densities of mourning doves in the Tucson area were high during the study period.

White-winged doves were seasonally migrant within the area studied. However, a few whitewings were known to winter near Green Valley, 40 km south and an occasional bird was seen each winter at lower elevations in the Tucson city area. Initial movemen of white-winged doves into the Catalina Foothills w in March, increasing markedly in April into June. Highest apparent numbers occurred in June and July with marked decreases noted in mid August with departure of most received but one recapture of a bi banded in this study was reported at a trap site, 8 kn distant. This distance may be the maximum birds from the Foothills before 1 September each year. A few birds lingered at higher elevations into late September unlike the situation in farming areas sou and west of Tucson where whitewings remained in some numbers into mid September. Four hundred a eleven white-winged doves were banded in the 3-ye period with only 23 repeats. Trapping was most successful prior to onset of saguaro cactus fruit ripening and after most fruits had dried (prior to 10 June and after 10 July). No recoveries were foragir radius for white-winged doves during the breeding season in suburban Tucson. Measurement data hav not been analyzed but a reliable technique to separa gender and age classes may be available. Further testing is needed. Additional field work is being considered only on white-winged doves.

Landscape Changes as Related to Mourning Dove Call-count Trends in Texas

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The mourning dove (Zenaida macroura) is recognized as the most important upland game bird species in North America. As such, dove populations are monitored by annual call-count surveys within the continental United States. Texas has the largest number of call-count transects, with 133 transects distributed among 8 physiographic regions. While there has been a significant ($P < 0.05$) decline in the statewide population index over the last 10 years (Dolton and Smith 1999), contradictory trends are evident among transects within the state. These discrepancies may be important if we are to identif which factors influence change in mourning dove populations, particularly at the community and landscape level. Grue et al. (1976, 1983) investigat the biotic and abiotic environment factors that defi the realized niche for mourning dove in Texas. Because this historic data set used a standardized method for the evaluation of habitat variables along each of the 133 transects in Texas, a comparison w current habitat conditions is possible. We hypothes that count trends may correlate with measurable

changes in land use and/or environmental factors adjacent to the call-count transects, as measured by the Grue et al. (1983) technique. Our objectives for this study are to: 1) determine if micro and macro habitat variable changes differ among declining and stable transects, 2) identify those micro and macro habitat variables which correlate with the observed differences in count trends, and 3) establish a spatially explicit database that can be used for future data input and investigations at differing spatial scales.

We have completed (summer 2002) data collection for all 133 call-count transects in Texas using the technique of Grue et al. (1983). We are currently in the process of compiling the GIS database for the 2002 results, which will be used to identify spatially congruent sample points from the 1983 study. This is the first year of a 3-year study of mourning dove habitat in Texas.

UNITED STATES CODE ANNOTATED
TITLE 16. CONSERVATION
CHAPTER 7--PROTECTION OF MIGRATORY GAME AND INSECTIVOROUS BIRDS
SUBCHAPTER II--MIGRATORY BIRD TREATY

§ 703. Taking, killing, or possessing migratory birds unlawful

Unless and except as permitted by regulations made as hereinafter provided in this subchapter, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916 (39 Stat. 1702), the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972 [FN1] and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976.

CREDIT(S)

(July 3, 1918, c. 128, § 2, 40 Stat. 755; June 20, 1936, c. 634, § 3, 49 Stat. 1556; June 1, 1974, Pub.L. 93-300, § 1, 88 Stat. 190; Dec. 13, 1989, Pub.L. 101-233, § 15, 103 Stat. 1977.)

[FN1] So in original. Probably should be followed by a comma.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1989 Acts. House Report No. 101-269 and Statement by President, see 1989 U.S. Code Cong. and Adm. News, p. 1437.

Amendments

1989 Amendments. Pub.L. 101-233 added reference to the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976.

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Legislative Briefs from the Wisconsin Legislative Reference Bureau

Legislative Brief 02-3 Corrected October 2, 2002

CONSTITUTIONAL AMENDMENT GIVEN "FIRST CONSIDERATION" APPROVAL BY THE 2001 WISCONSIN LEGISLATURE

INTRODUCTION

A proposal to amend the Wisconsin Constitution to create the right to hunt, fish, trap, and take game was adopted on first consideration by the 2001 Wisconsin Legislature. It will be eligible for second consideration by the 2003 Legislature.

