



CR 91-169

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny
Secretary

101 South Webster Street
Box 7921
Madison, Wisconsin 53707
TELEPHONE 608-266-2621
TELEFAX 608-267-3579
TDD 608-267-6897

STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WM-30-91 was duly approved and adopted by this Department on January 24, 1992. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 17th
day of March, 1992

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Bruce B. Braun
Bruce B. Braun, Deputy Secretary

(SEAL)

6-1-92

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

.....
IN THE MATTER of repealing ss. NR 13.50(1), (3),
(7) to (9), (11), (13) to (21), (23) and (25), 13.53 and
13.58; renumbering ss. NR 13.50(2), (4) to (6), (10), (12),
(22) and (24); amending ss. NR 13.02(6), 13.36(title) and
(intro.), 13.37(6)(b)2., 13.38(1), (2)(b) & (4)(d)7., 13.52,
13.54, 13.55(2) and 13.57; repealing and recreating s. NR
13.01; and creating ss. NR 13.035 and 13.36(12) of the
Wisconsin Administrative Code pertaining to Chippewa
Indian treaty fishing, hunting, trapping and gathering rights
.....

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Analysis Prepared by Department of Natural Resources

Authorizing statutes: ss. 23.09(2), 23.11, 27.01(2)(j), 29.085, 29.174, 227.11(2)(a) and 227.16(2)(b), Stats.
Statutes interpreted: chs. 23 and 29, Stats.

These amendments will modify the set of rules which regulate the Chippewa Indian off-reservation fishing, hunting, trapping and gathering rights which were originally recognized by Lac Courte Oreilles Band v. Voigt, 700 F. 2d 341 (7th Cir. 1983), to incorporate the changes mandated by subsequent litigation in Lac Courte Oreilles v. State of Wisconsin, 707 F. Supp. 1034 (W.D. Wis. 1989), Lac Courte Oreilles v. State of Wisconsin, 740 F. Supp. 1400 (W.D. Wis. 1990), Lac Courte Oreilles v. State of Wisconsin, 758 F. Supp. 1262 (W.D. Wis. 1991) and the final judgment thereto entered on March 19, 1991.

SECTION 1. NR 13.01 is repealed and recreated to read:

NR 13.01 PURPOSE. This chapter is intended to regulate off-reservation treaty rights of treaty rights participants recognized by Lac Courte Oreilles Band v. Voigt, 700 F. 2d 341 (7th Cir. 1983) to the extent permissible under Lac Courte Oreilles v. State of Wisconsin, 668 F. Supp. 1233 (W.D. Wis. 1987), Lac Courte Oreilles v. State of Wisconsin, 707 F. Supp. 1034 (W.D. Wis. 1989), Lac Courte Oreilles v. State of Wisconsin, 740 F. Supp. 1400 (W.D. Wis. 1990), Lac Courte Oreilles v. State of Wisconsin, 758 F. Supp. 1262 (W.D. Wis. 1991) and the final judgment thereto entered on March 19, 1991. Where applicable, provisions of this chapter dealing with tending, sharing or checking of gear, transactions including sale and transfer of tags, permits and other approvals also apply to nontreaty rights participants.

SECTION 2. NR 13.02(6) is amended to read:

NR 13.02(6) "Management unit", "hunting zone" and "management zone" mean those management units established for deer in s. NR 10.28, black bear hunting zones established in s. NR 10.30 and Canada goose management zones established in s. NR 10.31 or any other area established by the department for management purposes.

SECTION 3. NR 13.035 is created to read:

NR 13.035 ALLOCATION. The department may limit the number of permits, tags or quota available to treaty rights participants so as to limit the Chippewa harvest in any harvest or management unit to no more than 50% of the total harvest within that harvest or management unit.

