

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 10.01(3)(ed) and 19.73(3)(e); to amend NR 1.15(intro.) and (2)(d), 8.01 to 8.06, 10.01(3)(ev), 10.06(8)(b), 10.09(3), 12.36(1), 17.04(3)(a)(intro.), 17.08(3)(a)(intro.), 19.73(3)(a)(intro.), 19.77(2)(f) and 19.78(2); to repeal and recreate NR 10.30 and 15.11(1); and to create NR 1.15(2)(e), 16.19(8), 19.001(13m), 19.12(1)(d), relating to hunting, trapping, captive wild animals, dog training, nuisance animal removal, wildlife rehabilitation and license issuance.

WM-06-08

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: Statutes that authorize the promulgation of this rule order include sections 23.16, 23.322, 23.325(2), 23.33, 27.01 (7), 29.014, 29.889(7m), 30.52, 169.19(6), 169.20(6), 169.21(3), 169.24, and 227.11, Stats. These sections grant rule making authority to the department to establish and maintain open and closed seasons for hunting, to establish other regulations for hunting, trapping, dog training, nuisance wild animal removal, and wildlife rehabilitation. These sections also establish that the department may charge fees for various department permits and products. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted and Explanation: In promulgating this rule, sections 23.16, 23.322, 23.325(2), 23.33, 27.01 (7), 29.014, 29.889(7m), 30.52, 169.19(6), 169.20(6), 169.21(3), 169.24 and 227.11, Stats., have been interpreted as providing the department with the authority to make these housekeeping clarifications.

Related Statute or Rule: 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 Rule Analysis: The Bureau of Wildlife Management recommends promulgating administrative rules that modify sections of chapters NR 1, 8, 10, 12, 15, 16, 17, and 19. These rule changes related to hunting, trapping, captive wild animals, dog training, nuisance animal removal and license issuance are minor and unlikely to be controversial. The intent of these rule changes is to correct drafting errors, provide clarification to existing rules, simplify regulations, and update administrative code language and references. Policy issues affected by this rule are ones which have already been addressed by previous rulemaking. Specifically, these rules will:

- Designate elk as big game animals.
- Allow the department to issue all approvals, permits, license subscriptions and passes through the automated licensing system.
- Eliminate duplicative deer hunting season language.
- Correct a drafting error related to the youth deer hunting season.
- Return to the practice policy of allowing hunting at night of species for which there are no hunting hours restrictions during all firearm deer seasons except the traditional nine-day firearm deer season.
- Correct a cross reference related to types of legal archery hunting equipment.
- Adjust bear management zones A and D to account for the Bad River Reservation.
- Update wildlife damage and nuisance control rules to be consistent with recently passed legislation.
- Update rules which establish the Horicon Marsh Fur Farm to include newly acquired lands which are part of the marsh.
- Re-establish pheasant management zones in the captive wildlife chapter so that provisions which were inadvertently removed by previous rulemaking are restored.

- Eliminate the sunset of a rule which allows training dogs with the aid of raccoon and rabbits at certain times.
- Establish a definition of “preserve” in order to eliminate confusion about when a Taxidermy or Fur Buyers license is required.
- Waive department fur tagging requirements for tribes that have their own fur tagging systems.
- Repeal the “initial” advanced license for wildlife rehabilitation.
- Clarify that animals which are being rehabilitated may not be exposed to other species, including domestic, during rehabilitation.
- Correct a typographical error related to wildlife rehabilitation regulations.

Federal Regulatory Analysis: These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations. Regulating the hunting and trapping of native species has been delegated to state fish and wildlife agencies. Additionally, none of the proposed rules exceed the authorities granted to states in 50 CFR 10.

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: This rule order is necessary to correct inconsistencies created through the promulgation of other rules and statutes, update code language, correct previous drafting errors, and to clarify existing administrative code language. 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.

Anticipated Private Sector Costs: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

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.

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Deadline for Written Comments: The deadline for written comments is April 17, 2008. Comments may also be electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>

Section 1. NR 1.15(intro.) is amended to read:

NR 1.15 Big game mammals. (intro.) Big game mammals in Wisconsin are white-tailed deer, ~~and~~ black bear ~~and~~ elk. The needs and actions specified in this section are essential to an effective big game management program.

