

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

SUBJECT:

Request that the Board approve the statement of scope for Board Order WM-04-13, proposed rules affecting Ch's. NR 10, 11, 12, 15, 16, 18, and 45. related to the 2013 Wildlife Management housekeeping rules package.

FOR: April 2013 Board meeting

PRESENTER'S NAME AND TITLE: Scott Loomans, Wildlife Regulation Policy Specialist

SUMMARY:

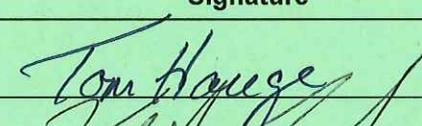
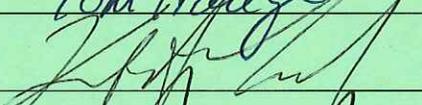
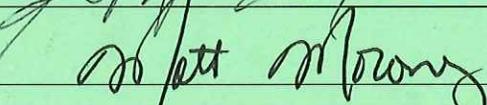
These rule changes are proposed to update administrative code language to correct inconsistencies, update outdated language, and provide clarification when appropriate. This rule package will amend regulations for hunting, deer carcass transportation, take of invasive species, deer carcass transportation to landfills, captive wildlife, possession of concealed handguns on DNR lands, and falconry.

The policies proposed in this rule are generally consistent with past board policies of regulating fish and game harvest for conservation purposes.

RECOMMENDATION: That the Board approve the statement of scope for Board Order WM-04-13.

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

Approved by	Signature	Date
Tom Hauge, Bureau Director		3/20/13
Kurt Thiede, Administrator		3/22/13
Cathy Stepp, Secretary		3/25/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: March 14, 2013

TO: Natural Resources Board Members

FROM: Cathy Stepp, Secretary

SUBJECT: Scope statement for Board Orders WM-04-13, the 2013 Bureau of Wildlife Management housekeeping rule

Subject of the Proposed Rules:

These rule changes are proposed to update administrative code language to correct inconsistencies, update outdated language, and provide clarification when appropriate. This rule package will amend regulations for hunting, deer carcass transportation, captive wildlife, possession of concealed handguns on DNR lands, and falconry found in Ch's. NR 10, 11, 12, 15, 16, 18, and 45.

Specifically, these rules may:

1. Update administrative code language related to deer hunting seasons that are no longer in effect with the passage of 2011 ACT 50. This rule proposal makes changes of a housekeeping nature by striking rule language that is no longer in effect as a result of the ACT.
2. Remove protective status for collared doves and monk parrots. Such protections could prevent management and control activities for these exotic species. [NR 10.04 and 12.05]
3. Simplify the process for licensed waste haulers and deer pick-up contractors to remove deer carcasses from the CWD zone to transport them directly to a landfill. Current rules allow DNR to grant an exception to the rule for licensed waste haulers, but incorporating this language directly into administrative code would make the process easier. [NR 10.105]
4. Expand hunting opportunities for disabled waterfowl hunters by easing restrictions on concealment requirements. Boats that can carry a person in a wheelchair may not be able to meet the concealment requirements for waterfowl hunting. [NR 10.12(3)]
5. Simplify the application process for conducting a Gun Deer Hunt for Hunters with Disabilities. Current application paperwork and procedures can cause undue hardship for hunt sponsors and a substantial amount of staff time is spent processing paperwork. [NR 10.40]
6. Update language pertaining to possession of concealed handguns on DNR lands to conform to state law. [NR 15 and 45].
7. Relax fence standards for captive canines. Fence standards for canines could be more similar to captive bear fences rather than captive feline fences because canines are unlikely to climb fences. [NR 16]
8. Update the falconry bag limit to include one hen pheasant. Under current rules, any hen pheasant killed by a falcon must be left to lie, even though the falcon does not differentiate between hen and rooster pheasants. [NR 18]
9. Replace the word 'Conibear' with the generic term 'body gripping trap' to protect the Conibear® trademark. [NR 11.10]
10. Simplify the Class B bear license requirements. [NR 12.15(11)(b)]
11. Simplify the regulations pertaining to entry into closed areas and waterfowl refuges to provide consistencies among properties. [NR 11 and 15]
12. The department may include other, minor, non-controversial rule proposals passed at the annual

Spring Fish & Wildlife Hearings as advisory questions by the Conservation Congress.

Policy Analysis:

All of the policies in this rule are generally consistent with past board policies of regulating fish and game harvest for conservation purposes.

