

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

SUBJECT:

Request that the Board adopt Board Order ER-30-13 and Emergency Board Order ER-31-13(E), proposed rules affecting NR 10, NR 16, NR 19, NR 21, NR 22, and NR 27 related to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits and to updating scientific and common names and federal listing status.

FOR: May 2014 Board meeting

PRESENTER'S NAME AND TITLE: Owen Boyle, Species Management Section Chief, Natural Heritage Conservation

SUMMARY:

The objective of this emergency and permanent rule is to protect Blanding's turtles from the threat of harvest and collection. The Blanding's turtle was delisted from the State's Threatened species list on January 1, 2014 per administrative rule ER-27-11. This rule is a follow-up action that was proposed during the public comment for ER-27-11. As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

Since 1979, when the Blanding's turtle was added to the threatened list, there has not been a pet or food trade industry for this species in the state. However, as a result of delisting, the Blanding's turtle is subject to turtle harvest regulations as all turtles not listed as threatened or endangered in NR 27 or otherwise specified have a 135-day open season between July 15 and November 30 where the public may capture and possess up to 5 individuals.

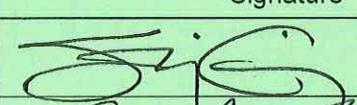
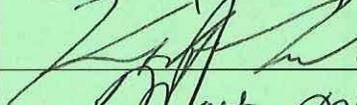
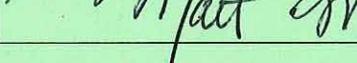
The Department estimates minimal economic impact (level 3) as there has not been a market for this species in Wisconsin since 1979, when it was added to the Threatened species list. However, in the absence of this proposed emergency and permanent rule, development of a trade for Blanding's turtles collected in Wisconsin is expected.

The board approved the ER-30-13 and ER-31-13(E) Scope Statement at the December 2013 meeting. Between January 22 and February 5, 2014, the department solicited comments on the economic impact of the proposed rule revision. No economic comments were received. One comment was received in support of the proposed revisions. A public hearing was held on Wednesday April 2, 2014. No one attended the public hearing. One written comment recommending a review of bird scientific names was received and prompted the addition of Caspian Tern to the list of scientific name updates in the proposed rule.

RECOMMENDATION: That the Board adopt Board Order ER-30-13 and Emergency Board Order ER-31-13(E).

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

- | | |
|---|---|
| <input type="checkbox"/> (choose one) | <input type="checkbox"/> Attachments to background memo |
| <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
Erin Crain, Bureau Director		4/21/14
Kurt Thiede, Division Administrator		4/22/14
Cathy Stepp, Secretary		4/30/14

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: April 21, 2014

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order ER-30-13 and Emergency Rule ER-31-13(E), relating to adoption.

1. Subject of Proposed Rule:

The proposed permanent and emergency rule adds the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits. The proposed permanent rule also updates scientific and common names and federal listing status.

2. Why is the rule being proposed?

The objective of this proposed rule is to protect Blanding's turtles from the threat of harvest and collection once they are removed from the Wisconsin Threatened species list. The Blanding's turtle was delisted on January 1, 2014 per administrative rule ER-27-11. This emergency and permanent rule is a follow-up action that was proposed during the public comment for ER-27-11. As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

Since 1979, when the Blanding's turtle was added to the threatened list, there has not been a pet or food trade industry for this species in the state. However, as a result of delisting, the Blanding's turtle is subject to turtle harvest regulations as all turtles not listed as threatened or endangered in NR 27 or otherwise specified have a 135-day open season between July 15 and November 30 where the public may capture and possess up to 5 individuals.

Internationally there is concern for this species because of the increasing trend in the pet trade and commercial collecting. Regionally the Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles cannot be taken or possessed except as authorized by the Director of the Department of Natural Resources.

The Department estimates minimal economic impact (level 3) as there has not been a market for this species in Wisconsin since 1979, when it was added to the Threatened species list. However, in the absence of this proposed emergency and permanent rule, development of a trade for Blanding's turtles collected in Wisconsin is expected.

3. Summary of the rule.

The emergency and permanent rules both contemplate the following changes: add Blanding's turtle to the list of Wild Protected Animals (NR 10.02); add Blanding's turtles to the Captive Wildlife – Reptile and Amphibian Possession Exemptions [NR 16.12(3)(b)]; and add Blanding's turtles to the turtle

season/limits with a season/limit of none/zero on NR 19.275(4), 21.13(4), and 22.13(4). The permanent rule only will also contemplate performing housekeeping on scientific and common names, and Federal Protection Status on administrative rules 10.02, 16.12, 16.13, 19.275, 21.13, 22.13, 27, and other related rules listing native plant and animal species.

4. How does this proposal affect existing policy?

Existing policies relevant to the rule are Wisconsin Adm. Codes, NR 27, NR 10.02, NR 16.12, NR 16.13, NR 19.275, NR 21.13, and NR 22.13. No new policies are being proposed.

5. Has Board dealt with these issues before?

The board approved the ER-30-13 and ER-31-13(E) Scope Statement at the December 2013 meeting.

6. Who will be impacted by the proposed rule? How?

The department anticipates minimal economic impact as the proposed rule changes will continue similar possession and collection limits that the Blanding's turtle received under the protections afforded to the species on Wisconsin's Threatened species list. The Blanding's turtle was added to the Threatened species list in 1979. As such, there has not been a market for its collection and possession since then.

No changes to the permitting process for researchers and rehabilitators are expected as part of this proposed rule change. As part of the administrative rule ER-27-11, researchers will need to apply for a Scientific Collectors Permit or Research License Authorization to collect or possess a Blanding's turtle instead of an Endangered and Threatened Species Permit.

The effect of this proposed rule will be minimal with few entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a Blanding's turtle pet/food trade in the state.

These proposed rules do not establish any requirements on businesses or local units of government.

7. Soliciting public input on economic impact synopsis

Pursuant to s. 227.137, Wis. Stats., the department is required to solicit comments on the economic impact of the proposed rule. Small businesses, as defined in s. 227.114(1), Wis. Stats., were asked to identify themselves as a small business in their comments. Between January 22 and February 5, 2014, the department solicited comments on the economic impact of the proposed rule revision. No economic comments were received. One comment was received in support of the proposed revisions.

8. Hearings and public participation

The Department published notice of the public hearings on proposed revisions March 14, 2014 (#699) in the Administrative Register. The public comment period was open through April 2, 2014. A public hearing was held on April 2, 2014 in the Madison Wisconsin Natural Resources Building. The option of

participating via Live Meeting was available for those who were unable to attend in person. There were no non-Department attendees at the public hearing.

A single written comment was received on the rule proposal. The individual providing comment was: William Mueller, Director, Western Great Lakes Bird and Bat Observatory, Ozaukee county, WI

Comment: *Taxonomic and nomenclatural changes have been made in recent years by the American Ornithologists' Union, and are included on the Annotated Checklist of Wisconsin Birds that I periodically update for the Wisconsin Society for Ornithology website. The WDNR website listing is not up-to-date.*

Response: The Department compared the scientific names and found 1 additional name change (Caspian Tern). The department agrees and has made the suggested update in the proposed rule to match the AOU Checklist.

