

Clearinghouse Rule 23-025

The statement of scope for this rule, SS 101-21 was approved by the Governor on October 22, 2021, published in Register No. 791A1 on November 1, 2021, and approved by the Natural Resources Board on May 25, 2022. This rule was approved by the Governor on insert date

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

The Wisconsin Natural Resources Board proposes an order to **repeal** NR 10.01 (3) (c) 2. c., 10.105 (4) (g) Note and (6) (f) Note, 17.08 (3) (c) Note and 19.82; to **renumber** NR 10.08 (6) Note; to **amend** NR 8.51 (16), 10.001 (10g), 10.01 (2) (f) 3. and 4. a., 10.105 (4) (g) and (6) (f), 10.09 (1) (d), 10.104 (8) (b), 10.15 (6), 12.06 (4), 12.10 (1) (a) 4., 12.15 (11) (b), 17.08 (3) (c), 18.12 (14), and 19.51; to **repeal and recreate** NR 11.07 (6) (a); and to **create** NR 12.001 (1) (m) and 12.10 (1) (a) 6.; relating to the 2021 Bureau of Wildlife Management housekeeping rule

WM-09-21

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted, Statutory Authority and 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 trapping and hunting regulations.

Under s. 29.164 (2) (a), Stats., the department is prohibited from requiring the possession or validation of a turkey carcass tag. In s. 29.164 (2) (c) 2., Stats., and in numerous other locations the term “authorization” is established as an alternative to “carcass tag” related to turkey hunting. In the s. 29.347 (2) Stats., provisions establishing that the department shall require the possession or validation of a deer carcass tag are eliminated.

Section 29.181 (2) (m), Stats., allows the department to establish by rule free bonus antlerless permits to eligible resident farm owners.

Additionally, s. 29.885, Stats., grants the department the authority to remove or authorize the removal of a wild animal that is causing damage or that is causing a nuisance.

4. Related Statutes or Rules: There are no current active related rules.

5. Plain Language Analysis:

SECTION 1 amends the definition of “wildlife-related violation” to include invasive species violations.

SECTION 2 corrects a deleted reference to administrative code.

SECTION 3 corrects the closing date of the fall turkey season to match state statute and clarifies that youth turkey hunters may only harvest a single turkey during the youth turkey season.

SECTION 4 deletes the year-long open cottontail rabbit season in Milwaukee County.

SECTION 5 moves a note related to pigeons to a more appropriate place in administrative code.

SECTION 6 amends the definition of a muzzleloading firearm.

SECTION 7 clarifies that free antlerless bonus permits for farmers are only valid on private lands.

SECTIONS 8-11 delete statutory references to restrictions on velvet antler possession that have been repealed.

SECTION 12 clarifies that the prohibition on hunting within seventy-five yards of the boundary of the Horicon Marsh Wildlife only applies on department lands.

SECTION 13 updates the Grand River Marsh refuge boundary.

SECTION 14 incorporates the statutory definition of damage into administrative code.

SECTION 15 replaces the term “back tag” with “harvest authorizations.”

SECTION 16 authorizes an agent of a city, village, town or county to discharge a firearm from within 50-feet of a roadway center to shoot beaver or muskrat that are causing damage to a highway.

SECTION 17 clarifies that animals live trapped and relocated on private property must be put in an area with suitable habitat to ensure survival.

SECTION 18 allows individuals who possess any valid firearm hunting license to engage in bear damage shooting permit activities such as hunting or baiting.

SECTIONS 19 - 20 delete an invalid statutory reference.

SECTION 21 deletes language which requires falconers to hold endangered species permits.

SECTION 22 deletes language which establishes a fee for duplicate copy of the trapper education course certification of accomplishment. It also deletes language which caps the cost of the advanced trapper education course.

SECTION 23 deletes language which establishes a wildlife rehabilitation advisory council since the council has been changed to an advisory committee.

