

Clearinghouse Rule 07-055

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

The Wisconsin Natural Resources Board proposes an order to amend NR 10.01(1)(v), 10.12(5)(d), 10.15(6), and 12.10(1)(b)4.; to repeal and recreate NR 10.01(1)(b), (g) and (u); and to create NR 12.10(1)(b)6. relating to the 2007 migratory game bird seasons and waterfowl hunting zones.

WM-19-07

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted and Explanation of Agency Authority: In promulgating this rule, ss. 29.014, 29.041, and 29.885, Stats. have been interpreted as allowing the department the authority to establish the migratory game bird seasons within the state as well as on and in all waters bordering the state, establish the two day youth waterfowl hunt, authorize the removal of wild animals that are causing damage or that are a nuisance, modify the types of activities that are allowed within a 75 yard area around the Horicon National Wildlife Refuge, and require the use of non-toxic shot for rails and snipe.

Statutory Authority and Explanation of Agency Authority: Statutes that authorize the promulgation of this rule order include sections 29.014, and 227.11, Stats. These sections grant rule making authority to the department to establish and maintain open and closed seasons for hunting and provide that all rules promulgated under this authority are subject to review under ch. 227, Stats. In addition, s. 29.041, Stats., authorizes the department to promulgate rules that regulate hunting on and in all interstate boundary waters, s. 29.197, Stats., authorizes the establishment of special hunts, and s. 29.885, Stats. authorizes the department to regulate wildlife damage and nuisance control.

Related Statute or Rule: This rule order establishes the season length, bag limits, and shot-type requirements for the Wisconsin migratory game bird seasons. Each year similar or identical Emergency and Permanent rule packages are promulgated. This process is necessary to have the seasons in place for the fall hunting season while following the federal and state rule procedures.

Plain Language Analysis: This rule order establishes the season length and bag limits for the 2007 Wisconsin migratory game bird seasons. For ducks, the state is divided into two zones each with 60-day seasons. The season begins at 9:00 a.m. September 22 and continues for 60 consecutive days in the north, closing on November 20. In the South the season begins at 9:00 a.m. on September 29 and continues through October 7, followed by a 5-day split, and then reopens on October 13 and continues through December 2. The daily bag limit is 6 ducks including no more than: 4 mallards, of which only one may be a hen, one black duck, one pintail, one canvasback, 2 wood ducks, 2 redheads and 2 scaup.

For Canada geese, the state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone - 62 days (3 periods, first period beginning September 16); Horicon Zone - 92 days (4 periods, first period beginning September 16); Exterior Zone - 85 days (North: Sept. 16 – 21 and Sept. 22 (9:00 a.m.) – Dec. 9 and South: Sept 16 – Sept. 28 and Sept. 29 (9:00 a.m.) – Dec. 9); and Mississippi River subzone - 70 days (Sept. 29 (9:00 a.m.) – Oct. 7 and Oct. 13 - Dec. 12). The Burnett County subzone is closed to Canada goose hunting. The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

Additionally, this rule eliminates the requirement that airport officials complete a written application and receive written approval from the department before destroying Canada geese that are causing a nuisance or damage. Airports would be able to trap and relocate birds, destroy nests and eggs from March 1 – June 30, kill adult birds and goslings by trapping or shooting from April 1 – September 15, and do so on neighboring lands with landowner permission.

At the Horicon National Wildlife Refuge, this rule would allow the placement of decoys and shooting at waterfowl that are within 75 yards of the refuge boundary by people who are hunting from outside of the 75 yard secondary boundary. The discharge of firearms at waterfowl by a person who is within 75 yards of the refuge boundary would continue to be illegal. The nature of this proposal is a housekeeping change that will restore a hunting strategy which was inadvertently eliminated when the Horicon Intensive Management Zone was eliminated.

Finally, this rule will require the use of non-toxic shot by people who are hunting rails, snipe and moorhens in 2007. The rule will require the use of non-toxic shot for dove hunting on lands that under the management, supervision, and control of the department beginning in 2008. Non-toxic shot is already required for use when hunting waterfowl and coot.

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 (FWS) regulations process. As part of the Federal rule process, the FWS 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. Additionally, while FWS believes that the NAWMP's population goals would tend to exert a conservative influence on overall duck harvest- management, other factors, such as habitat, also need to be considered.

