

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

**SUBJECT:**

Request that the Board adopt Emergency Board Order WM-15-21 (E), proposed rules affecting chapter NR 10 related to establishing the 2022 migratory bird season framework and regulations.

**FOR: April 2022 Board meeting**

**PRESENTER'S NAME AND TITLE:** Taylor Finger, Migratory Bird Specialist, Bureau of Wildlife Management

**SUMMARY:**

The Department's migratory bird hunting season proposal will be mostly consistent with that from 2021. A few changes from 2021 include:

- Adjusting the North Zone and Open Water Zone scaup season structure to 2 scaup/day for the first 45 days and 1 scaup/day for the final 15 days.
- Simplifying the open water restrictions on all approved inland open water hunting lakes to by creating a standard 500 feet setback.
- Further defining the boundary of the Open Water Migratory Zone.

These regulations are part of the federal migratory bird season framework. Migratory game bird hunting is regulated by the U.S. Fish and Wildlife Service in 50 CFR part 20. The Service offers a final season framework to Wisconsin in the spring of 2022. The Service needs to be informed of the Natural Resources Board's decisions on these seasons by April 30, 2022.



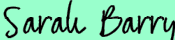
A series of four public meetings were held virtually in March.

This is an annual rule that will be consistent with a federal framework and will be consistent with past policies


**RECOMMENDATION:** That the Board adopt Emergency Board Order WM-15-21 (E).

**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Background Memo   | <input checked="" type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input checked="" type="checkbox"/> Board order/rule               |
| <input checked="" type="checkbox"/> Response summary  | <input type="checkbox"/> (insert document name)                    |

Approved by	Signature	Date
Eric Lobner, Bureau Director	 <small>DocuSigned by: 49A5E990CF80465...</small>	3/25/2022   11:34 AM CDT
Keith Warnke, Division Administrator	 <small>DocuSigned by: 49A5E990CF80465...</small>	3/28/2022   4:22 PM CDT
Preston D. Cole, Secretary	 <small>DocuSigned by: A1D70BC3770642F...</small>	3/29/2022   8:45 AM CDT

for

cc: Board Liaison - AD/8  Sarah Barry Program attorney – LS/8 by Sarah Barry Department rule officer – LS/8

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**CORRESPONDENCE/MEMORANDUM**

DATE: March 16, 2022

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order WM-15-21 (E), relating to establishing the 2021 migratory bird season framework and regulations.

**1. Subject of Proposed Rule:**

The proposed rule addresses migratory game bird seasons and regulations for 2022. This rule is necessary to authorize migratory game bird hunting in a manner consistent with federal frameworks for the Mississippi Flyway.

**2. Background:**

Each year Wisconsin establishes hunting seasons for over 35 different species of migratory game birds. Migratory game birds hunted in Wisconsin include a wide range of species with very different life cycles: for example, blue-winged teal that may nest in the marshes of Manitoba and winter in Venezuela, woodcock that breed in the northern forests of Wisconsin and winter in Louisiana, and mourning doves that are the most abundant and most harvested game bird in North America.

Wisconsin supports over 135,000 migratory game bird hunters with a diversity of habitat, technique and hunting season preferences. Nationally, Wisconsin is a leader in migratory bird hunting and management ranking in the top 5 for number of waterfowl hunters and second in the nation for woodcock hunters. These hunters are strong conservationists participating through various organizations to partner with agencies in habitat conservation, hunter education and management decisions.

Under international treaty and federal law, state migratory game bird seasons are closed unless opened annually via the U. S. Fish and Wildlife Service (USFWS) regulatory process (Figure 1). Department staff are a part of this process which involves international cooperative monitoring efforts and status review for each species. Migratory birds are managed in each of the 4 flyways that encompass North America. Each flyway has a Flyway Council consisting of members from each state and province in that flyway that meet multiple times each year. Wisconsin is part of the Mississippi Flyway and is one of 17 members on the Mississippi Flyway Council (MFC). The USFWS annually prescribes the outside limits (frameworks) for each flyway within which states may select hunting season parameters. This process involves the USFWS working cooperatively with each Flyway Council and the process varies across the different species.

