

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

The statement of scope for this rule, SS 061-18, was approved by the Governor on May 18, 2018, published in Register No. 749B, on May 29, 2018, and approved by the Natural Resources Board on June 27, 2018. This rule was approved by the governor on August 29, 2019.

The Wisconsin Natural Resources Board proposes an order to repeal and recreate NR 11.10; and relating to marten protection closed areas.

WM-10-18

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: The chapter on wild animals and plants, in s. 29.014 (1), “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.

2. Statutory Authority: Statutes that authorize the promulgation of this rule order includes sections 29.014 (1) and 29.053 (2) (intro).

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. This grant of rule-making authority allows the department to make changes related to hunting regulations.

In addition, s. 29.053 (2) grants the department the ability to exercise its authority under s. 29.014 to establish open and closed seasons to the state as a whole, or for any specified county or part of a county.

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

5. Plain Language Analysis:

SECTION 1 establishes the islands in the Apostle Islands National Lakeshore as a marten protection area (MPA). It also adds additional types of traps that are allowed within a marten protection area.

Current rules establish a closed season for trapping any species of wild animals in certain areas of the state where the American (pine) marten are found, with certain exceptions. There are currently two American marten protection areas and exceptions for certain type of traps which do not pose a risk of incidentally catching and harming marten. American marten have recently been confirmed on seven Apostle Islands (Stockton, Cat, Manitou, Rocky, Otter, Bear and Outer). This proposal establishes a third MPA on those islands that are within the Apostle Islands National Lakeshore.

Current language allows cable restraints and box traps as the types of traps that can be used in dryland sets in an MPA. This proposal includes language that allows flexibility to add or remove trap types allowed in MPA's. Research has shown that weasel boxes with a hole opening of 1 3/8" or less will prevent entry of American marten. Records also indicate that dryland foothold traps, with mandatory pan tension devices, can be used within marten range without risk of incidental capture of marten. These changes would provide trappers additional opportunities while not jeopardizing the welfare of the marten.

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

States possess inherent authority to manage the wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register. In general, hunting and trapping within the Apostle Islands National Lakeshore follows state regulations. However, in some instances, there are specific restrictions set in place by the federal government. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

The Apostle Islands National Lakeshore was authorized by an act of Congress on September 26, 1970 (Public Law 91-424). This act allowed hunting, fishing, and trapping within the borders of the lakeshore in accordance with the appropriate laws of the State of Wisconsin and the United States

7. Comparison with Similar Rules in Adjacent States:

The Upper Peninsula of Michigan and Minnesota both have a regulated marten trapping season. Marten are not currently found in Illinois or Iowa.

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

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.

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 S. Webster St., PO BOX 7921, Madison, WI 53707-7921.
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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:

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P.O. Box 7921
Madison, WI 53707
Scottr.karel@wisconsin.gov
608-267-2452
608-267-7857 (fax)

