

Report From Agency

REPORT TO LEGISLATURE

NR 10 and 45, Wis. Adm. Code
Related to hunting and trapping state parks
Board Order No. WM-21-13
Clearinghouse Rule No. 13-108

Basis and Purpose of the Proposed Rule

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.

Summary of Public Comments

Hearings

In January the department held hearings in Eau Claire (attendance – 6), Wausau (attendance – 4) and Fitchburg (attendance – 17). A hearing in Appleton was cancelled because of hazardous travel conditions.

The department attempted to solicit opinions on specific provisions of the rule by asking people to check if they support or oppose them, as well as providing a place to check over-all support or opposition to the rule. Results are summarized below in Table 1. The *discussion and responses to hearing/written comments* may be more useful than Table 1. for reviewing opinions expressed at the hearings, however. For instance, written comments show that a number of people who oppose a restriction to using only dog proof traps are actually opposed to allowing any trapping in state parks. These results do not necessarily indicate a preference for less restrictive trapping regulations at state parks. This was particularly true at the Fitchburg hearing, where a number of attendees arrived late and were not present for the department’s description of the rule and explanation that hunting and trapping are allowed in state parks - that the hearings were only for the purpose of obtaining input on specific regulations for those activities. Similarly, people who oppose any turkey hunting or firearms discharge in state parks may have been just as likely to mark support or opposition for specific provisions or the rule in general.

Table 1.

| | Support the rule | Oppose the rule | Elimination of turkey zones | Dog proof traps | Firearm discharge restriction |
|------------|------------------|-----------------|-----------------------------|----------------------------|-------------------------------|
| Eau Claire | | 3 | Support – 1 Opposed - 3 | Opposed - 3 | Opposed – 1 Support - 1 |
| Wausau | | 2 | Opposed – 2 Support - 2 | Opposed – 1 Support - 3 | Opposed – 1 Support - 3 |
| Fitchburg | 1 | 10 | Support – 1 Opposed - 10 | Support – 4 Opposed - 9 | Support – 10 Opposed - 3 |

Written comments

The department received 169 emails during the comment period for the rule. The comments can be broken down into the following categories:

| | |
|--|-----|
| Oppose any hunting and trapping in state parks | 152 |
| Oppose unleashed hunting dogs in state parks | 11 |
| Generally support hunting or trapping in state parks | 6 |

Discussion and responses to hearing/written comments

Hunting and trapping should not be allowed in state parks.

Under current State statute hunting and trapping are generally allowed in state parks, as established by 2011 Wis. ACT 168, and the law provides some ability for the department to restrict those activities for safety related purposes. The department does not have the rule making authority to generally prohibit hunting or trapping across the state park system. This was explained at hearings and in telephone discussions. The department appreciates that some people acknowledged they understood this situation but they still wanted to continue to stay involved in related issues and provide comments.

Hunting dogs should not be allowed off-leash in state parks.

Under state statute hunting is generally allowed in state parks. A prohibition of the off –leash use of hunting dogs would significantly restrict some types of hunting activities. While the Natural Resources Board does have some statutory flexibility to restrict hunting for safety purposes, the department is not aware of any safety issues related to the use of hunting dogs.

There is no such thing as a pet proof trap.

At the Fitchburg hearing, testimony was heard and a photograph submitted indicating that domestic cats have been captured incidentally by the use of enclosed trigger-type traps. Additional testimony and photographs were submitted describing injuries to domestic cats caused by the use of “leg hold” traps. While the department is concerned about any incident like these, there was no evidence and it was not implied that these incidents occurred on state park property or that the cats were pets or companion animals. Cats are required to be on a leash while on state park property and our experience is that it is not common for state park visitors to bring their cats to state park properties and allow them to roam freely. We do not anticipate seeing this type of user conflict at state park properties.