Under the current federal regulatory process, migratory bird hunting seasons are ordinarily based on prior rather than current year data. The Covid pandemic prevented spring breeding surveys from being conducted in 2020 and 2021. As a result, 2022 migratory bird season frameworks will be based on 2019 data. At a continental level, duck populations in 2019 were near an all-time high for the 63 years of the survey at 39 million ducks while Wisconsin's modeled breeding duck population was at 522,546 birds which is 19% above our long-term average (Appendix 1). Wisconsin depends upon two Canada goose populations for the regular goose season harvest; those that nest in northern Ontario are about 45% of the harvest while those that breed in Wisconsin are about 55% of the harvest. The population of Canada geese that breeds in northern Ontario has been on a long-term

decline but because of changing survey effort, the Department does not have a current population estimate. By contrast, Wisconsin's breeding Canada goose modeled population estimate for 2021 was 20% above the previous 10-year average.

### **3. Why is the rule being proposed?**

The purpose of this rule is to establish migratory game bird seasons and regulations for 2022 which are consistent with the federal framework established by the USFWS for the Mississippi Flyway.

### **4. Summary of the rule.**

This rule adjusts migratory game bird seasons and regulations for 2022 to be consistent with the federal framework for the Mississippi Flyway, current biological information and public input. In general, season frameworks for migratory birds in 2022 are identical to those implemented for 2021. There are two exceptions.

This rule changes the 2022 restrictive 60-day scaup season in the North Zone and Open Water Zone. In 2021 all three duck zones had the same scaup season. However, after having a year with this new scaup season structure, input and feedback from North Zone and Open Water Zone hunters indicated a desire to change. This rule adjusts the North Zone and Open Water Zone scaup season structure to 2 scaup/day for the first 45 days and 1 scaup/day for the final 15 days to better match the opportunity for hunters to pursue this species in each of the two zones.

This rule also adjusts and simplifies the open water restrictions on all approved inland open water hunting lakes. In 2011 the Department identified several inland lakes that would be open to open water hunting. The decision was to set the minimum distance from shore where hunters can be without having to adhere to concealment regulations to "greater than 1000 feet" as a precaution until the Department had some time to review how this opportunity was utilized. With more than a decade of these regulations the Department feels that the 1000-foot restriction can be reduced to 500 feet which aligns 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. Department biologist staff, law enforcement staff and public input all were in support of this rule simplification

In 2020, the Department gathered public input regarding the reconfiguration of duck harvest zones. Public input favored the creation of a new Open Water Zone to allow hunters to take advantage of unique late season opportunities which exist in open waters (waters greater than 500 feet from the mainland shore) of Lake Michigan and Green Bay. The Board approved of the new zone configuration for the 2021 migratory bird season. Some issues and confusion arose regarding the Open Water Zone boundary. This rule clarifies the duck zone boundary for the Open Water Zone by updating 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.

A summary of the complete migratory bird season framework for 2022 which takes into account the proposed changes follows.

#### **Early Migratory Bird Seasons:**

- *Early Teal*: September 1 – 9 (6 teal/day)
- *Early Goose Season*: September 1 – 15 (5 Canada geese/day; 20 Light geese/day)
- *Mourning Dove*: September 1 – November 29 (15 doves/day)
- *Woodcock*: September 24 – November 7 (3 birds/day)

### **Duck Seasons:**

- *Bag Limit for Duck, Other than Scaup*: 60-day season. Daily bag limit of 6 ducks in total. The number and sex of each species which may contribute to the 6 duck aggregate daily bag is limited to no more than: 4 mallards of which only 2 may be a hen; 3 wood ducks; 2 redheads; 2 black duck; 1 pintail; 2 canvasback.; and 5 mergansers of which only 2 may be hooded mergansers. (For duck species not listed such as teal and ring-necked ducks, the combined total with all other species may not exceed 6 ducks).
- *Bag Limit for Scaup*: 60-day season. Restrictive statewide scaup bag limit of 1 scaup/day for 15 days and 2 scaup/day for 45 days. The maximum number of scaup that may be harvested in a single zone to contribute to the statewide bag is limited by date as follows:
  - Northern Zone: 2 scaup/day September 24 – November 7; 1 scaup/day November 8 – November 22
  - Southern Zone: 1 scaup/day October 1 – 9 and October 15 – 20; 2 scaup/day October 21 – December 4
  - Open Water Zone (Green Bay and Lake Michigan): 2 scaup/day October 15 – November 28; 1 scaup/day November 29 – December 13
- *Season Dates*:
  - Youth Waterfowl Hunt: September 17 – 18
  - Northern Zone: September 24 – November 22
  - Southern Zone: October 1 – 9, followed by a 5-day closure, reopening October 15 – December 4
    -
  - Open Water Zone (Green Bay and Lake Michigan): October 15 – December 13

