

Clearinghouse Rule 19-068

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING AND AMENDING RULES

The statement of scope for this rule, SS 125-18, was approved by the Governor on December 21, 2018, published in Register No. 756B, on December 26, 2018, and approved by the Natural Resources Board on January 23, 2019. This rule was approved by the governor on _____.

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 10.001 (9w), NR 10.01 (1) (g) 1. d. and dm., 2. c., and 3. c., NR 10.05 (2), NR 10.125 (1) (b), (c) 1., 2. and 3., and (2), and NR 10.31 (3) (a); to **amend** NR 10.01 (1) (a), (b), (g) 1. a., b., c., e., 2 a. and b., 3. a., b., d., and (u); NR 10.06 (5), NR 10.125 (1) (c) and NR 10.31 (1), relating to establishing the 2019 migratory bird season framework and regulations.

WM-26-18

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 migratory game bird hunting.

Additional rule-making authority is found in s. 29.192, Stats., which enables the department to regulate the harvest of Canada geese.

2. Statutory Authority: In promulgating these rules, statutes being interpreted or establishing agency authority include ss. 29.014 and 29.192.

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

3. Explanation of Agency Authority: The chapter on wild animals and plants, in 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: The department promulgates identical or nearly identical emergency and permanent migratory bird season rules in odd years when legislative review will occur.

5. Plain Language Analysis:

SECTIONS 1, 3, 5, 8, & 11, 14, 15 & 17 eliminate the Horicon Canada goose management zone. The rule establishes one Canada goose hunting season and zone statewide.

SECTIONS 2, 4, 7, 8 & 10 decrease the daily bag limit for pintails from two to one, increase the daily bag limit for black ducks from one to two and increase the light goose season (snow and Ross's geese) by 15

days, increase the early teal season to 9-days and move the North Zone duck season one week later by opening on the Saturday nearest Oct. 1, similar to 2018. These sections specify the use of the second split (12-day season closure) in the South Zone Exterior Canada goose season to extend the season to Jan. 3, similar to 2018. It also corrects an error in administrative code to maintain a consistent open date for all species of geese.

SECTIONS 6 & 9 changes the term “split” to the more commonly used term “closure.”

SECTION 10 adjusts the number of days allowed to hunt ducks by use of falconry to match the maximum federal allowance per the Migratory Bird Treaty Act.

SECTION 12 clarifies the shooting hours for the early teal season.

SECTION 13 removes outdated language referring to a Canada goose maximum allowable harvest.

SECTION 16 removes the reference to the “exterior goose management zone” which is no longer accurate with the removal of the Horicon goose management zone.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service (USFWS) regulations process. As part of the Federal rule process, the USFWS proposes a duck harvest-management objective that balances hunting opportunities with the desire to achieve adaptive waterfowl management strategies identified in the North American Waterfowl Management Plan (NAWMP). NAWMP primary goals are: **Goal 1** – achieve abundant and resilient waterfowl populations to support hunting on other uses without imperiling habitat, **Goal 2** – achieve wetlands and related habitats sufficient to sustain waterfowl populations at desired levels, while providing places to recreate and ecological services that benefit society and **Goal 3** – grow numbers of waterfowl hunters, other conservationists, and citizens who enjoy and actively support waterfowl and wetlands conservation.

The proposed modifications included in this rule order are consistent with the parameters and guidelines which are annually established by the USFWS in 50 CFR 20.

7. Comparison with Similar Rules in Adjacent States: Since migratory bird species are managed under federal law, each region of the country is organized in a specific geographic flyway which represents distinct migratory game bird populations. Wisconsin along with Minnesota, Michigan, Illinois and Iowa are members of the Mississippi Flyway. Each year the states included in the flyways meet to discuss regulations and guidelines offered to the flyways by the USFWS. The USFWS regulations and guidelines apply to all states within the Flyway and therefore the regulations in the adjoining states closely resemble the rules established in this rule order, and only differ slightly based on hunter desires, habitat and population management goals. However, these variations fall within guidelines and sideboards established by the USFWS.

