

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

SUBJECT:

Request that the Board adopt Emergency Board Order WM-18-19(E), proposed rules affecting NR 10, related to ruffed grouse management

FOR: September 2019 Board meeting

PRESENTER'S NAME AND TITLE: Kent Van Horn, Bird and Habitat Section Chief, Bureau of Wildlife Management

SUMMARY:

In 2017, West Nile Virus (WNV) was found in Michigan's Upper Peninsula ruffed grouse population. The 2018 Wisconsin spring drumming counts were down 34% causing concern by hunters over the status of the grouse population in Wisconsin. Preliminary results of a hunter survey following the 2018 grouse season showed support for a shorter ruffed grouse hunting season. In fall 2018, the Department asked hunters to submit WNV samples as well as submit any grouse found sick or dead. Out of 16 birds submitted, three grouse tested positive for West Nile. Multiple factors working individually, concurrently, or interactively can impact grouse populations. These population drivers include habitat conditions, brood and nesting conditions, food availability, winter conditions, and disease. At this time, there is no definitive evidence pointing to one or multiple factors driving the decline in drumming activity observed in Wisconsin in 2018, however, staff are still awaiting lab results from a 3 (MN,MI,WI) state WNV monitoring effort and are conducting additional analyses. Based on these factors, combined with concerns expressed by hunters and Natural Resource Board members, the Department recommends a continued cautious approach as we finalize the ruffed grouse management plan and a permanent rule proposal. The department recommends closing the 2019 ruffed grouse season early.

RECOMMENDATION: That the Board adopt Emergency Board Order WM-18-19(E).

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

- | | |
|---|--|
| <input type="checkbox"/> background memo | <input checked="" type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input checked="" type="checkbox"/> Board order/rule |
| <input type="checkbox"/> Response summary | <input type="checkbox"/> (insert document name) |

Approved by	Signature	Date
Tami Ryan, Acting Bureau Director	<i>Tami Ryan</i>	9/11/19
Scott Loomans, Division Administrator	<i>Scott Loomans</i>	9/12/19
<i>pc</i> Preston D. Cole, Secretary	<i>Beth Bier</i>	9/12/19

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule officer - LS/8

by Beth Bier

DATE: September 9, 2019

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order WM-18-19 (E), relating to ruffed grouse management.

1. Subject of Proposed Rule:

This rule closes the ruffed grouse season for Zone A on January 5, 2020.

2. Background:

The state is currently split into two ruffed grouse management zones. Zone B is primarily made up of southeastern portion of the state with the majority of the state falling in Zone A. Under current rules, the season in Zone A begins on the Saturday closest to September 15th and closes on January 31st of the following year while Zone B opens on the Saturday nearest October 17th and runs through December 8th.

In 2017, West Nile Virus (WNV) was found in Michigan's Upper Peninsula ruffed grouse population. The 2018 Wisconsin spring drumming counts were down 34% causing concern by hunters over the status of the grouse population in Wisconsin. In fall 2018, the Department asked hunters to submit WNV samples as well as submit any grouse found sick or dead. Out of 16 birds submitted, three grouse tested positive for West Nile. The lab analyses on the 2018 samples are not yet finalized. Multiple factors working individually, concurrently, or interactively can impact grouse populations. These population drivers include habitat conditions, brood and nesting conditions, food availability, winter conditions, and disease. At this time, there is no definitive evidence pointing to one or multiple factors driving the decline in drumming activity observed in Wisconsin in 2018.

3. Why is the rule being proposed?

The board recommended at its June meeting to close the 2019 ruffed grouse season early. This was in response to concerns raised by the public about surprisingly low spring drumming survey results from 2018 and decreased harvest in 2017 and 2018. Preliminary results of a hunter survey following the 2018 grouse season showed support for a shorter ruffed grouse hunting season. To monitor the ruffed grouse population, the department utilizes annual drumming surveys and estimates harvest annually through a small game hunter survey. Ruffed grouse drumming activity declined 34% statewide from 2017 to 2018. In 2018, the decline was greatest in the northern region, with a 38% decline in drumming grouse detected. This area contains the most extensive early-successional forest habitat and healthiest ruffed grouse populations, so focus is generally placed on trends in the northern region. Also, estimated ruffed grouse harvest declined from 262,943 in 2016 to 185,336 in 2017, a 29.5% decline, and in 2018 declined again to 173,374. This represents the lowest estimated harvest in the 35 years the department has been conducting the small game hunter survey. Although drumming counts did increase in 2019, the cause of the earlier decline is still unknown and a cautionary approach is recommended.

