

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request authorization for public hearing for Board Order ER-08-08, revisions to NR 27 relating to the list Endangered and Threatened Species.

FOR: AUGUST 2008 BOARD MEETING

TO BE PRESENTED BY: Sumner Matteson, BER Avian Ecologist

SUMMARY:

The Department's recovery programs for Trumpeter Swan and Osprey have been very successful. The statewide populations of these two species have increased to the point where they no longer qualify as Endangered or Threatened Species. The Department would like to hold public hearings on a proposed rule change that would remove these two species from the Endangered and Threatened Species lists in NR 27 Wis. Admin. Code

Trumpeter Swan recovery in Wisconsin was only possible due to the generous cooperation of dozens of corporate partners and hundreds of private individuals. Officially removing this species from the Endangered Species list will be the culmination of a very successful reintroduction effort and give the Board an opportunity to acknowledge the contributions of all the partners.

Osprey recovery in Wisconsin has also been importantly supported by corporate partners especially utility companies.

RECOMMENDATION: Authorize a public hearing for Board Order ER-08-08, revisions to NR 27

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|-------------------------------------------------------|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

/s/	7/03/08
_____	_____
Bureau Director,	Date
/s/	7/07/09
_____	_____
Administrator,	Date
/s/	7/09/08
_____	_____
Secretary, Matt Frank	Date

- | | |
|---------------------------|-----------------------|
| cc: Laurie J. Ross - AD/5 | Tim Andryk- LS/8 |
| Signe Holtz- ER/6 | Randle Jurewicz- ER/6 |
| Sumner Matteson- ER/6 | |
| Rebecca Schroeder- ER/6 | |
| Carol Turner-LS/8 | |

DATE: June 24, 2008

TO: Christine Thomas, Chair
Jonathan Ela, Vice-Chair
John W. Welter, Chair Land Management, Recreation, Fisheries/Wildlife Committee

FROM: Matthew Frank

SUBJECT: Amend NR 27 to Remove the Trumpeter Swan from the Endangered Species List and Osprey from the Threatened Species List

The Department's recovery programs for Trumpeter Swan and Osprey have been very successful. The statewide populations of these two species have increased to the point where they no longer qualify as Endangered or Threatened Species. The Department would like to hold public hearings on a proposed rule change that would remove these two species from the Endangered and Threatened Species lists in NR 27 Wis. Admin. Code

Rule Summary-Trumpeter Swan

The Department wrote a recovery plan for the Trumpeter Swan in 1986 (Matteson *et al.* 1986), establishing a recovery goal of at least 20 breeding and migratory pairs by the year 2000. Implementation of the plan first focused on cross-fostering using Mute Swans already in the wild as foster parents during 1987 and 1988, while Department biologists waited in line behind the State of Minnesota to collect Alaskan Trumpeter Swan eggs. Cross-fostering was not successful largely due to heavy snapping turtle predation of the young cygnets.

From 1989 through 1997, Endangered Resources staff (Randy Jurewicz and Sumner Matteson) collected a total of 385 Trumpeter Swan eggs from wild nests in Alaska. These were transported back to Milwaukee by Terry and Mary Kohler and were hatched out in incubators at the Milwaukee County Zoo. Cygnets were placed in two programs: the decoy-rearing program (cygnets imprinted on a life-sized decoy, then flown at less than a week of age to marsh sites in northern and central Wisconsin where UW-interns in camouflaged float tubes led cygnets to feeding and loafing patches); and in the captive-rearing program (cygnets maintained at a site near Pewaukee owned by General Electric Medical Systems until they reached 2 years of age which were then released at selected wetland sites in northern Wisconsin). A total of 355 swans were released via these two techniques. A third technique of lesser importance was captive parent-rearing, where a few captive pairs of swans produced cygnets that were released as yearlings at selected marsh sites in northern Wisconsin. A total of 32 swans were released via this technique. As a result of this population growth, the Natural Heritage Inventory Program has revised the S rank (population status rank) from S3B (20-100 breeding occurrences) to S4B (apparently secure in WI).

In 2007, 113 breeding pairs occurred in 19 counties (see attached figures).

