

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

**SUBJECT:**

Request that the Board approve the statement of scope for Board Orders WM-06-13 and WM-07-13(Emergency), proposed rules affecting NR Ch's. 8, 10, 11, 15 and 18 related to establishing the 2013 migratory bird hunting seasons..

**FOR: April 2013 Board meeting**

**PRESENTER'S NAME AND TITLE:** Scott Loomans, Wildlife Regulation Policy Specialist

**SUMMARY:**

This emergency rule order will establish the 2013 migratory bird hunting seasons.

The permanent rule will establish a general framework of season dates, bag limits, and conditions for taking migratory game birds by hunting or falconry. For example, it may establish an opener on first "Saturday in October" instead of "October 5" as is currently done in the emergency rule. Primary objectives of the rule will be to reduce the amount of migratory bird-related emergency rule making that is needed each year, to simplify regulations, codify provisions already in effect by emergency rule, and repeal a sunset provision.

Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20, who will offer a final season framework to Wisconsin on approximately August 1, 2012. The State of Wisconsin's season proposal will be based on the federal framework and local conditions. Wisconsin will also not be more restrictive than the federal bag limit framework except that we will propose one less hen mallard in the bag limit if the federal framework allows two or more, consistent with existing Wisconsin rules.

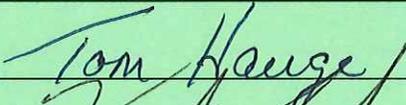
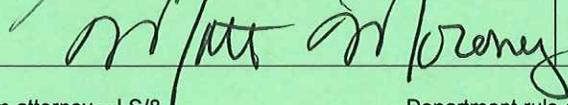
Once the USFWS final framework is available, department staff will meet with the Migratory Committee of the Conservation Congress and hold a public meeting with interest groups and individuals. The following week, four public hearings/meetings will be held around the state to solicit additional input.

The department will request Natural Resources Board adoption of the emergency rule at its August meeting.

**RECOMMENDATION:** That the Board approve the statement of scope for Board Orders WM-06-13 and WM-07-13(Emergency).

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

- |  |   |
|--|---|
| <input type="checkbox"/> (choose one)  | <input type="checkbox"/> Attachments to background memo                     |
| <input checked="" type="checkbox"/> Statement of scope                           | <input checked="" type="checkbox"/> Governor approval of statement of scope |
| <input type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement       |
| <input type="checkbox"/> Response summary  | <input type="checkbox"/> Board order/rule                                   |

Approved by	Signature	Date
Tom Hauge, Bureau Director		3/20/13
Kurt Thiede, Administrator		3/22/13
Cathy Stepp, Secretary		3/25/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: March 14, 2013

TO: Natural Resources Board Members

FROM: Cathy Stepp, Secretary

SUBJECT: Scope statement for Board Orders WM-06-13 and WM-07-13(Emergency) related to establishing the 2013 migratory bird hunting seasons.

**Subject of the Proposed Rules:**

This emergency rule order will establish the 2013 migratory bird hunting seasons.

The permanent rule will establish a general framework of season dates, bag limits, and conditions for taking migratory game birds by hunting or falconry. For example, it may establish an opener on first "Saturday in October" instead of "October 5" as is currently done in the emergency rule. Primary objectives of the rule will be to reduce the amount of migratory bird-related emergency rule making that is needed each year, to simplify regulations, codify provisions already in effect by emergency rule, and repeal a sunset provision.

**Policy Analysis:**

The emergency rule is an annual rule that will be consistent with a federal framework and is not a change from past policies. Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20, who will offer a final season framework to Wisconsin on approximately August 1, 2012. The State of Wisconsin's season proposal will be based on the federal framework and local conditions. Wisconsin will also not be more restrictive than the federal bag limit framework except that we will propose one less hen mallard in the bag limit if the federal framework allows two or more, consistent with existing Wisconsin rules. This rule may relax the prohibition on hunting waterfowl in open water for holders of permits for hunters with disabilities and lift a sunset of special migratory bird hunting regulations at the Mead and Zeloski Marsh Wildlife Management Areas.

Through the permanent rule process, the department will evaluate ways to establish more general descriptions of the migratory bird hunting season in Wis. Admin. Code. For example, new rule language might start the duck season on the "last Saturday in September" instead of a specific date. Emergency rulemaking will still be required of the department as the federal frameworks are established each year, but a result would be less rulemaking overall.

