

## Chapter NR 13

REGULATION OF CHIPPEWA TREATY RIGHTS  
PARTICIPANTS

<b>Subchapter I — General Provisions</b>		
NR 13.01	Purpose and applicability (p. 196-2)	NR 13.37 Modifications to administrative code relating to trapping small game, furbearers and protected animals (p. 196-18)
NR 13.02	Definitions (p. 196-2)	
NR 13.03	Identification (p. 196-3)	NR 13.38 Modifications to administrative code relating to deer hunting (p. 196-21)
NR 13.04	Restrictions and department authority (p. 196-3)	
NR 13.05	Exceptions and modifications (p. 196-10)	NR 13.40 Modifications to administrative code relating to handguns and crossbows (p. 196-23)
<b>Subchapter III — Hunting and Trapping</b>		
NR 13.30	Restrictions (p. 196-13)	NR 13.42 Modifications to administrative code relating to baiting, hunting hours and highways (p. 196-23)
NR 13.32	Statutory modifications and exceptions (p. 196-16)	
NR 13.34	Modifications to administrative code relating to migratory game bird hunting (p. 196-16)	NR 13.44 Modifications to administrative code relating to bear hunting (p. 196-24)
NR 13.36	Modifications to administrative code relating to hunting & trapping small game and protected wild animals (p. 196-18)	

Note: Chapter NR 13 was created as an emergency rule effective 8-4-89.

## Subchapter I — General Provisions

Note: Chapter NR 13 is a direct result of the off-reservation treaty rights first recognized in *Lac Courte Oreilles v. Voigt*, 700 F. 2d 341 (7th Cir. 1983). This rule does not actually amend other state statutes. Rather, it represents the Department's interpretation of how these laws must be interpreted or limited in order to comply with the general limitations on state regulatory authority expressed in *Lac Courte Oreilles v. State of Wisconsin*, 668 F. Supp. 1233 (W.D. Wis. 1987) and the specific limitations expressed in the regulatory phase of the Voigt litigation. (See e.g., *Lac Courte Oreilles v. State of Wisconsin*, 707 F. Supp. 1034 (W.D. Wis. 1989).

Chapter NR 13 will serve 4 purposes:

1. It provides the federal court with the State's litigation position in the ongoing Chippewa off-reservation treaty rights litigation.

2. The rule provides the State with a set of regulations for those species on which the court has not yet ruled. The state has acknowledged that certain of the current state laws do not meet the aforementioned reasonableness standards for enforcement of Chippewa off-reservation treaty rights.

3. The rule provides a set of back-up regulations for those species on which the court has already ruled. In *Lac Courte Oreilles v. State of Wisconsin*, 668 F. Supp. 226 (W.D. Wis. 1988) the court accepted the Chippewa Off-Reservation Code as the primary set of regulations applicable to off-reservation treaty rights. However, it allowed for enforcement of state law should the Chippewa fail to enact or enforce their code. It is expected that a similar pattern will prevail for all species covered by ch. NR 13.

4. Should the federal court rule in future trials that the Chippewa Off-Reservation Code does not preempt state law, ch. NR 13 will serve as the primary set of regulations for Chippewa off-reservation treaty rights.

Assuming that the federal court rules in the trials on deer, small game, furbearers and other species that the tribal off-reservation code is to be the primary method of regulating the off-reservation harvest, ch. NR 13 may eventually serve only as a backup set of regulations to be used in the event a tribe fails to enact or enforce the tribal code mandated by the court.

Chapter NR 13 is written to be a comprehensive set of regulations dealing with all aspects of the off-reservation treaty harvest. The first permanent rule enactment includes all introductory and general materials (including those for fishing and gathering) and specific rules for hunting and trapping. The specific rules for fishing and gathering will be added at a later date.

Note: This chapter contains a number of provisions for which modifications have been added to reflect limitations on the state's authority as a result of the litigation arising from *Lac Courte Oreilles v. Voigt*, 700 F. 2d 341 (7th Cir. 1983). The modifications are placed in this chapter rather than done as an actual change to the underlying statute or administrative code provision due to the applicability of the *Voigt* decision to only enrolled members of the Chippewa bands and the need for a single document summarizing all regulations dealing with off-reservation treaty rights.

**NR 13.01 Purpose and applicability.** (1) **PURPOSE.** This chapter is intended to regulate the off-reservation treaty rights of treaty rights participants recognized by *Lac Courte Oreilles Band v. Voigt*, 700 F. 2d 341 (7th Cir. 1983) to the extent permissible under *Lac Courte Oreilles v. State of Wisconsin*, 668 F. Supp. 1233 (W.D. Wis. 1987).

(2) **APPLICABILITY.** (a) *Treaty rights participants.* This chapter is intended to apply to treaty rights participants when hunting, fishing, spearing, trapping or gathering in areas of the ceded territory subject to the treaty rights recognized in *Lac Courte Oreilles v. Voigt*, 700 F. 2d 341 (7th Cir. 1983).

(b) *Walleye and muskellunge.* Regulations pertaining to walleye and muskellunge are applicable to treaty rights participants only upon a failure of that member's band to comply with the order of the court in *Lac Courte Oreilles Band of Lake Superior Chippewa v. Wisconsin*, 707 F. Supp. 1034 (W.D. Wis. 1989).

(c) *Wild rice.* Regulations pertaining to wild rice are applicable to treaty rights participants only upon a failure of that member's band to comply with the wild rice regulatory phase consent decree signed by District Judge Barbara B. Crabb on November 1, 1989.

(d) *General.* Where applicable, provisions of this chapter dealing with sharing or checking of gear, possession, transactions and transfer apply to any person.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**NR 13.02 Definitions.** In addition to definitions established in ss. NR 10.001, 12.001, 19.001 and 20.015, the following definitions apply to this chapter.

