

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 repeal and recreate NR 10.01(1)(b), (g) and (u) and 10.32 and to amend 10.01(1)(v) relating to hunting and the 2011 migratory game bird seasons and waterfowl hunting zones.

WM-11-11

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted and Explanation of Agency Authority: In promulgating this rule, ss. 29.014, 29.041, 29.192 and 29.197 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 and establish the two-day youth waterfowl hunt.

Statutory Authority and Explanation of Agency Authority: Statutes that authorize the promulgation of this rule order include ss. 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. 29.192 establishes a process for issuing permits to hunt Canada geese, and s. 29.197, Stats., authorizes the establishment of special hunts.

Related Statute or Rule: This rule order establishes the season length and bag limits, 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: SECTION 1 of this rule order establishes the season length and bag limits for the 2011 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 24 and continues for 60 consecutive days in the north, closing on November 22. In the South the season begins at 9:00 a.m. on October 1 and continues through October 9, followed by a 5-day split, and then reopens on October 15 and continues through December 4. The daily bag limit is 6 ducks including no more than: 4 mallards, of which only 1 may be a hen, 1 black duck, 1 canvasback, 3 wood ducks, 2 scaup, 2 pintails and 2 redheads.

For Canada geese, the state is apportioned into 2 goose hunting zones, Horicon and Exterior. Other special goose management subzones within the Exterior Zone include Brown County and the Mississippi River. Season lengths are: Horicon Zone - 92 days (2 hunting periods, first period beginning September 16 and the second on October 31); Exterior Zone in the northern duck zone - 85 days (Sept. 17 – Dec. 10); Exterior Zone in the southern duck zone – 85 days (Sept. 17 – Oct. 9 and Oct. 15 – Dec. 15) and Mississippi River subzone - 85 days (Oct. 1 – Oct. 9 and Oct. 15 – Dec. 29). The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the open seasons within the zones.

SECTION 2 establishes that the youth waterfowl hunting season will be held on September 17 and 18.

SECTION 3 establishes a new duck hunting zone configuration. At the time of submittal of this rule to the Wisconsin Legislative Council Clearinghouse for review under Ch. 227.15 Stats., the USFWS had not determined if they can give our state the option of reconfiguring duck hunting zones because they are engaged in a concurrent rule making process. If the USFWS does not grant Wisconsin's request to change duck hunting zones, the department will not propose a SECTION 3 in this board order when we request adoption and will not take public input on SECTION 3 at public hearings.

If the USFWS does grant Wisconsin's request to change duck hunting zone configurations, the department will request public input at hearings on three new alternatives. A map of each option is included under alternative versions of SECTION 3 of this rule order. Under all three alternatives, the Northern Zone duck hunting season would not change from the dates listed in this proposal. The Canada goose hunting season would be modified so that it is also closed during the closed period in duck zones that have split seasons.

The first alternative is to create a new, third duck hunting zone that consists of Mississippi River areas west of the Burlington Northern Railroad tracks. Under this scenario, the season dates in this zone would include a split when hunting is not allowed that is four days longer than the current five day split. The duck season dates would be October 1 to 9, reopening on October 19 and continuing through December 8 for a 60 day season.

The second alternative is to create a new, third duck hunting zone that consists of the Lake Michigan areas east of a line beginning 500 feet from shore, not including Green Bay. Under this scenario, the season dates in this zone would not include a split or closed period. The season would begin on October 15 and continue through December 13 for a 60 day season.

A third alternative is to create two new zones, one that consists of Lake Michigan and one that consists of the Mississippi River as described above. Under this scenario, the USFWS proposes to only allow continuous straight seasons with no opportunities for splits or closed periods during the season. Under this scenario the 60 day season in the Mississippi River zone would open on October 8 and continue through December 6. In Lake Michigan, it would open on October 15 and close on December 13. In the South Zone, it would open on October 1 and continue through November 29

A fourth alternative that the department will request input on is the existing zones with season dates as described in this proposed order.

