

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request adoption of Board Order WM-21-13, proposed rules that prohibit firearm discharge across trails and require dog-proof traps on State Park properties, eliminate unique state park turkey hunting units because they are no longer needed, and clean up chs. NR 10 and 45 to reflect previous Board determinations (December 2012) under Wis. Act 168

FOR: February 2014 Board meeting

PRESENTER'S NAME AND TITLE: Dan Schuller, Bureau Director, Wisconsin State Park System

SUMMARY:

These permanent rules will implement Natural Resources Board recommendations from its December 2012 meeting. At that meeting, the Board directed the department to establish emergency rules prohibiting the discharge of firearms from or across trails and to restrict trappers to the use of dog proof or underwater traps.

Additionally, these rules will eliminate 17 unique state park turkey hunting zones because the zones are no longer needed to allow turkey hunting during the first three spring seasons. Turkey hunting in those state parks will be allowed under permits which are also valid in the surrounding unit, consistent with other state parks where turkey hunting is now allowed.

Finally, these rules make a number of remedial or housekeeping changes to simplify state park hunting regulations or eliminate provisions which are no longer needed because hunting is now allowed both under the authority of 2011 ACT 168 and through subsequent policies adopted by the Board.

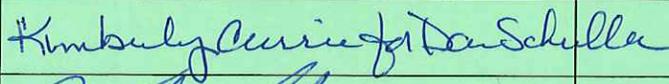
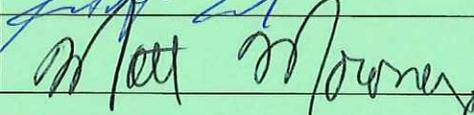
These rules do not establish new seasons or modify the periods when hunting or trapping are allowed in state parks.

In January the department held hearings in Eau Claire, Wausau and Fitchburg.

RECOMMENDATION: That the Board adopt Board Order WM-21-13.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input checked="" type="checkbox"/> background memo | <input type="checkbox"/> Attachments to background memo |
| <input type="checkbox"/> Statement of scope | <input type="checkbox"/> Governor approval of statement of scope |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input checked="" type="checkbox"/> Response summary | <input checked="" type="checkbox"/> Board order/rule |

| Approved by | Signature | Date |
|-------------------------------|--|---------|
| Dan Schuller, Bureau Director |  | 2/14/14 |
| Kurt Thiede, Administrator |  | 2/14/14 |
| Cathy Stepp, Secretary |  | 2/14/14 |

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: February 4, 2014
TO: Natural Resources Board members
FROM: Cathy Stepp, Secretary

SUBJECT: Adoption of Board Order WM-21-13, proposed rules that prohibit firearm discharge across trails and require dog-proof traps on State Park properties, eliminate unique state park turkey hunting units because they are no longer needed, and clean up Ch's. NR 10 and 45 to reflect previous Board determinations (December, 2012) under 2011 Wis. ACT 168.

These will be the first permanent 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 of the year when hunting and trapping are allowed in state parks.

A similar emergency rule, WM-22-13(E) was in effect for the fall 2013 hunting and trapping seasons. The emergency rule contains language which is similar to this rule related to shooting from or across trails and trapping regulations.

Why is the rule being proposed?

Prior to 2011 ACT 168, state parks were statutorily closed to hunting unless the department had written rules specifically allowing a hunting opportunity at an individual state park. Statutes did not grant rule authority to allow trapping. Today, hunting and trapping are both allowed at state parks except where the Natural Resources Board has prohibited the activities in order to protect public safety or a unique plant or animal community.

The ACT allowed the department to prohibit hunting in designated use areas. For safety purposes, these rules would also prohibit the discharge of firearms, air-guns, bows, and crossbows from-or-across trails. For instance, under these rules, it would be illegal to discharge a firearm from an area where hunting is allowed to another area where hunting is allowed if the two areas are separated by a designated hiking trail.

These rules will restrict trapping to the use of dog proof traps only and uses an existing trap-type definition. The type of trap that meets the requirements of being a "dog proof trap" is an "Enclosed trigger trap" These are any trap with a pull-activated trigger, inside an enclosure, and recessed 1 1/4 inches or more, from an opening that is no greater than 1 3/4 inches in diameter. While these trap types are very effective for catching raccoons, they may be the only animal that is capable of activating the trigger and being captured. These rules allow trapping under normal regulations in certain situations where the traps are submerged by water.