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

These rules will modify the Canada goose hunting season in what was considered the Horicon Canada goose management zone consistent with options available under the federal framework for Wisconsin in 2019. Hunter harvest has declined by 85% and the number of permits issued has declined by 75% since 1999. The purpose of the Horicon Canada goose management zone was to limit the impact that hunters

would have on the Interior nesting population (formerly Mississippi Valley Population) of Canada geese. Over the past several decades the concentration of Interior nesting Canada geese has declined in the Horicon Zone to the point that 2017 was the lowest recorded year with fewer than 30,000 geese observed in the Horicon National Refuge. Observations indicate that the local Temperate nesting (Giant) Canada geese have increased to a point that they are now decoying the migrating Canada geese away from Horicon and now can be found in areas all throughout the state. The department has determined that a specialized zone is no longer needed as the necessity for the management zone has diminished and no longer functions as the management tool for which it was intended. Eliminating the Horicon Canada goose management zone will simplify hunting regulations and increase hunting opportunity.

The proposed increase in the light goose (snow and Ross's geese) season is to expand the opportunity to encompass September 1 – 15. Per federal regulations we are allowed to utilize 107 days to hunt light geese similar to Canada geese, however only been utilizing 92 days to hunt light geese. We are proposing this change to provide additional opportunity and simplify regulations. There is no biological concern of overharvest of light geese in the first two weeks of September, but it does provide additional hunting opportunity.

Per federal regulations, states within the Mississippi Flyway may utilize 2 season splits during the regular Canada goose season. In the past the department has not elected to do so, but the department addressed the potential season structure this year in the public input process, and a majority of the public favor adding the second split in the South Zone Exterior Canada goose season. This second split would close the Canada goose season with the South Zone duck season (Dec. 2) for 13 days, then re-open the goose season on Dec. 16 and remain open through Jan. 3. The input indicated a desire from hunters to extend the season over the Christmas and the New Year's holidays when people have time off and could take advantage of this additional hunting opportunity. From a harvest perspective, 90% of all Canada goose harvest occurs before Dec. 1, so the department is not averse to adjusting season dates in the month of December as very few hunters participate during this time and it will have a very minimal impact on overall harvest.

The proposed later start date for the North Zone duck season was based on input collected from conservation organizations as well as the public. The department has seen a change occurring in both input collected from hunters via the waterfowl hunters survey as well as input collected through public contact, including emails, phone calls and public hearings. The input from the waterfowl hunter survey still shows slight support for a start in the North Zone on the Saturday nearest Sept. 24, however input received from hunters through public contact combined with input from the Wisconsin Conservation Congress has shown a shift in support for a later start in the North Zone. Generally, hunters recall their most recent experience. Since Wisconsin has had above average fall temperatures over the past several years, the position that hunters express is that there is additional duck hunting opportunity after the season has closed. Based on the shift in interest and input over the past 3 years to start later in the North Zone as well as the position that the Conservation Congress expresses, the department proposes starting the North on the Saturday nearest Oct. 1, similar to 2018.

With the inclusion of the early teal season in Wisconsin, the current language in Wisconsin Administrative Code exceeds the maximum allowable days to hunt ducks per federal regulations because of the extended falconry season. Prior to the early teal season, the department set the regular duck season to match all dates that are available to hunt ducks and in addition opened the falconry season starting the second Friday in January and continuing for 45 days. With the inclusion of the early teal season, the department increased the number of days to hunt ducks by potentially 16 days. The number of days to hunt ducks by method of falconry per Migratory Bird Treaty Act cannot exceed 107 days. This rule

proposal would change the language to state that the falconry season opens the second Friday in January and continues for a length of time to not exceed 45 days; this accounts for all potential possibilities.

Per federal regulations Wisconsin has the opportunity to hold a 16-day early teal season. For the past five years Wisconsin has held a seven-day early teal season. Based on hunter survey results and public input we have seen interest continue to increase with nearly 70% of public input supporting the early teal season. With that increased interest we have also seen interest in lengthening the season. This year we are proposing a nine-day early teal season which will encompass two weekends, one of which is a holiday weekend. Meaning this season could potentially include five days where hunters have off of work out of the nine-day season.

Under the federal framework for duck hunting, the USFWS is allowing Wisconsin no more than one pintail per day in the bag limit. The pintail bag limit was two daily during the 2018 season.