Between January 22 and February 5, 2014, the department solicited comments on the economic impact of the proposed rule revision. No economic comments were received. One comment was received in support of the proposed revisions. The individual providing comment was: Collette L. Adkins Giese, Amphibian and Reptile Senior Attorney, Center for Biological Diversity, Minneapolis MN

Comment: *On behalf of the Center for Biological Diversity, I am writing to express support for the Wisconsin Department of Natural Resources' proposal to add the Blanding's turtle to the State's Protected Wild Animal list. The Center is a national nonprofit organization dedicated to the protection of endangered species, and we have a strong interest in turtle conservation. We understand that Wisconsin removed the Blanding's turtle from the state's list of endangered and threatened species, and as such, the Blanding's turtle can now be legally collected. Protections for Wisconsin's Blanding's turtles are therefore urgently needed.*

Because we believe that the best available science shows that the Blanding's turtle remains in danger of extinction in Wisconsin and nationwide, the Center petitioned the U.S. Fish and Wildlife Service to list the turtle under the federal Endangered Species Act. See Petition to List 53 Amphibians and Reptiles in the United States as Threatened or Endangered Species Under the Endangered Species Act, available at http://www.biologicaldiversity.org/campaigns/amphibian_conservation/pdfs/Mega_herp_petition_7-9-2012.pdf (last visited February 5, 2014).

In addition, the Blanding's turtle was recently added to the list of species protected under the Convention on International Trade in Endangered Species, in response to a Center petition. See Species Proposals for Consideration at CoP16, available at http://www.biologicaldiversity.org/campaigns/southern_and_midwestern_freshwater_turtles/pdfs/Freshwater_turtles-CITES_petition_Aug_8.pdf (last visited February 5, 2014).

These petitions demonstrate that Blanding's turtles are facing endangerment from threats like road mortality, human-subsidized predators, and habitat loss.

While we continue to maintain that the Blanding's turtle deserves a place on the state's list of endangered and threatened species, the agency's current proposal to close turtle harvest is absolutely critical in the absence of endangered species protections.

To be sure, stable turtle populations are dependent on sufficient long-lived breeding adults to offset the effects of high egg and nestling mortality and delayed sexual maturity (Congdon et al. 1993; Wilbur and Morin 1988). As such, scientists warn that such long-lived turtle species cannot sustain any significant level of harvest from the wild without leading to population crashes (Congdon et al. 1993, 1994; Heppell 1998, Reed et al. 2002).

Some populations cannot withstand even minimal exploitation without undergoing a decline in numbers (Brooks et al. 1988). For example, life-history models indicate that only slight increases (0.1) in annual adult mortality rate (such as from harvesting) will cause a population of snapping turtles to be halved in under 20 years (COSEWIC 2008). Making matters worse, after depletion of turtle populations from human harvest, population recovery potential is low for Blanding's turtles that are long lived and slow to mature (see Brooks et al. 1991).

Life history traits of turtles also mask early detection of the impacts of human harvest. In contrast to "traditional" managed wildlife and fisheries species, where the effects of management measures become measurable within years, the time scale of turtle life history results in exploitation effects becoming apparent and continuing to have effects for decades after harvest (van Dijk 2010).

Wild collection of Blanding's turtles is prohibited in the neighboring states of Illinois, Iowa, Minnesota, and Michigan. If Wisconsin were to allow collection, enforcement of these states' laws would be very difficult, as collectors could simply claim that the turtles were legally collected in Wisconsin. Such a result could spur pet industry demand for the turtles and jeopardize recovery efforts for the rare turtles across the Midwest.

In addition, if the proposed rule is not adopted, the case for placement of the Blanding's turtle on the federal list of endangered species would be strengthened due to the threat of inadequate state protection.

For all these reasons, I strongly urge you to finalize the proposal to prohibit collection of Blanding's turtles.

9. Legislative Council Rules Clearinghouse (LCRC) Comments

The LCRC provided comments on the draft rule on March 24, 2014. All comments were recommendations that improve clarity and follow administrative code styles within the Board Order and have been incorporated into the final rule package (see attached report)

10. Environmental Analysis

This is a Type III action. A strategic analysis under the current s. NR 150.10 (1m), Wis. Adm. Code, is not required for Board Order ER-30-13 because the proposed rules do not involve unresolved conflicts concerning alternative uses of available resources. The Department has determined the rulemaking process for Board Order ER-30-13 constitutes an equivalent analysis action, under current s. NR 150.20(2)(b), Wis. Adm. Code. The Department has complied with WEPA, pursuant to both the former ch. 150, and the current ch. NR 150, Wis. Adm. Code, for Board Order ER-30-13 (see the "Findings of fact, conclusions of law, and determination of WEPA compliance" attachment).

11. Small Business Analysis

These rules will have few if any entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a pet/food trade for the Blanding's turtle in Wisconsin. 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).

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DETERMINATION OF WEPA COMPLIANCE
FOR BOARD ORDER ER-30-13**

FINDINGS OF FACT

1. On December 11, 2013, the Department received authorization from the Natural Resources Board (Board) to proceed with the rulemaking related to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions and turtle seasons and limits.
2. The Department prepared proposed rules as Board Order ER-30-13.
3. The Department made a preliminary determination that promulgation of the proposed rules constituted a Type III action under s. NR 150.03(6)(b)3.b., Wis. Adm. Code.
4. On December 11, 2013, the Board approved the Department's request to publish a public hearing notice and hold public hearings on proposed rules in Board Order ER-30-13.
5. In the Notice of Public Hearing dated February 28, 2014, for the proposed rules, the Department included its preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. The Notice included a statement that, based on comments received, an environmental analysis may be prepared before proceeding with the adoption of the proposed rules.
6. Public hearings were held on April 2, 2014, in Madison, Wisconsin, with Live Meeting connections for those who wished to appear remotely. The public comment period closed that same day.
7. No comments were received on the Department's preliminary determination that an environmental analysis under ch. NR 150, Wis. Adm. Code, would not be needed.
8. Effective April 1, 2014, ch. NR 150, Wis. Adm. Code, was repealed and recreated.
9. Under current NR 150.10(1m)(a) the Department must conduct a strategic analysis for all new or revised administrative rules if the rule involves unresolved conflicts concerning alternative uses of available resources and the Department has substantial discretion in formulating important provisions of the rule.
10. The proposed rules in Board Order ER-30-13 do not involve unresolved conflicts concerning alternative uses of available resources. The Blanding's turtle was removed from the Wisconsin Threatened Species list on January 1, 2014, per administrative rule ER-27-11. The objective of Board Order ER-30-13 is to continue to protect Blanding's turtles from the threat of harvest and collection following delisting. These proposed rules were the result of feedback submitted to the Department during the public comment period for ER-27-11.
11. The current s. NR 150.20(1) and (1m) establish that an environmental analysis is required for all department actions not specifically exempt by statute nor defined as minor actions.
12. The current s. NR 150.20(2)(b) provides that the Department may determine under s. NR 150.35 that there is equivalent analysis for a specific action which satisfies the requirement for an environmental analysis.
13. The rulemaking process for Board Order ER-30-13 evaluated environmental impacts and alternatives, and provided for public disclosure and input.

CONCLUSIONS OF LAW

14. A strategic analysis under the current s. NR 150.10 (1m), Wis. Adm. Code, is not required for Board Order ER-30-13 because the proposed rules do not involve unresolved conflicts concerning alternative uses of available resources.
15. The Department has determined the rulemaking process for Board Order ER-30-13 constitutes an equivalent analysis action, under current s. NR 150.20(2)(b), Wis. Adm. Code.
16. The Department has complied with WEPA, pursuant to both the former ch. 150, and the current ch. NR 150, Wis. Adm. Code, for Board Order ER-30-13.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

This rule modifies Ch.'s NR 10 related to the list of Wild Protected Animals, NR 16 related to Captive Wildlife – Reptile and Amphibian Possession Exemptions, NR 27 related to the list of US and Wisconsin Endangered and Threatened species, and Ch.'s NR.19, NR 21, and NR 22 related to turtle seasons and limits.

3. Subject

Economic impact analysis relating to adding Blanding's turtles (*Emyoides blandingi*) to the list of Wild Protected Animals, and eliminating harvest and collection through the Department's list of turtle seasons and limits and captive wildlife exemptions.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

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

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

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

Yes No

9. Policy Problem Addressed by the Rule

The objective of this proposed rule is to protect Blanding's turtles from the threat of harvest and collection since they were removed from the Wisconsin Threatened species list. The Blanding's turtle was delisted on January 1, 2014 per administrative rule ER-27-11. This emergency and permanent rule is a follow-up action that was proposed during the public comment for ER-27-11. As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

Since 1979, when the Blanding's turtle was added to the threatened list, there has not been a pet or food trade industry for this species in the state. However, as a result of delisting, the Blanding's turtle is subject to turtle harvest regulations as all turtles not listed as threatened or endangered in NR 27 or otherwise specified have a 135-day open season between July 15 and November 30 where the public may capture and possess up to 5 individuals.

Internationally there is concern for this species because of the increasing trend in the pet trade and commercial collecting. Regionally the Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles cannot be taken or possessed except as authorized by the Director of the Department of Natural Resources.

The proposed rule changes will continue similar possession and collection limits that the Blanding's turtle received on the State's Threatened list. As such, minimal controversy is anticipated.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Pursuant to s. 227.137, Wis. Stats., the department was required to solicit comments on the economic impact of the proposed rule. Small businesses, as defined in s. 227.114(1), Wis. Stats., were asked to identify themselves as a small business in their comments. The 2-week EIA comment period was between January 22 and February 5, 2014. No economic comments were received.

The department anticipates minimal economic impact, with few entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a pet/food trade for the Blanding's turtle in Wisconsin.

11. Identify the local governmental units that participated in the development of this EIA.

Pursuant to s. 227.137 Wis. Stats., the department is required to solicit comments on the economic impact of the proposed rule, and if requested to coordinate with local governments in the preparation of an Economic Impact Analysis (EIA). No comments or requests to coordinate were received.

12. 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)

The department anticipates minimal economic impact as the proposed rule changes will continue similar possession and collection limits that the Blanding's turtle received under the protections afforded to the species on Wisconsin's Threatened species list. The Blanding's turtle was added to the Threatened species list in 1979. As such, there has not been a market for its collection and possession since then.

No changes to the permitting process for researchers and rehabilitators are expected as part of this proposed rule change. As part of the administrative rule ER-27-11, researchers will need to apply for a Scientific Collectors Permit or Research License Authorization to collect or possess a Blanding's turtle instead of an Endangered and Threatened Species Permit.

The effect of this proposed rule will be minimal with few entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a Blanding's turtle pet/food trade in the state.

These proposed rules do not establish any requirements on businesses or local units of government.

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

The objective of this rule is to protect Blanding's turtles from the threat of harvest and collection since they were removed from the Wisconsin Threatened species list. Given the population-age structure of the species, the impact of collection may be severe enough to place the Blanding's turtle's long term survival in the state in jeopardy, causing the species to be considered for addition back to the state's endangered and threatened species list. The proposed rule changes will continue similar possession and collection limits that the Blanding's turtle received on the State's Threatened list. As such, minimal controversy is anticipated.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

14. Long Range Implications of Implementing the Rule

The long range implications of this rule proposal will be the same as the short term implications in protecting the Blanding's turtle from the threat of harvest and collection and keeping them off the Wisconsin Threatened species list. These rule proposals will continue harvest and collection limits that the Blanding's turtle received while listed on the State's Threatened species list.

15. Compare With Approaches Being Used by Federal Government

There are no federal regulations that would be in conflict with the proposed rule changes. The proposed changes would support the United States Fish and Wildlife Service proposed addition of the Blanding's turtle to The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) list:
<http://www.fws.gov/international/cites/cop16/blandings-turtle.html>.

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

There are similar laws in other states. The Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles shall not be taken or possessed except as authorized by the Director of the Department of Natural Resources.

17. Contact Name

Terrell Hyde

18. Contact Phone Number

608-264-9255

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessien Karls-Rupflinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 14-025

AN ORDER to renumber NR 27.03 (2) (i) 1.; to renumber and amend NR 27.03 (2) (b) 3. and 3L., (f) 2., and (i) 22m., and (3) (b) 2., 2t., 3., 7., and 12., (f) 2., and (i) 32., 33., 40., and 48; to amend NR 10.02 (9) and (10), 16.12 (3) (b) 2., 3., and 6., 16.13 (3) (a), and 27.03 (2) (a) 1., (b) 4., (c) 3., 4., 5., and 6., (d) 1m., (e) 2t., 3., 4m., and 6m., (f) 2m., 2t., 5., 6., 7., and 9g., (g) 1. and 9., (i) 4., 5m., 8., 9., 10., 11., 12., 17., 17m., 18., 20., 21., 22., 23., 25., 25m., 26., 27., 29m., 29t., 30m., 40q., 41., 43m., 44., 45., and 49. and (3) (b) 6m. and 10., (c) 1., (e) 9m., and (i) 7., 11., 14., 17., 19., 21., 25., 26., 28., 34., 42., 44., 46., 47., 51., 52m., and 56.; to repeal and recreate NR 27.03 (1); and to create NR 10.02 (11), 16.12 (3) (b) 12., 19.275 (4) (bm), 21.13 (4) (bm), 22.13 (4) (bm), and 27.03 (1) (Note), relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits and to updating scientific and common names and federal listing status.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-28-2014 RECEIVED BY LEGISLATIVE COUNCIL.

03-24-2014 REPORT SENT TO AGENCY.

