

Clearinghouse Rule 08-011

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

The Wisconsin Natural Resources Board proposes and order to renumber s. NR 10.001(3t); to amend ss. NR 10.01(3)(b) and (bm), 10.13(1)(b)6., 10.145(2)(b), 10.25(4)(c), 11.10(title) and intro., 17.04(2)(b), 17.08(2)(b), 45.09(5); and to create ss. NR 10.001(3u) and(5j) and 45.04(3)(u) relating to hunting and trapping regulations and the use of department managed lands.

WM-01-08

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted and Explanation of Agency Authority: The department has interpreted the following statutes as providing the authority to promulgate rules regarding hunting, trapping, game refuges, dog training, and the use of department managed lands: 23.09(2)(b), 23.11, 27.01(2)(j), 29.014, 29.192(3), 29.563(12)(c)3, 169.20 and 169.21 Stats.

Statutory Authority and Explanation of Agency Authority: Statutes that authorize the promulgation of these rules include, ss. 23.09(2)(b), 23.11, 27.01(2)(j), 29.014, 29.041, 29.192(3), 29.563(12)(c)3 and 169.20 and 169.21 Stats. These statutes specifically provide the department with authority to establish conditions regarding the use of state land such as state parks, public recreation areas and hunting grounds, to establish game refuges, and direct the department to manage, supervise, and police lands under its protection. These statutes authorize the department to establish hunting and trapping seasons, management zones, regulations regarding the techniques by which game animals and game birds may be harvested and other measures to ensure the citizens continued opportunities for good hunting and trapping. Finally, these statutes authorize the department to establish regulations on the possession and use of captive wild animals for purposes which include dog training and field trials. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Related Rule or Statute: There are no state rules or statutes currently under promulgation that directly relate to the provisions that are proposed in this administrative order.

Plain Language Analysis: The department has recommended modifications to chapter NR 10, 11, 17 and 45, Wis. Adm. Code, relating to hunting, trapping, closed areas, dog training and the use of public lands. These rule changes are proposed for inclusion in the 2008 Spring Hearing Questionnaire. Specifically, these proposals:

- Extend the raccoon trapping and hunting seasons by 15 days to coincide with the closing of the coyote trapping and fox trapping and hunting seasons.
- Establish definitions for live trap and body gripping type trap.
- Establish a new population goal for bobcat of 2,500 animals, plus-or-minus 20%.
- Add an additional year to the experimental fall season for hunting wild turkeys with the aid of dogs in nine counties in Southwest Wisconsin.
- Eliminate one fisher trapping closed area in Vilas, Forest and Oneida counties, another in Bayfield, Sawyer and Ashland counties, and establish unique trapping regulations to protect pine marten in those areas.
- Allow dog training with captive wild animals by license during the period when dog training is otherwise prohibited in the northern restricted zone.
- Prohibit paintball activity on department managed lands except when approved by the department.
- Establish a fee of \$2.75 for a duplicate copy of the trapper education course certificate of accomplishment and make them available from any DNR license vendor.

Summary of, and Comparison with, Existing or Proposed Federal Regulations: Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

Comparison with rules in Adjacent States: These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of wild game and furbearer species that are established based on needs that are unique to that state's resources and public desires.

All surrounding states have long raccoon hunting and trapping seasons and that species is common throughout the Upper Midwest. Trappers pursue raccoon and other species with a variety of trap types that are similar or identical to those used in Wisconsin. Michigan and Minnesota harvest bobcat during hunting and trapping seasons and have management plans in place to ensure sustainable use of that species.

Surrounding states all have fall turkey hunting seasons and the use of dogs is allowed in Iowa and Michigan.

All of Wisconsin's surrounding states allow dog training with the use of captive wild animals but regulate the practice, limiting where it may occur and the times of year.

Paintball games are expressly prohibited in state parks in Michigan and some other public properties in Michigan. Iowa prohibits the use of paintball guns on state parks, recreation areas and state preserves. Minnesota does not have specific regulations on paintball guns or games on state property. The Illinois DNR does not have specific paintball regulations however the possession and discharge of paintball guns are strictly regulated by many local units of government.

Summary of Factual Data and Analytical Methodologies: The rule changes included in this order do not deviate from current department policy on the management of wildlife and the regulation of hunting and trapping. By making those seasons run concurrently, the proposal to lengthen the raccoon trapping and hunting season will eliminate problems with the incidental catch of raccoons by fox and coyote trappers. Raccoon are an abundant wildlife species and the added 15 days of trapping and hunting will have no effect their overall population.

There are currently no definitions of "cage or box type (live trap)" or "body gripping" trap in administrative code. Establishing definitions will make current administrative rules easier to explain and enforce. Creating a definition of cage or box trap makes practical another proposal in this rule order to eliminate the fisher trapping closed area. This area will still be closed to marten trapping and only live traps and certain other types will be allowed in order to prevent the incidental catch or killing of marten.

