

CR 13-108
WM-21-13
Fish, Game, etc. Chs. NR 1--

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

The statement of scope for this permanent rule, SS 082-13, was approved by the Governor on July 15, 2013, published in Register No. 691 on July 31, 2013 and approved by the Natural Resources Board on August 14, 2013. This rule was approved by the Governor on March 19, 2014.

The Wisconsin Natural Resources Board proposes an order to repeal Ch.'s NR 10.01 (2) (f) 3., 10.275 (2) (a), 10.275 (3) and (4), 10.40 (4), 45.09 (4); to amend NR 1.29 (7) (b) 5, 10.01 (2) (g) 2., 10.275 (Intro.), 10.275 (1) (b) 1., 10.275 (2) (b) 1. and 2., 10.275 (2) (c), 19.025, and 45.09 (1); to repeal and recreate NR 10.29, and to create NR 10.13 (Note) and 10.275 (5) relating to hunting and trapping in state parks.

WM-21-13

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: The state trails system and department responsibilities and powers are established in s. 23.175 Stats. State trails are described as part of the state park system in sub. (2) (a). The state park system is established in s. 27.01 Stats. and specific authority for the department to promulgate rules necessary to govern the conduct of state park visitors and for the protection of state parks is found in sub. (2) (j).

The department's authority 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 is established in s. 29.014 Stats.

These proposed rules use the statutory authority described above to interpret s. 29.089 Stats. related to trapping on land in state parks. This provision establishes that state parks are open to hunting and trapping and that the department may prohibit hunting or trapping in a park or portion of a park if necessary to protect public safety or a unique animal or plant community.

Statutes Interpreted and Explanation: 23.175, 27.01, 29.014 and 29.089 Stats.

Related Statute or Rule: A similar emergency rule, WM-22-13(E), is also being promulgated by the department. The emergency rule contains language which is similar to this rule related to shooting from or across trails and trapping regulations. Those are the only two provisions in the emergency rule.

Plain Language Rule Analysis: These will be the first rule revisions related to hunting and trapping in state parks since passage of 2011 ACT 168 which established that those activities are generally allowed. These rules will eliminate language that is no longer needed, simplify existing regulations, and create new

rules related to safety. These rules will not establish new season dates or modify periods when hunting and trapping are allowed in state parks. Specifically, these rules will:

SECTION 1 updates a cross-reference to reflect where the authority to allow hunting on Ice Age Trail area properties is now established.

SECTIONS 2, 12 and 13 simplify turkey hunting regulations by eliminating the special state park and a state forest turkey hunting zone so that they will become part of the surrounding zone.

SECTION 3 corrects a misspelled word.

SECTION 4 creates a note in the section of Ch. NR 10 related to furbearing animals and trapping to alert readers that additional trapping regulations are established in the section related to hunting and trapping in state parks.

SECTIONS 5 and 11 establish that upland trapping on lands which are part of the Wisconsin State Park System is limited to the use of dog proof traps in order to protect the public safety as established in s. 29.089 (1m) (b) 2. Stats., a provision created by 2011 ACT 168. Trapping on uplands will be allowed with the use of enclosed-trigger-type-traps only. Raccoons are the primary species which are targeted with this trap type. Trapping will continue to be allowed using any type of trap that is otherwise legal if it is completely submerged under water.

SECTION 6 clarifies, consistent with natural resources board policy established following the enactment of 2011 ACT 168, that hunting can be allowed using archery gear after December 15 at Mirror Lake, Governor Dodge, and Mill Bluff state parks. The type of hunting specifically addressed in this section is migratory bird hunting if the seasons are still open after December 15.

SECTION 7 eliminates a prohibition of hunting small game with rifles or pistols at three state parks where small game hunting is allowed under current rules. Where hunting is allowed, rifles may be used at all other state parks and the department recently allowed the use of rifles for deer hunting statewide.

