STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
LANSING

RICK SNYDER
GOVERNOR

RODNEY A. STOKES
DIRECTOR

SUBMITTED: April 11, 2011
RESUBMITTED: May 16, 2011

MEMORANDUM TO THE NATURAL RESOURCES COMMISSION

Subject: Baiting and Feeding of Deer in the Lower Peninsula
Wildlife Conservation Order Amendment No. 10 of 2011

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:

On April 11, 2011, a Wildlife Conservation Order amendment was submitted to act as a placeholder, opening the relevant section of the Wildlife Conservation Order, while the public discussion on baiting continued. The changes contained did not constitute a recommendation from the Department but served as an example of the type of options the Natural Resources Commission (NRC) may consider. This action was necessary to allow for a decision to occur in a timely fashion to be able to be printed in the Hunting and Trapping Digest. The change offered as an example only would return regulations to the restrictions on baiting and feeding that were in place prior to August of 2008. These restrictions would include a ban on baiting and feeding in Alcona, Alpena, Crawford, Montmorency, Oscoda, Otsego, and Presque Isle Counties where a self-sustained infection of bovine tuberculosis (TB) persists in white-tailed deer. In the remainder of the Lower Peninsula, baiting and recreational feeding would be allowed in limited quantities as may currently be done in the Upper Peninsula. The requirement for the Director to ban baiting and feeding as established under the CWD Plan would be retained.

The Department adopted the Michigan Surveillance and Response Plan for Chronic Wasting Disease of Free-Ranging and Privately-Owned Cervids (CWD Plan) on August 26, 2002. If CWD is documented in Michigan or within 50 miles of the border, the CWD Plan requires a ban on all feeding and baiting of cervids within the peninsula containing CWD or adjacent to the adjoining state or province with CWD. On July 12, 2003, the Natural Resources Commission (NRC) amended those portions of the Wildlife Conservation Order (WCO) regulating feeding and baiting of deer to require the Director to ban baiting and feeding as required by the CWD Plan.

On August 25, 2008, the National Veterinary Services Laboratory in Ames, Iowa confirmed CWD in a deer from a privately-owned facility in Kent County. An interim order by the Director was issued on August 26, 2008, implementing a ban on feeding and baiting in the Lower Peninsula. Effective October 10, 2008, the NRC adopted WCO Amendment 15 of 2008, replacing the Director's Interim Order with a long-term ban on feeding and baiting in the Lower Peninsula.

During three years of surveillance required by the CWD Plan, no additional deer infected with CWD have been identified in Michigan. However, initial cases are difficult to detect until the disease has become established and increased in prevalence, and new emergence of the disease continues to be reported around the country. Though many individuals have made requests to maintain the Lower Peninsula ban and/or expand the ban to encompass the UP, there is also a great deal of public interest in providing opportunities under which baiting may be legally used throughout the state.

The most cautious and biologically justified approach to prevent establishment and spread of CWD (as well as other transmissible diseases) should it (they) currently exist at undetectable levels in Michigan or be introduced to the state in the future would entail maintaining the ban on baiting and feeding. However, additional consideration was made by the NRC regarding public preference to once again allow baiting and feeding of deer in some manner within the Lower Peninsula and the challenges to enforcement caused by poor compliance with the baiting ban throughout the Lower Peninsula. In recognition of these considerations, this resubmitted amendment would retain a ban on baiting and feeding in Deer Management Unit 487, which includes Alcona, Alpena, Iosco, Montmorency, Oscoda, and Presque Isle Counties. In the remainder of the Lower Peninsula, baiting and recreational feeding would be allowed on certain dates, in limited quantities, and with restrictions on the manner of placement as may currently be done in the Upper Peninsula. No TB positive deer have been documented in Crawford and Otsego counties since 2001 and 2002, respectively; thus these counties have been removed from the area proposed to fall under the baiting ban within the placeholder amendment. Within Iosco County, 2 TB positive deer were documented in 2007 and 1 in 2008, leading to incorporation of this county into DMU 487 and the current recommendation for it to be included under the baiting ban.

Recommendation:

This order was submitted for information on May 12, 2011 at the Natural Resources Commission Meeting. This item appeared on the Department's April 2011 calendar and may be eligible for approval on June 9, 2011.

