

CR 89-98



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary
Box 7921
Madison, Wisconsin 53707
TELEFAX NO. 608-267-3579
TDD NO. 608-267-6897

April 6, 1990

In reply refer to 1020

Mr. Gary L. Poulson
Assistant Revisor of Statutes
Suite 702
30 W. Mifflin Street

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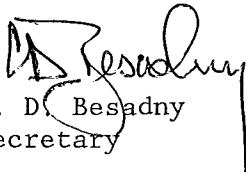
Revisor of Statutes
Bureau

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. WM-19-89. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Transportation, Conservation and Mining pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,


C. D. Besadny
Secretary

Enc.



State of Wisconsin

DEPARTMENT OF NATURAL RESOURCES

Carroll D. Besadny, Secretary
Box 7921
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STATE OF WISCONSIN)
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DEPARTMENT OF NATURAL RESOURCES)

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. WM-19-89 was duly approved and adopted by this Department on September 28, 1989 and March 1, 1990. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 10th
day of April, 1990.


Bruce B. Braun, Deputy Secretary

(SEAL)

6-1-90

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

IN THE MATTER of repealing ss. NR 10.03, 19.001(4), 19.01(2)(m) and (n), 19.26 and 19.85; amending ss. NR 10.01(4)(b) and (c), 10.13(1)(a)2., (b)1., 3., 4., 5., 6., 8., 12 (intro.), 10.13(2)(c) and (3)(b); repealing and recreating s. NR 10.04 (note) and 19.01(2)(1); creating ss. NR 10.001(25e), 10.13(1)(b)13 and chapter NR 12 of the Wisconsin Administrative Code pertaining to wildlife damage control.

WM-19-89

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 29.174(3) and 227.11(2)(a) and (d), Stats.

Statutes interpreted: ss. 29.174(1) and (2)(a), 29.425, 29.59 as repealed and recreated by 1989 Wisconsin Act 31.

The proposed rules: liberalize the regulations regarding harvest of beaver by trappers and the control of beaver damage by landowners; establish a new chapter on wildlife damage control; establish the general issuance criteria and conditions for permits to shoot or trap wild animals causing damage and specific conditions for deer and Canada geese shooting permits. Specific provisions include:

1. Allowing the use of underwater snares for beaver trapping.
2. Allowing trapping within 15 feet of a beaver lodge.
3. Allowing landowners and lessees to remove beaver dams without obtaining prior approval from the department.
4. Specification of when landowners and lessees need prior written approval to remove wild animals causing damage.
5. Establishment of criteria for the issuance of permits to remove wild animals causing damage and requirements for assistance by persons other than the permittee in the removal effort.
6. Establishment of general requirements that apply to all permits to shoot or trap wild animals causing damage that include conditions on public use, compliance with hunting or trapping laws, reporting the total number of wild animals removed, carcass care, department assistance, and possession of permit materials.

7. Establishment of specific requirements for bear, deer and Canada geese shooting permits that include conditions on participation, shooter selection, prohibited methods, shooting hours, tagging, and carcass sale.

SECTION 1. NR 10.001(25e) is created to read:

NR 10.001(25e) "Snare" means a non-spring activated noose used for catching furbearers.

SECTION 2. NR 10.01(4)(b) and (c) are amended to read:

NR 10.01(4)(b) Incidental take of muskrats. During the closed season for muskrats, licensed trappers may retain for salvage any muskrats taken incidentally while trapping for beaver in the portions of the state open to beaver trapping as described in par. (c) ~~and s. NR 19.85~~.

<u>Kind of animal and locality</u>	<u>Open season (all dates inclusive)</u>	<u>Limit</u>
(c) <u>Beaver trapping</u>	The opening date for the beaver trapping season is the same as the opening date for muskrat and mink as established in par. (a) and continuing through March 15 <u>April 30</u>	None

SECTION 3. NR 10.03 is repealed.

SECTION 4. NR 10.04 (Note) is repealed and recreated to read:

Note: Persons taking unprotected animals must possess a hunting or trapping license and comply with all method of taking requirements of this chapter unless otherwise authorized by the department in writing or exempted under ch. NR 12.

SECTION 5. NR 10.13(1)(a)2., (b)1., 3., 4., 5., 6., 8. as affected by Clearinghouse Rule No. 88-214, 12. (intro.), and (2)(c) are amended to read:

NR 10.13(1)(a)2. Agents or employees possessing written authorization from the landowner, land lessee or responsible governmental body may use firearms to shoot beaver ~~in damage control areas established in s. NR 19.85~~ under s. NR 12.10.