SG:REL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz and Jessica Karls-Ruplinger
Clearinghouse Co-Directors

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 14-025

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. In SECTIONS 1, 5, 19, and 21, the order of stricken and underscored text should be revised to conform to the style prescribed by s. 1.06, Manual.

b. Throughout the proposed rule, when the agency renumbers and amends a rule provision, it is unnecessary to indicate the renumbering of the provision using stricken and underscored text. [See s. 1.067 (Example 2), Manual.]

c. In s. NR 27.03 (1) (Note), “US” should be changed to “U.S.” and all of the other words that are capitalized should be changed to the lowercase. [See s. 1.01 (4), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the analysis of the proposed rule, the sentence at the bottom of page 3 should be revised for clarity.

b. In SECTION 33, the agency should clarify the intended effective date of the proposed rule.

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

The statement of scope for this rule, SS 124-13, was approved by the governor on September 20, 2013, published in Register No.694, on October 14, 2013, and approved by the Natural Resources Board on December 11, 2013. This rule was approved by the Governor on _____.

The Wisconsin Natural Resources Board proposes an order to **renumber** NR 27.03 (2) (i) 1.; to **renumber and amend** NR 27.03 (2) (b) 3., 3L., 7., (f) 2., (i) 22m., (3) (b) 2., 2t., 3., 7., 12., (f) 2., (i) 32., 33., 40., and 48.; to **amend** NR 10.02 (9), (10), 16.12 (3) (b) 2., 3., 6., 16.13 (3) (a), 27.03 (2) (a) 1., (b) 4., (c) 3., 4., 5., 6., (d) 1m., (e) 2t., 3., 4m., 6m., (f) 2m., 2r., 5., 6., 7., 9g., (g) 1., 9., (i) 4., 5m., 8., 9., 10., 11., 12., 17., 17m., 18., 20., 21., 22., 23., 25., 25m., 26., 27., 29m., 29t., 30m., 40q., 41., 43m., 44., 45., 49., (3) (b) 6m., 10., (c) 1., (e) 9m., (i) 7., 11., 14., 17., 19., 21., 25., 26., 28., 34., 42., 44., 46., 47., 51., 52m., and 56.; to **repeal and recreate** NR 27.03 (1); and to **create** NR 10.02 (11), 16.12 (3) (b) 12, 19.275 (4) (bm), 21.13 (4) (bm), 22.13 (4) (bm), and 27.03 (1) (Note) relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits and to updating scientific and common names and federal listing status.

ER-30-13

Analysis Prepared by the Department of Natural Resources

1. Statutory Authority, Statutes Interpreted and Explanation: Statutes that authorize the promulgation of these rules are: ss. 29.011, 29.014, 29.039, and 29.604 Stats. These statutes establish management authority with the department, provide that the title to wild animals is vested with the state, and provide the department with authority to maintain open and closed seasons and other regulations and programs to conserve game and nongame species. Section 29.604 (3)(b), Wis. Stats., has been interpreted as allowing the department the authority to create and amend the list of Wisconsin's endangered and threatened species, NR 27.03, Wis. Admin. Code. All rules promulgated under this authority are subject to review under ch. 227, Stats.

2. Related Statutes or Rules: Existing policies relevant to the rule are Wisconsin Adm. Codes, NR 27, NR 10.02, NR 16.12, NR 16.13, NR 19.275, NR 21.13, and NR 22.13. No new policies are being proposed.

The department is also promulgating a corresponding emergency rule [ER-31-13 (E)]. The emergency and permanent rules both contemplate the following changes: add Blanding's turtle to the list of Wild Protected Animals (NR 10.02); add Blanding's turtles to the Captive Wildlife – Reptile and Amphibian Possession Exemptions [NR 16.12(3)(b)]; and add Blanding's turtles to the turtle season/limits with a season/limit of none/zero on NR 19.275(4), 21.13(4), and 22.13(4). The permanent rule only will also contemplate performing housekeeping on scientific and common names, and Federal Protection Status on administrative rules 10.02, 16.12, 16.13, 19.275, 21.13, 22.13, 27, and other related rules listing native plant and animal species.

3. Plain Language Analysis: The objective of this proposed rule is to protect Blanding's turtles from the threat of harvest and collection once they are removed from the Wisconsin Threatened species list. The Blanding's turtle was delisted on January 1, 2014 per administrative rule ER-27-11. This emergency

and permanent rule is a follow-up action that was proposed during the public comment for ER-27-11. As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

SECTIONS 1, 3, 5, and 11-32 update scientific, common, and family names. These changes reflect current understanding of the scientific community and include mostly placement of species into a different Genus or taxonomic group. Several discrepancies in spelling and missing common names are also corrected. All of these taxa are still regarded as valid species.

SECTIONS 2, 4, 6, 7, and 8 add the Blanding's turtle to the list of Wild Protected Animals, Captive Wildlife Exemptions, and to the turtle season's and limits in Wisconsin's waters to protect them from harvest and collection.

SECTIONS 9 and 10 replace the list of endangered and threatened U.S. foreign and native species with a link to the latest publication as published in the Government Printing Office's Endangered and Threatened Wildlife and Plants 50 eCFR 17.11 and 17.12. This "adoption by reference" meets the expectation set by Wis. Stats. 29.604 (3) (b) to establish the list of wild animals and wild plants on the U.S. list of endangered and threatened foreign species; wild animals and wild plants on the U.S. list of endangered and threatened native species. The U.S. list is updated daily and is found on the US Fish and Wildlife Services' endangered species web page (<http://www.fws.gov/endangered/>).

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

There are no federal regulations that would be in conflict with this proposed action. Blanding's turtles are not federally listed. In 2013, the United States Fish and Wildlife Service proposed addition of the Blanding's turtle to The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) list: <http://www.fws.gov/international/cites/cop16/blandings-turtle.html>

5. Comparison with Similar Rules in Adjacent States: There are similar possession laws in adjacent other states. The Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles shall not be taken or possessed except as authorized by the Director of the Department of Natural Resources.

6. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: Since 1979, when the Blanding's turtle was added to the threatened list, there has not been a pet or food trade industry for this species in the state. However, as a result of delisting, the Blanding's turtle is subject to turtle harvest regulations as all turtles not listed as threatened or endangered in NR 27 or otherwise specified have a 135-day open season between July 15 and November 30 where the public may capture and possess up to 5 individuals.

Internationally there is concern for this species because of the increasing trend in the pet trade and commercial collecting. Regionally the Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles cannot be taken or possessed except as authorized by the Director of the Department of Natural Resources.

As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

These proposed rule changes were developed with the assistance of the Bureaus of Natural Heritage

Conservation, Fisheries Management, Wildlife Management, and Legal Services.

7. 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 a significant fiscal effect on the private sector or small businesses. These rules do not impose compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule.

Pursuant to s. 227.137, Wis. Stats., the department is required to solicit comments on the economic impact of the proposed rule. Small businesses, as defined in s. 227.114(1), Wis. Stats., were asked to identify themselves as a small business in their comments. No economic comments were received in the 2-week comment period between January 22 and February 5, 2014.

