

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

The statement of scope for this rule, SS 031-15, was approved by the Governor on March 26, 2015, published in Register No. 712A1, on April 6, 2015, and approved by the Natural Resources Board on May 27, 2015. This rule was approved by the governor on August 20, 2015.

The Wisconsin Natural Resources Board proposes an order to amend Ch. NR 10.01 (1) (b), (g) 1. (intro.) and e., (g) 2. (intro) and d., (g) 3. (intro.) and d., (g) 4. (intro.) and d., and (u) 1. (intro.) and 3. (intro.), and 10.06 (5); and to create NR 10.01 (1) (g) 1. dm. related to establishing migratory bird hunting seasons and regulations.

WM-05-15 (E)

### 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.

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 2015, the department will promulgate two emergency rule orders establishing the migratory bird hunting seasons and regulations. The first is SS 030-15, WM-04-15 (E), related to the early season framework for teal and mourning dove hunting. The second is SS 031-15, WM-05-15 (E), related to the late season framework for the regular duck and goose hunting seasons. The permanent rule order will promulgate in Administrative Code the season and regulations for both the early teal-only season and extension of the mourning dove hunting season and other bag limit and season date modifications necessary to make the regular duck and goose hunting seasons consistent with the federal framework.

Adoption of the two separate emergency rule orders was needed because there are two different times when the service needs to be informed of Wisconsin’s season selections.

One section of this rule modifies rule language that is also currently being amended by earlier rule making, CR 15-024, the 2015 wildlife management spring hearings rule order. The provision which modifies migratory bird hunting hours in NR 10.06 (5) contains the changes from the earlier proposal which modified pheasant hunting hours.

**Plain Language Analysis:** SECTIONS 1 and 3 eliminate the 9:00 opening time of shooting hours for ducks and geese on the first day of the regular duck hunting seasons. Both sections also modify the duck and goose hunting season dates in the Mississippi river zone so that they will open on October 3 and continue through October 9. The season will then be closed for seven days, reopening on October 17 and continuing through December 8. Finally, section 3 extends the mourning dove hunting season from the current 70 to 90 days.

SECTION 2 increases the season harvest limit for Canada geese in the Horicon Zone from six birds to twelve. The daily bag and possession limits will continue to be 2 and 6 respectively.

SECTION 3 establishes that waterfowl shooting hours on the first day of the regular seasons will begin at 30 minutes before sunrise instead of 9:00 a.m. For consistency with other rulemaking that affects the same subsection, the hunting hours for teal during a teal-only season are also re-established.

**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:** These rules will modify the duck and goose hunting season dates in the Mississippi river zone consistent with options available under the federal framework for Wisconsin in 2015. The regular duck and Canada goose hunting seasons will open on October 3 and continue through October 9. The season will then be closed for seven days, reopening on October 17 and continuing through December 8. In addition to consistency with the federal framework for migratory bird hunting, these season dates are proposed in response to the requests of Mississippi river zone hunters expressed at hearings and meetings.

In the Horicon goose management zone the department proposes a season harvest limit of 12 Canada geese. This will be the second year of a 12 bird season limit. Prior to 2014, the season limit had been 6. The department will continue to monitor harvest and hunter response to confirm that a 12 goose harvest limit continues to be appropriate for this zone.

These rules will repeal the delayed, 9:00 a.m. start of shooting hours on the first day of the regular duck hunting seasons. Hunting will begin 30 minutes before sunrise as it does during the rest of the season. In the past, the delayed start may have been in place for variety of reasons, including so that hunters could find locations during full daylight on the first day of season when hunting pressure is at its greatest. Recently, hunters have considered these issues during open meetings and registered opinions with the Conservation Congress established under s. Ch. 15.348. Hunters have expressed that they do not think the delayed start is necessary. Wisconsin's surrounding states all begin shooting hours 30 minutes before sunrise on the first day of regular duck hunting seasons. During the early teal season, shooting hours would continue to be delayed so that hunting is not allowed until 9:00 a.m. on the first day and sunrise on subsequent days. Teal are the only duck species that may be harvested during this early season.

