

Natural Resources – Revises Ch. NR 10 – EmR1214

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

Filed with LRB: September 10, 2012

Publication Date: September 12, 2012

Effective Dates: September 13, 2012 through February 9, 2013

The statement of scope for this rule, SS 011-12, was approved by the Governor on February 15, 2012, published in Register No. 674, on February 29, 2012, and approved by the Natural Resources Board on May 23, 2012. This emergency rule was approved by the Governor on September 6, 2012.

The Wisconsin Natural Resources Board proposes an order to repeal and recreate NR 10.01(1)(b), (g) and (u), 10.06(9)(a) and 10.32, to amend 10.01(1)(v) and to create 10.12(3)(e) relating to hunting and the 2012 migratory game bird seasons and waterfowl hunting zones.

WM-02-12(E)

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted and Explanation of Agency Authority: In promulgating this rule, ss. 29.014, 29.041, 29.192 and 29.197 and 227.24 Stats. have been interpreted as allowing the department the authority to establish the migratory game bird seasons within the state as well as on and in all waters bordering the state and establish the two-day youth waterfowl hunt.

Statutory Authority and Explanation of Agency Authority: Statutes that authorize the promulgation of this rule order include ss. 29.014 and 227.11, and 227.24 Stats. These sections grant rule making authority to the department to establish and maintain open and closed seasons for hunting and provide that all rules promulgated under this authority are subject to review under ch. 227, Stats. In addition, s. 29.041, Stats., authorizes the department to promulgate rules that regulate hunting on and in all interstate boundary waters, s. 29.192 establishes a process for issuing permits to hunt Canada geese, and s. 29.197, Stats., authorizes the establishment of special hunts.

Related Statute or Rule: This rule order establishes the season length and bag limits for the Wisconsin migratory game bird seasons. Each year similar emergency rules are promulgated. This process is necessary to have the seasons in place for the fall hunting season while following the federal and state rule procedures.

Plain Language Analysis: SECTION 1 of this rule order establishes the season length and bag limits for the 2012 Wisconsin migratory game bird seasons. For ducks, the state is divided into three zones, each with 60-day seasons. The proposed seasons in each zone are:

North duck zone - the season begins at 9:00 a.m. September 22 and continues through November 4, followed by a 5 day split, and reopens on November 10 and continues through November 25.

South duck zone - the season begins at 9:00 a.m. on September 29 and continues through October 7, followed by a 5-day split, and then reopens on October 13 and continues through December 2.

Mississippi River duck zone - the season begins at 9:00 am on September 22 and continues through September 30, followed by a 12 day split, reopening on October 13 and continuing through December 2.

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, 4 scaup, 2 pintails and 2 redheads.

For Canada geese, the state is apportioned into 2 goose hunting zones, Horicon and Exterior, each with a 92 day season. The Mississippi River Subzone is a special goose management subzone within the Exterior Zone. Season lengths are:

Horicon Zone – Two hunting periods, the first period beginning September 16 and the second on October 29

Exterior Zone in the northern duck zone - September 16 to November 4 and November 10 to December 21

Exterior Zone in the southern duck zone – September 16 to October 7 and October 13 to December 21

Mississippi River subzone - September 22 to September 30 and October 13 to January 3.

The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

SECTION 2 establishes that the youth waterfowl hunting season will be held on September 15 and 16.

SECTION 3 lifts a sunset of special migratory bird hunting regulations at the Mead and Zeloski Marsh Wildlife Management Areas.

SECTION 4 relaxes the prohibition on hunting waterfowl in open water for holders of permits for hunters with disabilities.

SECTION 5 reestablishes a duck hunting zone that consists of the Wisconsin portions of the Mississippi River west of the Burlington Northern Santa Fe Railroad tracks. This is the same zone configuration that was in place for the 2011 season and has been approved by the USFWS for a five year period.

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.

