

Clearinghouse Rule 19-017

DRAFT #1

February 7, 2019

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 10.085 (1) (g) and NR 10.13 (1) (b) 5.; **amend** NR 10.01 (4) (b), NR 10.06 (6), NR 10.08 (7) (e), NR 10.085 (intro), NR 10.09 (1) (c) b. and d., NR 10.145 (intro), (1), (4) and (6), NR 45.09 (5); to **repeal and recreate** NR 10.01 (4) (d); and to **create** NR 10.01 Table (4) (dg) and NR 10.08 (3) (b) (2m) relating to The 2019 Wildlife Management spring hearing rule related to hunting, trapping, and target shooting.

WM-21-18

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: In promulgating this rule, s. 29.014 has been interpreted as providing the department the authority to establish seasons and bag limits while ensuring public hunting and recreational opportunities.

In addition, s. 23.11 & 23.09(2)(d) grants the department the authority to regulate outdoor recreational use on state lands.

2. Statutory Authority: Statutes that authorize the promulgation of this rule order include sections 29.014, 23.11, and 23.09 Stats.

3. 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.

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) 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.

4. Related Statutes or Rules: There are no currently active related administrative rules.

5. Plain Language Analysis:

SECTIONS 2-3, 5-9, and 12 Changes the river otter framework from a quota/permit system to a bag limit/quota system.

SECTION 1 Allows trappers to keep incidental taken raccoons in beaver sets after the close of the raccoon season.

SECTION 4 Moves the close of pheasant season daily shooting hours on stocked public properties from 2 pm to 12 pm.

SECTION 10 Eliminates minimum barrel length restrictions for handguns that are used for hunting and minimum caliber restrictions on pellet guns used for hunting small game mammals.

SECTION 11 allows trappers to place traps within fifteen feet of a beaver dam.

SECTION 13 Regulates shooting on DNR lands in Rock County.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

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.

7. 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.

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

This proposal would change the river otter framework from the quota/permit system to a bag limit/quota system. River otter are currently managed through a limited permit/quota framework. This system requires trappers to apply by August 1, includes a \$3 issuing fee, and requires wildlife to coordinate mailing of durable tags to successful applicants. A quota is established annually, and permit levels are calculated based on average success rates over the previous 3 harvest seasons. Instead of a drawing and issuance of physical permits, an annual bag limit for river otter would be included with the purchase of a trapping license. Trappers would no longer be required to purchase/apply for an otter permit and would no longer be required to carry a physical tag.

Current law prevents the placement of traps, except enclosed trigger traps, at any time within 15 feet of any beaver dam. The landowner exemption does allow a landowner to trap on a dam, but this exemption does not extend to agents of the landowner. The United States Department of Agriculture-Wildlife Services can trap on dams as part of their beaver program as well. This proposal would allow both nuisance and fur trappers to trap on a beaver dam with written permission from the landowner.

Currently, shooting hours close at 2 p.m. on public lands stocked with pheasants during the pheasant season to allow staff to stock birds without hunters pursuing them straight out of the stocking truck. In some cases, due to staff limitations and other logistics, DNR staff must begin stocking pheasants earlier. This proposal would establish a noon closure on stocked properties to give staff more time and flexibility to stock while removing hunting pressure on the birds until the next morning.

Current law allows trappers, during the closed season for muskrat, to retain muskrat incidentally taken during the open beaver season. This rule change proposes a similar exemption for raccoon harvested in beaver sets, after the close of the raccoon season.

Target shooting is unregulated on DNR owned lands unless these lands are in counties listed Ch. NR 45.09(5), Wis. Adm. Code. There are no designated public shooting ranges in Rock County, a county with a relatively high population density and relatively flat topography. There is significant unregulated

target shooting on state owned lands such as the Avon Bottoms Wildlife Area. This proposal would allow the department to regulate target shooting on state-owned lands in Rock County.

9. 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.

10. 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.

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

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

Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Scott Karel
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707
Scottr.karel@wisconsin.gov
608-267-2452
608-267-7857 (fax)

Written comments may also be submitted to the Department at DNRAdministrativeRulesComments@wisconsin.gov.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 10.01 (4) (b) is amended to read:

NR 10.01 (4) (b) Incidental take of muskrats and raccoons. During the closed ~~season~~ seasons for muskrats and raccoons, licensed trappers may retain for salvage any muskrats and raccoons taken incidentally while trapping for beaver in the portions of the state open to beaver trapping as described in par. (c).

