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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF NATURAL RESOURCES  
LANSING



RODNEY A. STOKES  
DIRECTOR

SUBMITTED: June 18, 2012  
RESUBMITTED: July 16, 2012

<p><b>A P P R O V E D</b></p> <hr/> <p style="text-align: right;">, 20</p> <p style="text-align: center;">MICHIGAN NATURAL RESOURCES COMMISSION</p> <hr/> <p style="text-align: center;">(ASSISTANT TO THE COMMISSION)</p>
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MEMORANDUM TO THE NATURAL RESOURCES COMMISSION

**Subject:** Chronic Wasting Disease (CWD) Baiting and Feeding Regulations  
Wildlife Conservation Order Amendment No. 13 of 2012

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 updating the 2002 Michigan Surveillance and Response Plan for Chronic Wasting Disease (CWD) of Free-ranging and Privately-owned/Captive Cervids (CWD Plan). A large amount of published research and case studies have become available in the decade that passed since the first plan was put in place. These documents describe CWD dynamics and management, including responses to agency attempts to manage the disease by policymakers and the public.

CWD is transmitted between cervids by direct contact with infectious saliva, respiratory aerosols, urine, and feces, and indirectly by environmental materials (e.g. soil, food items, etc.) contaminated with those body fluids. Infected animals are infectious for other animals before they appear sick. Infected animals inevitably succumb, although the amount of time that takes to happen can vary from months to years.

Management practices that increase biological carrying capacity or artificial aggregation of deer (such as baiting) may cause CWD to persist and spread, just as they do with other diseases such as bovine tuberculosis (bTB). Once established, CWD outbreaks (and the substantial costs of their management) can be expected to last for decades.

The 2002 version of the CWD Plan states that if CWD was documented in Michigan or within 50 miles of the border, a ban on all feeding and baiting of cervids would be implemented within the peninsula containing CWD or adjacent to the adjoining state or province with CWD. However, when a peninsula-wide ban was enacted in 2008 subsequent to finding a single CWD positive deer inside a privately-owned/captive cervid facility, there was a great deal of public

interest in providing opportunities under which baiting could once again be legally used throughout at least a portion of the state. The Department also recognized that a peninsula-wide ban created enforcement challenges due to poor compliance by the public. In recognition of these considerations, the NRC authorized a reduction in the ban to Deer Management Unit 487, which was identified as the minimum biologically relevant area to maintain the ban as part of bTB management efforts.

The CWD Plan requires public support for various restrictions and response actions to be taken seriously and to effectively work to eradicate or contain CWD following any future identification of infected animals within Michigan. Because of prevailing public sentiment and the potential risk of losing public support if a widespread ban is adopted in the future, the updated CWD Plan reflects a modified Department response regarding future baiting and feeding bans. This proposed change would align the order with the updated CWD Plan.

Proposed Changes:

If CWD is identified in a cervid within the boundaries of Michigan or within 10 miles of the Michigan border, the Department recommends initiating the response plan. The previously recommended relevant distance to a case outside of Michigan was 50 miles from the border. This change does not supersede the authority of the director who may exercise additional flexibility regarding the implementation of the CWD Plan based on the context in which any future case is discovered.

We also recommend defining CWD Management Zone(s) based on documented-case criteria such as location, species, captive/wild status, and distribution of infected cervids, as well as the density, distribution, and seasonal movements of the local wild cervid population(s). A baiting ban would be enacted, at a minimum, in the applicable CWD Management Zone. Whether to expand the ban to an entire peninsula or the state as a whole would be determined on a case-by-case basis.

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Recommendation:

This order was submitted for information on July 12, 2012, at the Natural Resources Commission Meeting. This item appeared on the Department's June 2012 calendar and may be eligible for approval on August 9, 2012.

Russ Mason, Ph.D., Chief  
Wildlife Division

Gary Hagler, Chief  
Law Enforcement Division

Bill O'Neill, Acting Chief  
Forest Resources Division

Ronald A. Olson, Chief  
Parks and Recreation Division

James Dexter, Chief  
Fisheries Division

William E. Moritz, Ph.D.  
Natural Resources Deputy

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

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Keith Creagh, Director

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Date

# **WILDLIFE CONSERVATION ORDER**

## **Amendment No. 13 of 2012**

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 August 10, 2012, 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(s); 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 and sections 3.100a, and 3.205, "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 Alcona, Alpena, Montmorency, and Oscoda counties, and within the townships of Oscoda, Plainfield, Wilber, Au Sable, and Baldwin in Iosco county.