Additionally, these rules will eliminate 16 unique state park turkey hunting zones because the zones are no longer needed to allow turkey hunting during the first three spring seasons. Turkey hunting in those state parks will be allowed under permits which are also valid in the surrounding unit, consistent with other state parks where turkey hunting is allowed.

Finally, these rules make a number of remedial or housekeeping changes to simplify state park hunting regulations or eliminate provisions which are no longer needed because hunting is now allowed both under the authority of 2011 ACT 168 and through subsequent policies adopted by the Board.

Summary of the rule:

These rules would simplify turkey hunting regulations by eliminating the state park turkey hunting zones so that they will become part of the surrounding zone. Of the 16 state park hunting zones repealed by these rule, the following 11 were open to all applicants; Governor Dodge, Devils Lake, Wyalusing, Wildcat Mountain, Mirror Lake, Buckhorn (including the wildlife area), Newport, Hartman Creek, Interstate, Willow River, Straight Lake. Another 5 state parks turkey hunting zones which are currently open only to applicants who hold disabled permits are; Natural Bridge, Nelson Dewey, Belmont Mound, New Glarus Woods and Rocky Arbor. Special turkey hunting opportunities for disabled hunters on private lands are not affected by these rules.

The proposal establishes that dry land 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 dry land will be allowed with the use of enclosed-trigger-type-traps. 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.

The rule eliminates a prohibition of hunting small game with rifles or pistols at three state parks where small game hunting is allowed under current rules (Governor Dodge, Mirror Lake, Mill Bluff).

The proposal expands an exemption from the state park leash law for hunters' dogs actively engaged in hunting from three named parks (Governor Dodge, Mirror Lake, Mill Bluff) under current rules to any areas where hunting is allowed. This is a remedial revision because hunting with dogs is allowed under other, existing, rules.

The rule eliminates registration and check-in requirements and the noon closure for small game hunting at three state parks (Governor Dodge, Mirror Lake, Mill Bluff) 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.

The proposal 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.

Finally, this rule clarifies that it is illegal to discharge a firearm in an area of a state park where hunting is not allowed.

Modifications to the rule:

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.

Public Participation:

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 1 1/4 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.

Changes to existing policy:

These proposed rules are not a significant change to existing policy. The discharge of firearms “from or across trails” is already specifically prohibited on State Ice Age Trail areas, a property type that is part of the Wisconsin State Park System.

Trapping has not previously been allowed in state parks and so a limit to the use of dog proof traps is new policy. However, restrictions on the sizes, types, and locations of certain traps are established for trapping in other locations. Regulations have long been a method used by the department to prevent the capture of non-target species or for safety in certain locations.

Previous Board action:

The board authorized the statement of scope for this rule order at its August 2013 meeting. The board adopted similar emergency rules at its September 2013 meeting.

Groups and individuals impacted by the proposed rule:

State park visitors during the fall season, between November 15 and December 15 when most hunting and trapping will occur, are the people who may be impacted by the proposed rule. State park visitors include people who come to a state park to hunt or trap as well as all other park visitors.

Rule Development:

These rules were developed with assistance from the bureaus of parks & recreation, law enforcement, legal services, and wildlife management.

Small Business and Regulatory Flexibility Analysis:

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

Economic Impact Analysis of Proposed Rules

These rules will have none or a minimal impact on the amount of hunting or trapping that occurs at state parks. Correspondingly, it is expected that there will be no impact on the related expenditures of hunters and trappers and no economic impacts. Restricting dry land trapping activities to dog proof trap-types does have the incidental effect of restricting the species available for dry land trapping primarily to raccoons. However, raccoons are a desirable species for trappers and may be one of the primary dry land trapping opportunities at state parks - regardless of the types of regulations which are enacted. Enclosed trigger, dog proof traps are very effective for catching raccoons. The use of traps which are completely underwater is not affected by these proposed rules.

These rules are not expected to have an impact on the recreational activities of other state park visitors and no corresponding effects on their related expenditures and economic impacts. Potential state park visitors who are interested in activities other than hunting and trapping may make decisions about state park attendance based on their views of the compatibility of their recreation with hunting and trapping. However, these rules will not expand hunting and trapping activities and, for safety purposes, hunting and trapping are already limited seasonally. Therefore, decisions about state park attendance are not likely to be made as a result of these rules.