Russ Mason, Ph.D., Chief
Wildlife Division

Gary Hagler, Chief
Law Enforcement Division

Lynne M. Boyd, Chief
Forest Management Division

James Dexter, Acting Chief
Fisheries Division

Ronald Olson, Chief
Parks and Recreation Division

Kelley D. Smith, Ph.D.
Acting Natural Resources Deputy

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

_____
Rodney A. Stokes, Director

_____
Date

WILDLIFE CONSERVATION ORDER

Amendment No. 10 of 2011

By authority conferred on the Natural Resources Commission and the Director of the Department of Natural Resources by sections 40107 and 40113a of 1994 PA 451, MCL 324.40107 and 324.40113a, it is ordered that effective June 10, 2011, the following section(s) of the Wildlife Conservation Order shall read as follows:

3.100 Taking of deer; prohibited firearms, “bait” and “baiting” defined, conditions for baiting established in certain area; unlawful acts.

Sec. 3.100 (1) A person shall not use a rimfire firearm .22 caliber or smaller for the taking of deer.

(2) A person shall not pursue, capture, shoot, kill, chase, follow, harass, or harm a deer while the deer is swimming in a pond, lake, stream, or other body of water.

(3) For the purposes of this section, "bait" means a substance composed of grains, minerals, salt, fruits, vegetables, hay, or any other food materials, whether natural or manufactured, which may lure, entice or attract deer. "Bait" does not include the establishment and maintenance of plantings for wildlife, foods found scattered solely as the result of normal agricultural planting or harvesting practices, foods available to deer through normal agricultural practices of livestock feeding if the area is occupied by livestock actively consuming the feed on a daily basis, or standing farm crops under normal agricultural practices. For the purposes of this section, "baiting" means to place, deposit, tend, distribute, or scatter bait to aid in the taking of a deer.

(4) It shall be unlawful for a person to make use of bait to aid in the taking of a deer within deer management unit 487.

(5) Remaining portions of Michigan not described in subsection (4), a person may engage in baiting only if all of the following conditions apply:

(a) The baiting occurs only from October 1 to January 1.

(b) The bait material may be of any food type.

(c) The bait is scattered directly on the ground by any means, including mechanical spin-cast feeders, provided that the spin-cast feeder does not distribute on the ground more than the maximum volume allowed as described in subdivision (d) of this subsection. "Scattered" means that the bait is dispersed or thrown over a minimum of a 10-foot by 10-foot or equivalent area so that individual pieces of bait are separated and not placed in piles. The purpose of scattering is to mimic natural feeding conditions.

(d) The volume of bait used at any 1 point in time shall not exceed 2 gallons at any 1 hunting site.

(6) It shall be unlawful for a person to make use of bait to aid in the taking of a deer if the bait and baiting does not meet all of the conditions specified in subsection (5) unless specifically authorized in the minimum quantity and for the minimum time required under the conditions of a permit issued pursuant to chapter V for a scientific research project or for the control of deer by a governmental agency.

3.100a Deer and elk feeding; prohibitions and conditions; words and phrases.

Sec 3.100a (1) A person shall not engage in deer and elk feeding within deer management unit 487.

Deer and elk feeding prohibited except for recreational viewing and supplemental feeding, conditions for baiting and feeding in certain areas.

(2) Remaining portions of Michigan not described in subsection (1), a person shall not engage in deer and elk feeding except for recreational viewing and supplemental feeding conducted as prescribed in this section. In the event chronic wasting disease (CWD) is documented within Michigan or within 50 miles of Michigan’s border with

another state or Canadian province, the director shall issue an interim order banning the use of bait and banning the feeding of deer and elk within the peninsula containing cwd or adjacent to the adjoining state or province with cwd.

Recreational viewing in areas not closed to feeding, conditions.

(3)) Remaining portions of Michigan not described in subsection (1), a person may engage in deer and elk feeding for recreational viewing only if all of the following conditions are met:

(a) The feed is placed not more than 100 yards from a residence of the person and upon land owned or possessed by that person.

(b) The feed is placed, scattered, or dispersed at least 100 yards from any area accessible to cattle, goats, sheep, new world camelids, bison, swine, horses, or captive cervidae and no more than 100 yards from a residence.

(c) The feed is scattered directly on the ground by any means, including mechanical spin-cast feeders, provided that the spin-cast feeder does not distribute on the ground more than the maximum volume allowed as described in subdivision (d) of this subsection.

(d) The volume of feed placed, scattered, or distributed does not exceed 2 gallons per residence at any 1 point in time.

(e) The feed placed, scattered, or distributed may be of any food type.

Deer or elk feeding on property under a person's ownership or lease, prohibited conduct, "person" defined.

