

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS
WM-06-13

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041 and 227.11(2)(a), Stats., interpreting ss. 29.014, 29.041 and 29.192, Stats., the Department of Natural Resources will hold public meetings on revisions to ch. NR 10, Wis. Adm. Code, related to migratory bird hunting regulations. Season dates and bag limits will be set for ducks and Canada geese. Under international treaty and federal law, migratory game bird seasons are closed unless opened annually via the U.S. Fish and Wildlife Service regulatory process. Because of the timing of Wisconsin's rule process and the U.S. Fish and Wildlife Service rule process the season dates, the actual season lengths, dates and bag limits cannot be determined at this time for much of the rule.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will begin at 7:00 p.m. at each of the following locations:

August 5, 2013 State Office Building, Rooms B-19 and B-20, 3550 Mormon Coulee Rd, La Crosse

August 6, 2013 Days Inn, 1710 South Main Street, Rice Lake

August 7, 2013 Agricultural Services Center, Main conference room, 3369 West Brewster St, Appleton

August 8, 2013 Wildwood Lodge, N14 W24121 Tower Place, Pewaukee

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with rulemaking. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Plain Language Analysis: SECTIONS 1 and 2 of this rule eliminate references to the Brown County and New Auburn subzones of the Exterior Zone for Canada goose hunting. Those subzone designations have not been used by the department in recent years when setting migratory bird hunting seasons by emergency rule.

SECTION 2 of this rule order establishes the season length and bag limits for the migratory game bird seasons. For ducks, the state is divided into three zones, each with 60-day seasons as allowed by federal rule under liberal season frameworks. The proposed seasons in each zone are:

North duck zone - the season begins at 9:00 a.m. on the Saturday nearest September 24 and continues for 60 consecutive days.

South duck zone - the season begins at 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 consecutive days.

Mississippi River duck zone - the season begins at 9:00 am on the Saturday nearest September 24 and continues for 9 days, followed by a 12 day split, and then reopens for 51 consecutive days.

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 zones for the regular hunting season, Horicon and Exterior, each with a 92 day season. The Mississippi River Subzone is a special goose management subzone within the Exterior Zone. Season lengths are:

Horicon Zone – Two hunting periods, the first period beginning September 16 and the second on the Monday following the last Friday in October until December 16

Exterior Zone in the northern duck zone - Begins on September 16 and continues for 92 consecutive days

Exterior Zone in the southern duck zone – Begins on September 16 continuing until a closure during the 5 day split in the southern duck zone hunting season and then reopens following this split for the remainder of a season total of 92 days.

Mississippi River subzone – Begins the same day as the duck hunting season in the Mississippi River Zone, closes during the Mississippi River Zone duck hunting season split and reopens following this split for the remainder of a season total of 92 days.

The statewide daily bag limit for Canada geese in all zones is 2 birds per day during the regular open seasons within the zones.

SECTION 3 establishes that the youth waterfowl hunting season dates.

SECTION 4 lifts a sunset of special migratory bird hunting regulations at the Mead and Zeloski Marsh Wildlife Management Areas.

SECTION 5 Expands open water hunting opportunities for migratory birds by adding 10 lakes to the list of those where open water hunting is allowed if the hunter is more than 1,000 feet from the shoreline and islands.

SECTION 6 relaxes the prohibition on hunting waterfowl in open water for holders of permits for hunters with disabilities.

SECTIONS 7 to 9 simplify Canada goose hunting regulations in the Horicon Zone by providing the department the option of not requiring carcass tags and eliminating the permit application deadline when those measures are not necessary to restrict the harvest of Canada geese.

SECTION 10 decreases the size of the Horicon Zone for goose hunting by redesignating portions of Columbia, Winnebago, Fond du Lac, Marquette, and Green Lake counties from Horicon Zone to Exterior Zone.

SECTION 11 establishes a duck hunting zone that consists of the Wisconsin portions of the Mississippi River west of the Burlington Northern Santa Fe Railroad tracks. This is the same zone configuration that was in place for the 2011 and 2012 seasons and has been approved by the USFWS for a five year period.

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. These contrasting goals create a challenge in the development of hunting regulations. In order to improve our harvest management, the Mississippi Flyway Council tested the use of a standard season framework for 5 years while monitoring population size and harvest rates for the MVP and TBP. From 2007 - 2011, season lengths and bag limits for each MVP harvest state were unchanged. Each state retained 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 could be adjusted. At the winter 2012 flyway meeting, analysis of the impacts of these 5 years of stable regulation were reviewed and the results were mixed with regard to the management objectives. It was decided among the member states that a cautious and slow approach should be taken toward continued liberalization of Canada goose hunting seasons.

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: In the past, the department has annually promulgated emergency and permanent 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 on approximately August 1 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 are not useful, current information. Through this rulemaking process, the department is evaluating ways to establish more general descriptions of the migratory bird hunting season in administrative code. For example, new rule language starts the northern duck season on the "Saturday nearest September 24" instead of a specific date. Emergency rulemaking will still be required of the department as the federal frameworks are established each year, but the result would be less rulemaking overall.

