

Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item

SUBJECT:

Request that the Board approve the Statement of Scope for Emergency Board Order WM-01-21(E), Board Order WM-02-21 and Board Order WM-03-21 and conditionally approve the public hearing notice for WM-02-21 and WM-03-21 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse, for proposed rules affecting chapters NR 8, 10, 12 and 19 related to gray wolf harvest regulations.

FOR: June 2021 Board meeting

PRESENTER'S NAME AND TITLE: Scott Karel, Wildlife Policy Specialist

SUMMARY:

The department plans on bringing three different rules from this scope statement. The first rule will be an emergency rule. Since the last wolf season in 2014, many sections in code have been moved or updated, and new statutes have been put in place. The purpose of this emergency rule will be to align the regulations to reflect the subsequent changes in statute and code. In addition to these measures, this emergency rule will also explore shortening the registration timeline for successful wolf hunters and trappers. It may also explore eliminating night hunting for wolves to establish consistent shooting hours for the wolf hunting season for all methods for hunting wolves.

Additionally, one or more permanent rules may be promulgated from this scope statement. The purpose of this rule will be to permanently codify provisions of EmR1210 as modified by WM-01-21(E) and 2011 ACT 169. This permanent rule may also establish zone specific tags for wolf management zones.

Finally, the department will begin making updates to its wolf management plan. The department may also bring forward an additional permanent rule from this scope statement that may make any changes that result from the department's updated wolf management plan. These changes may include changes to zone structure, registration and tagging requirements, and other items related to the management of wolves that would necessitate a change in administrative code.

A preliminary public hearing on this scope statement was held on June 7, 2021. A copy of that hearing can be viewed here: https://widnr.widen.net/s/ncz8nkf6zn/wm-01-21-wolf-preliminary-hearing

RECOMMENDATION: That the Board approve the statement of scope for Emergency Board Order WM-01-21(E), Board Order WM-02-21 and Board Order WM-03-21 and conditionally approve the public hearing notice for Board Orders WM-02-21 and WM-03-21 and notice of submittal of proposed rules to the Legislative Council Rules Clearinghouse.

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

- Statement of Scope
Governor's Approval of Statement of Scope
Public Comments Summary
(insert document name)
(insert document name)
(insert document name)

Table with 3 columns: Approved by, Signature, Date. Rows include Eric Lobner, Keith Wanke, and Preston D. Cole, Secretary.

cc: Board Liaison - AD/8
Department Tribal Liaison - AD/8
Program attorney - LS/8 by Todd Ambs
Department rule officer - LS/8

**CORRESPONDENCE/MEMORANDUM**

DATE: June 8, 2021

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on preliminary public hearing and public comments received on the scope statement for Board Orders WM-01-21 (E), WM-02-21 and WM-03-21 relating to gray wolf harvest regulations

On May 20, 2021, the co-chair of the Joint Committee for the Review of Administrative Rules (JCRAR) requested that the department hold a preliminary public hearing and comment period on the scope statement for Board Orders WM-01-21 (E), WM-02-21 and WM-03-21 under s. 227.136, Wis. Stats. This memo summarizes all comments received during the public hearing and comment period.

**Public Hearing and Written Public Comments**

The Department held a virtual preliminary public hearing on the statement of scope on Monday, June 7 at 1:00 p.m. on Zoom. 30 members of the public attended the hearing with five choosing to make a public comment. Three speakers represented themselves while the other two represented the Wisconsin Coon Hunters Association and the Humane Society of the United States. The Wisconsin Coon Hunters Association was concerned that the night hunting restriction would impact other activities, including trapping and hunting coons with hounds. They wanted to make sure that rules were drafted specifically so they did not impact other users. This concern was shared by another individual who felt it will be difficult to determine whether a hunter was night hunting coyotes or wolves. Two individuals testified against the three additional changes in the scope statement. They felt that the night hunting restriction would discriminate against callers and that the proposal was reactionary to the February hunt. Finally, the Humane Society of the United States was supportive of the three items added to the revised scope statement but felt additional measures should be taken, including limiting group hunting, and eliminating the use of motor vehicles while hunting with hounds.

In addition to those testifying at the hearing, 28 members of the public submitted written comments regarding the scope statement. 16 individuals wrote in support of the revisions to the scope statement. However, a large amount of these individuals felt that the scope statement did not go far enough and that the department should take additional measures to restrict the hunting of wolves. Some of the suggestions included issuing limiting group hunting, issuing fewer licenses, restricting the use of using motor vehicles while pursuing wolves with hounds, prohibiting the use of bait, and eliminating the use of hounds while hunting. Four groups and or individuals made similar suggestions without specifically making a comment on the content of the scope statement. Groups making these comments include the Sierra Club of Wisconsin and Animal Wellness Action and the Center for a Humane Economy. Two individuals commented that they were against all wolf hunting. One commented that they didn't believe the department's wolf count and another specifically wrote that they wished to continue to be able to hunt wolves at night. Finally, two others wrote that they were against the revisions to the original scope statement.

A recording of the preliminary public hearing and copies of all the comments are available should members of the board like to have more detailed information regarding the comments received.

**Drafter:** Scott Karel

# REVISED STATEMENT OF SCOPE

## Department of Natural Resources

This revised statement of scope modifies, SS 027-21, which was approved by the Governor on February 26, 2021, published in Register 783A2, on March 8, 2021, relating to gray wolf harvest regulations.

**Rule No.:** WM-01-21 (Emergency), WM-02-21 and WM-03-21

**Relating to:** Gray wolf harvest regulations, NR Ch's. 8,10, 12 and 19

**Rule Type:** Both Permanent and Emergency

### 1. Finding/nature of emergency:

Wis. Stats. s. 29.185 directs the department to allow the hunting and trapping of gray wolves if the wolf is not listed on the federal or state endangered and threatened species list. The same statute also directs the department to hold a single annual season for both hunting and trapping of wolves which begins on the first Saturday in November. Non-statutory provisions in SECTION 21 of 2011 ACT 169 require the department to promulgate emergency rules necessary for implementation or interpretation of Wis. Stats. s. 29.185 but exempt the department from making a finding of emergency. An emergency rule promulgated under this SECTION remains in effect until a permanent rule is adopted.

The department promulgated EmR1210 in compliance with SECTION 21. Although that rule remains in effect, some provisions have been affected by the renumbering or repeal of the underlying code provisions which were the subject of the rule or by statutory changes. Subsequently, gray wolves were removed from the federal endangered species list on January 4, 2021. The department implemented a gray wolf harvest season in February 2021 as a result of a court order. The timing of the court's order did not permit the department to engage in rulemaking to align EmR1210 with current laws and regulations and make other substantive changes to promote orderly season administration and enhance tools for ensuring that wolf harvest remains within established limits. In compliance with statutory requirements, the next wolf harvest season will begin in November of 2021. A new emergency rule is necessary in order for the department to implement the November 2021 season. Pursuant to SECTION 21 of 2011 ACT 169, a finding of emergency is not required for this emergency rule. Nonetheless, in order to preserve the welfare of state-licensed hunters, as well as the welfare and sustainability of wolf populations in Wisconsin, the department finds that an emergency rule is necessary to implement harvest regulations.

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

The objectives of this proposed rule are to provide regulated and managed harvest opportunities for gray wolves via hunting and trapping, and to revise the administrative procedures for submission and payment of wolf depredation claims. The desired outcome of these rules is the maintenance of a healthy wolf population at an established population goal.

Wis. Stats. s. 29.185 was created by 2011 ACT 169. It directs the department to allow the hunting and trapping of wolves if the wolf is not listed on the federal or state endangered and threatened species list and to promulgate rules. In response to 2011 ACT 169, the department promulgated EmR1210 to establish harvest regulations for the administration and implementation of a wolf season. These provisions included establishing wolf hunting zones (Section 30, EmR1210); shooting hours (Section 11, EmR1210); reporting, registration and carcass presentation requirements (Section 28, EmR1210); and regulations regarding the use of dogs (Section 19, EmR1210). The emergency rule established that harvest quotas for wolves will be based in part on the wolf population, population trends, established population goals, ecological considerations, and wolf conflict with agricultural and land uses (Section 27 EmR1210).