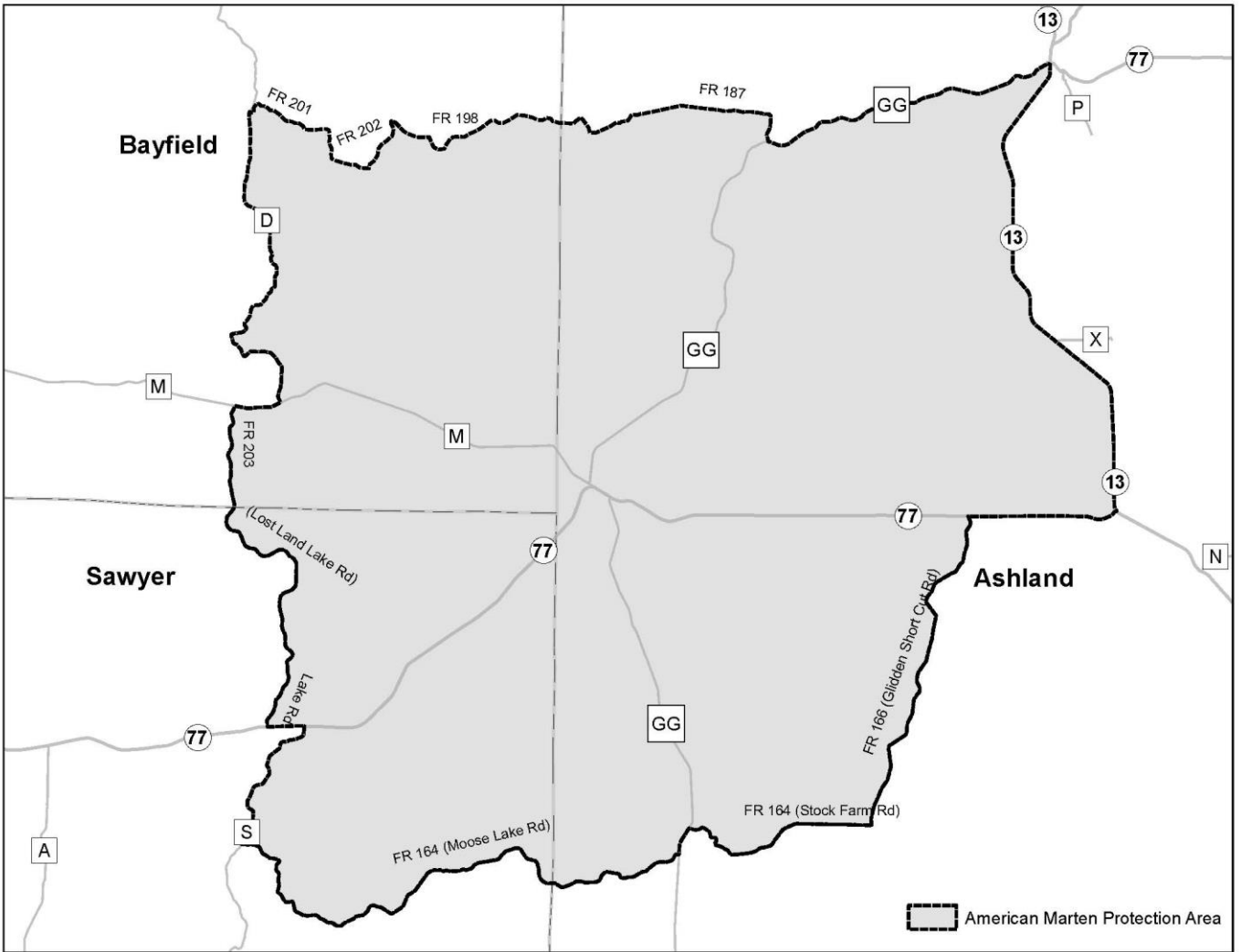
Written comments may also be submitted to the Department at
DNRAdministrativeRulesComments@wisconsin.gov.

A public hearing regarding was held on March 13, 2019 in Park Falls, Wisconsin. The comment submission deadline was March 12, 2019.

