

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

The statement of scope for this rule, SS 032-15, was approved by the Governor on March 26, 2015, published in Register No. 712A1, on April 6, 2015, and approved by the Natural Resources Board on May 27, 2015. This rule was approved by the governor on September 10, 2015.

The Wisconsin Natural Resources Board proposes an order to repeal NR 10.01 (g) 4.; to amend NR 10.01 (1) (b), (g) 1. (intro.) and d. and e., 2. (intro) and d., 3., (h), and (u) 1. (intro.) and 3. (intro.), 10.06 (5) (intro.), 10.12 (3) (a), and 11.044; to repeal and recreate NR 10.12 (3) (e); and to create NR 10.01 (1) (a) and (g) 1. dm. related to establishing migratory bird hunting seasons and regulations.

WM-06-15

Analysis Prepared by the Department of Natural Resources

Statutory Authority: The chapter related to wild animals and plants, in s. 29.014 Stats., “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 promulgate rules related to migratory game bird hunting.

Wisconsin’s boundary waters with other states are popular waterfowl hunting locations. Specific authority to regulate hunting in and on all interstate boundary waters and outlying waters is established in s. 29.041 Stats.

Sections 23.11 and 29.014, Stats., allow for the protection of natural resources on state lands such as migratory bird refuges, establish general department powers, and authority to establish hunting and trapping regulations on department managed lands.

The establishment of game refuges is authorized in s. 23.09 (2) (b) relating to the department’s ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

Statutes Interpreted and Explanation of Agency Authority: In promulgating these rules, statutes being interpreted or establishing agency authority include ss. 23.09 (2) (b), 23.11, 29.014 and 29.041.

The establishment of game refuges is authorized in s. 23.09 (2) (b) relating to the department’s ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

Sections 23.11 and 29.014, Stats., allow for the protection of natural resources on state lands such as migratory bird refuges, establish general department powers, and authority to establish hunting and trapping regulations on department managed lands. Additionally, s. 29.014 Stats., “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 promulgate rules related to migratory game bird hunting.

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Related Statute or Rule: In 2015, the department will promulgate two emergency rule orders establishing the migratory bird hunting seasons and regulations. The first is SS 030-15, WM-04-15 (E), related to the early season framework for teal and mourning dove hunting. The second is SS 031-15, WM-05-15 (E), related to the late season framework for the regular duck and goose hunting seasons. This permanent rule order will promulgate in Administrative Code the season and regulations for both the early teal-only season and extension of the mourning dove hunting season and other bag limit and season date modifications necessary to make the regular duck and goose hunting seasons consistent with the federal framework.

Adoption of the two separate emergency rule orders was needed because there are two different times when the service needs to be informed of Wisconsin's season selections.

Two sections of this rule modify rule language that is also currently being modified by earlier rule making, CR 15-024, the 2015 wildlife management spring hearings rule order. The provision which modifies migratory bird hunting hours in NR 10.06 (5) contains the changes from the earlier proposal which modified pheasant hunting hours. The revision to NR 10.12 (3) (e) related to waterfowl hunting by holders of permits for disabled hunters establishes a cross-reference to language created by CR 15-024.

Plain Language Analysis: SECTION 1 of this rule order establishes a seven day season beginning on September 1 and a six bird daily bag limit for a teal-only season. The teal-only season will occur prior to the youth duck season and the normal season for hunting all varieties of ducks.

SECTIONS 2 and 4 eliminate the 9:00 start of shooting hours for ducks and geese on the first day of the regular duck hunting seasons so that shooting hours will begin 30 minutes before sunrise. Both sections also modify the duck and goose hunting season dates in the Mississippi river zone so that they will open on October 3 and continue through October 9. The season will then be closed for seven days, reopening on October 17 and continuing through December 8. The season for white-fronted geese and brant is extended from 88 to 92 days in length.

SECTION 3 increases the season harvest limit for Canada geese in the Horicon Zone from six birds to twelve. The daily bag and possession limits will continue to be 2 and 6 respectively.

SECTION 5 repeals the subdivision establishing the brant season and bag limit. The brant season and bag limit are instead established under the subdivision for "other geese".

SECTION 6 extends the mourning dove hunting season from the current 70 to 90 days and repeals the 9:00 a.m. start of hunting hours during the falconry seasons.

SECTION 7 establishes that the hunting hours for teal during a teal-only season shall begin at 9:00 a.m. on the first day and sunrise on following days. Hunting will end at 7:00 p.m. each day. On the first day of the regular duck season shooting hours will begin at 30 minutes before sunrise instead of 9:00 a.m.

SECTION 8 corrects an inconsistency between the introductory language and the text of a rule which establishes an exception from the requirement that hunters in boats and blinds must be concealed in emergent vegetation. The exception is for hunters on the Mississippi River only and does not apply to hunters on all waters in counties adjacent to the Mississippi River.

SECTION 9 creates introductory language for consistency with the drafting style of other paragraphs in the subsection related to open water restrictions, updates a cross-reference, and simplifies the language of an existing exception for disabled hunters from the prohibition of hunting waterfowl in open water.

SECTION 10 repeals a sunset provision of special regulations for waterfowl hunting at the Mead wildlife area that was overlooked in Ch. NR 11 when the same sunset date was repealed in Ch. NR 10 by previous rulemaking.

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.

The 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 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.

Summary of Factual Data and Analytical Methodologies: The species of primary interest to duck hunters, blue-winged teal, are an early migrating bird whose numbers may be low or declining in Wisconsin when the normal duck seasons begin at the end of September or early October. Many hunters are likely to appreciate the opportunity to hunt this species earlier during the fall season, possibly prior to migration, when they may be more abundant. The federal authorization for an early teal season is for a three year trial period beginning in 2014 and continuing through 2016.

In the 1960s the US Fish and Wildlife Service (USFWS) allowed states to experiment with an early duck season that offered additional duck hunting days outside of the regular duck season framework. Hunters were restricted to shooting only teal; blue-winged and green-winged teal; but the focus in the Mississippi Flyway was primarily the early migrating blue-winged teal. This “experimental season” was intended to measure whether hunters could successfully distinguish between duck species and what the impact was on non-teal ducks. The results were mixed and after debate among state and federal agencies involved, the decision was made that the “production” states (WI, MN, MI and IA) within the Mississippi Flyway would not be allowed an early teal season. However, when blue-winged teal populations were high, “nonproduction” states would be offered an operational early teal season. “Production” refers primarily to whether a state is a major breeding area for mallards and other ducks.

The continental population of blue-winged teal has grown in recent years and a harvest assessment concluded that teal could sustain higher harvest beyond that incurred during the regular duck season and the existing early teal seasons. Following a series of meetings and recommendations among states and the USFWS, it was decided that the four production states would be offered a three-year year “experimental” teal season, the results of which will determine if a state is granted an operational (i.e. permanent) early teal season. The USFWS requires states to observe hunter behavior in the field to observe whether they shoot at non-teal ducks during the teal only season. If the number of attempts to shoot non-teal ducks is too high, Wisconsin will fail the experiment.

Based on public input and staff analyses, the department proposes an early teal season in Wisconsin that would begin on September 1 and continue through September 7. Only blue-winged and green-winged teal can be harvested. The daily bag limit would be 6 teal. Shooting hours on opening day begin at 9:00 a.m. and close at 7:00 p.m. Shooting hours from September 2 through 7 will begin at sunrise and close at 7:00 p.m.

This rule would also extend the mourning dove hunting season. At the February, 2014 meeting of about 20 states that are part of the Eastern Dove Management Unit, a recommendation was approved to increase the dove

hunting season from 70 to 90 days across the management unit. The additional 20 days will result in an increase in hunting opportunity that some hunters will appreciate. However, these days will be at a time of the year when many other hunting seasons are also open. As a result, the additional hunting opportunity may not result in a significant amount of hunting effort focused primarily on mourning doves.

These rules will modify the duck and goose hunting season dates in the Mississippi river zone consistent with options available under the federal framework for Wisconsin. The regular duck and Canada goose hunting seasons will open on October 3 and continue through October 9. The season will then be closed for seven days, reopening on October 17 and continuing through December 8. In addition to consistency with the federal framework for migratory bird hunting, these season dates are proposed in response to the requests of Mississippi river zone hunters expressed at hearings and meetings.

