

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 10.01 (1) (c) (Note); to **amend** NR 10.01 (1) (b), (c), (e), (f) 1., (g) 1. c. and e., 2. b. and d., and 3. b. and d. and (v); to and to **create** NR 10.01 (1) (d) relating to establishing the 2020 migratory bird season framework and regulations.

WM-30-19 (E)

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: Chapter 29 of the Wisconsin Statutes addresses the department’s authority with respect to wild animals and plants. Section 29.014, Stats., confers broad rule-making authority to the department to “establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping. This grant of rule-making authority allows the department to promulgate rules related to migratory game bird hunting.

Additional rule-making authority is found in s. 29.192, Stats., which enables the department to regulate the harvest of Canada geese.

2. Statutory Authority: In promulgating these rules, statutes being interpreted or establishing agency authority include ss. 29.014 and 29.192, Stats.

The emergency rule-making process is established in s. 227.24, Stats.

3. Explanation of Agency Authority: The chapter on 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 make changes related to hunting regulations.

4. Related Statutes or Rules: There are currently no active related rules.

5. Plain Language Analysis:

SECTION 1 decreases the daily bag limit for scaup from 3 to 1 scaup for 15 days and 2 scaup for 45 days in specific zones. It also increases the daily bag limit for hen mallards from one to two, moves the North Zone duck season one week earlier by opening on the Saturday nearest September 24, and structures the Mississippi River Zone duck season so that it mirrors the South Zone exactly.

SECTION 2 deletes a note clarifying that moorhen is synonymous with gallinule.

SECTIONS 3 AND 4 change the season for rail, snipe, and common gallinule (moorhen) to September. 1 and will run for 70 consecutive days to match federal requirements. These sections also utilize the second split (15-day season closure) in the South Zone Canada goose season to extend the season to January 5, similar to 2019.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and 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 adaptive waterfowl management strategies identified in the North American Waterfowl Management Plan (NAWMP). NAWMP primary goals are: **Goal 1** – achieve abundant and resilient waterfowl populations to support hunting on other uses without imperiling habitat, **Goal 2** – achieve wetlands and related habitats sufficient to sustain waterfowl populations at desired levels, while providing places to recreate and ecological services that benefit society and **Goal 3** – grow numbers of waterfowl hunters, other conservationists, and citizens who enjoy and actively support waterfowl and wetlands conservation.

The proposed modifications included in this rule order are consistent with the parameters and guidelines which are annually established by the USFWS in 50 CFR 20.

7. Comparison with Similar 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 distinct migratory game bird populations. 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.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

Per federal regulations, states within the Mississippi Flyway may utilize two season splits during the regular Canada goose season. In the past, the department has not elected to do so. However, the department addressed the potential season structure this year during the public input process and a majority of the public favored adding the second split in the South Zone Canada goose season. This second split would close the Canada goose season for 15 days at the same time the South Zone duck season closes (December 6), then reopen the goose season in the south zone on December 22 through January 5. The public input indicated a desire from hunters to extend the season over the Christmas and the New Year's holidays when people have time off and could take advantage of this additional hunting opportunity. From a harvest perspective, 90% of all Canada goose harvest occurs before December 1, so the department is not averse to adjusting season dates in the month of December as very few hunters participate during this time, and it will have a very minimal impact on overall harvest.

The proposed earlier start date for the North Zone duck season was based on input collected from conservation organizations as well as the public. The department had seen a change occurring in both the input collected from hunters via the waterfowl hunters survey as well as the input collected through public contact including emails, phone calls, and public hearings in 2018 and 2019. This input showed hunters preferring a later opening date in the North zone. This shift in public preference may be influenced by the manner in which dates occurred within the annual calendar and the fact that the three autumns prior to 2018 were relatively mild. Wisconsin had the second coldest November on record during 2018 and an early winter in the North at the end of 2019, both of which resulted in weeks of lost hunting opportunity. Input from conservation groups, waterfowl hunter survey, and public input has shifted back to a desire to

start on the Saturday nearest September 24th which is the season structure that had applied in the North had had for 20 years prior to 2018 and 2019.