Section Created	Resolution	Subject
Article I, Sec. 26	2001 Senate Joint Resolution 2 (Enrolled Joint Resolution 16)	The right to hunt, fish, trap, and take game.

Amendment Process. Article XII, Section 1, of the Wisconsin Constitution requires that every constitutional amendment must be adopted by two successive legislatures and ratified by the electorate before taking effect. A proposed change is introduced in the legislature for "first consideration" in the form of a joint resolution that must pass both houses but does not have to be submitted to the governor for approval. It must be published for 3 months before the next election. If the resolution is adopted on first consideration, a new joint resolution embodying the identical constitutional text must be approved on "second consideration" by the next legislature. The second joint resolution specifies the wording of the ballot question and sets the referendum date. The third and final step involves submitting the question to a statewide referendum vote where a majority of those casting ballots must ratify the amendment.

THE RIGHT TO HUNT, FISH, TRAP, AND TAKE GAME

Amendment Text. The text of the constitutional change, as approved in 2001 Enrolled Joint Resolution 16, reads:

Section 26 of article I of the constitution is created to read:

[Article I] Section 26. The people have the right to fish, hunt, trap, and take game subject only to reasonable restrictions as prescribed by law.

Background. An earlier attempt to guarantee the right to hunt, fish, and trap was proposed in almost identical wording in 1997 Senate Joint Resolution 36, which did not pass on first consideration. A related amendment to guarantee the right to bear arms, which received second consideration in that same session, was ratified in November 1998 by an almost 3-to-1 margin. The vote created Article I, Section 25, which reads: "The people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose."

The proposed new amendment would expand the protection of hunting from a "lawful purpose", dependent upon legislative action, to a guaranteed right that could only be limited by reasonable restrictions. Trapping and fishing would be added to the guaranteed rights.

Prepared by Sarah Basford, Legislative Reference Bureau Staff

Federal and State Guarantees. While the Second Amendment to the U.S. Constitution guarantees the right to bear arms, regulation of hunting, fishing, trapping and other taking of game generally falls under the jurisdiction of state and local governments. According to the National Conference of State Legislatures, seven states currently have constitutional amendments protecting or guaranteeing hunting and fishing: Alabama, California, Minnesota, North Dakota, Rhode Island, Vermont, and Virginia. Attempts to create similar amendments have failed in Idaho and Colorado.

Wisconsin provides certain protections for hunting, fishing, and trapping through state statutes and administrative law. A Wisconsin Legislative Council Staff memorandum, dated July 10, 2000, cites examples, including the provision for state title to wild animals for the benefit of hunters in Section 29.011 (1), Wisconsin Statutes, and the rules of the Department of Natural Resources (DNR) establishing open and closed seasons to conserve game and fish and improve the quality of the sport. Based on 1997 Wisconsin Act 170, state law for the most part prohibits local units of government from interfering with hunting, fishing, or trapping (s. 29.038), and DNR has the authority to void nonconforming local ordinances. Another statute (s. 29.083), enacted by 1989 Wisconsin Act 190, prohibits interference with lawful hunting, fishing, or trapping activity by private parties trying to prevent the taking of a wild animal.

PROPONENTS AND OPPONENTS OF THE PROPOSED AMENDMENT

Arguments in Support of the Proposal. Proponents of the constitutional amendment cite the need for further state protection of fishing, hunting, and trapping rights. They are concerned that certain interest groups will successfully challenge these activities through political action that leads to increasingly restrictive regulation. The chief argument of supporters is that the legislature and DNR can easily alter statutory laws and administrative rules, thereby leaving hunting, fishing, and trapping rights constantly vulnerable to political pressure.

Arguments in Opposition to the Proposal. A major part of the opposition to the proposed amendment arises from animal rights activists who argue that hunting is inhumane and should not be guaranteed as a constitutional right. Other opponents of a guaranteed right to hunt and fish claim that these activities are already protected by current law and the constitution is not an appropriate place for such policy matters. They are concerned that making such activities a right creates the potential for court challenges to any regulation proposed by the legislature or DNR, no matter how beneficial such policies might be for the respective sports. They also contend it could affect wildlife protection, create safety problems in more densely populated areas, and raise issues about property owners' rights.

