

The Wisconsin Department of Natural Resources proposes an order to repeal ss. NR 10.11(7); to amend ss. NR 10.01(2)(f), 1 through 3, 10.01(3)(e)1.b., 10.01(3)(e)2.b., 10.01(3)(em)1., 10.01(3)(es)3., 10.01(3)(i)1., 10.02(1), 10.06(6) and 45.09(5); and to create s. NR 10.106(2)(e)1. relating to game and hunting, wildlife damage and nuisance control, and DNR managed lands.

WM-01-11

Analysis Prepared by the Department of Natural Resources

Statutes interpreted and explanation of agency authority: The department has interpreted the following statutes as providing the authority to promulgate rules regarding the management of department lands, hunting, trapping, reports of hunters and the possession of wild animals: ss. 23.09(2)(p), 23.11, 29.011, 29.014, 29.059 and 29.089 Stats.

Statutory authority and explanation of agency authority: Statutes that authorize the promulgation of these rules include: ss. 23.09(2)(p), 23.11, 29.011, 29.014, 29.059 and 29.089 Stats. These statutes; establish management authority and police power of department managed lands, provide that the title to wild animals is vested with the state, provide the department with authority to maintain open and closed seasons and other regulations to conserve fish and game and ensure opportunities for hunting and trapping, report the number and kind of animal taken by hunters and trappers and authorize and regulate hunting on land in state parks. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Related rule or statute: There are no state rules or statutes currently being promulgated that directly relate to the provisions that are proposed in this administrative order.

Plain language analysis: The Bureau of Wildlife Management recommends promulgating administrative rules modifying chapters NR 10 and 45 related to game and hunting and DNR managed lands. These rule changes are proposed for inclusion on the 2011 Spring Hearing rules package and questionnaire. Specifically, these rule changes will do the following:

Section 1 repeals the sunset of trial period with an extended fall turkey hunting season so that this December hunt will be permanent. This section also extends each of the six consecutive spring turkey hunting seasons by two days.

Section 2 allows the use of rifles for firearm deer hunting in all of Waupaca County.

Sections 3 and 5 allow firearm deer hunting at Copper Falls State Park during the traditional nine day and muzzleloader only seasons.

Section 4 extends the archery deer hunting season to include and run concurrent with the traditional November nine day gun deer season.

Section 6 establishes a September firearm and archery hunting season for elk. The season would run concurrently with the first 30 days of the archery deer hunting season.

Section 7 allows landowners lessees or occupants of private land or any other person with permission of the landowner, lessee or occupant to shoot a cougar that is in the act of killing, wounding or biting a domestic animal and requires that the shooting be reported within 24 hours and the carcass of the cougar be turned over to the department. Department rules allow a landowner, lessee or occupant to shoot a wolf in the same situation, although the authority is currently pre-empted by federal rule. These sections clarify that the authority to shoot a wolf also applies employees and family members.

Section 8 allows pheasant hunting during normal hunting hours on the weekend at stocked properties that otherwise close at 2:00 p.m.

Section 9 requires that, if asked, bear hunters must provide carcass samples to the department at the time of harvest registration for purposes of research.

Section 10 repeals the requirement that elk hunters must wear blaze orange except that it is still required when a firearm deer season is open.

Section 12 includes Manitowoc, Pierce and St. Croix in the list of counties where the discharge of firearms on department lands is prohibited except while hunting, dog training, or at established ranges.

Summary of and comparison with existing or proposed federal regulations: 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.

Comparison with rules in Adjacent States: These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of wild game and furbearer species that are established based on needs that are unique to that state's resources and public desires.

All of Wisconsin's surrounding states have fall turkey hunting seasons but most close at the end of October or in November. Iowa's gun/bow season ends on December 3 but archery-only hunting reopens on December 20 and continues through January 10. Spring season dates in all of Wisconsin's surrounding states are variable but similar to Wisconsin. All of our surrounding states have four or more individual spring hunting periods which can be as short as four days or more than 20 days depending on the hunting period selected.