Section 2. NR 1.15(2)(d) is amended to read:

NR 1.15(2)(d) *Animal damage.* Deer, ~~and~~ bear ~~and~~ elk damage complaints will be handled according to the provisions of s. 29.889, Stats., and rules as published in the Wisconsin administrative code. Damage can be most economically controlled by maintaining populations with a hunting season harvest as specified in par. (a).

Section 3. NR 1.15(2)(e) is created to read:

NR 1.15(2)(e) *Elk*. Maintaining elk as a big game animal and offering the best opportunity for a once-in-a-lifetime, quality hunting experience. In addition, the maintenance of elk as a valued component of the natural community will be emphasized by continued management.

Section 4. NR 8.01 through 8.06 are amended to read:

NR 8.01(title) ~~County clerk, duties.~~ Definitions. In this chapter:

(1) "Approval means any type of approval or authorization issued by the department ~~under ch. 29, Stats.,~~ through the automated license issuance system, including any license, permit, certificate, card, stamp, tag, sticker, purchase receipt or customer identification number, unless the context requires a different meaning.

(2) "Automated license issuance system" means a network of computer terminals at license agents that provide for the issuance of licenses and other approvals.

(3) "County clerk" means a county clerk as defined in s. 59.20, Stats., who has accepted an appointment as an agent of the department pursuant to s. 29.024 (6) (a) 2., Stats., to issue approvals.

(4) "License agent" means a person who is not an employee of the department but who is appointed pursuant to s. 29.024 (6), Stats., to issue approvals.

(5) "Retail agent" means a person who is not a county clerk and not an employee of the department but who is appointed pursuant to s. 29.024 (6) (a) 3., Stats., to issue approvals.

(6) "Service provider" means the business firm to which the department has awarded a contract to develop, test and operate the automated license issuance system.

NR 8.02 Authorization to issue approvals. (1) All license agents shall issue daily vehicle admission receipts and annual vehicle admission receipts under s. 27.01 (7) (d), Stats.

(1m) All license agents shall issue the nonresident snowmobile trail use stickers required under s. 350.12, Stats., and ATV trail passes required under s. 23.33(2) Stats.

(2)(a) ~~All license agents shall issue all recreational fishing, and hunting licenses and stamps and trapping approvals in ch. 29, Stats., except: and any other department approvals or federal approvals designated by the department to be issued through the automated license issuance system, except where issuance is restricted under par. (b).~~

~~(a)(b)(title) Issued only by the department, county clerks and license agents authorized by the department. The following licenses department may designate approvals that shall be issued only by the department, county clerks and license agents authorized by the department to issue them:~~

- ~~1. Disabled fishing license under s. 29.193 (3), Stats.~~
- ~~2. Veteran's disabled fishing license under s. 29.193 (3) (c), Stats.~~
- ~~3. Duplicate senior citizen recreation card under s. 29.624, Stats.~~
- ~~4. Military fishing license under s. 29.194 (2), Stats.~~
- ~~5. Military small game license under s. 29.194 (3), Stats.~~
- ~~6. Slat net licenses under s. 29.526, Stats.~~
- ~~7. Set or bank pole licenses under s. 29.531, Stats.~~
- ~~8. Set line licenses under s. 29.533, Stats.~~

~~(3) All license agents shall issue the following approvals: antlerless bonus deer permits under s. 29.181, Stats.; trapping licenses under s. 29.241, Stats.; wild rice harvest license under s. 29.607, Stats.; and ginseng harvest license under s. 29.611, Stats.~~

NR 8.03 License agent application; eligibility; and contract. (1) APPLICATION FORMS. (a) Any person or county clerk wishing to become a license agent shall submit a written application to the department on forms provided by the department. The department shall review the application and determine whether the applicant shall be appointed as a license agent.

Note: License agent application forms are available from the Department of Natural Resources Bureau of Customer Service and Licensing, 101 South Webster, P.O. Box 7924, Madison, Wisconsin 53707.

(b) Applications to become a license agent shall be accepted at any time during the year.

(2) ELIGIBILITY CRITERIA. (a) Pursuant to s. 29.024 (6), Stats., all county clerks are eligible to become license agents.

(b) All persons who were license agents on December 31, 1998 are eligible to become license agents if they submit an application to the department no later than June 30, 1999.