SECTION 8 creates an exception to the current noon closure of hunting hours at Governor Dodge, Mill Bluff, and Mirror Lake state parks (except that all day hunting is allowed for migratory birds at Mirror Lake) so that hunting is allowed all day at times when hunting is generally allowed at most other state parks. Under current Natural Resources Board policy, normal hunting hours would be in effect from November 15 to December 15.

SECTION 9 repeals a specific exemption from the state park leash law for hunters' dogs actively engaged in hunting at three specific parks. This provision is not necessary because a similar exemption in NR 45.06 (2) applies to all DNR managed lands where hunting is allowed, including state parks.

SECTION 10 eliminates registration and check-in requirements for small game hunting at three state parks where small game hunting is allowed under current rules. Additionally, this section repeals rules which would have allowed hunting at State Ice Age Trail areas. These rules are no longer needed following the enactment of 2011 ACT 168.

SECTION 14 updates a cross reference to statute and clarifies that special educational hunting events may be held at state parks for species in addition to deer and turkeys, with the enactment of 2011 ACT 168.

SECTION 15 clarifies that it is illegal to discharge a firearm, bow, crossbow, or air gun in an area of a state park where hunting is not allowed.

SECTION 16 amends an exception to a prohibition of hunting in state parks to reflect new rules and current law, including elimination of a cross-reference with statutes that is no longer relevant.

Federal Regulatory Analysis: Federal regulations allow states to manage the wildlife and property 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 public lands which are under their control.

Summary of Factual Data and Analytical Methodologies: Prior to 2011 ACT 168, state parks were statutorily closed to hunting unless the department had written rules specifically allowing a hunting opportunity at an individual state park. Statutes did not grant rule authority for the department to allow bear hunting. Statutes did not grant rule authority to allow trapping. Today, hunting and trapping are both allowed at state parks except where the Natural Resources Board has prohibited the activities in order to protect public safety or a unique plant or animal community. Under the ACT, the Department may prohibit hunting or trapping on lands within 100 yards of a designated use area. Examples of designated use areas include locations such as campgrounds, certain hiking trails and beaches.

These rules simplify turkey hunting regulations by eliminating the 16 state park turkey hunting zones so that they will become part of the surrounding unit. As a result, most parks will be open to turkey hunting by people who possess a turkey permit for the zone surrounding the state park. Under previous law, it was necessary under the authorizing statute for each state park to have a season established by administrative rule. With changes that resulted from the 2011 ACT 168, these parks can now open to hunting without establishing a specific season by rule for each park. This change may result in an initial increase in turkey hunting pressure because anyone who holds a turkey hunting permit for the surrounding larger zone would be able to hunt in a state park in that zone. However, turkey hunter numbers are controlled in the larger zone by the use of a permit system. The limited nature of the spring turkey season helps to assure a high quality hunt with limited amounts of interference from other hunters. The department anticipates that our limited draw permit system for the larger zone will continue to assure a quality hunt on state park areas, just as the permit system does for other public properties in a zone.

Of the 17 state park hunting zones repealed by these rule, the following 11 were open to all applicants; Governor Dodge, Devils Lake, Wyalusing, Wildcat Mountain, Mirror Lake, Buckhorn (including the wildlife area), Newport, Hartman Creek, Interstate, Willow River, Straight Lake. Another 6 turkey hunting zones which are currently open only to applicants who hold disabled permits are; Natural Bridge, Nelson Dewey, Belmont Mound, New Glarus Woods, Rocky Arbor, and Loew Lake Unit – Kettle Moraine state forest. Special turkey hunting opportunities for disabled hunters on private lands are not affected by these rules.

The ACT allowed the department to prohibit hunting in designated use areas. For safety purposes, these rules would also prohibit the discharge of firearms, air-guns, bows, and crossbows from-or-across closed areas. For instance, under these rules, it would be illegal to discharge a firearm from an area where hunting is allowed to another area where hunting is allowed if the two areas are separated by a designated hiking trail or other area which is closed to hunting.