This rule order would increase the population goal for bobcat in the area north of State Highway 64. The current goal is approximately 1,800 animals but department staff people believe that the population has exceeded that goal. The public has been supportive of the increased population of approximately 3,000 animals and there have been few complaints or problems. There appears to be no reason to reduce the bobcat population to the current goal other than that Administrative Code requires it. Additionally, this proposal would create a range of plus-or-minus 20%. Establishing a target range is more practical for a species which has small over-all numbers and for which harvest success can vary greatly based on weather conditions.

Wisconsin is involved in a two-year experiment that allows hunting wild turkeys with the aid of dogs during the fall season. Extending the experiment to run through 2009 is necessary to ensure that there are actually two complete fall seasons of hunting. In 2007 hunting was not legal during the September portion of the season because the administrative rule process was not completed in time. Additionally, the rule went into effect after regulations pamphlets were printed meaning there was limited notice of this

opportunity during the first year of the trial. There have been no complaints related to hunting activity during the October and November portions of the first year of the pilot season. Hunting wild turkeys with dogs in autumn is a traditional activity in other states where the dogs are used to scatter flocks of turkeys so that individual birds can then be called back to the hunter.

Currently there are two fisher and marten trapping closed areas which were established in order to aid with the reintroduction of those species. Dryland trapping is not allowed in the Clam Lake closed area which includes portions of Bayfield, Sawyer and Ashland counties or in the Forest County closed area which includes portions of Forest, Vilas and Oneida counties. Fisher are now well established in available habitat throughout northern Wisconsin but marten have not expanded beyond the original reintroduction areas after nearly 50 years. The abundant fisher population may be suppressing pine marten. The prohibition on dryland trapping also reduces opportunities for trappers. This proposal will allow the use of trap types on dryland that are not likely to catch or kill pine marten but which will be effective for species like fisher, raccoon, bobcat, coyote and fox. Allowable trap types would include enclosed trigger type traps, live or box type traps, and cable restraints.

Dog training utilizing captive wild animals such as pheasants, gray partridge, quail, raccoon and rabbit is currently allowed by the department by license. A license that allows training year-round on private land may be issued except that no dog training is allowed in the northern restricted zone from May 1 to June 30. The northern restricted zone is an area of Wisconsin that is generally north of highways 8, 64, 29 and 22. The prohibition is intended to protect free roaming ground nesting birds during the time of year when they are most likely to be nesting. The current prohibition is in conflict, however, with new rules that allow the use of captive wild animals year-round in hound dog training enclosures. That conflict would be resolved by this proposal. Additionally, the general prohibition on the use of captive wild animals for dog training may not be necessary because the use of captive wild animals is already controlled by license. All use of captive wild animals under this proposal would continue to be controlled by license and the prohibition on training dogs on free-roaming wild animals during the closed period would remain in effect.

Duplicate trapper education course certificates of completion are currently available by request through the department's Madison office and are delivered by mail. This proposal would make those duplicates available over-the-counter through any license vendor and establishes a fee that would cover the costs of providing this service.

Paintball guns utilize compressed air or springs to fire a ball of paint which breaks upon impact and marks the intended target with water-soluble paint. This proposal would prohibit the use of paintball guns on department properties unless prior authorization is obtained from the department. Department staff have expressed concern with litter, user conflict, and firearm identification challenges for law enforcement and these concerns would be addressed by prohibiting the indiscriminate use of paintball guns. The discharge of firearms and airguns is prohibited on department properties in 17 counties meaning that most paintball guns are illegal in those counties under current rule. To assure that the same rule applies statewide regarding paintball games and legitimate forestry practices for marking trees, this rule would exempt paintball guns from the existing blanket prohibition on the discharge of firearms and airguns in those counties. While paintball activities would generally not be allowed on department property, they could be allowed if it were determined that it is a legitimate outdoor activity that does not conflict with the intended property use. Requiring department permission to use paintball guns will better assure that the public, department staff and law enforcement officers can anticipate encountering people who possess and are using paintball guns.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses.

Effects on Small Businesses: These rules are applicable to individual sportspersons and paintball game enthusiasts and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

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Deadline for Written Comments: The deadline for written comments is April 15, 2008. Comments may also be submitted electronically at the following internet site: <http://adminrules.wisconsin.gov>

Section 1. NR 10.001(3t) is renumbered to be NR 10.001(3x).

Section 2. NR 10.001(3u) is created to read:

NR 10.001(3u) "Body gripping trap" means a steel trap designed to allow the animal's head, neck or torso to enter the trap opening and be held by compression of the jaws around the head, neck or torso when the trap is sprung. It may not be used as a cage trap, enclosed trigger trap, snare, cable restraint or steel jawed trap.

Section 3. NR 10.001(5j) is created to read:

NR 10.001(5j) "Cage or box trap" means a trap that is designed to allow an animal to enter the trap enclosure, be captured and remain alive inside the cage or box type enclosure until it can be released unharmed or reduced to possession by the operator of the trap. It may not be used as a water set or in conjunction with a steel jawed trap, an enclosed trigger trap or body gripping trap.

