

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

The statement of scope for this rule, SS 0005-18, was approved by the Governor on January 29, 2018, published in Register No. 746A1, on February 5, 2018, and approved by the Natural Resources Board on February 28, 2018. This rule was approved by the governor on January 29, 2018.

The Wisconsin Natural Resources Board proposes an order to repeal Ch. NR 10.01 (1) (g) d., dm., 2. c., 3. c., NR 10.05 (2), NR 10.125 (1) (c) 2. a., b., (2) (b) 1., 3., (2) (c) a., b.; NR 10.31 (3) (a); and amend Ch. NR 10.001 (9w), NR 10.01 (1) (a), (b), (g) 1. a., b., c., e., 2 a., b., 3. a., b., (u), and NR 10.125 (2) (c) 1. related to establishing migratory bird hunting seasons and regulations.

WM-18-17 (E)

Analysis Prepared by the Department of Natural Resources

Statutory Authority: 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.

Statutes Interpreted and Explanation of Agency Authority: In promulgating these rules, statutes being interpreted or establishing agency authority include ss. 29.014 and 29.192.

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

Related Statute or Rule: The department promulgates identical or nearly identical emergency and permanent migratory bird season rules in odd years when legislative review will occur.

Plain Language Analysis:

SECTIONS 2, 4 & 6 increase the daily bag limit for pintails from one to two and move the North Zone duck season one week later by opening on the Saturday nearest Oct. 1. These sections also increase the daily bag limit for Canada geese during the Regular Canada goose season from two to three and utilizes the second split (13 day season closure) in the South Zone Exterior Canada goose season to extend the season to Jan. 3. It also corrects an error in administrative code to maintain a consistent open date for all species of geese.

SECTIONS 1, 3, 5, 7, & 9-14 eliminate the Horicon Canada goose management zone. The rule establishes one Exterior Canada goose hunting season and zone statewide.

SECTION 8 adjusts the number of days allowed to hunt ducks by use of falconry to match the maximum federal allowance per the Migratory Bird Treaty Act.

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 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.

Comparison with 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.

Summary of Factual Data and Analytical Methodologies: These rules will modify the Canada goose hunting season in what was considered the Horicon Canada goose management zone consistent with options available under the federal framework for Wisconsin in 2018. Hunter harvest has declined by 85% and the number of permits issued has declined by 75% since 1999. The purpose of the Horicon Canada goose management zone was to limit the impact that hunters would have on the Interior nesting population (formerly Mississippi Valley Population) of Canada geese. Over the past several decades the concentration of Interior nesting Canada geese has declined in the Horicon Zone to the point that 2017 was the lowest recorded year with fewer than 30,000 geese observed in the Horicon National Refuge. Observations indicate that the local Temperate nesting (Giant) Canada geese have increased to a point that they are now decoying the migrating Canada geese away from Horicon and now can be found in areas all throughout the state. The department has determined that a specialized zone is no longer needed as the necessity for the management zone has diminished and no longer functions as the management tool for which it was intended. Eliminating the Horicon Canada goose management zone will simplify hunting regulations and increase hunting opportunity.

The proposed increase in regular Canada goose season daily bag from 2 to 3 is based on changes in harvest derivations over the past 20 years. In 1996, 80% of Wisconsin Canada goose harvest occurred on the Ontario migrating population and 20% occurred on Wisconsin's own local Temperate Breeding (Giant) Canada geese. By 2006 that had changed to 60% Ontario migrants and 40% Giants. As of 2015 Temperate Breeding Canada geese now make up the majority of our harvest at 55% and the Ontario migrants make up 45%. Despite seeing these changes in Canada goose origins over the past decade, the department has not seen any substantial change in overall harvest. Based on this recent information the department is proposing liberalizing the Canada goose bag limit to match the federal framework.

