

**Administrative Rules
GOVERNOR'S OFFICE PRECLEARANCE FORM**

| | |
|---|---|
| Agency: | Natural Resource Commission and Iowa Department of Natural Resources (DNR) |
| IAC Citation: | 571 IAC Chapter 86, "Turtles" |
| Agency Contact: | Martin Konrad, 725-8447, Martin.Konrad@dnr.iowa.gov |
| Statutory Authority: | Iowa Code §§ 481A.39, 481A.67, 482.1 and House File 2357 (2016) |
| Preclearance Requested Review Deadline: | August 24, 2016 |

Purpose of Proposed Rule: The purpose of this proposed rulemaking is to do the following:

1. Establish seasons and daily catch limits for both commercial and non-commercial (recreational) harvest of common snapping, smooth softshell, spiny softshell, and painted turtles as instructed to in House File 2357, signed by Governor Branstad on March 13, 2016 (HF 2357);
2. Prevent culling of turtles, i.e., releasing turtles after being taken into possession because they are considered inferior to other turtles taken; and
3. Add gear attendance and gear tagging requirements.

Nothing in this proposed rulemaking shall apply to aquaculture operations already regulated pursuant to Iowa Code sections 481A.141-145 or 571 IAC Chapter 89. In addition, the proposed rule does not implement any requirement that may be imposed on commercial turtle harvesters and buyers by the U.S. Department of State or U.S. Fish and Wildlife Service due to the proposed inclusion of wild spiny softshell, smooth softshell, and common snapping turtles in Appendix 3 of the Convention on the International Trade of Endangered Species (CITES), effective November 2016.

Need for Proposed Rule: HF 2357 specifically instructs the Natural Resource Commission (NRC) to adopt rules establishing commercial and recreational seasons and daily catch limits on turtles. Iowa law also requires the NRC, in partnership with the DNR, to manage the state's turtle population for posterity.

Many surrounding Midwest states have determined their turtle populations can only be managed for posterity by entirely closing commercial harvest (*see, e.g.*, North Dakota, South Dakota, Nebraska, Kansas, Illinois, and Indiana). The DNR considered this approach. However, as an interim measure and pending the results of HF 2357's five-year study (more below), the DNR has instead determined, and is proposing to the NRC, that commercial and recreational harvest can continue so long as turtles are protected during their peak mating season, egg-laying females are protected during most of their nesting season, and turtles are protected while they are congregated in wintering colonies. The proposed rule is structured accordingly.

Specifically, the proposed rule establishes a July 1 through December 31 commercial harvest season on common snapping, smooth softshell, spiny softshell, and painted turtles. The same season dates apply to recreational harvest of smooth softshell, spiny softshell, and painted turtles; however, common snapping turtles shall not be subject to any recreational season but instead shall be open year-round for recreational take. The proposed rulemaking also prohibits harvesting on or within 100 yards of a

river or a stream between July 1 and July 15.

The proposed rule's daily catch and possession limits have been developed to hold harvest to recent historical levels while the DNR completes a five-year study on the sustainability of Iowa's turtle populations. This approach is consistent with the North American Wildlife Management model and the NRC's authority in statute.

The proposed daily catch and possession limits are based on the reported take of the top 50% harvesters from the prior eight year period (2008-2015). More precisely:

- The proposed commercial daily catch and possession limits are respectively:
 - for common snapping turtles, 14 and 70;
 - for the two softshell species in aggregate, 1 and 5; and
 - for painted turtles, 3 and 15.
- Under the proposed rulemaking, a commercial harvester may possess a maximum of 90 turtles of all species at any one time.
- Recreational possession limits are set by Iowa Code section 483A.28 (100 lbs. of live turtles or 50 lbs. of dressed turtles). Daily catch limits for recreational harvest are proposed to be the same as above, provided the possession limit defined in Iowa Code is not exceeded.

The proposed possession limits described above for harvestable species was calculated at five times the daily catch limit, which was selected to ensure it is still profitable to market turtles while maintaining historic harvest levels.