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. 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 2011 the USFWS gave our state the option of reconfiguring duck hunting zones and after an 11 month public input process Wisconsin implemented changes for a 5 year period. Waterfowl hunters have been supportive of the new zone configuration and this proposal contains the same zone configuration that was in effect for the 2011 season. The department's position has been that the configuration of duck zones is

an issue of hunter opportunity and satisfaction which does not have significant impact on duck populations.

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, 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 on August 3.. Staff gather public input and citizen suggestions at those meetings for the development of Wisconsin's waterfowl regulations, given the federal framework. Public hearings will be held from August 5-8 around the state to solicit additional input on the proposed annual waterfowl rule.

Wisconsin has a long tradition of restricting waterfowl hunting to the near shore and marsh areas of lakes and flowages. This provides safe open water resting areas for migrating waterfowl and helps keep ducks on water bodies for a longer period during the hunting season. However, "open water" hunting is allowed on some large lakes and the Great Lakes where it is believed that open water hunting does not eliminate safe resting areas. This type of hunting may involve specialized boats and other equipment and primarily targets diving species of ducks. All open water blinds must be removed at the close of hunting hours each day. Following a citizen request to increase hunting opportunities by expanding the number of lakes available for open water duck hunting, an ad hoc committee of citizens conducted a statewide review of 130 of the state's largest lakes, held local meetings, and made recommendations for additional open water hunting lakes. Adding the lakes in this proposal will increase areas available to waterfowl hunters and provide more opportunities for a unique type of waterfowl hunting.

This rule will expand opportunity for waterfowl hunters with disabilities. Open water waterfowl hunting is currently prohibited on all but a handful of lakes in WI. A hunter who is "concealed" in emergent vegetation under current rules is not considered to be in open water. The concern is that those with disabilities may physically not be able to get into a smaller boat, skiff, or blind and that it may be difficult or impossible to place an accessible boat or blind near vegetation capable of meeting the concealment requirements. This proposal will make it possible for disabled permit holders, and their companions, to hunt from a craft such as a pontoon boat, which may be impossible to conceal in emergent vegetation.

This proposal would simplify Canada goose hunting regulations in the Horicon Zone by providing the department the option of not requiring carcass tags and eliminating the permit application deadline when those measures are not necessary to restrict the harvest of Canada geese. In recent years the department has been able to provide more carcass tags to each applicant than most hunters were able to use. With improved harvest reporting methods, reduced Horicon Zone hunter numbers and efforts to

reduce management costs, it is possible to eliminate the use of a carcass tag. Hunters will continue to be restricted to a specific number of Canada geese harvested in the Horicon Zone each season but this will be controlled through a punch card and telephone reporting system rather than issuance of a carcass tag.

In an effort to provide additional hunting opportunity and simplify regulations, while still protecting Ontario nesting Canada geese from overharvest, this proposal would shrink the size of the Horicon Zone. Areas removed from the Horicon Zone would become part of the Exterior Zone. During regular Canada goose seasons in the Horicon and Exterior Zones, Wisconsin harvests geese from 2 nesting populations; geese that nest locally and geese that nest in wilderness areas of northern Ontario. Harvest of the Ontario population is shared among several states and is managed to avoid overharvest. The Horicon Zone is an area where the Ontario nesting geese concentrate during migration and regulations are designed to avoid overharvest. Maintaining the Horicon Zone regulations is important because nearly 20% of the statewide regular season harvest occurs in the counties near Horicon Marsh.

However, Canada goose hunting regulations are regularly reviewed and can adapt to changes in hunting pressure and goose distribution. In recent years, greater than 80% of the Canada goose harvest within the Horicon Zone has occurred in Dodge and Fond du Lac counties. The band recoveries from Canada geese that nest in northern Ontario are highest on the eastern counties of the Horicon Zone within about 20 miles of the Horicon Marsh. Western and northern areas of the Horicon Zone experience very low Canada goose harvest. Based on these data and suggestions offered during meetings in 2012, the Department proposes shrinking the Horicon Canada goose hunting zone by establishing the western boundary at Highway 73 and the northern boundary at Highway 23.

Closing migratory bird hunting hours early on managed public hunting areas in some states has been shown to provide good hunting across an entire property rather than just near refuges, hold ducks in an area for a longer period of time, and provide better hunting opportunities throughout the season. An experimental early closure has been applied at the Mead Wildlife Area in Marathon and Wood counties and at Zeloski Marsh, Lake Mills Wildlife Area in Jefferson. The regulation has been in place only during the early part of the season when hunting pressure is heaviest. The regulation has sunset after a three year trial period. There continues to be support for the special regulations and reauthorization by rule is needed for them to remain in effect.

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, 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.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608)

267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov> or by searching the keywords "administrative rules" on the department's website. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Kent Van Horn, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 or by email to kent.vanhorn@wisconsin.gov. Comments may be submitted until August 8. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Horn.

Dated at Madison, Wisconsin _____ June 28, 2013 _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary