

Clearinghouse Rule 08-083

CR 08-083

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING 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.

Explanation of Agency Authority: This rule supports Department policy and underscores statutory authority (ss. 29.604 and 227.11, Stats.) to list only species that are proven to be endangered or threatened and to remove from the list species that have recovered and are no longer threatened or endangered.

Related Rule or Statute: SS. NR 27.03(2)(b)2 and (3)(b)8, Wis. Adm. Code, and ss. 227.11 and 29.604, Stats.

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 never 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. Several states in the Midwest continue to list Trumpeter Swans and Osprey as endangered or threatened. Trumpeter Swans are listed as state endangered in Indiana and Ohio, and as state threatened in

Michigan and Minnesota. Ohio, Michigan, and Minnesota have active restoration programs. This species is listed as extirpated in Illinois and Missouri. The species is not listed in Iowa, where an active reintroduction program began in 1994.

The Osprey is listed as state endangered in Illinois and Indiana, and as state threatened in Michigan and Ohio. Active recovery programs occur in these states, except for Illinois. It is not listed in Iowa and Minnesota, where reintroduction projects have occurred, and it is also not listed in Missouri, where the state Natural Heritage Inventory keeps track of occurrences.

Wisconsin is fortunate to have had such successful recovery programs for both species.

Summary of Factual Data: The proposed rule changes are based on field surveys of the subject bird species in Wisconsin from 1973 to the present..

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.

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 January 28, 2009.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)

Clearinghouse Rule No. 08-083

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

Summary of final Regulatory 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.

Summary of Comments by Legislative Review Committees

The rules were reviewed by the Senate Committee on Transportation, Tourism, forestry and Natural Resources and Assembly Committee on Natural Resources. On March 25, 2009, the Assembly Committee on Natural Resources held a public hearing. The Department did not receive any comments or requests for modification as a result of the hearing.