



ALLOW HUNTING OF MOURNING DOVES

House Bill 6147 as introduced
Revised First Analysis (12-4-00)

Sponsor: Rep. Sue Tabor
Committee: Conservation and Outdoor
Recreation

THE APPARENT PROBLEM:

Reportedly, 39 states allow the hunting of mourning doves. In 1985, the Natural Resources Commission voted to establish a mourning dove hunting season in Michigan, but as the result of a lawsuit filed by the Michigan Humane Society challenging the commission's authority to establish a mourning dove hunting season, the state appeals court ruled that only the legislature can declare an open season under the Game Law of 1929. The Game Law was replaced in 1988 with the Wildlife Conservation Act (which now is part of the Natural Resources and Environmental Protection Act, Public Act 451 of 1994), which specified that only the legislature can authorize the establishment of the first open season for an animal declared as game, and mourning doves were not included on the list of game animals in these subsequent acts.

Legislation has been introduced to allow mourning doves to be hunted as game animals.

THE CONTENT OF THE BILL:

The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to add the mourning dove to the act's list of game animals that could be hunted in open season beginning June 1, 2001. Adding the June 1, 2001 date to the section of the act defining "game" [animal] also would extend the effective date when privately owned cervids would be removed from the act's list of game animals. Finally, the bill would repeal the section of the act (MCL 324.40110) that currently allows only the legislature to designate a species as game.

MCL 324.40103

BACKGROUND INFORMATION:

Michigan Humane Society v Natural Resources Commission. In 1985, the Natural Resources Commission (NRC) voted to establish a mourning dove hunting season, and the Department of Natural Resources followed that action by issuing hunting regulations for a 22-day open hunting season for mourning doves in the fall of 1985. The Michigan Humane Society filed suit against the commission and the DNR challenging their authority to establish a mourning dove season, and the Michigan Court of Appeals (158 Mich App 393, 1987) found that, while the commission had the power to establish the time, manner, and bag limits of a hunt, the power to declare an open season rested with the legislature as provided under the then-Game Law of 1929. The court said, in part, that "this matter is too important to rest on the assumption that the NRC has implied authority to establish a mourning dove season simply because no laws expressly forbid such a season." One year later, the Wildlife Conservation Act repealed the Game Law of 1929, and replaced and modified several of its provisions, including a provision that only the legislature could designate a species as game and authorize the establishment of the first open season for a newly designated game animal. Mourning doves were not included on the list of species considered game under the Wildlife Conservation Act (which since has been repealed and incorporated into the Natural Resources and Environmental Protection Act of 1994). Reportedly, the court also issued a permanent injunction against the DNR or the NRC with regard to promoting the hunting of mourning doves (which is why the director of the DNR appeared before the House committee to speak only as an individual citizen of the state and not as the DNR director).

Repealer. Section 40110 of the NREPA, that the bill would repeal, reads as following:

Only the legislature may designate a species as game. If an animal is designated under this section by the legislature as game, then only the legislature may authorize the establishment of the first open season for that animal. After the legislature authorizes the establishment of the first open season for game pursuant to this section, the department [of natural resources] may issue orders pertaining to that animal for each of the purposes listed in section 40107.

Section 40110 was added by Public Act 57 of 1995, which incorporated the former Wildlife Conservation Act (Public Act 256 of 1988).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (11-27-00)

ARGUMENTS:

For:

Among the arguments offered by proponents of the bill are the following:

Mourning doves provide a great hunting opportunity as well as an excellent “recruitment” tool for sport hunting. Mourning doves are especially fun to hunt because their fast, erratic flight patterns make them an extremely challenging “shot,” and allowing them to be hunted would increase the recreational opportunities for state residents. In addition, because mourning doves can be hunted from a stationary position – unlike hunting some other game animals, which may involve walking over rough terrain, climbing into tree stands, or standing in cold water – they make successful hunting more feasible for a number of categories of hunters who may have difficulty in successfully hunting other game animals. Thus, for example, elderly hunters with limited mobility and disabled hunters can easily hunt these birds, and mourning dove hunting can provide an excellent opportunity for new, inexperienced hunters to learn shooting skills. In addition, given a reported decline in the number of young people who take up sport hunting, allowing the hunting of mourning doves can be a way to involve more young people in sport hunting, as well as a way to get young people out of the house and away from television and video games. Mourning doves, moreover, are plentiful and easy to spot, which means that young people, who need movement and action to hold their attention, are more likely to see lots of the birds. Also, hunting mourning doves doesn’t require stealth or silence, so young hunters, who may find it

harder to stand still or move quietly, can talk and move around without scaring the birds away.