The department anticipates minimal economic impact, with few entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a pet/food trade for the Blanding's turtle in Wisconsin.

8. Effect on Small Business: These rules will have few if any entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a pet/food trade for the Blanding's turtle in Wisconsin. 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).

9. Agency Contact Persons: Terrell Hyde (608) 264-9255 terrell.hyde@wisconsin.gov or Erin Crain (608) 267-7479 erin.crain@wisconsin.gov. Wisconsin Department of Natural Resources, Natural Heritage Conservation NH/6, Madison, WI 53707-7921.

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

Public hearing was held on April 2, 2014. The deadline for written comments was also April 2, 2014. Written comments could be submitted at the public hearings, by regular mail, fax or email to:

Terrell Hyde, Department of Natural Resources, Natural Heritage Conservation – NH/6, Madison, WI 53707-7921, Fax: (608) 266-2925, Email: Terrell.Hyde@Wisconsin.gov

Written comments could also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

The consent of the Attorney General was requested for the incorporation by reference of the list of endangered and threatened U.S. foreign and native species with a link to the latest publication as published in the Government Printing Office's Endangered and Threatened Wildlife and Plants 50 eCFR 17.11 and 17.12. This "adoption by reference" meets the expectation set by Wis. Stats. 29.604 (3) (b) to establish the list of wild animals and wild plants on the U.S. list of endangered and threatened foreign species; wild animals and wild plants on the U.S. list of endangered and threatened native species. The U.S. list is updated daily and is found on the US Fish and Wildlife Services' endangered species web page (<http://www.fws.gov/endangered/>).

SECTION 1. NR 10.02 (9) and (10) are amended to read:

10.02 (9) Timber rattlesnake ~~of the species *Crotalus horridus*~~, except that a timber rattlesnake may be killed in emergency situations involving an immediate threat to human life or domestic animals. It is requested that each person who kills a rattlesnake under this provision provide to the department no later than 48 hours after the kill, not to include Saturdays, Sundays and holidays, factual information related to the kill including the location, date of the kill and the name and address of the person who killed it.

(10) ~~Bullsnakes Gophersnakes *Pituophis melanoleucus sayi catenifer*, black rat snakes *Elaphe obsoleta obsoleta* gray ratsnakes *Pantherophis spiloides*, and the racer snakes North American racers *Coluber constrictor*.~~

SECTION 2. NR 10.02 (11) is created to read:

10.02 (11) Blanding's turtles *Emydoidea blandingii*.

SECTION 3. NR 16.12 (3) (b) 2., 3., and 6. are amended to read:

16.12 (3) (b) 2. No person may take or possess ~~bullsnakes gophersnakes~~ of the species *Pituophis melanoleucus sayi catenifer*, North American racers of the species *Coluber constrictor* or ~~black rat snakes gray ratsnakes~~ of the species *Elaphe obsoleta obsoleta Pantherophis spiloides* taken from within the borders of the state. Persons may possess up to 2 of each of these species if legally obtained from out-of-state.

(3) (b) 3. A person may only take or possess up to 2 individuals of the following snake species: ~~Fox snakes Eastern foxsnakes~~ of the species *Elaphe vulpina vulpina Pantherophis vulpinus* and ~~eastern milk snakes milksnakes~~ of the species *Lampropeltis triangulum triangulum*.

(3) (b) 6. A person may take and possess more than 5 native northern leopard frogs of the species *Rana Lithobates pipiens*, 5 mudpuppies of the species *Necturus maculosus*, and 5 eastern tiger salamanders of the species *Ambystoma tigrinum*, or native amphibians and reptiles subject to s. NR 16.13 (2) (a) if authorized by the department by a class A captive wild animal farm license issued under s. 169.15, Stats.

SECTION 4. NR 16.12 (3) (b) 12. is created to read:

16.12 (3) (b) 12. No person may take or possess Blanding's turtles of the species *Emydoidea blandingii* within the borders of the state. Persons may possess up to 2 of this species if legally obtained from out-of-state.

SECTION 5. NR 16.13 (3) (a) is amended to read:

16.13 (3) (a) ~~Leopard Northern leopard~~ frogs, mudpuppies and eastern tiger salamanders. Native leopard frogs of the species *Rana Lithobates pipiens*, mudpuppies of the species *Necturus maculosus* or eastern tiger salamanders of the species *Ambystoma tigrinum* collected within Wisconsin may be purchased from a seller that has been specifically authorized by a class A captive wild animal farm license issued under s. 169.15, Stats., or a bait dealers license issued under s. 29.509, Stats., to possess and sell these species.

SECTION 6. NR 19.275 (4) (bm) is created to read:

Turtle species	Open seasons (both dates inclusive)	Daily bag and possession limit	Size limit
(bm) Blanding's turtle	None	0	None

SECTION 7. NR 21.13 (4) (bm) is created to read:

Turtle species	Open seasons (both dates inclusive)	Daily bag and possession limit	Size limit
(bm) Blanding's turtle	None	0	None

SECTION 8. NR 22.13 (4) (bm) is created to read:

Turtle species	Open seasons (both dates inclusive)	Daily bag and possession limit	Size limit
(bm) Blanding's turtle	None	0	None

SECTION 9. NR 27.03 (1) is repealed and recreated to read:

27.03 (1) U.S. foreign and native endangered and threatened species list as published in 50 eCFR 17.11 and 17.12.

SECTION 10. NR 27.03 (1) (Note) is created to read:

27.03 (1) (Note) The latest publication of threatened and endangered U.S. foreign and native species as published in the government printing office's endangered and threatened wildlife and plants 50 eCFR 17.11 and 17.12 is updated daily and can found on the U.S. fish and wildlife services' endangered species web page (<http://www.fws.gov/endangered/>).

SECTION 11. NR 27.03 (2) (a) 1. is amended to read:

27.03 (2) (a) 1. ~~Pine~~ American Marten — *Martes americana*.

SECTION 12. NR 27.03 (2) (b) 3. and 3L. are renumbered NR 27.03 (2) (b) 6r. and 6w. and amended to read:

27.03 (2) (b) 6r. Yellow-Throated Warbler — *Dendroiea Setophaga dominica*.

(2) (b) 6w. Kirtland's Warbler — *Dendroiea Setophaga kirtlandii*.

SECTION 13. NR 27.03 (2) (b) 4. is amended to read:

27.03 (2) (b) 4. ~~Peregrine~~ Peregrine Falcon — *Falco peregrinus* (also U.S. Endangered).

SECTION 14. NR 27.03 (2) (b) 7. is renumbered NR 27.03 (2) (b) 5m. and amended to read:

27.03 (2) (b) 5m. Caspian Tern — *Sterna caspia Hydroprogne caspia*.

