

## Clearinghouse Rule 13-052

Report to  
Legislative Council Rules Clearinghouse  
NR 10, Wis. Adm. Code  
Natural Resources Board Order WM-06-13

### Wisconsin Statutory Authority

ss. 23.11, 29.014, 29.041, 29.192, and 227.11, Stats.

### Federal Authority

The USFWS annually prescribes the outside limits (frameworks) within which states may select migratory bird hunting seasons and regulations. Authority for the secretary of the US Department of the Interior to determine when "hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any . . . bird, or any part, nest or egg" can occur and to adopt regulations is established in 16 U.S.C. 704.

### Court Decisions Directly Relevant

None.

### Analysis of the Rule – Rule Effect – Reason for the Rule

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 (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 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.

#### Agency Procedures for Promulgation

Public hearings, followed by Natural Resources Board adoption, followed by legislative review.

#### Description of any Forms (attach copies if available)

Fiscal and economic impact analysis.

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