Wisconsin Canada goose harvest is supported by 2 different Canada goose populations; the local giant Canada geese which are part of the Temperate Breeding Population (TBP) of the Mississippi Flyway provide about 40% of our fall harvest while the Mississippi Valley Population (MVP) that breeds in northern Ontario provide about 60% of the fall harvest. These 2 populations are managed under cooperative management plans developed by several states and provinces. The TBP population has steadily grown and management goals are to provide additional harvest opportunity and control population growth. In contrast, the MVP population has been on a slow decline so management objectives are to maintain a lower rate of harvest and have a stable or increasing population. These contrasting goals create a challenge in the development of hunting regulations. In order to improve our harvest management, the Mississippi Flyway Council tested the use of a standard season framework for 5 years while monitoring population size and harvest rates for the MVP and TBP. From 2007 - 2011, season lengths and bag limits for each MVP harvest state were unchanged. Each state retained 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 could be adjusted. At the winter 2012 flyway meeting, analysis of the impacts of these 5 years of stable regulation were reviewed and the results were mixed with regard to the management objectives. It was decided among the member states that a cautious and slow approach be taken toward continued liberalization of Canada goose hunting seasons.

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 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 2011 the USFWS gave our state the option of reconfiguring duck hunting zones and after an 11 month public input process Wisconsin implemented changes for a 5 year period. Waterfowl hunters appear to have been supportive of the new zone configuration and this proposal contains the same zone configuration that was in effect for the 2011 season. The department's position has been that the configuration of duck zones is an issue of hunter opportunity and satisfaction which does not have significant impact on duck populations.

The parameters of Wisconsin's regular goose seasons are guided by the Mississippi Flyway management plans for the MVP and TBP 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.

In early July, staff conducted a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Committee. At this meeting, staff provided the attendees with breeding status information and asked for any items that they wish the department to pursue at the MFC meeting in mid July. Department staff then attended the MFC Technical and Council meetings. At these meetings, staff were provided status information and the proposed framework alternative from the USFWS. Department staff worked with the other states in our Flyway to discuss and develop proposals and recommendations that were voted upon by the MFC. Proposals that passed at the MFC meeting were forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting. The USFWS announced its final waterfowl season framework recommendation at the end of July. Department staff then summarized waterfowl status and regulation information for Wisconsin citizens and presented this information to the Migratory Committee of the Conservation Congress and at a public meeting (Post-Flyway Meeting) of interest groups and individuals on July 28. Staff gathered public input and citizen suggestions at those meetings for the development of Wisconsin's waterfowl regulations, given the federal framework. Public hearings were held from July 30-August 2 around the state to solicit additional input on the proposed annual waterfowl rule.

This rule will expand opportunity for waterfowl hunters with disabilities. Open water waterfowl hunting is currently prohibited on all but a handful of lakes in WI. A hunter who is "concealed" in emergent vegetation under current rules is not considered to be in open water. The concern is that those with disabilities may physically not be able to get into a smaller John boat, skiff, or blind and that it may be difficult or impossible to place an accessible boat or blind near vegetation capable of meeting the concealment requirements. This proposal will make it possible for disabled permit holders, and their companions, to hunt from a craft such as a pontoon boat, which may be impossible to conceal in emergent vegetation.

Closing migratory bird hunting hours early on managed public hunting areas in some states has been shown to provide good hunting across an entire property rather than just near refuges, hold ducks in an area for a longer period of time, and provide better hunting opportunities throughout the season. An experimental early closure has been applied at the Mead Wildlife Area in Marathon and Wood counties and at Zeloski Marsh in Jefferson. The regulation has been in place only during the early part of the season when hunting pressure is heaviest. The regulation has sunset after a three year trial period. There continues to be support for the special regulations and reauthorization by rule is needed for them to remain in effect.

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 a significant economic impact on a substantial number of small businesses under 227.24(3m).

