

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS
WM-11-11

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041 and 227.11(2)(a), Stats., interpreting ss. 29.014, 29.041 and 29.192, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 2011 migratory game bird seasons and waterfowl hunting zones. Season dates and bag limits will be set for ducks and Canada geese. Under international treaty and federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service regulatory process. Because of the timing of Wisconsin's rule process and the U.S. Fish and Wildlife Service rule process, the actual season lengths, dates and bag limits cannot be determined at this time for much of the rule.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will begin at 7:00 p.m. at each of the following locations:

August 1, 2011 State Office Bldg, Rooms B-19 and B-20, 3550 Mormon Coulee Rd, La Crosse

August 2, 2011 Spooner Agricultural Research Station, W6646 Hwy. 70, Spooner

August 3, 2011 Agricultural Services Center, Main conference room, 3369 West Brewster St., Appleton

August 4, 2011 Comfort Suites Lake Country, Thunder Bay room, N14 W24121 Tower Place, Pewaukee

Plain Language Analysis: This rule order establishes the season length and bag limits for the 2011 Wisconsin migratory game bird seasons. For ducks, the state is divided into two zones each with 60-day seasons. The season begins at 9:00 a.m. September 24 and continues for 60 consecutive days in the north, closing on November 22. In the South the season begins at 9:00 a.m. on October 1 and continues through October 9, followed by a 5-day split, and then reopens on October 15 and continues through December 4. The daily bag limit is 6 ducks including no more than: 4 mallards, of which only 1 may be a hen, 1 black duck, 1 canvasback, 3 wood ducks, 2 scaup, 2 pintails and 2 redheads.

For Canada geese, the state is apportioned into 2 goose hunting zones, Horicon and Exterior. Other special goose management subzones within the Exterior Zone include Brown County and the Mississippi River. Season lengths are: Horicon Zone - 92 days (2 hunting periods, first period beginning September 16 and the second on October 31); Exterior Zone in the northern duck zone - 85 days (Sept. 17 – Dec. 10); Exterior Zone in the southern duck zone – 85 days (Sept. 17 – Oct. 9 and Oct. 15 – Dec. 15) and Mississippi River subzone - 85 days (Oct. 1 – Oct. 9 and Oct. 15 – Dec. 29). The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

This rule establishes that the youth waterfowl hunting season will be held on September 17 and 18.

This proposal may establish a new duck hunting zone configuration. At the time of submittal of this hearing notice to the Legislative Reference Bureau, the USFWS had not determined if they can give our state the option of reconfiguring duck hunting zones because they are engaged in a concurrent rule

making process. If the USFWS does not grant Wisconsin's request to change duck hunting zones, the department will not propose a SECTION 3 in this board order when we request adoption and will not take public input on SECTION 3 at public hearings.

If the USFWS does grant Wisconsin's request to change duck hunting zone configurations, the department will request public input at hearings on three new alternatives. Under all three alternatives, the Northern Zone duck hunting season would not change from the dates listed in this proposal. The Canada goose hunting season would be modified so that it is also closed during the closed period in duck zones that have split seasons.

The first alternative the department will take comments on is to create a new, third duck hunting zone that consists of Mississippi River areas west of the Burlington Northern Railroad tracks. Under this scenario, the season dates in this zone would include a split when hunting is not allowed that is four days longer than the current five day split. The duck season dates would be October 1 to 9, reopening on October 19 and continuing through December 8 for a 60 day season.

The second alternative is to create a new, third duck hunting zone that consists of the Lake Michigan areas east of a line beginning 500 feet from shore, not including Green Bay. Under this scenario, the season dates in this zone would not include a split or closed period. The season would begin on October 15 and continue through December 13 for a 60 day season.

A third alternative is to create two new zones, one that consists of Lake Michigan and one that consists of the Mississippi River as described above. Under this scenario, the USFWS proposes to only allow continuous straight seasons with no opportunities for splits or closed periods during the season. Under this scenario the 60 day season in the Mississippi River zone would open on October 8 and continue through December 6. In Lake Michigan, it would open on October 15 and close on December 13. In the South Zone, it would open on October 1 and continue through November 29

A fourth alternative that the department will request input on is the existing zones and season dates.

Summary of, and Comparison with, Existing or Proposed Federal 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 waterfowl population goals identified in the North American Waterfowl Management Plan (NAWMP). Under this harvest-management objective, the relative importance of hunting opportunity increases as duck populations approach the goals in the NAWMP. Thus, hunting opportunity would be maximized when the population is at or above goals. Additionally, while USFWS believes that the NAWMP's population goals would tend to exert a conservative influence on overall duck harvest-management. Other factors, such as habitat, are to be considered.