Wisconsin's surrounding states have a variety of firearm restrictions during deer seasons. In Illinois and most of Iowa, rifles are prohibited for deer hunting. In Minnesota, rifles are prohibited in the western and southern portions of the state. Michigan prohibits rifles for deer hunting in the lower half of the lower-peninsula during deer season for, they believe, safety reasons.

Michigan allows the use of archery gear and crossbows during its firearm deer season. Iowa allows the use of archery gear or firearms during certain seasons but not all of their firearm seasons.

All of Wisconsin's surrounding states allow deer hunting to some extent on properties that are comparable to our state park system. Minnesota allows deer hunting at 42 state parks and Michigan hold hunts in at least 26 park properties.

Minnesota has several elk hunting periods; the first beginning as early as mid September. Michigan also has different elk hunting periods, the first beginning August 31 in 2010. The primary MI hunt begins in December. North Dakota opens its rifle season on September 3, Pennsylvania on November 1, South Dakota on September 18, Nebraska on September 25, Arkansas on September 20 and Kentucky on October 2. Michigan and Minnesota require firearm elk hunters to wear blaze orange and archers must wear orange if a firearm deer season is open.

Wisconsin's surrounding states are not known to have established, breeding populations of cougars. Individual cougars have, however, been documented in surrounding states in recent years. In Minnesota, cougars are protected by law and only public safety officials are authorized to kill a cougar that proves to be an imminent threat to humans. Cougars are classified as an endangered species in Michigan and it is unlawful to kill, harass or otherwise harm a cougar except in the immediate defense of human life. Cougars are not protected in Iowa. In Illinois, cougars are not protected under state rules.

Hunting hours on Illinois department operated, controlled pheasant hunting properties open at 9:00 a.m. and close at 4:00 p.m. Other surrounding states do not have comparable put-and-take hunting programs.

Summary of factual data and analytical methodologies: The rule changes included in this order do not deviate from current department policy on the management of wildlife and the regulation of hunting and trapping.

The fall turkey hunting season was extended in the five southern-most management units beginning in 2009 for a two-year trial period. This proposal would make the extended season permanent by lifting a sunset. In the five zones, the turkey season has continued to close on the Thursday before the traditional November firearm deer season but, under the extension, has reopened on the Monday after the deer season and continued through December 31. With one year of harvest data to review, the extended season has not resulted in increased harvest but, rather, the harvest has been spread out over a longer period of time. Harvest data from the fall, 2010 season will be available as this rule order is being promulgated.

This proposal would extend each of the six spring turkey hunting seasons by two days. The current five day seasons run from Wednesday to Sunday. Under the proposal, each season would continue to open on Wednesday but would continue through Tuesday of the following week. Because the additional days are weekdays, this proposal is not expected to result in a significant change in harvest or create any conflict between people who are outdoors during the spring season.

This proposal would allow rifles for use during firearm deer seasons in Waupaca County. Currently shotguns with slugs, handguns, and muzzleloaders are the only legal firearms there. Wisconsin hunting accident statistics do not show a safety advantage of shotgun slugs over rifle bullets. Hunters in Waupaca County have requested this rule change.

Hunting is statutorily prohibited in state parks except where allowed by administrative rule. This rule proposal would establish hunting at Copper Falls State Park in Ashland County during the traditional nine day firearm and muzzleloader only deer hunting seasons. These seasons will

provide a hunting opportunity and deer herd control. Special permits would not be required and the park would not receive a deer management unit number.

The archery deer hunting season would be extended by nine days, concurrent with the November firearm season, under this proposal. In the past, archery deer hunting has closed on the Thursday before the November firearm season and reopened on the day after the firearm season ends. Under this proposal, the archery season would continue to be closed on the day before the traditional November firearm deer season. This extension was previously proposed by the department in 2009 Clearinghouse Rule 09-078, a rule that contained many archery deer and firearm season revision. The department is no longer promulgating that rule proposal. Provisions of this order also establish comparable archery season extension for state parks that allow archery hunting. Those state parks and trails include; Elroy-Sparta, Council Grounds (52A), Buckhorn, Hartman Creek, Interstate, Kinnickinnic, Wildcat Mountain (unit 72A), Rib Mountain (unit 57D), Harrington Beach (unit 69C), Kohler-Andrae (unit 77E), Willow River, Newport, Tuscobia-Park Falls, Brunet Island (unit 23A), the Loew Lake Unit - Kettle Moraine state forest (unit 77D), the Plum Island portion of Grand Traverse Islands, Big Bay, Mill Bluff and Rock Island state parks.