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SECTION 1. NR 10.01(1)(b), (g) and (u), are repealed and recreated 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	As established by season and zone	Double the daily bag limit through the entire season, except opening day when it is the same as the daily bag limit.
	Northern zone as established in s. NR 10.32	Sept. 22 at 9:00 a.m. – Nov. 4 and Nov. 10 – Nov. 25	6 ducks to include not more than 4 mallards of which only 1 may be a hen mallard, 1 black duck, 2 pintails, 1 canvasback, 2 redheads, 4 scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.	
	Southern zone as established in s. NR 10.32	Sept. 29 at 9:00 a.m. – Oct. 7 and Oct. 13 – Dec. 2	6 ducks to include not more than 4 mallards of which only 1 may be a hen mallard, 1 black duck, 2 pintails, 1 canvasback, 2 redheads, 4 scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.	
	Mississippi River zone as established in s. NR 10.32	Sept. 22 at 9:00 a.m. – Sept. 30 and Oct. 13 – Dec. 2	6 ducks to include not more than 4 mallards of which only 1 may be a hen mallard, 1 black duck, 2 pintails, 1 canvasback, 2 redheads, 4 scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.	

SECTION 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
NR 10.01(1)(g) <i>Geese</i> 1. Canada geese and its subspecies	a. Entire state	Sept. 1 — Sept. 15	5	10
	b. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Nov. 4 and Nov. 10 – Dec. 21	2	4
	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.	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. - Oct. 7 and Oct. 13 - Dec. 21	2	4
	d. Horicon zone	Two permit periods		6 (equivalent to the prescribed number of carcass tags)
		Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Oct 28.	2	
		Oct 29 – Dec. 16	2	
	e. Mississippi River subzone	Sept. 22 at 9:00 a.m. – Sept. 30 and Oct. 13 – Jan. 3	2	4
<p>Note: Season dates listed in this subdivision may be closed early when the harvest may exceed the level authorized, according to the procedure in s. NR 10.125(6).</p>				

SECTION 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
2. Snow or blue and Ross' geese	Entire state	As established by zone	20	40
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Nov. 4 and Nov. 10 – Dec. 21		
	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. 2. e. and g.	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. - Oct. 7 and Oct. 13 - Dec. 21		
	c. Horicon zone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 16.		
	d. Mississippi river subzone	Sept. 22 at 9:00 a.m. – Sept. 30 and Oct. 13 – Jan. 3		
3. All other geese	Entire state	As established by zone	1 white-fronted goose	2 white-fronted geese
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	Sept. 20 – Sept. 21 and Sept. 22 at 9:00 a.m. – Nov. 4 and Nov. 10 – Dec. 21		
	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.	Sept. 20 – Sept. 28 and Sept. 29 at 9:00 a.m. - Oct. 7 and Oct. 13 - Dec. 21		
	c. Horicon zone	Sept. 20 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 16.		
	d. Mississippi River subzone	Sept. 26 at 9:00 a.m. – Sept. 30 and Oct. 13 – Jan. 3		

SECTION 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
4. Brant	Entire state	As established by zone	1	2
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Nov. 4 and Nov. 10 – Dec. 21		
	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. 3. c. and d.	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. - Oct. 7 and Oct. 13 - Dec. 21		
	c. Horicon zone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 16.		
	d. Mississippi River subzone	Sept. 22 at 9:00 a.m. – Sept. 30 and Oct. 13 – Jan. 3		
NR 10.01(1)(u) Falconry special season. Any person possessing a valid falconry permit and hunting license shall be restricted to the following migratory game bird seasons:				
1. All species of wild ducks, mergansers and coots	Northern zone as established in s. NR 10.32	Sept. 15 – Sept. 16, Sept. 22 at 9:00 a.m. – Nov 4, Nov 10 -Nov. 25 and Jan. 11 – Feb. 24	3 in aggregate with those species listed under subd. 2.	6 in aggregate with those species listed under subd. 2.
	Southern zone as established in s. NR 10.32	Sept. 15 – Sept. 16, and Sept 29 at 9:00 a.m. – Oct. 7, Oct. 13 – Dec. 2 and Jan.11 – Feb. 24	3 in aggregate with those species listed under subd. 2.	6 in aggregate with those species listed under subd. 2.
	Mississippi River zone as established in s. NR 10.32	Sept. 15 – Sept. 16 and Sept. 22 at 9:00 a.m. – Sept 30 and Oct. 13 – Dec. 2 and Jan. 11 – Feb. 24	3 in aggregate with those species listed under subd. 2.	6 in aggregate with those species listed under subd. 2.
2. Gallinules, Sora rail, Virginia rail, common snipe and woodcock	Entire state	Sept. 1 – Dec. 16	3 in aggregate with those species listed under subd. 1.	6 in aggregate with those species listed under subd. 1.
3. Geese	Within the zones and subzones established in s. NR 10.31	Concurrent with the open season for geese established in par. (g) for each zone or subzone	As established in par. (g) for each zone or subzone	As established in par. (g) for each zone or subzone