Through this rulemaking process, the department will investigate what authority it has or which can be established to modify season dates or bag limits through an order of the department secretary instead of by rule. The ability to modify regulations, specifically when necessary to remain in compliance with the federal season framework, could reduce the amount of emergency rulemaking that is needed. A rule of this nature could establish sideboards requiring the department to take full advantage of the federal framework.

The department will also recommend ways to simplify Canada goose hunting regulations. Current rules require tagging geese that are harvested in the Horicon Zone but a simpler process of recording harvest may be possible. Additionally, the department will consider eliminating the permit application deadline

for Horicon zone hunters and simply issue harvest permits while recognizing the flyway management and federal protections against overharvest of the Mississippi Valley Population. The department will also consider reducing the size of the Horicon zone which would result in expanded hunting opportunities in areas no longer in that zone.

The department will consider other simplifications to migratory bird hunting regulations that may be identified during this rulemaking process.

Through this rulemaking, the department may suggest revisions to the existing prohibition and exceptions for open-water hunting. Most waterfowl hunters are required to be partially or entirely concealed in emergent vegetation while hunting from a boat, blind or similar device on state water. This requirement preserves open water areas as safe resting areas for migrating waterfowl. By emergency rule, the department has established an exception for disabled permit holders and their assistants. This would establish the same exception by permanent rule in Wis. Admin. Code. Additional revisions of a housekeeping nature could be made. The department will consider other suggested ways to modify the provision, including advisory resolutions offered by the Wisconsin Conservation Congress.

This proposal would eliminate the sunset of 1:00 p.m. closure of migratory bird hunting at two wildlife management areas - Lake Mills Wildlife Area, Jefferson County, and Mead Wildlife Management Area, Wood, Marathon, and Portage Counties. Similar regulations in other states have been shown to provide good hunting across an entire property rather than just near refuges and hold ducks in an area for a longer period of time. This regulation sunsets after 3 years but there continues to be public support so the rule would be reauthorized under this proposal. At Lake Mills, mourning dove hunting hours also close at 1:00 p.m. The department may ask hunters if they would like this or similar opportunities at additional properties which are managed for mourning dove hunting.

These rules may modify the regulations of people who practice falconry for pursuing migratory game birds if necessary changes are identified during the rulemaking process.

The department may include other, minor, non-controversial rule proposals passed at the annual Spring Fish & Wildlife Hearings as advisory questions by the Conservation Congress.

**Statutory Authority:**

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

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

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

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

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

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

**Estimate of Staff Time Needed to Develop the Proposed Revision:**

Approximately 640 hours will be needed by the department prior to and following the hearings.

**Groups Likely Affected by the Proposed Rule:**

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

**Anticipated economic impact of implementing the rule:**

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

**Agency Contact:**

Scott Loomans, Wildlife Regulation Policy Specialist, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, (608) 267-2453, [Scott.Loomans@wisconsin.gov](mailto:Scott.Loomans@wisconsin.gov)

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: WM-06-13

Relating to: Migratory bird hunting regulations in Ch's. NR 8, 10, 11, 15 and 18.

Rule Type: Permanent

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

These will be permanent rules.

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

This proposal will establish a general framework of season dates, bag limits, and conditions for taking migratory game birds by hunting or falconry. Primary objectives of the rule will be to reduce the amount of migratory bird-related emergency rule making that is needed each year, to simplify regulations, codify provisions already in effect by emergency rule, and repeal a sunset provision.

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

In the past, the department has annually promulgated emergency and permanent rules establishing the same year's migratory bird hunting regulations. The emergency rule is necessary because migratory game bird hunting is regulated by the United States Fish & Wildlife Service which offers a final season framework to Wisconsin on approximately August 1 each year. This timeframe does not allow for promulgation of a permanent rule prior to the hunting season. As part of the federal regulation of migratory game bird hunting, groups of states are organized into councils by migratory flyways to work together on the management and regulation of migratory game birds. Wisconsin is part of the Mississippi Flyway Council (MFC) which consists of 14 states and 3 Canadian provinces and state rules are subject to flyway council management plans and agreements. The department has promulgated permanent rules in the past so that information related to zones, tagging requirements for geese, and other regulations remain current. However, season dates and bag limits established in the Wis. Admin. Code reflect the previous year's season framework and are not useful, current information.