(1)(b)1. (title) Traps and snares. Set out or place traps or snares, whether set or sprung, during the closed season.

3. (title) Trap and snare limit. Set, place or operate more than 75 traps ~~of any kind~~ or snares in any combination for the purposes of capturing furbearing animals.

4. (title) Watersets. Take, capture or kill, or attempt to take, capture, or kill any furbearing animals at any time by means of ~~water sets~~ watersets except during that period when and in those areas where there is an open season for trapping muskrat, beaver, or otter. In addition, persons removing beaver under ~~s. NR 19.85~~ s. NR 12.10 may use watersets.

5. (title) Trap and snare placement. Set any ~~trap~~ snares or traps at any time within 15 feet of any ~~beaver house or~~ beaver dam, except when ~~participating under a beaver damage control subsidy agreement as established in s. NR 19.85 or~~ when trapping under the landowner authority established by s. 29.24, Stats.

Note: The rule exception allows trapping on beaver ~~houses and~~ dams by landowners.

6. (title) Trap and snare use. ~~It shall be unlawful for any person to set~~ Set, place, operate or possess while on or adjacent to waters of this state, any trap other than a steel-jawed trap ~~or~~, live traps or snare other

than that defined in s. NR 10.001(25e) for the purpose of taking, capturing, or killing ~~fur-bearing~~ furbearing animals. ~~Such live~~ Live traps shall be constructed so that not more than one animal can be taken or captured in any single trap setting.

8. (title) Killer traps and snares. ~~No person may set,~~ Set, place, or operate any snare or killer type trap of the conibear type that is larger than 7" x 7" unless ~~it is~~ one-half of the trap or snare noose is located ~~completely~~ underwater at all times.

12. Trap placement. (intro.) ~~No person may set,~~ Set place or operate any snare or killer trap of the conibear type greater than 6" x 6" or 6" in diameter in the following locations:

SECTION 6. NR 10.13(1)(b)13 is created to read:

NR 10.13(1)(b)13. Snare specifications. Set, place or operate any snare unless the noose cable and noose attachments conform to the following specifications:

a. Noose. Five feet or less of non-stainless steel metal cable or wire with a diameter not exceeding 1/8".

b. Noose attachments. All snares shall include a relaxing mechanical lock, anchor swivel and stop device to prevent the mechanical lock from closing the noose loop to a diameter less than 2.5". In addition, all snares shall be tagged with a metal tag enscribed with the name and address of the owner.

SECTION 7. NR 10.13(2)(c) and (3)(b) are amended to read:

NR 10.13(2)(c) Muskrat and beaver. Molest any muskrat house, muskrat feeding house, ~~beaver house~~ or beaver dam. However, beaver dams may be altered by persons ~~participating under a beaver damage control subsidy agreement as established in s. NR 19.85 or when participating under the landowner authority established by s. 29.24, Stats. removing beaver causing damage under s. NR 12.10.~~

(3)(b) Illegal time period. ~~It shall be unlawful for any~~ No person ~~to~~ may set or reset any trap or traps or attend any trapline from 7:00 p.m. to 6:00 a.m. (CST).

SECTION 8. Chapter NR 12 is created to read:

Chapter NR 12

WILDLIFE DAMAGE AND NUISANCE CONTROL

NR 12.001 DEFINITIONS. (1) "Contiguous land" means lands under the same ownership which are connected to lands on which wildlife are causing damage including lands separated by a roadway, easement, license or waterway.

(2) "Lands suitable for hunting or trapping" means lands where the conduct of hunting or trapping is not likely to result in a violation under ss. 29.22(1), 167.30, 167.31 and 941.20(1)(d), Stats., or damage to buildings and where it is probable an animal causing damage may be harvested.

Note: Sections 29.22(1), 167.30, 167.31 and 941.20(1)(d), Stats., concern shooting near hospitals, schools, sanatoriums, parks, buildings and highways.

(3) "Landowner" means any person over 18 years of age and any partnership, firm or corporation that holds title to land whether or not this land is subject to easement, mortgage, lien, lease or restrictive covenant, except that this term does not include any person who is under guardianship, a person who is incompetent or a person who is mentally ill. A person, partnership, firm or corporation is deemed to hold title to land if the person, partnership, firm or corporation has any of the following:

- (a) Title as sole owner.
- (b) Title as a joint owner.
- (c) Title as owner of an undivided interest.
- (d) Title as sole or joint trustee or as sole or joint assignee.
- (e) A land contract vendee's interest therein.

