

Clearinghouse Rule 15-024

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

The statement of scope for this rule, SS 113-14, was approved by the Governor on October 31, 2014, published in Register No. 707, on November 11, 2014, and approved by the Natural Resources Board on December 10, 2014. This permanent rule was approved by the Governor on _____.

The Wisconsin Natural Resources Board proposes an order to repeal Ch. NR 11.02 (8); to amend NR 10.01 (2) (a), (c) 1., (d) to (g), 10.01 (3) (a) and (c) 2., 10.06 (5), 10.13 (3), 10.13 (1) (b) 13. and 15. (Intro.) and d.; to repeal and recreate NR 10.001 (20); and to create NR 10.13 (1) (b) 18. and 11.04 (3m), wildlife management rules relating to hunting, trapping, and closed areas.

WM-01-15

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: The chapter on wild animals and plants, in s. 29.014, “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 methods and times and the seasons for taking game and furbearing animals.

The department’s authority to authorize the removal of wild animals that are causing damage is established under s. 29.885. Additionally authority to establish conditions for taking game, such as bears, is established in s. 29.014 as noted above.

The establishment of game refuges is authorized in s. 23.09 (2) (b) relating to the department’s ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

Statutes Interpreted and Explanation: The chapter on wild animals and plants, in s. 29.014, “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 methods and times and the seasons for taking game and furbearing animals. Other statutes interpreted include s. 29.885 and 23.09 (2) (b).

Related Statute or Rule: There are not directly related statutes or rules.

Plain Language Rule Analysis: These rule changes are proposed for inclusion on the 2015 Spring Hearing rules package and questionnaire. This rule package will create and amend regulations for hunting, trapping and closed areas found in Ch’s. NR 10 and 11 Wis. Adm. Code.

SECTION 1 expands the areas where waterfowl hunting is allowed by eliminating the requirement that hunters and blinds be “concealed” if they are within 3 feet of the shoreline. The WI Conservation Congress has recommended modifications to this rule.

SECTIONS 2 to 6 increase the limit on the number of small game animals a person is allowed to possess at home or in transport so that it is three times the daily bag limit instead of two, consistent with federal regulations for migratory game birds.

SECTIONS 3, 4, 6 and 7 establish a 9:00 a.m. opening time on the first day of the pheasant, quail, Hungarian partridge, and southern rabbit seasons instead of noon. The WI Conservation Congress has recommended modifications to this rule.

SECTION 4 modifies the spring wild turkey hunting season opening date so that it is always the third Wednesday in April. This section also simplifies the fall turkey hunting season framework so that hunting is always allowed on the day before the firearm deer hunting season and so that the season is continuous with no closed periods in Zones 1 to 5 in the southern part of the state.

SECTIONS 8, 9 and 11 allow the use of foot activated cable restraints, a device used to trap furbearing animals and for which best management practices have been approved by the Association of Fish and Wildlife Agencies.

SECTION 10 modifies the standards for construction of cable restraint devices used to trap furbearers to improve their efficiency for catching coyotes.

SECTION 12 eliminates the trapping hours restriction so that traps may be placed or tended at any time. The WI Conservation Congress has recommended modifications to this rule.

SECTIONS 13 and 14 modify the location and size of a waterfowl hunting closed area at the *Wolf River Bottomlands Natural Resources Area* on DNR managed lands in Outagamie County.

Federal Regulatory Analysis: 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.

Summary of Factual Data and Analytical Methodologies: All of the policies in this rule are generally consistent with past board policies of regulating fish and game harvest for conservation purposes.

A number of these proposals are recommendations of the Wisconsin Conservation Congress to the Natural Resources Board and initiating a process to promulgate those rules fulfills a role of the board and the congress established in s 15.348 Stats.

This rule proposal would have the effect of expanding the areas where a waterfowl hunter can park a boat (or blind) and hunt. The boat would no longer need to be concealed by emergent vegetation such as rice or cattails. Under this proposal, on-shore vegetation such as reed canary grass could provide the needed concealment. Additionally, dead trees or stumps could be considered concealing vegetation. While it

expands areas where waterfowl hunting may occur, this rule would still maintain Wisconsin's requirement that people hunt from the edges of bodies of water and that they not hunt from open-water, offshore areas. Wisconsin's open water hunting rule dates back to early conservation statutes and may have been designed to keep hunters from setting up in front of each other and to keep them out of the middle of waters that are used as staging areas by migrating ducks or geese. Providing these areas where there is no hunting pressure may encourage birds to remain in an area longer and provide more chance for birds to spend time feeding and resting during migration. Hunters have supported the rule because it increases hunting opportunity by encouraging birds to remain in an area for longer periods of time.