These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business. No design or operational standards are contained in these rules.

The department accepted public comments on the analysis for 14 days in January and none were received. The department received a number of statements during the comment period on the rule order from people who said they would not visit Wisconsin state parks because hunting and trapping are allowed. However, these rules do not have an impact on whether-or-not hunting or trapping will be allowed in the the Wisconsin state park system or when those activities will occur. Hunting has been allowed at a more limited level since the early 70's and to a greater extent, and trapping, beginning in 2013. The department did not observe overall changes in usership or resulting economic impacts that could be directly attributed to hunting or trapping in state parks.

Environmental Analysis:

The department has determined that these rule revisions are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

Natural Resources Board Order WM-21-13 amending Ch.'s NR 10, Game and Hunting, and NR 45, Use of Department Properties

Subject

Hunting and trapping in state parks

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20, Stats. Appropriations Affected

None

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy
 Local Government Units

Specific Businesses/Sectors
 Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the 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.

The department's analysis indicates that these rules will have none or a minimal economic impact. Pursuant to the Governor's Executive Order 50, Section II, this is a level 3 economic impact analysis.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Background Information

Following enactment of 2011 ACT 168, hunting and trapping are both allowed at state parks except where the Natural Resources Board has prohibited the activities in order to protect public safety or a unique plant or animal community. Under previous laws, state parks were statutorily closed to hunting unless the department had written rules specifically allowing a hunting opportunity at an individual state park. Statutes did not grant rule authority for the department to allow bear hunting. Statutes did not grant rule authority to allow trapping.

Some objectives of these proposed rules are to simplify hunting regulations, accomplish remedial updates to code language that is no longer needed, and to help assure the safety of state park visitors and, by extension, their pets.

Economic Impact

These rules will have none or a minimal impact on the amount of hunting or trapping that occurs at state parks. Correspondingly, it is expected that there will be no impact on the related expenditures of hunters and trappers and no economic impacts. Restricting dry land trapping activities to dog proof trap-types does have the incidental effect of restricting the species available for dry land trapping primarily to raccoons. However, raccoons are a desirable species for trappers and may be one of the primary dry land trapping opportunities at state parks - regardless of the types of regulations which are enacted. Enclosed trigger, dog proof traps are very effective for catching raccoons. The use of traps which are completely underwater is not affected by these proposed rules.

These rules are not expected to have an impact on the recreational activities of other state park visitors and no corresponding effects on their related expenditures and economic impacts. Potential state park visitors who are interested in activities other than hunting and trapping may make decisions about state park attendance based on their views of the compatibility of their recreation with hunting and trapping. However, these rules will not expand hunting and trapping activities and and, for safety purposes, hunting and trapping are already limited seasonally. Therefore, decisions about state park attendance are not likely to be made as a result of these rules.

These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business. No design or operational standards are contained in these rules.

Fiscal Impact on the Department

The department anticipates that there will be no fiscal impacts as a result of implementing these rules. The Wisconsin State Park system already has a law enforcement program to enforce regulations on the properties it manages. Hunting and trapping can already legally occur under the provisions of 2011 ACT 168 and department guidance on implementing that ACT. These rules are not expected to result in any significant need for enforcement efforts.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

These rule are a potential benefit to the safety of state park visitors and their pets because they prohibit the discharge of firearms from-or-across certain trails. These rules also restrict trapping to the use of dog proof traps.

These rules will benefit turkey hunters by simplifying the number of hunting zone choices they need to consider and expanding the areas where they may hunt. Under current rules, a person who applies for a state park hunting zone can hunt only in that state park zone. Under the proposal, state parks will become part of the surrounding zones and hunting would be allowed anywhere in the new, larger zones.

These rules will simplify hunting regulations by eliminating a requirement to obtain an access permit and sign-in at a check station before small game hunting at three parks where small game hunting has been allowed under current rules; Governor Dodge, Mill Bluff, and Mirror Lake. Other state parks where hunting is now allowed under 2011 ACT 168 do not have similar requirements. Experience with these requirements has demonstrated that they are not necessary to control hunter activity and the information collected is infrequently or not used by the department. At the same three parks, these rules allow small game hunting with rifles or handguns where small game hunting has been allowed under current rules. Other state parks where hunting is now allowed under 2011 ACT 168 do not have firearm-type restrictions and the department believes that the prohibition is not necessary for safety or wildlife management purposes.