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The right to hunt, fish, trap

Voters OK inserting pastimes protection into Wisconsin Constitution

By MEG JONES
mjones@journalsentinel.com

Last Updated: April 2, 2003

Wisconsin voters overwhelmingly approved a change to the state constitution assuring the right to hunt, fish and trap in the state.

Without any organized opposition, the measure had been expected to pass easily.

The only statewide referendum proposal on the general election ballot asked residents to determine whether fishing, hunting and trapping rights will be guaranteed in Wisconsin.

The measure was proposed by Rep. Scott Gunderson (R-Town of Norway), who was not surprised to see the referendum measure approved by residents.

"I think it really shows how strong our hunting and fishing heritage is here in Wisconsin and how many people believe that and believe this is a God-given right, which is why a majority of folks voted that way," Gunderson said.

Voters approved inserting an amendment giving people "the right to fish, hunt, trap and take game subject only to reasonable restrictions as prescribed by law" into the constitution's Declaration of Rights.

The amendment allows the state to regulate hunting and fishing but stops it from imposing unreasonable restrictions on sporting activities.

The Senate and Assembly overwhelmingly approved the amendment in two consecutive sessions, a requirement to change the state constitution. Only four legislators voted against the proposal, including Rep. Mark Pocan (D-Madison), who said it was a trivial reason to change the state constitution.

The amendment was pushed by sportsmen's groups worried about the possibility of restrictions on traditional outdoor pastimes in light of the contentious debate a few years ago over hunting mourning doves.

Wisconsin is now the seventh state, including Minnesota, to enact such a guarantee.

It's the first addition to the constitution's Declaration of Rights since 1997, when voters approved an amendment guaranteeing the right to keep and bear arms.

Gunderson conceded hunting and fishing rights are not threatened in Wisconsin. The pastimes are immensely popular - about 700,000 hunt deer with firearms each fall. But he said he worries about the possibility of special interest groups attempting to take away hunting, fishing and trapping privileges.

Election 2003

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A version of this story appeared in the Milwaukee Journal Sentinel on April 2, 2003.

STATE OF WISCONSIN
SUPREME COURT

Appellate Case No. 02-1166

WISCONSIN CITIZENS CONCERNED FOR CRANES AND DOVES, JOHN WIENEKE AND PAT FISHER,

Plaintiffs-Respondents-Petitioners,

v.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES,

Defendant-Appellant,

and

U.S. SPORTSMEN'S ALLIANCE FOUNDATION f/k/a WILDLIFE LEGISLATIVE FUND OF AMERICA,

Defendant-Intervenor-Co-Appellant.

WISCONSIN CITIZENS CONCERNED FOR CRANES AND DOVES', ET. AL., RESPONSE BRIEF

Review of a Decision of the Wisconsin Court of Appeals, District IV, Reversing a Dane County Circuit Court Decision, The Honorable Daniel R. Moeser, Presiding Circuit Court No. 01CV1616

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STATE OF WISCONSIN
SUPREME COURT

Appellate Case No. 02-1166

WISCONSIN CITIZENS CONCERNED FOR CRANES AND DOVES, JOHN WIENEKE AND PAT FISHER,

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WISCONSIN DEPARTMENT OF NATURAL RESOURCES,

Defendant-Appellant,

and

U.S. SPORTSMEN'S ALLIANCE FOUNDATION f/k/a WILDLIFE LEGISLATIVE FUND OF AMERICA,

Defendant-Intervenor-Co-Appellant.