The proposed duck season framework in the Mississippi River Zone will exactly mirror the season structure of the duck season in the South Zone. Over the past three years (2017-2019), the Mississippi River Zone duck season has started on the same day as the South Zone duck season but had a 7-day split rather than a 5-day split. This resulted in one less weekend of duck hunting in October, but an additional Tuesday and Wednesday in December. Data from the waterfowl hunter survey, public input, and feedback from nearly every conservation group indicates support for the Mississippi River Zone proposed a duck season structure of starting on the Saturday nearest October 1 with a 5-day split to mirror the South Zone duck season structure.

Under the federal framework for duck hunting, the USFWS is allowing Wisconsin a 60-day restrictive scaup season. This allows no more than one scaup per day for 15 days and two scaup per day for 45 days however, this restriction can be specific to each duck hunting zone. The scaup bag limit was three daily during the 2019 season.

Under the federal framework for duck hunting, the USFWS is allowing Wisconsin no more than two hen mallard per day in the bag limit. Wisconsin has traditionally been conservative on its hen mallard bag limit due to research that indicated 70% of the mallards harvested in Wisconsin come from Wisconsin. An analysis done by department research scientist Dr. Drew Fowler in collaboration with the University of MN assessing 70 years' worth of Mallard banding data, determined that at a one or two hen mallard bag limit, hunting and harvest do not affect the survival of hen mallards or Wisconsin's overall mallard population. The department also compared its data to Minnesota's data due to Minnesota's decision in 2011 to increase their hen mallard bag limit to two per day; this comparison also indicated that there is little risk to the Wisconsin's hen mallard survival or the mallard population if the the hen mallard bag limit is increased to two per day. All other states in the Mississippi Flyway are currently at a daily bag limit of two hen mallards per day, and the department feels there is little concern that an increase in the hen mallard daily bag limit from one to two will negatively impact the local mallard population.

Under the federal framework for duck hunting, the USFWS is allowing Wisconsin a 70-day consecutive rail, snipe, and common gallinule (moorhen) season. In the past, the department has structured these seasons so that they ran concurrently with the duck seasons in each zone, however per federal direction we are not allowed to include a split in the rail, snipe, and common gallinule seasons which has been department policy in the past. With this new direction, the department is proposing to open the season on September 1 and continue for 70 consecutive days which occurs during a period when hunters are most likely to be able to harvest these species. This start date is consistent with the early teal, early goose, and mourning dove season start date. The department is pursuing this change to provide greater opportunity to hunt these bird species at the time they are present in the state, and before they have migrated out of the state, which typically occurs before the regular duck season.

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

10. Effect on Small Business (initial regulatory flexibility analysis): These rules are applicable to individual sportspeople 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.

11. Agency Contact Person: Scott Karel, 101 S. Webster St., PO BOX 7921, Madison, WI 53707-7921.
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12. Place where comments are to be submitted and deadline for submission:

Written comments may also be submitted here: DNRAAdministrativeRulesComments@Wisconsin.gov

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 10.01 (1) (b) and (c) are amended to read:

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
(b) <i>All species of wild ducks</i>	Entire state.	As established by zone-	<u>Sept. 26 – Oct. 10:</u> 6 ducks to include not more than 4 mallards of which only <u>4</u> may be a hen mallard, 2 black ducks 1 pintail, 2 canvasbacks, 2 redheads, 3 <u>1</u> scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.	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>Oct. 11-22: 6 ducks to include not more than 4 mallards of which only 2 may be a hen mallard, 2 black ducks 1 pintail, 2 canvasbacks, 2 redheads, 2 scaup no more than 1 may be from the Southern or Mississippi River</u>	

			<u>Zones and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</u>	
			<u>Oct. 23- Dec.6 ducks to include not more than 4 mallards of which only 2 may be a hen mallard, 2 black ducks 1 pintail, 2 canvasbacks, 2 redheads, 2 scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</u>	
	Northern zone as established in s. NR 10.32.	Beginning on the Saturday nearest October 1 <u>September 24</u> and continuing for 60 consecutive days.		
	Southern zone as established in s. NR 10.32.	Beginning on the Saturday nearest October 1 and continuing for 9 days, followed by a 5-day closure, and then reopens for 51 consecutive days.		

