

EMR1419

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HEARING DATE: OCTOBER 29, 2014

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

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. This rule was approved by the Governor on August 27, 2014.

The Wisconsin Natural Resources Board proposes an order to amend Ch. NR 10.01 (1) (b), 10.01 (1) (g) 1. d.; and to create NR 1001 (1) (g) 1. dm. related to migratory bird hunting regulations.

WM-04-14 (E)

Analysis Prepared by the Department of Natural Resources

Statutory 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 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.

Additional statutory authority is found in s. 29.192, Stats. related to establishing regulations for hunting Canada geese.

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. 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.

This year, by a separate board order drawn from the same statement of scope and approved at the board’s June meeting, emergency rulemaking 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 needed to be informed of the State of Wisconsin Natural Resources Board decision on these seasons in June. The board order number for rules establishing the early teal season is WM-11-14(E).

This rule order is part of the “late migratory bird season framework” and it establishes what are commonly considered to be the regular waterfowl hunting season framework including the traditional late September to early October duck season opening days and Canada goose hunting season and regulations.

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: This emergency rule order will modify regulations for migratory bird hunting during the 2014 seasons.

SECTION 1 of these rules reduces the daily bag limit for canvasback ducks from two birds to one.

SECTIONS 2 and 3 increase the season harvest limit for Canada geese in the Horicon Zone from six birds to twelve. The daily bag limit will be unchanged and continues to be two birds.

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.

Wisconsin Canada goose harvest is supported by two 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 two 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.

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 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 an emergency rule 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 on approximately August 1 each year. This timeframe does not allow for promulgation of a permanent rule prior to the hunting season.

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 addition, harvest strategies have been developed to inform hunting season decisions for other individual duck species such as scaup, canvasback and pintail which could drive annual changes in bag limits or season lengths for those species.

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 is 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 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 each year, staff conduct a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Committee. At this meeting, staff provide the attendees with breeding status information and ask for any items that they wish the department to pursue at the MFC meeting in mid July. Department staff then attend the MFC Technical and Council meetings. At these meetings, staff are provided status information and the proposed framework alternative from the USFWS. Department staff work with the other states in our Flyway to discuss and develop proposals and recommendations that are voted upon by the MFC. Proposals that passed at the MFC meeting are forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting. The USFWS announces its final waterfowl season framework recommendation at the end of July. Department staff then summarize waterfowl status and regulation information for Wisconsin citizens and present this information to the Migratory Committee of the Conservation Congress and at a public meeting (Post-Flyway Meeting) of interest groups and individuals in early August. Staff gather public input and citizen suggestions at those meetings for the development of Wisconsin's waterfowl regulations, given the federal framework. In 2014, public hearings were held from August 4-7 around the state to solicit additional input on the proposed annual waterfowl rule.

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 7.

SECTION 1. NR 10.01 (1) (b) is 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 , <u>1 canvasback</u> , 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. on the Saturday nearest September 24 and continues for 60 consecutive days		
	Southern zone as established in s. NR 10.32	9:00 a.m. on the Saturday nearest October 1 and continues 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. on the Saturday nearest September 24 and continues for 9 days, followed by a 12-day split, and then reopens for 51 consecutive days.		

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

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 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>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.</u>
		<u>First permit period beginning on September 16 and continuing until the Sunday following the last Friday in October.</u>	2	
		Begins <u>Second permit period beginning on the Monday following the last Friday in October and continuing for a season total of 92 days combined for both periods.</u>	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. 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 5. EFFECTIVE DATE. This rule shall take effect upon publication in the Wisconsin state paper pursuant to s. 227.24(1)(c).

SECTION 6. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 13, 2014.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)