WISCONSIN CITIZENS CONCERNED FOR CRANES AND DOVES', ET. AL., RESPONSE BRIEF

Review of a Decision of the Wisconsin Court of Appeals, District IV, Reversing a Dane County Circuit Court Decision, The Honorable Daniel R. Moeser, Presiding Circuit Court No. 01CV1616

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TABLE OF CONTENTS

Page

INTRODUCTION 1

ARGUMENT 1

I. THE DNR INTERPRETATION OF § 29.014(1), STATS. IS OWED NO DEFERENCE. CONCERNED CITIZENS BEAR NO BURDEN IN THIS SCOPE OF AUTHORITY REVIEW 1

A. The Supreme Court Owes No Deference to DNR'S Interpretation Where Scope of Authority Is at Issue 1

B. Concerned Citizens Bear No Burden to Demonstrate the Lack of DNR'S Rulemaking Authority 5

II. WIS. STAT § 29.039(1) LIMITS THE DNR'S AUTHORITY TO REGULATE MOURNING DOVES 7

III. LEGISLATIVE HISTORY SHOWS INTENT TO LIMIT DNR'S AUTHORITY TO DETERMINE SPECIES TO BE HUNTED 9

IV. THE RIGHT TO HUNT AMENDMENT, WIS. CONST. ART. I, § 26, IS IRRELEVANT TO DNR'S AUTHORITY TO SET HUNTING SEASONS 10

CONCLUSION 11

TABLE OF AUTHORITIES

State Cases

American Motors Corp. v. DILHR
101 Wis.2d 337, 305 N.W.2d 62 (1981).....10

Capoun Revocable Trust v. Ansari
234 Wis.2d 335, 610 N.W.2d 129 (2000).....7

Citizens' Utility Bd. v. Public Service Com'n of Wisconsin
211 Wis.2d 537, 565 N.W.2d 554 (1997).....2, 6

Debeck v. Wisconsin Department of Natural Resources
172 Wis.2d 382, 493 N.W.2d 234 (Ct. App. 1992),
review denied 497 N.W.2d 130 .....5, 7

Grafft v. Wisconsin Department of Natural Resources
238 Wis.2d 750, 618 N.W.2d 897 (Ct.App.2000).....5, 7

Harnischfeger Corp. v. LIRC
196 Wis.2d 650, 539 N.W.2d 98 (1995).....3, 4, 6

League of Wisconsin Municipalities v. Dept. of Commerce
2002 WI App 137.....1, 2, 3, 5, 6
256 Wis.2d 183, 647 N.W.2d 301.....2

Lindsey v. Lindsey
140 Wis.2d 684, 412 N.W.2d 132 (Ct. App.1987).....10

Rusk Co. Citizen Action Group v. Wisconsin DNR
203 Wis.2d 1, 552 N.W.2d 110 (Ct.App.1996).....7

State v. ILHR Department
101 Wis.2d 403, 304 N.W.2d 762.....9-10

Wisconsin Power and Light Co. v. Public Service Com'n of Wisconsin
181 Wis.2d 385, 511 N.W.2d 291 (1994).....4, 7

State Statutes

Wis. Stat. § 29.014.....7-9
Wis. Stat. § 29.014(1) 1, 2, 11
Wis. Stat. § 29.039.....7, 8
Wis. Stat. § 29.039(1).....7
Wis. Stat. § 227.40.....3, 5, 7
Wis. Stat. § 227.52 – 227.57.....3

State Constitutional Amendment

Article I, §26 10

State Administrative Code Regulations

NR 10.01(1), Wis. Adm. Code 2

INTRODUCTION

The Court of Appeals found that the DNR's interpretation of its rule-making authority was owed a degree of deference, and that Concerned Citizens bore the burden to convince the court regarding the invalidity of the challenged rule. The DNR argues for the same result in the Supreme Court. However, neither case law nor statute supports either proposition.

ARGUMENT

I. THE DNR INTERPRETATION OF § 29.014(1), STATS. IS OWED NO DEFERENCE. CONCERNED CITIZENS BEAR NO BURDEN IN THIS SCOPE OF AUTHORITY REVIEW.

A. The Supreme Court Owes No Deference to DNR'S Interpretation Where Scope of Authority is at Issue.

DNR argues that the Supreme Court should accord deference to the agency's interpretation of *§ 29.014(1), Stats.* DNR cites ***League of Wisconsin Municipalities v. Wisconsin Department of Commerce***, 2002 WI App 137 at ¶ 8 n.4, as authority for this contention. DNR asserts that the rulemaking proceedings were extensive and hearings were held in all 72 counties with over 30,000 people attending, with 21,167 people voting in favor of the dove hunting rule. This information is irrelevant, serving only to distract from the task at hand. This information may show popular support among hunters for the DNR rule, and it may be indicative of DNR's belief as

to the scope of its powers. However, it says nothing about the Legislature's intent in adopting *§ 29.014(1), Stats.*, or about how DNR might interpret and apply its rule (a question on which deference would be due DNR if the application of *§ NR 10.01(1), W.A.C.*, was at issue here, and it clearly is not).