### **Goose Seasons:**

- *Canada Geese*: 92-day season. The state is divided into 3 zones for goose hunting during the regular season; north, south and Mississippi River Zones. These correspond to the zones used for duck hunting seasons.
  - North Zone: 3 geese/day September 16 – December 16.
  - South Zone: 3 geese/day September 16 – October 9 and October 15 – December 4; 5 geese/day December 18 – January 3.
  - Mississippi River Zone: 3 geese/day October 1 – October 9 and October 15 – January 3
- *Brant, White Fronted Geese and Light Geese*: Season dates will be the same as for the Canada goose zones/subzones. The daily bag limit will be 1 brant, 1 white-fronted and 20 snow, blue or Ross's geese

### **Other Migratory Bird Seasons:**

- *Coot*: Follows the same migratory game bird zones and zone-specific season dates as ducks.
- *Common Gallinule (Moorhen), Rails and Snipe*: September 1 – November 9
- *Daily Bag Limits*:
  - Coot and Common Gallinule: 15/day of each
  - Sora and Virginia Rail: 25/day in aggregate
  - Snipe: 8

### **5. How does this proposal affect existing policy?**

All of the policies in this proposed rule are consistent with past Board policies of regulating fish and game harvest for conservation purposes.

### **6. Has Board dealt with these issues before?**

The statement of scope for this rule, SS 002-22, was approved by the Governor on November 21, 2022, published in Register No. 793A2, on January 10, 2022, and approved by the Natural Resources Board on January 26, 2022.

### **7. Who will be impacted by the proposed rule? How?**

Migratory bird hunters are the principal groups that will be affected by this rulemaking.

### **8. Soliciting public input on economic impact synopsis**

The rulemaking process for Board Order WM-15-21 (E) constitutes an equivalent analysis action under s. NR 150.20 (2) (b), Wis. Adm. Code and additional environmental analysis is not required.

### **9. Small Business Analysis**

The revisions to Ch. NR 10, Wis. Admin. Code, relating to hunting, and trapping are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m) Stats., a final regulatory flexibility analysis is not required.

### **10. Summary of Public Input**

Over the years, the Department has used various methods to engage migratory bird hunters in season decisions and learn about their season and hunting preferences. Hunters have a wide range of practices and preferences, some of which result in opposing views on various season parameters. However, hunting groups and individuals have been very engaged and over time have helped the Department develop compromises and produce a season structure which has strong majority support. A total of 1,437 comments were received as it relates to the 2022 waterfowl hunting seasons. The Wisconsin Conservation Congress Migratory Committee and several waterfowl groups also offered comments. The following tools were used to involve interested parties in the rule making process.

- **Mail Survey (Winter 2021-22)**: Following the 2021 waterfowl season a scientifically designed survey was mailed out to a random selection of 2700 Wisconsin waterfowl hunters as we have

done every other year for the last several years. This survey provided information on waterfowl hunter experiences, input on hunting seasons.

- **Rule process information:** Beginning in March 2022, the Department issued preliminary information and instructions on how the public could provide input to the regulation setting process through press releases, social media post and live events, the Department website and direct mailings to waterfowl groups. Over 395,000 people are now on GovDelivery email notices regarding topics related to migratory game bird management, and general hunting. This list was provided regular updates during the process.
- **Online Public Input Tool:** An online input tool was utilized to provide an easier, more efficient and more convenient method for hunters to provide their input to the migratory bird program. This tool required hunters to identify themselves. Hunters were then presented with Department season proposals and allowed to select the season options they most preferred. Over 1,300 comments were received through this online tool.
- **Telephone, Email and Written Comment:** Public comments and questions began coming in during January through telephone calls and emails. These were accepted through March 11.
- **February 22, Migratory Committee of the Wisconsin Conservation Congress (Virtual):** Department staff presented information on the population status of waterfowl and season structure options to the committee. The committee made suggestions for the hunting season proposal and voted on all aspects. The committee had about 15 members present.
- **March 1, Waterfowl Committee of the Wisconsin Wildlife Federation (Virtual):** Department staff presented information on the population status of waterfowl and season structure options to the committee. Several conservation organizations were present, including: Wisconsin Wildlife Federation (WWF), Wisconsin Waterfowl Association (WWA), La Crosse County Conservation Alliance (LCCA), Green Bay Duck Hunters (GBDH) and Black Slough Conservation Club (BSCC). Several individuals were also present.
- **March 8 – 10, Public Hearings:** Four public hearings were held around the state and 73 people attended overall. Attendees were presented with information on the population status of waterfowl and season structure options. Following a period for clarifying questions, individuals could make oral testimony or provide written comments.
  - March 8: 35 people attended, 8 gave oral testimony
  - March 9: 22 people attended, 5 gave oral testimony
  - March 10: 16 people attended, 5 gave oral testimony