In addition, proposals for gear placement, gear attendance, and releasing turtles are included to protect turtle health. All turtle traps (whether in a river, stream, pond, or lake) must be set above the waterlines to avoid drowning turtles should there be unexpected rises in water levels.

Finally, as noted above, HF 2357 also instructed the NRC to conduct a review of the status of the state's turtle population to determine whether these harvest regulations should be revised. Per the legislation, this study must begin no later than January 1, 2017, with a final report due to the General Assembly by July 1, 2021. The study officially began on July 6, 2016 and includes sampling three habitat types where the four harvestable species live. The NRC intends to assess turtle populations on a regional basis. The DNR will contact and involve appropriate organizations in the review of the study's data. There is no rulemaking component of this legislation so this study is not addressed in the proposed rule; it is mentioned in this packet merely to address the entirety of HF 2357.

Nothing in this proposed rulemaking shall apply to aquaculture operations already regulated pursuant to Iowa Code sections 481A.141-145 or 571 IAC Chapter 89.

Stakeholder Engagement: Stakeholder engagement began on September 17, 2015 when the DNR hosted a meeting at Neal Smith National Wildlife Refuge to discuss turtle harvesting in Iowa. Stakeholders met again on May 12, 2016 and discussed more narrowly proposed season dates and catch and possession limits in response to HF 2357. (The catch and possession limits discussed at the May 12th meeting were more restrictive than what is included in this proposal.) Participating stakeholders included commercial and recreational harvesters, NRC Commissioners Marcus Branstad and Kim Francisco, a professional naturalist, State Representative Dean Fisher, and representatives from the Iowa Trappers Association, Iowa Fur Takers of America, Fishing and Aquaculture Association, Iowa Conservation Alliance, Izaak Walton League, Iowa Sierra Club, Iowa Rivers Revival, Pheasants Forever, Blank Park Zoo, Iowa Environmental Council, and Stantec Company.

Stakeholders were invited to share comments and information with the NRC and DNR on possible season dates and harvest limits both in person at the May 12th meeting and through written submissions until June 17, 2016.

All told, approximately 240 emails and letters were received. Of these, only seven expressed concern about impacts to harvest while the rest were concerned with the sustainability of the turtle population (the vast majority of stakeholders supported closing commercial harvest completely). The most notable stakeholder comments were:

- Daily catch limits are too restrictive and will put the harvester out of business
- Season dates should be adjusted to allow for more harvest days
- Establish species-specific seasons
- Set the season to begin after 80% of the females have completed nesting
- Establish a minimum possession of 100/species
- Turtle harvesting should be banned entirely
- The harvest of female turtles should be eliminated entirely
- Regulations should be set according to sex
- The harvest season shouldn't be more than 90 days in recognition of the slow reproductive rate of turtles
- Establish turtle harvest quotas instead of catch and possession limits
- Establish turtle length limits
- Has the DNR contacted the Minnesota or Wisconsin DNR to determine if their regulations have been effective in increasing turtle populations?
- Implement a pilot program where wild turtle eggs are collected, cultured, and hatchlings stocked back into the wild

DNR considered these stakeholder comments and information gathered from May 12 through June 17, 2016 in finalizing this proposed rule. For instance, the DNR's original proposal had the season beginning on July 15 to account for early July nesting of certain species. In response to comments, the DNR is proposing a July 1 start date instead, provided there is a ban on trapping on or within 100-yards of any river or stream for the first two weeks of the season (to protect early July nesting of certain softshell species).

Similarly, the DNR originally proposed catch and possession limits based on a ten-year average of days worked, reported turtle weights, and reported harvest amounts of all reporting harvesters, but the DNR instead proposes here to utilize only the reported take of the top 50% harvesters from the prior eight year period (2008-2015).

Alternatives:

The DNR also considered the suggestion to implement a quota system or either a sex- or species-specific season, but decided these were not feasible approaches at this time. A quota system would require either new tags or a new electronic reporting system (so as to accurately monitor take in almost real-time); it would also arguably require legislative changes to Iowa Code Chapter 482. Sex- or species-specific regulations would be more cumbersome for harvesters to follow and for DNR to enforce than the proposed rule will be. However, the DNR will revisit all feasible alternatives pending the data set from its five-year study.

The DNR also considered a ban on commercial harvest, as North Dakota, South Dakota, Nebraska, Kansas, Illinois, and Indiana have, or a ban except for limited waters, as Missouri has.

Besides stakeholder feedback, DNR relied on other important criteria in drafting this proposed rule including simplicity of dates and structure to ensure the rule will be simple and easy for harvesters to understand and comply with (which reflects enforceability, too); cost effectiveness; and minimizing impact to harvesters while grounding the regulations in science.

**Administrative Rules
JOBS IMPACT STATEMENT**

1. BACKGROUND INFORMATION

| | |
|----------------------|--|
| Agency: | Natural Resource Commission and Iowa Department of Natural Resources (DNR) |
| IAC Citation: | 571 IAC Chapter 86, "Turtles" |
| Agency Contact: | Martin Konrad, 725-8447, Martin.Konrad@dnr.iowa.gov |
| Statutory Authority: | Iowa Code §§ 481A.39, 481A.67, 482.1, and House File 2357 (2016) |

| | |
|------------|--|
| Objective: | <p>The purpose of this proposed rulemaking is to do the following:</p> <ol style="list-style-type: none"> 1. Establish seasons and daily catch limits for both commercial and non-commercial (recreational) harvest of common snapping, smooth softshell, spiny softshell, and painted turtles as instructed to in House File 2357, signed by Governor Branstad on March 13, 2016 (HF 2357); 2. Prevent culling of turtles, i.e., releasing turtles after being taken into possession because they are considered inferior to other turtles taken; and 3. Add gear attendance and gear tagging requirements. <p>Nothing in this proposed rulemaking shall apply to aquaculture operations already regulated pursuant to Iowa Code sections 481A.141-145 or 571 IAC Chapter 89. In addition, the proposed rule does not implement any requirement that may be imposed on commercial turtle harvesters and buyers by the U.S. Department of State or U.S. Fish and Wildlife Service due to the proposed inclusion of wild spiny softshell, smooth softshell, and common snapping turtles in Appendix 3 of the Convention on the International Trade of Endangered Species (CITES), effective November 2016.</p> |
| Summary: | <p>The proposed rule establishes a July 1 through December 31 commercial harvest season on common snapping, smooth softshell, spiny softshell, and painted turtles. The same season dates apply to recreational harvest of smooth softshell, spiny softshell, and painted turtles; however, common snapping turtles shall be open year-round for recreational harvest. The proposed rule also prohibits harvesting on or within 100 yards of a river or a stream between July 1 and July 15. The proposed rule also imposes daily catch and possession limits to maintain the overall harvest numbers similar to that taken by the top 50% of harvesters the last eight years. There are also gear placement, gear tag, and gear attendance requirements for all harvesters, and a prohibition against culling (release of a turtle after being taken into possession because it is considered inferior to other turtles taken).</p> |

2. JOB IMPACT ANALYSIS

Fill in this box if impact meets these criteria:

No Job Impact on private sector jobs and employment opportunities in the State.
(If you make this determination, you must include the following statement in the preamble to the rule: "After analysis and review of this rulemaking, no impact on jobs has been found.")

Explanation:

Fill in this box if impact meets either of these criteria:

- Positive Job Impact on private sector jobs and employment opportunities in the State.
 Negative Job Impact on private sector jobs and employment opportunities in the State.