Under the federal framework for duck hunting, the USFWS is allowing Wisconsin no more than two black duck per day in the bag limit. Wisconsin has traditionally been conservative on our black duck bag limit due to potential misidentification between black ducks and hen mallards. All other states in the Mississippi Flyway are currently at a daily bag limit of two black ducks per day and after reaching out with other states in our region, the WDNR feels there is little concern that increasing the black duck bag limit to two will negatively impact our local mallard population.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: 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.

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 or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have an economic impact on a substantial number of small businesses under s. 227.24(3m) Stats.

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:

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

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

SECTION 1. NR 10.001 (9w) is repealed.

SECTION 2. NR 10.01 (1) (a), (b), and (g) 1. a., b., and c. are amended to read:

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Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
NR 10.01 (1) (a) <i>Teal species</i>	Entire state.	9:00 am Sunrise to sunset on Sept. 1 to 7 <u>September 1 – September 9.</u>	6 teal.	Three times the daily bag limit through the entire season except opening day when it is the same as the daily bag limit and the second day when it is twice the daily bag
(b) <i>All species of wild ducks</i>	Entire state.	As established by zone.	6 ducks to include not more than 4 mallards of which only 1 may be a hen mallard, 4 black duck , <u>2 black ducks</u> 1 pintail, 2 canvasbacks, 2 redheads, 3 scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.	Three times the daily bag limit except opening day when it is the same as the daily bag limit and the second day when it is twice the daily bag limit.
	Northern zone as established in s. NR 10.32.	Beginning on the Saturday nearest September 24 <u>October 1</u> and continuing for 60 consecutive days.		
	Southern zone as established in s. NR 10.32.	Beginning on the Saturday nearest October 1 and continuing for 9 days, followed by a 5-day split <u>closure</u> , and then reopens for 51 consecutive days.		

	Mississippi River zone as established in s. NR 10.32.	Beginning on the Saturday nearest October 1 and continuing for 7 days, followed by a 7-day split -closure, and then reopens for 53 consecutive days.		
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(g) Geese 1. Canada geese and its subspecies	a. Entire state.	September 1 – September 15	5	15 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	b. All that part of the exterior zone lying within the northern zone established in s. NR 10.32 <u>Northern zone as established in s. NR 10.32.</u>	September 16 and continues for 92 consecutive days.	2 3	9 6 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	c. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 1. d. and e. <u>Southern zone as established in s. NR 10.32.</u>	Begins on September 16 continuing until the closure during the <u>closure of the southern duck zone hunting season in par. B</u> and then reopens continuing <u>until the closure of the southern duck zone hunting season in par. B</u> and then reopens on Dec. 16 continuing for a season total of 92 days	2 3	9 6 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.

SECTION 3. NR 10.01 (1) (g) (1) d. and dm. are repealed.

SECTION 4. NR 10.01 (1) (g) 1. e., 2. a. and b. are amended to read:

	e. Mississippi River subzone.	Begins on Saturday nearest October 1 and continues for 7 days followed by a 7-day split closure, and then reopens for a season total of 92 days.	23	96 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
2. Snow or blue and Ross' geese.	Entire state	As established by zone- <u>September 1- September 15</u>	20	60 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32-Northern zone as established in s. NR 10.32.	September 16 and continues for 92 consecutive days.		
	b. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 1. d. and e. Southern zone as established in s. NR 10.32.	Begins on September 16 continuing until the closure during the 5-day split closure in the southern duck zone hunting season in par. B and then reopens continuing until the closure of the southern duck zone hunting season in par. B and then reopens on Dec. 16 continuing for a season total of 92 days		

SECTION 5. NR 10.01 (1) (g) 2. c. is repealed.

