

Clearinghouse Rule 21-069

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 10.01 (1) (c) (Note); to **amend** NR 10.01 (1) (b), (c), (e), (f) 1., (g) 1. c. and e., 2. b. and d., and 3. b. and d., and (v); **repeal and recreate** NR 10.32; and to and to **create** NR 10.01 (1) (d) relating to establishing the 2021 migratory bird season framework and regulations.

WM-20-20

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, Stats.

3. Explanation of Agency Authority: The chapter on 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 make changes related to hunting regulations. Additionally, s. 29.192, Stats. allows the department to regulate and limit the number of hunters and the maximum harvest of Canada geese in any area.

4. Related Statutes or Rules: There are currently no active related rules.

5. Plain Language Analysis:

SECTION 1 decreases the daily bag limit for scaup from 3 to 1 scaup for 15 days and 2 scaup for 45 days in specific zones. It also increases the daily bag limit for hen mallards from one to two, moves the North Migratory Zone duck season one week earlier by opening on the Saturday nearest September 24. All of these were also part of the 2020 migratory season framework. New for 2021 is a daily bag limit of 5 Canada geese per day during the “Holiday Hunt” that is offered from December 20 – January 4 in the South Zone.

SECTION 2 deletes a note clarifying that moorhen is synonymous with gallinule.

SECTIONS 3 AND 4 change the season for rail, snipe, and common gallinule (moorhen) to September 1 and will run for 70 consecutive days to match federal requirements as it was in the 2020 season. These

sections also utilize the second split (15-day season closure) in the South Zone Canada goose season to extend the season to January 4. These changes are a carryover from the 2020 season.

SECTION 5 removes the Mississippi River Migratory Zone, expands the boundaries of the South Migratory Zone to include the former Mississippi River Migratory Zone, and creates a new Open Water Migratory 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:

Per federal regulations, states within the Mississippi Flyway may utilize two season splits during the regular Canada goose season. Traditionally, the department elected to utilize only a single season split. That changed in 2020, when data gathered through public input processes demonstrated majority support for adding a second split in the South Zone Canada goose season 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. This second split closed the Canada goose season for 15 days at the same time the South Zone duck season closed, then reopened the goose season in the South Zone for an additional 16 days.

For 2021, public input favored the continued use of two splits. Additionally, the public indicated support for increasing the Canada Goose bag limit to 5 geese/day during the third period over the holidays in the South Canada Goose Zone. From a harvest perspective, 90% of all Canada goose harvest occurs before December 1, and harvest analysis indicates that 80% of the Canada geese harvested in December are comprised of Wisconsin's own local temperate breeding Canada geese, so the department is not averse to adjusting the bag limit in the month of December as very few hunters participate during this time, and it

will have a very minimal impact on overall harvest.

This rule proposes to maintain an earlier start date for the North Zone duck season that was implemented in 2020. This change was based on input collected from conservation organizations as well as the public via the waterfowl hunters survey, emails, phone calls, and public hearings in 2018 and 2019. This input showed hunters preferring a later opening date in the North zone. This shift in public preference may have been influenced by the manner in which dates occurred within the annual calendar and the fact that the three autumns prior to 2018 were relatively mild. Wisconsin had the second coldest November on record during 2018 and an early winter in the North at in both 2019 and 2020, which resulted in weeks of lost hunting opportunity. Input from conservation groups and the public in 2020 shifted back to a desire to start on the Saturday nearest September 24 from the previous date which was the Saturday nearest October 1st. Maintaining this earlier season start date has majority public support for 2021.

The proposed reconfiguration of migratory game bird zones and related duck season frameworks is based on public input and feedback from conservation partners. Public input favored the creation of a new Open Water Zone to allow hunters the ability to advantage of late season opportunities in waters greater than 500 feet from the mainland shore on Green Bay and Lake Michigan. The creation of this new zone would result in the elimination of the Mississippi Zone. The feedback and input supported a two week later start than the South Zone and no split. This is the first year of this zone and the department will likely learn a lot from our hunters when we approach the season setting process next year on how to best structure the season in the future.

Under the federal framework for duck hunting, the USFWS is allowing Wisconsin a 60-day restrictive scaup season. This allows no more than one scaup per day for 15 days and two scaup per day for 45 days however, this restriction can be specific to each duck hunting zone. The scaup bag limit was similar in 2020 and three per day during the 2019 season.