(1) "Ceded territory" means the territory in Wisconsin ceded by the Chippewa Indians to the United States in the Treaty of 1837, 7 Stat. 536, and in the Treaty of 1842, 7 Stat. 591. A map of the ceded territory is found in the appendix to *United States v. Bouchard*, 464 F. Supp. 1316 (W.D. Wis. 1978).

(2) "Department" means the department of natural resources.

(3) "Enrolled Chippewa tribal member" means an individual listed on the official roll of one of the Chippewa bands entitled to exercise off-reservation treaty rights under *Lac Courte Oreilles v. Voigt*, 700 F. 2d 341 (7th Cir. 1983).

(4) "Gill net" means any net set to capture fish by entanglement rather than entrapment.

(5) "Ice fishing" means taking, capturing or killing fish or fishing for any variety of fish at any time through an artificial hole in the ice.

(6) "Management unit", "hunting zone" and "management zone" mean those management units established for deer in s. NR 10.28, black Register, February, 1990, No. 410

(6) **REGISTRATION.** (a) *Antlerless deer.* Treaty rights participants shall register all antlerless deer at a department authorized registration station in the management unit where the deer is killed or in an adjoining unit provided the deer is transported directly to a station in that adjoining unit no later than 5:00 p.m. on the third working day after the deer is killed. Upon registration of an antlerless deer, the antlerless deer permit shall be retained by the registration station.

(b) *Antlered deer.* Treaty rights participants shall register antlered deer at a department authorized registration station within the ceded territory by 5:00 p.m. on the third working day after the deer is killed.

(7) **DEER HUNTING IN STATE PARKS AND RECREATIONAL AREAS.** Where deer hunting is permitted in a state park or recreational area, gun hunting by treaty rights participants is allowed during the state gun deer season through December 31.

(8) **TRIBAL IDENTIFICATION CARD.** Each treaty rights participant shall possess a tribal identification card and a carcass tag while hunting deer.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**NR 13.40 Modifications to administrative code relating to handguns and crossbows.** (1) **HANDGUNS.** Treaty rights participants may possess handguns authorized by s. NR 10.09 (1) (c) 1. c. in addition to other types of permissible firearms while hunting deer and bear.

(2) **CROSSBOWS.** Treaty rights participants may hunt with cross bows which meet the requirements of s. 29.104 (4) (b), Stats.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**NR 13.42 Modifications to administrative code relating to baiting hours and highways.** (1) **BAITING.** Treaty rights participants may use bait not authorized in s. NR 10.07 (1) (g), including salt, but except honey provided the bait is marked with a metal identification tag stating the treaty rights participant's name, address and tribal affiliation and attached to the nearest tree at eye level and directly facing the bait. All solid material shall be confined to a hole in the ground measuring no more than 2 feet square.

(2) **HIGHWAYS.** (a) Treaty rights participants may possess loaded and uncased firearms and strung and unenclosed bows in a stationary vehicle provided that the vehicle is parked off the highway and more than 50 feet from the roadway's center.

(b) Treaty rights participants may load, fire or shoot a firearm or bow in or from a stationary vehicle provided the vehicle is parked off the highway and more than 50 feet from the roadway's center.

(c) The exemptions of pars. (a) and (b) are not applicable during the state gun deer season.

(3) **HUNTING HOURS.** No hunting hours apply for any open season authorized by this chapter from March 1 through August 31.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.

**NR 13.44 Modifications to administrative code relating to bear hunting.** (1) **BEAR SEASON.** The tribal bear hunting season shall begin on the day

Register, February, 1990, No. 410

after Labor Day and continue through October 31. Both bait and dogs may be used.

(2) **TRIBAL BEAR QUOTA.** The tribal bear quotas for each black bear hunting zone established in s. NR 10.30, located in part or whole within the ceded lands territory shall be based upon the following:

(a) *Tribal request and past performance.* Tribal bear quotas shall be established based on requests from the Chippewa bands submitted to the department by June 15, the tribe's past harvest performance and may not exceed the maximum limit specified in par. (b).

(b) *Maximum bear harvest limit.* The maximum tribal harvest limit shall be calculated according to the following formula:

The bear harvest quota, as calculated under s. NR 10.102 (1),  $\times$  % public land acreage (including forest crop land and managed forest land open to public hunting)  $\times$  50%.

(3) **BEAR HUNTING PERMITS.** (a) The department shall issue to treaty rights participants bear harvest permits in an amount sufficient to harvest the tribal quota established in sub. (2) for each black bear hunting zone. The number of permits for each black bear hunting zone shall be determined by using tribal hunter success rate data.

(b) No treaty rights participant may kill a bear unless in possession of a valid permit and carcass tag at the point of kill. Permits shall be valid only in the designated black bear hunting zone.

(c) The department shall issue metal carcass tags and bear harvest permits to treaty rights participants upon presentation of the tribal photo identification card. No more than one metal carcass tag may be issued to a participant at a time. An additional metal carcass may be issued to a treaty rights participant upon registration, as provided in s. NR 13.30 (2) (o), of a bear tagged with the bear carcass tag previously issued.

(d) Each permit is valid for one bear and expires upon the harvest of a bear. No more than one bear harvest permit may be issued to or possessed by a treaty rights participant at any time.

(e) Each bear harvest permit shall have a number corresponding to the number found on the carcass tag issued to a treaty rights participant.

(f) Each treaty rights participant shall possess a tribal photo identification card while hunting bear.

(g) **Dog use restriction.** Dogs may be used to hunt bear during the open seasons provided in this section but no more than 6 dogs in a single pack may be used to pursue a bear regardless of the dog ownership.

History: Cr. Register, February, 1990, No. 410, eff. 3-1-90.