STATE OF MICHIGAN

DEPARTMENT OF NATURAL RESOURCES

LANSING

JENNIFER M. GRANHOLM
GOVERNOR

REBECCA A. HUMPHRIES
DIRECTOR

SUBMITTED: January 15, 2008
RESUBMITTED: February 11, 2008
RESUBMITTED: March 10, 2008

A P P R O V E D
_____, 20____
MICHIGAN NATURAL RESOURCES COMMISSION
_____
(ASSISTANT TO THE COMMISSION)

Memorandum to the Natural Resources Commission

Subject: Pesticide Regulations
Wildlife Conservation Order Amendment No. 3 of 2008

Authority:

The Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, authorizes the Director and the Commission to issue orders to manage wild animals in this state.

Discussion and Background:

The Department is recommending amendments to the Wildlife Conservation Order (WCO) to update regulations on the take of certain wildlife with pesticides. Since the early 1990s, there have been many changes in available pesticides, the status of threatened and endangered wildlife which may be impacted by pesticides, and changes in the societal acceptance of pesticide use on various species. This order addresses changes necessary to assure adequate measures for nuisance animal control while protecting Michigan's urban peregrine falcons and other raptors.

Current peregrine falcon range in Michigan encompasses urban areas that include industrial sites. Pesticide applications in "recognized industrial areas" do not need a Department permit, but there is no legal definition for "recognized industrial areas." Two restricted-use pesticides used in urban avian depredation situations may be lethal to peregrines and other non-target wildlife. This order proposes that any use of restricted pesticides outside of buildings require a Department permit. This will provide the Department the oversight to allow the continued use of restricted-use pesticides as a tool in addressing wildlife depredations while assuring the conservation of non-target species.

This order also recommends changes to bring the WCO into compliance with modifications to the Michigan Compiled Laws since the last update to this section in 1990. These recommendations include correcting the reference to the appropriate Public Act dealing with pesticides, providing a reference to the definition for restricted-use pesticides, and referring to restricted-use pesticides where necessary.

NATURAL RESOURCES COMMISSION
Keith J. Charters, Chair ● Mary Brown ● Hurley J. Coleman, Jr. ● Darnell Earley ● John Madigan ● J. R. Richardson ● Frank Wheatlake

STEVENS T. MASON BUILDING ● P.O. BOX 30028 ● LANSING, MICHIGAN 48909-7528
www.michigan.gov/dnr ● (517) 373-2329

Great Lakes, Great Times, Great Outdoors!

Recommendation:

This order was submitted for information February 7 and March 6, 2008 at the Natural Resources Commission Meetings. This item appeared on the Department's January 28, 2008 calendar and may be eligible for approval on April 10, 2008.

Douglas A. Reeves, Acting Chief
Wildlife Division

Lynne M. Boyd, Chief
Forest, Mineral and Fire Management

Ronald A. Olson, Chief
Parks and Recreation

Rodney Stokes, Acting Chief
Law Enforcement Division

Arminda S. Koch
Resource Management Deputy

Dennis Fedewa
Chief Deputy

I have analyzed and discussed these recommendations with staff and concur as to matters over which the Natural Resources Commission has authority.

Rebecca A. Humphries
Director

WILDLIFE CONSERVATION ORDER

Amendment No. 3 of 2008

Under the authority of sections 40107 and 40113a, Act No. 451 of the Public Acts of 1994, as amended, being sections 324.40107 and 324.40113a of the Michigan Compiled Laws, the Natural Resources Commission and the Director of the Department of Natural Resources orders that, effective April 11, 2008, the following sections of the Wildlife Conservation Order shall read as follows:

5.50 Damage and nuisance animal control permit definitions.

Sec. 5.50. For the purposes of sections 5.51 to 5.55 of this order, the terms in this section shall have the meaning ascribed to them in this section.

(1) "Permit" means any type of permit issued under the authority of sections 5.50 to 5.55 of this order for the control of damage or nuisance caused by wildlife.

(2) "Permittee" means a person who has applied for and been issued a permit.

(3) "Pesticide" shall have the same meaning as that ascribed by the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, as amended, Part 83 pesticide control, being sections 324.8301 to 324.8336 of the Michigan Compiled Laws.

(4) "Restricted use pesticide" shall have the same meaning as that ascribed by the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, as amended, Part 83 pesticide control, being sections 324.8301 to 324.8336 of the Michigan Compiled Laws.

5.53 Use of pesticides.

Sec. 5.53. Nuisance animal control operators may be issued a permit to use pesticides and may use pesticides to control the depredations of wild animals only in accordance with the following:

(1) As provided by Part 83, pesticide control, Act No. 451 of the Public Acts of 1994, as amended, permits authorizing the use of pesticides shall not be issued unless the applicant provides proof that either the applicant is currently licensed as a commercial pesticide applicator business in category 7a (general pest control) or category 7d (vertebrate pest control) or is in possession of a valid commercial pesticide applicator certification in category 7a (general pest control) or category 7d (vertebrate pest control) as provided by the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, as amended, Part 83 pesticide control, being sections 324.8301 to 324.8336 of the Michigan Compiled Laws.

(2) Only pesticides registered with the United States environmental protection agency and the Michigan department of agriculture may be used, and then only in a manner and for the purposes for which registered and labeled.

(3) Pesticides may be used inside of buildings to control the depredations of those species designated in subsection 5.52(3).

(4) Pesticides other than restricted-use pesticides may be used outside of buildings and other structures to control the depredations of those species designated in subsection 5.52(3).

(5) Placement of restricted-use pesticides outside of buildings to control the depredations of those species designated in subsection 5.52(3) shall not be made except under a control permit issued for each project.

(a) Information which should be supplied with the request for a project control permit are: location, nature, and extent of damage, species committing the damage, and proposed control techniques. If a project control permit is issued, such permit shall specify: the person, the time, the toxicant and method which may be used, the method of disposing of dead animals, other conditions as may be appropriate, and that a report of the operation be submitted to the department on department provided forms at the conclusion of the permit.

(b) The placement of all bait-type pesticides outside of buildings shall be preceded by pre-baiting, and such pesticides shall not be left unattended. Prior to placement of contact-type pesticides outside of buildings, such period of surveillance shall be made as to ensure that minimal or no harm to protected species will occur, with periodic daily surveillance maintained during exposure. Contact poisons used in conjunction with bird perches for bird control shall not be used in grain elevators, feed mills, or other places where food or feed products may become contaminated from drippings.

(c) Failure of the permittee or an authorized designee to comply with the permit provisions will make the permittee ineligible to receive project control permits for a period of one year.

Issued this 10th day of April, 2008.

Approved as to matters over which the Natural Resources Commission has authority.

Keith J. Charters, Chairman
Natural Resources Commission

Approved as to matters over which the Director has authority.

Rebecca A. Humphries
Director