(4) A person shall not allow deer or elk feeding on property under their ownership or control in violation of this section. For the purposes of this subsection, "person" means an individual, partnership, corporation, association, or other non-governmental legal entity except if the property is leased it shall mean the individual, partnership, corporation, association, or other non-governmental legal entity with control or authority over the property except it shall not include the owner of lands enrolled under the provisions of Part 511, Commercial Forests, of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.51101 to 324.51120.

Meaning of words and phrases.

(5) For the purposes of this section:

(a) "Deer and elk feeding" shall have the same meaning as defined by section 40102 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40102.

(b) "Feed" shall have the same meaning as defined by section 40102 of the Natural Resources and Environmental Protection Act, Act No. 1994 PA 451, MCL 324.40102.

(c) "New world camelids" means animals belonging to the genus llama and vicuna of the family camelidae of the order artiodactyla including, but not limited to, the llama, alpaca, vicuna, and guanaco.

(d) "Residence" shall have the same meaning as defined by section 40103 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.40103.

Supplemental feeding of deer, counties listed, conditions.

(6) A person may engage in the supplemental feeding of deer in Ontonagon, Houghton, Keweenaw, Baraga, Alger, Luce, Gogebic, and those portions of Marquette and Chippewa counties north of the T43N-T44N boundary line if all of the following conditions are met:

(a) The placement of feed shall not begin prior to the Monday following January 1 and shall not extend beyond May 15 unless otherwise specified in the supplemental deer feeding permit.

(b) All conditions in section 3.100a (9) of this order are met.

(7) A person may engage in the supplemental feeding of deer in Iron, Dickinson, Delta, Menominee, and that portion of Marquette county south of T43N-44N boundary line if all the following apply:

(a) The average snow accumulation reported by the Crystal falls and Escanaba department field offices reaches 48 inches by the Monday nearest January 15.

(b) The placement of feed shall not begin prior to the Monday following January 15 and shall not extend beyond May 15 unless otherwise specified in the supplemental deer feeding permit.

(c)All conditions in section 3.100a (9) of this order are met.

(8) A person may engage in the supplemental feeding of deer in Schoolcraft, Mackinac and that portion of Chippewa county south of T43N-44N boundary line if all the following apply:

(a) The average snow accumulation reported by the Manistique and Naubinway department field offices reaches 60 inches by the Monday nearest January 15.

(b) The placement of feed shall not begin prior to the Monday following January 15 and shall not extend beyond May 15 unless otherwise specified in the supplemental deer feeding permit.

(c) All conditions in section 3.100a (9) of this order are met.

(9) The following conditions must be met to engage in the supplemental feeding of deer in areas noted in section 3.100a (6) to (8) of this order:

(a) Prior to placing any feed, the person first acquires permission of the respective public land administrator and private property owner and a supplemental deer feeding permit issued by a department wildlife biologist. A person engaged in supplemental deer feeding shall possess a copy of the supplemental deer feeding permit and shall produce the permit upon the request of a conservation officer.

(b) The supplemental deer feeding is conducted in compliance with all of the following criteria:

(i) All feed shall be placed ¼ mile or more from the nearest paved public highway unless otherwise specified in the supplemental deer feeding permit.

(ii) All feed shall be placed at least 1 mile from cattle, goats, sheep, new world camelids, bison, swine, horses, or captive cervidae unless otherwise specified in the supplemental deer feeding permit.

(iii) All feed shall be placed at least 1 mile from wheat fields, potato fields, commercial fruit orchards, commercial plantings of nursery stock or Christmas trees, unless otherwise specified in the supplemental deer feeding permit.

(iv) The feed shall consist solely of grains, second cut alfalfa and clover, and pelletized food materials containing no animal protein which is scattered or dispersed directly upon the ground to a depth which shall not exceed 3 inches.

(c) A person issued a supplemental deer feeding permit shall agree to assist the department in the collection of deer tissue samples for disease surveillance.

(d) A person issued a supplemental deer feeding permit shall report by May 30 the quantity and type of feed used, dates and duration of feeding, and other information as may be specified in the supplemental feeding permit. The department shall report to the commission the number of permits issued, quantity of feed used, and other relevant supplemental deer feeding information.

(e) Failure to comply with all provisions of a supplemental deer feeding permit shall make the permittee ineligible for any future supplemental deer feeding permits.

Issued on this 9th day of June, 2011.

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

Timothy L. Nichols, Chairman
Natural Resources Commission

Approved as to matters over which the Director has authority.

Rodney A. Stokes
Director