These rules restrict trapping to the use of dog proof traps only except if the trap is placed completely under water. The type of trap that meets the requirement of being a “dog proof trap” is an "enclosed trigger trap". These are already defined by administrative rule as any trap with a pull-activated trigger, inside an enclosure, and recessed 1 1/4 inches or more, from an opening that is no greater than 1 3/4 inches in diameter. While these trap types are very effective for catching raccoons, they may be the only animal that is capable of activating the trigger and being captured. These rules allow all trap types which are normally allowed in locations where the traps are completely submerged under water.

These rules expand an exemption from the state park leash law for hunters’ dogs actively engaged in hunting from three named parks under current rules to any areas where hunting is allowed.

These rules allow small game hunting with rifles or handguns at three parks where small game hunting has been allowed under current rules; Governor Dodge, Mill Bluff, and Mirror Lake. Other state parks where hunting is now allowed under 2011 ACT 168 do not have similar restrictions and the department believes that the prohibition is not necessary for safety or wildlife management purposes.

These rules eliminate a requirement to obtain an access permit and sign-in at a check station before small game hunting at three parks where small game hunting has been allowed under current rules; Governor Dodge, Mill Bluff, and Mirror Lake. Other state parks where hunting is now allowed under 2011 ACT 168 do not have similar requirements. Experience with these requirements has demonstrated that they are not necessary to control hunter activity and the information collected is infrequently or not used by the department.

Additionally, this proposal repeals rules which would have allowed hunting at State Ice Age Trail areas. These rules are no longer needed following the enactment of 2011 ACT 168 because State Ice Age Trail areas are established by statute as part of the state park system.

Current rule clarifies current rules primarily related to special learn-to-hunt events because, with the enactment of 2011 ACT 168, it is no longer necessary to limit them to just deer and turkey if they are held at state parks.

Anticipated Private Sector Costs and Economic Impact of Implementing the Rule: 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. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

Significant policy decisions that could potentially result in increased use of state parks by some users or decreased use by other users were made with enactment of 2011 ACT 168 and again when the Natural Resources Board developed policies under authority of the ACT. These rules will not have significant additional impacts on the use of the state park system or the related economic activity of park users.

Effects on Small Business: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.24(3m).

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SECTION 1. NR 1.29 (7) (b) 5. is amended to read:

NR 1.29 (7) (b) 5. Hunting in accordance with ~~ss. NR 10.275 (4)~~ as authorized pursuant to s. 29.089 and natural resources board determinations under 29.089(1m) and 45.09 (11).

SECTION 2. NR 10.01 (2) (f) 3. is repealed.

SECTION 3. NR 10.01 (2) (g) 2. is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01 (2) (g) 2.		
Governor Dodge, Mill Bluff and Miller <u>Mirror Lake</u> state parks.	Beginning on Nov. 1 and continuing through the Thursday immediately preceding the gun deer season for Zone A in sub. (3) (e).	Daily bag 15; possession 30

SECTION 4. NR 10.13 (Note) is created to read:

Note: Additional restrictions on trapping furbearing animals on department managed lands that are part of the Wisconsin state parks or state park trails are established in s. NR 10.275 (5). This section limits upland trapping activities to the use of pull-activated enclosed trigger traps.

SECTION 5. NR 10.275 (Intro.) is amended to read:

NR 10.275 **State park trapping, small game and migratory game bird hunting.** No person may hunt game species listed in s. NR 10.01 (1), (2) (a), (c), (e), (g), (3) (a), (bt), (c), (f) or (h) on the state owned or managed portions of Governor Dodge, Mill Bluff, or Mirror Lake state parks except as provided in this section and as established under 29.089 (1m). No person may trap on the state owned portions of state parks except as provided in this section and as established under 29.089 (1m). Portions of the properties listed may be posted closed to trapping and, small game and migratory bird hunting.

SECTION 6. NR 10.275 (1) (b) 1. is amended to read:

NR 10.275 (1) (b) 1. Migratory game bird hunting with firearms for the species specified in s. NR 10.01 (1) is allowed in Governor Dodge and Mill Bluff state parks from November 1 through December 15 or until the seasons established in s. NR 10.01 (1) conclude, whichever occurs first.