SECTION 15. NR 27.03 (2) (c) 3., 4., 5., 6., (d) 1m., (e) 2t., 3., 4m., and 6m. are amended to read:

- 27.03 (2) (c) 3. ~~Queen Snake~~ Queensnake — *Regina septemvittata*
- (2) (c) 4. ~~Western Ribbon Snake~~ Ribbonsnake — *Thamnophis proximus*
- (2) (c) 5. ~~Northern Ribbon Snake~~ Eastern Ribbonsnake — *Thamnophis sauritus*
- (2) (c) 6. Eastern Massasauga — *Sistrurus catenatus catenatus*
- (2) (d) 1m. ~~Northern~~ Blanchard's Cricket Frog — *Acris crepitans blanchardi*
- (2) (e) 2t. ~~Gravel Chub~~ — ~~*Erimystox x punctata*~~ *Erimystax x-punctatus*.
- (2) (e) 3. Bluntnose Darter — *Etheostoma chlorosomum chlorosoma*.
- (2) (e) 4m. Starhead Topminnow — *Fundulus disper dispar*.
- (2) (e) 6m. Black Redhorse — *Moxostoma duguensnei duguesnei*.

SECTION 16. NR 27.03 (2) (f) 2. is renumbered NR 27.03 (2) (f) 9x. and amended to read:

- 27.03 (2) (f) 9x. A Flat-headed Mayfly — *Anepeorus Spinadis simplex*.

SECTION 17. NR 27.03 (2) (f) 2m., 2r., 5., 6., 7., 9g., (g) 1., 9., (i) 4., 5m., 8., 9., 10., 11., 12., 17., 17m., 18., 20., 21., and 22. are amended to read:

- 27.03 (2) (f) 2m. Swamp Metalmark Butterfly — *Calephelis mutiea muticum*.
- (2) (f) 2r. ~~Beach-dune~~ Hairy-necked Tiger Beetle — *Cicindela hirticollis rhodensis*.
- (2) (f) 5. ~~Poweshiek~~ Poweshiek Skipper — *Oarisma-poweshiek poweshiek*.
- (2) (f) 6. Extra-striped Snaketail Dragonfly — *Ophiogomphus anomalos anomalus*.
- (2) (f) 7. Saint Croix Snaketail Dragonfly — *Ophiogomphus susbecha susbehcha*.
- (2) (f) 9g. ~~Warpaint Emerald Dragonfly~~ Incurvate Emerald — *Somatochlora incurvata*.
- (2) (g) 1. ~~Spectacle Case~~ Spectaclecase — *Cumberlandia monodonta*.
- (2) (g) 9. ~~Bullhead~~ Sheepnose — *Plethobasus cyphus*.
- (2) (i) 4. ~~*Armoracia-aquatica*~~ *lacustris* — Lake Cress (Brassicaceae: Mustard Family).
- (2) (i) 5m. *Asplenium trichomanes-ramosum* — Green Spleenwort (Polypodiaceae: Fern Aspleniaceae: Spleenwort Family).
- (2) (i) 8. *Botrychium lunaria* — ~~Moonwort~~ Common Moonwort (Ophioglossaceae: Adder's-tongue Family).
- (2) (i) 9. *Caltha natans* — a Floating Marsh Marigold (Ranunculaceae: Crowfoot Family).

- (2) (i) 10. *Carex crus-corvi* — ~~no common name~~ Ravenfoot Sedge (Cyperaceae: Sedge Family).
- (2) (i) 11. *Carex lupuliformis* — ~~no common name~~ False Hop Sedge (Cyperaceae: Sedge Family).
- (2) (i) 12. *Carex media* — ~~no common name~~ Intermediate Sedge (Cyperaceae: Sedge Family).
- (2) (i) 17. *Draba cana* — Hoary Whitlow-eress Whitlow-grass (Brassicaceae: Mustard Family).
- (2) (i) 17m. *Eleocharis wolffi* wolfii — Wolf Spike-rush (Cyperaceae: Sedge Family).
- (2) (i) 18. *Eleocharis quadrangulata* — a Square-stem Spike-rush (Cyperaceae: Sedge Family).
- (2) (i) 20. *Fimbristylis puberula* — ~~no common name~~ Chestnut Sedge (Cyperaceae: Sedge Family).
- (2) (i) 21. *Fuirena pumila* — Dwarf Umbrella Sedge (Cyperaceae: Sedge Family).
- (2) (i) 22. *Geocaulon lividum* — Northern Comandra (Santalaceae: ~~Sandal-wood~~ Sandalwood Family).

SECTION 18. NR 27.03 (2) (i) 1. is renumbered NR 27.03 (2) (i) 1r.

SECTION 19. NR 27.03 (2) (i) 22m. is renumbered NR 27.03 (2) (i) 1g. and amended to read:

27.03 (2) (i) 1g. *Gerardia* Agalinis skinneriana — Pale False Foxglove (Scrophulariaceae: ~~Fig Wort~~ Figwort Family).

SECTION 20. NR 27.03 (2) (i) 23., 25., 25m., 26., 27., 29m., 29t., 30m., 40q., 41., 43m., 44., 45., and 49. are amended to read:

27.03 (2) (i) 23. *Liatris punctata* var. nebraskana — Dotted Blazing Star (Asteraceae: Composite Family).

(2) (i) 25. *Melica smithii* — ~~Smith~~ Smith's Melic Grass (Poaceae: Grass Family).

(2) (i) 25m. *Oxytropis campestris* var. chartacea — Fassett's Locoweed (Fabaceae: Bean Family).

(2) (i) 26. *Parnassia parviflora* — a Small-flowered Grass-of-Parnassus (Saxifragaceae: Saxifrage Family).

(2) (i) 27. *Phlox glaberrima* ssp. interior — Smooth Phlox (~~Polemoniaceae~~ Polemoniaceae: Phlox Family).

(2) (i) 29m. *Platanthera leucophaea* — Eastern Prairie ~~White Fringed~~ White Fringed Orchid (Orchidaceae: Orchid Family).

(2) (i) 29t. *Polemonium occidentale* ssp. huebneri lacustre — Western Jacob's Ladder (Polemoniaceae: Phlox Family).

(2) (i) 30m. *Potamogeton pulcher* — ~~Spotted Pond Weed~~ Pondweed (Potamogetonaceae: ~~Pond Weed~~ Pondweed Family).

(2) (i) 40q. *Scutellaria parvula* var. *parvula* — Small Skullcap (Lamiaceae: Mint Family).

(2) (i) 41. *Selaginella selaginoides* — ~~no common name~~ Low Spike-moss (Selaginellaceae: Selaginella Family).

(2) (i) 43m. *Tanacetum bipinnatum* spp ssp. *huronense* — Lake Huron Tansy (Asteraceae: Composite Family).

(2) (i) 44. *Thaspium barbinode chapmanii* — Hairy Meadow Parsnip (Apiaceae: Parsley Family).

(2) (i) 45. *Tiarella cordifolia* — Heartleaf Foamflower (Saxifragaceae: Saxifrage Family).

(2) (i) 49. *Viola fimbriatula sagittata* var. *ovata* — a Sand Violet (Violaceae: Violet Family).