Currently, the spring turkey hunting season opens on the Wednesday nearest April 13. Under this structure, the spring turkey season overlaps the Memorial Day holiday weekend in approximately one out of every three years (when it falls on the third Wednesday of the month). This proposal would stabilize the season opener so that it falls on the 3rd Wednesday of the month every year, making it more predictable and easier for hunters to schedule their hunts, resulting in the 6th time period always overlapping the Memorial Day holiday weekend, and reducing the likelihood of cold and snow during the Youth Hunt, Learn to Hunt Turkey events, and early time periods.

The fall turkey hunting season is currently closed from the Friday immediately preceding the 9-day gun deer hunt through the Sunday immediately following the 9-day gun deer hunt. This proposal would allow fall turkey hunting on the Friday immediately preceding the 9-day gun deer hunt statewide and, in zones 1 through 5 where the turkey season re-opens after deer season, would eliminate that closed period. This proposal would make the fall turkey hunt consistent with other fall seasons, simplify hunting regulations, and provide some additional hunter opportunity.

Trapping hours currently in place may be designed to deter trap theft or simplify enforcement of a requirement to tend or check traps daily. These rules would eliminate trapping hours. Eliminating trapping hours would simplify regulations and would provide a particular benefit to people whose work schedule conflicts with trapping hours. There is not a furbearer population management purpose for trap checking hours. These rules would maintain the requirement that traps be checked daily.

For simplicity and consistency with new federal regulations for migratory birds, this proposal would increase the limit on the number of small game animals a person is allowed to possess at home or in transport. Instead of the current possession limit which is twice the daily bag limit, it would be three times the daily bag limit, consistent with federal regulations for migratory game birds.

A cable restraint is a device used for the live capture of furbearers. The device consists of a non-spring activated cable which includes a relaxing mechanical lock, stops, and swivel. International research on humane trap systems has documented the safe use of cable restraints on dry land, with much of the field research conducted here in Wisconsin from 2000 to 2002. A "breakaway" is a component of the cable restraint device that allows larger non-target animals to be able to pull free of the device and self-release if caught. This also allows some larger coyotes to self-release. In most states, a 350 pound rating is the standard. These rules would increase the maximum allowable pound rating.

These rules would allow the use of foot activated cable restraints, a relatively new device used to trap furbearing animals. This device has been the subject of research and it is recommended as a humane method of trapping and for which best management practices have been approved by the Association of Fish and Wildlife Agencies. This would allow the use of a humane device in the restraint of fox, coyote, and bobcats during latter portions of harvest seasons.

These rules would eliminate one waterfowl hunting closed areas on department managed lands that are part of the Lower Wolf River Bottomlands Natural Resources Area and recreate the refuge in an area

where it is more likely to maintain waterfowl numbers in the area throughout the course of the hunting season. These modifications were recommended following a planning process that involved members of the public. The closed areas would provide a more functional area for waterfowl to rest, creating more opportunity for waterfowl hunters in the area because birds would remain in the area for a longer period of time.

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.

The proposed rule changes are not expected to significantly influence the spending activities or hunting and trapping activity of hunters, trappers, dog trainers, or other outdoor enthusiasts. Correspondingly, no related economic impacts are anticipated.

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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Comment Period: Comments may be sent to the agency contact person through April 13, 2015

SECTION 1. NR 10.001 (20) is repealed and recreated to read:

NR 10.001 (20) "Open water" for the purposes of s. NR 10.12(3), means all portions of a navigable water body but does not include that portion of the water body occupied by a boat, blind and similar device used for hunting waterfowl for which any part of the boat, blind or similar device is:

(a) within three feet of the shoreline or,

(b) located within 3 feet of a naturally occurring, un-manipulated growth of vegetation rooted to the navigable waterway's bed or shoreline and of sufficient height and density to conceal at least 50% of the hunter and the boat, blind or similar device when viewed from at least one direction beyond the vegetation providing the concealment. For determining if the vegetation provides the minimum 50% concealment, the viewing shall occur from a height approximately the same as height of the boat, blind or similar device being used by the hunter.

