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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES
LANSING



KEITH CREAGH
DIRECTOR

SUBMITTED: August 12, 2013

MEMORANDUM TO THE NATURAL RESOURCES COMMISSION

Subject: Deer: Unlawful Acts, Permit Revocation, Airport Safety Issues
Wildlife Conservation Order Amendment No. 18 of 2013
FOR INFORMATION ONLY

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:

White-tailed deer are a popular and abundant resource that provide a variety of recreational opportunities for the people of Michigan. Because white-tailed deer can be found in many different locations, they sometimes create a nuisance, health, or safety issue for humans. They are also legally harvested using several methods, licenses, permits, and during multiple seasons. The purpose of this order is to reduce confusion over the legal methods of taking deer, the process for suspending and revoking permits, and the appropriate permitting procedure when human safety is at risk.

Legal Take

When a hunter violates the law by harvesting a deer using an illegal method or without the proper license or tags, the conservation officer writes the violation citing sections of the wildlife conservation order (WCO) or state statute. In order to reduce confusion and allow for better enforcement and communication with prosecutors, the Department recommends updating the section of WCO on taking deer in order to clearly articulate permissible and prohibited methods of take. For example, the section on take details that deer may not be taken with a rimfire firearm .22 caliber or smaller but it does not specify that deer may only be taken with a firearm, crossbow, or bow and arrow.

Airport Safety Issues

When airport administrators see deer or other potentially hazardous wildlife on their grounds, they contact the local Departmental office in order to receive a special permit to control the animals. It's important that wildlife are removed quickly, as they present a human safety issue should a plane hit wildlife upon takeoff or while landing on the runway. In order to expedite this process and ensure that the animal can be removed shortly after it is spotted, the Department recommends updating permit language to allow for issuance without an inspection. This will give Department personnel the ability to deal with human safety issues quickly even when they are not on site.

Permit Suspension, Revocation

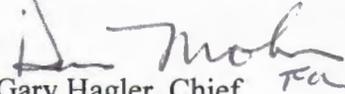
The Department has the authority to issue a variety of permits related to nuisance animals, rehabilitation, scientific collection, disease control, and persons with disabilities. The authority to write these permits comes from section 40114 of the Natural Resources and Environmental Protection Act, 1994 PA 451. This act also clearly articulates that the suspension, revocation, annulment, withdrawal, cancelation, or amendment of permits issued under the authority of MCL 324.40114 is subject to the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The Department recommends clarifying that a violator of any permit detailed in Chapter V of WCO is subject to the administrative procedures act and that if the violator's license is revoked, any animal and the parts of any animal in his or her possession shall be disposed of in a manner approved by the Department.

Recommendation:

This order is being submitted for information and consideration. This item appeared on the Department's August 2013 calendar and may be eligible for approval on October 10, 2013.



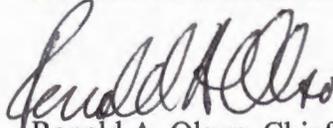
Russ Mason, Ph.D., Chief
Wildlife Division



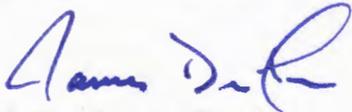
Gary Hagler, Chief
Law Enforcement Division



Bill O'Neill, Chief
Forest Resources Division



Ronald A. Olson, Chief
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William E. Moritz, Ph.D.
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WILDLIFE CONSERVATION ORDER

Amendment No. 18 of 2013

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 October 11, 2013, the following section(s) of the Wildlife Conservation Order shall read as follows:

3.100 Taking Take of deer; prohibited firearms, legal weapons, "bait" and "baiting" defined, conditions for baiting established in certain area(s); unlawful acts.

Sec. 3.100 (1) "Take" means the same as defined in section 40104, 1994 PA 451, MCL 324.40104.

(2) An individual must possess while hunting deer the unused kill tag issued with the deer license, pursuant to section 3.103, and provide it to a conservation officer upon request.

(3) Unless otherwise specified in this order, an individual shall not do any of the following:

(a) Take a deer without possessing a valid license with kill tag.

(b) Take a deer other than during the open seasons established in this order.

(c) Take a deer outside of lawful hunting hours.

(d) Take a deer by any method other than by firearm, bow and arrow, or crossbow.

~~(1) (e) A person shall not use a rimfire firearm .22 caliber or smaller for the taking of deer~~ Take a deer with a rimfire firearm .22 caliber or smaller.