While there will be benefits to implementing these rules, they are not likely to have economic impacts.

The alternatives to be considered during this rules process are limited because statute establishes that hunting and trapping are legal activities at state parks. Prohibitions of those activities can only be made by the Natural Resources Board in order to protect public safety or a unique plant or animal community. The board has considered these concerns and has established restrictions for purposes of protecting public safety.

Long Range Implications of Implementing the Rule

The state park system will continue to be a source of significant recreational opportunity and preserve prominent features of Wisconsin's landscape. The activities of visitors will continue to generate significant economic activity.

Compare With Approaches Being Used by Federal Government

Federal regulations allow states to manage the wildlife, recreational, 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.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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 public lands which are under their control.

Name and Phone Number of Contact Person

Scott Loomans, Wildlife Regulation Policy Specialist, 608-266-3534.

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

The statement of scope for this permanent rule, SS 082-13, was approved by the Governor on July 15, 2013, published in Register No. 691 on July 31, 2013 and approved by the Natural Resources Board on August 14, 2013. This rule was approved by the Governor on _____.

The Wisconsin Natural Resources Board proposes an order to repeal Ch.'s NR 10.01 (2) (f) 3., 10.275 (2) (a), 10.275 (3) and (4), 10.40 (4), 45.09 (4); to amend NR 1.29 (7) (b) 5, 10.01 (2) (g) 2., 10.275 (Intro.), 10.275 (1) (b) 1., 10.275 (2) (b) 1. and 2., 10.275 (2) (c), 19.025, and 45.09 (1); to repeal and recreate NR 10.29, and to create NR 10.13 (Note) and 10.275 (5) relating to hunting and trapping in state parks

WM-21-13

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: The state trails system and department responsibilities and powers are established in s. 23.175 Stats. State trails are described as part of the state park system in sub. (2) (a). The state park system is established in s. 27.01 Stats. and specific authority for the department to promulgate rules necessary to govern the conduct of state park visitors and for the protection of state parks is found in sub. (2) (j).

The department's authority to establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game is established in s. 29.014 Stats.

These proposed rules use the statutory authority described above to interpret s. 29.089 Stats. related to trapping on land in state parks. This provision establishes that state parks are open to hunting and trapping and that the department may prohibit hunting or trapping in a park or portion of a park if necessary to protect public safety or a unique animal or plant community.

Statutes Interpreted and Explanation: 23.175, 27.01, 29.014 and 29.089 Stats.

Related Statute or Rule: A similar emergency rule, WM-22-13(E), is also being promulgated by the department. The emergency rule contains language which is similar to this rule related to shooting from or across trails and trapping regulations. Those are the only two provisions in the emergency rule.

Plain Language Rule Analysis: 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.

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 public lands which are under their control.

Summary of Factual Data and Analytical Methodologies: Prior to 2011 ACT 168, state parks were statutorily closed to hunting unless the department had written rules specifically allowing a hunting opportunity at an individual state park. Statutes did not grant rule authority for the department to allow bear hunting. Statutes did not grant rule authority to allow trapping. Today, hunting and trapping are both allowed at state parks except where the Natural Resources Board has prohibited the activities in order to protect public safety or a unique plant or animal community. Under the ACT, the Department may prohibit hunting or trapping on lands within 100 yards of a designated use area. Examples of designated use areas include locations such as campgrounds, certain hiking trails and beaches.

These rules simplify turkey hunting regulations by eliminating the 16 state park turkey hunting zones so that they will become part of the surrounding unit. As a result, most parks will be open to turkey hunting by people who possess a turkey permit for the zone surrounding the state park. Under previous law, it was necessary under the authorizing statute for each state park to have a season established by administrative rule. With changes that resulted from the 2011 ACT 168, these parks can now open to hunting without establishing a specific season by rule for each park. This change 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.

Of the 17 state park hunting zones repealed by these rule, the following 11 were open to all applicants; Governor Dodge, Devils Lake, Wyalusing, Wildcat Mountain, Mirror Lake, Buckhorn (including the wildlife area), Newport, Hartman Creek, Interstate, Willow River, Straight Lake. Another 6 turkey hunting zones which are currently open only to applicants who hold disabled permits are; Natural Bridge, Nelson Dewey, Belmont Mound, New Glarus Woods, Rocky Arbor, and Loew Lake Unit – Kettle Moraine state forest. Special turkey hunting opportunities for disabled hunters on private lands are not affected by these rules.