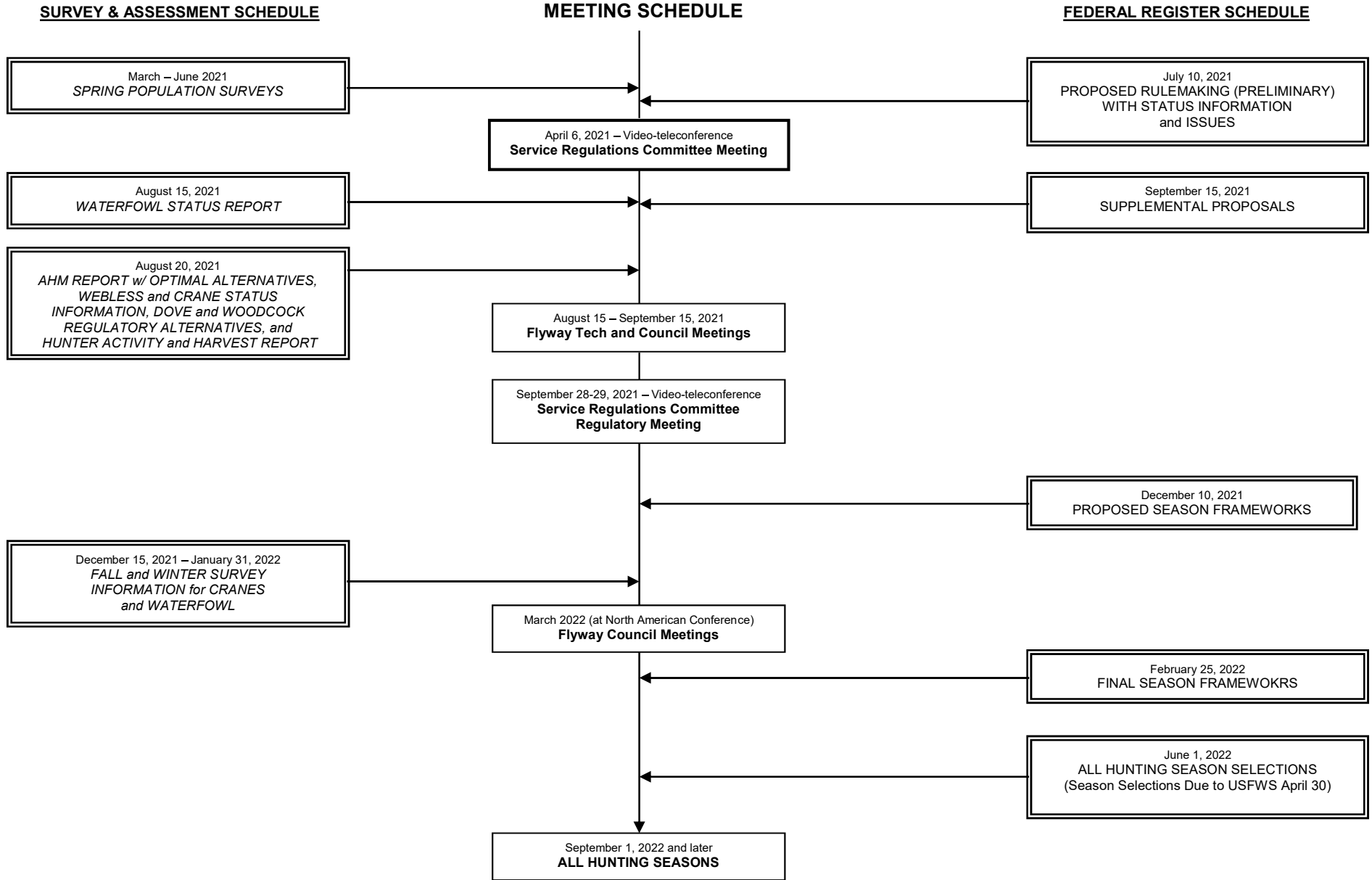
Hearing attendance was slightly down compared to 2021. Public input volume was down compared 2021 with 1,437 individual comments (2021 = 1,543). With a total of 1,437 individual comments and several statewide or local conservation groups representing thousands of members submitting comment. Of the individual comments received the majority were in agreement with the proposed duck and goose hunting zones and season dates with only a single exception (Appendix 2). Most of the waterfowl hunting groups that submitted comment supported the season proposal with no changes. The Migratory Committee of the Conservation Congress voted in support of nearly all the proposed season structures.

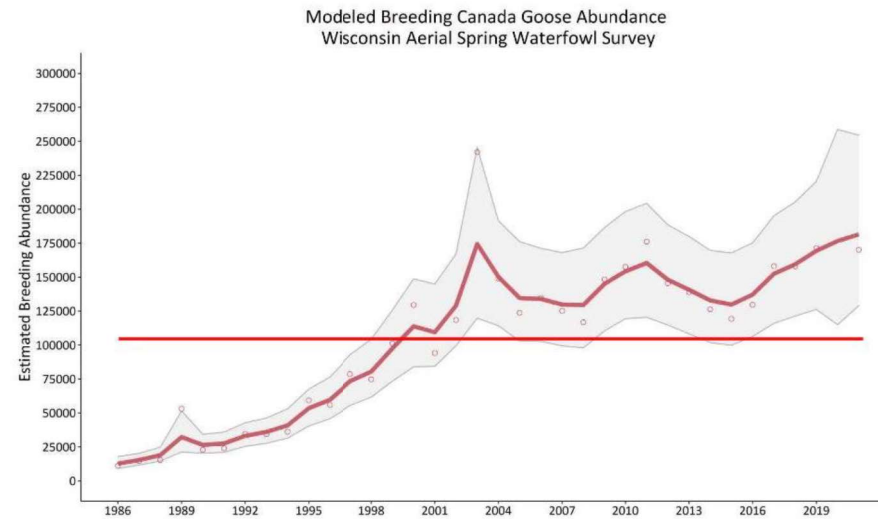
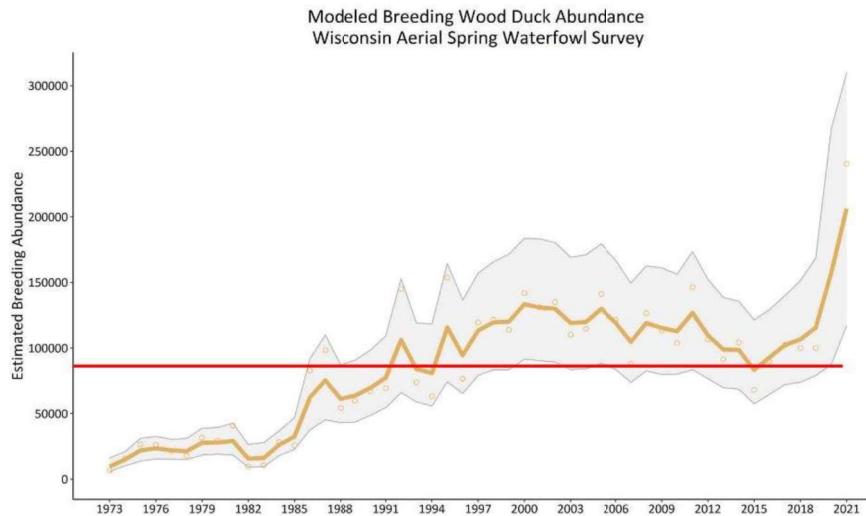
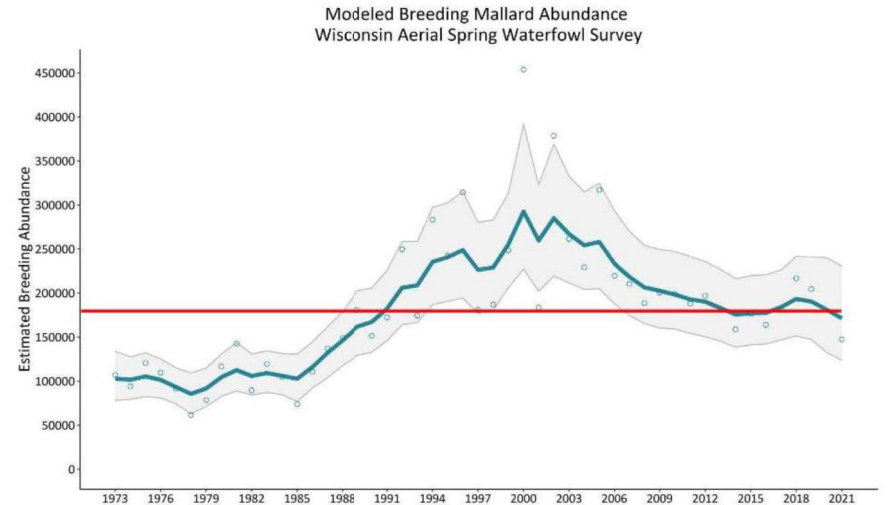
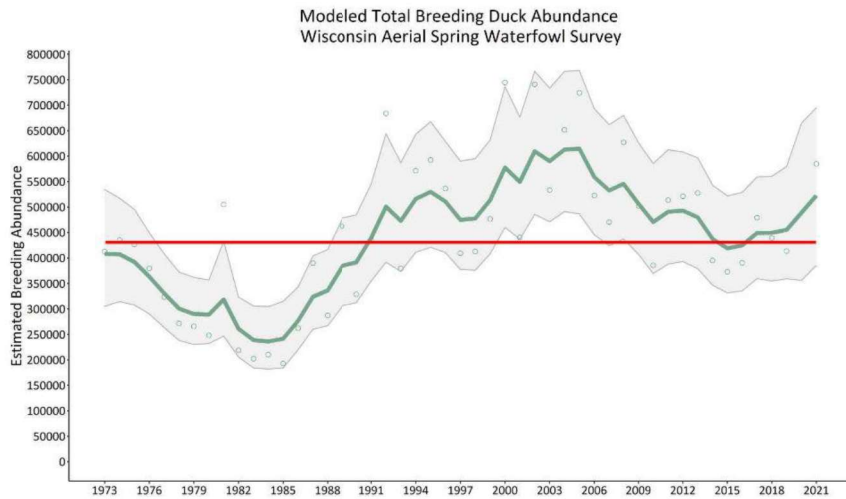
**Drafter:** Taylor Finger