SECTION 6. NR 10.01 (1) (g) 2. d. is amended to read:

	d. Mississippi River subzone.	Begins on the Saturday nearest October 1 and continues for 7 days, followed by a 7-day split <u>closure</u> , and then reopens for a season total of 92 days.		
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SECTION 7. NR 10.01 (1) (g) 3. a. and b. is amended to read:

3. All other geese.	a.. All that part of the exterior zone lying within the northern zone established in s. NR 10.32. <u>Northern zone as established in s. NR 10.32.</u>	September 20 <u>16</u> and continues for 92 consecutive days.	1 white-fronted goose and 1 brant.	3 white-fronted geese and 3 brant except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	b. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 1. d. and e. <u>Southern zone as established in s. NR 10.32.</u>	Begins on September 20 <u>16</u> continuing until the closure during the 5-day split <u>closure</u> in the southern duck zone hunting season in par. B and then reopens continuing <u>until the closure of the southern duck zone hunting season in par. B and then reopens on Dec. 16</u> continuing for a season total of 92 days		

SECTION 8. NR 10.01 (1) (g) 3. c. is repealed.

SECTION 9. NR 10.01 (1) (g) 3. d. is amended to read:

	d. Mississippi River subzone.	Begins on the Saturday nearest October 1 and continues for 7 days, followed by a 7-day split <u>closure</u> , and then reopens for a season total of 92 days.		
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SECTION 10. NR 10.01 (1) (u) is amended to read:

<i>(u) Falconry: special season. Any person possessing a valid falconry permit and hunting license shall be restricted to the following migratory game bird species.</i>				
1. All species of wild ducks, mergansers and coots.	Northern zone as established in s. NR 10.32.	Concurrent with the open youth waterfowl hunt in par. V and open northern zone regular duck season in par. b. Reopens on <u>the first or second Friday in January and continues for to not exceed 45 days</u>	3 in aggregate with those species listed under subd. 2.	9 in aggregate with those species listed under subd. 2 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
	Southern zone established in s. NR 10.32	Concurrent with the open youth waterfowl hunt in par. V and open northern zone regular duck season in par. b. Reopens on <u>the first or second Friday in January and continues for to not exceed 45 days</u>	3 in aggregate with those species listed under subd. 2.	9 in aggregate with those species listed under subd. 2 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.

	Mississippi River zone as established in s. NR 10.32	Concurrent with the open youth waterfowl hunt in par. V and open northern zone regular duck season in par. b. Reopens on first or second Friday in January and continues <u>to not exceed</u> 45 days	3 in aggregate with those species listed under subd. 2.	9 in aggregate with those species listed under subd. 2 except opening day when it is the same as the daily bag limit and the second day, when it is twice the daily bag limit.
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SECTION 11. NR 10.05 (2) is repealed.

SECTION 12. NR 10.06 (5) is amended to read:

NR 10.06 (5) SHOOTING HOURS. Shooting hours for bear, bow deer, deer with firearms, elk and small game are 30 minutes before sunrise through 20 minutes after sunset. Shooting hours for migratory game birds are 30 minutes before sunrise to sunset except for teal during a season for hunting teal species only. The hours for shooting teal during ~~a teal-only~~ the season established in 10.01(1)(a) shall be sunrise through ~~7:00 p.m.~~ sunset. ~~except on the first day when shooting hours begin at 9:00 a.m.~~ All pheasant shooting starts at 9:00 a.m. on the first day of the pheasant hunting season established in s. NR 10.01 (2) (c). The department shall establish the specific opening and closing times annually in the hunting regulations pamphlets. Opening and closing times for zone A southern and northern areas shall be based on astronomical data collected by the U.S. naval observatory, Washington D.C., 20392-5420 for Sheboygan, Wisconsin and Powers, Michigan, respectively. The shooting hours for the other zones shall be obtained by adding minutes to the Zone A a.m. and p.m. columns as follows:

SECTION 13. NR 10.125 (1) (b) is repealed.

SECTION 14. NR 10.125 (1) (c) is amended to read:

NR 10.125 (1) (c) Validity. All permits are valid only in the zones and for the time periods specified on the permit during the open season established for Canada geese. ~~The department shall use the following procedure when specifying the permit zones:~~

SECTION 15. NR 10.125 (1) (c) 1., 2. and 3., and (2) are repealed.

SECTION 16. NR 10.31 (1) is amended to read:

NR 10.31 (1) EXTERIOR STATEWIDE ZONE. The ~~exterior~~ statewide goose management zone is ~~defined in s. NR 10.001 (9w) and~~ includes the following subzones:

SECTION 17. NR 10.31 (a) is repealed.

SECTION 18. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 19. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)