**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 6, 2015.

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**SECTION 1. NR 10.01 (1) (b) and (g) 1. (intro.) and d. are amended to read:**

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
<b>NR 10.01 (1) (b)</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, 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 <del>through the entire season</del> 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	<del>9:00 a.m.</del> Beginning on the Saturday nearest September 24 and <del>continues</del> <u>continuing</u> for 60 consecutive days		
	Southern zone as established in s. NR 10.32	<del>9:00 a.m.</del> Beginning on the Saturday nearest October 1 and <del>continues</del> <u>continuing</u> for 9 days, followed by a 5-day split, and then reopens for 51 <del>days</del> consecutive days.		
	Mississippi River zone as established in s. NR 10.32	<del>9:00 a.m.</del> Beginning on the Saturday nearest <del>September 24</del> <u>October 1</u> and <del>continues</del> <u>continuing</u> for <del>9</del> <u>7</u> days, followed by a <del>12-day</del> <u>7-day</u> split, and then reopens for <del>51</del> <u>53</u> consecutive days.		
(g) Geese 1. Canada geese and its subspecies <del>except on the first day of the duck season in par. b. when goose hunting is not allowed until 9:00 a.m.</del>	d. Horicon zone	Two permit periods		<del>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.</del>

		<u>First permit period beginning on September 16 and continuing until the Sunday following the last Friday in October.</u>	2	<u>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>
		<del>Begins</del> <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 2. 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 3. NR 10.01 (1) (g) 1. e., 2. (intro) and d., 3. (intro.) and d., 4. (intro.) and d., (h), and (u) 1. (intro.) and 3. (intro.) are amended to read:**

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
<b>NR 10.01 (1) (g) 1.</b>	e. Mississippi River subzone	Begins on the Saturday nearest <del>September 24</del> <u>October 1</u> and continues for <del>9</del> <u>7</u> days, followed by a <del>12-day</del> <u>7-day</u> split, and then reopens for a season total of 92 days.	2	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.
2. Snow or blue and Ross' geese <del>except on the first day of the duck season in</del> par. b. when <del>goose hunting is not allowed until 9:00 a.m.</del>				

	d. Mississippi river subzone	Begins on the Saturday nearest <del>September 24</del> <u>October 1</u> and continues for 9 <u>7</u> days, followed by a <del>12-day</del> <u>7-day</u> split, and then reopens for a season total of 92 days.		
3. All other geese <del>except on the first day of the duck season in par. b. when goose hunting is not allowed until 9:00 a.m.</del>				
	d. Mississippi River subzone	Begins on the Saturday nearest <del>September 24</del> <u>October 1</u> and continues for 9 <u>7</u> days, followed by a <del>12-day</del> <u>7-day</u> split, and then reopens for a season total of 88 days.		
4. Brant except on the first day of the duck season in par. b. when brant hunting is not allowed until 9:00 a.m.				
	d. Mississippi River subzone	Begins on the Saturday nearest <del>September 24</del> <u>October 1</u> and continues for 9 <u>7</u> days, followed by a <del>12-day</del> <u>7-day</u> split, and then reopens for a season total of 92 days.		
(h) Mourning dove	Entire State	Sept. 1 – <del>Nov. 9</del> <u>Nov. 29</u>	15	45
(u) 1. All species of wild ducks, mergansers and				

coots <del>except on the first day of the duck season in par. b. when hunting is not allowed until 9:00 a.m.</del>	
3. Geese <del>except on the first day of the duck season in par. b. when hunting is not allowed until 9:00 a.m.</del>	

**SECTION 4. NR 10.06 (5) (Intro.), as affected by CR 15-024, is amended to read:**

**NR 10.06 Hunting hours. (5) HUNTINGHOURS.** 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 for teal during a season for hunting teal species only. ~~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).~~ The hours for hunting teal during a teal-only season shall be sunrise through 7:00 p.m. except on the first day when hunting hours begin at 9:00 a.m. All pheasant hunting starts at 9:00 a.m. on the first day of the pheasant hunting season established in s. NR 10.01 (2) (c). 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:

**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. EFFECTIVE DATE.** 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 August 12, 2015.