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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 23-048

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

#### 1. Statutory Authority

As noted in the department’s analysis for the proposed rule, the department has broad statutory authority to establish hunting seasons and bag limits by rule under s. 29.014 (1), Stats. The department’s authority to establish alternate bag limits by order, as the rule proposes, is more questionable. As a generally applicable standard with the force and effect of law, the alternate bag limits authorized to be selected by the department secretary under s. NR 10.01 (1) (L) 2. arguably fall within the definition of a “rule” under s. 227.01 (13), Stats. If so, they must be promulgated as a rule. In addition, although s. 29.014 (1), Stats., does not expressly require the department to promulgate bag limits by rule, that provision is within a section of the statutes entitled “Rule-making for this chapter” and has historically been interpreted to provide a broad grant of rulemaking authority. It is not clear that the provision authorizes the department to establish bag limits by order. In lieu of orders, would it be feasible to establish, by rule, alternate bag limits that apply when certain conditions of federal law are satisfied?

#### 2. Form, Style and Placement in Administrative Code

a. In s. NR 10.01 (1), each reference to a paragraph within sub. (1) that uses the abbreviation “sub.,” “subs.,” or “subd.” should be revised to the abbreviation “par.” or “pars.,” as appropriate. For example, in sub. (1) (intro.), the reference to “sub. (a)” should be revised to “par. (a)”. [ss. 1.10 (1) (a) (Example) and 1.15 (2) (c) (Examples), Manual.]

b. In s. NR 10.01 (1) (intro.), the department should use the introductory statement to explain the interrelationship of each of the paragraphs, not just pars. (a), (b), and (L). For example, something like, “each of the following requirements apply”. [s. 1.11 (1) and (2), Manual.]

c. The treatment clause for SECTION 3 of the proposed rule should be revised to more precisely identify the affected provision as “NR 10.01 (2) (g) 1.,” rather than “NR 10.01 (2) (g)”. Subdivision 2. of par. (g) is not affected by the proposed rule. The rule caption’s introductory clause that lists the affected provisions should also be updated to identify this amended provision.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

In s. NR 10.01 (1) (n), it appears that a reference to s. 29.197 (1), Stats., should instead refer to s. 29.197 (2), Stats.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. NR 10.01 (1) (m) (table), commas should be added after “wood ducks” and “common snipe” in the first column.

b. The rule creates a definition of “Open Water Zone” but also retains the phrase “Open Water zone as established in s. NR 10.32” in several provisions in s. NR 10.01 (1) (b) (table) (1). Does the zone depicted in s. NR 10.32 match the definition created by the rule? If so, is the new definition needed given the references to s. NR 10.32? See also comment 6, below. Lastly, if the definition is retained, is it necessary for the term “Open Water Zone” to be capitalized? The term is not a proper name, and similar terms in the current code are not capitalized (see, for a comparison, the terms “pheasant management zone” and “wild turkey hunting zone”). [s. 1.06 (2), Manual.]

c. In s. NR 10.01 (1) (L), some provisions are missing periods at the end of the text.

d. In s. NR 10.01 (1) (n), is it the department’s intent to require persons who participate in the special youth hunt to both obtain a hunter education certificate and to satisfy the requirements for participating in a mentored hunt? If not, the phrase “shall be in compliance with ss. 20.592 and 29.593, Stats.” could be revised to avoid confusion. For example, if the intent is to allow a person who meets the requirements under s. 29.592, Stats., to participate without obtaining a hunter education certificate, that could be clarified.

#### **6. Potential Conflicts With, and Comparability to, Related Federal Regulations**

The definition of “open water zone” in SECTION 1 of the proposed rule, creating s. NR 10.001 (20), appears to be worded differently than the description of “open water zone” included in Wisconsin-specific area, unit, and zone descriptions for ducks and coots in a proposed U.S. Fish and Wildlife Service rule published on January 30, 2023. Should the definition mirror the description in the proposed federal rule?