On October 11, 2007, the Wisconsin Trumpeter Swan Recovery Program was awarded a 2007 *Leopold Restoration Award: the John Nolen Award for Excellence in Ecological Restoration Practices*. The dedicated work of several wildlife managers and technicians, Endangered Resources and Science Services staff, the Milwaukee County Zoo, and the UW-Department of Wildlife Ecology helped make this possible, along with the support of the Natural Resources Foundation, Inc. and several other

organizations, businesses, and private individuals. Most of these individuals and organizations/businesses were able to attend a party in their honor held at the Milwaukee County Zoo on 31 March 2007. Certificates of Appreciation for Exceptional Performance were awarded by WDNR Secretary Scott Hassett.

Rule Summary - Osprey

Osprey were one of the raptor species whose populations were decimated by DDT. In the early 1970s the state's nesting population numbered fewer than 100 pairs. Osprey were state listed as Endangered in 1972. In 1986, a comprehensive osprey Recovery Plan was developed by the Department. The goal was to maintain a self-sustaining osprey population in suitable habitat throughout Wisconsin. Two objectives were identified to meet that goal:

1. Maintain statewide production at a minimum of 1.2 young per active nest
2. Increase the number of known active nests to 300.

Four major activity categories were identified:

1. Determine current population and habitat status
2. Determine population and habitat needed to achieve recovery.
3. Protect, enhance, and increase osprey population and habitats.
4. Establish and maintain communication with all interested groups and conduct public education.

Staff from Wildlife Management and Endangered Resources have been conducting yearly statewide surveys of osprey population and reproduction by fixed-wing aircraft. Results are presented in the bar graph and map below (Eckstein).

Ospreys choose dead tree "snags" to build their nests on. Because these snags are no longer present in sufficient numbers in Wisconsin to support the birds, an ambitious DNR project was begun in 1972 to provide artificial nesting platforms. Active nest numbers have been at or above 300 since 1989. They held at a plateau of just under 400 pairs from 1993 to 2002 and have been above 400 pairs since 2003. As a result of this population growth, the Natural Heritage Inventory Program has revised the S rank (population status rank) from S3 to S4B (apparently secure in WI).

In 1989 the nesting population reached 300 pairs and the species was down listed to Threatened.

As of 2007 survey data, the first objective (productivity) has been closely approached with an average production of 1.18 young per active nest for the last 7 years.

Of continuing concern is the fact that natural nesting habitat for ospreys remains a scarce resource in the state. At least 84% of the nests are on man-made structures, most of them the artificial platforms. These platforms require periodic maintenance, repair, and replacement. Wisconsin's large Osprey population now need more nesting sites than are available naturally and are using on cell phone towers, ball field lights, power poles, and other human structures. It is necessary to continue monitoring, platform maintenance and relationships with energy companies to ensure that osprey continues to thrive in Wisconsin.

Background

This proposal supports the policy of the Department to only list species that are proven to be Endangered or Threatened and to remove from these lists species that have recovered to the point where they are no longer so rare as to qualify for such classifications. (“Endangered” means the species is so rare that it is approaching statewide extirpation. “Threatened” means that the species is likely, within the foreseeable future, to become endangered).

The Endangered Resources Fund pays for damage done by Endangered and Threatened animal species and gray wolves. Damage done by Trumpeter Swans and Osprey would no longer be eligible for reimbursement once they are delisted. The Endangered Resources Damage Payment Program has paid for Osprey damage claims to one private trout farm in Marinette County in 2003 (\$ 2,100.00), 2004 (\$ 600.00), 2005 (\$ 2,000.00) and 2006 (\$ 2,000.00). However, once Osprey have been state delisted, permits may be issued by the U.S. Fish & Wildlife Service for the removal of the individual birds causing the damage.

Rule Development

These proposed amendments were developed by the Bureau of Endangered with the assistance of Legal Services and with input from the Department’s Swan Management Committee and Eagle-Osprey Management Committee.