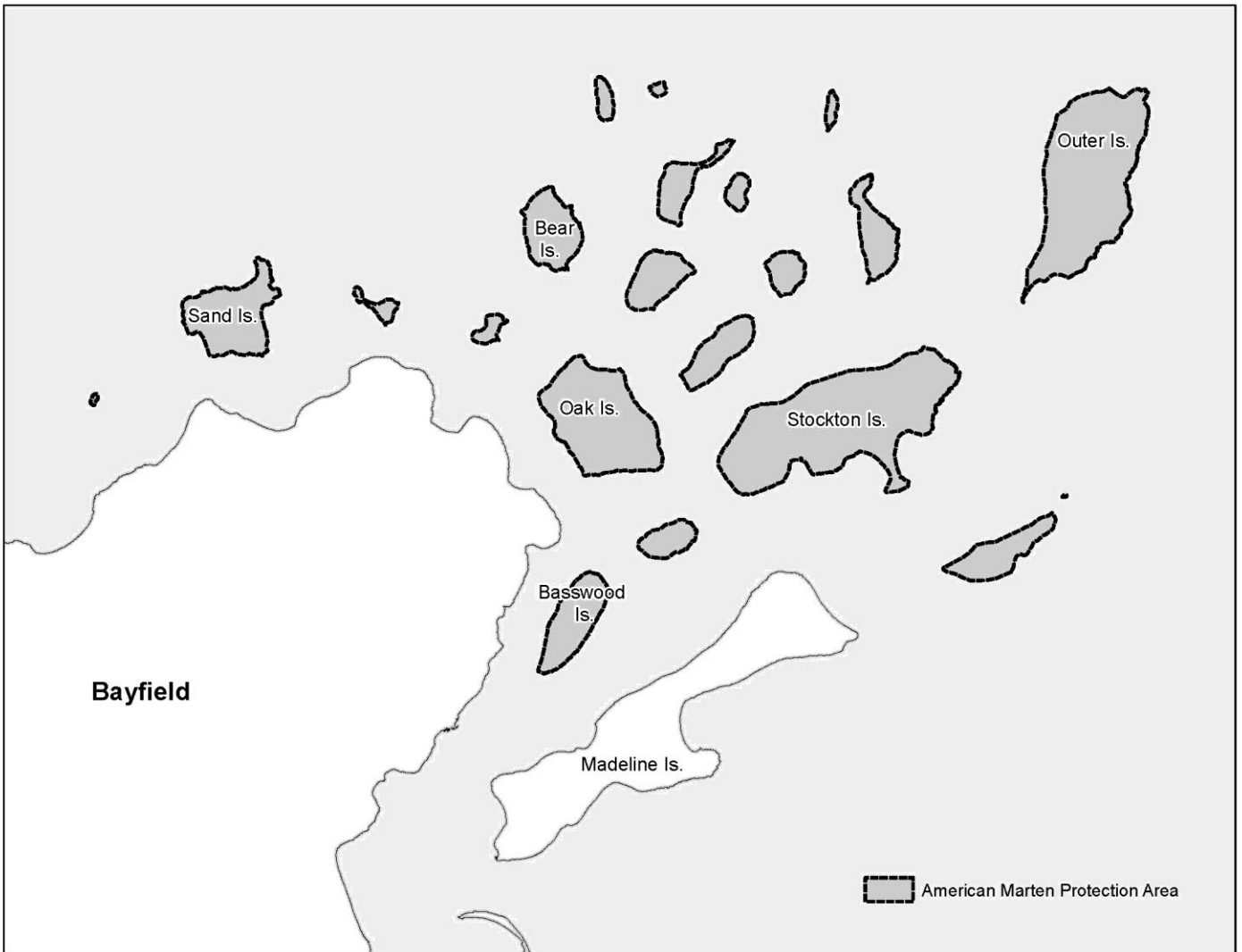
SECTION 1. NR 11.10 is repealed and recreated to read:

NR 11.10 American Marten protection areas.