(c) All license agent applicants not included in par. (a) or (b) shall be considered for approval by the department. Factors which may be considered for approval of an application include, but are not limited to the following:

1. Need for a license vendor in the area.
2. Convenience of location of the establishment.
3. Potential sales volume.-
4. Amount and timing of hours open for business.
5. Stability of the business and personal and financial standing of the applicant.
6. Availability of point of sale equipment.

(d) License agent applications that are denied shall be retained for a period of 2 years and reconsidered if another license agent is needed in that area. Applications shall also be reconsidered at the request of the applicant after a 6-month waiting period.

(3) CONTRACT AGREEMENTS. (a) All license agent applicants are required to sign a written contract with the department in order to become a license agent. The contract shall include but is not limited to accountability, record keeping, and payment methods.

(b) All license agents are required to enter into an agreement with the service provider covering maintenance and support of the electronic license issuance equipment.

(c) The department may rescind the license agent status of any license agent who fails to comply with all provisions of the contract.

NR 8.04 Forms of approvals. (1) APPLICATION AND APPROVAL REQUIREMENTS. (a) An applicant shall provide appropriate identification and update all ~~application~~ personal information as indicated by the department's license issuance handbook when applying for an approval. In addition, an applicant shall sign the purchase receipt attesting to his or her residency and that his or her privileges for all approvals issued have not been revoked by a court of law.

Note: The department's license issuance handbook is available from the Department of Natural Resources' Bureau of Customer Service and Licensing, 101 South Webster, P.O. Box 7924, Madison, Wisconsin 53707.

~~(b) A first-time applicant through the automated license issuance system, who has not been issued a customer identification number, shall complete and sign an application for a customer identification number. The applicant shall carry the completed application when exercising privileges authorized by the approval.~~

~~(c) (b) An applicant shall sign the issued approval, if required by the department on the approval form, before exercising any privileges authorized by the approval- and carry the signed approval on their person when exercising privileges authorized by the approval.~~

~~(d) (c) Pursuant to s. 29.024 (5), Stats., the license agent is not required to sign the approval.~~

(2) STAMPS AND THEIR FACSIMILES. (a) Privileges conferred by the purchase of a waterfowl stamp under s. 29.191 (1), Stats., turkey stamp under s. 29.164, Stats., pheasant stamp under s. 29.191 (2), Stats., trout stamp under s. 29.191 (4), Stats., or salmon stamp under s. 29.191 (5), Stats., shall be in the form of a written authorization imprinted on the issued approval.

(b) Persons purchasing privileges conferred under par. (a) may obtain a stamp at no additional charge from the department by doing one of the following:

1. Presenting the approval in person at a department service center.
2. Mailing a written request to the department at the end of the license year which includes the expired license and a handling fee to cover mailing and handling costs as described in s. 29.556, Stats., and in s. NR 19.02.

NR 8.05 Telephone issuance of approvals. (1) The department may issue approvals by telephone according to procedures described in the department's ~~telephone~~ license issuance handbook manual.

Note: The department's ~~telephone~~ license issuance handbook manual is available from the Department of Natural Resources' Bureau of Customer Service and Licensing, 101 South Webster, P.O. Box 7924, Madison, Wisconsin 53707.

(2) Applicants who receive a telephone issued approval shall carry the approval authorization number while lawfully exercising privileges under the approval, until receiving the printed approval in the mail.

NR 8.06 Purchasing a ch. 29, Stats., approval for another person. (1) ~~An~~ Except as prohibited in sub. (2), an individual may purchase an approval for another if the purchaser submits an application form completed and signed by the applicant except that: who is not required to complete and submit an application for a customer identification number, pursuant to s. NR 8.04 (1) (b). A signed purchase receipt under s. NR 8.04 (1)(a) is not required. The purchaser shall submit an application form completed and signed by the applicant except that:

(a) ~~A parent or guardian of a child under the age of 18 may submit and sign an application purchase an approval on behalf of a child under 18 years of age. A signed purchase receipt under s. NR 8.04(1)(a) is required to be signed by the parent or guardian on behalf of the child before being issued the approval.~~

(b) Stamp approvals may be purchased for another person if a customer identification number is provided.

~~(2) A person purchasing An individual may not purchase an approval for another person may purchase the approval from any license agent when there is a limited quantity of approvals available, except a parent or guardian may purchase an approval for their child under the age of 18.~~

~~(3) A person purchasing an approval for another person may purchase the approval from any license agent.~~

Section 5. NR 10.01(3)(ed) is repealed.