The rule e-mail address is: Sumner.Matteson@wisconsin.gov

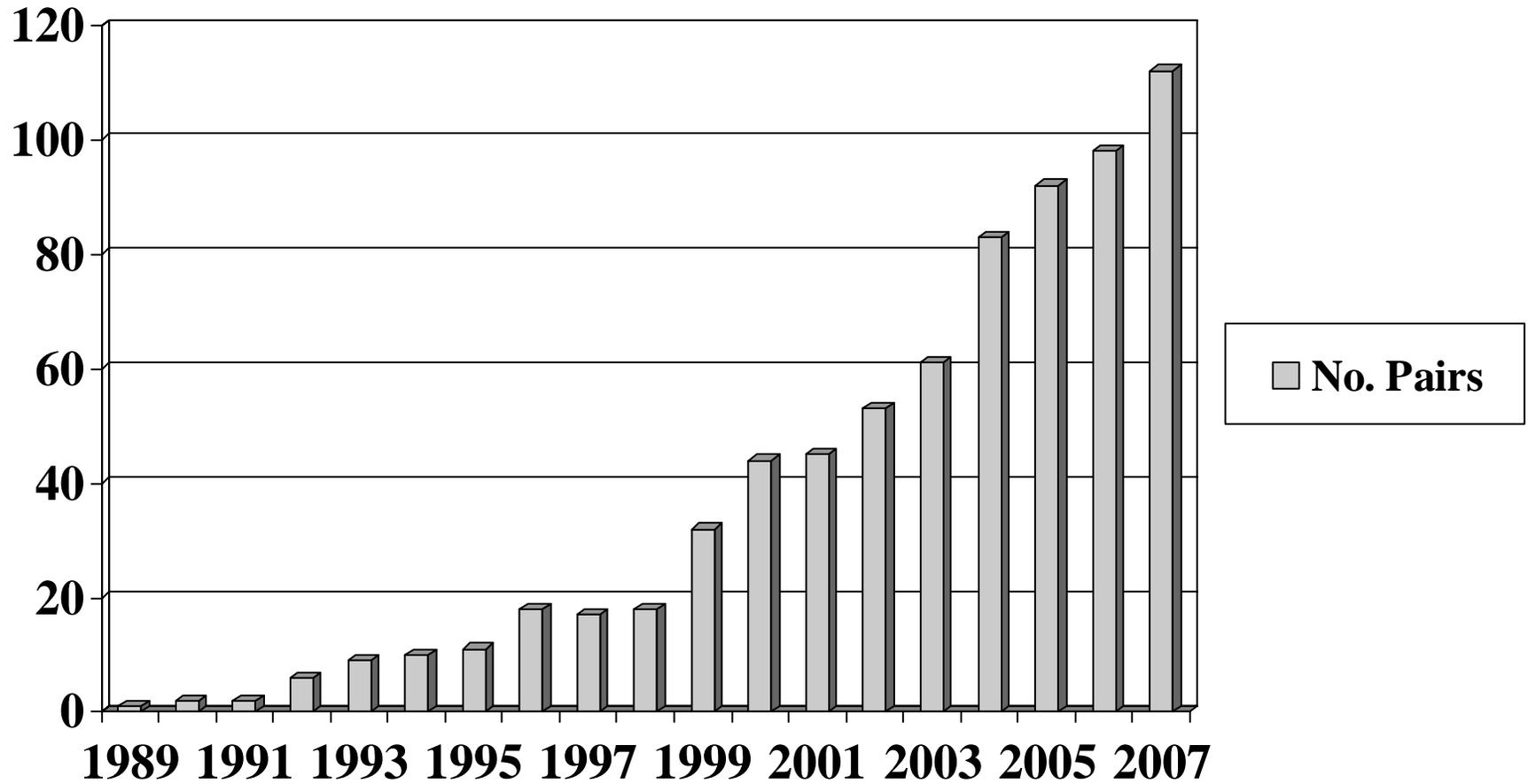
Environmental Analysis

The Office of Energy has determined that these rule revisions are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

Initial Flexibility Analysis

The proposed revision to ch. NR 27, Wis. Adm. Code, pertains to rules that list plant and animal species that are Endangered and Threatened in Wisconsin. These rules are applicable to the general public but impose no compliance or reporting requirements for small businesses nor are any design or operation standards contained in the rule. Therefore, under s.227.19(3m), Stats., a final regulatory flexibility analysis is not required.