(f) Take a deer during any firearm deer season in the "shotgun, handgun, black-powder firearms only area," with a firearm other than a shotgun with a smooth or rifled barrel, a .35 caliber or larger pistol capable of holding no more than nine shells at one time in the barrel and magazine combined and loaded with straight-walled cartridges, or a muzzle-loading rifle or black-powder pistol loaded with black-powder or a commercially manufactured black-powder substitute.

(g) Take a deer, or have in possession while hunting deer, a semiautomatic shotgun or rifle, capable of holding more than six shells in the magazine and barrel combined, or use a cartridge containing a tracer or explosive bullet, or a firearm capable of firing more than one shot with a single pull or activation of the trigger.

(h) Possess or use an apparatus known as a silencer on a gun while hunting deer.

(i) Take a deer using an arrow, bolt, or quarrel with a broadhead hunting type of point less than 7/8 of an inch wide and/or a length less than 14 inches.

(j) Take a deer with a crossbow or a modified bow in zone 1 from December 1 to March 31 unless issued a disability crossbow permit by the department.

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

(l) Make use of a dog in hunting a deer, except as noted in section 2.1a of this order.

(m) Use aircraft to aid in the taking of a deer.

(n) Set afire or assist in setting afire any land for the purpose of driving out a deer, or take or attempt to take a deer so driven out of any land.

~~(3)~~ (4) 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) (5) 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)~~ (6) In remaining portions of Michigan not described in subsection (4 5), 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 (§ 6) shall be rescinded on June 9, 2014.

(f) Subsection (§ 6) is subject to Section 3.100a (2) of this order.

~~(6)~~ (7) 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 (§ 6) 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.

5.42 Deer damage shooting permit, prohibited acts; failure to comply.

Sec. 5.42 (1) It shall be unlawful for a permittee to designate more than 15 authorized shooters to implement the provisions of the permit unless additional shooters are approved by the wildlife management unit supervisor and district law enforcement supervisor.

(2) It shall be unlawful for a permittee or an authorized designee to:

(a) Kill more than the number of deer authorized by the permit.

(b) Possess a deer killed under the authority of a permit without having a validated deer damage permit tag attached to the deer.

(c) Take or attempt to take a deer within the permit boundaries unless in possession of a valid unused deer damage permit tag. The tag shall be presented upon demand to a representative of the director.

(d) Use a firearm other than a centerfire rifle or shotgun with slugload.

(e) Subject to section 43510, subsections (2) and (3), of Part 435, as amended, hunting and fishing licensing, MCL 324.43510, possess an uncased or loaded firearm in the vehicles authorized by the permit.

(f) Kill a deer with antlers extending three inches or more above the skull unless approved by the wildlife management unit supervisor.

(g) Take or attempt to take a deer using an artificial light or from one-half hour after sunset to one-half hour before sunrise unless approved by the wildlife management unit supervisor and district law enforcement supervisor.

(h) Take or attempt to take a deer in any area except that location described on the permit.

(3) It shall be unlawful for any person to buy or sell any deer killed under the authority of a deer damage control permit.

(4) It shall be unlawful for any person other than the permittee or an authorized designee to take or attempt to take deer under the authority of a valid permit.

(5) For failure to comply with this section or other requirements of the deer damage control program, the department shall deny a permittee to be eligible to participate in the next calendar year.

5.44 Deer damage shooting permit; revocation, suspension Repealed. Am 18, 2013, Eff. Oct 10, 2013.

~~Sec. 5.44 (1) Pursuant to section 40118 of part 401, wildlife conservation, of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.40118 of the Michigan Compiled Laws, a conviction for a violation of the provisions of sections 5.41 to 5.43 of this order shall result in the revocation of a permit.~~

~~(2) A modification, suspension, or revocation of a permit is subject to the provisions of section 40114 of part 401, wildlife conservation, of the natural resources and environmental protection act, Act No. 451 of the Public Acts of 1994, being section 324.40114 of the Michigan Compiled Laws.~~

~~(3) Failure to comply with these and other rules of the out-of-season deer damage control program will make the permittee ineligible to participate in the deer damage shooting permit program for a period of 1 year.~~

5.51 Damage and nuisance animal control permit, issuance, release requirements, reporting; exceptions.

Sec. 5.51 (1) Except as provided by subsections (4) and (8), a damage and nuisance animal control permit shall be required by anyone to prevent or control, by shooting, trapping or otherwise, the depredations of animals at a time or in a manner not otherwise permitted by law or order.