SECTION 2. NR 10.01 Table (4) (d) is repealed and recreated to read:

Kind of Animal and Locality	Open season (all dates inclusive)	Limit
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<p>NR 10.01 (4) (d) Otter trapping</p> <p>1. North zone as described in s. NR 10.36</p> <p>3. South zone as described in s. NR 10.36</p>	<p>Beginning on the Saturday nearest November 4 and continuing through April 30</p> <p>Beginning on the Saturday nearest November 4 and continuing through March 31.</p>	<p>One otter per trapping license issued under s. 29.241 or s. 29.235.</p> <p>One otter per trapping license issued under s. 29.241 or s. 29.235.</p>
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SECTION 3. NR 10.01 Table (4) (dg) is created to read:

<p>NR 10.01 (4) (dg) Otter season framework modifications.</p>
<p>The department may modify the otter bag limits established in s. NR 10.01 (4) upon approval the issuance of an order of the secretary and publication in the official state newspaper.</p>

SECTION 4. NR 10.06 (6) is amended to read:

NR 10.06 (6) PHEASANT HUNTING. Except as provided in this subsection, pheasant shooting hours are those hunting hours established for small game in sub. (5). Pheasant shooting hours shall close at ~~2:00~~ 12:00 p.m. on weekdays within the posted boundaries of the following state wildlife areas beginning the third day of the pheasant hunting season established in s. NR 10.01 (2) (c) and continuing through November 3:

SECTION 5. NR 10.08 (3) (b) (2m) is created to read:

NR 10.08 (3) (b) (2m) Otter. The possession limit corresponds to the seasonal bag limit.

SECTION 6. NR 10.08 (7) (e) is amended to read:

NR 10.08 (7) (e) Transport or possess an unskinned bobcat, fisher, ~~otter~~, or wolf carcass, or a raw pelt of these species unless it has been tagged in accordance with s. NR 10.085.

SECTION 7. NR 10.085 (intro) is amended to read:

NR 10.085 Tagging and registration of game. Requirements for the tagging and registration of game in this section apply to the species listed in sub. (1), except that subs. (6), (7), and (8) also apply to deer and subs. (6) and (8) also apply to turkey and otter:

SECTION 8. NR 10.085 (1) (g) is repealed.

SECTION 9. NR 10.085 (4) (b) is amended to read:

NR 10.085 (4) (b) The pelt tag shall be attached to a bobcat, fisher, ~~otter~~ or wolf when it is killed and before it is carried by hand or transported in any manner. Failure to attach the pelt tag invalidates the permit. The pelt and registration tag shall remain attached to the pelt until removed by a fur dresser or taxidermist at time of preparation.

SECTION 10. NR 10.09 (1) (c) b. and d. are amended to read:

NR 10.09 (1) (c) b. Hare, rabbit, squirrel, raccoon, fox, coyote, bobcat and unprotected wild animals may be hunted with handguns ~~or pellet guns~~ of .17 caliber or larger. ~~Handguns shall have a minimum barrel length of 4 inches measured from the muzzle to the firing pin with the action closed.~~

c. Deer or bear may be hunted with handguns loaded with centerfire cartridges of .22 caliber or larger ~~and that have a minimum barrel length of 5 ½ inches measured from the muzzle to the firing pin with the action closed.~~

d. Deer or bear may be hunted with cylinder loading black powder muzzle-loading handguns which are not less than .44 caliber, do not use cartridges, ~~and have a minimum barrel length of 7 inches measured from muzzle to breech face~~ that fire a single projectile weighing not less than 138 grains.

SECTION 11. NR 10.13 (1) (b) 5. is repealed.

SECTION 12. NR 10.145 (intro), (1), (4) and (6) is amended to read:

NR 10.145 Bobcat, fisher, and otter. No person may hunt or trap, or attempt to hunt or trap, any bobcat, or fisher or otter 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 otter, unless he or she possesses a current and valid trapping license issued by the department.

(1) HARVEST QUOTAS. The number of bobcat, and fisher ~~and otter~~ permits issued annually and otter seasonal bag limit shall be determined by the department. The department shall base its determination upon:

(4) TAGGING, RECORDING OF HARVEST AND POSSESSION AND TRANSFER. No person may possess a bobcat, fisher, ~~otter~~, or wolf carcass or pelt in violation of the requirements for possession and transportation established under s. NR 10.08 (7) and, including otter, for tagging and registration established under s. NR 10.085.

(6) REPORTS. (a) *Harvest reports.* The department may require each successful bobcat, fisher, or otter permit or wolf harvest license applicant or purchaser to submit a harvest report in a manner prescribed by the department within 24 hours of harvesting a bobcat, fisher, otter, or wolf. If the department requires a person who has been issued a bobcat, fisher, or otter harvest permit or wolf harvest license to report the harvest under this section, the person shall make the report in the manner required by the department within 24 hours of the time the person kills the bobcat, fisher, otter, or wolf

SECTION 13. 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 Dane, Dodge, 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.

SECTION 12. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)