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

States possess inherent authority to manage the wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

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

and at Public Hearing on the Statement of Scope: The department held a virtual preliminary public hearing on the statement of scope on Thursday, December 16, 2021 at 1:00 p.m. Only one member of the public attended the hearing. This individual represented the WI Coon Hunters Association and the WI Association of Sporting Dog Clubs. They expressed interest on what would be changed regarding the

item that would update the list of animals causing damage or nuisance that may be live-trapped and relocated without written authorization from the department and whether it would apply to raccoons. No members of the public submitted written comments on the scope statement during the open comment period.

8. Comparison with Similar 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. Also, all of Wisconsin's neighboring states have established management units for the purpose of managing deer populations.

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

2017 Wisconsin Act 63 created a uniform closing date for certain hunting and trapping seasons, including the fall turkey season.

Current rule language allows youth turkey hunters to harvest multiple turkeys during the two-day youth turkey season. This rule would amend the language so that only one bird may be harvested during the season.

Administrative code currently grants Milwaukee County a continuous, year-round open rabbit season. This is misleading because people have very limited access to hunt legally in Milwaukee County. In addition, most municipalities in Milwaukee County have restrictions on the use of firearms and air guns in their jurisdiction. Deleting this language will reduce confusion in the hunting regulations. Private landowners would still be allowed to harvest under the private landowners exemptions year round.

In order for a firearm to qualify for use during the muzzleloader deer season it must have a solid breach plug attached with threads. Recent advancements in firearm technology have made this requirement no longer necessary. This rule removes that requirement.

Eligible resident farm owners are eligible to receive one free bonus antlerless deer permit for each bonus antlerless deer permit they purchase if requested at the time of purchase. That free bonus permit is valid on either public or private lands. This rule would now only allow the free permit to be valid on private lands.

A closed area to hunting exists with 75 yards of the boundary of Horicon national wildlife refuge. This rule clarifies that this closed area only exists on the south boundary of the marsh where the lands owned by the state and federal government meet.

Restrictions on the possession of velvet antlers was repealed by 2015 Wisconsin Act 89.

2021 Wisconsin Act 62 created an additional exception to the prohibition on the use of a firearm near a roadway. Specifically, the act authorizes the department, or an agent of a city, village, town, or county who is authorized by the department, to discharge a firearm within 50 feet of the center of a roadway to dispose of a beaver or muskrat that is causing damage to a highway in which the roadway is located, if the firearm discharge does not pose a threat to public safety.

Section 29.184 (5), Stats., was repealed by 2015 Wis. Act 55, which eliminated the Class B bear license. Prior to the Act, only individuals with a Class A or B bear license could participate in Agriculture Damage and Nuisance Bear Shooting Permits. An unintended consequence of the Act was that hunter participation in Agriculture Damage and Nuisance Bear Shooting Permits was reduced to only individuals who possess a Class A bear license, which greatly limited the ability of hunters to assist permit holders in removing bear causing a nuisance or damage. This change would someone with a gun deer or small game license to participate in a bear shooting permit.

According to s. 29.604 (6) Stats., endangered species permits may only be issued for zoological, educational or scientific purposes or for propagation of such wild animals and wild plants in captivity for preservation purposes. Falconry is a recreational activity so an endangered species permit cannot be issued.

Administrative code established a wildlife rehabilitation advisory council which assists the department with development of wildlife rehabilitation examinations, facility inspections, and recommendations which may be used in department decision making as it pertains to wildlife rehabilitation, wildlife health, or captive wildlife activities. This council has been changed to an advisory committee, similar to the species advisory committees that advise the department on a variety of wildlife management issues.

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 standards are contained in the rule.

12. Agency Contact Person: Scott Karel, 101 South Webster Str., PO BOX 7921, Madison, WI 53707-7921. (608) 267-2452, scottr.karel@wisconsin.gov.

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

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Scott Karel
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707
Scottr.karel@wisconsin.gov
608-267-2452
608-267-7857 (fax)

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@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>.