The ACT allowed the department to prohibit hunting in designated use areas. For safety purposes, these rules would also prohibit the discharge of firearms, air-guns, bows, and crossbows from-or-across closed areas. For instance, under these rules, it would be illegal to discharge a firearm from an area where hunting is allowed to another area where hunting is allowed if the two areas are separated by a designated hiking trail or other area which is closed to hunting.

These rules restrict trapping to the use of dog proof traps only except if the trap is placed completely under water. The type of trap that meets the requirement of being a "dog proof trap" is an "enclosed trigger trap". These are already defined by administrative rule as any trap with a pull-activated trigger, inside an enclosure, and recessed 1 1/4 inches or more, from an opening that is no greater than 1 3/4 inches in diameter. While these trap types are very effective for catching raccoons, they may be the only animal that is capable of activating the trigger and being captured. These rules allow all trap types which are normally allowed in locations where the traps are completely submerged under water.

These rules expand an exemption from the state park leash law for hunters' dogs actively engaged in hunting from three named parks under current rules to any areas where hunting is allowed.

These rules allow small game hunting with rifles or handguns at three parks where small game hunting has been allowed under current rules; Governor Dodge, Mill Bluff, and Mirror Lake. Other state parks where hunting is now allowed under 2011 ACT 168 do not have similar restrictions and the department believes that the prohibition is not necessary for safety or wildlife management purposes.

These rules eliminate a requirement to obtain an access permit and sign-in at a check station before small game hunting at three parks where small game hunting has been allowed under current rules; Governor Dodge, Mill Bluff, and Mirror Lake. Other state parks where hunting is now allowed under 2011 ACT 168 do not have similar requirements. Experience with these requirements has demonstrated that they are not necessary to control hunter activity and the information collected is infrequently or not used by the department.

Additionally, this proposal 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 because State Ice Age Trail areas are established by statute as part of the state park system.

Current rule clarifies current rules primarily related to special learn-to-hunt events because, with the enactment of 2011 ACT 168, it is no longer necessary to limit them to just deer and turkey if they are held at state parks.

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.

Significant policy decisions that could potentially result in increased use of state parks by some users or decreased use by other users were made with enactment of 2011 ACT 168 and again when the Natural Resources Board developed policies under authority of the ACT. These rules will not have significant additional impacts on the use of the state park system or the related economic activity of park users.

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. 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).

Agency Contact Person: Scott Loomans, 101 South Webster St., PO BOX 7921, Madison, WI 53707-7921. (608) 267-2452, scott.loomans@wisconsin.gov

SECTION 1. NR 1.29 (7) (b) 5. is amended to read:

NR 1.29 (7)(b) 5. Hunting in accordance with ~~ss. NR 10.275 (4)~~ as authorized pursuant to s. 29.089 and natural resources board determinations under 29.089(1m) and 45.09 (11).

SECTION 2. NR 10.01 (2) (f) 3. is repealed.

SECTION 3. NR 10.01 (2) (g) 2. is amended to read:

| Kind of animal and locality | Open season (all dates inclusive) | Limit |
|--|---|-----------------------------|
| NR 10.01 (2) (g) 2. | | |
| Governor Dodge, Mill Bluff and Miller <u>Mirror Lake</u> state parks. | Beginning on Nov. 1 and continuing through the Thursday immediately preceding the gun deer season for Zone A in sub. (3) (e). | Daily bag 15; possession 30 |

SECTION 4. NR 10.13 (Note) is created to read:

Note: Additional restrictions on trapping furbearing animals on department managed lands that are part of the Wisconsin state parks or state park trails are established in s. NR 10.275 (5). This section limits upland trapping activities to the use of pull-activated enclosed trigger traps.

SECTION 5. NR 10.275 (Intro.) is amended to read:

NR 10.275 **State park trapping, small game and migratory game bird hunting.** No person may hunt game species listed in s. NR 10.01 (1), (2) (a), (c), (e), (g), (3) (a), (bt), (c), (f) or (h) on the state owned or managed portions of Governor Dodge, Mill Bluff, or Mirror Lake state parks except as provided in this section and as established under 29.089 (1m). No person may trap on the state owned portions of state parks except as provided in this section and as established under 29.089 (1m). Portions of the properties listed may be posted closed to trapping and, small game and migratory bird hunting.