	Mississippi River zone as established in s. NR 10.32.	Beginning on the Saturday nearest October 1 and continuing for 7 <u>9</u> days, followed by a 7 <u>5</u> -day closure, and then reopens for 5 <u>3</u> <u>5</u> consecutive days.		
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(c) Coots and moorhens	Entire State	Concurrent with the open season for ducks established in par. (b).	15	45 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.
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SECTION 2. NR 10.01 (1) (c) (Note) is repealed.

SECTION 3. NR 10.01 (1) (d) is created to read:

(d) Common Gallinule (Moorhen)	Entire State.	Sept. 1 – Nov. 9	15	45 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.
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SECTION 4. NR 10.01 (1) (e), (f) 1., (g) 1. c. and e., 2. b. and d., and 3. b. and d. and (v) are amended to read:

(e) Sora and Virginia rails	Entire State.	Concurrent with the open season for ducks established in par. (b). <u>Sept. 1 – Nov. 9</u>	25	75 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.
(f) 1. Snipe	Entire State.	Concurrent with the open season for ducks established in par. (b). <u>Sept. 1 – Nov. 9</u>	8	24 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.

(g) 1. Canada geese and its subspecies.	c. Southern zone as established in s. NR 10.32.	Begins on September 16 continuing until the 5-day closure in the southern duck zone hunting season in par. (b) and then reopens continuing until the closure of the southern duck zone hunting season in par. (b) and then reopens on Dec. 16 <u>22</u> continuing for a season total of 92 days	3	9 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.
	e. Mississippi River subzone.	Begins on the Saturday nearest October 1 and continues for 7-9 <u>7-5</u> days, followed by a 7-5 <u>7-5</u> day closure, and then reopens for a season total of 92 days.	3	9 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.	b. Southern zone as established in s. NR 10.32.	Begins on September 16 continuing until the 5-day closure in the southern duck zone hunting season in par. (b) and then reopens continuing until the closure of the southern duck zone hunting season in par. (b) and then reopens on Dec. 46 <u>22</u> continuing for a season total of 92 days.		
	d. Mississippi river subzone.	Begins on the Saturday nearest October 1 and continues for 7-9 days, followed by a 7-5 -day closure, and then reopens for a season total of 92 days.		
3. All other geese.	b. Southern zone as established in s. NR 10.32.	Begins on September 16 continuing until the 5-day closure in the southern duck zone hunting season in par. (b) and then reopens continuing until the closure of the southern duck zone hunting season in par. (b) and then reopens on Dec. 46 <u>22</u> continuing for a season total of 92 days.		

	d. Mississippi River subzone.	Begins on the Saturday nearest October 1 and continues for <u>7-9</u> days, followed by a <u>7-5</u> -day closure, and then reopens for a season total of 92 days.		
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(v) Special youth waterfowl hunt event. Persons under the age of 16 may hunt all species of wild duck, mergansers, geese, coots, ~~and~~ common gallinules, Sora and Virginia rails, and snipe ~~moorhens~~ statewide for 2 consecutive days starting on the Saturday before the beginning of the open season established for the north duck zone by par. (b). 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), (d), (e) (f) and (g), except that the daily bag limit for the zone or subzone 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 5. STATEMENT 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 states until the same year that the regulations must

be implemented in order to have annual migratory bird hunting seasons. This order is designed to bring state hunting regulations into conformity with the federal regulations. Normal rule-making procedures will not allow the promulgation of permanent rules prior to when the seasons should be open. 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 takes effect upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

SECTION 7. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 1, 2020.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

For Preston D. Cole, Secretary