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**Figure 1. 2022-2023 FEDERAL SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS**





**Appendix 2. Migratory Game Bird Public Comment Summary 2022**

***Bold/Italics*** = Department proposal

Issue	Email/ Hearing/ other	Groups at Meeting s	Cons. Congr ess	% of comments in favor
<b>Early Teal Season</b>	850	6	X	71%
No Teal season	346			
<b>Early Teal Season Sept. 1-9 with a bag of 6 birds</b>	333	3	X	53%
16 day Early Teal Season	210	3		
7 day Early Teal Season	80			
<b>Duck Bag - 6 ducks/day (4 mallard) etc.</b>	971	6	X	78%
Different	271			
<b>Youth Hunt Sept 17-18</b>	822	6	X	66%
No Youth Hunt	310			
Youth Hunt, 1 day or something different	119			
<b>North Duck Zone, Opening Date of Sept. 24</b>	530	6	X	59%
North Duck Zone, Oct. 1	263			
North Duck Zone, Oct 8 or later	101			
<b>North Duck Zone Split - No Split</b>	382	6	X	58%
North Duck Zone Split - Yes Split	279			
<b>South Duck Zone Opening Date of Oct. 1</b>	575	6	X	56%
South Duck Zone, Sept. 24	210			
South Duck Zone, Oct. 8	248			
<b>South Duck Zone Split - Yes Split</b>	738	6	X	79%
South Duck Zone Split - No Split	201			
<b>South Duck Zone Split Length - 5 days</b>	342	6	X	55%
South Duck Zone Split Length - 7 days	158			
South Duck Zone Split Length - Greater than 12 days	119			
<b>Open Water Duck Zone Opening Date of Oct. 15</b>	239	6	X	54%
Open Water Duck Zone, Oct. 1	130			
Open Water Duck Zone, Oct. 8	75			
<b>Open Water Duck Zone Split - No Split</b>	193	6	X	54%
Open Water Duck Zone Split - Yes	166			
<b>South Canada Goose Zone, Sept 16-Oct 9, Oct 15-Dec 4, Dec 18-Jan 3</b>	664	6	X	60%
South Canada Goose Zone Sept 16.-Oct 6, Oct 12-Dec 21	448			
<b>North Canada Goose Zone, Sept 16.-Dec. 16</b>	519	6	X	54%
North Canada Goose Zone Include a Split	444			
<b>Miss. River Canada Goose Subzone Oct 1-Oct 9, Oct 15-Jan 3</b>	508	2	X	49%
Miss. River Canada Goose Subzone, Sept 16-Oct 9, Oct 15-Dec 4, Dec 18-Jan 3	530	3		
<b>South Canada Goose Zone Bag Limit, 3 geese/day during first portion and 5 geese/day for Holiday Hunt</b>	604	6	X	54%
South Canada Goose Zone Bag Limit, 3 geese/day for entire season	524			
Total comments	1437			
Attendance at Virtual Public Hearings	73			