Judge Deininger, for the Court of Appeals, appears to have struggled with determining what, if any, deference the DNR's interpretation of *§ 29.014(1), Stats.*, might be entitled to receive, in the process creating an unprecedented hybrid standard to which Concerned Citizens has apparently been improperly held:

> "[O]ur review is de novo, but in deciding this question of law, we may derive "benefit" from the experience and analysis of an administrative agency where the legislature has empowered to administer a law it has enacted. ***Id.*** at ¶¶25-27. Here, the department has obviously concluded that Wis. Stat. ch. 29 authorizes it to establish a hunting season for mourning doves. We nonetheless have a duty to independently determine whether that is the case. ***Id.*** The department's determination that it was empowered to promulgate the rule is thus *not* entitled to the deference we would accord if the question it had decided were one of fact, or one of law not going to the scope of its authority in promulgating the rule". *Citing* ***League of Wisconsin Municipalities v. Department of Commerce***, 2002 WI App 137, ¶8, 256 Wis.2d 183, 647 N.W.2d 301, *review denied*, 2002 WI 121, 257 Wis.2d 117, 653 N.W.2d 889 (Wis. Sep. 26, 2002) (No. 01-1035).

League of Wisconsin Municipalities was also authored by Judge Deininger. In ***League***, Judge Deininger relies upon ***Citizens' Utility Bd. v. Public Service Com'n of Wisconsin,*** *565 N.W.2d 554, 211 Wis.2d 537 (Ct..App.,1997)*, yet another opinion authored by Judge Deininger, for the proposition that deference is due the administrative agency even where review is *de novo* on issues of scope of authority. Ultimately, ***Citizens' Utility Board*** relies upon

Harnischfeger Corp. v. Labor and Industry Review Com'n, *539 N.W.2d 98, 196 Wis.2d 650, 661 (1995)*, for guidance on the issue of deference in a "scope of authority" case, but finding support where in fact there is none, given that the latter is a "great weight deference" case.

Judge Deininger's foundation for the conclusion reached in the instant case is a fatally flawed foundation, built primarily on earlier cases in which Judge Deininger, writing for the court, has articulated a hybrid standard of review, not elsewhere recognized, in "scope of authority" cases. It is that same foundation on which the DNR and the Intervenors have chosen to build. The foundation is flawed because the earlier cases on which Judge Deininger and the DNR have relied for the proposition that deference to the agency was due in ***League***, and to the DNR in the instant case, were cases which involved agency fact-finding, and were cases in which it was the agency's application of either a statute or an administrative rule, to a specific fact situation, which was at issue (and not cases where the agency's interpretation of the extent of its own statutory authority was the pertinent question). Furthermore, none of these foundation cases arise under the declaratory judgment provisions of *§ 227.40, Stats.*, but rather are cases arising under *§ 227.52 – 227.57, Stats.*, or similar provisions found elsewhere in the state statutes, permitting review of decision-making in various kinds of contested cases involving agency fact-finding.

The Supreme Court has repeatedly and invariably held that on questions of law (i.e., an agency's interpretation of its authority under a statute), the court's

review is *de novo* with no deference given to the agency's determination. ***Harnischfeger Corp. v. Labor and Industry Review Com'n,*** *539 N.W.2d 98, 196 Wis.2d 650, 660-61 (1995).* It is a principle indelibly burned into the fabric of our legal system that a court is not bound by an agency's interpretation of a statute. ***Id.*** Deference, whether "great weight" or "due", is owed only where the court reviews the manner in which the agency applies, or administers a rule or statute, in the context of a specific set of facts. An administrative agency is not permitted to police itself by determining its scope of authority.