In the past, the regular Canada goose season was based on the allowable Mississippi Valley Population (MVP) harvest which was determined based on the spring breeding population estimate obtained from an aerial survey of the MVP breeding range as prescribed by the Mississippi Flyway MVP management plan. However, because locally produced giant Canada geese now constitute a considerable portion of the harvest in all states that also harvest Mississippi Valley Population birds, the Mississippi Flyway Council is testing the use of a standard season framework for 5 years. Beginning in the fall of 2007 and continuing through 2011, season lengths and bag limits for each MVP harvest state have remained unchanged. Each state retains the flexibility to schedule the timing of their Canada goose season. In addition, if the MVP spring population numbers dropped to a predetermined low level during the 5-year period, the stable season framework would be adjusted.

At the time of submittal of this rule and hearing notice to the Legislative Council Clearinghouse and to the Reference Bureau, the USFWS had not determined if they can give our state the option of reconfiguring duck hunting zones because they are engaged in a concurrent rule making process to revise 50 CFR 20. If the USFWS does not modify their rules allowing Wisconsin to change duck hunting zones, the

department will not propose a SECTION 3 in this board order when we request adoption and will not take public input on SECTION 3 alternatives at public hearings.

Except as described above, proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the USFWS in 50 CFR 20.

Comparison with Rules in Adjacent States: Since migratory bird species are managed under international treaty, each region of the country is organized in a specific geographic flyway which represents an individual migratory population of migratory game birds. 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 FWS 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.

Summary of Factual Data and Analytical Methodologies: For the regular duck season, a data based process called Adaptive Harvest Management is used annually by the USFWS and the Flyways to determine which of 3 framework alternatives best matches the current year's data on populations and habitat (data from the spring pond and duck survey). The option of a closed season is also possible if survey conditions indicated that this is necessary for the management of duck populations. The determination of which alternative is selected is based in part on the spring wetland conditions on the breeding grounds and the Mid-Continent Mallard population. These data come from the May Pond and Breeding Waterfowl Population Surveys conducted by the USFWS and Canadian Wildlife Service on traditional survey areas as well as surveys from select states, including Wisconsin.

In addition to the annual waterfowl hunting regulation process described below, 2011 is the open window to change state duck hunting zones as allowed by the USFWS every 5 years. Since 1991, the USFWS has regulated how states can arrange duck hunting zones and season splits. A season split is a temporary closure of the hunting season in order to extend the hunting later in the duck season. The USFWS has allowed 3 configurations of duck zones and splits; 1)One statewide zone with the annual option to have 2 season splits, 2)Two zones with the annual option for 1 season split in each zone, 3)Three zones without the option for a split. Each zone can have a unique size or shape but must be contiguous and the boundaries clear.

Wisconsin has always selected the 2 zone with split option to provide a north and south duck hunting zone. Over the years, we have moved our zone line but always maintained a general north and south separation recognizing the differences in weather and hunting opportunities. While we have worked with the USFWS restrictions on duck hunting zones it has been our consistent position that the configuration of duck zones is an issue of hunter opportunity and satisfaction which does not have significant impact on duck populations, therefore, states should be allowed to manage zones without federal regulation. We have provided comment to the USFWS with this position over the years but the USFWS has maintained control over state duck hunting zones. In August, 2010 the USFWS announced their intent to offer 2 additional duck hunting zone options; 3 zones with splits and 4 zones without splits. Unfortunately, the federal implementation of these new opportunities has moved slower than planned and there is still uncertainty whether it will be implemented in 2011 or delayed. Potential configurations are described in SECTION 3 of the rule order. If one of these new options is selected it is likely that the season structure for the north and south zones will experience only minor changes from that in this proposed rule order while 1-2 new season structures will be offered in the new zones.

Wisconsin's regular Canada goose season harvest consists of close to a 50:50 ratio between resident giant and MVP population Canada geese. As a result, the parameters of Wisconsin's regular goose seasons are guided by the Mississippi Flyway management plans for the MVP and giant Canada goose populations and approved by the Mississippi Flyway Council and the USFWS. The health of these populations was measured with spring breeding population surveys, survival data and harvest rates obtained from banding and production studies. The surveys and studies are conducted annually and are

supported by the State of Wisconsin as part of the MFC. The result of this work is reviewed annually by the MFC committee and the USFWS to measure the impact of the stable season framework trial period.

The primary elements of Wisconsin's waterfowl regulatory process include conducting spring waterfowl surveys, participation in MFC meetings, commenting on federal proposals, and soliciting input from the public. The state process begins with Flyway meetings in February and March each year where staff provide input to the development of federal framework alternatives and requests related to the early seasons. In spring and summer, breeding waterfowl surveys and banding are conducted in support of the regulatory process.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses. Additionally, no significant costs are associated with compliance to these rules.

Effects on Small Businesses: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608) 267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to kent.vanhorn@wisconsin.gov. Comments may be submitted until August 4, 2011. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary