

Chapter NR 13

CHIPPEWA TREATY RIGHTS PARTICIPANTS

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Note: Chapter NR 13 was created as an emergency rule effective 8-4-89; emerg. cr. NR 13.10 to 13.196 and 13.50 to 13.57 effective 2-2-90.

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).

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- (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 bear hunting zones established in s. NR 10.30 and Canada goose management zones established in s. NR 10.31.
- (7) "Public lands" means land currently held in fee title by federal, state or local governments or lands held under the forest crop or managed forest land programs but only to the extent such lands are required to be open to public hunting and fishing.
- (8) "Remaining tribal quota" means the difference between the tribal quota and the cumulative harvest of the particular species by all treaty rights participants using all harvest methods permissible under this chapter. The cumulative harvest includes all harvest to the date that the remaining tribal quota is calculated. If the cumulative harvest exceeds the tribal quota, the remaining tribal quota shall be zero.
- (9) "Safe harvest" means a level of harvest meeting the guidelines of *Lac Courte Oreilles Band of Lake Superior Chippewa v. Wisconsin*, 707 F. Supp. 1034 (W.D. Wis. 1989) that incorporates an appropriate margin of safety, estimates of the population and acceptable exploitation rates which will reasonably prevent harvest of more than 35% of the population of adult walleyes and 27% of the population of adult muskellunge. The margin of safety shall assure that the true safe harvest is not exceeded in more than 1 of 40 cases. For waters where a population estimate has not been made, a regression model based upon population estimates from other waters shall be used. The margin of safety used depends upon the age of the population estimate and whether a regression model was used.
- (10) "Snare" means a steel cable device in the form of a noose with a stop, lock and swivel which is set to capture an animal by the body, neck or foot.
- (11) "Spear fishing" means taking or attempting to take a fish by means of a hand held spear or other similar device which is directed by the spearer to impale the target fish. Spearfishing may include the use of an artificial light.
- (12) "Tribal quota" or "TQ" means the total number of a particular species which may be harvested annually from a given body of water, management unit, hunting zone or management zone by all treaty rights participants.

(13) "Treaty rights participant" means an enrolled Chippewa tribal member exercising off-reservation rights under *Lac Courte Oreilles Band v. Voigt*, 700 F. 2d 341 (7th Cir. 1983).

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

NR 13.03 Identification. A treaty rights participant shall be issued a photo identification card by his or her band and shall carry the card on his or her person when exercising treaty rights. Treaty rights participants shall display their photo identification card upon request by state or local law enforcement personnel, state biologists or state, federal or local property managers. A treaty rights participant is not required to have a state hunting, fishing, trapping or ricing license.

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

NR 13.04 Restrictions and department authority. (1) DEPARTMENT AUTHORITY. The following statutory and administrative code provisions are unaffected by *Lac Courte Oreilles v. Voigt*, 700 F. 2d 341 (7th Cir. 1983):

(a) *Statutory provisions.* 1. Sections 23.09 and 23.11 Powers of the department.

2. Section 23.10 Conservation wardens.

3. Section 23.115 Designation of trails, etc.

4. Section 23.15 Sale of state owned lands under the jurisdiction of the department of natural resources.

5. Section 23.27 Natural areas; definitions; importance; inventory; acquisition; sales.

6. Section 23.28 State natural areas; designated state natural areas.

7. Section 23.29 Wisconsin natural areas heritage program.

8. Section 23.30 Outdoor recreation program.

9. Section 23.305 Leasing of department land for recreational purposes.

10. Section 23.31 Recreation resources facilities.

11. Section 23.32 Wetlands mapping.

12. Section 26.07 Money, how disposed of.

13. Section 26.08 Leases and licenses.

14. Section 26.22 Sales, etc.

15. Section 26.30 Forest insects and diseases; department jurisdiction; procedure.

16. Ch. 28 Public forests.

17. Section 29.02 Title to wild animals.

18. Section 29.03 Public nuisances (modified by s. NR 13.05 (4)).

19. Section 29.06 Sale of confiscated game and apparatus.

20. Section 29.08 Interstate comity.

(2) **POSSESSION.** Migratory game birds in possession or custody of tribal members on ceded lands shall be considered to have been taken on these lands.

(3) **HOURS.** Legal shooting hours shall be the same as the statewide hours established in s. NR 10.06 (2), except on the first day of the statewide migratory game bird season established in s. NR 10.01 (1) when shooting hours shall start at 12:00 noon.

(4) **HUNTING FROM PIERS, ETC.** Treaty rights participants may hunt from piers, dams, docks or similar structures so long as they are publicly owned unless prohibited by the owner for safety purposes.

(5) **BAG LIMITS.** Bag limits and possession limits for migratory game birds shall be as follows:

(a) *Ducks.* The daily bag limit is reached when the point value, as established by this paragraph, of the last duck taken plus the total value of ducks already taken during that day reaches or exceeds 100 points. The possession limit for ducks taken off the reservation is double the daily bag limit. Point values shall be as follows:

1. 100 points: Hen mallard, black duck.

2. 70 points: Wood duck, redhead, hooded merganser.

3. 35 points: Drake mallard, pintail, ring-necked duck, goldeneye, bufflehead, all other duck species not listed.

4. 20 points: Blue-winged teal, green-winged teal, widgeon, gadwall, shoveler, scaup, common merganser, red-breasted merganser.

(b) *Special scaup-only season.* Bag limit of 5 per day; possession limit of 10.

(c) *Rest period.* If waterfowl distribution in certain locales is significantly altered because of hunting pressure by treaty rights participants as determined by the department, those locales will be closed in 48 hours by department order until noon on the opening day of the general state waterfowl season.

(d) *Canada geese.* Bag limit 3, possession limit 6.

(e) *Other geese.* (Snow geese, blue geese, white-fronted geese): Bag limit of 5, including the legal limit of Canada geese specified in par. (d) taken, during the open season, and including no more than 2 white-fronted geese; possession limit of 10, minus the number of Canada geese possessed taken during the open season, and including no more than 4 white-fronted geese.

(f) *Cool and gallinule.* 20 daily, singly or in aggregate; possession limit 40.

(g) *Sora and Virginia rails.* 25 daily, singly or in aggregate. Possession limit 25.

(h) *Common snipe.* 8 daily. Possession limit 16.

(i) *Woodcock.* 5 daily. Possession limit 10.

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

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NR 13.36 Modifications to administrative code relating to hunting small game, furbearers and protected wild animals. The seasons for hunting small game, furbearers and protected animals shall be as follows:

- (1) **RUFFED GROUSE.** Beginning on the day after Labor Day and continuing through January 31.
- (2) **SNOWSHOE HARE.** Year-round.
- (3) **COTTONTAIL RABBIT.** Year-round.
- (4) **RED, GRAY AND FOX SQUIRREL.** Year-round.
- (5) **COYOTE.** Year-round, except that the special closure specified in s. NR 10.01 (3) (h) 3. is applicable during the deer hunting season established in s. NR 13.38.
- (6) **RED AND GRAY FOX.** Beginning on the Saturday nearest October 10 and continuing through March 1.
- (7) **RACCOON.** Beginning on the Saturday nearest October 10 and continuing through March 1.
- (8) **BOBCAT.** Beginning on the Saturday nearest October 10 and continuing through March 1.
- (9) **PHEASANTS.** Roosters and hens beginning the Saturday nearest October 17 at 12 noon and continuing for 54 consecutive days.
- (10) **WOODCHUCKS.** Year-round.
- (11) **BEAVER.** Year-round.

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

NR 13.37 Modifications to administrative code relating to trapping small game, furbearers and protected animals. (1) **CLOSED SEASON RESTRICTION.** Traps and snares may not be set or placed during the closed seasons specified in sub. (2).

- (2) **SEASONS.** The seasons for trapping small game and furbearers shall be as follows:
- (a) *Bobcat.* Beginning the Saturday nearest October 10 and continuing through March 1.
 - (b) *Coyote.* Year-round.
 - (c) *Cottontail.* Year-round.
 - (d) *Raccoon.* Beginning on the Saturday nearest October 10 and continuing through March 1.
 - (e) *Red and gray fox.* Beginning on the Saturday nearest October 10 and continuing through March 1.
 - (f) *Red, gray and fox squirrel.* Year-round.
 - (g) *Snowshoe hare.* Year-round.
 - (h) *Mink.* Beginning on the Saturday nearest October 21 and continuing through March 1 north of state highway 64; beginning on the Saturday nearest October 21 south of state highway 64.
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day nearest October 28 and continuing through February 28 south of state highway 64.

(i) *Muskrat*. Beginning on the Saturday nearest October 21 and continuing through May 1 north of state highway 64; beginning on the Saturday nearest October 28 and continuing through April 30 south of state highway 64.

(j) *Beaver*. Year-round.

(k) *Otter*. November 15 through March 15.

(l) *Fisher*. November 15 through December 31.

(3) TRAP AND SNARE PLACEMENT NEAR BEAVER DAMS. A treaty rights participant may place a trap or snare within 15 feet of a beaver dam provided the trap or snare is not placed on or touching the dam. The trap or snare shall be marked by a tag attached to an object above the water line and set near the trap or snare in a visible manner. The tag shall contain the information required by s. NR 13.05 (5).

(4) TRAPPING AND SNARING HOURS. Treaty rights participants may trap or snare between the hours of 6:00 a.m. of the opening date for each furbearer and 12:00 midnight of the respective closing date.

(5) USE OF SNARES. Treaty rights participants trapping off-reservation may use snares only during established tribal small game and trapping seasons subject to the following specifications:

(a) *Anchoring and tagging*. Snares shall be permanently anchored so as not to drag and shall be tagged with a metal tag marked in a legible manner with the treaty rights participant's name and address.

(b) *Manner of set*. Snares may not be spring activated and shall be set in a manner which prevents an animal from being suspended off the ground or in the water unless it is attached to a drowning mechanism.

(c) *Snare removal dates*. Snares set in water shall be removed by May 1. All other snares shall be removed by March 1 except if set for hare or rabbit.

(d) *Snare specifications*. 1. All snares shall have a mechanical lock, a swivel device on the anchor end and a stop device which will prevent the loop size from exceeding 10 inches in diameter and prevent the loop from closing to less than 2½ inches in diameter.

2. All snare cable or wire shall be made of ferrous metal and have a diameter not exceeding ⅛". Cable or wire may not be made of stainless steel or exceed 5 feet in length.

(e) *Maximum number of snares*. No more than 30 total snares may be used by any one trapper. For determination purposes, all snares set in water and attached to a common stake or pole shall be counted as a single snare.

(f) *Snares set in water*. Any snares set in water shall have the snare loop one-half submerged in the water at all times.

(g) *Maximum snare loop height*. All snares not set in water shall be subject to the following restrictions:

1. The bottom of the loop may not be more than 6" above the ground or, when the ground is snow-covered, no more than 6" above the bottom of a person's footprint made in the snow beneath the snare with full body weight on the foot.

2. All snares not set in water shall be checked every 24 hours.

(6) **BOBCAT, FISHER AND OTTER TAGS AND REGISTRATION.** (a) *Permit.* No treaty rights participant may snare, trap, possess, control, shoot or shoot at a bobcat, or snare, trap, possess or control a fisher or otter unless in possession of a valid tag for the animal issued under par. (c).

(b) *Quotas.* 1. A minimum of 100 bobcat and 75 otter carcass tags shall be allocated to treaty rights participants. The department may allocate additional tags upon a request with the Chippewa bands.

2. Maximum tribal fisher quotas for each fisher management zone as established in s. NR 10.01 (4), located within the ceded lands territory shall be based upon the following formula:

state quota × % public land (including forest crop land and managed forest land open to public hunting) × 50%

3. Actual tribal fisher quotas shall be established based on requests of the Chippewa bands provided the requests are submitted to the department prior to August 15, subject to the maximum of subd. 2. Tribal requests shall be based upon past harvest performance and capacity to harvest.

4. The department shall issue fisher carcass tags in an amount sufficient to harvest the tribal quota for each fisher management zone. The number of permits for each zone shall be determined by using treaty rights participant trapping success rate data.

(c) *Application procedures.* Treaty rights participants may obtain a single bobcat and fisher carcass tag and 2 otter carcass tags from the department on a first-come, first-served basis prior to or during the open season for the species the tag is applied for by requesting such tags from the department. Provided treaty tags are available, treaty participants may apply for and receive another tag if they have utilized previously issued tags and the registration certification slip accompanies the application. The request shall include the species to be trapped, the name and address of the individual and a copy of the individual's tribal photo identification card.

(d) *Tagging.* Each treaty rights participant shall immediately upon possessing a bobcat, otter or fisher affix a tag issued under this section through the opening of the mouth to the opening of the eye immediately beneath the skin. No person may have a bobcat, otter or fisher pelt in possession or under control unless the tag is attached in the manner described.

(e) *Bobcat and fisher carcass retention.* Bobcat and fisher pelts shall be separated from the carcass and both the pelt and carcass shall be presented to the department for registration within 10 days after it is killed. The bobcat and fisher carcass may be retained by the department for research purposes.

(f) *Registration stations.* Bobcat, otter and fisher shall be registered at department stations or by any state conservation warden. Registrants

will receive a certification slip which may be used to obtain additional tags.

(g) *Possession restrictions.* No person may possess raw bobcat, otter or fisher pelts taken by treaty rights participants more than 10 days after the close of the season until the opening date of the following season unless a valid registration tag has been attached and locked by the department.

(h) *Transactions.* No person may transfer, give, trade, sell or purchase any bobcat, fisher or otter pelt taken by treaty rights participants unless a valid registration tag has been attached in the manner specified in par. (d) and locked through the opening of the eye of each pelt by the department.

(i) *Nontransfer.* Tags issued under this section to treaty rights participants may not be transferred to any person other than another treaty rights participant.

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

NR 13.38 Modifications to administrative code relating to deer hunting.

(1) **DEER SEASON.** The deer season shall begin the day after Labor Day and continue through the Thursday prior to the state gun deer season established in s. NR 10.01 (3) (e). The season shall resume on the Saturday preceding the Thanksgiving holiday and continue through December 31.

(2) **TRIBAL ANTLERLESS DEER QUOTA.** (a) *Minimum antlerless deer harvest limit.* The tribal antlerless deer quotas for each management unit located in part or whole within the ceded lands territory shall be at least 25 deer.

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

The management unit deer harvest quota as calculated under s. NR 10.103 (7) \times % public land acreage in the management unit (including forest crop and managed forest land open to public hunting) \times 50%.

(c) *Tribal requests and past harvest performance.* Tribal quotas for each deer management unit shall be based on annual requests from the Chippewa bands submitted to the department by June 15, the tribe's past harvest performance and may not exceed the maximum harvest limit specified in par. (b).

(3) **DEER HUNTING TAGS.** (a) *Requirements and issuance procedures.* Prior to killing any deer, treaty rights participants shall obtain a numbered metal carcass tag from the department. No more than 2 carcass tags may be issued at a time to any individual treaty rights participant. Treaty rights participants may receive additional tags by presenting a registration form completed by a department registration station indicating that a tag has been used.

(b) *Tagging requirement.* All deer regardless of sex shall be tagged with a valid metal carcass tag immediately upon killing and before field dressing or moving the deer. For a deer to be properly tagged, the tag shall be placed through the ear and locked. Failure to attach the tag in this manner renders possession of the deer illegal.

(4) **ANTLERLESS DEER.** (a) *Permit requirement.* In addition to the tag requirement specified under sub. (3), treaty rights participants shall obtain an antlerless deer permit from the department prior to killing any antlerless deer.

(b) *Possession in field requirement.* No treaty rights participant may shoot an antlerless deer without being in possession of a valid antlerless deer permit for the management unit where the deer is located at the time of shooting.

(c) *Permit validity.* Antlerless deer permits shall be valid only in the management unit specified on the permit.

(d) *Issuance procedures.* The antlerless deer permits will be issued on a first-come, first-served basis according to the following conditions:

1. Up to 2 antlerless deer permits may be issued to any treaty rights participant at any one time.

2. Treaty rights participants may receive additional permits only by presenting a registration form completed by a department registration station indicating that an antlerless deer has been registered or upon presentation of an unused, expired permit.

3. Any antlerless deer taken by bow or crossbow shall be counted against the tribal antlerless deer quota.

4. The department shall issue antlerless deer permits in an amount sufficient to harvest the tribal quota for each management unit. The number of permits for each management unit shall be determined by using tribal hunter success data.

5. Antlerless deer permits applicable to a management unit where 50% of the quota has not been harvested shall be valid only for 14 days, including the day of issuance, or until harvest of an antlerless deer.

6. Antlerless deer permits applicable to a management unit where 50% of the quota has been reached shall be valid only for 7 days including the day of issuance or until harvest of an antlerless deer.

7. No permit will be valid on the day preceding the state gun deer season established in s. NR 10.01 (3) (e) or beyond December 31.

8. An antlerless deer permit shall include the date of issuance and expiration and the applicable management unit.

9. Each antlerless deer permit is valid for only one antlerless deer and expires upon the harvest of an antlerless deer.

10. No more than 2 unused antlerless deer permits may be possessed by a treaty rights participant at any one time.

11. Each antlerless deer permit shall bear a number corresponding to the number found on the carcass tag issued to a treaty rights participant.

(5) **DEPARTMENT HOURS.** Tags and antlerless deer permits shall be issued during normal weekday working hours at department district or area offices within the ceded territory or at other designated department offices.

(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

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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.

Subchapter IV — Gathering

NR 13.50 Definitions. In addition to definitions in s. NR 13.02, the following definitions apply to this subchapter:

(1) "Appraised value" means the monetary value of timber designated for cutting and removal as determined by the department.

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(2) "Band" means one of the Wisconsin Chippewa bands entitled to exercise off-reservation treaty rights under *Lac Courte Oreilles v. Voigt*, 700 F. 2d 341 (7th Cir. 1983).

(3) "Bucking" means cutting felled trees into shorter lengths.

(4) "Department gathering permit" means a permit issued by the department authorizing a treaty rights participant to gather miscellaneous forest products listed in ss. NR 13.54 (1) and 13.55 (1) on department land.

(5) "Department land" means land under the ownership of the department within the ceded territory where the department has authority to manage and harvest timber and other forest products on the land.

(6) "Department property" means a department project including but not limited to a state forest, state park, wildlife area or fisheries area.

(7) "Designated timber" means timber described in the timber gathering plan, marked or otherwise designated by the department for cutting and removal.

(8) "Establish" or "established" means the department's setting up of a tract of timber for cutting by designation of the timber to be cut and determination of cutting specifications and conditions.

(9) "Falling" means the cutting of a standing tree.

(10) "Forest products" means all forms of vegetation, and parts thereof, including fruits, seeds, berries and roots.

(11) "Gathering timber" means felling, bucking, skidding, piling and hauling timber to the mill.

(12) "Natural area" means land designated or dedicated under s. 23.28 or 23.29, Stats.

(13) "Public offering" means the advertisement or offer by the department of a tract of its timber to the public for sale.

(14) "Skidding" means dragging or otherwise moving trees on department land to the site of loading for hauling.

(15) "Slash" has the meaning established in s. 26.12 (6) (a), Stats.

(16) "Timber" means logs, pilings, posts, poles, pulpwood, other cord wood products and full tree or cord wood chipping.

(17) "Timber gathering permit" means the authorization issued by the timber permit issuing authority to authorize the gathering of timber on a tract of department land.

(18) "Timber gathering permittee" means a treaty rights participant who is issued a timber gathering permit by the timber permit issuing authority.

(19) "Timber gathering plan" means the timber cutting plan prepared by the department for silviculturally sound timber harvest on department land which addresses but is not limited to the estimated volume of timber available, the proper time of harvest, proper harvest methods, designation of trees suitable for harvest and other conditions on harvest necessary to conserve the timber resource and assure a safe harvest.

(20) "Timber permit issuing authority" means the band or designee which issues a treaty rights participant a permit authorizing the gathering of timber on off-reservation land in the ceded territory.

(21) "Tract" means a specific description or area of department land established by the department for timber cutting and removal.

(22) "Treaty rights participant", for purposes of this subchapter, means any person defined as a treaty rights participant in s. NR 13.02 (13) or any of the 6 Wisconsin Chippewa bands.

(23) "Utilization" means the specified degree to which each tree shall be cut and removed.

(24) "Year" means the calendar year.

(25) "Zone" means a specific area or portion of a tract.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 13.51 Restrictions. Subject to the modifications and exceptions of this subchapter, and in addition to the modifications and exceptions provided elsewhere in this chapter, the following provisions are applicable to treaty rights participants engaged in gathering activities:

(1) *Statutory provisions.*

(a) Chapter 24 Public domain and trust funds

(b) Section 26.05 Timber theft.

(c) Section 26.06 (2) and (3) Relating to possession of timber products.

(d) Section 26.09 Civil liability for unlawful cutting, removal and transport.

(e) Section 29.415 Endangered and threatened species protected.

(f) Section 29.547 Ginseng protected.

(g) Section 85.075 Rail program rules.

(h) Sections 85.15 and 85.16 Property management and Department rules and forms.

(i) Section 86.02 Injury to highway.

(j) Section 86.03 Trees on and adjacent to highway.

(k) Section 86.07 (2) Relating to alteration in any highway.

(2) *Administrative code provisions.*

(a) Section NR 1.24 Management of state and county forests

(b) Section NR 19.09 Wild rice conservation.

(c) Section NR 19.11 (1) - (5) Scientific collectors permits.

(d) Section NR 45.04 (1) (a) Relating to gathering on state property.

(e) Chapter NR 28 Wild plants.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

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NR 13.52 Timber or forest product gathering eligibility and assistance. Treaty rights participants gathering timber or other forest products on department land may not be assisted in the gathering by any person other than another treaty rights participant. Treaty rights participants may not permit any person other than another treaty rights participant to tend or operate equipment involved in the gathering.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 13.53 Timber gathering. (1) **PERMIT REQUIRED.** A treaty rights participant may gather timber on department land reserved for gathering under sub. (3) (e) if:

- (a) The treaty rights participant is a timber gathering permittee; or
- (b) The treaty participant who is not the permittee but who has been named in a timber gathering permit for the tract issued by the timber permit issuing authority to assist the permittee;
- (c) The gathering is being conducted in accordance with the timber gathering plan which was provided to the timber gathering permittee by the department under sub. (3) (e); and
- (d) The permit and authorization under it is conditioned on compliance with the timber gathering plan.

(2) **GATHERING IN ACCORDANCE WITH TIMBER GATHERING PLAN.** Gathering by treaty rights participants on department land shall be in accordance with and fully comply with the timber gathering plan prepared for the tract. The timber gathering plan shall include:

(a) The designated timber which is authorized to be cut and removed and which shall be cut and removed either by describing the timber or the manner by which it has been or will be designated for cutting.

(b) Cutting and utilization specifications as well as other conditions on the manner in which the timber shall be cut and removed.

(c) The time period or time periods within which the timber may or shall be cut and removed.

(d) Conditions on the disposal or handling of slash and debris.

(e) Conditions on construction and use of roads or landing areas on department land.

(f) Conditions on access to the tract.

(g) A description of cutting zones within the total tract subject to the gathering.

(h) The required progression of cutting of zones within the tract subject to the gathering and assurance bonding requirements.

(i) Conditions pertaining to safety.

(3) **TIMBER AVAILABILITY MAXIMUM AMOUNT; NOTICE.** (a) *Maximum amount of timber available for gathering.* 1. Subject to subs. 2 to 4, 50% of the total appraised value of all tracts on each department property or combination of properties to be offered at a single public offering shall be available for gathering by treaty rights participants under this section.

2. Gathering on each department property shall be by total tract and in accordance with the timber gathering plan for the tract.

3. If only one tract is established for the public offering, the tract shall be available for gathering under this section.

4. The 50% maximum in subd. 1 may be exceeded under the following conditions:

a. If only 2 tracts are established for the public offering, the larger or smaller tract may be selected for gathering under this section.

b. If multiple tracts are established for the public offering, a tract or tracts exceeding 50% by the smallest margin may be requested for gathering under this section.

Note: Tracts are normally established for public offering in the spring and fall of each year. A single public offering may include more than one department property.

(b) *Notification to bands of timber available on department land.* The department shall notify each band in writing at least 60 days in advance of public offering of a tract or tracts.

(c) *Tribal notification to the department.* The timber to be available for gathering subject to par. (e) shall be based on requests of the bands subject to the maximum of par. (a), provided that the requests are filed with and received by the department within 30 days of the mailing of the notice under par. (b). Tribal requests shall be based upon past harvest performance and capacity to harvest. The tribal requests shall be submitted to the department property office identified in the notice under par. (b).

(d) *Tribal notification to treaty rights participants.* The bands shall notify the treaty rights participants of the availability of timber on department land for gathering identified under par. (c). If more than one treaty rights participant is interested in an available tract of timber, the bands or other timber permit issuing authority shall select the treaty rights participant or participants and issue a timber gathering permit to authorize the treaty rights participant or participants to gather timber on the tract. The timber gathering permit shall name the treaty rights participant or participants authorized to engage in the gathering.

(e) *Filing timber gathering permit and assurance bond with the department; reserving department land for timber gathering; providing timber gathering plan.* 1. As a condition of gathering timber on department land and reserving that tract for gathering, the timber gathering permittee shall file, in person, the timber gathering permit authorizing the gathering and the assurance bond under par. (f) at the department office designated in the notice to the bands under par. (b) within 30 days from the date that notice is mailed to the bands. Within 72 hours of the timely filing of the permit and assurance bond by the permittee, the department's timber gathering plan for the tract shall be prepared. The permittee shall then acknowledge receipt of it by signature on the department's copy of the plan within 10 days of notification by the department that the plan is available for acknowledgement.

2. A tract of timber available for gathering and noticed as such under par. (b) shall be offered for sale to the public and no longer available for gathering in that year if it is not reserved as provided in this paragraph.

(f) *Assurance bond.* As a condition to the department's providing a timber gathering permittee the timber gathering plan and as a condition of the gathering, the timber gathering permittee shall deposit funds in the form of cash, bond, letter of credit or certificate of deposit, acceptable to the department, equal to 10% of the department's appraised value of the timber designated to be cut on the tract or the zone on which cutting is authorized if progression cutting is also authorized in the plan. The department may retain the assurance bond for a period of 30 days beyond completion of cutting in compliance with timber gathering plan, if the department has been notified of the completion by the permittee, or 30 days beyond the date the cutting is to be completed.

(4) **REMEDIES FOR FAILURE OF A TREATY RIGHTS PARTICIPANT TO COMPLY WITH THIS SUBCHAPTER AND THE TIMBER GATHERING MANAGEMENT PLAN.** Upon a determination by the department that a timber gathering permittee has failed to comply with the timber gathering plan and upon written notice to the permittee and timber permit issuing authority, the department may pursue any or all of the following remedies:

(a) Prevent further gathering by the timber gathering permittee or any other treaty rights participant on the tract and offer the tract to the public for sale or otherwise manage it.

(b) Retain all or part of the permittee's assurance bond for damages which are incurred due to the timber gathering permittee's failure to comply with the timber gathering plan.

(c) Prevent the timber gathering permittee from reserving or gathering on any tract for 2 years from written notice to the permittee of the permittee's failure to gather in accordance with the timber gathering plan.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 13.54 Gathering miscellaneous forest products on department land. (1) Any treaty rights participant interested in gathering from department land firewood other than on a tract under s. NR 13.53, tree bark, maple sap, lodge poles, boughs, marsh hay or other miscellaneous forest products not enumerated in s. NR 13.55 or this section shall obtain a permit from the manager of the department property upon which the gathering is desired. The department shall respond to the gathering request no later than 14 days after receipt of the request. The permit shall indicate the location of the material to be gathered, the volume of material to be gathered, and conditions on the gathering of the material necessary for conservation of the timber and other forest products on the department land or for safety.

(2) The department may not deny a request to gather miscellaneous forest products on a department property under this section unless the gathering is inconsistent with the management plan for that property or the gathering will conflict with the preexisting rights of a permittee, other person who has an approval to conduct an activity on the department property or a contractor of the department.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 13.55 Gathering fruits, seeds, berries or certain plants. (1) **NO GATHERING PERMIT REQUIRED.** Except as provided in subs. (2) and (3), treaty

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rights participants may gather fruits, seeds or berries on department property without a permit issued by the department.

(2) **GATHERING PERMIT REQUIRED.** No treaty rights participant may gather anything other than edible berries on a natural area without a department gathering permit. The department shall respond to the gathering permit request no later than 14 days after receipt of the request. The permit shall indicate the type of material, location and volume of material to be gathered and conditions on the gathering of the material necessary for conservation of the timber and other forest products on the department land or for safety.

(3) **GATHERING NOT PERMITTED.** No treaty rights participant may gather forest products, including fruits, seeds, berries or plants which are listed on the department's endangered or threatened species list established under s. 29.415, Stats.

(4) **GINSENG.** Treaty rights participants harvesting ginseng shall comply with the provisions of s. 29.547, Stats., and ch. NR 28, except the license requirements.

(5) **WILD RICE.** Wild rice may be harvested on department land without a permit under this subchapter when harvested in accordance with s. NR 19.09.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 13.56 Safety. Treaty rights participants engaged in gathering on department land may not impair or obstruct developed recreational trails or special use areas. Any forest products subject to gathering which are cut and may impede or impair use of those trails or other special use areas shall be immediately removed by the treaty rights participant.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 13.57 Department inspection. Any treaty rights participant engaged in gathering on department land shall present, upon request by department representatives, the timber gathering permit, the permit authorizing gathering miscellaneous forest products, and his or her tribal identity card.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.

NR 13.58 Effective period of the rules. Sections NR 13.50 (1), (3), (7) to (9), (11) to (21), (23) and (25) and 13.53 shall be effective only for so long as the federal court exercising jurisdiction in *Lac Courte Oreilles v. Voigt*, 700 F. 2d 341 (7th Cir. 1983) holds that the harvest of timber is subject to the Chippewa off-reservation treaty right of gathering.

History: Cr. Register, October, 1990, No. 418, eff. 11-1-90.