SECTION 7. NR 10.275 (2) (a) is repealed.

SECTION 8. NR 10.275 (2) (b) 1. and 2. are amended to read:

NR 10.275 (2) (b) *Hunting hours.*

1. Except as provided under subd. 2. and 3., the ~~The~~ hunting hours for pursuing small game at Governor Dodge, Mill Bluff and Mirror Lake state parks shall be the same as the hours established in s. NR 10.06 (5) except that hunting hours will close at 12:00 noon daily at times when the Natural Resources Board has made a determination to generally prohibit hunting at other state parks under s.

29.089 (1m) (b) 2. Hunting is allowed under the specific season frameworks for these parks established in s. NR 10.01.

2. The hunting hours for pursuing migratory game birds at Governor Dodge and Mill Bluff state parks shall be the same as the hours established in s. NR 10.06 (5) except that hunting hours shall close at 12:00 noon daily at times when the Natural Resources Board has made a determination to generally prohibit hunting under s. 29.089 (1m) (b) 2. Hunting is allowed under the specific season frameworks for these parks established in s. NR 10.01.

SECTION 9. NR 10.275 (2) (c) is repealed.

SECTION 10. NR 10.275 (3) and (4) are repealed.

SECTION 11. NR 10.275 (5) is created to read:

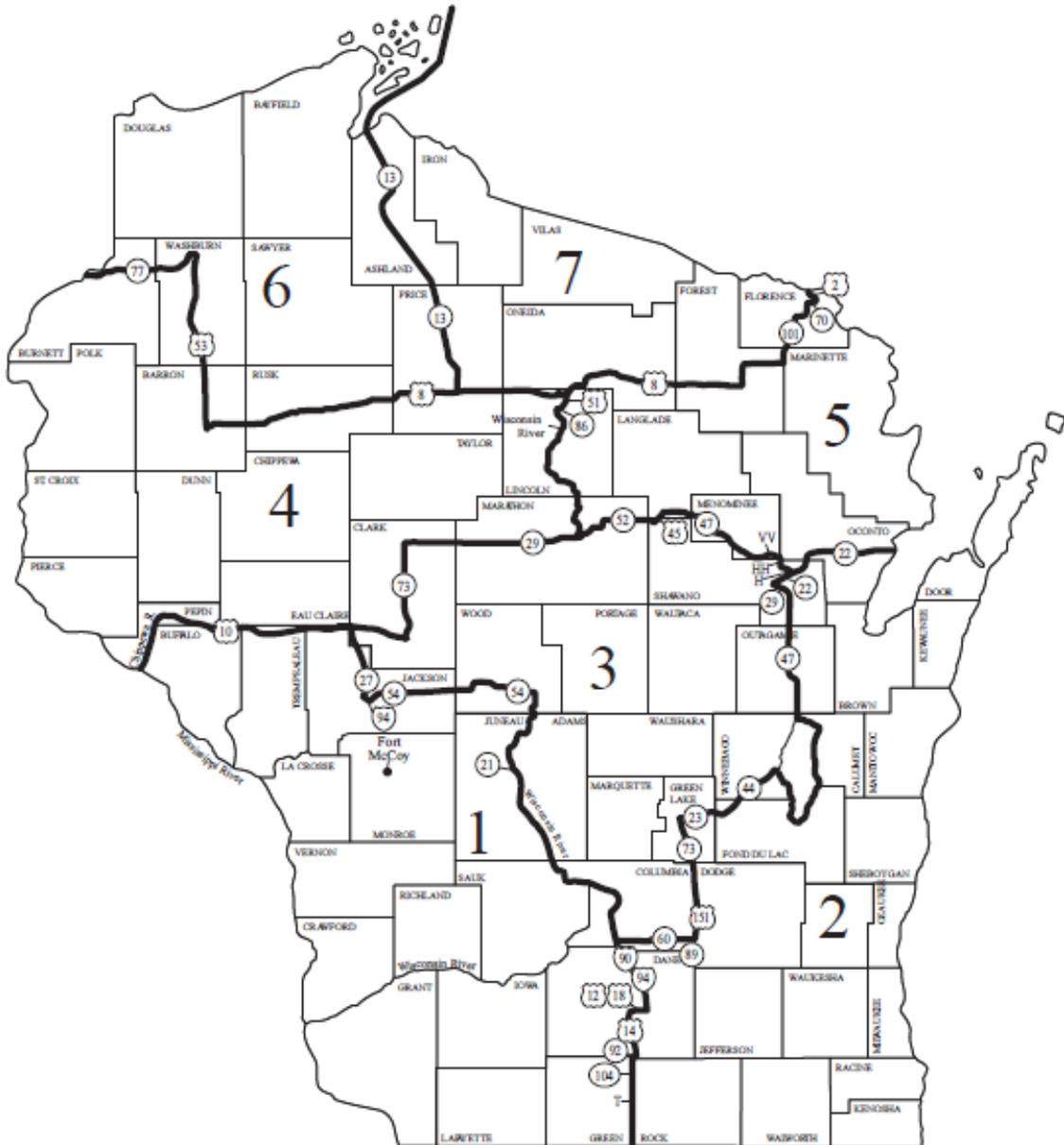
TRAPPING. (a) *Purpose.* Section 29.089 (1m) (a) Stats. establishes that trapping is generally allowed in state parks. This subsection is created because prohibiting trapping by certain methods and in certain locations is necessary to protect public safety.