Description and quantification of the nature of the impact the proposed rule will have on private sector jobs and employment opportunities:

The commercial turtle industry consists of turtle harvesters, turtle harvest helpers, and turtle buyers, all of whom must be licensed under state law to harvest and/or buy wild turtles in Iowa. According to DNR records, the following licenses were issued on average per year over the past three years (2012 – 2014):

- 160 harvesters
- 20 turtle harvest helpers
- 15 turtle buyers

Although the DNR does not anticipate a significant change in the number of licensed turtle harvesters, buyers, or helpers from this proposed rulemaking, there is potential for a negative impact on jobs in the commercial turtle harvest industry. Because the DNR proposed harvest limits is in line with the upper 50% of harvesters, most individual harvesters should not experience a significant reduction in income because of the proposed season.

The purpose of the proposed rule is to protect Iowa's wild turtle populations to both sustain them for posterity as required by law, but also to provide on-going harvest opportunity. To that latter point, this proposed rule should actually support the continuation of commercial harvest in the state. The DNR believes that any short-term jobs impact will eventually be outweighed by a sustainable commercial turtle harvest industry well into the future.

Categories of jobs and employment opportunities that are affected by the proposed rule:

- Commercial turtle harvesters – self employed
- Commercial turtle harvester helpers – employed by a turtle harvester
- Commercial turtle buyer – self employed
- Seasonal employment by commercial turtle buyers

Number of jobs or potential job opportunities:

Unknown.

Regions of the state affected:

This proposed rule will have a statewide affect.

Additional costs to the employer per employee due to the proposed rule: (if not possible to determine, write "Not Possible to Determine.")

Not possible to determine. In 2015 stakeholders were encouraged to provide projections on the

financial impact of a similar recommended rule but none chose to do so. It is reasonable to assume some harvesters will choose to purchase additional harvest gear so as to increase netting effort during the open season to minimize loss of income. Others may choose not to make additional gear investment and instead just increase daily activity. It follows that with so many unknowns it is not possible to estimate a per harvester impact.

3. COST-BENEFIT ANALYSIS

The Agency has taken steps to minimize the adverse impact on jobs and the development of new employment opportunities before proposing a rule. See the following Cost-Benefit Analysis:

Adjustments taken by the DNR to minimize impacts to harvesters were to open the season on July 1 when July 15 was initially proposed, and to set the daily catch limits based on the reported take of the top 50% harvesters from the prior eight year period (2008-2015) instead of the average numbers of all harvesters from 2005 to 2015 as originally suggested. The proposed possession limits for harvestable species were likewise increased to the top harvesters' eight-year average.

4. FISCAL IMPACT

Please see the Fiscal Impact Statement for an identification and description of costs the Department anticipates state agencies, local governments, the public, and the regulated entities, including regulated businesses and self-employed individuals, will incur from implementing and complying with the proposed rule.

5. PREAMBLE

The information collected and included in this Jobs Impact Statement must be included in the preamble of the proposed rule, written in paragraph form. For rules that have no impact on jobs (see the first box in number 2 above), the following statement must be included in the preamble: "After analysis and review of this rulemaking, no impact on jobs has been found."

**Administrative Rules
FISCAL IMPACT STATEMENT**

Agency: Natural Resource Commission and Iowa Department of Natural Resources (DNR)
IAC Citation: 571 IAC Chapter 86 "Turtles"
Agency Contact: Martin Konrad, 725-8447, Martin.Konrad@dnr.iowa.gov

Summary of the Rule: The purpose of this proposed rulemaking is to do the following:

1. Establish seasons and daily catch limits for both commercial and non-commercial (recreational) harvest of common snapping, smooth softshell, spiny softshell, and painted turtles as instructed to in House File 2357, signed by Governor Branstad on March 13, 2016 (HF 2357);
2. Prevent culling of turtles, i.e., releasing turtles after being taken into possession because they are considered inferior to other turtles taken; and
3. Add gear attendance and gear tagging requirements.

Fill in this box if the impact meets any of these criteria:

- No Fiscal Impact to the State.
 Fiscal Impact of less than \$100,000 annually or \$500,000 over 5 years.
 Fiscal Impact cannot be determined.

