

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

SUBJECT:

Request that the Board approve the statement of scope for Board Orders ER-30-13 and ER-31-13(E) and conditionally approve the public hearing notice for ER-30-13 and notice of submittal of proposal rules to the Legislative Council Rules Clearinghouse, proposed rules affecting NR 10.02, 16.12, 19.275, 21.13 and 22.13 related to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits.

FOR: December 2013 Board meeting

PRESENTER'S NAME AND TITLE: Erin Crain, Bureau Director of 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 once they are removed from the Wisconsin Threatened species list. The Blanding's turtle is proposed for delisting from the Threatened list per administrative rule ER-27-11, which the board approved in May 2013 and is expected to take effect as early as December 2013. As a result of that delisting, the Blanding's turtle will be 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 (July 15 – November 30) where the public may capture and possess up to 5 individuals [NR 19.275 (4), 21.13(4), and 22.13(4)].

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.

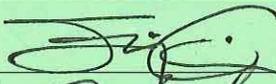
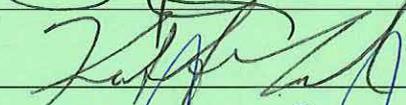
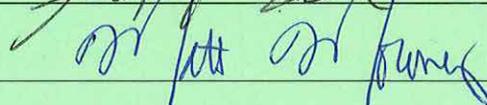
Permanent rule-making to protect Blanding's turtles from this harvest will not go into effect until after the 2014 open season for turtles is already underway. An emergency rule is therefore necessary to prevent the harvest and possession of Blanding's turtles during the 2014 open season until the permanent rule goes into effect. If this Scope Statement is approved, the Department will return before the board in December to seek approval of the emergency rule this fall with a delayed effective date of July 2014.

The Department estimates minimal economic impact 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.

RECOMMENDATION: That the Board approve the statement of scope for Board Orders ER-30-13 and ER-31-13(E) and conditionally approve the public hearing notice for ER-30-13 and notice of submittal of proposal rules to the Legislative Council Rules Clearinghouse.

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

- (choose one)
- Statement of scope
- Fiscal estimate and economic impact analysis (EIA) form
- Response summary
- Attachments to background memo
- Governor approval of statement of scope
- Environmental assessment or impact statement
- Board order/rule

Approved by	Signature	Date
Erin Crain, Bureau Director		9/12/13
Kurt Thiede, Administrator		9/23/13
Cathy Stepp, Secretary		11/13/13

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: ER-30-13 & ER-31-13(E)

Relating to: Addition of the Blanding's turtle to the State's Protected Wild Animal list (NR 10.02), possession exemptions for native amphibians and reptiles (NR 16.12), and turtle seasons and limits (NR 19.275, 21.13, and 22.13).

Rule Type: Both Permanent and Emergency

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

An emergency rule, pursuant to s. 227.24, Stats., is necessary 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.

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

The objective of this emergency and permanent 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 is proposed for delisting from the Threatened list per administrative rule ER-27-11, which is expected to take effect as early as December 2013. As a result of that 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 (July 15 - November 30) where the public may capture and possess up to 5 individuals [NR 19.275 (4), 21.13(4), and 22.13(4)].

Through the Endangered and Threatened species list revision process for administrative rule ER-27-11, the Blanding's turtle was recommended by the public for addition to the Protected Wild Animal list and associated rules to address the threat of collection to species recovery once delisting from the Threatened list takes effect. The Department received considerable public comment on the issue of collection and harvest and the intrinsic vulnerability of the Blanding's turtle given its population age structure.

The Blanding's turtle is a long-lived species that is slow to mature. Life spans may exceed 75 years and individuals may not reach sexual maturity for 14-25 years. Adult females are most at risk for collection because they are easier to locate, as they nest in open areas like fields and roadways, and may receive a higher price in the pet trade. Inherently, losses of adult females have a greater long-term impact on the population. It may be difficult for populations to recover from these losses.