Section 6. NR 10.01(3)(ev) is amended to read:

Persons 12 years of age or older but under the age of 16 years of age who possess a certificate of accomplishment under s. 29.591, Stats., or its equivalent from another state or province, may hunt deer with a firearm for 2 consecutive days beginning on the Saturday nearest October 8 in all deer management units, except state park units, and deer management unit 48 and federal lands. Allowable types of firearms are those authorized on the first day of the regular gun deer season under par. (e) or (et). The bag limit is one buck deer per valid gun deer carcass tag and additional antlerless deer per valid antlerless deer carcass tags issued under par. (ed) or s. NR 10.104 (8). Hunters shall be accompanied by an adult 18 years of age or older. One adult may not accompany more than 2 hunters and all other hunting regulations apply. Blaze orange requirements under s. 29.301 (2), Stats., apply to all hunters on these days except waterfowl hunters. Earn-a-buck requirements do not apply to youth hunters hunting in CWD zones identified in s. NR 10.28 (3) or non-CWD earn-a-buck units when using their regular gun buck deer carcass tag. Youth hunters may harvest and tag bucks or antlerless deer in CWD zones as authorized by CWD tags under s. NR 10.104 (11) or CWD landowner permit tags issued pursuant to s. NR 10.41 (3).

Section 7. NR 10.06(8)(b) is amended to read:

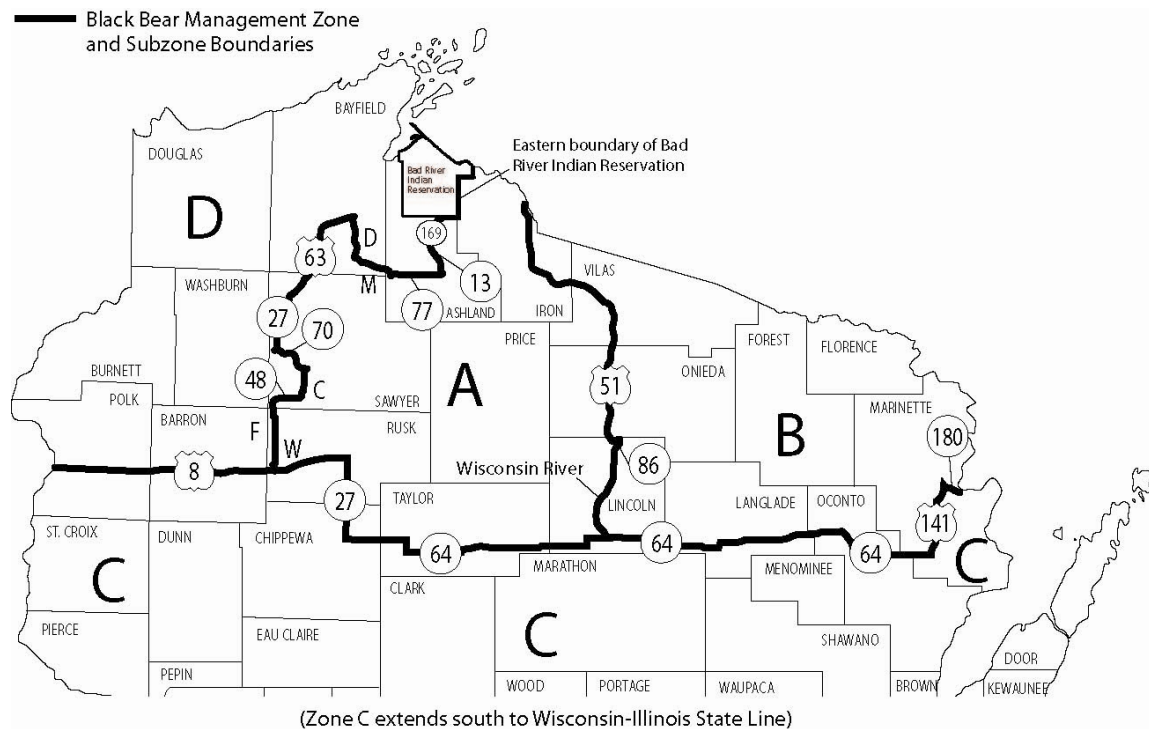
NR 10.06(8)(b) *Gun deer season.* Hunting hours established in sub. (5) shall apply statewide to bow and gun hunters pursuing any species, except migratory game birds listed in s. NR 10.01(1), during the dates established in s. NR 10.01(3)(e)1. a. and b.

Section 8. NR 10.09(3) is amended to read:

NR 10.09(3)(b) *Special restrictions.* Use, possess or have under control while hunting, any poisoned or drugged arrow, arrow with explosive tips or any crossbow unless the crossbow is authorized under sub. (1)(c)1. ~~d. e.~~

Section 9. NR 10.30 is repealed and recreated:

NR 10.30 Black bear hunting zones. Black bear hunting zones are established as designated on the following map:



Section 10. NR 12.36(1) is amended to read:

NR 12.36 Open hunting access requirement. (1) Enrollees shall have hunting access control over all contiguous land on which they seek wildlife damage abatement assistance or claims. Enrollees shall open their land to hunting, using one of the access options in sub. (3), during the regular hunting seasons for the species causing the damage for which they have enrolled in the WDACP as required by s. 29.889 (7m), Stats. Enrollees may not charge any fees for hunting, hunting access or any other activity that includes hunting the species causing damage. This hunting access requirement ~~shall~~ may also apply to enrollees who have also been issued a shooting permit under the authority of s. 29.885, Stats., and ~~ch. NR 12~~ this chapter.

(1m) Exemptions. The requirements under sub. (1) do not apply to a person to whom the department grants a shooting permit for deer causing damage that is issued as an abatement measure recommended under s. 29.889, Stats., if all of the following apply:

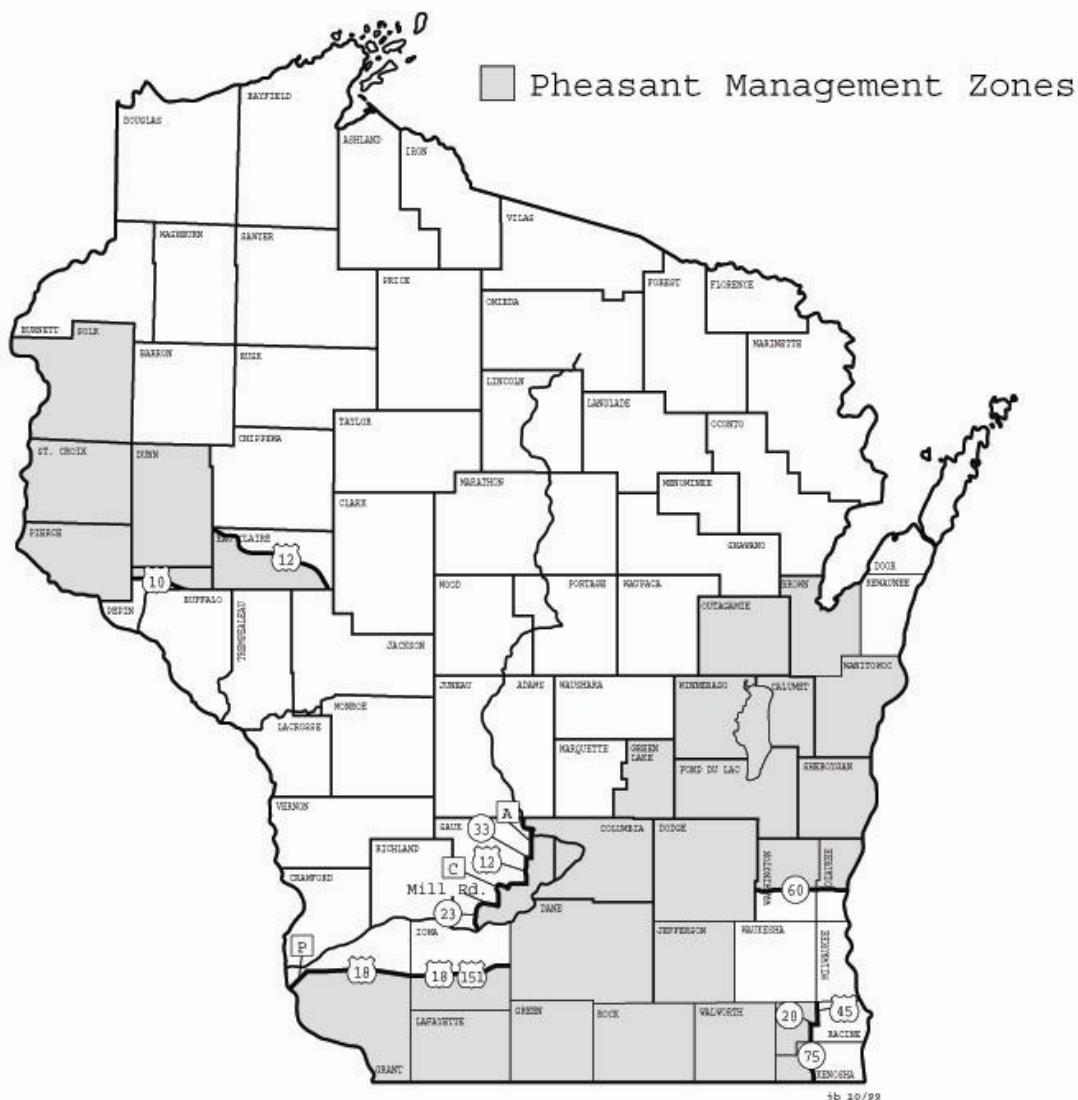
1. The permit is the only abatement measure the person receives under s. 29.889, Stats., for damage caused by deer, and
2. The person waives any eligibility to receive a wildlife damage claim payment under s. 29.889 (7), Stats., for damage caused by deer.