(5) In 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.

(e) Subsection (5) shall be rescinded on June 9, 2014.

(f) Subsection (5) is subject to Section 3.100a (2) of this order.

(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.

#### **(2) Deer and elk feeding prohibited except for recreational viewing and supplemental feeding, conditions for baiting and feeding in certain areas.**

In 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, within 10 miles of Michigan's border with another state or Canadian province, or as determined by the director, the director shall issue an interim order banning the use of bait and banning the feeding of deer and elk, at a minimum, within the relevant CWD management zone.

#### **(3) Recreational viewing in areas not closed to feeding, conditions.**

In remaining portions of Michigan not described in subsection (1) or identified by provisions of subsection (2), 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.

(f) Subsection (3) shall be rescinded on June 9, 2014.

#### **(4) Deer or elk feeding on property under a person's ownership or lease, prohibited conduct, "person" defined.**

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.

#### **(5) Meaning of words and phrases.** For the purposes of sections 3.100 through 3.123:

(a) "CWD management zone" means an area defined in chapter XII of this order subject to Michigan's surveillance and response plan for chronic wasting disease.

(b) "Deer and elk feeding" shall have the same meaning as defined by section 40102 of 1994 PA 451, MCL 324.40102.

(c) "Feed" shall have the same meaning as defined by section 40102 of 1994 PA 451, MCL 324.40102.

(d) "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.

(e) "Residence" shall have the same meaning as defined by section 40103 of 1994 PA 451, MCL 324.40103.

**(6) Supplemental feeding of deer, counties listed, conditions.**

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  $\frac{1}{4}$  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.

### **3.100b Prohibition on possession of free-ranging deer carcasses or parts thereof; reporting requirements; movement of deer carcasses or parts thereof.**

Sec. 3.100b (1) A person shall not remove the carcass or parts of the carcass of a free-ranging deer from a CWD management zone defined in chapter XII of this order, other than deboned meat, antlers, antlers attached to a skull cap cleaned of all brain and muscle tissue, and hides, until a negative test for CWD is documented by the department for that carcass.

(2) The carcass or parts thereof of a hunter-harvested deer, other than deboned meat, antlers, antlers attached to a skull cap cleaned of brain and muscle tissue, and hides, shall not be possessed outside a CWD management zone defined in chapter XII of this order if originating from a free-ranging deer from the CWD management zone, until a negative test for CWD is documented by the department for that carcass.

### **3.101h Deer check; requirements.**

Sec. 3.101h A person killing a deer within a CWD management zone defined in chapter XII of this order, shall present the entire deer, or head with at least 3 vertebra attached, at a department designated check station within a CWD management zone within the business hours of the next 72 hours after killing the deer. The field validation kill tag must be attached to the deer. The head, with vertebra, will be surrendered to the department for CWD testing. The hunter may retain the antlers attached to a skull cap cleaned of all brain and muscle tissue.

### **4.4 Commercial processing and storage; records required; maintenance and inspection.**

Sec. 4.4 (1) The owner, operator, or agent of any commercial processing operation, refrigeration plant, or frozen food locker plant, shall maintain records of all wild animals accepted for processing or storage for 90 days following receipt of the animal. Such records shall include the name and address of the owner of the animal, the date accepted, and the number of the license or permit authorizing possession. These records shall be maintained on the premises and be available for inspection by a conservation officer at any reasonable time.

(2) A commercial processing operation that receives a carcass or parts thereof, other than deboned meat, antlers, antlers attached to a skull cap cleaned of all brain and muscle tissue, hides, and upper canine teeth, from a deer, elk, or moose which originated from a state or a province listed in the Michigan hunting and trapping guide for the current year as a state or province detected to have CWD in free-ranging deer, elk, or moose populations, shall report such acquisition to the Michigan department of natural resources, wildlife disease laboratory, within the business hours of the next 72 hours.

(3) A commercial processing operation outside of a CWD management zone described in chapter XII of this order, that receives a carcass or parts thereof, other than deboned meat, antlers, antlers attached to a skull cap cleaned of all brain and muscle tissue, hides, and upper canine teeth, from a deer, which originated within ~~the~~ a CWD management zone described in chapter XII of this order, without a negative test for CWD documented by the department for that carcass, shall report such acquisition to the Michigan department of natural resources wildlife disease laboratory, within the business hours of the next 72 hours.

