

The statement of scope for this rule, SS 013-23 was approved by the Governor on January 26, 2023, published in Register No. 806A1 on February 6, 2023, and approved by the Natural Resources Board on February 22, 2023. This rule was approved by the Governor on September 7, 2023.

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

The Wisconsin Natural Resources Board proposes an order to **amend** NR 10.02 (intro), 10.09 (2) (a) 1., 10.104 (7) (a) 2., (b) 2., (c) 2. and (12) (c), 10.145, 19.51 and 45.09 (5); to **repeal and recreate** NR 10.105 (2); and to **create** NR 10.02 (12) and (13) and 10.145 (4) relating to the 2023 wildlife management spring hearing rule.

WM-18-22

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.

The department is generally charged with the care, protection, and supervision of state lands by s. 23.11 Stats.

Under s. 23.09(2)(d), Stats., related to conservation, the department is directed to provide an adequate and flexible system for the use of outdoor resources in this state and may promulgate such rules as are necessary. These rules are necessary to preserve public opportunities to hunt with firearms on lands that have been acquired as areas where any citizen may hunt or trap.

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

3. Plain Language Analysis:

SECTIONS 1 AND 2 allow individuals to shoot a bear in the act of attacking a domestic animal on private lands.

SECTION 3 allows the use of F-shot while hunting migratory birds.

SECTION 4 removes the public/private designation on the junior antlerless deer harvest authorization.

SECTION 5 allows the department to issue an either-sex diseased deer replacement permit if a hunter harvests an antlerless deer that is diseased.

SECTION 6 removes the requirement that hunters who quarter a deer bear or elk must divide them into no more than five parts before they are removed from the field.

SECTIONS 7 AND 8 allow anyone holding a valid trapping authorization to assist a trapper that holds a bobcat permit or harvest authorization for river otter or fisher and also holds a class A, B, C or D disability permit.

SECTION 9 increases the student registration fee for trapper education from \$12 to \$20.

SECTION 10 regulates target shooting on department lands in Brown County.

4. 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.

5. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

No preliminary public hearing was required on the Statement of Scope for this rule.

6. 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.

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

The largest shot size allowed while hunting migratory birds is T. This proposal would allow F-shot, which is larger than T, to be possessed and used while hunting migratory birds. F-shot can be and is often used by hunters who reload their own ammunition and has been shown to pattern well for waterfowl hunting with larger gauge shotguns. Allowing F-shot would increase opportunity, simplify regulations and allow the use of a shot size that can be used safely and effectively when waterfowl hunting.

Hunters are allowed to quarter a deer, bear, or elk in order to facilitate removal from the field. However, current rules require that the deer, bear, or elk may not be divided into more than 5 parts, not including the hide and the lower legs. Also, the head and neck must remain attached to one of the other parts of the animal, not including the hide, and all parts of animal must be removed from the field. This proposal would allow hunters to separate the carcass of the deer, bear or elk into as many parts as needed as long as all parts are removed from the field.

Currently, youth deer hunters are issued an antlerless deer harvest authorization that is valid statewide. But the hunter must select whether they want the authorization valid for public or private land. This rule proposal would eliminate the public/private designation, making the authorization valid on all property types.

Trapper education became mandatory in May 1992. The fee for the basic in person and correspondence course was originally \$8. The fee for the basic and correspondence course was last increased to \$12 in 2008. Fourteen years later, the \$12 fee no longer covers the cost of the program. This proposal would set the basic in person and correspondence course fee at \$20. The trapper education program now has an online course and this proposal will include a \$20 course fee for that option.

Under current rules, anyone assisting a disabled trapper who is targeting bobcat, fisher or otter must also hold a valid permit or harvest authorization for the same species the disabled trapper is pursuing. Many of these approvals are difficult to obtain which limits the pool of individuals available to provide assistance. This proposal would make it legal for anyone holding a valid trapping authorization (trapping license, conservation patron's license, non-resident trapping license) to assist a trapper that holds a bobcat permit or harvest authorization for river otter or fisher and also holds a class A, B, C or D permit for disabled persons. The licensed individual may assist the disabled trapper, while in visual or voice contact without the aid of any mechanical or electronic amplifying device other than a hearing aid, by setting traps, tending traps, tagging and/or registering a bobcat, fisher or river otter.

The department may provide a free replacement permit to hunters who harvest deer that are suspected of being diseased, provided that the entire deer is surrendered to the department or is disposed of as directed by the department. That permit may only be issued for the same type of deer authorized on the approval used to harvest the suspect deer. This proposal would allow individuals to receive an either-sex replacement permit if they harvest a diseased antlerless deer.

This proposal would make it legal for landowners or occupants of private lands to shoot bear in the act of killing, wounding, or biting a domestic animal without the need for written authorization from the department. Individuals would be required to be reported to department law enforcement within 24 hours and the department would have discretion on carcass disposition. This would be consistent with the authority already provided in administrative code for landowners or occupants of private lands to shoot wolves (when they are not state or federally listed as an endangered species) or cougar in the act of depredation. This authority would not cover dogs that are actively pursuing bear during either the bear dog training season or during the bear hunting season.