Through this rulemaking process, the department will evaluate ways to establish more general descriptions of the migratory bird hunting season in Wis. Admin. Code. For example, new rule language might start the duck season on the "last Saturday in September" instead of a specific date. Emergency rulemaking will still be required of the department as the federal frameworks are established each year, but a result would be less rulemaking overall.

Through this rulemaking process, the department will investigate what authority it has or which can be established to modify season dates or bag limits through an order of the department secretary instead of by rule. The ability to modify regulations, specifically when necessary to remain in compliance with the federal season framework, could reduce the amount of emergency rulemaking that is needed. A rule of this nature could establish sideboards requiring the department to take full advantage of the federal framework.

The department will also recommend ways to simplify Canada goose hunting regulations. Current rules require tagging geese that are harvested in the Horicon Zone but a simpler process of recording harvest may be possible. Additionally, the department will consider eliminating the permit application deadline for Horicon zone hunters and simply issue harvest permits while recognizing the flyway management and  
Rev. 3/6/2012

federal protections against overharvest of the Mississippi Valley Population. The department will also consider reducing the size of the Horicon zone which would result in expanded hunting opportunities in areas no longer in that zone.

The department will consider other simplifications to migratory bird hunting regulations that may be identified during this rulemaking process.

Through this rulemaking, the department may suggest revisions to the existing prohibition and exceptions for open-water hunting. Most waterfowl hunters are required to be partially or entirely concealed in emergent vegetation while hunting from a boat, blind or similar device on state water. This requirement preserves open water areas as safe resting areas for migrating waterfowl. By emergency rule, the department has established an exception for disabled permit holders and their assistants. This would establish the same exception by permanent rule in Wis. Admin. Code. Additional revisions of a housekeeping nature could be made. The department will consider other suggested ways to modify the provision, including advisory resolutions offered by the Wisconsin Conservation Congress.

This proposal would eliminate the sunset of 1:00 p.m. closure of migratory bird hunting at two wildlife management areas - Lake Mills Wildlife Area, Jefferson County, and Mead Wildlife Management Area, Wood, Marathon, and Portage Counties. Similar regulations in other states have been shown to provide good hunting across an entire property rather than just near refuges and hold ducks in an area for a longer period of time. This regulation sunsets after 3 years but there continues to be public support so the rule would be reauthorized under this proposal. At Lake Mills, mourning dove hunting hours also close at 1:00 p.m. The department may ask hunters if they would like this or similar opportunities at additional properties which are managed for mourning dove hunting.

These rules may modify the regulations of people who practice falconry for pursuing migratory game birds if necessary changes are identified during the rulemaking process.

The department may include other, minor, non-controversial rule proposals passed at the annual Spring Fish & Wildlife Hearings as advisory questions by the Conservation Congress.

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

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

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

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

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

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

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

Approximately 400 hours will be needed by the department prior to and following the hearings.

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

These rules will impact migratory game bird hunters, primarily those pursuing ducks and geese.

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

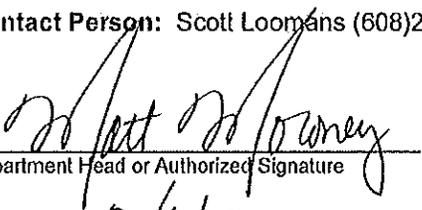
Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20. Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually through the USFWS regulations process. As part of the federal rule process, the service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

Locally produced giant Canada geese are now a considerable portion of the harvest in states that also harvest Mississippi Valley Population geese that nest in Northern Ontario. The Mississippi Flyway Council has tested the use of a standard season framework for 5 years, ending in 2011. Season lengths and bag limits for each MVP harvest state remained unchanged. In 2012, the MFC conducted an evaluation of harvest impacts of these stable regulations and established a framework for future seasons. It was agreed within the MFC that states harvesting MVP Canada geese could take small steps toward liberalization while impacts are cooperatively monitored.