### **5.74a Animals of special concern, possession, transportation and disposal.**

Sec. 5.74a Animals of special concern are as follows:

(1) Deer of special concern, all wild free-ranging deer. Live wild deer may be possessed and released only as follows:

(a) All wild deer, positively confirmed to be from Alcona, Alpena, Crawford, Montmorency, Oscoda, Otsego, and Presque Isle counties, or positively confirmed to be from inside a CWD management zone as defined in chapter XII of this order, shall be sent or taken at the earliest possible time to the department pathology laboratory by direct arrangement with the pathology laboratory or by arrangement with a local conservation officer.

(b) All wild deer positively confirmed to be from outside a CWD management zone but within counties containing a CWD management zone or counties adjacent to a county containing a CWD management zone as defined in chapter XII of this order shall be isolated in an enclosure in a manner to prevent physical contact with animals not originating from the same county and shall be released only in the county of origin. Each enclosure shall be tagged by the permittee with the county of origin and date of capture.

(c) All wild deer positively confirmed to originate from areas not defined in sections (1a) and (1b) above may not be released within the areas defined in sections (1a) and (1b).

(d) The permittee shall permanently mark all deer in possession with a clearly visible unique identification mark as required by the department.

(2) Skunks and bats of special concern, all wild skunks and bats. Live skunks and bats shall not be possessed.

(3) Raccoons of special concern, all wild raccoons. Live raccoons may be possessed and released only as follows:

(a) Raccoons shall be released only in the same county where captured and shall be isolated in a manner to prevent physical contact with animals not originating from the same county. Each cage shall be tagged by the permittee with the county of origin and date of capture.

(b) Cages and areas used to hold raccoons for release shall be constructed of materials that can be effectively disinfected.

(c) If the capture point of a raccoon cannot be positively confirmed to be from a particular county, the raccoon shall be isolated from physical contact with other raccoons and humanely euthanized within 24 hours of receipt. If a raccoon has come into physical contact with a raccoon originating from another or unknown county of origin, both raccoons shall be isolated from physical contact with other raccoons and humanely euthanized within 24 hours of exposure.

(4) Elk of special concern, all wild free-ranging elk. Live wild elk shall not be possessed.

(5) Moose of special concern, all wild free-ranging moose. Live wild moose shall not be possessed.

(6) Mute swans of special concern, all wild mute swans. Live wild mute swans shall not be possessed.

### **5.221 Disease control replacement permit; standards, conditions, records; unlawful acts.**

Sec. 5.221 (1) A disease control replacement permit may be issued to a person who voluntarily surrenders the carcass of a legally harvested deer or elk if the deer or elk has one or more of the following conditions:

(a) Visible lesions department field staff suspect to be bovine tuberculosis (TB).

(b) A positive acid fast test for bovine TB.

(c) A positive Elisa test for CWD.

(d) With visible physical conditions, department field staff suspect to be consistent with CWD for a deer taken within a CWD management zone, defined in chapter XII of this order.

(2) A person may retain the antlers or antlers attached to a skull cap cleaned of all brain and muscle tissue from a surrendered animal.

(3) Department personnel shall record on the permit with indelible ink, the species, and management unit where the permit is valid.

(4) The permit shall be issued with a kill tag. A person killing an elk shall comply with the requirements of subsections 3.6(2) to 3.6(5). A person killing a deer shall comply with the requirements of section 3.103.

(5) The permittee shall have the permit on their person when taking or attempting to take game. The permit shall be presented upon the demand of a law enforcement officer.

(6) A disease control replacement permit shall not be valid:

(a) Except during the established hunting seasons for the species listed on the permit.

(b) To take a deer with antlers extending 3 inches or more above the skull.

(c) To take an elk with antlers.

(d) Except in the management unit designated on the tag.

(e) If the recorded information on the tag is altered.

(7) It shall be unlawful for any person to buy or sell any animal killed under the authority of a permit.

(8) It shall be unlawful for any person other than the permittee to take or attempt to take game under the authority of a permit.

(9) A deer or elk taken under the authority of a permit shall not count towards the bag or season limit.

Issued on this 9<sup>th</sup> day of August 2012.

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.

Keith Creagh  
Director