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

Kind of animal and locality	Open season (all dates inclusive)	Limit
<i>NR 10.01 (2) (a) Ruffed grouse.</i>		
1. Zone A as established under s. NR 10.33.	Beginning on the Saturday nearest September 15 and continuing through January 31.	Daily bag 5; possession 4 <u>15</u>
2. Zone B as established under s. NR 10.33.	Beginning on the Saturday nearest October 17 and continuing through December 8.	Daily bag 2; possession 4 <u>6</u>
4. Governor Dodge, Mill Bluff and Mirror Lake state parks.	Nov. 1 – Dec. 15.	Daily bag 2; possession 4 <u>6</u>

SECTION 3. NR 10.01 (2) (c) 1. is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
<i>NR 10.01 (2) (c) Pheasants. 1. Cocks only</i>		
a. In all counties of the state except the properties specified in subs. 1. b. and 2. and s. NR 10.24.	Early season—Beginning on the Saturday nearest October 17 at 12:00 noon <u>9:00 a.m.</u> and continuing for 2 consecutive days	Daily bag 1; possession 2
	Late season—Beginning on the day immediately after the season described above and continuing through December 31	Daily bag 2; possession 4 <u>6</u>
b. Governor Dodge, Mill Bluff and Mirror Lake state parks	Nov. 1 – Dec. 15.	Daily bag 2; possession 4 <u>6</u>

SECTION 4. NR 10.01 (2) (d) to (g) are amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
<i>NR 10.01 (2) (d) Gray (Hungarian) partridge.</i>		
1. In all counties of the state except in the areas listed in subd. 2.	Beginning on the Saturday nearest October 17 at 12:00 noon <u>9:00 a.m.</u> and continuing through December 31.	Daily bag 3; possession 6-9
2. Clark, Marathon and Taylor counties.	None	None
<i>(e) Bobwhite quail</i>		
1. In all counties of the state except in the parks listed in subd. 2.	Beginning on Saturday nearest October 17 at 12:00 noon <u>9:00 a.m.</u> and continuing for 54 consecutive days	Daily bag 5; possession 10-15
2. Governor Dodge, Mirror Lake, and Mill Bluff state parks.	Beginning on November 1 to the close of the season listed in subd. 1.	Daily bag 5; possession 10-15
<i>(f) Wild turkey.</i>		
1. All wild turkey hunting zones as described in s. NR 10.29, excluding state parks for which a quota has been established under s. NR 10.25 (5).	Spring seasons beginning on <u>the third Wednesday nearest in</u> April 13 and continuing Wednesday through Tuesday of the following week for 6 consecutive 7-day time periods, except on Ft. McCoy military reservation where the season continues for 40 consecutive days.	Only male or bearded turkeys may be killed. The possession limit corresponds to the number of carcass tags issued.
2. All wild turkey hunting zones 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).	Fall season beginning on the Saturday nearest September 15 and continuing through the Thursday <u>Friday</u> immediately preceding the Thanksgiving holiday.	Either sex of turkey may be killed. The possession limit corresponds to the number of carcass tags issued.
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).	Fall season reopening on the Monday immediately following <u>Saturday immediately preceding</u> the Thanksgiving holiday and continuing through December 31.	Either sex of turkey may be killed. The possession limit corresponds to the number of carcass tags issued.

Note: Glacial Heritage Area state park lands may be leased to another unit of government for management purposes and access permits to hunt turkeys on those lands would be obtained from that unit of government.

4. Youth turkey hunt. a. Persons under the age of 16 years of age who possess a valid carcass tag 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 carcass tag was issued. Only one male or bearded turkey may be killed and shall be tagged immediately with a valid carcass tag for that zone pursuant to s. NR 10.25 (2). Hunters shall be accompanied by an adult 18 years of age or older and be in compliance 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.

b. A youth who does not successfully harvest a turkey during the 2-day youth hunt established in subd. 4. a. may use their unfilled carcass tag during the time period and in the zone for which the carcass tag was issued. A carcass tag that was used to tag a turkey during the 2-day youth hunt may not be reused pursuant to s. NR 10.25 (2)

(b) 2. to harvest an additional turkey during the time period for which the carcass tag is valid.