Additionally, the USFWS is allowing Wisconsin a 70-day consecutive rail, snipe, and common gallinule (moorhen) season. Similar to the 2020 season, the department is proposing to open the season on September 1 and continue for 70 consecutive days which occurs during a period when hunters are most likely to be able to harvest these species. This start date is consistent with the early teal, early goose, and mourning dove season start date.

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. scott.karel@wisconsin.gov (608) 267-2452

12. Place where comments are to be submitted and deadline for submission:

Written comments may also be submitted here: DNRAAdministrativeRulesComments@Wisconsin.gov

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

SECTION 1. NR 10.01 (1) (b) and (c) are amended to read:

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
(b) <i>All species of wild ducks</i>	Entire state.	As established by zone:	Sept. 25 – Oct. 10: 6 ducks to include not more than 4 mallards of which only <u>1</u> may be a hen mallard, 2 black ducks, 1 pintail, 2 canvasbacks, 2 redheads, 3 <u>1</u> 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.
			<u>Oct. 10-21: 6 ducks to include not more than 4 mallards of which only 2 may be a hen mallard, 2 black ducks, 1 pintail, 2 canvasbacks, 2 redheads, 2 scaup no more than 1 may be from the Southern or Open Water Zones and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</u>	

			<p><u>Oct. 22-30: 6 ducks to include not more than 4 mallards of which only 2 may be a hen mallard, 2 black ducks, 1 pintail, 2 canvasbacks, 2 redheads, 2 scaup no more than 1 may be from the Open Water Zone and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</u></p>	
			<p><u>Oct. 31- Dec.14: 6 ducks to include not more than 4 mallards of which only 2 may be a hen mallard, 2 black ducks, 1 pintail, 2 canvasbacks, 2 redheads, 2 scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</u></p>	
	<p>Northern zone as established in s. NR 10.32.</p>	<p>Beginning on the Saturday nearest October 1 <u>September 24</u> and continuing for 60 consecutive days.</p>		

	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 closure, and then reopens for 51 consecutive days.		
	Mississippi River Open Water zone as established in s. NR 10.32.	Beginning on the Saturday nearest October 16 and continuing for 60 consecutive days.		

(c) Coots and moorhens	Entire State	Concurrent with the open season for ducks established in par. (b).	15	45 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 2. NR 10.01 (1) (c) (Note) is repealed.

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

(d) Common Gallinule (Moorhen)	Entire State.	Sept. 1 – Nov. 9	15	45 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 4. NR 10.01 (1) (e), (f) 1., (g) 1. c. and e., 2. b. and d., and 3. b. and d. and (v) are amended to read:

(e) Sora and Virginia rails	Entire State.	Concurrent with the open season for ducks established in par. (b). Sept. 1 – Nov. 9	25	75 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.
(f) 1. Snipe	Entire State.	Concurrent with the open season for ducks established in par. (b). Sept. 1 – Nov. 9	8	24 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.