These rules will repeal the delayed, 9:00 a.m. start of shooting hours on the first day of the regular duck hunting seasons. Hunting will begin 30 minutes before sunrise as it does during the rest of the season. In the past, the delayed start may have been in place for variety of reasons, including reduced hunter conflict on the first day of hunting and improved duck identification. Recently, hunters have considered these issues during open meetings and registered opinions with the Conservation Congress established under s. Ch. 15.348. Hunter opinion has shifted from support of the 9:00 a.m. opening day shooting hours to ½ hour before sunrise. Wisconsin's surrounding states all begin shooting hours 30 minutes before sunrise on the first day of regular duck hunting seasons although some alter shooting hours in other ways. During the early teal season, shooting hours would continue to be delayed so that hunting is not allowed until 9:00 a.m. on the first day and sunrise on subsequent days based on public input and duck identification concerns. Teal are the only duck species that may be harvested during this early season.

In the Horicon goose management zone the department proposes a season harvest limit of 12 Canada geese. This will be the second year of a 12 bird season limit. Prior to 2014, the season limit had been 6. The department will continue to monitor harvest and hunter response to confirm that a 12 goose harvest limit continues to be appropriate for this zone.

These rules make revisions which the department considers to be remedial in nature. The proposal corrects an inconsistency between the introductory language and the text of a rule that exempts hunters on the Mississippi River from the requirement that hunters in boats and blinds be concealed by emergent vegetation. The exception is for hunters on the Mississippi River only and does not apply to hunters on all waters in counties adjacent to the Mississippi River. Disabled hunters are also exempt from the requirement to be concealed and this proposal creates introductory language for consistency with other provisions of that subsection, updates a cross-reference, and simplifies that language. Finally, these rules repeal a sunset provision of special regulations for waterfowl hunting at the Mead wildlife area that was overlooked in Ch. NR 11 when the same sunset date was repealed in Ch. NR 10 by previous rulemaking.

Anticipated Private Sector Costs: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no costs are associated with compliance to these rules.

Effects on Small Business: 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.

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Deadline for Written Comments: The deadline for written comments was August 6, 2015.

SECTION 1. NR 10.01 (1) (a) is created to read:

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 a.m. on Sept. 1 to 7	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 limit.

SECTION 2. NR 10.01 (1) (b) and (g) 1. (intro.) and d. are amended to read:

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
NR 10.01 (1) (b) <i>All species of wild duck</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, 1 black duck, 2 pintails, 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 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 limit.
	Northern zone as established in s. NR 10.32.	9:00 a.m. <u>Beginning</u> on the Saturday nearest September 24 and continues <u>continuing</u> for 60 consecutive days.		
	Southern zone as established in s. NR 10.32.	9:00 a.m. <u>Beginning</u> on the Saturday nearest October 1 and continues <u>continuing</u> for 9 days, followed by a 5-day split, and then reopens for 51 days consecutive days.		

	Mississippi River zone as established in s. NR 10.32.	9:00 a.m. <u>Beginning</u> on the Saturday nearest September 24 <u>October 1</u> and continues <u>continuing</u> for 9 <u>7</u> days, followed by a 12-day <u>7-day</u> split, and then reopens for 51 <u>53</u> consecutive days.		
(g) Geese 1. Canada geese and its subspecies except on the first day of the duck season in par. b. when goose hunting is not allowed until 9:00 a.m.	d. Horicon zone	Two permit periods		Equivalent to the seasonal limit established by the department 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. <u>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.</u>
		<u>First permit period beginning on September 16 and continuing</u> until the Sunday following the last Friday in October.	2	
		Begins <u>Second permit period beginning</u> on the Monday following the last Friday in October <u>and</u> continuing for a season total of 92 days combined for both periods.	2	

SECTION 3. NR 10.01 (1) (g) 1. dm. is created to read:

NR 10.01 (1) (g) 1. dm. HORICON ZONE SEASON HARVEST LIMIT. No person may harvest more than 12 Canada geese during a permit period established in subd. par. d.