Eurasian collared doves are currently a protected species in Wisconsin, and monk parrots are prohibited, but have become established in Chicago, and could naturally colonize in Wisconsin. These exotic species have a large reproductive output and an ability to adapt to a variety of habitats. Under current rules, Eurasian collared doves cannot be harvested, and permission from the DNR is necessary before destroying monk parrots or their nests. By classifying Eurasian collared doves as unprotected, and monk parrots as birds causing depredation, and thereby allowing their harvest by the public, the necessity of future management action for these two species could be reduced.

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

Waterfowl hunters must be 'concealed' in emergent vegetation as defined in NR 10.001(20) unless hunting one of the few lakes that allow open water hunting. Accessible boats may not be able to meet the concealment requirements because they may require deeper water to operate and it is therefore difficult to find emergent vegetation capable of meeting the definition of concealment. People with disabilities may also be physically unable to get into a smaller-sized boat that is capable of meeting the concealment requirement. This rule will make waterfowl hunting opportunities for people with disabilities more equitable.

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

State law (2011 Acts 35 and 51) pertaining to the possession of concealed handguns and firearms transportation changed in 2011 and this proposal will update administrative code to reflect these changes.

Fence standards for captive wolf, wolf-dog hybrids, and coyote are currently the same as for cougar, bobcat, and lynx (i.e., 10 feet tall with an additional 4 feet at the top slanted in at a 30-45° angle). Canines are unlikely to climb fences, so this rule seeks to reduce fence standards for captive canines to reflect their likely behavior. The new fence standards that would be in place under this rule would be the same as current rules for captive bear (i.e., 8 feet tall with an additional 3 feet at the top slanted inward at a 30-45° angle).

Under current rules, a falconer whose raptor kills a hen pheasant must leave the dead pheasant where it lies. This rule change will allow falconers to harvest and legally possess a hen pheasant taken by falconry methods outside the regular pheasant hunting season and hen/rooster stocked public hunting grounds. This will reduce the waste of a game bird, and will also make Wisconsin's rules for falconry more similar to rules in surrounding state.

The holder of the Conibear® trademark contacted the WI Department of Justice requesting that the DNR remove the term 'Conibear' from administrative code, and replace it with a more generic term, such as 'body-gripping trap', to protect their trademark name. Additionally, this rule may slightly expand the allowable sizes of colony traps used for muskrats so that they can be more easily constructed with the materials that are commonly available at hardware stores.

In 2011, a new law changed the requirements associated with a Class B bear license; one of the changes was that youth under 16 no longer need a Class B bear license to perform the activities authorized by a Class B bear license. This rule will help to simplify the administrative code associated with Class B bear licenses, and bring the administrative code in line with state law.

A number of closed areas and refuges are established to protect migratory birds during the hunting season. These refuges provide safe resting areas for migrating waterfowl and a result is that birds may remain in an area for a longer period of time during the hunting season and provide hunting opportunities around the refuges. However, many of regulations for refuges are out-of-date. Modifications to refuge-related rules could include clarifying that entry to refuges is not allowed during a split in the duck hunting season. For the first time in 2012, to accommodate people who prefer to hunt late in the fall season, the duck season will be closed for five days in November in the north duck zone. The season will re-open after those five days and continue five days later into November than would otherwise be allowed under the federal framework. Some refuges could be open to the public during the five days when the waterfowl season is closed, potentially resulting in disturbances to waterfowl that will have a negative effect on hunting when the season reopens.

Statutory Authority:

The chapter on wild animals and plants, in s. 29.014, "rule making for this chapter", establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to make changes related to taking of unprotected species, movement of deer waste, concealment of waterfowl hunters, the administration of deer hunts, taking of hen pheasants by falconers, legal trap types, and waterfowl hunting hours and season dates.

The establishment of game refuges is authorized in s. 23.09(2)(b) relating to the department's ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

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

State law (2011 Acts 35 and 51) relating to the possession of concealed handguns and transporting firearms changed in 2011 and this proposal will update administrative code to reflect these changes.

Under 2011 ACT 50, the department is prohibited from establishing regular firearm deer seasons that occur earlier than the Saturday before the Thanksgiving holiday. This rule proposal makes changes of a housekeeping nature by striking rule language that is no longer in effect as a result of the ACT.

Estimate of Staff Time Needed to Develop the Proposed Revision:

Approximately 400 hours will be needed by the department prior to and following the hearings.

Groups Likely Affected by the Proposed Rule:

Hunters, trappers, recreational users of DNR lands, and holders of captive wildlife permits are the principal groups that will be affected by this rulemaking. Any impacts will be very minor and no controversy is anticipated.