Moreover, this Court has specifically held that a reviewing court owes no deference to an agency's determination concerning its own statutory authority. ***Wisconsin Power and Light Co. v. Public Service Com'n of Wisconsin,*** *511 N.W.2d 291,293, 181 Wis.2d 385,392 (1994).* The Supreme Court, finding the case presented a question concerning the statutory authority of the PSC to order a utility to refund validly collected revenue, held: "[T]he extent of an agency's statutory authority is a question of law. Thus, courts owe no deference to an agency's determination concerning its own statutory authority". ***Id.*** The Court reasoned, "[A]s a creation of the legislature, the PSC 'has only those powers which are expressly conferred or which are necessarily implied by the statutes under which it operates.'" ***Id.*** It is firmly established that where there is reasonable doubt regarding agency authority, the doubt must be resolved against the agency, with a finding of lack of authority.

Wisconsin's Courts have specifically refused to defer to DNR's determination of its own scope of authority on previous occasion involving action

for declaratory judgment pursuant to *§ 227.40, Stats.* ***Debeck v. Wisconsin Dept. of Natural Resources***, 172 Wis.2d 382, 386, 493 N.W.2d 234 (Ct. App. 1992), *review denied* 497 N.W.2d 130. In a challenge to the DNR's authority involving a landfill matter, the court concluded that a claim that an administrative rule exceeds the statutory authority of an agency is reviewed de novo. ***Id. at 386.*** More recently, a challenge to DNR's authority differentiated between questions of law and questions of fact, with scope of authority again recognized as a question of law subject to *de novo* review, without deference to the agency's opinion. ***Grafft v. Wisconsin Department of Natural Resources***, 238 Wis.2d 750, 754, 618 N.W.2d 897 (Ct. App. 2000).

B. Concerned Citizens Bear No Burden to Demonstrate the Lack of DNR's Rulemaking Authority.

The DNR's position in the instant case is additionally founded on the proposition that the Concerned Citizens have not met "their burden" to show or persuade that the agency has exceeded the scope of its authority. Judge Deininger's majority opinion for the Court of Appeals cites ***League of Wisconsin Municipalities***, 2002 WI App 137 at ¶ 9, in order to find such a burden of proof or persuasion: "[w]e will invalidate the department's rule only if we are convinced that it contravenes statutory language or a clear expression of legislative intent, and the burden is on the Concerned Citizens to so convince us". In fact, no such burden exists, and no such burden may be imposed. Nevertheless, Concerned Citizens was erroneously held to such burden by the Court of Appeals, and the DNR now bases its contentions upon this spurious proposition.

Further analysis of ***League of Wisconsin Municipalities*** and its progenitors dispels any notion that the Concerned Citizens bear any burden of proof or persuasion in this appeal. As with his conclusion regarding deference to the agency, Judge Deininger's opinion relies upon ***League of Wisconsin Municipalities,*** which in turn finds its foundation in his earlier opinion for the Court in ***Citizens Utility Board, Id.***. In ***Citizens Utility Board***, he cites ***Harnischfeger, Id.*** at 102, for his conclusion regarding burden of proof or persuasion. However, this reliance is misplaced and erroneous, and no such authority is found there or elsewhere in ***Harnischfeger***, a "great deference" case stemming from a LIRC review of a ruling by the Worker's Compensation Division in a contested claim for benefits:

Harnischfeger is not a "scope of authority" case; Harnischfeger Co. was held to a burden of proof because our appellate courts have recognized a burden of proof in "great deference" and "due deference" cases. No case cited by the DNR or the Intervenors recognizes such a burden of proof where scope of authority is the issue. The Court of Appeals has imposed upon Concerned Citizens a burden of proof or persuasion where in fact none has ever authoritatively been recognized, and where ultimately none exists. It is in that context that the Court of Appeals has ruled adversely to Concerned Citizens, and in which the DNR argues the merits of its position in the case.

In those cases where Wisconsin's appellate courts have refused to grant deference to an agency's determination and/or interpretation, including particularly instances where an agency's scope of authority was at issue, no

burden of proof or persuasion upon the petitioner has ever been recognized. *See, e.g.,* ***Rusk County Citizen Action Group, Inc. v. Wisconsin DNR,*** 552 N.W.2d 110, 203 Wis.2d 1 (Ct App.1996); ***Wisconsin Power and Light Co. v. PSC,*** *511 N.W.2d 291, 181 Wis.2d 385(1994);* ***Debeck v. DNR,*** 172 Wis.2d 382, 493 N.W.2d 234 (Ct. App. 1992); ***Grafft v. DNR,*** 238 Wis.2d 750, 754, 618 N.W.2d 897 (Ct. App. 2000); ***Capoun Revocable Trust v. Ansari,*** 234 Wis.2d 335, 610 N.W.2d 129 (2000).

It is not only the courts which have failed to establish a burden of proof in scope of authority cases, but the Legislature as well. Scope of authority review in this case originates with a request for declaratory judgment pursuant to *§ 227.40, Stats.* The statute establishes a threshold burden (on the party initiating review) to show standing, but none other. The ultimate burden is on the courts, which are obligated to determine the validity of the administrative rule at issue once a party with standing invokes the court's jurisdiction.

II. WIS. STAT § 29.039(1) LIMITS THE DNR'S AUTHORITY TO REGULATE MOURNING DOVES.

§ 29.014, Stats. is a broad grant of authority to DNR, but it does not specifically authorize DNR to designate the wild animals, birds or fish which can be hunted, trapped, or fished. This provision simply allows DNR to determine the conditions of a hunt or taking. § 29.039, Wis. Stats. is a very specific grant of authority to the DNR. The Legislature has limited DNR to acting as scientific investigators to gather information about

nongame species, allowing DNR to develop conservation programs, require harvest information and set limitations regarding the taking, possession transportation....of nongame species. This limited grant of authority is of a substantially different character than that found in § 29.014, Stats.

Granting authority to DNR to set limitations regarding "taking" is not synonymous with granting authority to allow a hunt of a nongame species as found by the Court of Appeals, and as the DNR argues. Indeed, this interpretation would truly render the term "taking" superfluous. The Legislature has clearly distinguished the terms in both the statute (definitions) and now, in the new constitutional amendment. This signals the Legislature's intent that nongame species, including the dove, be accorded a status, and treatment, by DNR different from those wild creatures whose fate has in fact been left to the determination of DNR. As to the latter, the DNR has a broad and general grant of authority with respect to determine the parameters of hunting; as to the former, the Legislature has retained the authority to determine what creatures will be non-game species, and how they will be managed in the environment.

The policies articulated in the two statutes are markedly different, but both must be recognized and given effect by the courts. DNR's grant of authority in § 29.014, Stats. is to "conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping". In § 29.039, Stats., it is the stated policy to determine necessary conservation measures and develop programs to ensure

the perpetuation of nongame species. The interpretation urged by DNR minimizes, or even disregards, the latter, and puts these very different parts of Ch. 29, Stats., in grating disharmony (or inescapably makes the latter quite superfluous). Neither is permissible under the rules of statutory construction.

III. LEGISLATIVE HISTORY SHOWS INTENT TO LIMIT DNR'S AUTHORITY TO DETERMINE SPECIES TO BE HUNTED.

The events surrounding the promulgation of the rule allowing dove hunting are irrelevant to the Supreme Court's determination in this case. Those events are not part of the legislative history (and DNR's interpretation of § 29.014, Stats. is due no deference, and is therefore of no consequence since DNR's scope of authority is the issue before the court). Contrary to the contentions of DNR and the Intervenors, Concerned Citizens does not argue that dove hunting is inappropriate from an environmental or policy perspective. However, it is the contention of Concerned Citizens that the Legislature intended that doves be spared from the hunter, and that the true legislative history so indicates.

