

The statement of scope for this rule, SS 083-22 was approved by the Governor on October 20, 2022, published in Register No. 802A4 on October 24, 2022, and approved by the Natural Resources Board on December 14, 2022. This rule was approved by the Governor on November 8, 2023.

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 10.12 (3) (b); to **amend** NR 10.01 (2) (g) 1. and (4) (c) 4., 10.06 (5), 10.12 (3) (c), and 10.125 (1), (5) (a), and (6); to **repeal and recreate** NR 10.01 (1); and to **create** NR 10.001 (20) relating to establishing the 2023-2024 migratory bird season framework and regulations.

WM-16-22

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(1), 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.

Additionally, s. 29.197 (2), Stats. allows the department to waive the requirement for certain approvals if the department determines that certain requirements are met.

2. Statutory Authority: In promulgating these rules, statutes being interpreted or establishing agency authority include s. 29.014 (1) and s. 29.197 (2), 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: This rule is related to emergency rule WM-15-22 (E).

5. Plain Language Analysis:

SECTION 1 clarifies the boundary of the Open Water Migratory Zone.

SECTION 2 establishes migratory season dates and bag limits on a multi-year basis consistent with public input and Federal regulations.

SECTION 3 changes the dates of the crow season. It also updates a reference to the duck season.

SECTION 4 updates a cross reference to the teal season.

SECTIONS 5 AND 6 simplify the open water restrictions on all approved inland open water hunting lakes by creating a standard setback of 500 feet.

SECTION 7 updates cross references to the season dates for geese. This SECTION allows hunters during the youth waterfowl hunt to harvest a goose without a goose permit. It also deletes an outdated reference to the interior and exterior goose zones.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

Migratory bird species are managed under federal law. The USFWS annually promulgates regulations and guidelines which permit states to administer migratory bird seasons. State migratory bird regulations must fall within the guidelines and sideboards established by the USFWS. Therefore, these rules are consistent with federal regulations.

7. If Held, Summary of Comments Received During Preliminary Comment Period

and at Public Hearing on the Statement of Scope: The department did not hold a preliminary hearing for this scope statement.

8. 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 for the Mississippi Flyway 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.

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

This rule provides that the department secretary may by order annually select migratory bird species bag limits which are equal to the maximum allowable bag limits authorized by the USFWS, unless a lesser bag limit is indicated in the rule. The state's bag limits have primarily been the maximum allowable by the USFWS with the exception of the Canada goose season. The State of Wisconsin must comply with federal allowances in the establishment of migratory bird hunting seasons and conditions. Federal allowances are not made available to states until the same year that the regulations must be implemented. Normal rule-making procedures do not allow the promulgation of permanent rules prior to when the seasons should be open so historically the season frameworks were established on a yearly basis through the use of an emergency rule. Use of an order pairs well with federal timelines and give hunters additional time to plan for the hunting seasons.

This rule adjusts and simplifies the open water restrictions on all approved inland open water hunting lakes. This change was initially implemented by an emergency rule during the 2022 migratory season and will be continued by this rule. In 2011 the Department identified several inland lakes that would be open to open water hunting. At that time, the minimum distance from shore where hunters can be without having to adhere to concealment regulations was set to "greater than 1000 feet" as a precaution until the Department had some time to review how this opportunity was utilized. With these regulations having been in place more than a decade, the Department feels that the 1000-foot restriction can be reduced to 500 feet, a distance which would align the definition of open water hunting for both the inland lakes and the Great Lakes. This change simplifies regulations while adding additional open water hunting opportunity on these identified inland lakes. Public input was in support of this rule simplification.

This rule will also continue the clarification of the duck zone boundary for the Open Water Zone—another item which was initially implemented by the 2022 emergency rule. Specifically, this rule will

update the definition of the Open Water Zone boundary as, “waters greater than 500 feet from the mainland shore of Green Bay and Lake Michigan; for the purposes of the Open Water Zone, mainland shore includes all adjacent rooted vegetation, adjacent floating cattail and Long Tail and Little Tail points.”

During the annual two-day youth waterfowl hunt in September, hunters under the age of 16 are allowed to hunt all species of wild duck, mergansers, geese, coots, and moorhens. During this youth season all license and stamp requirements are waived, except for the state Canada Goose Hunting Permit. This rule waives the state Canada Goose Hunting Permit for youth hunters during the youth waterfowl hunt. Waiving this permit would provide consistency to youth hunters by waiving all applicable state and federal license, stamps and permits for the youth season.