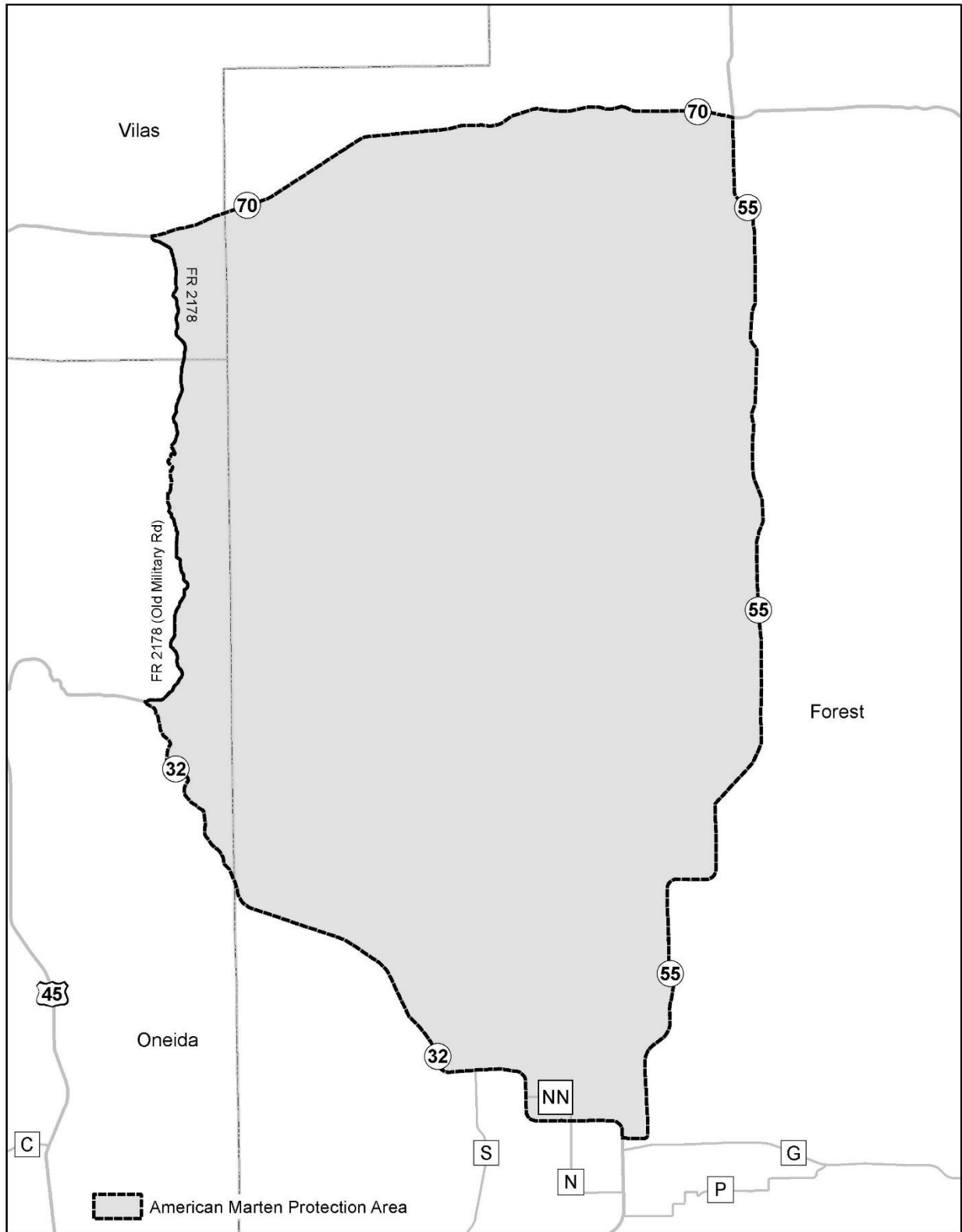
- (1) DEFINITION. In this section “pan tension” means the amount of weight that, when applied to the trap pan of a jawed trap, will result in activation of the trap.
- (2) ESTABLISHMENT. No person may trap any species of wild animal in the following marten protection closed areas at any time unless trapping with the equipment identified in sub. (3):
 - (a) The Clam Lake area within Ashland, Bayfield, and Sawyer Counties.



(b) The Apostle Islands area within Ashland and Bayfield Counties.



(c) The Pine River area within Forest, Oneida, and Vilas Counties.



(3) AUTHORIZED EQUIPMENT IN A MARTEN PROTECTION CLOSED AREA. The following traps may be used for trapping within a marten protection closed area:

- (a) Cage or box trap or cable restraint in compliance with s. NR 10.13.
- (b) Sets placed for weasels in compliance with s. NR 10.13 (3) (d).

Note: This type of set is commonly referred to as a weasel box.

- (c) Jawed trap as a non-submersion set within the areas identified in sub. (2) (a) and (c) having a pan tension of no less than 4 pounds.

Note: Pan tension is frequently modified through the use of commercially adjustable pans, sheer pins, springs, spring steel, or foam.

- (d) Jawed traps, enclosed trigger traps, snares, or body-gripping type traps as authorized under s. NR 10.13 being used as watersets during the open seasons established in s. NR 10.01 (4).

SECTION 2. 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 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 22, 2019.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)