EmR1210 also established a wolf depredation program that is similar to the existing program that applies when wolves are listed as threatened or endangered and consistent with the wildlife damage, claims and abatement program that is in place for other species (Sections 36-43 EmR1210).

The department plans on bringing three different rules from this scope statement.

The first rule will be an emergency rule. Since 2015, many sections in code which relate to wolf harvest and depredations have been moved or updated and new statutes have been put in place. The purpose of this emergency rule will be to align wolf regulations to reflect the subsequent changes in statute and code. In addition to these measures, this emergency rule will also explore shortening the registration timeline for successful wolf hunters and trappers. It may also explore eliminating night hunting for wolves to establish consistent shooting hours for the wolf hunting season for all methods for hunting wolves.

Additionally, one or more permanent rules may be promulgated from this scope statement. The purpose of one permanent rule will be to permanently codify provisions of EmR1210 as modified by WM-01-21(E) and 2011 ACT 169, as well as the substantive changes included WM-01-21(E). This permanent rule may also establish zone specific tags for wolf management zones.

Finally, the department has begun the process to make updates to its wolf management plan. The department may also bring forward an additional permanent rule from this scope statement that may make any changes which would implement the department's updated wolf management plan. These changes may include changes to zone structure, registration and tagging requirements and other items related to the management of wolves that would necessitate a change in administrative code. The wolf management plan is anticipated to be completed in the spring of 2022.

These rules may make additional updates such as correcting cross-reference citations, updating road names on maps, changes needed to update application forms, revisions necessary to effectuate enforcement, or revisions which are necessary for consistency with recently enacted legislation.

### **3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

EmR1210 establishes regulations for method of the harvest, transportation, recording and registration of many harvested animals. A primary objective of these proposed rules is to ensure consistency of regulations with rules and statutes that are currently in place.

Current rules require many game species to be registered by 5 p.m. the day after recovery of the harvested animal. This registration is typically done either online or over the phone. This registration data is important for wolf harvest seasons because the department uses registration data to determine when the quota for a wolf management zone is nearing being filled which then triggers closure of the zone. This proposal will explore shortening the time that wolf harvesters will have to register their harvested game. The current rules potentially allow for a wolf hunter or trapper to wait over 24 hours after the wolf has been recovered to register the animal. With a small quota species such as wolves, the timeliness of closing the season when a quota has been reached is important so that harvest goals are maintained. The current registration structure makes it more difficult to timely obtain accurate harvest information. A shorter registration window will allow the department to more quickly obtain data regarding the number of wolves harvested during a season which may help prevent going over the quota in a management zone.

Current rules allow wolves to be hunted at night. These rules implemented a previous statutory requirement to permit night hunting of wolves. That requirement was removed by 2013 ACT 20, but because wolves were placed back on the federal list of endangered and threatened species shortly after the Act's passage, the department did not have the opportunity to engage in a review of its rules in response to 2013 Act 20. This rule may eliminate night hunting of wolves to establish consistent shooting hours for the entire wolf hunting season across all methods of hunting wolves.

Hunters and trappers who have been issued a wolf permit are currently allowed to harvest a wolf in any wolf management zone in which the quota has not been met. One potential effect of this allowance has been that quotas within individual zones are quickly approached, resulting in early closures of wolf zones

to harvest and a shortened overall wolf harvest season. This rule will explore establishing tags that are zone-specific. This will allow the department to apply different levels of harvest pressure and prevent crowding in individual wolf zones. This could potentially extend the season by allowing the department to regulate how many hunters and trappers are in a particular zone which would provide better opportunity for hunters and trappers and reduce the likelihood that the quota in each zone will be exceeded. This change would be consistent with the department's administration of other species seasons for which there is a limited draw quota.

#### **4. Detailed explanation of statutory authority for the rule:**

The department is directed by s. 29.014, Wis. Stats. to establish regulations for the taking of game that conserve populations, including wolves, and provide opportunities for good hunting. This authorizes the department to establish rules that restrict harvest to safe levels which are established based on population estimates, population goals, and hunter and trapper success rates. This section authorizes other actions such as establishing that wolves are not small game and allows removing them from a protected species list because they will be protected under other rules.