SECTION 21. NR 27.03 (3) (b) 2., 2t., and 3. are renumbered NR 27.03 (3) (b) 1c., 5a., and 8a. and amended to read:

27.03 (3) (b) 1c. Great Egret — ~~*Casmerodius albus*~~ *Ardea alba*.

(3) (b) 5a. Spruce Grouse — ~~*Dendragapus*~~ *Falcapennis canadensis*.

(3) (b) 8a. Cerulean Warbler — ~~*Dendroiea*~~ *Setophaga cerulea*.

SECTION 22. NR 27.03 (3) (b) 6m. is amended to read:

27.03 (3) (b) 6m. Yellow-Crowned Night Heron — ~~*Nyctanassa violaceus*~~ *violacea*.

SECTION 23. NR 27.03 (3) (b) 7. is renumbered NR 27.03 (3) (b) 6a. and amended to read:

27.03 (3) (b) 6a. Kentucky Warbler — ~~*Oporornis formosus*~~ *Geothlypis formosa*.

SECTION 24. NR 27.03 (3) (b) 10. is amended to read:

27.03 (3) (b) 10. Greater Prairie Chicken — ~~*Tympanuchus cupido*~~ *pinnatus*.

SECTION 25. NR 27.03 (3) (b) 12. is renumbered NR 27.03 (3) (b) 9a. and amended to read:

27.03 (3) (b) 9a. Hooded Warbler — ~~*Wilsonia*~~ *Setophaga citrina*.

SECTION 26. NR 27.03 (3) (c) 1. and (e) 9m. are amended to read:

27.03 (3) (c) 1. Wood Turtle — ~~*Clemmys*~~ *Glyptemys insculpta*.

(3) (e) 9m. Ozark Minnow — ~~*Notropis nubilus*~~ *nubilus*.

SECTION 27. NR 27.03 (3) (f) 2. is renumbered NR 27.03 (3) (f) 1e. and amended to read:

27.03 (3) (f) 1e. Frosted Elfin — ~~*Meisalia*~~ *Callophrys irus*.

SECTION 28. NR 27.03 (3) (i) 7., 11., 14., 17., 19., 21., 25., 26. and 28. are amended to read:

27.03 (3) (i) 7. *Asplenium pinnatifidum* — Pinnatifid Spleenwart Spleenwort (Polypodiaceae)

Aspleniaceae: Fern Spleenwort Family).

(3) (i) 11. *Calamovilfa longifolia* var. magna — Sand Reed Reedgrass (Poaceae: Grass Family).

(3) (i) 14. *Carex concinna* — ~~no common name~~ Beautiful Sedge (Cyperaceae: Sedge Family).

(3) (i) 17. *Carex garberi* — ~~Garbers~~ Elk Sedge (Cyperaceae: Sedge Family).

(3) (i) 19. *Carex michauxiana* — ~~no common name~~ Michaux's Sedge (Cyperaceae: Sedge).

(3) (i) 21. *Cirsium hillii* — ~~Prairie~~ Hill's Thistle (Asteraceae: Aster Family).

(3) (i) 25. *Drosera anglica* — a English Sundew (Droseraceae: Sundew Family).

(3) (i) 26. *Drosera linearis* — a Linear-leaved Sundew (Droseraceae: Sundew Family).

(3) (i) 28. *Eleocharis rostellata* — Beaked ~~Spike-Rush~~ Spike-rush (Cyperaceae: Sedge Family).

SECTION 29. NR 27.03 (3) (i) 32. and 33. are renumbered NR 27.03 (3) (i) 3a. and 45a and amended to read:

27.03 (3) (i) 3a. *Gerardia Agalinis gattingeri* — Round-Stemmed-False Roundstem Foxglove (Scrophulariaceae: Fig Wort Family).

(3) (i) 45a. *Habenaria Platanthera flava* var. *herbiola* — Tubereled Pale Green Orchid (Orchidaceae:Orchid Family).

SECTION 30. NR 27.03 (3) (i) 34. is amended to read:

27.03 (3) (i) 34. *Hypericum sphaerocarpum* — Round-Fruited Round-fruited St. Johns John's Wort (Hypericaceae: St. Johns John's Wort Family)

SECTION 31. NR 27.03 (3) (i) 40. is renumbered NR 27.03 (3) (i) 3m. and amended to read:

27.03 (3) (i) 3m. *Orehis Amerorchis rotundifolia* — ~~Small~~ Round-leaved Orchis (Orchidaceae: Orchid Family).

SECTION 32. NR 27.03 (3) (i) 42., 44., 46., and 47. are amended to read:

27.03 (3) (i) 42. *Parnassia palustris* — a Marsh Grass-of-Parnassus (Saxifragaceae: Saxifrage Family).

(3) (i) 44. *Petasites sagittatus* — Sweet ~~Celtsfoot~~ Colt's-foot (Asteraceae: Composite Family).

(3) (i) 46. *Polystichum braunii* — Braun's Holly Fern (~~Polypodiaceae-Dryopteridaceae:~~ Wood Fern Family).

(3) (i) 47. *Potamogeton confervoides* — ~~no common name~~ Algae-leaved Pondweed (Potamogetonaceae: Pondweed Family).

SECTION 33. NR 27.03 (3) (i) 48. is renumbered NR 27.03 (3) (i) 52r. and amended to read:

27.03 (3) (i) 52r. ~~Potamogeton vaginatus~~ Stuckenia vaginata — Sheathed Pond Weed Pondweed (Potamogetonaceae: ~~Pond Weed~~ Pondweed Family).

SECTION 34. NR 27.03 (3) (i) 51., 52m., and 56. are amended to read:

27.03 (3) (i) 51. *Ribes oxycanthoides* ssp. *oxycanthoides* — ~~Canada~~ Canadian Gooseberry (Saxifragaceae Grossulariaceae: ~~Saxifrage~~ Currant Family).

(3) (i) 52m. *Sparganium glomeratum* — Clustered ~~Bur Reed~~ Bur-reed (Sparganiaceae: ~~Bur Reed~~ Bur-reed Family).

(3) (i) 56. *Valeriana sitchensis uliginosa* — Marsh Valerian (Valerianaceae: Valerian Family).

SECTION 33. 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 34. 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)

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The statement of scope for this rule, SS 124-13, was approved by the governor on September 20, 2013, published in Register No.694, on October 14, 2013, and approved by the Natural Resources Board on December 11, 2013.

The Wisconsin Natural Resources Board proposes an order to **create** NR 10.02 (11), 16.12 (3) (b) 12, 19.275 (4) (bm), 21.13 (4) (bm), and 22.13 (4) (bm) relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits.

ER-31-13(E)

Analysis Prepared by the Department of Natural Resources

1. Statutory Authority, Statutes Interpreted and Explanation: Statutes that authorize the promulgation of these rules are: ss. 29.011, 29.014, 29.039, and 29.604 Stats. These statutes establish management authority with the department, provide that the title to wild animals is vested with the state, and provide the department with authority to maintain open and closed seasons and other regulations and programs to conserve game and nongame species. Section 29.604 (3)(b), Wis. Stats., has been interpreted as allowing the department the authority to create and amend the list of Wisconsin's endangered and threatened species, NR 27.03, Wis. Admin. Code. All rules promulgated under this authority are subject to review under ch. 227, Stats.