Currently, 39 other states allow the hunting of mourning doves, which, as migratory birds, already are regulated under federal migratory bird regulations and under international treaties. The most recent states to allow mourning dove hunting are the neighboring states of Wisconsin (last year), Ohio (1995), and Indiana (1987). Michigan loses economically by not allowing dove hunting, since state residents must leave the state in order to hunt doves, and obviously no hunters come to Michigan to hunt doves. Although a representative from the Ohio Department of Natural Resources testified that the number of small game hunters has not increased since Ohio allowed the hunting of mourning doves, he did indicate that 40,000 licensed hunters hunted doves during Ohio’s first season (the ODNR had a research program involving bird banding and a \$100 reward for anyone returning the band from a dove), and that within three years the number of licensed hunters hunting doves has risen to over 60,000. Mourning doves reportedly are the most popular game bird in North America, and Michigan residents should be given the opportunity to hunt them. Finally, some people argue that their rights and freedoms as individuals are being infringed upon by the ban on hunting mourning doves. Hunters are a minority of the population (an estimate given in committee testimony was that 9 percent of Michigan residents are hunters), and some hunters believe that this hunting ban deprives them of their rights.

Against:

While proponents of the bill argue that it is fun to hunt mourning doves and that teaching young people to hunt mourning doves is desirable, other people believe strongly that killing animals for “fun” – much less teaching children to kill animals for “fun” – is not only unnecessary but wrong. Reportedly, the majority of the state’s citizens oppose the hunting of mourning doves, and as a state natural resource mourning doves belong to all of the state’s citizens, not just to those who hunt. In making such a major policy change as this, the majority opinion should prevail. Both sides appear to agree, moreover, that hunting is not needed to “manage” the current mourning dove population, which reportedly is stable. Moreover, despite testimony about what a delicacy mourning dove meat is, opponents argue that the one ounce of breast meat that a mourning dove can provide for eating means that the desire to hunt these birds basically is a desire to use the birds as target practice rather than a food source.

Against:

The bill not only would place mourning doves on the statutory list of “game” animals that can be hunted, it also would repeal a section of law that currently makes the designation of game animals the exclusive prerogative of the legislature. Proponents of the bill argue that they want to allow the Natural Resources Commission to be able to set the initial open season for animals newly designated as “game,” which the repeal would do, and that continuing to define “game” in statute means that the legislature still would be able to designate – or remove – animals from the list of game animals. However, it does not seem clear that this would remain the exclusive prerogative of the legislature, which it should. Would repeal of this section of the law mean that, in addition to legislative designation or removal from the “game” list, the Natural Resources Commission could, through its orders (as it attempted to do in 1985), also designate and remove animals from this list? Couldn’t the stated objective – allowing the commission to set the initial open season – be accomplished simply by deleting this language from this section of the law instead of repealing the entire section?

Response:

There is no reason to believe that repealing this section of the Natural Resources and Environmental Protection Act would affect the legislature’s exclusive authority to designate or remove animals from the act’s list of “game” animals. In the first place, the definition of “game” is in statute, in the form of a list of animals that fall under the designation of “game,” which means that the list can only be changed by legislation passed by the legislature and enacted. Secondly, by the principle of statutory construction, under which the expression of one thing excludes another, it should be pointed out that the list is a list exclusively of animal species. That is, the list does not conclude with a subsection allowing the Natural Resources Commission to designate other species as “game,” and therefore can be construed to say that the NRC cannot make such designations. Finally, it should be pointed out that Section 40113a of the NREPA, which implements Ballot Proposal G of 1996, which was placed on the ballot by the legislature and approved by the voters of the state, specifically states that the Natural Resources Commission “shall have the exclusive authority to regulate the taking of game as defined in section 40103 in this state.” That is, the language says nothing about giving the NRC the authority to designate game but instead clearly gives the commission the exclusive authority to regulate the *taking* of game as statutorily defined. Thus, the bill should have no effect either on the legislature’s authority to designate game animals nor on its *exclusive* authority to do so.

POSITIONS:

A representative of the Michigan United Conservation Clubs testified in support of the bill. (11-28-00)

A representative of the Wildlife Legislative Fund of America testified in support of the bill. (11-28-00)

A representative of the Safari Club International Southeast Michigan Bowhunters Chapter testified in support of the bill. (11-28-00)

Pheasants Forever (a conservation organization) indicated support of the bill. (11-28-00)

A representative of the Detroit Audubon Society (a chapter of the National Audubon Society) testified in opposition to the bill. (11-28-00)

A representative of the Michigan Audubon Society (a separate chapter of the National Audubon Society) testified in opposition to the bill. (11-28-00)

A representative of the Humane Society of the United States testified in opposition to the bill. (11-28-00)

A representative of the Michigan Humane Society testified in opposition to the bill. (11-28-00)

The American Society of the Prevention of Cruelty to Animals (ASPCA) indicated opposition to the bill. (11-28-00)

The Fund for Animals (founded by writer Cleveland Amory) indicated opposition to the bill. (11-28-00)

Analyst: S. Ekstrom

#This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.