Internationally there is concern for this species. 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 because of the increasing trend in the pet trade internationally: <http://www.fws.gov/international/cites/cop16/blandings-turtle.html>. And the IUCN/SSC Tortoise and Freshwater Turtle Specialist Group identified the elimination of commercial collecting as an immediate conservation need for this species worldwide: <http://www.iucn-tfsg.org/emyoidea-blandingii-015/>.

Since 1979, when the Blanding's turtle was added to the threatened list, there has not been a pet trade industry for this species in the state. 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.

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 receives on the State's Threatened list. As such, minimal controversy is anticipated.

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/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). Permanent rule-making procedures will not allow the establishment of these proposed rule changes before the start of the 2014 open season for turtles. The impact of collection and harvest to Blanding's turtle conservation necessitates putting the emergency rule into effect during the 2014 open season for turtles while the agency complies with the permanent rule making procedures.

The permanent rule only, will also contemplate performing housekeeping on scientific and common names of several plant and animal species, and Federal Protection Status on administrative rules 10.02, 16.12, 19.275, 21.13, 22.13, 27, and other related rules listing native plant and animal species. Additional rule changes may be pursued which are reasonably related to those discussed here.

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:

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

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, 19.275, 21.13, 22.13, 27, and other related rules listing native plant and animal species.

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

Statutes that authorize the promulgation of these rules include: ss. 29.011, 29.014, and 29.039 Stats. These statutes establish management authority, 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. All rules promulgated under this authority are subject to review under ch. 227, Stats.

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

160 hours

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

The proposed rule changes will continue similar possession and collection limits that the Blanding's turtle receives 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 the turtle pet/food trade.

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:

There are no federal regulations that would be in conflict with this proposed action. 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>

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.

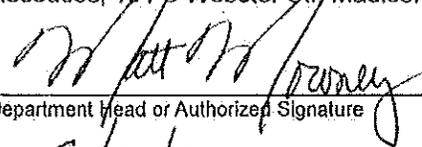
8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The Department estimates minimal economic impact 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.

9. Anticipated number, month and locations of public hearings:

The Department anticipates holding 1 public hearing in the month of March, 2014. The hearing location will be the DNR office in Madison with remote participation at the DNR offices in Green Bay, Eau Claire, and Wausau. The Department will hold these hearings in these locations to allow for greater participation across the state and to effectively use staff time and resources.

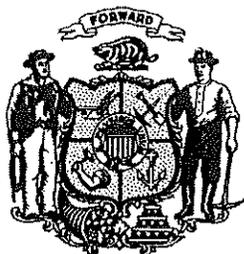
Contact Person: Terrell Hyde (608) 264-9255 terrell.hyde@wisconsin.gov or Erin Crain (608) 267-7479 erin.crain@wisconsin.gov. Natural Heritage Conservation NHC/6, Wisconsin Department of Natural Resources, 101 S Webster St, Madison, WI 53707-7921.



Department Head or Authorized Signature

8/8/13

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

September 20, 2013

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

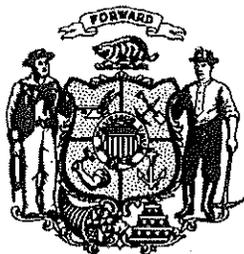
RE: Scope Statement for ER-30-13 modifying Chapters NR 10, 16, 19, 21, and 22 relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions for native amphibians and reptiles, and turtle seasons and limits

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on August 9, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule modifying Chapters NR 10, 16, 19, 21, and 22 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

Scott Walker
Governor



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

September 20, 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 ER-31-13 Emergency Rule modifying NR 10, 16, 19, 21, and 22 relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions for native amphibians and reptiles, and turtle seasons and limits

Dear Secretary Stepp,

I hereby approve the statement of scope submitted on August 9, 2013, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying Chapters NR 10, 16, 19, 21, and 22 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

Scott Walker
Governor