This rule also adjusts the crow season dates. The department is allowed to establish a crow season that last no more than 124 days. Previously, the crow season began on the Saturday nearest September 15 and continued until the Thursday before the opening of the gun deer season in November. The season would then reopen in January and then close on March 20th for a 124-day season. This rule would set a single continuous crow season that would begin on the same day the gun deer season opens and last for 124 days. A single continuous open season is less complex for hunters to remember and most crow hunting takes place during the winter after other hunting seasons have closed.

10. 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.

11. Effect on Small Business (initial regulatory flexibility analysis): 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.

12. Agency Contact Person: Taylor Finger, Migratory Bird Specialist, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, (608) 266-8841

13. Place where comments are to be submitted and deadline for submission:

A public comment period on the draft rule occurred from August 14, 2023, to September 11, 2023, with a public hearing on September 11, 2023.

RULE TEXT

SECTION 1. NR 10.001 (20) is created to read:

NR 10.001 (20): “Open Water Zone” means waters greater than 500 feet from the mainland shore of Lake Michigan and Green Bay; for the purposes of the Open Water Zone, mainland shore includes all adjacent rooted vegetation, adjacent floating cattail and Long Tail and Little Tail points.

SECTION 2. NR 10.01 (1) is repealed and recreated to read:

NR 10.01 (1) MIGRATORY GAME BIRDS. In accordance with this section, the department may annually select migratory bird season dates and bag limits established in pars. (b) and (L) using the procedures established in par. (a):

(a) The department shall utilize the following procedures in applying a bag limit under this section:

1. *Notice.* The department shall prepare and distribute a notice of its proposed annual migratory bird season dates and bag limit selections. The notice shall be published as a class 1 notice under ch. 985, Stats., in the official state newspaper. The notice shall include a description of the zone or zones affected, the species affected, the proposed annual selections, and the date the annual selections will take effect. The notice shall invite the public to submit written comments and indicate that a public information meeting will be held on the alternate limit if requested in writing within 10 days after the notice is published.

2. *Determination.* In consideration of facts and information available to it, including comments received from the public, the department shall finalize its annual migratory bird season dates and bag limit selections. The annual selections shall take effect upon the issuance of an order of the secretary and publication in the official state newspaper.

(b) *Migratory Game Bird Seasons.* The department shall, in accordance with the procedures established in par. (a), annually select migratory bird season dates from the following options:

1. When the U.S. fish and wildlife service establishes that Wisconsin may have a 30-day season for all species of wild ducks the season dates shall be as established in par. (d).
2. When the U.S. fish and wildlife service establishes that Wisconsin may have a 45-day season for all species of wild ducks the season dates shall be as established in par. (e).
3. When the U.S. fish and wildlife service establishes that Wisconsin may have a 60-day season for all species of wild ducks the season dates shall be as established in par. (f).
4. For all other species of migratory birds, season dates shall be as established in Table (1).

Table (1).

| Kind of Animal | Locality | Season Dates |
|--|---|--|
| (c) <i>Teal species.</i> | Entire State | September 1 – September 9 |
| (d) <i>All species of wild duck, coot and merganser.</i> | 1. Northern zone as established in s. NR 10.32. | Beginning on the first Saturday in October and continuing for 30 consecutive days. |
| | 2. Southern zone as established in s. NR 10.32. | Beginning on the first Saturday in October and continuing for 9 days, followed by a 5-day closure and then reopening for the remainder of the 30-day season. |