RULE TEXT

SECTION 1. NR 8.51 (16) is amended to read:

(16) "Wildlife-related violation" has the meaning given in s. 29.03 (2) (s), Stats., and includes any violation of ch. 29, Stats., or chs. NR 10 to 28, invasive species violation, or a similar violation committed in a participating state, except that violations involving a captive wild animal subject to regulation under ch. 169, Stats., may not be considered a wildlife-related violation for the purposes of this subchapter.

SECTION 2. NR 10.001 (10g) is amended to read

(10g) "Firearm season" means an open season for hunting with any of the following firearms loaded with a single slug or ball: rifle, muzzle-loader, shotgun or handgun for deer or bear hunting described in ~~s. NR 10.09 (1) (e) 1. C~~ s. NR 10.09 (1).

SECTION 3. NR 10.01 (2) (f) 3. and 4. a. are amended to read:

<p>3. Wild turkey hunting zones 1–5, as described in s. NR 10.29 and the Mill Bluff state park portion of zone 1, excluding all other state parks, for which a quota has been established under s. NR 10.25 (5).</p>	<p>Fall season reopening on the Saturday immediately preceding the Thanksgiving holiday and continuing through December 31 <u>the Sunday nearest January 6th</u>.</p>	<p>The bag limit is one male or one female turkey for each wild turkey harvest authorization issued under s. NR 10.25.</p>
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4. Youth turkey hunt.

a. Persons under the age of 16 years of age who possess a valid wild turkey harvest authorization issued for the current license year, and all necessary ch. 29, Stats., approvals may hunt turkeys for 2 consecutive days starting on the Saturday immediately preceding the beginning of the spring turkey hunting season established in subd. 1. in the turkey management zone for which

the harvest authorization was issued. The bag limit is one male or bearded turkey for each wild turkey harvest authorization issued under s. NR 10.25, except that no hunter may harvest more than one turkey during this season. Hunters shall be accompanied by an adult 18 years of age or older and comply with s. 29.592, Stats. One adult may not accompany more than 2 hunters and pursuant to s. 29.592, Stats., not more than one of the 2 hunters may be age 10 or 11, or be a person who does not possess a certificate of accomplishment under s. 29.591, Stats., or its equivalent from another state, country or province. All other spring turkey hunting regulations apply.

SECTION 4. NR 10.01 (3) (c) 2. c. is repealed.

SECTION 5. NR 10.08 (6) Note is renumbered to NR 10.04 (3) Note.

SECTION 6. NR 10.09 (1) (d) is amended to read:

(d) Hunt a deer during a muzzleloader-only hunt, such as described in s. NR 10.01 (3) (es), with any gun other than a rifle, shotgun, or handgun that is a firearm ~~with a solid breech plug attached with threads and~~ capable of being loaded only from the muzzle through the use of a ramrod.

SECTION 7. NR 10.104 (8) (b) is amended to read:

(b) *Bonus antlerless permits for farm owners.* Eligible resident farm owners under s. 29.181, Stats., will receive one free bonus antlerless deer permit for each bonus antlerless deer permit they purchase if requested at the time of purchase. When there are joint owners or vendee names under a land contract, only one of the owners or vendedes is eligible for the free bonus permits. The free permit shall be valid ~~for the same type of land, either public access or private as defined in s. NR 10.001 (23a) and (23b) as the one that was purchased~~ only on private lands as defined in NR 10.001 (23a). To be an eligible farmer under this section, a majority of the land shall be used on a commercial agricultural basis, to produce income.

SECTION 8. NR 10.105 (4) (g) is amended to read:

(g) Antlers with no tissue attached except for velvet on antlers ~~when possession of the velvet antlers is authorized pursuant to s. 29.347 (3) (b), Stats.~~

SECTION 9. NR 10.105 (4) (g) Note is repealed.