SECTION 6. NR 10.275 (1) (b) 1. is amended to read:

NR 10.275 (1) (b) 1. Migratory game bird hunting with firearms for the species specified in s. NR 10.01 (1) is allowed in Governor Dodge and Mill Bluff state parks from November 1 through December 15 or until the seasons established in s. NR 10.01 (1) conclude, whichever occurs first.

SECTION 7. NR 10.275 (2) (a) is repealed.

SECTION 8. NR 10.275 (2) (b) 1. and 2. are amended to read:

NR 10.275 (2) (b) *Hunting hours.*

1. Except as provided under subd. 2. and 3., the ~~The~~ hunting hours for pursuing small game at Governor Dodge, Mill Bluff and Mirror Lake state parks shall be the same as the hours established in s. NR 10.06 (5) except that hunting hours will close at 12:00 noon daily at times when the Natural Resources Board has made a determination to generally prohibit hunting at other state parks under s.

29.089 (1m) (b) 2. Hunting is allowed under the specific season frameworks for these parks established in s. NR 10.01.

2. The hunting hours for pursuing migratory game birds at Governor Dodge and Mill Bluff state parks shall be the same as the hours established in s. NR 10.06 (5) except that hunting hours shall close at 12:00 noon daily at times when the Natural Resources Board has made a determination to generally prohibit hunting under s. 29.089 (1m) (b) 2. Hunting is allowed under the specific season frameworks for these parks established in s. NR 10.01.

SECTION 9. NR 10.275 (2) (c) is repealed.

SECTION 10. NR 10.275 (3) and (4) are repealed.

SECTION 11. NR 10.275 (5) is created to read:

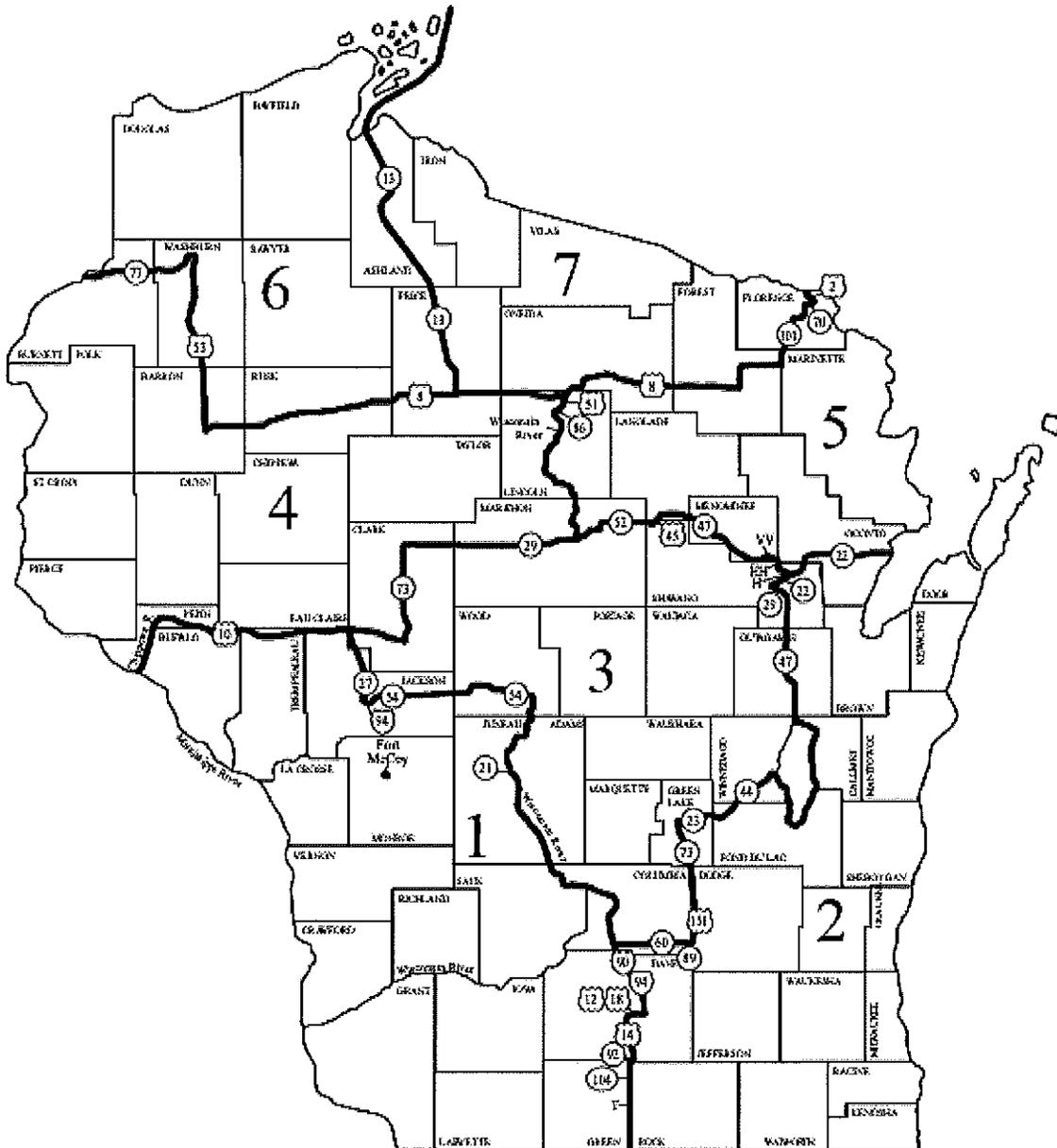
TRAPPING. (a) *Purpose.* Section 29.089 (1m) (a) Stats. establishes that trapping is generally allowed in state parks. This subsection is created because prohibiting trapping by certain methods and in certain locations is necessary to protect public safety.