(4) "Lessee" means any person possessing a written lease for use of land for the production of commercial seedlings, crops, orchard trees, Christmas trees, nursery stock, honey, and livestock.

(5) "Management unit" and "hunting zone" mean those management units established for deer in s. NR 10.28, and those management zones established in ss. NR 10.30 and 10.31 for deer, bear and Canada geese.

(6) "Permanent deer fence" means a fence erected for year-round protection from white-tailed deer that meets the specifications in s. NR 16.01, authorized under s. NR 16.02(12) or adopted by a county participating under s. 29.598, Stats.

(7) "USFWS" means the United States department of the interior, fish and wildlife service.

NR 12.01 PURPOSE. This chapter is established to administer sections s. 29.59, Stats., relating to the removal of wild animals causing damage or nuisance.

NR 12.05 BIRDS CAUSING DEPREDATION. (1) FINDINGS. The natural resources board finds that unlimited shooting or trapping of cowbirds, crows, grackles, house sparrows, starlings, and red-winged blackbirds is necessary when causing depredation.

(2) PERMIT WAIVER. Neither a federal nor state permit are required of any person to shoot or trap birds listed in sub. (1) when found committing or about to commit depredations upon agricultural crops, livestock, ornamental or shade trees or when constituting a health hazard or other nuisance provided:

(a) Disposition. Birds killed and their plumage may not be sold or offered for sale.

(b) Premises inspection. Any person taking these birds shall at all reasonable times, including during actual operation, permit any federal or state game law enforcement officer, free and unrestricted access on the premises over which the operations have been or are being conducted, and shall furnish promptly to the officer whatever information he or she requests about the operation.

(3) LICENSE WAIVER. Hunting and trapping licenses are not required for shooting or trapping these birds when causing the depredations described under sub. (2) (intro.).

NR 12.10 AUTHORIZATION TO REMOVE WILD ANIMALS CAUSING DAMAGE.
Landowners, lessees or occupants may remove from lands under their control wild animals and their associated structures causing damage or constituting a nuisance in accordance with this section.

(1) WRITTEN APPLICATION REQUIRED. (a) General prohibitions. Unless otherwise approved by the department, a landowner, lessee or occupant may not engage in the following without applying in writing and receiving written approval from the department to:

1. Destroy any wild animal classified as:
 - a. A furbearing animal or game fish, animal or bird under s. 29.01(4) through (7), Stats.; or
 - b. Protected under s. NR 10.02; or
 - c. Endangered or threatened under s. NR 27.03;
2. Use any restricted-use pesticides listed in s. NR 80.01(4); or
3. Live-capture and relocate any wild animal to department controlled lands.
4. Live-capture and relocate white-tailed deer, black bear or any wild animal classified as endangered or threatened under s. NR 27.03.

Note: Application forms are obtained from department field stations.

- (b) Exemptions. Written authorization is not required to:
1. Destroy by shooting or trapping:
 - a. Any unprotected wild animal under s. NR 10.04; or
 - b. Any bird causing depredation under s. NR 12.05; or provided that all game and furbearing animals are disposed of as directed by the department
 - c. Any species listed in s. 29.24, Stats.; or
 - d. Muskrats damaging dikes, dams, shoreline or roadways.
 2. Live-trap and relocate any wild animal, except white-tailed deer, black bear or any wild animal classified as endangered or threatened under s. NR 27.03, to lands not controlled by the department.
 3. Remove beaver dams.

Note: Animals listed in s. 29.24, Stats. are beavers, foxes, raccoons, rabbits, squirrels and woodchucks.

(2) APPROVAL CRITERIA. Prior to authorizing the removal of wild animals, the department shall find that:

(a) Abatement attempt. The applicant is employing or has agreed to employ alternative abatement methods deemed reasonable by the department.

(b) Damage extent. 1. Damage to applicant's property in the current calendar year exceeds or is likely to exceed \$1,000 if caused by any species included under s. 29.598, Stats.; or

2. White-tailed deer are causing damage on lands enclosed by a permanent deer fence that has been certified to be in proper working order by either the department or the county wildlife damage program administrator; or

3. Damage will result in a loss of plants or animals listed as threatened or endangered under s. NR 27.03; or

4. Extraordinary damage other than specified in subds. 1 to 3 is occurring or is likely to occur.

(c) Access control. The applicant has the authority to control access for purposes of hunting and trapping on the lands being damaged and any contiguous lands under the same ownership that are suitable for hunting or trapping.

