

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING
Natural Resources Board Order ER-30-13

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on amendments to NR 10.02, 16.12, 16.13, 19.275, 21.13, 22.13, and 27, relating to the addition of the Blanding's turtle to the State's Protected Wild Animal list, possession exemptions, and turtle seasons and limits and to updating scientific and common names and federal listing status on the date(s) and at the time(s) and location(s) listed below.

Hearing Information

Date and Time

April 2, 2014
Wednesday
11:00AM

Location

Wisconsin Natural Resources Building
101 S. Webster, Madison, WI 53707
Room 613

There will be ***Live Meeting*** availability for those who are unable to attend in person. To request a ***Live Meeting*** link, please contact Terrell Hyde at Terrell.Hyde@wisconsin.gov or by calling (608) 264-9255.

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Terrell Hyde, Department of Natural Resources, Bureau of Natural Heritage Conservation, 101 S. Webster St, Madison, WI, 53707-7921; by E-mail to Terrell.hyde@wisconsin.gov or by calling (608) 264-9255. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Terrell Hyde, Department of Natural Resources, Bureau of Natural Heritage Conservation, 101 S. Webster St, Madison, WI, 53707-7921, or by calling 608-264-9255.

Submitting Comments

Comments on the proposed rule must be received on or before April 2, 2014. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Terrell Hyde
Department of Natural Resources
Bureau of Natural Heritage Conservation
101 S Webster St, Madison, WI 53707-7921

Phone: 608-264-9255
Fax: 608-266-2925
E-mail: Terrell.hyde@wisconsin.gov
Internet: <https://health.wisconsin.gov/admrules/public/Home> search "ER-30-13"

Analysis Prepared by the Department of Natural Resources

Statutory Authority, Statutes Interpreted and Explanation: Statutes that authorize the promulgation of these rules are: ss. 29.011, 29.014, 29.039, and 29.604 Stats. These statutes establish management authority with the department, provide that the title to wild animals is vested with the state, and provide the department with authority to maintain open and closed seasons and other regulations and programs to conserve game and nongame species. Section 29.604 (3)(b), Wis. Stats., has been interpreted as

allowing the department the authority to create and amend the list of Wisconsin's endangered and threatened species, NR 27.03, Wis. Admin. Code. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Related Statutes or Rules: Existing policies relevant to the rule are Wisconsin Adm. Codes, NR 27, NR 10.02, NR 16.12, NR 16.13, NR 19.275, NR 21.13, and NR 22.13. No new policies are being proposed. The department is also promulgating a corresponding emergency rule [ER-31-13 (E)]. The emergency and permanent rules both contemplate the following changes: add Blanding's turtle to the list of Wild Protected Animals (NR 10.02); add Blanding's turtles to the Captive Wildlife – Reptile and Amphibian Possession Exemptions [NR 16.12(3)(b)]; and add Blanding's turtles to the turtle season/limits with a season/limit of none/zero on NR 19.275(4), 21.13(4), and 22.13(4). The permanent rule only will also contemplate performing housekeeping on scientific and common names, and Federal Protection Status on administrative rules 10.02, 16.12, 16.13, 19.275, 21.13, 22.13, 27, and other related rules listing native plant and animal species.

Plain Language Analysis: The objective of this proposed rule is to protect Blanding's turtles from the threat of harvest and collection once they are removed from the Wisconsin Threatened species list. The Blanding's turtle was delisted on January 1, 2014 per administrative rule ER-27-11. This emergency and permanent rule is a follow-up action that was proposed during the public comment for ER-27-11. As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

SECTIONS 1, 3, 5, and 11-32 update scientific, common, and family names. These changes reflect current understanding of the scientific community and include mostly placement of species into a different Genus or taxonomic group. Several discrepancies in spelling and missing common names are also corrected. All of these taxa are still regarded as valid species.

SECTIONS 2, 4, 6, 7, and 8 add the Blanding's turtle to the list of Wild Protected Animals, Captive Wildlife Exemptions, and to the turtle season's and limits in Wisconsin's waters to protect them from harvest and collection.