(g) 1. Canada geese and its subspecies.	c. Southern zone as established in s. NR 10.32.	Begins on September 16 continuing until the 5-day 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 20 continuing for a season total of 92 days	3 <u>Canada goose daily bag limit for the period of Sept. 16 – Dec. 5. 5 Canada goose daily bag limit for the period of Dec. 20 – Jan. 4.</u>	9 from <u>Sept. 16- Dec. 5, and 15 from Dec. 20.- Jan. 4,</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.
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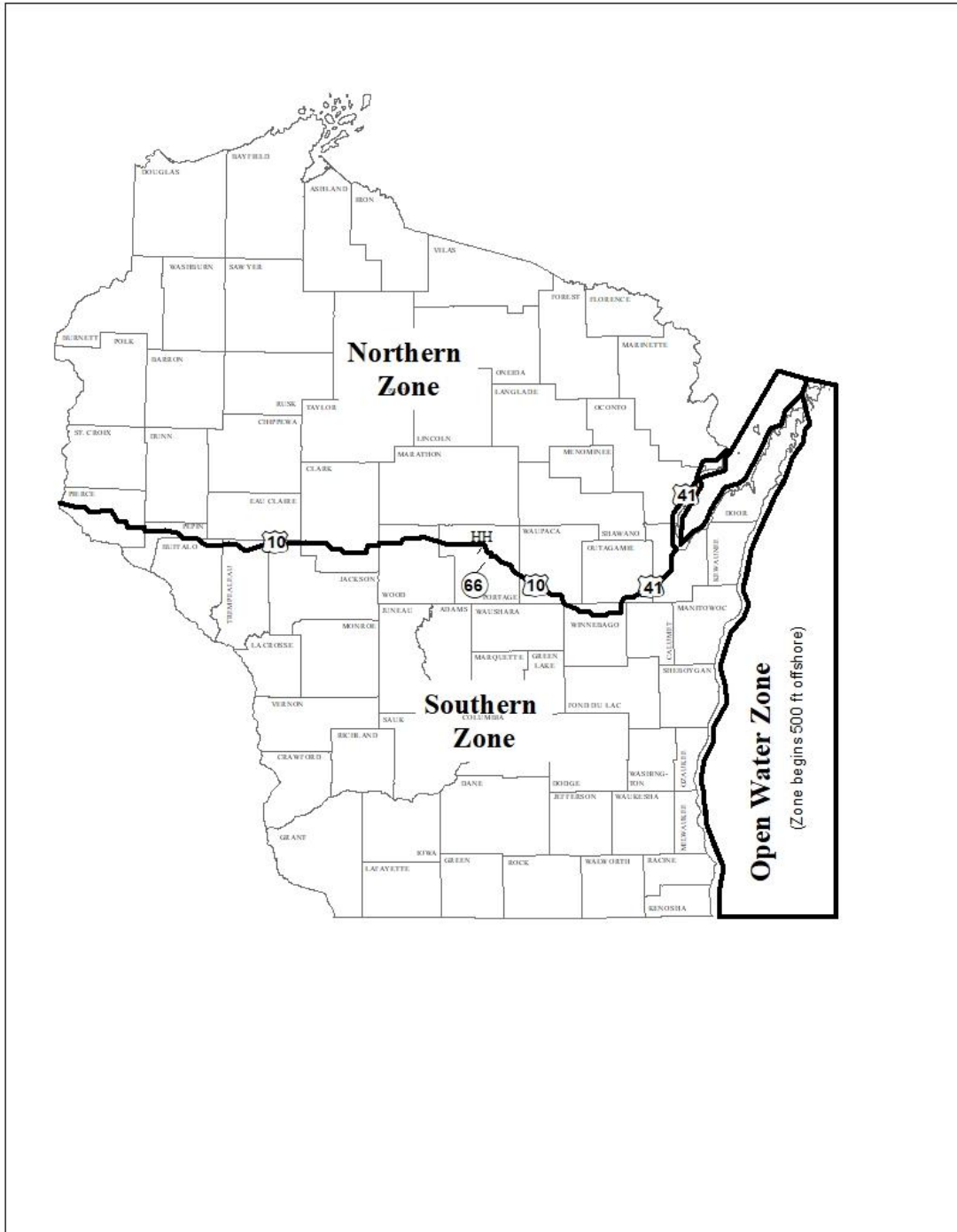
	e. Mississippi River sub zone.	Begins on the Saturday nearest October 1 and continues for 7-9 days, followed by a 7-5 -day closure, and then reopens for a season total of 92 days.	3	9 except opening day when it is the same as the daily bag limit and the second day when it is twice the daily bag limit.
2. Snow or blue and Ross' geese.	b. Southern zone as established in s. NR 10.32.	Begins on September 16 continuing until the 5-day 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 <u>20</u> continuing for a season total of 92 days.		
	d. Mississippi river sub zone.	Begins on the Saturday nearest October 1 and continues for 7-9 days, followed by a 7-5 -day closure, and then reopens for a season total of 92 days.		
3. All other geese.	b. Southern zone as established in s. NR 10.32.	Begins on September 16 continuing until the 5-day 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		

		20 continuing for a season total of 92 days.		
	d. Mississippi River subzone.	Begins on the Saturday nearest October 1 and continues for 7-9 days, followed by a 7-5-day closure, and then reopens for a season total of 92 days.		

(v) Special youth waterfowl hunt event. Persons under the age of 16 may hunt all species of wild duck, mergansers, geese, coots, ~~and~~ common gallinules, Sora and Virginia rails, and snipe ~~moorhens~~ statewide for 2 consecutive days starting on the Saturday before the beginning of the open season established for the north duck zone by par. (b). 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), (d), (e), (f), and (g), except that the daily bag limit for the zone or subzone 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 5. NR 10.32 is repealed and recreated to read:



SECTION 6. 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 7. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)