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| | 3. Open Water zone as established in s. NR 10.32. | Beginning on the Saturday nearest October 15 and continuing for 9 days, followed by a 5-day closure and then reopening for the remainder of the 30-day season. |
| (e) <i>All species of wild duck, coot and merganser.</i> | 1. Northern zone as established in s. NR 10.32. | Beginning on the Saturday nearest September 24 and continuing for 9 days, followed by a 5-day closure and then reopening for the remainder of the 45-day season. |
| | 2. Southern zone as established in s. NR 10.32. | Beginning on the first Saturday in October and continuing for 9 days, followed by a 5-day closure and then reopens for the remainder of the 45-day season. |
| | 3. Open Water zone as established in s. NR 10.32. | Beginning on the Saturday nearest October 15 and continuing for 9 days, followed by a 5-day closure and then reopening for remainder of the 45-day season. |
| (f) <i>All species of wild duck, coot and merganser.</i> | 1. Northern zone as established in s. NR 10.32. | Beginning on the Saturday nearest September 24 and continuing for 60 consecutive days. |
| | 2. 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 reopening for 51 consecutive days. |
| | 3. Open Water zone as established in s. NR 10.32. | Beginning on the Saturday nearest October 15 and continuing for 60 consecutive days. |
| (g) <i>Canada geese and its subspecies, Snow, or blue and Ross' geese.</i> | Entire state | September 1-15 |
| (h) <i>All species of wild geese.</i> | 1. Northern zone as established in s. NR 10.32. | Beginning September 16 and continuing for 92 consecutive days. |
| | 2. Southern zone as established in s. NR 10.32. | Beginning on September 16 and continuing until the 5-day closure in the southern duck zone hunting season in par. (b), then reopening at the end of the 5 day closure and continuing |

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| | | until the closure of the southern duck zone hunting season in par. (b), and then reopening on the third Saturday in December and continuing for a season total of 92 days. |
| | 3. Mississippi River zone as established in s. NR 10.32. | Beginning on September 16 and continuing until the 5-day closure in the southern duck zone hunting season in par. (b), then reopening at the end of the 5 day closure and continuing until the closure of the southern duck zone hunting season in par. (b), and then reopening on third Saturday in December and continuing for a season total of 92 days. |
| (i) <i>Mourning dove</i> | Entire State | September 1 – November 29 |
| (j) <i>Woodcock</i> | Entire State | Beginning on the Saturday nearest September 22 and continuing for 45 days. |
| (k) <i>Sora and Virginia Rail and Snipe</i> | Entire State | September 1 – November 9. |

(L) Migratory Bird Daily Bag Limit and Possession Limit:

1. The possession limit is three times the daily bag limit through the entire season 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. Daily Bag Limits. The bag limit for migratory birds is zero for all species. Following the procedures established in subd. (a), the secretary may annually select a bag limit for each species of migratory bird that is equal to the maximum allowable bag limit established by the U.S. fish and wildlife service, except that for the following species the bag limit shall be selected as provided below:

a. Canada Geese and its subspecies: 5 during the season established in s. NR 10.01 (1) (g), 3 during the seasons established in s. NR 10.01 (1) (h), except the bag limit is 5 in the Southern and Mississippi River zones beginning on December 16th until the close of the season.

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

| Kind of Animal | Locality | Open season (all dates inclusive) | Daily Bag Limit |
|--|---|--|---|
| 1. All species of wild ducks, mergansers, and coots. | Northern zone as established in s. NR 10.32. | Concurrent with the open youth waterfowl hunt in par. (n) and open northern zone regular duck season in pars. (d), (e), or (f). Reopening on the second Friday in January and continuing to not exceed 45 days. | 3 in aggregate with those species listed under subd. 2. |
| | Southern zone as established in s. NR 10.32. | Concurrent with the open youth waterfowl hunt in par. (n) and open northern zone regular duck season in par. (d), (e), or (f). Reopening on the second Friday in January and continuing to not exceed 45 days. | 3 in aggregate with those species listed under subd. 2. |
| | Mississippi River zone as established in s. NR 10.32. | Concurrent with the open youth waterfowl hunt in par. (n) and open northern zone regular duck season in par. (d), (e), or (f). Reopening on the first or second Friday in January and continuing to not exceed 45 days. | 3 in aggregate with those species listed under subd. 2. |

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|--|---|---|---|
| 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. |
| 3. Geese | Within the zones and subzones established in s. NR 10.31. | Concurrent with the open season for geese established in par. (h) for each zone or subzone. | As established in par. (L). |

4. The possession limit is three times the daily bag limit through the entire season 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.