Under current rules, a nine day elk hunting season will be held in December after the elk population reaches a goal of 200 animals. This proposal would establish an additional early season for elk beginning on the Saturday nearest September 17 and continuing for 30 days. By statute, elk hunters are limited to drawing one tag in their lifetime and allowing more days to hunt will help take full advantage of this very limited opportunity. An earlier opening day will also allow hunting during the rut. During the rut, elk are particularly active and additional hunting methods, such as calling, may enhance the hunting experience. Department staff advise that there is not a biological reason for the current season framework that does not allow hunting during the rut.

Under this proposal, owners and lessees or occupants of private land or any other person with permission of the landowner, lessee or occupant could shoot and kill a cougar that is in the act of killing, wounding or biting a domestic animal. Shootings must be reported within 24 hours to a department conservation warden. The carcass of a cougar must be turned over to the department. Department rules currently allow a landowner, occupant or lessee to shoot a wolf in the same situation, although the authority is currently pre-empted by federal rule. These sections clarify that, in addition, the authority to shoot a wolf also extends to employees and family members when wolves are delisted at the federal level.

Blaze orange is currently required of all hunters, except waterfowl hunters, in an elk management zone when the elk season is open. This proposal repeals the blaze orange requirement in order to reduce conflict with other hunters who may not want to wear orange in an elk zone during a September and October elk season. When the department does begin to issue elk hunting permits, only five would be issued. Each of the five elk permit holders is required to take a department established elk hunter education course which will include instruction in safety aspects of the hunt. When the elk hunting season coincides with a firearm deer hunting season, all hunters other than waterfowl hunters would still be required by statute to wear blaze orange.

Pheasant hunting hours at 22 department properties that are stocked with pheasants close at 2:00 p.m. and bird are stocked afterwards. This proposal would allow pheasant hunting all afternoon on Saturdays and Sundays. During the week, when pheasants are stocked, hunting would continue to close at 2:00 p.m. through November 3. This would result in all day pheasant hunting on two additional weekends. During years when the department only stocks for several weeks, this could be viewed as a significant increase in hunting opportunity. Some pheasant hunters

would prefer to hunt waterfowl during the morning hours and this would add to their opportunities. This rule change would not affect Bong Recreation Area in Racine County.

The department has for years collected bear teeth from harvested bears at registration stations. These teeth have been critical to population modeling efforts. In recent years, we have initiated new research projects that require collection of pieces of bear rib from hunters at registration stations. Submitting a sample is voluntary at this time but, under the proposal, submitting samples at registration stations could be required of successful hunters. Establishing this authority by rule will make it easier to gain compliance with tissue sample requests. This will improve the quality and consistency of the data collected and will increase the department's return on investments made in a 2011 tetracycline mark-recapture study of bears. Registration station operators have told wildlife field staff that collecting samples would be easier for them if it was mandatory. The department will be asking registration stations to collect bear teeth and bear ribs as a regular part of registration into the future.

Currently it is illegal to discharge a firearm or air gun on certain state-owned lands except while hunting, dog training or trialing under department permit, or at an established shooting range. This rule prevents littering, damage to property, and addresses safety concerns where it applies to DNR managed properties in 17 counties located primarily in Southern Wisconsin and at the Kettle Moraine and Point Beach state forests as well as on recreation areas, natural areas, and trails. This proposal would extend the prohibition to Manitowoc, St. Croix and Pierce counties.

Analysis and supporting documents used to determine effect on small business or in preparation of 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.

Effects on Small Businesses: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

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

Deadline for Written Comments: Comments on this proposed rulemaking may be submitted to the agency contact person listed above. The deadline for written comments is April 11, 2011.

