

The statement of scope for this rule, SS 002-22 was approved by the Governor on November 18, 2021, published in Register No. 793A2 on January 10, 2022, and approved by the Natural Resources Board on January 26, 2022. This rule was approved by the Governor on May 5, 2022.

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING; RENUMBERING; RENUMBERING AND AMENDING; CONSOLIDATING,
RENUMBERING AND AMENDING; AMENDING, REPEALING AND RECREATING; AND
CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 10.12 (3) (b); to **amend** NR 10.01 (1) (b) and NR 10.12 (3) (c); and to **create** NR 10.001 (20) relating to establishing the 2022 migratory bird season framework and regulations.

WM-15-21 (E)

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.

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

4. Related Statutes or Rules: This rule is related to active rule CR-21-069.

5. Plain Language Analysis:

SECTION 1 clarifies the boundary of the Open Water Migratory Zone.

SECTION 2 revises the dates that contain either a one or two daily bag limit for scaup.

SECTIONS 3 AND 4 simplifies the open water restrictions on all approved inland open water hunting lakes to by creating a standard setback of 500 feet.

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

United States Fish and Wildlife Service (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.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope: The department did not hold a preliminary hearing for this scope statement.

8. 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.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: 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. In 2021 all three zones had the same scaup season structure of 1 scaup/day for 15 days and 2 scaup/day for the final 45 days. However, after having a year with this new scaup season structure, input and feedback from North Zone and Open Water Zone hunters indicated a desire to change. This rule adjusts the North Zone and Open Water Zone scaup season structure to 2 scaup/day for the first 45 days and 1 scaup/day for the final 15 days to better match the opportunity for hunters to pursue this species in each of the two zones.

This rule also adjusts and simplifies the open water restrictions on all approved inland open water hunting lakes. In 2011 the Department identified several inland lakes that would be open to open water hunting. The decision was to set the minimum distance from shore where hunters can be without having to adhere to concealment regulations to “greater than 1000 feet” as a precaution until the Department had some time to review how this opportunity was utilized. With more than a decade of these regulations the Department feels that the 1000-foot restriction can be reduced to 500 feet which aligns the definition of open water hunting for both the inland lakes and the Great Lakes. This change simplifies regulations while adding additional open water hunting opportunity on these identified inland lakes. Department biologist staff, law enforcement staff and public input all were in support of this rule simplification

In 2020, the Department gathered public input regarding the reconfiguration of duck harvest zones. Public input favored the creation of a new Open Water Zone to allow hunters to take advantage of unique late season opportunities which exist in open waters (waters greater than 500 feet from the mainland shore) of Lake Michigan and Green Bay. The Board approved of the new zone configuration for the 2021 migratory bird season. Some issues and confusion arose regarding the Open Water Zone boundary. This rule clarifies the duck zone boundary for the Open Water Zone by updating the definition of the Open Water Zone boundary as, “waters greater than 500 feet from the mainland shore of Green Bay and Lake Michigan; for the purposes of the Open Water Zone, mainland shore includes all adjacent rooted vegetation, adjacent floating cattail and Long Tail and Little Tail points.

10. 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.

11. 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.

12. Agency Contact Person: Taylor Finger, Migratory Bird Specialist, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, (608) 266-8841

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

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>

RULE TEXT

SECTION 1. NR 10.001 (20) is created to read:

NR 10.001 (20): "Open Water Zone" means waters greater than 500 feet from the mainland shore of Lake Michigan and Green Bay; for the purposes of the Open Water Zone, mainland shore includes all adjacent rooted vegetation, adjacent floating cattail and Long Tail and Little Tail points.

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

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
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<p>(b) <i>All species of wild ducks</i></p>	<p>Entire state.</p>	<p>As established by zone.</p>	<p>Sept. 25 – Oct. 10 <u>Sept. 24 – 30 and Oct 21 – Nov 7</u>: 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, 1<u>2</u> scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</p>	<p>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.</p>
			<p>Oct. 10 – 21 <u>Oct 1 - 20</u>: 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 <u>Water Zones Zone</u>) and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</p>	

			<p>Oct. 22-30 <u>Nov. 8 - 28</u>: 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 <u>Open Water Northern Zone</u>) and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</p>	
			<p>Oct. 31 - Dec. 14 <u>Nov. 29 - Dec. 13</u>: 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 (<u>no more than 1 may be from the Open Water Zone</u>) and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</p>	

SECTION 3. NR 10.12 (3) (b) is repealed.

SECTION 4. NR 10.12 (3) (c) is amended to read:

(c) *Large Lakes and Great Lakes*. Blinds in open waters of the following lakes if more than

~~1,000~~ 500 feet from any shoreline including islands provided blinds are securely anchored:

Beaver Dam Lake in Dodge County (excluding Rakes and Trestle Works Bays), Big Green Lake in Green Lake County, Castle Rock Lake in Adams and Juneau counties (south of railroad bridge and county road G), Fence Lake in Vilas County, Green Bay, Grindstone Lake in Sawyer County, North Twin Lake in Vilas County, Petenwell flowage in Adams, Juneau and Wood counties (north of state highway 21 and south of state highway 73), Lake Michigan, Lake Superior, Lake Puckaway in Marquette and Green Lake counties (the waters west of the west end of the dredge bank, excluding the waters east of the west end of the dredge bank), Shawano Lake in Shawano County, Trout Lake in Vilas County, Lake Winnebago, Lake Wisconsin in Sauk and Columbia counties (north of railroad bridge), and Lake Wissota in Chippewa County (south of county road S and north of county road X).

SECTION 5. 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 states until the same year that the regulations must be implemented in order to have annual migratory bird hunting seasons. This order is designed to bring state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the promulgation of permanent rules prior to when the seasons should be open. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

SECTION 6. EFFECTIVE DATE. This rule takes effect upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

SECTION 7. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 13, 2022.