Currently target shooting is unregulated on department-owned lands unless these lands are in counties listed s. NR 45.09(5), Wis. Adm. Code. In Brown County, a history of non-hunting firearm discharge from department-owned property parking lots and near parking lot areas has raised safety concerns of neighbors, department staff, and local law enforcement. Brown County wildlife areas seemingly provide a rural, "woody" atmosphere for target shooting. However, these areas are often surrounded by residential and other developments. Without suitable targets and safe backstops, discharged rounds have allegedly left state property boundaries and travelled in the direction of other recreational users. This proposal would allow the department to restrict target shooting on department-owned properties in Brown County in order to address repeated safety and noise complaints as well as some problems with littering.

8. 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.

9. 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.

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

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

A public comment period on the draft rule occurred from April 17, 2023, to May 17, 2023, with a public hearing on May 17, 2023.

RULE TEXT

SECTION 1. NR 10.02 (intro) is amended to read:

NR 10.02 Protected wild animals. The following wild animals are designated protected. No person may take, attempt to take, transport or possess any protected wild animal or its carcass at any time ~~unless expressly~~ except as authorized by the department-state or federal law.

SECTION 2. NR 10.02 (12) and (13) are created to read:

(12) On private land, the landowner, lessee or occupant of the land, or any other person with permission of the landowner, lessee or occupant may shoot and kill any bear in the act of killing, wounding or biting a domestic animal, other than dogs used to hunt or pursue bear during an open bear hunting season or bear dog training season. Shootings shall be reported within 24 hours to a department conservation warden. The carcass of the bear shall be turned over to the department.

(13) Any other wild animal for which a closed season, bag limit, size limit or possession limit is prescribed.

SECTION 3. NR 10.09 (2) (a) 1. is amended to read:

1. Shot shells containing shot larger than T, except that shot shells containing shot not larger than F may be used when hunting migratory birds.

SECTION 4. NR 10.104 (7) (a) 2., (b) 2., and (c) 2. are amended to read:

NR 10.104 (7) (a) 2. Licenses that authorize the hunting of deer with a bow and arrow, and not with a firearm or crossbow, may include one or more harvest authorizations that are valid for the taking of one antlerless deer in a management zone, unit, or portion of a unit specified on the harvest authorization that is in a farmland zone or a metropolitan deer management subunit established in s. NR 10.28 (2) and (4) except that, where the department has established an objective to increase or maintain the deer

population under sub. (4), the department may establish that the antlerless harvest authorizations under this subdivision are not valid. This antlerless deer harvest authorization is not weapon or season specific, but the holder must possess the correct license for the method of harvest and season. This harvest authorization is valid statewide for a person holding a Class A or Class C disabled permit issued under s. 29.193 (2) (b), Stats., or a person who obtains the harvest authorization while under 18 years of age except that, in units where the department has not established a quota allowing the harvest of antlerless deer, the department may establish that harvest authorizations obtained under this subdivision by people who are under 18 years of age are not valid. These harvest authorizations are valid as indicated on the permit only for harvesting antlerless deer on public access lands or only for harvesting antlerless deer on private land as defined in s. NR 10.001 (23a) and (23b), except that antlerless harvest authorizations obtained by people under 18 years of age are valid on both private and public access lands. A person who has already been issued a license authorizing deer hunting with a crossbow during a season established under s. 29.014 (1m) (b), Stats., or s. NR 10.01 (3) (ep) will not receive the harvest authorization established in this subdivision. A person may use any harvest authorization issued with a license authorizing hunting with a crossbow during a crossbow deer season established under s. NR 10.01 (3) (ep) under the authority of an archer hunting license during the archery deer season established in s. NR 10.01 (3) (em).

(b) 2. Licenses that authorize the hunting of deer with a firearm may include one or more harvest authorizations that are valid for taking one antlerless deer in a management zone, unit, or portion of a unit specified on the harvest authorization that is in a farmland zone or in a metropolitan deer management subunit established in s. NR 10.28 (2) and (4) except that, where the department has established an objective to increase or maintain the deer population under s. NR 10.104 (4), the department may establish that the antlerless harvest authorization under this subdivision is not valid. This antlerless deer harvest authorization is not weapon or season specific, but the holder must possess the correct license for the method of harvest and season. This harvest authorization is valid for the taking of one antlerless deer

in any unit statewide by a person holding a Class A or Class C disabled permit issued under s. 29.193 (2) (b), Stats., or a person who obtains the harvest authorization while under 18 years of age except that, in units where the department has not established a quota allowing the harvest of antlerless deer, the department may establish that harvest authorizations obtained under this subdivision by people who are under 18 years of age are not valid. These harvest authorizations are valid as indicated on the harvest authorization only for harvesting antlerless deer on public access lands or only for harvesting antlerless deer on private land as defined in s. NR 10.001 (23a) and (23b), except that antlerless harvest authorizations obtained by people under 18 years of age are valid on both private and public access lands.