Everyone is thus far in agreement that the mourning dove was removed from the game bird list by the Legislature in 1971, and that in the same bill, the mourning dove was designated as the state symbol of peace. "[W]here statutes of direct and immediate linkage are enacted in the same legislation, they must be considered *in pari materia* and harmonized if

possible. ***State v. ILHR Department,*** 101 Wis.2d 403, 304 N.W.2d 762 (Ct. App. 1979). The two 1971 statutes regarding the mourning dove, enacted in the same bill, are unmistakably linked by the simple fact that they both concern this specific bird species. Accordingly, the two statutes must be harmonized, if possible, and the obvious and logical way to do so is to conclude that the Legislature intended that the state symbol of peace be protected from hunting. That other state animals may have symbolic status, yet may be hunted, is essentially a *non sequitur* and of no particular relevance. The case of the hunting dove stands on its own, given the simultaneous passage in 1971 of the two statutes regarding the dove, and since official recognition that the dove is identified with peace and non-violence has unique connotations. Contrary to the contention of the Intervenors, the subsequent silence of the Legislature on the subject of the mourning dove is of utterly no legal significance. ***American Motors Corp. v DILHR***, 101 Wis. 2d 337, 349, 305 N.W.2d 62 (1981) – committee inaction does not indicate legislative intent; ***Lindsey v. Lindsey***, 140 Wis. 2d 684, 694 n.8, 412 N.W.2d 132 (Ct. App. 1987) - ". . . non-passage of a bill is not reliable evidence of legislative intent".

IV. THE RIGHT TO HUNT AMENDMENT, WIS. CONST. ART. I, § 26, IS IRRELEVANT TO DNR'S AUTHORITY TO SET HUNTING SEASONS.

The "Right to Hunt" amendment has limited significance in this case. The amendment recognizes the Legislature's right to enact

reasonable regulations regarding hunting and taking of game. It does not provide for the right to hunt all species, but merely "game". It does not give DNR any authority, much less specific authority to determine what "game" may be hunted. It is silent on how the Legislature might be limited in regulating hunting and taking of any particular species. The amendment preserves the right of "people"; it is the Legislature that represents the people of Wisconsin.

Intervenors' contention that "take" and "hunt" are synonymous is without merit, and if accurate, would impermissibly render one or the other term superfluous. They are separate and distinct, clearly signaling the Legislature's intent that the terms be accorded different meaning. Intervenors argue that disallowance of hunting of doves is *per se* unreasonable. If the Supreme Court ventures into those turbid waters, the case will become a moral, scientific, or value judgment about hunting doves, something Concerned Citizens has studiously avoided, and something the trial court and Court of Appeals have acknowledged has nothing to do with Concerned Citizens' challenge.

CONCLUSION

The Legislature's grant of authority under § 29.014(1), Stats., is not plain on its face. It is confusing and ambiguous, particularly when examined (as it must be) in the greater context of Ch. 29, Stats. Resort to long-standing rules of statutory construction compels precisely the analysis reflected in the

Trial Court's Decision and Order of August 28, 2001. The Court of Appeals erroneously gave deference to the DNR's interpretation of its own authority, and erroneously placed upon Concerned Citizens a burden of proof to demonstrate that the DNR's rule was improper. The context, scope, and legislative history, at a minimum, demonstrate doubt that the DNR has authority to allow the hunting of the mourning dove, and more probably give strong indication that the Legislature intended that the dove be protected from the hunter's gun. This view is amply supported by inferences to be drawn from Wisconsin's new "Right to Hunt" constitutional amendment. Accordingly, the Appellate Court's decision overruling the trial court, and denying declaratory and injunctive relief to Citizens, should be reversed.

Dated this 5th day of December, 2003.

Respectfully Submitted

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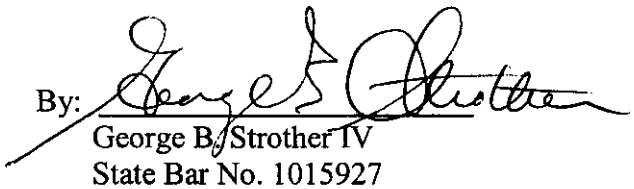
By: 

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CERTIFICATION

I hereby certify that this pleading conforms to the rules contained in Wis. Stat. 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 2982 words.

Dated this 5th day of December, 2003.

Respectfully Submitted

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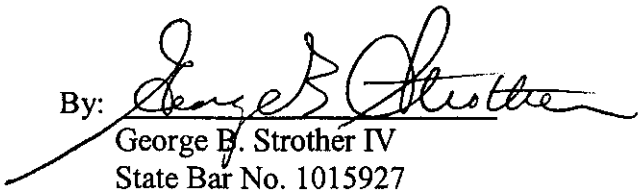
By: 

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