Section 21 of 2011 Act 169 directs the department to propose any rules that are necessary to implement or interpret s. 29.185 and 29.888, Wis. Stats. Some provisions of s. 29.185 will be duplicated in administrative code because that is where people are accustomed to finding similar or identical regulatory information for other species. Rule updates on the payments of claims for damage associated with gray wolves will be similar or identical to the language found in s. 29.888.

A variety of provisions explicitly authorize the department to manage harvest to ensure sustainable populations managed in accordance with the wolf management plan. Section 29.185(1m) permits the department to limit the number of harvest licenses issued and the number of wolves that may be taken under such licenses. Wolf harvesting zones are established in s. 29.185(5)(b). Section 29.185(5)(c) grants the department the authority to close the season in a harvest zone if the harvest quota is reached. The department may also regulate on how harvested wolves are properly tagged and registered, including requiring the carcass to be presented in person for registration under s. 29.185(7) and generally by s. 29.014.

The department is given authority to regulate the types of traps that may be used to harvest wolves under s. 29.185(6)(f) and generally by s. 29.014.

The department's authority with respect to forms of proof and reprints is found s. 23.47(1) and (3)(a). The department is authorized by s. 23.47(1) to designate, by rule, forms of proof of approvals and the locations and times during which those forms of proof are valid. In addition, under s. 23.47(3)(a), the department is authorized to maintain a system under which an individual may obtain a reprint of certain approvals and directed to designate, by rule, who may produce a reprint of an approval, which approvals a reprint may be produced, and the manner in which a reprint of an approval may be produced.

Restrictions on the removal of wild animals and the wildlife damage abatement and claims program are established under the authority of ss. 29.014, 29.885 and 29.888. These provisions allow the department to require written authorization for a member of the public to capture and relocate or kill wolves in damage and nuisance situations. Public hunting and trapping of certain species must be allowed for species currently covered under s. 29.885 (4m).

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

The Bureau of Wildlife Management, in cooperation with endangered resources, customer & outreach services, law enforcement, and legal services, will be responsible for promulgating permanent and emergency rules that support the implementation of a wolf hunting and trapping season. It is generally estimated that the effort of various staff will amount to the equivalent of two months of a staff specialist's time, approximately 320 hours.

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

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses and no design or operational standards are established in the rule.

Wisconsin's six Ojibwe tribes, which reserved hunting, fishing and gathering rights in territory ceded to the United States in the 1837 and 1842 Treaties, and the Great Lakes Indian Fish & Wildlife Commission, which provides off-reservation resource management and regulatory assistance to the Ojibwe Tribes, have an interest in how the department manages and regulates wolves.

A variety of organizations have expressed an interest in a wolf season during previous legislative and rulemaking efforts. It is likely that these same organizations will have a renewed interest in this topic.

The Department is committed to a transparent and deliberative process, in which all interested parties will be encouraged to participate, as we review our existing emergency rule and propose a permanent rule pursuant to this scope statement.

#### **7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The US Department of Interior announced in November 2020 that gray wolf populations across the lower 48 states have recovered and no longer require the protection of the Endangered Species Act. The U.S. Fish and Wildlife Service published a final rule in the Federal Register that removed gray wolves across the lower 48 states from the list of endangered and threatened wildlife and plants. The rule went into effect on January 4, 2021.

Federal law requires the states to monitor wolf populations for at least five years to ensure the species continues to thrive. If it appears, at any time, that the gray wolf cannot sustain itself without the protections of the Endangered Species Act, the service can initiate the listing process, including emergency listing.

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

In the long term, it is expected that new wolf hunting and trapping opportunities, and continuing wildlife watching activity, will contribute positively to Wisconsin's existing tourism economy. Even though the total number of participants in hunting and trapping will be low, these unique opportunities will bolster Wisconsin's image as a premier destination for wildlife and outdoors oriented activities.