SECTION 4. NR 10.01 (1) (g) 1. e., 2. (intro) and d., and 3. are amended to read:

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
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NR 10.01 (1) (g) 1.	e. Mississippi river subzone.	Begins on the Saturday nearest September 24 <u>October</u> <u>1</u> and continues for <u>9</u> <u>7</u> days, followed by a 12-day <u>7-day</u> split, and then reopens for a season total of 92 days.	2	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.
2. Snow or blue and Ross' geese except on the first day of the duck season in par. b. when goose hunting is not allowed until 9:00 a.m.				
	d. Mississippi river subzone.	Begins on the Saturday nearest September 24 <u>October</u> <u>1</u> and continues for <u>9</u> <u>7</u> days, followed by a 12-day <u>7-day</u> split, and then reopens for a season total of 92 days.		
3. All other geese except on the first day of the duck season in par. b. when goose hunting is not allowed until 9:00 a.m.	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	September 20 and continues for 88 <u>92</u> consecutive days.	1 white-fronted goose <u>and 1 brant.</u>	3 white-fronted geese <u>and 3 brant</u> 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 this subd. 3.c. and d.	Begins on September 20 continuing until the closure during the 5- day split in the southern duck zone hunting season in par. b and then reopens, continuing for a season total of 88 <u>92</u> days.		

	c. Horicon zone ₂	September 20 and continues for 88 <u>92</u> consecutive days ₂		
	d. Mississippi river subzone ₂	Begins on the Saturday nearest September 24 <u>October 1</u> and continues for 9 <u>7</u> days, followed by a 12-day <u>7-day</u> split, and then reopens for a season total of 92 days.		

Section 5. NR 10.01 (1) (g) 4. is repealed.

Section 6. NR 10.01 (1) (h), and (u) 1. (intro.) and 3. (intro.) are amended to read:

NR 10.01 (1) (h) Mourning dove	Entire state	Sept. 1 – Nov. 9 <u>Nov. 29</u>	15	45
(u) 1. All species of wild ducks, mergansers and coots except on the first day of the duck season in par. b. when hunting is not allowed until 9:00 a.m.				
3. Geese except on the first day of the duck season in par. b. when hunting is not allowed until 9:00 a.m.				

SECTION 7. NR 10.06 (5) (Intro.), as affected by CR 15-024, is amended to read:

NR 10.06 Hunting hours. (5) HUNTING HOURS. Hunting hours for bear, bow deer, deer with firearms, elk and small game are 30 minutes before sunrise through 20 minutes after sunset. Hunting hours for migratory game birds are 30 minutes before sunrise to sunset except for teal during a season for hunting teal species only. ~~All waterfowl hunting starts at 9:00 a.m. on the first day of the duck hunting season established in s. NR 10.01 (1) (b).~~ The hours for hunting teal during a teal-only season shall be sunrise through 7:00 p.m. except on the first day when hunting hours begin at 9:00 a.m. All pheasant hunting 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 hunting hours for the other zones shall be obtained by adding minutes to the Zone A a.m. and p.m. columns as follow s:

SECTION 8. NR 10.12 (3) (a) is amended to read:

NR 10.12 (3) (a) *Mississippi river.* Blinds in any of the waters of the Mississippi river and adjoining ~~counties~~ waters west of the Burlington Northern railway provided the blinds are securely anchored and located not more than 100 feet from any shoreline including islands. Blinds in open water in Grant county and the Lake Pepin portions of the Mississippi river are permitted regardless of the distance from shore provided the blinds are securely anchored.

SECTION 9. NR 10.12 (3) (e), as affected by CR 15-024, is repealed and recreated to read:

NR 10.12 (3) (e) *Disability provision.* If the boat, blind, or similar device is occupied by at least one individual engaged in hunting who holds a Class A or B disabled permit that authorizes hunting from a stationary vehicle and which has been issued for more than 1 year, and is substantially in compliance with par (f) considering necessary additional distance to maintain the minimum depth of water for operation of the boat, blind, or similar device used.

SECTION 10. NR 11.044 is amended to read:

NR 11.044 Early waterfowl hunting season closed area. A closed season is established at the Mead wildlife area. No person may hunt waterfowl until the beginning of the duck season established in s. NR 10.01 (1), except that hunting is allowed on the dates of the youth duck hunt established in s. NR 10.01 (1) by all people who may legally hunt waterfowl on those dates. ~~This subsection does not apply after December 31, 2012.~~

SECTION 11. EFFECTIVE DATE. This rule shall take 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 12. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2015.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)