Section 11. NR 15.11(1) is repealed and recreated to read:

NR 15.11 Horicon marsh fur farm. (1) A state fur farm to be known as the Horicon marsh fur farm is established on all of the state owned land on the Horicon marsh wildlife area in Dodge county as posted with department signs and no person may hunt or trap any furbearing animals on such area unless authorized by a valid department permit. Any violation of the permit shall be deemed to be a violation of this section.

Section 12. NR 16.19 (8) is created to read:

NR 16.19(8) Pheasant management zones. Pheasant management zones are established for the purposes in s. 169.19(4m), Stats. A person holding a Class B bird hunting preserve license may not allow the hunting or taking of hen pheasants beginning on December 15 of each year and ending on the following March 31 within the boundaries of the licensed preserve if the preserve is located totally or partially within a pheasant management zone.



Section 13. NR 17.04(3)(a)(intro.) is amended to read:

NR 17.04(3)(a) *Northern restricted zone hound dog training on raccoon and rabbits.* (intro.) ~~in 2004, 2005 and 2006, a~~ A person may train dogs on captive or free-roaming raccoons and rabbits in the northern restricted zone May 1 to June 30 provided all the following apply:

Section 14. NR 17.08(3)(a)(intro.) is amended to read:

NR 17.08(3)(a) *Northern restricted zone hound dog trialing on raccoon and rabbits.* (intro.) ~~¶~~ 2004, 2005 and 2006, a An individual may trial dogs on captive or free-roaming raccoons and rabbits May 1 to June 30 provided all the following apply:

Section 15. NR 19.001(13m) is created to read:

NR 19.001(13m) "Preserve" means, for the purposes of s. 29.506(1), Stats., and this chapter, to treat or process the carcass of a wild animal to prevent the carcass from decaying or spoiling for the purpose of mounting the carcass or parts of the carcass in a lifelike manner.

Section 16. NR 19.12(1)(d) is created to read:

NR 19.12(1)(d) Waiver exemption. If a Wisconsin tribe has a tagging and registration system similar to the department's and an approved memorandum of understanding with the department pertaining to such system, tagging requirements under this section may be waived by the department. Tribal tags shall be validated and affixed to the carcass.

Section 17. NR 19.73(3)(a)(intro.) is amended to read:

NR 19.73(3) ADVANCED LICENSE. (a) *Requirements.* (intro.) ~~Except as provided under par. (e), applicants~~ Applicants shall meet all of the following requirements:

Section 18. NR 19.73(3)(e) is repealed.

Section 19. NR 19.77(2)(f) is amended to read:

NR 19.77(2)(f) Enclosures shall have visual barriers to restrict wildlife's view of humans, domestic animals, and other species being rehabilitated to reduce inappropriate imprinting, socialization, habituation or stress.

Section 20. NR 19.78(2) is amended to read:

NR 19.78(2) A ~~license~~ licensee shall notify the department within 48 hours of receipt of federal or state endangered or threatened species.

Section 21. Effective dates. These rules shall take effect following publication in the Administrative Register.

Section 22. Board adoption. This rule order 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)