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. Additionally, no significant costs are associated with compliance to these rules. Re-implementing a wolf season will have a direct positive economic impact to both the department and various small businesses. During the first three years in which the department had the authority to conduct a wolf harvest season, an average of 17,000 people per year submitted applications for a wolf license. This brought in an average of \$247,781 in annual revenue for the department. People who hunt or trap wolves may reside anywhere in the state but are likely to hunt and trap in the northern third of the state where most wolves are found. This will result in increased purchases of lodging services in those areas. Some hunters/trappers will need to be assisted by paid guides in order to have a high likelihood of success. The gear used for wolf hunting will be similar to that used for deer or furbearers and that, combined with the low number of hunters, means there will be limited new retail expenditures even though this is a new opportunity. Successful hunters and trappers will contribute economically through the sales of wolf pelts or, more often, the purchase of taxidermy services. These will be minor contributions overall but for an individual taxidermist, guide, or motel owner who receives extra work, the impact is worth noting.

This rulemaking may allow Wisconsin to manage wolves to population levels that will be lower than the current population. A lower wolf population may result in fewer wolf conflicts and reduced wolf depredation on domestic animals. Under previous requirements of law, the department reimburses owners for the fair market value of domestic animals killed, or veterinary services, in wolf depredation incidents. A reduction in depredation will result in less time investigating damage, filling claims, and

working with agency staff who administer the program. Individual producers who are concerned about livestock depredation are likely to view a hunting season as very important to them economically.

The department does not anticipate that there will be significant conflict in the field between people pursuing different outdoor recreational opportunities. It is possible that some wildlife watchers who seek wolves for viewing opportunities may be concerned about user conflict, however, and will be less active. They may initially spend less money travelling and pursuing these activities.

**Contact Person:**

Randy Johnson, Large Carnivore Specialist, 107 Sutliff Ave. Rhinelander WI 54501. (715) 499-0010.

[randy.johnson@wisconsin.gov](mailto:randy.johnson@wisconsin.gov)

Scott Karel, Wildlife Regulation Policy Specialist, 101 South Webster St., Madison, WI 53707. (608) 267-2452. [scottr.karel@wisconsin.gov](mailto:scottr.karel@wisconsin.gov)

DocuSigned by:



Department Head or Authorized Signature

4/29/2021 | 5:03 PM CDT

Date Submitted



# Tony Evers

Office of the Governor | State of Wisconsin

April 30, 2021

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statement of scope pursuant to Wis. Stat. § 227.135(2):

- Both an emergency and permanent statement of scope by the Department of Natural Resources, submitted April 28, 2021, relating to gray wolf harvest regulations (Wis. Admin. Code chs. NR 8, 10, 12 and 19).

On this day, I approved the following proposed administrative rules pursuant to Wis. Stat. § 227.185:

- A proposed emergency rule by the Accounting Examining Board, submitted April 14, 2021, relating to candidates for certification (Wis. Admin. Code ch. Accy 2); and
- A proposed emergency rule by the Department of Workforce Development, submitted April 27, 2021, relating to benefit charges for initial claims related to the public health emergency declared by Executive Order 72 (Wis. Admin. Code ch. DWD 123).

Please direct any questions about this letter to my deputy policy director, Katie Domina.

Sincerely,

A handwritten signature in black ink that reads 'Tony Evers'.

Tony Evers  
Governor

cc: Ryan Nilsestuen, chief legal counsel ([ryan.nilsestuen1@wisconsin.gov](mailto:ryan.nilsestuen1@wisconsin.gov))  
Katie Domina, deputy policy director ([katherine.domina1@wisconsin.gov](mailto:katherine.domina1@wisconsin.gov))  
DOA State Budget Office ([SBOAdminRules@spmail.wi.gov](mailto:SBOAdminRules@spmail.wi.gov))  
Emma Esch, DNR ([emma.esch@wisconsin.gov](mailto:emma.esch@wisconsin.gov))  
DSPS ([DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov))  
Mark Kunkel, DWD ([markd.kunkel@dwd.wisconsin.gov](mailto:markd.kunkel@dwd.wisconsin.gov))