(n) *Special youth waterfowl hunt event.* Persons under the age of 16 may hunt all species of wild duck, mergansers, geese, coots, common gallinules, Sora and Virginia rails, and snipe statewide for 2 consecutive days starting on the Saturday before the beginning of the open season established for the north duck zone by par. (1) Approvals under ch. 29, Stats., are not required pursuant to s. 29.197 (2), Stats. Registration in the harvest information program under s. NR 10.12 (11) is required. Daily bag limits are those selected by the secretary under par. (L) 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 or 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. NR 10.01 (2) (g) 1. and (4) (c) 4. are amended to read:

| Kind of Animal and locality | Open season (all dates inclusive) | Limit |
|---|--|-----------------------------|
| (g) Crow 1. Statewide except in the parks listed in subd par., 2. b. | Beginning on the Saturday nearest September 15 and continuing through the Thursday immediately preceding the gun deer season for Zone A. in sub. (3) (e) and reopening in January and continuing through March 20. The date of reopening in January shall be established each year by the department to allow for a 124-day crow season. Beginning on the Saturday before Thanksgiving and continuing for 124 days. | Daily bag 15; possession 45 |

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|---------------------------------------|--|------|
| 4. Zone D as described in s. NR 10.35 | Beginning on the day following the close of the open season for ducks as established under sub. (1) (b) 2. (1) <u>par. (d) 2., (e) 2., or (f) 2.</u> and continuing through March 15. | None |
|---------------------------------------|--|------|

SECTION 4. NR 10.06 (5) is amended to read:

(5) SHOOTING HOURS. Shooting hours for bear, bow deer, deer with firearms, elk and small game are 30 minutes before sunrise through 20 minutes after sunset. Shooting hours for migratory game birds are 30 minutes before sunrise to sunset except for teal during a season for hunting teal species only. The hours for shooting teal during the season established in ~~s. NR 10.01 (1) (a)~~ s. NR 10.01 (1) (c) shall be sunrise through sunset. Shooting hours for the first day of the pheasant hunting season established in s. NR 10.01 (2) (c) begin at 9:00 a.m. The department shall establish the specific opening and closing times annually in the hunting regulations pamphlets. Opening and closing times for zone A southern and northern areas shall be based on astronomical data collected by the U.S. naval observatory, Washington D.C., 20392-5420 for Sheboygan, Wisconsin and Powers, Michigan, respectively. The shooting hours for the other zones shall be obtained by adding minutes to the Zone A a.m. and p.m. columns as follows:

SECTION 5. NR 10.12 (3) (b) is repealed.

SECTION 6. NR 10.12 (3) (c) is amended to read:

(c) Large Lakes and Great Lakes. Blinds in open waters of the following lakes if more than ~~1,000~~ 500 feet from any shoreline including islands ~~provided that, blinds are securely anchored:~~ Beaver Dam Lake in Dodge County (excluding Rakes and Trestle Works Bays), Big Green Lake in Green Lake County, Castle Rock Lake in Adams and Juneau counties (south of railroad bridge and county road G), Fence Lake in Vilas County, Green Bay, Grindstone Lake in Sawyer County, North Twin Lake in Vilas County, Petenwell flowage in Adams, Juneau and Wood counties (north of state highway 21 and south of state highway 73), Lake Michigan, Lake Superior, Lake Puckaway in Marquette and Green Lake counties (the waters west of the west end of the dredge bank, excluding the waters east of the west end of the dredge bank), Shawano Lake in Shawano County, Trout Lake in Vilas County, Lake Winnebago, Lake Wisconsin in Sauk and Columbia counties (north of railroad bridge), and Lake Wissota in Chippewa County (south of county road S and north of county road X). All blinds must be securely anchored, except those in the open waters of Big Green Lake, Lake Superior, Lake Michigan and Green Bay.

SECTION 7. NR 10.125 (1), (5) (a) and (6) are amended to read:

(1) PERMIT REQUIREMENTS. (a) *Permit possession required.* No person may hunt Canada geese in any area of the state without having on his or her person a valid Canada goose hunting permit except for hunters 15 and under during the youth waterfowl season established in s. NR 10.01 (1) (n).

(5)

(a) *Bag limit.* The aggregate daily bag limit for persons hunting ~~in both the exterior zone and a subzone within the exterior zone in the same day~~ during the regular Canada goose season is equal to the

larger of the respective daily bag limits established in ~~s. NR 10.01 (1) (g)~~-s. NR 10.01 (1) (L).

(6) SEASON CLOSURE. The secretary of the department may close a portion or all of any Canada goose season established in s. ~~NR 10.01 (1) (g)~~ NR 10.01 (1) (h) upon a finding by the department that the harvest for that season will exceed the level authorized by U.S. fish and wildlife service. Closure shall become effective upon issuance of an order and publication in the official state newspaper.

SECTION 8. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 9. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on October 25, 2023.