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. Additionally, while USFWS believes that the NAWMP's population goals would tend to exert a conservative influence on overall duck harvest-management. Other factors, such as habitat, are 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 is testing the use of a standard season framework for 5 years. Beginning in the fall of 2007 and continuing through 2011, season lengths and bag limits for each MVP harvest state have remained unchanged. Each state retains the flexibility to schedule the timing of 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.

At the time of submittal of this rule to the Wisconsin Legislative Council Clearinghouse for review under Ch. 227.15 Stats., the USFWS had not determined if they can give our state the option of reconfiguring duck hunting zones because they are engaged in a concurrent rule making process to revise 50 CFR 20. If the USFWS does not modify their rules allowing Wisconsin to change duck hunting zones, the department will not propose a SECTION 3 in this board order when we request adoption and will not take public input on SECTION 3 alternatives at public hearings.

Except as described above, 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 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 USFWS.

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 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 to the annual waterfowl hunting regulation process described below, 2011 is the open window to change state duck hunting zones as allowed by the USFWS every 5 years. Since 1991, the USFWS has regulated how states can arrange duck hunting zones and season splits. A season split is a temporary closure of the hunting season in order to extend the hunting later in

the duck season. The USFWS has allowed 3 configurations of duck zones and splits; 1)One statewide zone with the annual option to have 2 season splits, 2)Two zones with the annual option for 1 season split in each zone, 3)Three zones without the option for a split. Each zone can have a unique size or shape but must be contiguous and the boundaries clear.

Wisconsin has always selected the 2 zone with split option to provide a north and south duck hunting zone. Over the years, we have moved our zone line but always maintained a general north and south separation recognizing the differences in weather and hunting opportunities. While we have worked with the USFWS restrictions on duck hunting zones it has been our consistent position that the configuration of duck zones is an issue of hunter opportunity and satisfaction which does not have significant impact on duck populations, therefore, states should be allowed to manage zones without federal regulation. We have provided comment to the USFWS with this position over the years but the USFWS has maintained control over state duck hunting zones.

In August, 2010 the USFWS announced their intent to offer 2 additional duck hunting zone options; 3 zones with splits and 4 zones without splits. Unfortunately, the federal implementation of these new opportunities has moved slower than planned and there is still uncertainty whether it will be implemented in 2011 or delayed. Potential configurations are described in SECTION 3 of this rule order. If one of these new options is selected it is likely that the season structure for the north and south zones will experience only minor changes from that in this proposed rule order while 1-2 new season structures will be offered in the new zones.

Wisconsin's regular Canada goose season harvest consists of close to a 50:50 ratio between resident giant and MVP population Canada geese. As a result, the parameters of Wisconsin's regular goose seasons are guided by the Mississippi Flyway management plans for the MVP and giant Canada goose populations and approved by the Mississippi Flyway Council and the USFWS. The health of these populations was 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 result of this work is 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 spring and summer, breeding waterfowl surveys and banding are conducted in support of the regulatory process.

In early July, staff will conduct a public meeting to solicit input from interest groups, including representatives of the Conservation Congress Migratory Committee. At this meeting staff will 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 this meeting, staff will be 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 to be voted upon by the MFC. Proposals that pass at the MFC meeting will be forwarded to the USFWS for consideration by the Service Regulations Committee (SRC) at their meeting. The USFWS will announce its final waterfowl season framework recommendation on July 29. Department staff will 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 on July 30. Staff will gather public input at these meetings regarding citizen suggestions for the development of Wisconsin's waterfowl regulations given the federal framework. Public hearings will be held during the first week of August around the state to solicit additional input on the proposed annual waterfowl rule.

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 Written Comments: Comments on this proposed rulemaking may be submitted to the agency contact person listed above. The deadline for written comments is Thursday, August 4.

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. 24 at 9:00 a.m. – Nov. 22	6 ducks to include not more than 4 mallards of which only 1 may be a hen mallard, 1 black duck, 2 pintails, 1 canvasback, 2 redheads, 2 scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.	
	Southern zone as established in s. NR 10.32	Oct. 1 at 9:00 a.m. – Oct. 9 and Oct. 15 – Dec. 4	6 ducks to include not more than 4 mallards of which only 1 may be a hen mallard, 1 black duck, 2 pintails, 1 canvasback, 2 redheads, 2 scaup and 3 wood ducks. In addition 5 mergansers to include not more than 2 hooded mergansers.	