Per federal regulations, states within the Mississippi Flyway may utilize 2 season splits during the regular Canada goose season. In the past the department has not elected to do so, but the department addressed the potential

season structure this year in the public input process, and a majority of the public favor adding the second split in the South Zone Exterior Canada goose season. This second split would close the Canada goose season with the South Zone duck season (Dec. 2) for 13 days, then re-open the goose season on Dec. 16 and remain open through Jan. 3. The 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 Dec. 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 later start date for the North Zone duck season was based on input collected from conservation organizations as well as the public. The department has seen a change occurring in both input collected from hunters via the waterfowl hunters survey as well as input collected through public contact, including emails, phone calls and public hearings. The input from the waterfowl hunter survey still shows slight support for a start in the North Zone on the Saturday nearest Sept. 24, however input received from hunters through public contact combined with input from the Wisconsin Conservation Congress has shown a shift in support for a later start in the North Zone. Generally, hunters recall their most recent experience. Since Wisconsin has had above average fall temperatures over the past several years, the position that hunters express is that there is additional duck hunting opportunity after the season has closed. Based on the shift in interest and input over the past 2 years to start later in the North Zone as well as the position that the Conservation Congress expresses, the department proposes starting the North on the Saturday nearest Oct. 1.

With the inclusion of the early teal season in Wisconsin, the current language in Wisconsin Administrative Code exceeds the maximum allowable days to hunt ducks per federal regulations because of the extended falconry season. Prior to the early teal season, the department set the regular duck season to match all dates that are available to hunt ducks and in addition opened the falconry season starting the second Friday in January and continuing for 45 days. With the inclusion of the early teal season, the department increased the number of days to hunt ducks by potentially 16 days. The number of days to hunt ducks by method of falconry per Migratory Bird Treaty Act cannot exceed 107 days. This rule proposal would change the language to state that the falconry season opens the second Friday in January and continues for a length of time to not exceed 45 days; this accounts for all potential possibilities.

The early teal season shooting hour proposed change is sunrise to sunset. During the early teal season experiment, opening day shooting hours were 9:00am to 7:00 pm and sunrise to 7:00pm for the remainder of the season. The 9:00 am shooting hours for opening day reflected the opening day shooting hours for the regular duck season at the start of the early teal season experiment. With the change in shooting hours for the regular duck season to ½ hour before sunrise, the department proposes starting the shooting hours on opening day earlier as well. Per federal regulations the early teal season cannot open any earlier than sunrise. Also, the department proposes closing the season at sunset as it then is consistent with the other migratory bird season shooting hours occurring at the same time.

Under the federal framework for duck hunting, the USFWS is allowing Wisconsin no more than two pintail per day in the bag limit. The pintail bag limit was one daily during the 2017 season.

Anticipated Private Sector Costs: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no costs are associated with compliance to these rules.

Effects on Small Business: 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.

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Deadline for Written Comments: The deadline for written comments was March 16, 2018.

SECTION 1. NR 10.001 (9w) is amended to read:

NR 10.001 (9w) For the purpose of administering the Canada goose hunting permit system, “Exterior goose management zone” or the “Exterior zone” means the entire state reflecting the North and South duck zones all that part of the state outside of the Horicon goose management zone described in s. NR 10.31-10.32, and includes the Mississippi River subzone which shall be treated as a separate management subzone for other purposes.

SECTION 2. NR 10.01 (1) (a), (b), and (g) 1. a.-c. are amended to read:

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
NR 10.01 (1) (a) <i>Teal species</i>	Entire state.	9:00 am <u>Sunrise to sunset</u> on Sept. 1 to 7.	6 teal.	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
(b) <i>All species of wild ducks</i>	Entire state.	As established by zone.	6 ducks to include not more than 4 mallards of which only 1 may be a hen mallard, 1 black duck, 1 pintail , <u>2 pintails</u> , 2 canvasbacks, 2 redheads, 3 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.

	Northern zone as established in s. NR 10.32.	Beginning on the Saturday nearest September 24 <u>October 1</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 split, 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 days, followed by a 7-day split, and then reopens for 53 consecutive days.		

(g) Geese 1. Canada geese and its subspecies	a. Entire state.	September 1 – September 15	5	15 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.
	b. All that part of the exterior zone lying within the northern zone established in s. NR 10.32	September 16 and continues for 92 consecutive days.	2 3	9 6 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.