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		2. Date 3/17/22
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 10, Game and Hunting		
4. Subject 2022 Migratory Bird Hunting Seasons		
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected	
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget		
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>		
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). <b>\$0, (No implementation and compliance costs anticipated)</b>		
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
11. Policy Problem Addressed by the Rule Under the federal framework for duck hunting, the USFWS is allowing Wisconsin a 60-day restrictive scaup season in which no more than one scaup per day may be harvested for 15 days and no more than two scaup per day may be harvested for 45 days. However, there is flexibility in how the restriction is applied to each harvest zone. In 2021 all three zones had the same scaup season structure of 1 scaup/day for 15 days and 2 scaup/day for the final 45 days. Public feedback gathered after the 2021 showed support to change the structure in the North and Open Water Zones, with support to retain structure in the South Zone.  This rule also adjusts and simplifies the open water restrictions on all approved inland open water hunting lakes. The Department in 2011 identified several inland lakes that would be open to open water hunting. The decision was to set the minimum distance from shore where hunters can be without having to adhere to concealment regulations to "greater than 1000 feet" as a precaution until the Department had some time to review how this opportunity was utilized. With more than a decade of these regulations the Department feels that the 1000-foot restriction can be reduced to 500 feet which aligns 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. Department biologist staff, law enforcement staff and public input all were in support of this rule simplification.  In 2020, the Department gathered public input regarding the reconfiguration of duck harvest zones. Public input favored the creation of a new Open Water Zone to allow hunters to take advantage of unique late season opportunities which exist in open waters (waters greater than 500 feet from the mainland shore) of Lake Michigan and Green Bay. The Board approved of the new zone configuration for the 2021 migratory bird season. With all new opportunities issues and confusion arose regarding the Open Water Zone boundary. [This sentence is a bit vague and subjective. Can we objectively state what the problem was that we are trying to solve?] This rule clarifies the duck zone boundary for the Open Water Zone by updating 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		

## **ADMINISTRATIVE RULES**

### **Fiscal Estimate & Economic Impact Analysis**

adjacent rooted vegetation, adjacent floating cattail and Long Tail and Little Tail points.

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12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

No fiscal effects on small businesses, their associations, or local governments are anticipated

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

None at this time. Local Government units are not anticipated to be impacted by this rule.

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

No effects on small businesses, their associations, or local governments are anticipated. The department does not anticipate any fiscal impacts as a result of these rules. Following is the department's preliminary analysis.

#### Economic Impact

Because the hunting season framework proposed in this rule will be very similar to those in place during previous seasons, no economic impacts are anticipated. We do not anticipate that these rules will result in changes in the activities of migratory bird hunters, their expenditures, and the related economic activity. These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

#### Fiscal Impact

The department anticipates no fiscal impact resulting from these rules. The department currently annually conducts a number of activities related to migratory bird hunting such as managing department lands, selling licenses, providing law enforcement services, and surveys and related research. The department will continue to conduct the same activities under the season framework proposed in this rule and does not anticipate any new or reduced expenditures. No effects on small businesses, their associations, or local governments are anticipated. The department does not anticipate any fiscal impacts as a result of these rules. Following is the department's preliminary analysis.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

By implementing this rule, Wisconsin's migratory bird hunters will continue to enjoy excellent hunting opportunities. The expenditures of migratory bird hunters and the economic impacts resulting from their expenditures will continue to benefit the state's economy.

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16. Long Range Implications of Implementing the Rule

Implementing these rules will have little impact on the public except that they will continue to have good hunting opportunities into the future.

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17. Compare With Approaches Being Used by Federal Government

Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20. Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually through the USFWS regulations process. As part of the federal rule process, the service annually evaluates migratory game bird populations and breeding habitat in cooperation with state provincial agencies and the Canadian Wildlife Service. After considering recommendations from the flyway councils of states and the guidance of cooperatively developed harvest strategies, the USFWS establishes annual frameworks within flyway or bird populations regions. States can then establish hunting seasons within the sideboards for each species and region.