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 subzones described in subd. 1.c.	Sept. 17 – Sept. 23 and Sept. 24 at 9:00 a.m. – Dec. 10	2	4
	c. All that part of the Brown County subzone lying within the northern zone established in s. NR 10.32.	Sept. 17 – Sept. 23 and Sept. 24 at 9:00 a.m. – Dec. 10	2	4
	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. 1. f. to h.	Sept. 17 – Sept. 30 and Oct 1 at 9:00 a.m. - Oct. 9 and Oct. 15 - Dec. 15	2	4
	e. All that part of the Brown County subzone lying within the southern zone established in s. NR 10.32.	Sept. 17 – Sept. 30 and Oct 1 at 9:00 a.m. - Oct. 9 and Oct. 15 - Dec. 15	2	4
	f. Horicon zone	Two permit periods		6 (equivalent to the prescribed number of carcass tags)
		Sept. 16 – Sept. 30 and Oct. 1 at 9:00 a.m. – Oct 30.	2	
		Oct 31 – Dec. 16	2	
h. Mississippi River subzone	Oct. 1 at 9:00 a.m. – Oct. 9 and Oct. 15 – Dec 29	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).

SECTION 1. Continued.

2. Snow or blue and Ross' geese	Entire state	As established by zone	20	40
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 subzones described in subd. 2.b.	Sept. 17 – Sept. 23 and Sept. 24 at 9:00 a.m. – Dec. 10		
	b. All that part of the Brown County subzone lying within the northern zone established in s. NR 10.32.	Sept. 17 – Sept. 23 and Sept. 24 at 9:00 a.m. – Dec. 10		
	c. 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. d. to g.	Sept. 17 – Sept. 30 and Oct 1 at 9:00 a.m. - Oct. 9 and Oct. 15 - Dec. 15		
	d. All that part of the Brown County subzone lying within the southern zone established in s. NR 10.32	Sept. 17 – Sept. 30 and Oct 1 at 9:00 a.m. - Oct. 9 and Oct. 15 - Dec. 15		
	e. Horicon zone	Sept. 16 – Sept. 30 and Oct. 1 at 9:00 a.m. – Dec. 16		
	g. Mississippi river subzone	Oct. 1 at 9:00 a.m. – Oct. 9 and Oct. 15 – Dec 29		

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 subzones described in subd. 3.b.	Sept. 17 – Sept. 23 and Sept. 24 at 9:00 a.m. – Dec. 10		
	b. All that part of the Brown County subzone lying within the northern zone established in s. NR 10.32	Sept. 17 – Sept. 23 and Sept. 24 at 9:00 a.m. – Dec. 10		
	c. 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.d. to g.	Sept. 17 – Sept. 30 and Oct 1 at 9:00 a.m. - Oct. 9 and Oct. 15 - Dec. 15		
	d. All that part of the Brown County subzone lying within the southern zone established in s. NR 10.32	Sept. 17 - Sept. 30 and Oct 1 at 9:00 a.m. - Oct. 9 and Oct. 15 - Dec. 15		
	e. Horicon zone	Sept. 22 - Sept. 30 and Oct. 1 at 9:00 a.m. – Dec. 16		
	g. Mississippi River subzone	Oct. 1 at 9:00 a.m. – Oct. 9 and Oct. 15 – Dec 29		

SECTION 1. Continued.