In the past, the Regular Canada goose season was based on the allowable Mississippi Valley Population (MVP) harvest which was determined based on the spring breeding population estimate obtained from an aerial survey of the MVP breeding range as prescribed by the Mississippi Flyway MVP management plan. However, because locally produced giant Canada geese now constitute a considerable portion of the harvest in all states that also harvest Mississippi Valley Population birds, the Mississippi Flyway Council would like to test the use of a standard season framework for 5 years. Beginning this fall and continuing for five years, season lengths and bag limits for each MVP harvest state will remain unchanged. Each state retains the flexibility to schedule the timing their Canada goose season. In addition, if the MVP spring population numbers dropped to a predetermined low level during the 5 year period the stable season framework would be adjusted.

Finally, the FWS has modified its regulations on the management of resident Canada geese. The overall intent of those modifications is to reduce federal involvement in the permitting and management of resident geese in nuisance situations. However, the final result of the modifications simply created some state procedural changes for most areas of resident Canada goose management. The proposed modification to exempt airports from Canada nuisance control permits in this proposed rule makes our regulations consistent with new federal guidelines in 50 CFR 21.

All proposed modifications included in this rule order are consistent with these parameters and guidelines which are annually established by the Fish and Wildlife Service 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 a 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 FWS. The FWS 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 FWS.

This rule would require the use of non-toxic shot when hunting rails, snipe, and moorhens. Non-toxic shot would be required for hunting mourning doves on department managed lands. Non-toxic shot is already required for most bird hunting on federally owned waterfowl production areas and refuges. There are 26 states that have non-toxic shot requirements that are more restrictive than federal rules including all of Wisconsin's neighboring states.

Summary of Factual Data and Analytical Methodologies: 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, duck, and goose surveys). The option of a closed season is also possible if survey conditions indicated that this was 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 the traditional survey areas as well as surveys from select states, including Wisconsin.

Wisconsin's regular Canada goose season harvest consists of close to a 50:50 rate between resident giant and MVP population Canada geese. As a result, the parameters of Wisconsin's regular goose seasons will be guided by the Mississippi Flyway management plans for the MVP and giant Canada goose populations and approved by the MFC and the USFWS. The health of these populations will be 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 results of this work will be reviewed annually by the MFC committee and the USFWS to measure the impact of the stable season framework trial period.

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 May and June, breeding waterfowl surveys and banding are conducted in support of the regulatory process.

In early July, staff conduct a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Bird Committee. At this meeting staff provide the attendees with any breeding status information we have received and we ask for any items that they wish us to pursue at the MFC meeting that will occur in mid July. Department staff then attend the MFC Technical and Council meetings (July 23 -29, 2007). At this meeting staff will be provided status information and the proposed framework alternative from the USFWS. Department staff then work with the other states in our Flyway to discuss and develop proposals and recommendations that are voted upon by the MFC. Proposals that are passed at the MFC meeting are forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting (August 1 - 2, 2007). On August 3, the USFWS will announce its final waterfowl season framework recommendation. Once the USFWS's final Draft framework is available, Department staff can summarize waterfowl status and regulation information for Wisconsin citizens. This information is presented to the Migratory Committee of the Conservation Congress and at a public meeting (Post-Flyway Meeting) of interest groups and individuals. Staff receive input at these meetings regarding citizen suggestions for the development of Wisconsin's waterfowl regulations given the federal framework. The following week, public hearings are held around the state to solicit additional input on the proposed annual waterfowl rule.

Non-toxic shot is already required for use when hunting waterfowl coot and this rule will expand that requirement to people who are hunting rails, snipe, moorhens. Non-toxic shot would be required for hunting mourning doves on department managed lands beginning in 2008. All of these species of birds are susceptible to lead poisoning when they ingest pellets for their crop, then other grit material wears down the soft lead pellets, causing lead particles to be absorbed in the bloodstream. Examinations of dead birds collected from the wild still commonly identify lead toxicity as a cause of death.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses. Additionally, no significant costs are associated with compliance to these rules.

Effects on Small Businesses: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule.

Agency Contact Person: Kent Van Horn, 101 S. Webster St., PO BOX 7921, Madison, WI 53707-7921.
kent.vanhorn@wisconsin.gov (608) 266-8841

Deadline for Public Comments: August 9, 2007.

Section 1. NR 10.01(1)(b), (g) and (u) are repealed and recreated 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	As established by season and zone	Double the daily bag limit through the entire season, except opening day when it is the same as the daily bag limit.
	Northern zone as established in s. NR 10.32	Sept. 22 at 9:00 a.m. – Nov. 20	6 ducks to include not more than 4 mallards of which only one may be a hen mallard, one black duck, one canvasback, one pintail, 2 redheads, 2 wood ducks, and 2 scaup. In addition 5 mergansers to include not more than one hooded merganser.	
	Southern zone as established in s. NR 10.32	Sept. 29 at 9:00 a.m. – Oct. 7 and Oct. 13 – Dec. 2	6 ducks to include not more than 4 mallards of which only one may be a hen mallard, one black duck, one pintail, 2 redheads, 2 wood ducks, 2	

scaup, and one canvasback.
In addition 5 mergansers to
include not more than one
hooded merganser.

Section 1. Continued.

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	a. Entire state	Sept. 1 — Sept. 15	5	10
	b. All that part of the exterior zone lying within the northern zone established in s. NR 10.32 except for the subzone described in subd. 1.c. and 1.d.	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Dec. 9	2	4
	c. All that part of the Brown County subzone lying within the northern zone established in s. NR 10.32.	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Dec. 9	2	4
	d. Burnett county subzone	None	None	None
	e. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 1. f. to j.	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9	2	4
	f. All that part of the Brown County subzone lying within the southern zone established in s. NR 10.32.	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9	2	4

Section 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
	g. Horicon zone	Four permit periods		6 (equivalent to the prescribed number of carcass tags)
		Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Oct. 28	2	
		Sept. 22 – Sept. 28 and Sept. 29 at 9:00 a.m. – Nov. 2	2	
		Oct. 13 – Nov. 23	2	
		Oct. 27 - Dec. 16	2	
	h. Collins zone	Three permit periods:		6 (equivalent to the prescribed number of carcass tags)
		Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Sept. 30	2	
		Oct. 1 – Oct 21	2	
		Oct. 22 – Nov. 16	2	
	i. Rock Prairie subzone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9	2	4
	j. Mississippi river subzone	Sept. 29 at 9:00 a.m. – Oct. 7	2	4
		Oct. 13 – Dec. 12	2	4

Note: Season dates listed in this subdivision may be closed early when the harvest may exceed the level authorized, according to the procedure in s. NR 10.125(6).

2. Snow or blue and Ross' geese	Entire state	As established by zone	10	20
---------------------------------	--------------	------------------------	----	----

Section 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32 except for the subzone described in subd. 2.b. and 2.c.	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Dec. 9		
	b. All that part of the Brown County subzone lying within the northern zone established in s. NR 10.32.	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Dec. 9		
	c. Burnett county subzone	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Dec. 9		
	d. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 2. e. to i.	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9		
	e. All that part of the Brown County subzone lying within the southern zone established in s. NR 10.32	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9		
	f. Horicon zone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 16		
	g. Collins zone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Nov. 16		
	h. Rock Prairie subzone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9		
	i. Mississippi river subzone	Sept. 29 at 9:00 a.m. – Oct. 7 and Oct. 13 - Dec. 12		

Section 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
3. All other geese	Entire state	As established by zone	1 white-fronted goose	2 white-fronted geese
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32 except for the subzone described in subd. 3.b. and 3.c.	Sept. 22 at 9:00 a.m. – Dec. 9		
	b. All that part of the Brown County subzone lying within the northern zone established in s. NR 10.32	Sept. 22 at 9:00 a.m. – Dec. 9		
	c. Burnett county subzone	Sept. 22 at 9:00 a.m. – Dec. 9		
	d. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in this subd. 3.e. to i.	Sept. 22 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9		
	e. All that part of the Brown County subzone lying within the southern zone established in s. NR 10.32	Sept. 22 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9		
	f. Horicon zone	Sept. 22 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 16		
	g. Collins zone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Nov. 16		
	h. Rock Prairie subzone	Sept. 22 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9		

Section 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
4. Brant	i. Mississippi river subzone	Sept. 29 at 9:00 a.m. – Oct. 7 and Oct. 13 – Dec. 12		
	Entire state	As established by zone	1	2
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32 except for the subzone described in sub. 3.b. and 3.c.	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Dec. 9		
	b. All that part of the Brown county subzone lying within the northern zone established in s. NR 10.32	Sept. 16 – Sept. 21 and Sept. 22 at 9:00 a.m. – Dec. 9		
	c. Burnett county subzone	Sept. 16 – Sept. 29 and Sept. 30 at 9:00 a.m. – Dec. 9		
	d. All that part of the exterior zone lying within the southern zone established in s. NR 10.32 except for the zones and subzones described in subd. 3. e. to i.	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9		
	e. All that part of the Brown county subzone lying within the southern zone established in s. NR 10.32	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9		
	f. Horicon zone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 16		
	g. Collins zone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Nov. 16		
	h. Rock Prairie subzone	Sept. 16 – Sept. 28 and Sept. 29 at 9:00 a.m. – Dec. 9		
	i. Mississippi river subzone	Sept. 29 at 9:00 a.m. – Oct. 7 and Oct. 13 - Dec. 12		

Section 1. Continued.