Anticipated economic impact of implementing the rule:

These rules, and the legislation which grants the department rule making authority, will have no 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.

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

The proposal to relax fence standards would replace more restrictive fence standards that are set to go into effect on January 1, 2014. By superseding the more restrictive fence standards, permit holders will not be required to upgrade existing fences to a higher standard. However, the number of people who possess captive canines such as wolf-dog hybrids is fewer than two dozen and no statewide economic impacts are expected. The captive breeding of wolf-dog hybrids is prohibited in Wisconsin so there should be no impact on wolf-dog hybrid breeders.

Other proposed rule changes are not expected to significantly influence the spending activities or hunting and trapping activity of hunters, trappers, dog trainers, or other outdoor enthusiasts. Correspondingly, no related economic impacts are anticipated.

Agency Contact:

Scott Loomans, Wildlife Regulation Policy Specialist, 101 South Webster Street, PO Box 7921, Madison, WI 53707-7921, (608) 267-2453, Scott.Loomans@wisconsin.gov

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WM-04-13

Relating to: The 2013 Bureau of Wildlife Management housekeeping rule amending Ch.'s NR 10, 11, 12, 15, 16, 18, and 45 Wis. Admin. Code

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

These will be permanent rules only.

2. Detailed description of the objective of the proposed rule:

These rule changes are proposed to update administrative code language to correct inconsistencies, update outdated language, and provide clarification when appropriate. This rule package will amend regulations for hunting, deer carcass transportation, captive wildlife, possession of concealed handguns on DNR lands, and falconry found in Ch's. NR 10, 11, 12, 15, 16, 18, and 45.

Specifically, these rules would;

1. Update administrative code language related to deer hunting seasons that are no longer in effect with the passage of 2011 ACT 50. This rule proposal makes changes of a housekeeping nature by striking rule language that is no longer in effect as a result of the ACT.
2. Remove protective status for collared doves and monk parrots. Such protections could prevent management and control activities for these exotic species. [NR 10.04 and 12.05]
3. Simplify the process for licensed waste haulers and deer pick-up contractors to remove deer carcasses from the CWD zone to transport them directly to a landfill. Current rules allow DNR to grant an exception to the rule for licensed waste haulers, but incorporating this language directly into administrative code would make the process easier. [NR 10.105]
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12. The department may include other, minor, non-controversial rule proposals passed at the annual Spring Fish & Wildlife Hearings as advisory questions by the Conservation Congress.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

All of the policies in this rule are generally consistent with past board policies of regulating fish and game harvest for conservation purposes.

Eurasian collared doves are currently a protected species in Wisconsin, and monk parrots are prohibited, but have become established in Chicago, and could naturally colonize in Wisconsin. These exotic species have a large reproductive output and an ability to adapt to a variety of habitats. Under current rules, Eurasian collared doves cannot be harvested, and permission from the DNR is necessary before destroying monk parrots or their nests. By classifying Eurasian collared doves as unprotected, and monk parrots as birds causing depredation, and thereby allowing their harvest by the public, the necessity of future management action for these two species could be reduced.

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4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The chapter on wild animals and plants, in s. 29.014, "rule making for this chapter", establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to make changes related to taking of unprotected species, movement of deer waste, concealment of waterfowl hunters, the administration of deer hunts, taking of hen pheasants by falconers, legal trap types, and waterfowl hunting hours and season dates.

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5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 400 hours will be needed by the department prior to and following the hearings.

6. List with description of all entities that may be affected by the proposed rule:

Hunters, trappers, recreational users of DNR lands, and holders of captive wildlife permits are the principal groups that will be affected by this rulemaking. Any impacts will be very minor and no controversy is anticipated.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

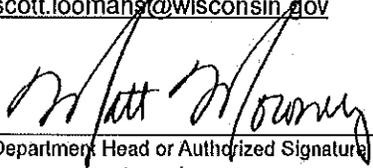
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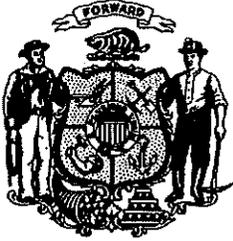
Contact Person: Scott Loomans, Wildlife Regulation Policy Specialist, 608-267-2452
scott.loomans@wisconsin.gov



Department Head or Authorized Signature

2/4/13

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

March 6, 2013

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Scope Statement for WM-04-13 relating to amending regulations for hunting, deer carcass transportation, captive wildlife, possession of concealed handguns on DNR lands and falconry

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on February 5, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule WM-04-13. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor