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EmR1418

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES
WM-11-14(E)

The rule was adopted by the Natural Resources Board on June 25, 2014, approved by the Governor on August 27, 2014 and signed by Policy Director Michael L. Bruhn for Secretary Cathy Stepp, also on August 27, 2014.

The statement of scope for this rule, SS 020-14, was approved by the Governor on March 10, 2014, published in Register No. 699, on March 31, 2014, and approved by the Natural Resources Board on May 27, 2014.

The Wisconsin Natural Resources Board proposes an order to amend Ch. NR 10.01 (b) and 10.06 (5); and to create NR 10.01 (1) (a) and 10.06 (5) (a), related to establishing an early duck season for teal-only and the hunting regulations for teal and mourning doves.

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.

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

The emergency rule making process is established in s. 227.24, Stats.

Related Statute or Rule: In 2014, the department will promulgate two emergency rule orders establishing the migratory bird hunting seasons and regulations. This rule order will establish the season and regulations for an early teal-only season and extend the mourning dove hunting season. These seasons are part of the federal “early migratory bird season framework” and the United States Fish and Wildlife Service needs to be informed of the State of Wisconsin Natural Resources Board decision on these seasons in June. The other emergency rule, WM-04-14(E), is part of the “late migratory bird season framework” and will establish all other 2014 migratory bird hunting seasons and regulations, a rule which is promulgated annually by the department following establishment of a federal season framework by the service. Adoption of two separate orders is needed because there are two different times when the service needs to be informed of Wisconsin’s season selections.

Final promulgation of both orders will occur simultaneously with publication in the state paper in late August, prior to the September 1 opening day of several of the seasons being established. Both of these emergency rulemaking processes are necessary to have regulations 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 a seven day season beginning on September 1 and a six bird daily bag limit for a new, teal-only hunt. The teal-only season will occur prior to the youth duck season and the normal season for hunting all varieties of ducks.

SECTION 2 extends the mourning dove hunting season from the current 70 to 90 days.

SECTIONS 3 and 4 establish that the hunting hours for teal during the 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. The hunting hours for other migratory birds such as mourning doves or Canada geese are not modified by these rules.

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 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 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 department annually promulgates emergency rules establishing the same year's migratory bird hunting regulations. The emergency rule is necessary because migratory game bird hunting is regulated by the United States Fish & Wildlife Service which offers a final season framework to Wisconsin within months of the possible opening days each year. This timeframe does not allow for promulgation of a permanent rule prior to the hunting season. The department has promulgated permanent rules in the past so that information related to zones, tagging requirements for geese, and other regulations remain relatively current. However, season dates and bag limits established in the administrative code reflect the prior season frameworks and the permanent rule often does not contain current information.

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.

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 seasons 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 4 production states would be offered a 3 year experimental teal season. It is very important to understand that this is an experimental season and that the results of the experiment will determine if a state is granted an operational 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 then we will fail the experiment.

Based on the public input and staff analyses, the department proposes an early teal season in Wisconsin for 2014 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 am and close at 7 pm. Shooting hours from September 2 through 7 will begin at sunrise and close at 7 pm.

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.

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 June 5, 2014.

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	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 (b) is amended to read:

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
10.01 (1) (h) <i>Mourning dove</i>	Entire State	Sept. 1 – Nov. 9 <u>Nov. 29</u>	15	45

Section 3. NR 10.06 (5) 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 during a duck season for hunting teal only when the hunting hours for teal are as established in par. (a). 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)~~ ss. NR 10.01 (1) (a) and (b). 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 follows:

- Zone Adjustment**
 B ----- Add 4 minutes
 C ----- Add 8 minutes
 D ----- Add 12 minutes
 E ----- Add 16 minutes
 F ----- Add 20 minutes

Section 4. NR 10.06 (5) (a) is created to read:

NR 10.06 (5) (a) The hours for hunting teal during a season for teal species only shall be sunrise through 7:00 p.m.

SECTION 5. FINDING 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 6. This rule shall take effect upon publication in the Wisconsin state paper pursuant to s. 227.24(1)(c).

SECTION 7. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 25, 2014.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
 DEPARTMENT OF NATURAL RESOURCES

By _____
 Cathy Stepp, Secretary

(SEAL)