SECTION 4. NR 13.36(title) and (intro.) are amended to read:

NR 13.36 (title) MODIFICATIONS TO ADMINISTRATIVE CODE RELATING TO HUNTING SMALL GAME, FURBEARERS AND PROTECTED WILD ANIMALS. The seasons for hunting specified small game, furbearers and protected wild animals shall be as follows:

SECTION 5. NR 13.36(12) is created to read:

NR 13.36(12) WHITE DEER. Beginning on the day after Labor Day and continuing through December 31:

SECTION 6. NR 13.37(6)(b)2. is amended to read:

NR 13.37(6)(b)2. Maximum tribal fisher quotas for each fisher management zone as established in s. NR 10.01(4), located within the ceded lands territory shall be based upon the following formula:

state quota ~~x % public land (including forest crop land and managed forest land open to public hunting)~~ x 50%

SECTION 7. NR 13.38(1) is amended to read:

NR 13.38(1) DEER SEASON. The deer season shall begin the day after Labor Day and continue through the Thursday prior to the state gun deer season established in s. NR 10.01(3)(e). ~~The season shall resume on the Saturday preceding the Thanksgiving holiday and continue through~~ December 31.

SECTION 8. NR 13.38(2)(b) is amended to read:

NR 13.38(2)(b) Maximum antlerless deer harvest limit. The maximum tribal harvest limit shall be calculated according to the following formula:

The management unit deer harvest quota as calculated under s. NR 10.103(7) ~~x % public land acreage in the management unit (including forest crop and managed forest land open to public hunting)~~ x 50%.

SECTION 9. NR 13.38(4)(d)7. is amended to read:

NR 13.38(4)(d)7. No permit will be valid ~~on the day preceding the state gun deer season established in s. NR 10.01(3)(e) or~~ beyond December 31.

SECTION 10. NR 13.50(1), (3), (7) to (9), (11), (13) to (21), (23) and (25) are repealed.

SECTION 11. NR 13.50(2), (4) to (6), (10), (12), (22) and (24) are renumbered NR 13.50(1) to (8).

SECTION 12. NR 13.52 is amended to read:

NR 13.52 (title) MISCELLANEOUS FOREST PRODUCT GATHERING ELIGIBILITY AND ASSISTANCE. Treaty rights participants gathering ~~timber or other~~ forest products on department land may not be assisted in the gathering by any person other than another treaty rights participant. Treaty rights participants may not permit any person other than another treaty rights participant to tend or operate equipment involved in the gathering.

SECTION 13. NR 13.53 is repealed.

SECTION 14. NR 13.54 is amended to read:

NR 13.54 GATHERING MISCELLANEOUS FOREST PRODUCTS ON DEPARTMENT LAND. (1) Any treaty rights participant interested in gathering from department land firewood ~~other than on a tract under s. NR 13.53~~, tree bark, maple sap, lodge poles, boughs, marsh hay or other miscellaneous forest products not enumerated in s. NR 13.55 or this section shall obtain a permit from the manager of the department property upon which the gathering is desired. The department shall respond to the gathering request no later than 14 days after receipt of the request. The permit shall indicate the location of the material to be gathered, the volume of material to be gathered, and conditions on the gathering of the material necessary for conservation of the timber and other forest products on the department land or for public health or safety.

(2) The department may not deny a request to gather miscellaneous forest products on a department property under this section unless the gathering is inconsistent with the management plan for that property or the gathering will conflict with the preexisting rights of a permittee, other person who has an approval to conduct an activity on the department property or a contractor of the department or is otherwise inconsistent with conservation, public health or safety.

SECTION 15. NR 13.55(2) is amended to read:

NR 13.55(2) (title) NATURAL AREAS. (a) No treaty rights participant may gather anything other than edible berries on a natural area without a department gathering permit. The department shall respond to the gathering permit request no later than 14 days after receipt of the request. The permit shall indicate the type of material, location and volume of material to be gathered and conditions on the gathering of the material necessary for conservation of the timber and other forest products on the department land or for public health or safety.

(b) The department may not deny a request to gather miscellaneous products on a natural area unless the gathering is inconsistent with the management plan for the property or the gathering will conflict with the preexisting rights of a permittee, other person who has an approval to conduct an activity on the department property or a contractor of the department or is otherwise inconsistent with conservation, public health or safety.

SECTION 16. NR 13.57 is amended to read:

NR 13.57 DEPARTMENT INSPECTION. Any treaty rights participant engaged in gathering on department land shall present, upon request by department representatives, ~~the timber gathering permit,~~ the permit authorizing gathering miscellaneous forest products, and his or her tribal identity card.

SECTION 17. NR 13.58 is repealed.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 24, 1992.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin

March 11, 1992

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

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