Section 1. NR 10.01(2)(f)1 through 3 are amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit	
NR 10.01(2)(f)			
1.	All wild turkey hunting zones as described in s. NR 10.29, excluding state parks for which a quota has been established under s. NR 10.25 (5).	Spring seasons beginning on Wednesday nearest April 13 and continuing Wednesday through Sunday <u>Tuesday of the following week</u> for 6 consecutive 5-day <u>7-day</u> time periods, except on Ft. McCoy military reservation where the season continues for 40 consecutive days.	Only male or bearded turkeys may be killed. The possession limit corresponds to the number of carcass tags issued.
2.	All wild turkey hunting zones as described in s. NR 10.29 and the Mill Bluff state park portion-of zone 1, excluding all other state parks, for which a quota has been established under s. NR 10.25(5). Wild turkey hunting zones 1 – 5, as described in s. NR 10.29 and the Mill Bluff state park portion of zone 1, excluding all other state parks, for which a quota has been established under s. NR 10.25(5).	Fall season beginning on the Saturday nearest September 15 and continuing through the Thursday immediately preceding the Thanksgiving holiday. Fall season reopening on the Monday immediately following the Thanksgiving holiday and continuing through December 31 during the 2009 and 2010 seasons.	Either sex of turkey may be killed. The possession limit corresponds to the number of carcass tags issued. Either sex of turkey may be killed. The possession limit corresponds to the number of carcass tags issued.
3.	Zones 1A, 1B, 1C, 1D, 1E, 1F, 2A, 3A, 4A, 4B, 4C, the Mill Bluff state park portions of zone 1 and the Glacial Heritage Area state park portions of zone 2 as described in s. NR 10.29.	Spring season beginning on the Wednesday nearest April 13 and continuing Wednesday through Sunday <u>Tuesday of the following week</u> for 3 consecutive 5-day <u>7-day</u> time periods.	Only male or bearded turkeys may be killed. The possession limit corresponds to the number of carcass tags issued.
Note: Glacial Heritage Area state park lands may be leased to another unit of government for management purposes and access permits to hunt turkeys on those lands would be obtained from that unit of government.			

Section 2. NR 10.01(3)(e)1.b. is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
10.01(3)(e)1.		
b In the counties or parts of counties and deer management units of Brown, Calumet, Dane, Dodge, Door (Detroit, Plum, Rock and Washington Islands only), Fond du Lac, Green, Jefferson, Kenosha, Lafayette, Manitowoc, Outagamie, Ozaukee, Pierce (unit 59B, 60A, 60B and 61 portions), Racine, Rock, St. Croix (unit 59B and 60B portions), Sheboygan, Shawano (south of highway 29 and east of highway J), Trempealeau national wildlife refuge, Walworth, Washington, Waukesha, Waupaca and Winnebago.	Shotgun season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days.	One buck deer and additional antlerless deer as authorized by antlerless deer permits issued under s. NR 10.104.

Section 3. NR 10.01(3)(e)2.b. is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01(3)(e)2.		
b. The following state parks and trails: Big Bay state park , <u>Copper Falls</u> , Governor Thompson, Elroy-Sparta, Hartman Creek, Interstate, the Plum Island portion of Grand Traverse Islands, Mill Bluff, Nelson Dewey, Newport, Potawatomi, Rock Island, Straight Lake, Whitefish Dunes, Wyalusing (73A) and Tuscobia-Park Falls.	Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days. The firearm type is the same as authorized for the surrounding deer management unit except that rifles are allowed in Hartman Creek state park.	One buck deer and additional antlerless deer as authorized by antlerless deer permits issued under s. NR 10.104.

Section 4. NR 10.01(3)(em)1. is amended to read:

	Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01(3)(em) Deer bow season			
1.	Statewide except as established under subs. 2. to 5. and pars. (ed) and (et).	<p>Early archery season. Beginning on the Saturday nearest September 15 and continuing through the Thursday immediately prior to the opening of the deer gun season described in par. (e).</p> <p>Late archery season. Reopening on the day immediately after the deer gun season described in par. (e) 1. a. and b. <u>Saturday immediately preceding the Thanksgiving holiday</u> and continuing through the second Wednesday following the Thanksgiving holiday.</p> <p>Beginning on the second Thursday following the Thanksgiving holiday and continuing for 4 consecutive days.</p>	<p>One buck and one antlerless deer as authorized by the appropriate archery deer carcass tag and additional antlerless deer as authorized by antlerless permits issued under s. NR 10.104. During an October firearm season established in par. (e) 1. e., the bag limit is one antlerless deer per antlerless deer permit issued under s. NR 10.104.</p> <p>One buck and one antlerless deer as authorized by the appropriate archery deer carcass tag and additional antlerless deer as authorized by antlerless permits issued under s. NR 10.104.</p> <p>One antlerless deer per antlerless deer permit issued under s. NR 10.104.</p>
		Beginning on the day immediately following the 4-day antlerless hunt above and continuing through the Sunday nearest January 6.	One buck and one antlerless deer as authorized by the appropriate archery deer carcass tag and additional antlerless deer as authorized by antlerless permits issued

			under s. NR 10.104.
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Section 5. NR 10.01(3)(es)3. is amended to read:

	Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01(3)(es) Muzzleloader deer season.			
3.	Big Bay, <u>Copper Falls</u> , Mill Bluff, Newport, Rock Island, and Straight Lake state parks.	Beginning on the Monday immediately following the Thanksgiving holiday and continuing for 10 consecutive days.	One buck deer and additional antlerless deer as authorized by antlerless deer permits issued under s. NR 10.104.

Section 6. NR10.01(3)(i)1. is amended to read:

	Kind of animal and locality	Open season	Limit
NR10.01(3)(i)			
1	Those portions of elk management zones A and B as described in NR10.37	Beginning on the second Thursday after Labor Day and continuing for 7 consecutive days <u>Saturday nearest September 15 and continuing for 30 consecutive days</u> , when the department determines that the total elk population estimate for zones A and B is at least 600 <u>200</u> elk. Beginning the second Thursday in December and continuing for 9 consecutive days, when the department determines that the total elk population estimate for zones A and B is at least 200 elk.	One bull elk or antlerless elk as authorized by antlerless elk tag in s. NR10.111 (5) (c).

Section 7. NR 10.02(1)(b) is amended to read:

NR 10.02(1)(b) On private land, the landowner, lessee or occupant of the land, or any other person with permission of the landowner, lessee or occupant may shoot and kill any gray wolf or cougar in the act of killing, wounding or biting a domestic animal. Shootings shall be reported within 24 hours to a department conservation warden. The carcass of the wolf or cougar shall be turned over to the department.

Section 8. NR 10.06(6) is amended to read:

NR 10.06(6) PHEASANT HUNTING. Except as provided in this subsection, pheasant hunting hours are those hunting hours established for small game in sub. (5). Pheasant hunting hours shall close at 2:00 p.m. ~~daily~~ on weekdays within the posted boundaries of the following state wildlife areas beginning the third day of the pheasant hunting season established in s. NR 10.01 (2) (c) and continuing through November 3.

Section 9. NR 10.106(2)(e)1. is created to read:

NR 10.106(2)(e)1. Notwithstanding s. 29.347, Stats., any part of a harvested bear may be collected or sampled by the department for research purposes prior to or during registration. No person may refuse to allow a sample to be taken during registration.

Section 10. NR 10.11(7) is repealed.

Section 11. NR 45.09(5) is amended to read:

NR 45.09(5) No person may possess any loaded or uncased firearm or air gun while within the exterior boundary of state-owned lands posted with department signs in Dane, Dodge, Fond du Lac, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Milwaukee, Outagamie, Ozaukee, Pierce, Racine, St. Croix, Sauk, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties or on state forest lands in the Kettle Moraine or Point Beach state forests, state recreation areas, state natural areas or on state trails established on abandoned railroad grades, except as follows:

- (a) While engaged in hunting in accordance with the open seasons established in s. NR 10.01 on properties where hunting is authorized.
- (b) At target ranges designated by the department.
- (c) While engaged in dog trials under department permit.
- (d) While training dogs in designated areas under department permit.
- (e) When paintball guns are approved pursuant to s. NR 45.04 (3) (u).

Section 12. Effective dates. This rule shall take effect on February 1, 2012 except sections 1, 2, 3, 5, 7, and 9 which shall take effect on the first day of the first month after publication.

Section 13. 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)