The department is aware that enclosed trigger traps are manufactured which can be activated by a pushing or by a pulling motion. We are aware that traps which are activated by a pushing motion can be triggered more easily by an animal like a cat. Current rules, including for purposes of this rule proposal, establish that:

NR 10.001 (9c) "Enclosed trigger trap" means any trap with a pull-activated trigger, inside an enclosure, and recessed 11/ 4 inches or more, from an opening that is no greater than 1 3/4 inches in diameter.

Elimination of state park turkey management units will increase hunting pressure and may result in unsafe conditions.

The state parks currently designated with their own turkey zone number are a subset of the many state parks that now allow turkey hunting. Eliminating the unique unit designation for these individual properties 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.

Hunting should be allowed at night, for instance, so that raccoon hunters have good access to hunting opportunities.

State park visiting hours do end at 11:00 p.m. and reopen at 6:00 a.m. with exceptions such as for registered campers and people entering to hunt no earlier than 1 hour before normal daytime hunting hours. We agree that this does reduce the time that state park properties are available for night hunting species such as raccoons. However, these rules and current department policy do still provide ample opportunity for night hunting prior to 11:00 p.m. This may allow for as many as 6 hours of time when days are short in the last half of November and first half of December, when firearm hunting is generally allowed in state parks.

Additional discussion.

The department recognizes that there is a great deal of interest in the management of state parks and the importance of these properties and recreational opportunities to the people of Wisconsin. That is why the department and partners have invested significant effort and sought public involvement to carefully and thoughtfully provide hunting and trapping opportunities and assure safety. Following the enactment of 2011 ACT 168, the department held meeting on this subject with state park property staff and subject matter experts from parks, forestry legal, law enforcement and the wildlife programs. The department also consulted with all tribes in the ceded territory and later consulted with the Voigt Task Force. Then an implementation plan was made available to the public and the Natural Resources Board held five public listening sessions around the state between October 29 and November 13, 2012. The department made changes to its original plan and the Board made additional changes, based on public input, at its December 2012 meeting when the plan was adopted. The department has continued to work on refinements to policy, to enact emergency rules, and finally to adopt these proposed rules. These rules will not establish new season dates or modify periods of the year when hunting and trapping are allowed in state parks.

Modification Following Hearings - Tree Stand Use on Department Managed Lands

The following modifications to the rule are proposed by the department after the hearing process.

Language limiting dry land trapping to enclosed trigger type traps is improved to better anticipate changing conditions such as water levels. This simplified language simply prohibits the placement of a trap that is not “completely submerged” unless it is an enclosed trigger type trap. Originally, the department had proposed that, “No person may place any trap on dry land or which is set or staked in such a manner as to permit the trap, snare or trapped animal to reach dry land on the state owned portions of state parks except if the trap is an enclosed trigger trap.”

The department proposes additional cross-reference updates, correcting a misspelled park name in current rule, and relaxing a requirement to enclose firearms in a carrying case because that language is no longer consistent with new state laws eliminating those requirements in vehicles and concealed carry laws.

Finally, the department has observed that small game, other than waterfowl, hunting hours close at noon at the three state parks where small game hunting was allowed prior to the enactment of 2011 ACT 168. Those parks are Governor Dodge, Mill Bluff, and Mirror Lake. For consistency with hunting regulations at other parks, this proposal allows all-day hunting at those three parks at times when normal small game hunting hours are in effect and hunting is allowed at other state parks. Currently, normal small game hunting hours apply and small game hunting with firearms is allowed from November 15 to December 15 at other properties in the state park system.

Changes to Rule Analysis and Fiscal Estimate

The rule analysis was modified to reflect changes to the rule order. The fiscal estimate were revised and no changes in fiscal or economic impacts are expected because of changes to the rule.

Response to Legislative Council Rules Clearinghouse Report

The recommendations have been incorporated into the rule.

Final Regulatory Flexibility Analysis

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. Therefore, under s. 227.19(3m), Stats., a final regulatory flexibility analysis is not required.