(g) *Crow*

1. Statewide except in the parks listed in subd. 2.	Beginning on the Saturday nearest September 15 and continuing through the Thursday immediately preceding the gun deer season for Zone A. in sub. (3) (e) and reopening in January and continuing through March 20. The date of reopening in January shall be established each year by the department to allow for a 124-day crow season.	Daily bag 15; possession 30 <u>45</u>
2. Governor Dodge, Mill Bluff and Mirror Lake 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 <u>45</u>

SECTION 5. NR 10.01 (3) (a) is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
<i>NR 10.01 (2) (a) Gray and fox squirrels.</i>		
1. In all counties of the state except in the parks listed in subd. 2.	Beginning on the Saturday nearest September 15 and continuing through January 31.	Daily bag (total of both species) 5; possession 4 <u>15</u>
2. Governor Dodge, Mill Bluff, and Mirror Lake state parks.	Nov. 1 – Dec. 15.	Daily bag (total of both species) 5; possession 4 <u>15</u>

SECTION 6. NR 10.01 (3) (c) 2. is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
<i>NR 10.01 (3) (c) 2. Cottontail.</i>		
a. All that part of Wisconsin lying north of U. S. highway 10 from Prescott to Waupaca and state highway 54 from Waupaca to Algoma	Beginning on the Saturday nearest September 15 and continuing through the last day in February.	Daily bag 3; possession 6 <u>9</u>
b. Governor Dodge, Mill Bluff, and Mirror Lake state parks.	Nov. 1 – Dec. 15.	Daily bag 3; possession 6 <u>9</u>
c. In addition, there shall be an open season for hunting cottontails, except with the use of firearms, in Milwaukee county	All year	None
d. In all other parts of the state	Beginning on the Saturday nearest October 17 at 12:00 noon <u>9:00 a.m.</u> and continuing through the last day in February.	Daily bag 3; possession 6 <u>9</u>

SECTION 7. NR 10.06 (5) is amended to read:

NR 10.06 (5) HUNTING HOURS. Hunting hours for bear, bow deer, crossbow deer, deer with firearms, elk and small game are 30 minutes before sunrise through 20 minutes after sunset. Hunting hours for migratory game birds are 30 minutes before sunrise to sunset. All waterfowl hunting starts at 9:00 a.m. on the first day of the duck hunting season established in s. NR 10.01 (1) (b). All pheasant hunting starts at 9:00 a.m. on the first day of the pheasant hunting season established in s. NR 10.01 (2) (c). The department shall establish the specific opening and closing times annually in the hunting regulations pamphlets. Opening and closing times for zone A southern and northern areas shall be based on astronomical data collected by the U.S. naval observatory, Washington D.C., 20392-5420 for

Sheboygan, Wisconsin and Powers, Michigan, respectively. The hunting hours for the other zones shall be obtained by adding minutes to the Zone A a.m. and p.m. columns as follows:

Zone	Adjustment
B - - - -	Add 4 minutes
C - - - -	Add 8 minutes
D - - - -	Add 12 minutes
E - - - -	Add 16 minutes
F - - - -	Add 20 minutes

SECTION 8. NR 10.13 (1) (b) 13. is amended to read:

NR 10.13 (1) (b) 13. 'Snare and cable restraint specifications.' Set, place or operate any snare or cable restraint unless they are non-spring activated, constructed of galvanized aircraft cable and include a swivel, except that a cable restraint which is designed and placed so that it can only be activated by an animal's foot may be spring activated.

SECTION 9. NR 10.13 (1) (b) 15. (Intro.) is amended to read:

NR 10.13 (1) (b) 15. 'Cable restraints specifications.' Set, place or operate any cable restraint except for bobcat from December 1 to January 31 and fox and coyotes from December 1 to February 15, dates inclusive, provided the cable restraint conforms to the following specifications, or the specifications established in subd. 18 if the device is a foot activated cable restraint, in addition to those under subd. 13.

SECTION 10. NR 10.13 (1) (b) 15. d. is amended to read:

NR 10.13(1)(b)15. d. A cable restraint shall include a breakaway device or stop rated at ~~285~~ 350 pounds or less; a reverse-bend washer lock with a minimum outside diameter of 1 1/4 inches; and staked in a manner that does not allow the restraint device to reach any part of a fence, rooted woody vegetation greater than 1/2" in diameter or any other immovable object or stake that could cause entanglement.