Brief Explanation:

The proposed rule is not expected to cause a significant change in revenue to the state. The DNR does not anticipate any notable reduction in the sale of either commercial or recreational fishing licenses as a result of this proposed rulemaking. DNR employees who currently monitor the harvest of turtles, who are responsible for enforcing turtle harvest regulations, and who issue commercial licenses will all continue to do so without additional training or cost to state government.

Fill in this box if the impact meets this criteria:

- Fiscal Impact of \$100,000 annually or \$500,000 over 5 years.

Brief Explanation:

Assumptions:

Describe how estimates were derived:

Estimated Impact to the State by Fiscal Year

| | <u>Year 1 (FY)</u> | <u>Year 2 (FY)</u> |
|--------------------------------|--------------------|--------------------|
| Revenue by Each Source: | | |
| GENERAL FUND | 0\$ | 0\$ |
| FEDERAL FUNDS | 0\$ | 0\$ |
| OTHER (Specify) | 0\$ | 0\$ |
| | <hr/> | <hr/> |
| TOTAL REVENUE | \$0 | \$0 |
| Expenditures: | | |
| GENERAL FUND | 0\$ | 0\$ |
| FEDERAL FUNDS | 0\$ | 0\$ |
| OTHER (Specify) | 0\$ | 0\$ |
| | <hr/> | <hr/> |
| TOTAL EXPENDITURES | \$0 | \$0 |

NET IMPACT

This rule is required by State law or Federal mandate.

Please identify the state or federal law: HF 2357; see also Iowa Code sections 481A.39, 481A.67, and 482.1.

Funding has been provided for the rule change.

Please identify the amount provided and the funding source:

Funding has not been provided for the rule.

Please explain how the agency will pay for the rule change: All DNR employees who currently monitor the harvest of turtles, who are responsible for enforcing turtle harvest regulations, and who issue commercial licenses will continue to do so without additional training or cost to state government.

Fiscal impact to persons affected by the rule: There is a potential for harvesters to experience a reduction of income under the proposed rule. This loss would be attributed to less total opportunity to harvest wild turtles due to the shortened season. However, stakeholder input indicated that the income derived by commercial harvesters is used to supplement other income sources; no one provided comment (or evidence) that their income is wholly dependent on turtle harvesting.

Fiscal impact to Counties or other Local Governments (required by Iowa Code 25B.6): No fiscal impact is expected for counties or other local governments because of this proposed rule.

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 481A.39, 481A.67 and 482.1, the Natural Resource Commission (Commission) hereby gives Notice of Intended Action to amend Chapter 86, “Turtles,” Iowa Administrative Code.

House File 2357 (HF 2357), signed by Governor Branstad on March 23, 2016, specifically instructs the Commission to adopt rules establishing commercial and recreational seasons and daily catch limits on turtles. Iowa law requires the Commission, in partnership with the Department of Natural Resources (DNR), to manage the state’s turtle population for posterity.

Many surrounding Midwest states have determined their turtle populations can only be sustainably managed by entirely closing commercial harvest (see, e.g., North Dakota, South Dakota, Nebraska, Kansas, Illinois, and Indiana). The Commission considered this approach. However, as an interim measure and pending the results of HF 2357’s five-year study, the Commission has instead determined that commercial and recreational harvest can continue so long as turtles are protected during their peak mating season, egg-laying females are protected during most of their nesting season, and turtles are protected while they are congregated in wintering colonies. The proposed rule is structured accordingly.

Nothing in this proposed rulemaking shall apply to aquaculture operations already regulated pursuant to Iowa Code sections 481A.141-145 or 571 IAC Chapter 89. In addition, the proposed rule does not implement any requirements that may be imposed on commercial harvesters and buyers by the U.S. Department of State or U.S. Fish and Wildlife Service due to

the proposed inclusion of wild spiny softshell, smooth softshell, and common snapping turtles in Appendix 3 of the Convention on the International Trade of Endangered Species (CITES).