4. Summary of the rule.

This rule shortens the 2019 ruffed grouse season for grouse management zone A so that it will close on January 5, 2020 instead of January 31, 2020.

5. How does this proposal affect existing policy?

The state is currently split into two ruffed grouse management zones. Zone B is primarily made up of southeastern portion of the state with the majority of the state falling in Zone A. Under current rules, the season in Zone A begins on the Saturday closest to September 15th and closes on January 31st of the following year while Zone B opens on the Saturday nearest October 17th and runs through December 8th.

6. Has Board dealt with these issues before?

The board closed the 2018 ruffed grouse season early at the September 2018 meeting. The scope statement for this rule was approved at the special August 2019 meeting.

7. Who will be impacted by the proposed rule? How?

These rules will impact hunters who pursue ruffed grouse and small businesses for whom ruffed grouse hunters and their associated expenditures generate revenue. However, the closure will occur after the peak period for ruffed grouse hunting activity which is in October and November and no significant impacts are expected.

8. Small Business Analysis

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. However, there might be an economic impact to small business who depend on ruffed grouse hunters for revenue. This rule may shorten the ruffed grouse season by almost one month, which could result in decreased revenue during that time.

According to the U.S. Fish and Wildlife Service and U.S. National Survey of Fishing, Hunting, and Wildlife-2011 (USFWS 2011), grouse hunting in Wisconsin accounts for 7% of the total hunting effort (hunting days) in Wisconsin. The Wisconsin DNR and USFWS do not keep specific data on hunting expenditure related to grouse hunting. Additionally, the closure will occur after prime portions of the season that are most desirable to travelling hunters. Based on the limited number of days that hunters dedicate to grouse hunting relative to other types of hunting, we do not expect that the impact of these rules on hunting expenditure (reduced expenditure) will be significant.

Drafter: Scott Karel, Kent Van Horn

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 8/29/2019
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Ch. NR 10, WM-18-19 (E)	
4. Subject Ruffed Grouse Management	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$680,200	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The department finds that an emergency rule is necessary in order protect the ruffed grouse population and so that the state can continue to properly manage the species in a way that preserves the public welfare. To monitor the ruffed grouse population, the department utilizes annual drumming surveys and estimates harvest annually through a small game hunter survey. Ruffed grouse drumming activity declined 34% statewide from 2017 to 2018. The decline was greatest in the northern region, with a 38% decline in drumming grouse detected. This area contains the most extensive early-successional forest habitat and healthiest ruffed grouse populations, so focus is generally placed on trends in the northern region. Also, estimated ruffed grouse harvest declined from 262,943 in 2016 to 185,336 in 2017, a 29.5% decline. This represents the lowest estimated harvest in the 34 years the department has been conducting the small game hunter survey.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. These rules will impact hunters who pursue ruffed grouse and hunting related businesses for whom ruffed grouse hunters and their associated expenditures generate revenue. However, the closure will occur after the peak period for ruffed grouse hunting activity which is in October and November and no significant impacts are expected.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None at this time. Local Government units are not anticipated to be impacted by this rule.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule. However, there might be an economic impact to small business who depend on ruffed grouse hunters for revenue. This rule may shorten the ruffed grouse season by almost one month, which could result in decreased revenue during that time.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

According to the U.S. Fish and Wildlife Service and U.S. National Survey of Fishing, Hunting, and Wildlife-2011 (USFWS 2011), grouse hunting in Wisconsin accounts for only 7% of the total hunting effort (hunting days) in Wisconsin. The Wisconsin DNR or the USFWS does not keep specific data on hunting expenditure related to grouse hunting. Additionally, the closure will occur after prime portions of the season that are most desirable to travelling hunters. Based on the limited number of days that hunters dedicate to grouse hunting relative to other types of hunting in Wisconsin, we do not expect that the impact of limiting the grouse hunting season in Wisconsin on hunting expenditure (reduced expenditure) will be significant.

Since 88% of all hunters in Wisconsin hunted deer (USFWS 2011), we assumed that hunting expenditure associated with grouse hunting to be minimal and not totally mutually exclusive from expenditure made towards other forms of hunting. The most likely economic impact will be related to a reduced hunting trip related expenses. The USFWS 2011 estimate hunting trip related expenses in Wisconsin to be about \$358 million dollars (\$358,000,000).