2. Related Statutes or Rules: Existing policies relevant to the rule are Wisconsin Adm. Codes, NR 27, NR 10.02, NR 16.12, NR 16.13, NR 19.275, NR 21.13, and NR 22.13. No new policies are being proposed.

The department is also promulgating a corresponding permanent rule [ER-30-13]. The emergency and permanent rules both contemplate the following changes: add Blanding's turtle to the list of Wild Protected Animals (NR 10.02); add Blanding's turtles to the Captive Wildlife – Reptile and Amphibian Possession Exemptions [NR 16.12(3)(b)]; and add Blanding's turtles to the turtle season/limits with a season/limit of none/zero on NR 19.275(4), 21.13(4), and 22.13(4). The permanent rule only will also contemplate performing housekeeping on scientific and common names, and Federal Protection Status on administrative rules 10.02, 16.12, 16.13, 19.275, 21.13, 22.13, 27, and other related rules listing native plant and animal species.

3. Plain Language Analysis: The objective of this proposed rule is to protect Blanding's turtles from the threat of harvest and collection once they are removed from the Wisconsin Threatened species list. The Blanding's turtle was delisted on January 1, 2014 per administrative rule ER-27-11. This emergency and permanent rule is a follow-up action that was proposed during the public comment for ER-27-11. As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

SECTIONS 1-5 add the Blanding's turtle to the list of Wild Protected Animals, Captive Wildlife Exemptions, and to the turtle season's and limits in Wisconsin's waters to protect them from harvest and collection.

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

There are no federal regulations that would be in conflict with this proposed action. Blanding's turtles are not federally listed. In 2013, the United States Fish and Wildlife Service proposed addition of the Blanding's turtle to The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) list: <http://www.fws.gov/international/cites/cop16/blandings-turtle.html>

5. Comparison with Similar Rules in Adjacent States: There are similar possession laws in adjacent other states. The Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles shall not be taken or possessed except as authorized by the Director of the Department of Natural Resources.

6. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: Since 1979, when the Blanding's turtle was added to the threatened list, there has not been a pet or food trade industry for this species in the state. However, as a result of delisting, the Blanding's turtle is subject to turtle harvest regulations as all turtles not listed as threatened or endangered in NR 27 or otherwise specified have a 135-day open season between July 15 and November 30 where the public may capture and possess up to 5 individuals.

Internationally there is concern for this species because of the increasing trend in the pet trade and commercial collecting. Regionally the Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles cannot be taken or possessed except as authorized by the Director of the Department of Natural Resources.

As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

These proposed rule changes were developed with the assistance of the Bureaus of Natural Heritage Conservation, Fisheries Management, Wildlife Management, and Legal Services.

7. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: Pursuant to s. 227.137, Wis. Stats., the department is required to solicit comments on the economic impact of the proposed rule. Small businesses, as defined in s. 227.114(1), Wis. Stats., were asked to identify themselves as a small business in their comments. No comments were received in the 2-week comment period between January 22 and February 5, 2014.

The department anticipates minimal economic impact, with few entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a pet/food trade for the Blanding's turtle in Wisconsin.

8. Effect on Small Business: Pursuant to s. 227.137, Wis. Stats., the department is required to solicit comments on the economic impact of proposed rule. Small businesses, as defined in s. 227.114(1), Wis. Stats., were asked to identify themselves as a small business in their comments. No economic comments were received in the 2-week EIA comment period held between January 22 and February 5, 2014. The Department's email distribution list will be submitted to the Governor's Office of Regulatory Compliance. The EIA does not indicate that the proposed rule is reasonably expected to have a total impact of \$20,000,000 in implementation and compliance costs.

9. Agency Contact Persons: Terrell Hyde (608) 264-9255 terrell.hyde@wisconsin.gov or Erin Crain (608) 267-7479 erin.crain@wisconsin.gov. Wisconsin Department of Natural Resources, Natural Heritage Conservation NH/6, Madison, WI 53707-7921.

10. 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:

Terrell Hyde
 Department of Natural Resources
 Natural Heritage Conservation – NH/6
 P.O. Box 7921
 Madison, WI 53707-7921
 Email: Terrell.Hyde@Wisconsin.gov

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

Public hearings for the emergency rule will be scheduled and held within 45 days from publication in the Wisconsin state paper.

SECTION 1. NR 10.02 (11) is created to read:

10.02 (11) Blanding’s turtles *Emydoidea blandingii*.

SECTION 2. NR 16.12 (3) (b) 12. is created to read:

16.12 (3) (b) 12. No person may take or possess Blanding’s turtles of the species *Emydoidea blandingii* within the borders of the state. Persons may possess up to 2 of this species if legally obtained from out-of-state.

SECTION 3. NR 19.275 (4) (bm) is created to read:

Turtle species	Open seasons (both dates inclusive)	Daily bag and possession limit	Size limit
(bm) Blanding’s turtle	None	0	None

SECTION 4. NR 21.13 (4) (bm) is created to read:

Turtle species	Open seasons (both dates inclusive)	Daily bag and possession limit	Size limit
(bm) Blanding’s turtle	None	0	None

SECTION 5. NR 22.13 (4) (bm) is created to read:

Turtle species	Open seasons (both dates inclusive)	Daily bag and possession limit	Size limit
(bm) Blanding’s turtle	None	0	None

SECTION 6. STATEMENT OF EMERGENCY. The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified to preserve the public welfare and interest in ensuring a sustainable population of Blanding's turtles. The Blanding's turtle is proposed for delisting from the State's Threatened Species list per administrative rule ER-27-11, which is expected to take effect as early as December 2013. Although the Blanding's turtle no longer meets the scientific criteria for listing, the Department feels that the population is nonetheless too vulnerable to survive the threat of harvest and collection, and believes emergency rules are needed to ensure a proper recovery before these activities are permitted.

All turtles not listed as threatened or endangered in NR 27 or as otherwise specified have a 135-day open season (July 15-November 30) during which members of the public may capture and possess up to 5 individuals [NR 19.275 (4), 21.13(4) and 22.13(4)] per day. Permanent rule-making to protect Blanding's turtles from this harvest will not go into effect until after the 2014 open season for turtles is already underway. An emergency rule is therefore necessary to prevent the harvest and possession of Blanding's turtles during the 2014 open season until the permanent rule goes into effect.

The anticipated impact of collection and harvest to Blanding's turtle conservation and recovery in the state necessitates putting the emergency rule into effect during the 2014 open season for turtles while the agency complies with the permanent rule-making procedures.

SECTION 7. EFFECTIVE DATE. This rule shall take effect upon publication in the Wisconsin state paper pursuant to s. 227.24 (1) (c).

SECTION 8. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Cathy Stepp, Secretary

(SEAL)