

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

The statement of scope for this rule, SS 025-13, was approved by the Governor on March 6, 2013, published in Register No. 687 on March 31, 2013 and approved by the Natural Resources Board on April 24, 2013. This permanent rule was approved by the Governor on March 22, 2017.

The Wisconsin Natural Resources Board proposes an order to repeal Ch. NR 16.30 (9) (b) 3. and 4.; and to amend NR 10.001 (5v), 10.40 (3) (a) 1. and (e), 11.10 (intro) and (note), 16.30 (9) (b), and 16.30 (9) (c); and to create NR 10.105 (j), administrative rules relating to hunting, trapping, closed areas, nuisance wildlife management and captive wildlife.

WM-04-13

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 taking of unprotected species, movement of deer waste, the administration of deer hunts, legal trap types, and waterfowl hunting hours and season dates.

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.

The department’s authority to authorize the removal of nuisance animals, such as monk parrots, is established in s. 29.885 (2).

The establishment of rules for the housing of captive wildlife is authorized in s. 169.39(3) which directs the department to promulgate rules pertaining to the specifications for enclosures.

Statutes Interpreted and Explanation: The chapter on wild animals and plants, in ss. 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 ss. 23.09 (2) (b) and 169.39 (3).

Related Statute or Rule: Under provisions of 2011 Act 28, a Class B license is no longer required of people under the age of 16 for activities such as training dogs to track or trail bears but a license is still required for people under the age of 16 who are hunting bear under the authority of nuisance permits. This rule proposal would update rules for consistency with Act 28.

Plain Language Rule Analysis: These rule changes are proposed to update administrative code language to correct inconsistencies, update outdated language, and provide clarification when appropriate.

This rule package will amend regulations for hunting, deer carcass transportation, and captive wildlife found in Ch. NR 10, 11, 12, and 16.

SECTION 1 increases the legal width and height of colony traps by one-half inch so that trappers and trap manufacturers can utilize readily accessible dimensional hardware cloth to construct these types of traps.

SECTION 2 exempts private sector waste haulers from the requirement to obtain the department's permission to move the waste to a landfill outside of the CWD management zone. Hauling may still only be to landfills which are licensed by the department.

SECTION 3 simplifies the application process for special gun deer hunts for hunters with disabilities.

SECTION 4 implements a language correction recommended by the Legislative Reference Bureau and removes a trademarked brand name from the same provision.

SECTIONS 5 and 6 exempt wolf-dog hybrids from the perimeter fence requirement that applies to some harmful wild animals and makes the pen standard for wolf-dog hybrids consistent with true wolves, a species for which there is no perimeter fence requirement. These sections also repeal a "sunrise" provision which is no longer needed.

SECTION 7 establishes new fence standards for captive wolves, wolf-dog hybrids, and coyotes which would be the same as current rules for captive bear. The fences would need to be 8 feet tall with an additional 3 feet at the top slanted inward at a 30-45° angle. Canines are unlikely to climb fences, so this rule seeks to reduce fence standards for captive canines to reflect their likely behavior. This section also repeals a "sunrise" provision which is no longer needed.

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.

Colony Traps are a legal trap type for muskrat. The legal width and height of colony traps would be increased by one-half inch so that trappers and trap manufacturers can utilize readily accessible dimensional hardware cloth to construct these types of traps.

Under current rules, deer waste from the CWD management zone may only be disposed at a landfill within the CWD management zone unless permission to move the waste to a landfill outside of the CWD management zone is granted by the department. This change would allow private sector waste haulers to negotiate disposal contracts with landfills outside of the CWD management zone, which could allow private sector business more cost effective methods for disposing of deer waste.

The current application process for sponsoring a Gun Deer Hunt for People with Disabilities on private land is cumbersome. Simplifying the process will help to reduce costs associated with the application procedure for private sponsors as well as reduce the department's costs of administering the hunt.

The holder of the Conibear® trademark contacted the WI Department of Justice requesting that the DNR remove the term 'Conibear' from administrative code, and replace it with a more generic term, such as 'body-gripping trap', to protect their trademark name.

Fence standards for captive wolf, wolf-dog hybrids, and coyote are currently the same as for cougar, bobcat, and lynx (i.e., 10 feet tall with an additional 4 feet at the top slanted in at a 30-45° angle). Canines are unlikely to climb fences, so this rule seeks to reduce fence standards for captive canines to reflect their likely behavior. The new fence standards that would be in place under this rule would be the same as current rules for captive bear (i.e., 8 feet tall with an additional 3 feet at the top slanted inward at a 30-45° angle). These rules also exempt wolf-dog hybrids from the perimeter fence requirement that applies to some harmful wild animals and makes the pen standard for wolf-dog hybrids consistent with true wolves, a species for which there is no perimeter fence requirement.