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

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

**Contact Person:** Scott Loomans (608)267-2452, or Kent Van Horn (608) 266-8841

  
Department Head or Authorized Signature

2/6/13  
Date Submitted

# STATEMENT OF SCOPE

## Department of Natural Resources

Rule No.: WM-07-13 (E)

Relating to: Establishing the 2013 Migratory Bird Season Framework in Ch. NR 10 Wis. Admin. Code

Rule Type: These will be emergency rules

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

The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

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

This emergency rule order will establish the 2013 migratory bird hunting seasons.

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

This is an annual rule that will be consistent with a federal framework and is not a change from past policies. Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20, who will offer a final season framework to Wisconsin on approximately August 1, 2012. The State of Wisconsin's season proposal will be based on the federal framework and local conditions. Wisconsin will also not be more restrictive than the federal bag limit framework except that we will propose one less hen mallard in the bag limit if the federal framework allows two or more, consistent with existing Wisconsin rules. This rule may relax the prohibition on hunting waterfowl in open water for holders of permits for hunters with disabilities and lift a sunset of special migratory bird hunting regulations at the Mead and Zeloski Marsh Wildlife Management Areas.

The department will also recommend ways to simplify Canada goose hunting regulations. Current rules require tagging geese that are harvested in the Horicon Zone but a simpler process of recording harvest may be possible. Additionally, the department will consider eliminating the permit application deadline for Horicon zone hunters and simply issue harvest permits while recognizing the flyway management and federal protections against overharvest of the Mississippi Valley Population. The department will also consider reducing the size of the Horicon zone which would result in expanded hunting opportunities in areas no longer in that zone.

Through this rulemaking, the department may suggest revisions to the existing prohibition and exceptions for open-water hunting. Most waterfowl hunters are required to be partially or entirely concealed in emergent vegetation while hunting from a boat, blind or similar device on state water. This requirement preserves open water areas as safe resting areas for migrating waterfowl. This rule would establish an exception for disabled permit holders and their assistants.

The department will consider other simplifications to migratory bird hunting regulations that may be identified during this rulemaking process.

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

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

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

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

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

Sections 23.095, 23.11 and 29.014, Stats. allow for the protection of natural resources, establish general department powers, and authority to establish hunting and trapping regulations on department managed lands.

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

Approximately 640 hours will be needed by the department prior to and following the hearings.

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

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

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

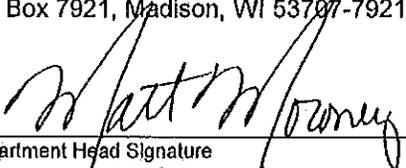
Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20. Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually through the USFWS regulations process. As part of the federal rule process, the service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

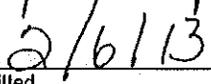
Locally produced giant Canada geese are now a considerable portion of the harvest in states that also harvest Mississippi Valley Population geese that nest in Northern Ontario. The Mississippi Flyway Council has tested the use of a standard season framework for 5 years, ending in 2011. Season lengths and bag limits for each MVP harvest state remained unchanged. In 2012, the MFC conducted an evaluation of harvest impacts of these stable regulations and established a framework for future seasons. It was agreed within the MFC that states harvesting MVP Canada geese could take small steps toward liberalization while impacts are cooperatively monitored.

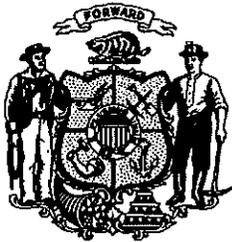
**B. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

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

**Contact Person:** Scott Loomans, 101 S Webster St., Madison, WI 53707, (608)267-2452, [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov) or Kent Van Horn, Migratory Birds Specialist, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, (608) 266-8841, [Kent.Vanhorn@wisconsin.gov](mailto:Kent.Vanhorn@wisconsin.gov)

  
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Department Head Signature

  
\_\_\_\_\_  
Date Submitted



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

March 6, 2013

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

**RE: Scope Statement for WM-06-13 relating to migratory bird hunting regulations**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on February 8, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule WM-06-13. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Walker'.

Scott Walker  
Governor



**SCOTT WALKER**  
**OFFICE OF THE GOVERNOR**  
**STATE OF WISCONSIN**

P.O. Box 7863  
MADISON, WI 53707

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February 18, 2013

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

**RE: Scope Statement for WM-07-13 Emergency Rule relating to establishing the  
2013 Migratory Bird Season Framework**

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on February 8, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modify Chapter NR 10 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

Scott Walker  
Governor