Section 4. NR 10.01(3)(b) and (bm) are amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01(3)(b) <i>Raccoon</i> (resident hunting and trapping) In all counties of the state	Beginning on the Saturday nearest October 17 and continuing through January 31 <u>February 15</u> .	None
(bm) <i>Raccoon</i> (non-resident hunting and trapping) In all counties of the state	Beginning on the Saturday nearest November 1 and continuing through January 31 <u>February 15</u> .	None

Section 5. NR 10.13(1)(b)6. is amended to read:

NR 10.13(1)(b)6. 'Trap, snare, and cable restraint use.' Set, place, operate or possess while ~~on or adjacent to waters of this state~~ trapping, any trap other than a steel jawed trap, ~~live enclosed trigger trap, cage or box~~ trap, body gripping trap, snare or cable restraint as defined in s. NR 10.001(5g) for the purpose of taking, capturing, or killing furbearing animals. ~~Live Cage traps shall be constructed so that not more than one animal can be taken or captured in any single trap setting after an animal has been captured, no additional animals may enter the trap until the captured animal is removed and the trap is reset.~~

Section 6. NR 10.145(2)(b) is amended to read:

NR 10.145(2)(b) *Bobcat*. The preharvest population goal north of the state highway 64 is ~~one bobcat per 10 square miles of bobcat range~~ 2,500 animals plus-or-minus 20%.

Section 7. NR 10.25(4)(c) is amended to read:

NR 10.25(4)(c) With the aid of dogs, except during the open season for hunting turkeys described in s. NR 10.01(2)(f)2. in Crawford, Jackson, Juneau, La Crosse, Monroe, Richland, Sauk, Vernon and Wood counties in 2007, ~~and 2008~~ and 2009.

Section 8. NR 11.10(title) and intro. are amended to read:

NR 11.10 (title) ~~Fisher/marten~~ Marten protection areas. (intro.) A closed season is established in the following ~~area~~ areas posted with department signs. No person may trap any species of wild animal thereon at any time, ~~except beaver, otter, raccoon, muskrat and mink may be trapped unless using cage traps or cable restraints in compliance with s. NR 10.13, except that steel jawed traps, enclosed trigger traps, snares, or body-gripping traps of the conibear type as authorized under s. NR 10.13 may be used as with wet water~~ sets during the open seasons established in s. NR 10.01(4).

Section 9. NR 17.04(2)(b) is amended to read:

NR 17.04(2)(b) *Northern restricted zone.* Dog training on any ~~captive or free roaming~~ wild animal is prohibited May 1 to June 30 on all lands within the northern restricted zone except as described in sub. (3) (a).

Section 10. NR 17.08(2)(b) is amended to read:

NR 17.08(2)(b) *Northern restricted zone.* Dog trialing on any ~~captive or free roaming~~ wild animal is prohibited May 1 to June 30 on all lands north of the highway described in s. NR 10.07 (1) (i) except as described in sub. (3) (a).

Section 11. NR 19.51 is amended to read:

NR 19.51 Wisconsin cooperative trapper education program fee. The fee for the course of instruction under the Wisconsin cooperative trapper education program shall be \$12.00 per student. The fee for correspondence trapper education certification program shall be \$12.00 per student for correspondence programs that require in-state mailing of course materials and shall be \$28.00 per student for correspondence programs that require out-of-state mailing of course materials. In addition to the fees established in this section, for correspondence courses, each student shall pay a \$17.00 deposit that shall be refunded when the course materials are returned. The fee for a duplicate copy of a trapper education course certificate of accomplishment is \$2.75. The fee for advanced trapper education courses shall be that amount needed to pay for the cost of the course, but not to exceed \$50.00 per student. Only instructors who are certified by the department to teach trapper education courses under s. 29.597, Stats., may charge a fee for a trapper education course established under s. 29.597, Stats.

Section 12. NR 45.04(3)(u) is created to read:

NR 45.04(3)(u) *Paintball.* Except when authorized by the department, no person may engage in an activity involving the use of paintball guns, paint markers or discharge of similar devices on any lands subject to this chapter.

Section 13. NR 45.09(5) is amended to read:

NR 45.09(5) No person may possess any loaded or uncased firearm or air gun, other than a paintball or paintmarker gun, while within the exterior boundary of state-owned lands posted with department signs in Dane, Dodge, Fond du Lac, Jefferson, Juneau, Kenosha, La Crosse, Milwaukee, Outagamie, Ozaukee, Racine, Sauk, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties or on state forest lands in the Kettle Moraine or Point Beach state forests, state recreation areas, state natural areas or on state trails established on abandoned railroad grades, except as follows:

(a) While engaged in hunting in accordance with the open seasons established in s. NR 10.01 on properties where hunting is authorized.

- (b) At target ranges designated by the department.
- (c) While engaged in dog trials under department permit.
- (d) While training dogs in designated areas under department permit.

Note: Paintball guns and similar devices are subject to s. NR 45.04(3)(u).

Section 14. Effective dates. These rules shall take effect on February 1, 2009.

Section 15. Board adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)