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 standards are contained in the rule.

This rule includes a proposal that would simplify the process by which private sector waste haulers are able to dispose of deer waste from the CWD Management Zone. This proposal is expected to reduce costs for private business because they will be able to find local, cost effective methods for disposal rather than transporting waste to one of the two landfills within the CWD management zone which accept deer waste. The department currently has authority to make exceptions on a case-by-case basis and has granted exemptions, so actual economic benefits will be minor.

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: The deadline for written comments was June 29, 2016

SECTION 1. NR 10.001 (5v) is amended to read:

NR 10.001 (5v) "Colony trap" means an enclosure device designed to allow the capture of one or more fur-bearing animals in a single setting as a drowning set. Entrance to the device is gained by one or more one-way entrances with overall dimensions of the trap not to exceed 6 6.5 inches in width, 6 6.5 inches in height and ~~36~~ 36.5 inches in length.

SECTION 2. NR 10.105 (4) (j) is created to read:

NR 10.105 (4) (j) Deer carcasses transported by a licensed solid waste transporter regulated under s. NR 502.06 Wis. Admin. Code or by a person who is under contract with the department to transport deer killed by vehicles for disposal in a landfill.

SECTION 3. NR 10.40 (3) (a) 1. and (e) are amended to read:

NR 10.40 (3) (a) *Application requirements.*

1. All applications to conduct a special gun deer hunt shall be on department forms and be submitted to the designated department office for the county within which the hunt will be conducted by ~~June 1~~ by the date established by the department on the form.

(e) *Hunter participation limits.* The department may not authorize a special gun deer hunt if the number of participating hunters is less than 3 ~~or if the hunter density will exceed 2 per 40 acres of land described on the application.~~

SECTION 4. NR 11.10 (intro) and (note) are amended to read:

NR 11.10 Marten protection ~~[closed]~~ closed areas. A closed season is established in the following areas posted with department signs. No person may trap any species of wild animal thereon at any time unless using cage or box traps or cable restraints in compliance with s. NR 10.13, except that steel jawed traps, enclosed trigger traps, snares, or body-gripping traps ~~of the conibear type~~ as authorized under s. NR 10.13 may be used as water sets during the open seasons established in s. NR 10.01 (4).

~~Note: The bracketed language was dropped from CR 08-011 without being shown as stricken. The department intends to reinsert the dropped language in a future rule order.~~

SECTION 5. NR 16.30 (9) (b) is amended to read:

NR 16.30 (9) (b) *Perimeter fence.* An outdoor housing facility for harmful wild animals other than mute swans, wolf-dog hybrids and wild or feral swine shall be enclosed by a perimeter fence that is at least 8 feet high. Fences less than 8 feet high may be approved by the department. An outdoor housing facility for wild or feral swine shall be enclosed by a perimeter fence that is at least 4 feet high not including any portion of the fence that is buried. The fence shall be constructed so that it protects the enclosed species by restricting unauthorized humans from having contact with the enclosed species. It shall be of sufficient distance from the outside wall or fence of the primary enclosure to prevent physical contact with captive wild animals inside the enclosure. Fences less than 3 feet in distance from the primary enclosure may be used if approved by the department. A perimeter fence is not required if any of the following apply:

SECTION 6. NR 16.30 (9) (b) 3. and 4. are repealed.

SECTION 7. NR 16.30 (9) (c) is amended to read:

NR 16.30 (9) (c) 1. Bear, wolf, wolf-dog hybrid, and coyote pens with open tops shall be a minimum of 1000 square feet. The walls shall be a minimum of 8 feet in height with an additional 3 feet at the top slanted inward at a 30 to 45 degree angle.

2. Cougar, bobcat, and lynx, ~~timber wolf, wolf-dog hybrid, and coyote~~ pens with open tops shall be a minimum of 1000 square feet. The walls shall be a minimum of 10 feet in height with an additional 4 feet at the top slanted in at a 30° to 45° angle. ~~This section applies to owners of wolf-dog hybrids beginning on January 1, 2014.~~

SECTION 8. EFFECTIVE DATE. This rule 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 9. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 25, 2017.