(b) *Applicability.* The provisions of this subsection apply to state parks and state park trails as established in ss. 23.17 (2), 23.175 (2) (a), 23.293 (1) (c), 27.01 and 29.089 Stats., when the property is owned by the department. When traversing another type of department property established under s 23.09 (2) Stats., portions of state trails and other state park related properties are subject to the hunting and trapping rules of that property type unless otherwise posted.

(c) *Upland trapping.* No person may place any trap that is not completely submerged under water on the state owned portions of state parks except if the trap is an enclosed trigger trap.

Section 12. NR 10.29 is repealed and recreated to read:

NR 10.29 Wild turkey hunting zones.



SECTION 13. NR 10.40 (4) is repealed.

SECTION 14. NR 19.025 is amended to read:

NR 19.025 (6) (c) ~~Shooting of deer and turkey~~ Hunting or trapping on properties opened for the hunting of these species under s. 29.089 (3), Stats s. 29.089 (1m), Stats.

SECTION 15. NR 45.09 (1) is amended to read:

NR 45.09 Firearms and hunting. (1) No person may take, catch, kill, hunt, trap or pursue any wild animal or bird, or discharge any firearm, or have in possession or under control any firearm or air gun as defined in s. 939.22, Stats., unless it is unloaded and enclosed in a carrying case, or any bow, slingshot or spring-load ~~device~~ device designed for shooting a projectile unless the same is unstrung or enclosed in a carrying case while in any state park, fish hatchery, or within 100 yards of any state campground, picnic area or other special use area designated by the department by posted notice. No person may discharge a firearm, bow, crossbow, or airgun from, on, or across any ~~Lee Age Trail~~ state trail corridor or other state park area, which is not open to hunting.

Section 16. NR 45.09 (4) is amended to read:

NR 45.09 (4) Nothing in this section shall prohibit ~~the hunting of deer as provided in s. 29.621 (4), Stats., in accordance with the open seasons established by s. NR 10.01 (3) :~~

(a) hunting as authorized pursuant to s. 29.089 Stats. and natural resources board determinations under 29.089(1m) Stats.,

(b) hunting in state parks as established in s. NR 10.275 or as otherwise specifically established by rule,

(c) possession of uncased or loaded firearms, bows, crossbows or air guns while on foot and in route to a state park area where hunting is allowed. This paragraph does not allow the discharge of a firearm, bow, crossbow, or air gun from or across state park areas where hunting is not allowed.

SECTION 17. EFFECTIVE DATE. This 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.

SECTION 18. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 26, 2014.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)