SECTIONS 9 and 10 replace the list of endangered and threatened U.S. foreign and native species with a link to the latest publication as published in the Government Printing Office's Endangered and Threatened Wildlife and Plants 50 eCFR 17.11 and 17.12. This "adoption by reference" meets the expectation set by Wis. Stats. 29.604 (3) (b) to establish the list of wild animals and wild plants on the U.S. list of endangered and threatened foreign species; wild animals and wild plants on the U.S. list of endangered and threatened native species. The U.S. list is updated daily and is found on the US Fish and Wildlife Services' endangered species web page (<http://www.fws.gov/endangered/>).

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations: There are no federal regulations that would be in conflict with this proposed action. Blanding's turtles are not federally listed. In 2013, the United States Fish and Wildlife Service proposed addition of the Blanding's turtle to The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) list: <http://www.fws.gov/international/cites/cop16/blandings-turtle.html>

Comparison with Similar Rules in Adjacent States: There are similar possession laws in adjacent other states. The Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles shall not be taken or possessed except as authorized by the Director of the Department of Natural Resources.

Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen: Since 1979, when the Blanding's turtle was added to the threatened list, there has not been a pet or food trade industry for this species in the state. However, as a result of delisting, the Blanding's turtle is subject to turtle harvest regulations as all turtles not listed as threatened or endangered in NR 27 or otherwise specified have a 135-day open season between July 15 and November 30 where the public may capture and possess up to 5 individuals.

Internationally there is concern for this species because of the increasing trend in the pet trade and commercial collecting. Regionally the Blanding's turtle is state protected in Illinois, Iowa, and Minnesota. In Michigan, Blanding's turtles cannot be taken or possessed except as authorized by the Director of the Department of Natural Resources.

As stated by the Department in the final adopted rule order for ER-27-11, that while the Blanding's turtle no longer meets the scientific criteria for listing as Threatened, the population is vulnerable to

harvest and collection and should be added to the Protected Wild Animal list (NR 10.02) and harvest/collection limits.

These proposed rule changes were developed with the assistance of the Bureau of Natural Heritage Conservation, Fisheries Management, Wildlife Management, and Legal Services.

Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report: Pursuant to s. 227.137, Wis. Stats., the department is required to solicit comments on the economic impact of the proposed rule. Small businesses, as defined in s. 227.114(1), Wis. Stats., were asked to identify themselves as a small business in their comments. No comments were received in the 2-week comment period between January 22 and February 5, 2014.

The department anticipates minimal economic impact, with few entities affected as collection and possession limits will not change. Interested parties may include individuals using turtles as bait or food, and parties interested in developing a pet/food trade for the Blanding's turtle in Wisconsin.

Effect on Small Business (initial regulatory flexibility analysis): Pursuant to s. 227.137, Wis. Stats., the department is required to solicit comments on the economic impact of proposed rule. Small businesses, as defined in s. 227.114(1), Wis. Stats., were asked to identify themselves as a small business in their comments. No comments were received in the 2-week EIA comment period held between January 22 and February 5, 2014. The Department's email distribution list will be submitted to the Governor's Office of Regulatory Compliance. The EIA does not indicate that the proposed rule is reasonably expected to have a total impact of \$20,000,000 in implementation and compliance costs.

The department will submit the rule package and economic impact analysis to the Wisconsin Legislative Council under s. 227.15, Wis. Stats., and hearings on the proposed rule will be held by the department after proper notice in accordance with ss. 227.17 and 227.18, Wis. Stats. A small business regulatory flexibility analysis that contains the provisions in s. 227.19(3)(e), Stats., will be included in the final rule order.

The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us, or by calling (608) 266-1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

These proposed rules do not establish any requirements on businesses or local units of government.

The department anticipates minimal economic impact as the proposed rule changes will continue similar possession and collection limits that the Blanding's turtle received under the protections afforded to the species on Wisconsin's Threatened species list. The Blanding's turtle was added to the Threatened species list in 1979. As such, there has not been a market for its collection and possession since then. No changes to the permitting process for researchers and rehabilitators are expected as part of this proposed rule change.

Dated at Madison, Wisconsin

February 28, 2014

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By *Cathy Stepp*
Cathy Stepp, Secretary

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