(b) *Applicability.* The provisions of this subsection apply to state parks and state park trails as established in ss. 23.17 (2), 23.175 (2) (a), 23.293 (1) (c), 27.01 and 29.089 Stats., when the property is owned by the department. When traversing another type of department property established under s 23.09 (2) Stats., portions of state trails and other state park related properties are subject to the hunting and trapping rules of that property type unless otherwise posted.

(c) *Upland trapping.* No person may place any trap that is not completely submerged under water on the state owned portions of state parks except if the trap is an enclosed trigger trap.

Section 12. NR 10.29 is repealed and recreated to read:

NR 10.29 Wild turkey hunting zones.



SECTION 13. NR 10.40 (4) is repealed.

SECTION 14. NR 19.025 is amended to read:

NR 19.025 (6) (c) ~~Shooting of deer and turkey~~ Hunting or trapping on properties opened for the hunting of these species under s. 29.089 (3), Stats s. 29.089 (1m), Stats.

SECTION 15. NR 45.09 (1) is amended to read:

NR 45.09 Firearms and hunting. (1) No person may take, catch, kill, hunt, trap or pursue any wild animal or bird, or discharge any firearm, or have in possession or under control any firearm or air gun as defined in s. 939.22, Stats., unless it is unloaded and enclosed in a carrying case, or any bow, slingshot or spring-load ~~device~~ device designed for shooting a projectile unless the same is unstrung or enclosed in a carrying case while in any state park, fish hatchery, or within 100 yards of any state campground, picnic area or other special use area designated by the department by posted notice. No person may discharge a firearm, bow, crossbow, or airgun from, on, or across any ~~Ice Age Trail state trail corridor~~ or other state park area, which is not open to hunting.

Section 16. NR 45.09 (4) is amended to read:

NR 45.09 (4) Nothing in this section shall prohibit ~~the hunting of deer as provided in s. 29.621 (4), Stats., in accordance with the open seasons established by s. NR 10.01 (3) :~~

- (a) hunting as authorized pursuant to s. 29.089 Stats. and natural resources board determinations under 29.089(1m) Stats.,
- (b) hunting in state parks as established in s. NR 10.275 or as otherwise specifically established by rule,
- (c) possession of uncased or loaded firearms, bows, crossbows or air guns while on foot and in route to a state park area where hunting is allowed. This paragraph does not allow the discharge of a firearm, bow, crossbow, or air gun from or across state park areas where hunting is not allowed.

SECTION 17. 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 18. BOARD ADOPTION. This rule 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 _____
Cathy Stepp, Secretary

(SEAL)