(c) 2. Licenses that authorize the hunting of deer with a crossbow, and not with a firearm or bow and arrow, may include one or more harvest authorizations that are valid for the taking of one antlerless deer in a management zone, unit, or portion of a unit specified on the harvest authorization that is in a farmland zones or a metropolitan deer management subunit established in s. NR 10.28 (2) and (4) except that, when the department has established an objective to increase or maintain the deer population under sub. (4), the department may establish that the antlerless harvest authorizations under this subdivision are not valid. This antlerless deer harvest authorization is not weapon or season specific, but the holder must possess the correct license for the method of harvest and season. This harvest authorization is valid statewide for a person holding a Class A or Class C disabled permit issued under s. 29.193 (2) (b), Stats., or a person who obtains the harvest authorization while under 18 years of age except that, in units where the department has not established a quota allowing the harvest of antlerless deer, the department may establish that harvest authorizations obtained under this subdivision by people who are under 18 years of age are not valid. These harvest authorizations are valid as indicated on the harvest authorization only for harvesting antlerless deer on public access lands or only for harvesting antlerless deer on private land as defined in s. NR 10.001 (23a) and (23b), except that antlerless harvest authorizations obtained by people under 18 years of age are valid on both private and public access lands. A person who has already been issued a license authorizing deer hunting with a bow and arrow during an archery-only deer season

established under s. NR 10.01 (3) (em) will not receive the harvest authorization established in this subdivision. A person may use any antlerless deer harvest authorization issued with a license authorizing hunting with a bow and arrow during an archery-only deer season established under s. NR 10.01 (3) (em) under the authority of a crossbow hunting license during the crossbow deer season established in s. NR 10.01 (3) (ep).

SECTION 5. NR 10.104 (12) (c) is amended to read:

(c) ~~Issued~~ For antlered deer, issued for the type of deer authorized on the approval used to harvest the suspect deer. For antlerless deer, issued for either antlered or antlerless deer.

SECTION 6. NR 10.105 (2) is repealed and recreated to read:

(2) CARCASS CONDITION AND TRANSPORTATION. A deer, bear, or elk may be divided to facilitate removal from the field. A person who divides a deer, bear, or elk while afield:

(a) May not allow the deer, bear, or elk to be stored or transported with any other deer or bear that has been divided while afield.

(b) May not divide any bear in a manner that does not keep one part of the bear intact to allow it to be measured in a straight line from the tip of the nose to the base of the tail, to determine it was an adult bear of 42 inches or greater.

(c) Must remove all parts from the field except for the entrails.

(d) Shall exhibit all parts at the time of registration when in-person registration is required by the department.

(e) Must dispose of all parts not retained in a manner that is in compliance with s. 287.81 (2), Stats., but such disposal may only occur after in-person or electronic registration has been completed, and the deer, bear, or elk has been removed from the field.

SECTION 7. NR 10.145 (intro) is amended to read:

NR 10.145 Bobcat, fisher, and otter. ~~No~~ Except as provided in (4), no person may hunt or trap, or attempt to hunt or trap, any bobcat unless he or she possesses a current and valid permit from the

department and any associated pelt tags for the area or unit in which he or she is hunting or trapping, or for fisher and otter, unless he or she possesses a current and valid harvest authorization issued by the department.

SECTION 8. NR 10.145 (4) is created to read:

NR 10.145 (4) A person that holds a current class A, B, C or D hunting permit under s. 29.193(2), Stats., may be accompanied, as defined in s. 29.193(2) (a) 1., Stats., by and receive assistance from a person who possesses a valid trapping authorization. The assistance rendered by an accompanying person who possess a valid trapping authorization may include assisting with trap setting, trap tending, tagging and registration of these species if the disabled person has been issued the appropriate approval to do so. The accompanying person shall comply with all trapping rules and laws.

SECTION 9. 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~~ \$20.00 per student. The fee for correspondence trapper education certification program shall be ~~\$12.00~~ \$20.00 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 10. NR 45.09 (5) is amended to read:

NR 45.09 (5) No person may discharge any firearm or air gun while within the exterior boundary of state-owned lands posted with department signs in Brown, Dane, Dodge, Columbia, Fond du Lac,

Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sauk, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties, or on state forest lands in the Kettle Moraine or Point Beach state forests, fish hatcheries, state parks, state recreation areas, state natural areas, from or across a state campground, picnic area or other special use area designated by the department which is not open to hunting, or on state trails established on railroad grades, except as follows:

SECTION 11. 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, except Section 4 which takes effect on March 1, 2024.

SECTION 12. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 28, 2023.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

For Adam N. Payne, Secretary