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
4. Brant	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 subzones described in sub. 3.b.	Sept. 17 – Sept. 23 and Sept. 24 at 9:00 a.m. – Dec. 10		
	b. All that part of the Brown county subzone lying within the northern zone established in s. NR 10.32	Sept. 17 – Sept. 23 and Sept. 24 at 9:00 a.m. – Dec. 10		
	c. 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. d. to g.	Sept. 17 – Sept. 30 and Oct 1 at 9:00 a.m. - Oct. 9 and Oct. 15 - Dec. 15		
	d. All that part of the Brown County subzone lying within the southern zone established in s. NR 10.32	Sept. 17 – Sept. 30 and Oct 1 at 9:00 a.m. - Oct. 9 and Oct. 15 - Dec. 15		
	e. Horicon zone	Sept. 16 – Sept. 30 and Oct. 1 at 9:00 a.m. – Dec. 16		
	g. Mississippi River subzone	Oct. 1 at 9:00 a.m. – Oct. 9 and Oct. 15 – Dec 29		

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. 17 – Sept. 18, Sept. 24 at 9:00 a.m. – Nov. 22 and Jan. 6 – Feb. 19	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. 17 – Sept. 18, and Oct 1 at 9:00 a.m. – Oct. 9, Oct. 15 – Dec. 4 and Jan. 6 – Feb. 19	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

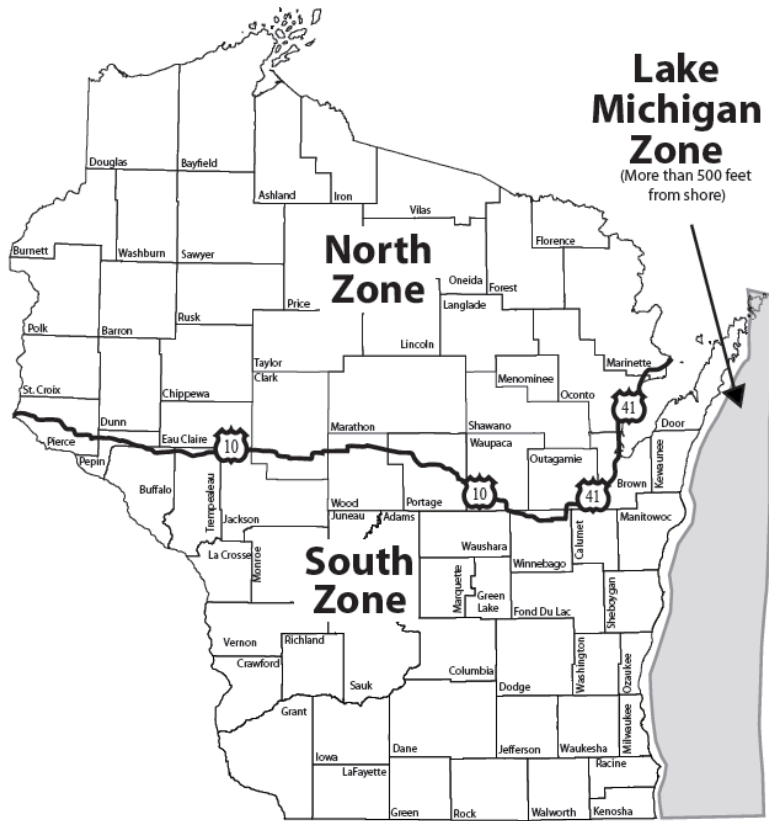
SECTION 2. NR 10.01(1)(v) is amended to read:

NR 10.01(1)(v) *Special youth waterfowl hunt event.* Persons under the age of 16 may hunt all species of wild duck, mergansers, geese, coots, and moorhens for 2 consecutive days starting on September ~~48~~ 17. 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 h., 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 and be in compliance with ss. 29.592 and 29.593, Stats. One adult may not accompany more than 2 hunters and pursuant to s. 29.592, Stats., not more than one of the 2 hunters may be age 10 or 11, or be a person who does not possess a certificate of accomplishment under s. 29.591, Stats., or its equivalent from another state, country or province.

Section 3 (first alternative version to consider at hearings). NR 10.32 is repealed and recreated:



SECTION 3 (second alternative version to consider at hearings). NR 10.32 is repealed and recreated to read:



Section 3 (third alternative version to consider at hearings). NR 10.32 is repealed and recreated:



SECTION 4. 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 5. 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 _____
Cathy Stepp, Secretary

(SEAL)