(d) Previous performance. The applicant has complied with the conditions of any previous department authorizations to remove wild animals causing damage issued within the preceding 12 months.

(e) County involvement. For species and lands covered under an approved county wildlife damage plan of administration under s. 29.598, Stats., the county wildlife damage administrator has conducted a damage

investigation and made recommendations on abatement measures to be implemented by the applicant.

(f) Migratory birds. The USFWS has authorized the department to remove or authorize the removal of birds classified as migratory under 50 C.F.R. s. 10.13.

(3) PARTICIPATION BY OTHERS. Persons other than the landowner, lessee or occupant, may assist in the removal of wild animals causing damage or nuisance in accordance with this subsection.

(a) Number and selection of participants. The department may limit the number of persons assisting in a removal subject to s. NR 12.10(1). All participants shall be selected by the permittee. First preference may be given to members of the permittee's immediate family. Next preference shall be given to persons that are able to provide immediate removal assistance and meet the requirements specified under par. (b) and s. NR 12.15(11).

(b) Age and safety training. All participants shall meet the requirements of ss. 29.226 and 29.227, Stats., pertaining to hunter safety and age.

(c) Written authorization. All participants shall possess written approval from the landowner or lessee when carrying on removal activities.

(d) No fees. The landowner, lessee, or occupant may not charge any form of a fee to a person providing removal assistance.

NR 12.15 CONDITIONS OF PERMITS TO SHOOT OR TRAP WILD ANIMALS CAUSING DAMAGE. The following general conditions apply to all permits:

(1) PUBLIC USE. All lands described on the application and any contiguous lands under the same ownership suitable for hunting or trapping shall be open to public hunting or trapping of the species causing the damage

for a period of one year from the effective date of the permit. These lands may be posted to indicate that hunting permission is required from the permittee.

(2) USE REFUSAL. Permittees may refuse access to hunters or trappers for reasonable cause. Reasonable cause may not be based on age, race, religion, color, handicap, sex, physical condition, development disability, creed, sexual orientation, or national origin. The presence of at least 2 hunters or active trapping of at least one trapper per each 40 acres suitable for hunting or trapping, respectively, shall constitute a reasonable cause for refusal.

Note: Other examples of reasonable cause may include drunkenness, vandalism, littering, or reckless conduct.

(3) REGULATION COMPLIANCE. All participants shall comply with all hunting and trapping rules specified under ch. NR 10 or ch. 29, Stats., unless otherwise provided under this chapter, ch. 29, Stats., or by permit.

(4) REPORTING. The permittee shall report the total number of wild animals or structures removed and return all unused permit materials to the department within 10 days after the permit expiration date.

Note: Permit materials may include carcass tags, armbands and hunter permission slips.

(5) CARCASS CARE AND DISPOSITION. Unless otherwise directed by the department, each animal shall be:

(a) Tagged with a carcass tag provided by the department immediately upon killing;

(b) Field dressed and stored in a cool location; and

(c) As soon as practical, turned over to the department designee authorized to receive the carcass.

(6) DEPARTMENT ASSISTANCE. The department may not assist the permittee in shooting or trapping unless:

(a) Extraordinary damage is occurring; or

(b) The permittee has demonstrated an inability to kill an adequate number of wild animals and damage to the permittee's property in the current calendar year exceeds or is likely to exceed \$5,000 if caused by any species included under s. 29.598, Stats.

(7) PERMIT MATERIALS POSSESSION. Each participant shall have in their possession while hunting or trapping under the authority of a permit to remove wild animals causing damage any materials issued to the participant by the department or permittee.

(8) PERMIT MATERIALS RESTRICTION. Permit materials are not transferable and may not be altered or defaced.

(9) PERMIT KILL LIMIT. The department may specify the sex and age of the animals to be removed and limit the number of carcass tags issued under this section after consultation with the applicant and, if the damage is occurring in a county participating under s. 29.598, Stats., the appropriate county wildlife damage program personnel.

(10) AUTHORIZED AREA. The permit applies to all lands subject to public use under sub. (1) and may extend 1/4-mile onto adjoining lands of consenting landowners.

(11) LICENSES, STAMPS AND PERMITS. Except as provided under s. 29.24, Stats., and excluding the permittee, all participants shall possess the

appropriate state and federal hunting or trapping license, and stamps for hunting or trapping for that animal.