SECTION 11. NR 10.13 (1) (b) 18. is created to read:

NR 10.13 (1) (b) 18. 'Foot-activated cable restraint specifications.' Set, place or operate any cable restraint which is designed and placed so that it can only be activated by an animal's foot except for bobcat from December 1 to January 31 and fox and coyote from December 1 to February 15, dates inclusive, provided the foot activated cable restraint conforms to the following specifications:

a. Cable length of 10 feet or less, with a diameter of 3/32 inch or larger, consisting of multiple strands of wire.

b. Cable stops shall be affixed to the cable to ensure that the portion of the cable which makes up the noose loop may not be longer than 25 inches when fully open, or less than 8 inches when fully closed.

c. A cable restraint shall include a breakaway device or stop rated at 350 pounds or less; a 1,500 pound roller (or barrel) in-line swivel that acts as the maximum opening cable stop; an inline shock spring; and staked in a manner that does not allow the restraint device to reach any part of a fence, rooted woody vegetation greater than one-half inch in diameter or any other immovable object or stake that could cause entanglement.

SECTION 12. NR 10.13 (3) is amended to read:

NR 10.13(3) ~~TRAPPING HOURS~~ SET TENDING INTERVALS.

~~(a) Legal time period. The trapping hours shall be from 4:00 a.m. to 8:00 p.m.~~

~~(b) Illegal time period. No person may set or reset any trap or traps or attend any trapline from 8:00 p.m. to 4:00 a.m.~~

~~(c) Set tending interval.~~

1- (a) Non-drowning sets shall be tended at least once each day and any animal captured shall be removed from the set.

2- (b) Drowning sets shall be tended within a 4-day period following the last tending of the set. Any animal captured shall be removed from the set. Water levels shall be monitored to ensure effective drowning sets.

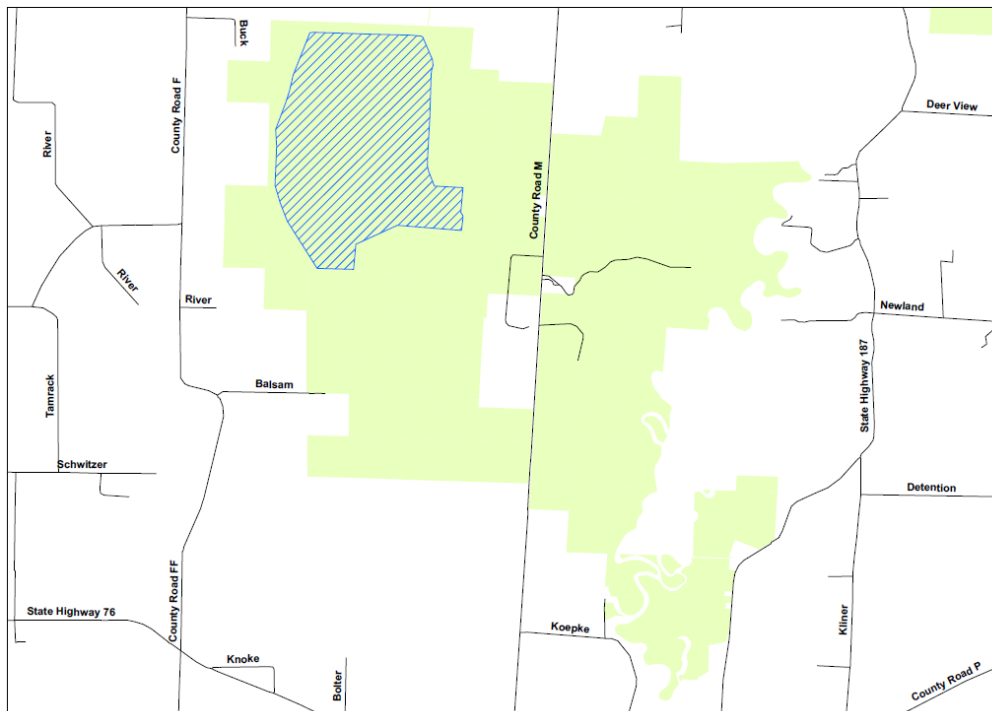
3. Under ice sets are exempt from the checking periods.

4. Sets placed for weasels consisting of body gripping traps placed entirely in enclosures, with no opening larger than 1 3/8 inch in diameter, and anchored to an immovable object shall be tended within a 4-day period following the last tending of the set. Any animal captured shall be removed from the set each time the trap is tended.

SECTION 13. NR 11.02 (8) is repealed.

SECTION 14. NR 11.04 (3m) is created to read:

NR 11.04 (3m) OUTAGAMIE COUNTY. (a) *Wolf River Bottomlands Natural Resources Area.*



SECTION 15. EFFECTIVE DATE. This rule shall take effect on February 1, 2016 except sections 8 to 11 which 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 16. 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 _____
Cathy Stepp, Secretary

(SEAL)