NR 10.01(1)(u) *Falconry special season.* Any person possessing a valid falconry permit and hunting license shall be restricted to the following migratory game bird seasons:

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
1. All species of wild ducks, mergansers and coots	Northern zone as established in s. NR 10.32	Sept. 15– Sept. 16, Sept. 22 at 9:00 a.m. – Nov. 20 and Jan. 13 – Feb. 26	3 in aggregate with those species listed under subd. 2.	6 in aggregate with those species listed under subd. 2 .
	Southern zone as established in s. NR 10.32	Sept. 15 – Sept. 16, Sept. 29 at 9:00 a.m. – Oct. 7, Oct. 13 – Dec. 2 and Jan. 13 – Feb. 26	3 in aggregate with those species listed under subd. 2.	6 in aggregate with those species listed under subd. 2.
2. Gallinules, Sora rail, Virginia rail, common snipe and woodcock	Entire state	Sept. 1 – Dec. 16	3 in aggregate with those species listed under subd. 1.	6 in aggregate with those species listed under subd. 1.
3. Geese	Within the zones and subzones established in s. NR 10.31	Concurrent with the open season for geese established in par. (g) for each zone or subzone	As established in par. (g) for each zone or subzone	As established in par. (g) for each zone or subzone

Section 2. NR 10.01(1)(v) is amended to read:

NR 10.01(1)(v) *Special youth waterfowl hunt event.* Persons 12 years of age or older but under 16 years of age who possess a certificate of accomplishment under s. 29.591, Stats., or its equivalent from another state or province, may hunt all species of wild duck, mergansers, geese, coots, and moorhens for 2 consecutive days starting on September ~~4~~ 15. 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) and (g), except that the daily bag limit for the zone or sub zone being hunted as listed in par. (g)1.a. to j., 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. One adult may not accompany more than 2 hunters.

Section 3. NR 10.12(5)(d) is amended to read:

NR 10.12(5)(d) *Non-toxic shot requirements.* While hunting waterfowl, snipe, rails, moorhens and coot within any areas of the state, or mourning doves on lands which are under the management, supervision and control of the department, no person may:

1. Take, catch, kill or pursue waterfowl, mourning doves, snipe, rails, moorhens and coot with any shot, either in shotshells or as loose shot for muzzle-loading, other than non-toxic shot.
2. Possess any shotshell or muzzle-loading firearm loaded with any material other than non-toxic shot.

Section 4. NR 10.15(6) is amended to read:

NR 10.15(6) WATERFOWL SEASON. No person may hunt waterfowl within 75 yards of the Horicon national wildlife refuge boundary during the open season for hunting waterfowl. For purposes of this section, the placement of decoys or shooting at waterfowl which are located within the 75-yard zone immediately outside of the refuge are allowed as long as the hunter does not discharge a firearm or bow and arrow from within that area when shooting at waterfowl.

Section 5. NR 12.10(1)(b)4. is amended to read:

NR 12.10(1)(b) 4. Harass or disturb protected wild birds, not listed as endangered or threatened in s. NR 27.03, in such a way as to relieve a damage or nuisance situation in urban areas ~~and~~, golf courses, and airports provided the bird is not physically harmed.

Section 6. NR 12.10(1)(b)6. is created to read:

NR 12.10(1)(b)6. Conduct any of the following activities in order to control Canada geese at an airport or within a three mile radius of the airport with landowner permission, if the activities are conducted by airport employees or their designees in compliance with the restrictions, requirements and conditions as described by the U.S. fish and wildlife service in 50 CFR 21.49 and provided that all birds are disposed of as directed by the department:

- a. Live-trap and relocate Canada geese.
- b. Destroy nests and eggs of Canada geese from March 1 to June 30.
- c. Kill adult Canada geese and goslings by trapping or shooting from April 1 to September 15.

Section 7. EFFECTIVE DATE. The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.).

Section 8. 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 _____
Scott Hassett, Secretary

(SEAL)