NR 12.16 CONDITIONS OF PERMITS TO SHOOT DEER CAUSING DAMAGE. In addition to s. NR 12.15, the following conditions shall apply to all deer shooting permits:

(1) **CLOSED SEASON SHOOTING HOURS.** Deer may be killed only during the period from one hour before sunrise to one hour after sunset during the closed season.

(2) **HARVEST OBJECTIVE.** (a) Harvest objective. The permittee and permit participants, unless granted an exemption under par. (b), shall kill at least 80% of the number of deer authorized for harvest on the permit to retain eligibility for future deer shooting permits.

(b) Harvest objective exemption. The department may exempt the permittee from having to kill the additional deer necessary to meet the harvest objective if:

1. The harvest will not likely reduce the amount of damage sustained by the permittee in the current and succeeding calendar year; or

2. Deer are unavailable for harvest within the authorized area.

(3) **CARCASS TAG DISTRIBUTION.** The number of carcass tags provided to the permittee shall be based upon the harvest objective specified under sub. (2) and the expected harvest success rate. The permittee may distribute the carcass tags provided to the permittee to the persons they have authorized to assist or retain them for their use.

(4) **EFFECTIVE DATES.** Authorization to kill deer commences the date of permit receipt by the permittee and continues through the open season for the

appropriate zone described in s. NR 10.01(3)(e) and (em), except that no deer may be killed during 24 hour period prior to the open season for hunting deer with gun.

(5) CLOSED SEASON REPORTING. All deer killed shall be presented for registration at a location designated by the department.

(6) CARCASS SALE AND PRICE. The department shall offer the permittee and each participant the opportunity to retain one deer killed under the deer shooting permit. All deer not retained under this subsection shall be disposed of by the department.

(7) DEER TYPE. Unless exempted by the department, only deer without antlers or with an antler less than 3 inches in length may be killed.

(8) USE OF FIREARMS. The following conditions shall apply to the use of firearms on deer shooting permits:

1. All participants using firearms shall comply with the blaze orange clothing requirements of s. 29.22(2), Stats.

2. Except as provided under subd. 3., all participants shall comply with the firearm type restrictions applicable to the permittee's land during the gun-deer season specified under s. NR 10.01(3)(e).

3. In counties with shotgun seasons, a permittee, their employes or members of their family that have been authorized to participate by the permittee may use a rifle during the time period closed to gun deer hunting.

NR 12.17 CONDITIONS OF PERMITS TO SHOOT CANADA GEESE CAUSING DAMAGE.

In addition to s. NR 12.15, the following conditions shall apply to all Canada geese shooting permits:

(1) GOOSE HUNTING PERMIT REQUIRED. All participants other than the permittee shall have been issued a permit to hunt Canada geese under s.

NR 10.125 that is valid for the current license year and goose hunting zone which contains the lands on which the permittee has been authorized to shoot Canada geese causing damage.

(2) CARCASS TAG DISTRIBUTION. The permittee may retain 2 of the carcass tags provided to them by the department for their use. The permittee shall distribute the remaining carcass tags to the hunters he or she has authorized to assist. The permittee may not provide more than 2 carcass tags to each authorized hunter and may not distribute the second carcass tag until they have used their first carcass tag.

(3) USE OF OTHER PERMITS. All persons authorized to participate under this section shall have used any other goose hunting permit and carcass tags issued to them which are valid for the locations and effective dates specified in the permit prior to using the carcass tags issued sub. (2).

(4) REPORTING. Any person receiving a permit from a permittee under this section shall report the harvest of a Canada goose to the permittee and mail a completed goose harvest report card to the department within 48 hours of the time of harvest.

(5) BAG LIMIT. No person may take or possess more than 2 Canada geese under each permit issued under this section.

(6) WEEKDAYS ONLY HUNTING. No person may kill a Canada goose under a permit issued under this section on a Saturday or Sunday during the effective dates of their permit.

SECTION 9. NR 19.001(4), 19.01(2)(1)(m) and (n), 19.26 and 19.85 are repealed.

SECTION 10. NR 19.01(2m) is created to read:

NR 19.01(2m) APPROVAL TO REMOVE WILD ANIMALS CAUSING DAMAGE. Permits to remove wild animals causing damage shall be issued within 48 hours of receipt of a written complaint. Permits may be granted orally, but shall be confirmed in writing by the department.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on September 28, 1989 and March 1, 1990.

The rules shall take effect upon publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin April 5, 1990

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny
Carroll D. Besadny, Secretary

(SEAL)

03/15/90

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