	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. 1. d. and e.	Begins on September 16 continuing until the closure during the 5-day split in the southern duck zone hunting season in par. B and then reopens continuing <u>until the closure of the southern duck zone hunting season in par. B and then reopens on Dec. 16 continuing</u> for a season total of 92 days	23	96 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 3. NR 10.01 (1) (g) d. & dm. are repealed.

SECTION 4. NR 10.01 (1) (g) 1. e., 2. a. & b. are amended to read:

	e. Mississippi River subzone.	Begins on Saturday nearest October 1 and continues for 7 days followed by a 7-day split, and then reopens for a season total of 92 days.	23	96 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.	Entire state	As established by zone.	20	60 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.
	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32	September 16 and continues for 92 consecutive days.		

	b. 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. d. and e.	Begins on September 16 continuing until the closure during the 5-day split in the southern duck zone hunting season in par. B and then reopens continuing <u>until the closure of the southern duck zone hunting season in par. B</u> and then reopens <u>on Dec. 16 continuing</u> for a season total of 92 days		
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SECTION 5. NR 10.01 (1) (g) 2. c. is repealed.

SECTION 6. NR 10.01 (1) (g) 3. a. & b. is amended to read:

3. All other geese.	a. All that part of the exterior zone lying within the northern zone established in s. NR 10.32.	September 20 <u>16</u> and continues for 92 consecutive days.	1 white-fronted goose and 1 brant.	3 white-fronted geese and 3 brant 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.
	b. 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. d. and e.	Begins on September 20 <u>16</u> continuing until the closure during the 5-day split in the southern duck zone hunting season in par. B and then reopens continuing <u>until the closure of the southern duck zone hunting season in par. B</u> and then reopens <u>on Dec. 16 continuing</u> for a season total of 92 days		

SECTION 7. NR 10.01 (1) (g) 3. c. is repealed.

SECTION 8. NR 10.01 (1) (u) is amended to read:

<i>(u) Falconry: special season. Any person possessing a valid falconry permit and hunting license shall be restricted to the following migratory game bird species.</i>				
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. V and open northern zone regular duck season in par. b. Reopens on first or second Friday in January and continues <u>to not exceed 45 days</u>	3 in aggregate with those species listed under subd. 2.	9 in aggregate with those species listed under subd. 2 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.
	Southern zone established in s. NR 10.32	Concurrent with the open youth waterfowl hunt in par. V and open northern zone regular duck season in par. b. Reopens on first or second Friday in January and continues <u>to not exceed 45 days</u>	3 in aggregate with those species listed under subd. 2.	9 in aggregate with those species listed under subd. 2 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.
	Mississippi River zone as established in s. NR 10.32	Concurrent with the open youth waterfowl hunt in par. V and open northern zone regular duck season in par. b. Reopens on first or second Friday in January and continues <u>to not exceed 45 days</u>	3 in aggregate with those species listed under subd. 2.	9 in aggregate with those species listed under subd. 2 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.

SECTION 9. NR 10.05 (2) is repealed.

SECTION 10. NR 10.125 (1) (c) 2. a. & b. are repealed.

SECTION 11. NR 10.125 (2) (b) 1. & 3. are repealed.

SECTION 12. NR 10.125 (2) (c) 1. is amended to read:

NR 10.125 (2) (c) *Application limitations.*

1. No person may submit more than one application per year. ~~except that:~~

SECTION 13. NR 10.125 (2) (c) a. & b. is repealed.

SECTION 14. NR 10.31 (3) (a) is repealed.

SECTION 15. FINDING 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 this state until March of each year. This order is designed to bring state hunting regulations into conformity with federal regulations. Normal rule-making procedures will not allow the establishment of these changes prior to the beginning of migratory bird hunting seasons in September. Failure to modify our rules will result in the failure to provide hunting opportunity and continuation of rules which conflict with federal regulations.

SECTION 16. EFFECTIVE DATE. This rule takes effect on the day of publication in the Wisconsin State Newspaper, as provided in s. 227.24 (1) (c), Stats.

SECTION 17. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 11, 2018.

Dated at Madison, Wisconsin 8/24/18.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By /S/ Ed Eberle
For Daniel Meyer, Secretary

(SEAL)