Although the Commission does not anticipate a significant change in the number of licensed turtle harvesters, buyers, or helpers from this proposed rulemaking (or in the sale of recreational fishing licenses generally), there is the possibility of a negative impact on the commercial turtle harvest industry. Individual harvesters may experience a reduction in income because there will be fewer days to harvest turtles under the proposed season. The Commission, however, is proposing these rule changes to protect Iowa's wild turtle population, held in trust for the public, for posterity; this in turn will ensure the long-term sustainability of Iowa's commercial turtle harvest industry and protect jobs related to it into the future.

Any person may submit written suggestions or comments on the proposed amendments through _____, 2016. Such written material should be submitted to Martin Konrad, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034, fax (515)725-8201, or by E-mail to Martin.Konrad@dnr.iowa.gov. Persons who have questions may contact Martin Konrad by E-mail or at (515)725-8447.

A public hearing where persons may present their views orally or in writing will be held *Month, day, 2016 at time pm* Wallace State Office Bldg., Conference Room **XX**, 502 E. 9th Street, Des Moines, Iowa. At the meeting, persons will be asked to give their names and addresses for the record and to confine their remarks to the subjects of the proposed amendments. Any person who intends to attend the public hearing and has special requirements such as those related to mobility or hearing impairments should contact the DNR to advise of any specific needs.

These amendments are intended to implement Iowa Code sections 481A.39, 481A.67,

482.1, 482.4, and 482.11.

The following amendments are proposed.

ITEM 1. Amend subrule **86.1(1)** as follows:

86.1(1) ~~*Species and season*~~*Permissive catch.* It shall be lawful to commercially and non-commercially (recreationally) take ~~common snapping turtles,~~ spiny softshells (*Apalone spinifera*), smooth softshell (*Apalone mutica*), and painted turtles (*Chrysemys picta*) from July 1 to December 31. Common snapping turtles (*Chelydra serpentine*) may be taken commercially from July 1 to December 31, but recreationally may be taken year-round. ~~Possession of alligator snapping turtles is not permitted.~~ The taking of turtle eggs from wild nests is prohibited.

a. Turtles shall not be harvested from gear set prior to midnight on July 1.

b. Turtles shall not be harvested from gear set prior to midnight on July 15 in or within 100 yards of any river or stream.

ITEM 2. Rescind subrule **86.1(3)** and adopt the following **new** subrule in lieu thereof:

86.1(3) *Daily catch and possession limits.* The following daily catch limits apply to commercial and recreational harvesters, while the possession limits apply to only commercial harvesters:

| Turtle Species | Daily Catch Limit (commercial and recreational) | Possession Limit (commercial only) |
|--|--|---------------------------------------|
| Common snapping turtle | 14 | 70 |
| Spiny and Smooth softshell turtle in aggregate | 1 | 5 |
| Painted turtle | 3 | 15 |

a. The possession limit for recreational harvesters is a maximum of 100 pounds of live turtles or 50 pounds of dressed turtles per Iowa Code section 483A.28. A recreational

harvester's daily catch limit shall not exceed this possession limit.

ITEM 3. Rescind subrule **86.1(4)** and adopt the following **new** subrule in lieu thereof:

86.1(4) *Culling.* It is unlawful to sort, cull, high-grade, or otherwise replace any turtle in possession.

ITEM 4. Adopt the following **new** subrule 86.1(5):

86.1(5) *Tags.* All harvesters shall affix weather-resistant gear tags above the waterline to each piece of gear plainly showing the name, address, and license number of the licensee.

ITEM 5. Adopt the following **new** subrule 86.1(6):

86.1(6) *Gear attendance.* All turtle traps shall be set with the top of the trap visible above the waterline at all times, and shall be checked and completely emptied of catch at least once every 72 hours. When a turtle trap is checked, turtles shall either be taken into possession, up to the daily catch limit, or immediately released.

Date

Chuck Gipp