Assuming only 1% of hunting related expenditure in Wisconsin was dedicated towards grouse hunting ($0.01 * \$358,000,000 = \3.58 million dollars), we expect that the impact of reducing grouse hunting season by about 19% of the days allowed will reduce hunting related expenditure by about \$680,200 ($0.19 * \$3,580,000$) per year.

The alternative is to not implement this rule. A failure to shorten the season could contribute to a continued decline in the grouse population, which could have significant impacts to the hunting community, industry and the state economy.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule would provide potential benefits to the state's ruffed grouse population, the department recommends closing the 2019 ruffed grouse season early. The alternative would be to leave the grouse season framework as is or shortening the grouse season to a date different than the proposed January 5th closure.

16. Long Range Implications of Implementing the Rule

The long range implications of this rule proposal will be the same as the short term impacts. These proposals will generally contribute to providing good opportunities for hunting and trapping and maintenance of the economic activity generated by people who participate in those activities

17. Compare With Approaches Being Used by Federal Government

For resident game bird hunting, there are no related federal regulations. States possess inherent authority to manage the wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota and Michigan's ruffed grouse season ends on January 1st. Iowa's ends on January 31st. Illinois does not have a ruffed grouse season.

19. Contact Name

Scott Karel

20. Contact Phone Number

608-267-2452

This document can be made available in alternate formats to individuals with disabilities upon request.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 10.02 (2) relating to establishing an early close to the 2019 ruffed grouse season.

WM-13-18 (E)

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Chapter 29 of the Wisconsin Statutes addresses the department's authority with respect to wild animals and plants. Section 29.014, Stats., confers broad rule-making authority to the department to "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. This grant of rule-making authority allows the department to promulgate rules related to resident game bird hunting.

2. Statutory Authority: In promulgating these rules, statutes being interpreted or establishing agency authority include s. 29.014.

The emergency rule-making process is established in s. 227.24, Stats.

3. Explanation of Agency Authority: In the chapter on wild animals and plants, 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 make changes related to hunting regulations.

4. Related Statutes or Rules: There are no currently active related administrative rules.

5. Plain Language Analysis:

SECTION 1 closes the ruffed grouse season for Zone A on January 5, 2019.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: For resident game bird hunting, there are no related federal regulations. States possess inherent authority to manage the wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

7. Comparison with Similar Rules in Adjacent States: Minnesota and Michigan's ruffed grouse season ends on January 1st. Iowa's ends on January 31st. Illinois does not have a ruffed grouse season.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

These rules, and the legislation which grants the department rule-making authority, do not have fiscal effects on the private sector or small businesses. No costs to the private sector or small businesses are associated with compliance to these rules.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in

Preparation of an Economic Impact Report:

10. Effect on Small Business (initial regulatory flexibility analysis): These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design standards are contained in the rule

11. Agency Contact Person: Scott Karel, 101 S. Webster St., PO BOX 7921, Madison, WI 53707-7921. scottr.karel@wisconsin.gov (608) 267-2452

12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Scott Karel

Department of Natural Resources

P.O. Box 7921

Madison, WI 53707

Scottr.karel@wisconsin.gov

608-267-2452

608-267-7857 (fax)

Written comments may also be submitted to the Department at DNRAdministrativeRulesComments@wisconsin.gov.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 10.01 (2) (a) 1. is amended to read:

Kind of Animal and Locality	Open season (all dates inclusive)	Limit
NR 10.01. (2) (a) Ruffed Grouse 1. Zone A as established under s. NR 10.33.	Beginning on the Saturday nearest September 15 and continuing through January 31 <u>January 5.</u>	Daily bag 5; possession 15

SECTION 2. STATEMENT OF EMERGENCY. The department finds that an emergency rule is necessary in order protect the ruffed grouse population and so that the state can continue to properly manage the species in a way that preserves the public welfare.

To monitor the ruffed grouse population, the department utilizes annual drumming surveys and estimates harvest annually through a small game hunter survey. Ruffed grouse drumming

activity declined 34% statewide from 2017 to 2018. The decline was greatest in the northern region, with a 38% decline in drumming grouse detected. This area contains the most extensive early-successional forest habitat and healthiest ruffed grouse populations, so focus is generally placed on trends in the northern region. Also, estimated ruffed grouse harvest declined from 262,943 in 2016 to 185,336 in 2017, a 29.5% decline. This represents the lowest estimated harvest in the 34 years the department has been conducting the small game hunter survey.

SECTION 3. EFFECTIVE DATE. This rule takes effect on the day of publication in the Wisconsin State Newspaper, as provided in s. 227.24 (1) (c), Stats.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)