SECTION 10. NR 10.105 (6) (f) is amended to read:

(f) Antlers with no tissue attached except for velvet on antlers ~~when possession of the velvet antlers is authorized pursuant to s. 29.347 (3) (b), Stats.~~

SECTION 11. NR 10.105 (6) (f) Note is repealed.

SECTION 12. NR 10.15 (6) is amended to read:

(6) WATERFOWL SEASON. No person may hunt waterfowl within 75 yards of the south boundary of the Horicon national wildlife refuge boundary during the open season for hunting waterfowl. For purposes of this section, the placement of decoys or shooting at waterfowl which are located within the 75-yard zone immediately outside of the refuge are allowed as long as the hunter does not discharge a firearm, crossbow, or bow and arrow from within that area when shooting at waterfowl. Legally killed or crippled waterfowl may be retrieved by dog or hand within the closed area.

SECTION 13. NR 11.07 (6) (a) is repealed and recreated to read:

(6) GREEN LAKE AND MARQUETTE COUNTIES.

(a) *Grand River Marsh.*



SECTION 14. NR 12.001 (1m) is created to read:

(1m) "Damage" means physical harm to forest products; streams; roads; dams; buildings; orchards; apiaries; livestock; and commercial agricultural crops, including Christmas trees and nursery stock. "Damage" includes flooding and culvert blockages caused by a beaver or muskrat.

SECTION 15. NR 12.06 (4) is amended to read:

(4) LICENSES, STAMPS AND PERMITS. The permittee and participants are not required to possess the appropriate state hunting license or ~~backtag~~ harvest authorization for deer, unless otherwise required as a condition of the permit.

SECTION 16. NR 12.10 (1) (a) 6. is created to read:

6. Discharge a firearm from within 50-feet of a roadway center to shoot beaver or muskrat that are causing damage to a highway. Authorization may only be issued to an agent of a city, village, town or county if the discharge of a firearm does not pose a risk to public safety.

SECTION 17. NR 12.10 (1) (b) 2. is amended to read:

2. Live-trap and relocate any wild animal, except white-tailed deer, elk, black bear or any wild animal classified as endangered or threatened under s. NR 27.03, or any animal classified as a harmful wild animal under s. NR 16.11, to open unenclosed lands not controlled by the department with the permission of the owner. Animals must be relocated in an area where there is adequate habitat and cover to support survival of the animal. Pursuit of animals released under this subdivision by dogs may not occur in an area where a wild animal has been released for a period of 2 hours after release of the animal, except dogs may be released to pursue raccoons at anytime after the raccoon has reached cover by climbing a tree or pole to a height of at least 10 feet.

SECTION 18. NR 12.15 (11) (b) is amended to read:

(b) *Bear damage shooting permits.* Participants shall possess a current Class A hunting license or any valid license authorizing hunting with a firearm when engaged in bear damage shooting permit activities, such as hunting or baiting.

SECTION 19. NR 17.08 (3) (c) is amended to read:

(c) *Bear dog trialing.* Except where prohibited by s. NR 45.06, an individual may use dogs to pursue wild bear without a leash from July 1 to August 31 and at times when the season for hunting bears is open in places where it is legal to hunt bear with aid of dogs provided the individual possesses a class A or B bear license issued under s. 29.184, Stats., ~~or is exempt under s. 29.184 (5), Stats., and:~~

SECTION 20. NR 17.08 (3) (c) Note is repealed.

SECTION 21. NR 18.12 (14) is amended to read:

(14) CAPTIVE REARED RAPTORS. A raptor hatched and reared in captivity, and banded with a seamless metal band provided by the fish and wildlife service, may be used for falconry. The raptor may also have an implanted ISO-compliant (134.2 kHz) microchip. ~~A falconer using a species that is state or federally endangered shall have an endangered species permit to cover all activities including possession, regardless of whether the species is wild or captive bred. A falconry permit does not serve as a substitute.~~

SECTION 22. 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 23. NR 19.82 is repealed.

SECTION 24. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 25. 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 _____

For Adam N. Payne, Secretary