None of the provisions of this rule conflict with the federal framework.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The department establishes migratory game bird hunting seasons based on a federal framework that is presented to Wisconsin by the US Fish & Wildlife Service. Because of the federal guidelines, Wisconsin's regulations are similar to

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

those in neighboring states.

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19. Contact Name

Taylor Finger

20. Contact Phone Number

608-266-8841

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING; RENUMBERING; RENUMBERING AND AMENDING; CONSOLIDATING,  
RENUMBERING AND AMENDING; 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 (1) (b) and NR 10.12 (3) (c); and to **create** NR 10.001 (20) relating to establishing the 2022 migratory bird season framework and regulations.

**WM-15-21 (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.

**2. Statutory Authority:** In promulgating these rules, statutes being interpreted or establishing agency authority include s. 29.014, 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 active rule CR-21-069.

**5. Plain Language Analysis:**

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

SECTION 2 revises the dates that contain either a one or two daily bag limit for scaup.

SECTIONS 3 AND 4 simplifies the open water restrictions on all approved inland open water hunting lakes to by creating a standard setback of 500 feet.

**6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:** 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 United States Fish and Wildlife Service (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.

**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 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:** 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. In 2021 all three zones had the same scaup season structure of 1 scaup/day for 15 days and 2 scaup/day for the final 45 days. However, after having a year with this new scaup season structure, input and feedback from North Zone and Open Water Zone hunters indicated a desire to change. This rule adjusts the North Zone and Open Water Zone scaup season structure to 2 scaup/day for the first 45 days and 1 scaup/day for the final 15 days to better match the opportunity for hunters to pursue this species in each of the two zones.

This rule also adjusts and simplifies the open water restrictions on all approved inland open water hunting lakes. In 2011 the Department identified several inland lakes that would be open to open water hunting. The decision was to set the minimum distance from shore where hunters can be without having to adhere to concealment regulations to “greater than 1000 feet” as a precaution until the Department had some time to review how this opportunity was utilized. With more than a decade of these regulations the Department feels that the 1000-foot restriction can be reduced to 500 feet which aligns 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. Department biologist staff, law enforcement staff and public input all were in support of this rule simplification

In 2020, the Department gathered public input regarding the reconfiguration of duck harvest zones. Public input favored the creation of a new Open Water Zone to allow hunters to take advantage of unique late season opportunities which exist in open waters (waters greater than 500 feet from the mainland shore) of Lake Michigan and Green Bay. The Board approved of the new zone configuration for the 2021 migratory bird season. Some issues and confusion arose regarding the Open Water Zone boundary. This rule clarifies the duck zone boundary for the Open Water Zone by updating 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.

**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:**

Comments may be submitted to the department contact person listed above or to [DNRAdministrativeRulesComments@wisconsin.gov](mailto:DNRAdministrativeRulesComments@wisconsin.gov) until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department’s website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>

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**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) (b) is amended to read:**

Kind of Animal	Locality	Open season (all dates inclusive)	Daily Bag Limit	Possession Limit
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<p>(b) <i>All species of wild ducks</i></p>	<p>Entire state.</p>	<p>As established by zone.</p>	<p><del>Sept. 25 – Oct. 10</del>  <u>Sept. 24 – 30 and Oct 21 – Nov 7</u>: 6 ducks to include not more than 4 mallards of which only 1 2 may be a hen mallard, 2 black ducks, 1 pintail, 2 canvasbacks, 2 redheads, <del>1</del><u>2</u> scaup and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</p>	<p>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.</p>
			<p><del>Oct. 10 – 21</del> <u>Oct 1 - 20</u>: 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 <del>or Open</del> Water Zones <u>Zone</u>) and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</p>	

			<p><del>Oct. 22-30</del> <u>Nov. 8 - 28</u>: 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 <del>Open Water</del> <u>Northern Zone</u>) and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</p>	
			<p><del>Oct. 31 - Dec. 14</del> <u>Nov. 29 - Dec. 13</u>: 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 (<u>no more than 1 may be from the Open Water Zone</u>) and 3 wood ducks. In addition, 5 mergansers to include not more than 2 hooded mergansers.</p>	

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

**SECTION 4. 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 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).

**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 [DATE].

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY \_\_\_\_\_

Preston D. Cole, Secretary

(SEAL)

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