SECTION 2. NR 10.01(1)(v) is amended to read:

NR 10.01(1)(v) *Special youth waterfowl hunt event.* Persons under the age of 16 may hunt all species of wild duck, mergansers, geese, coots, and moorhens for 2 consecutive days starting on September ~~18~~ 15. Approvals under ch. 29, Stats., are not required pursuant to s. 29.197 (1), Stats., except for registration in the harvest information program under s. NR 10.12 (11) and a Canada goose hunting permit for the season or zone where goose hunting, as listed in par. (g) 1., if hunting Canada geese. Daily bag limits are those described under pars. (b), (c) and (g), except that the daily bag limit for the zone or sub zone being hunted as listed in par. (g)1.a. to h., on that date shall apply to Canada geese, and all other waterfowl hunting regulations apply. Hunters shall be accompanied by an adult 18 years of age or older and be in compliance with ss. 29.592 and 29.593, Stats. One adult may not accompany more than 2 hunters and pursuant to s. 29.592, Stats., not more than one of the 2 hunters may be age 10 or 11, or be a person who does not possess a certificate of accomplishment under s. 29.591, Stats., or its equivalent from another state, country or province.

SECTION 3. NR 10.06(9)(a) is amended to read:

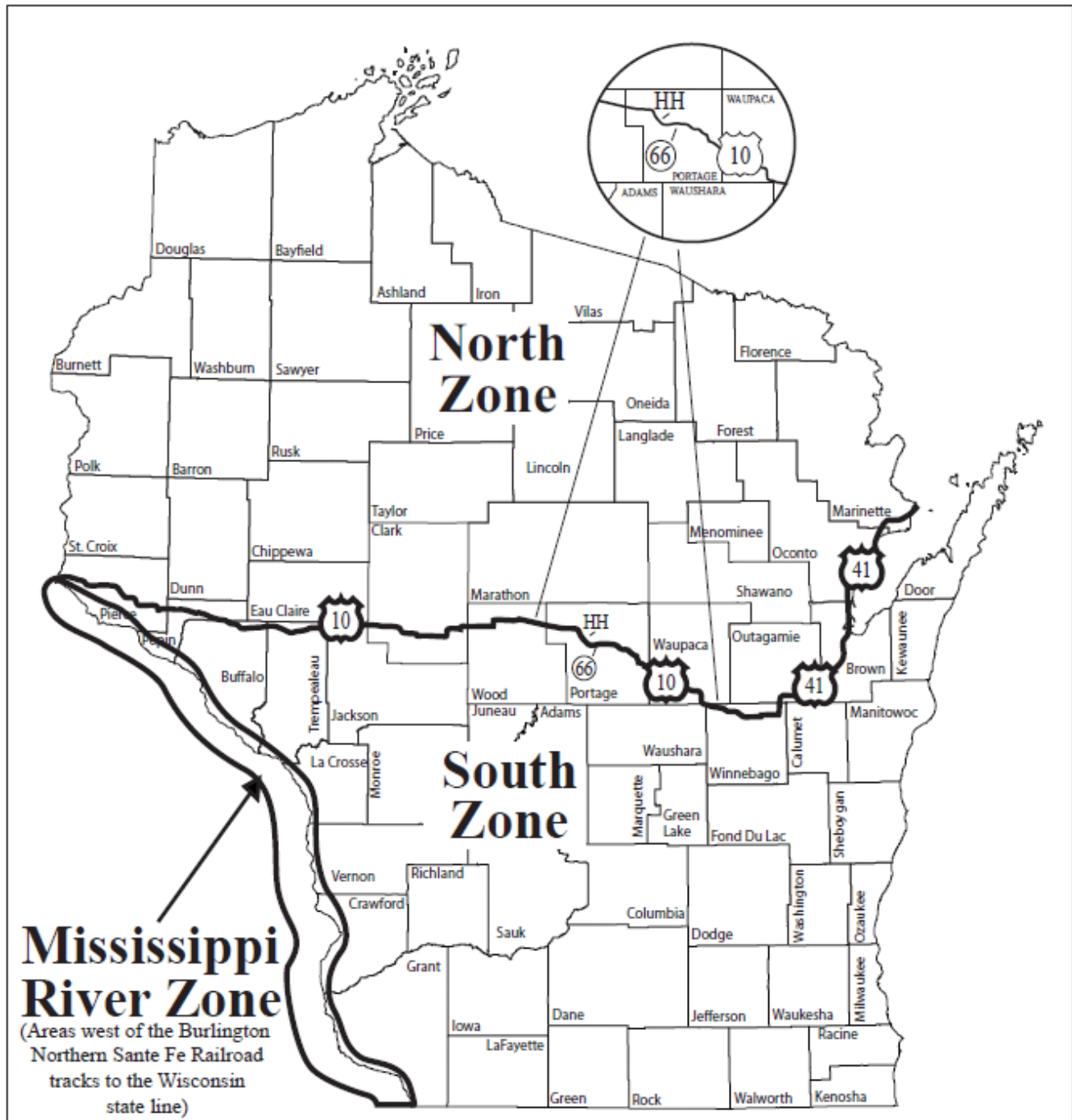
NR 10.06(9) DAILY MIGRATORY BIRD REST PERIOD. (a) Hunting hours for certain species shall close at 1:00 p.m. daily within the posted boundaries of the following state wildlife areas on the following dates:

1. George W. Mead Wildlife Area (Wood, Portage, and Marathon Counties) for waterfowl beginning on the third day of the duck hunting season in s. NR 10.01 and continuing for 16 days.
2. Zeloski Unit of the Lake Mills Wildlife Area (Jefferson County) for migratory birds beginning on Sept 1 and continuing ~~through the 16th day after the opening weekend of the duck season established in s. NR 10.01~~ for a period of time as posted with department signs of at least 16 days after the opening weekend of the duck season established in s. NR 10.01, except that normal statewide hunting hours apply on the opening weekend of the duck season.
~~(b) This subsection does not apply after December 31, 2012.~~

SECTION 4. NR 10.12(3)(e) is created to read:

NR 10.12(3)(e) Persons holding 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 a person who assists the disabled hunter in the same boat, may hunt more than 3 feet from emergent vegetation that provides the required 50 % concealment of the hunters and boat, but not farther than necessary to maintain the minimum depth of water necessary for operation of the boat being used by the hunters.

SECTION 5. NR 10.32 is repealed and recreated:



SECTION 6. STATEMENT OF EMERGENCY. The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public welfare. The federal government and state legislature have delegated to the appropriate agencies rule-making authority to control the hunting of migratory birds. The State of Wisconsin must comply with federal regulations in the establishment of migratory bird hunting seasons and conditions. Federal regulations are not made available to this state until late July of each year. This order is designed to bring the state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the establishment of these changes by September 1. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

SECTION 7. EFFECTIVE DATE. This rule shall take effect upon publication in the Wisconsin state paper pursuant to s. 227.24(1)(c).

SECTION 8. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 8, 2012.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)

Final Regulatory Flexibility Analysis WM-02-12(E)

This rule, 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 this rule.

This rule is 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 rule will not have a significant economic impact on a substantial number of small businesses under 227.24(em) Stats.