WI Trumpeter Swan Nesting Pairs, 1989-2007



Distribution Of WI Trumpeter Swan Nests, 2007



• <u>Counties</u>	<u>No. Nests</u>
• DOUGLAS	4
• BAYFIELD	2
• ASHLAND	4
• IRON	10
• VILAS	3
• SAWYER	3
• PRICE	1
• WASHBURN	3
• BURNETT	29
• POLK	28
• ST. CROIX	3
• BARRON	1
• RUSK	1
• JACKSON	1
• WOOD	7
• JUNEAU	8
• MONROE	2
• GRANT	2
• WAUKESHA	<u>1</u>
• TOTAL:	113

Fiscal Estimate — 2007 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number Bill Number	Amendment Number if Applicable Administrative Rule Number NR 27
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Subject

Proposed rule amendment to remove trumpeter swans from the endangered species list and osprey from the threatened species list.

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- | | |
|----------------------------------------------------------|-----------------------------------------------------|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs

Indeterminate

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

None

Assumptions Used in Arriving at Fiscal Estimate

The removal of these two bird species from the state list of endangered and threatened species will not have a fiscal effect.

Long-Range Fiscal Implications

None

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

Fiscal Estimate — 2007 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 27

Subject

Proposed rule amendment to remove trumpeter swans from the endangered species list and osprey from the threatened species list.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

None

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		(FTE)	(- FTE)
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
Total State Costs by Category		\$ 0	\$ - 0
B. State Costs by Source of Funds			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
Total State Revenues		\$ 0	\$ - 0

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 0	\$ 0

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 27.03(2)(b) 2 and NR27.03 (3)(b)8 relating to the Wisconsin lists of Endangered and Threatened Species.

ER-08 -08

Analysis Prepared by Department of Natural Resources

Statutory Authority: Statutes that authorize the promulgation of this rule include ss. 29.604 and 227.11, Stats. These sections grant rule-making authority to the Department to protect endangered and threatened species. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted: In promulgating this rule, ss. 227.11, and 29.604, Stats., have been interpreted as allowing the Department the authority to develop rules to add and remove species from the endangered and threatened species lists.

Plain Language Rule Analysis: The Department's recovery programs for Trumpeter Swan and Osprey have been very successful. The statewide populations of these two species have increased to the point where they no longer qualify as Endangered or Threatened Species.

Trumpeter Swan

The Department wrote a recovery plan for the Trumpeter Swan in 1986 (Matteson *et al.* 1986), establishing a recovery goal of at least 20 breeding and migratory pairs by the year 2000. The reintroduction effort was very successful and the Wisconsin population has increased from zero in 1986 to 113 breeding pairs occurring in 19 Wisconsin counties in 2007.

Osprey

Osprey were one of the raptor species whose populations were decimated by DDT in the 1950's and 1960's. In the early 1970's the state's nesting population numbered fewer than 100 pairs. Osprey were state listed as Endangered in 1972. Due to the management program the statewide population increased to just under 400 pairs from 1993 to 2002 and have been above 400 pairs since 2003.

Federal Regulatory Analysis: Trumpeter swans and osprey have ever been on the U.S. list of Endangered and Threatened Species under the authority of the U.S. Endangered Species Act. They are protected by the U.S. Migratory Bird Treaty Act.

State Regulatory Analysis: The proposed rule changes are non-controversial in nature and do not represent policy or significant changes that differ from surrounding states. Many of the other states in the mid-west continue to list trumpeter swans and osprey as endangered or threatened species. Wisconsin is fortunate to have had such successful recovery programs for these species.

Summary of Factual Data: The proposed rule changes are based solely on the biological recovery of these species in Wisconsin.

Anticipated Private Sector Costs: These rules do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

Agency Contact Person: Sumner Matteson, 101 S. Webster St., PO BOX 7921, Madison, WI 53707-7921. (608) 266-1571. E-mail: Sumner.Matteson@wisconsin.gov

Place where comments are to be submitted and deadline for submission: The deadline for written comments is to be determined. Comments may be submitted to Mr. Matteson or they may also be electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>

SECTION 1. NR 27.03(2)(b) 2 is repealed.

SECTION 2. NR27.03 (3)(b)8 is repealed.

Section 3. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), 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
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)