(2) **a A department** conservation officer or wildlife biologist shall make an investigation upon complaint of any person allegedly suffering damage caused by wild birds or wild mammals and may issue a damage and nuisance animal control permit, **unless the following conditions apply:**

(a) ~~Except as provided in~~ The permit is issued under sections 5.51ab, 5.52, 5.52ab, and 5.53 of this order.

(b) **A public safety issue exists as determined by a department wildlife management regional supervisor or district law enforcement supervisor or their designee and requires immediate permit issuance.**

(3) At the time of such investigation, the complainant shall furnish the department investigator with a written statement, on forms provided for this purpose by the department, indicating the location, extent, kind, and approximate value of the property allegedly damaged, destroyed, or in danger of being damaged or destroyed, the kind and number of animals believed to be doing the damage and such other information as may be required.

~~(2)~~ (4) If, results of **the department's** investigation warrants control of the animal(s) involved, **the department** investigator may, except for horticultural or agricultural damage caused by deer, issue a permit **to authorizing authorize their** control of the animal(s) by shooting, trapping, or other means as ~~noted~~ **specified** on the permit.

(a) **Permits A permit** to control horticultural or agricultural damage caused by deer may be issued by the **department's** investigator per section 5.41 of this order.

(b) ~~Permits~~ **A permit to control deer or other wildlife at an airports may be issued by the a department wildlife management regional supervisor or district law enforcement supervisor or their designee without an investigation to address a public safety issue.**

~~(3)~~ **(5) Permits A permit shall be issued only to bona fide landowners or lessees, or their designated agents, and shall not be transferable.**

~~(4)~~ **(6) Except for animals protected by part 365, endangered species protection, of the natural resources and environmental protection act, endangered species protection, 1994 PA 451, nonlethal means of harassment to deter or prevent damage to private property, such as noise makers or scare devices; exclusion devices, such as fences or screening; and other recognized and recommended means of preventing damage which do not kill, harm, capture, trap, or collect animals shall not require a permit.**

~~(5)~~ **(7) All animals taken under the authority of a permit shall be reported to the department in the manner specified on the permit.**

~~(6)~~ **(8) All animals taken under the authority of a permit shall be properly cared for and disposed of as directed by the permit or this order.**

~~(7)~~ **(9) A live raccoons captured under a damage and nuisance animal control permit shall be possessed and released only as follows:**

(a) **A raccoons, if released, shall be released only in the same county where captured and, if held in captivity, shall be isolated in a manner to prevent physical contact with any 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) **A cages and areas used to hold raccoon(s) for release shall be constructed of materials that can be effectively disinfected.**

(c) **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.**

~~(8)~~ **(10) Department employees shall be exempt from the requirement of obtaining a permit to take animals, nests, or eggs for damage and nuisance control in the course of performing official job responsibilities.**

(11) An individual ineligible to secure or possess a hunting, trapping or fur dealer license by state law, court order, or administrative ruling shall not be issued a permit during the period of ineligibility.

(12) For failure to comply with this section or other requirements of the damage and nuisance animal control program, the department shall deny a permittee to be eligible to participate in the next calendar year.

~~5.55 Damage and nuisance animal control permit; revocation, suspension, denial. Repealed. Am 18, 2013, Eff. Oct 10, 2013.~~

~~Sec. 5.55 (1) Pursuant to section 17 of the wildlife conservation act, Act No. 256 of the Public Acts of 1988, being section 300.267 of the Michigan Compiled Laws, a conviction for a violation of the provisions of sections 5.50 to 5.54 of this order shall result in the revocation of a permit.~~

~~(2) The modification or suspension of a permit is subject to the provisions of section 14 of the wildlife conservation act, Act No. 256 of the Public Acts of 1988, being section 300.264 of the Michigan Compiled Laws.~~

~~(3) A person ineligible to secure or possess a hunting, trapping or fur dealers license by state law, court order, or administrative ruling shall not be issued a permit during the period of ineligibility.~~

5.77 Disease control permit; standards, conditions, records; unlawful acts.

Sec. 5.77 (1) A disease control permits may be issued to any owner of property in a county with a confirmed case of bovine tuberculosis or lands within 30 miles of a confirmed case of a disease.

(2) A landowners may apply for a permit by filing an application with the department. This application will include the names of desired authorized designees. This application, once signed by both the landowner an authorized natural resources representative, shall become the permit. The number of tags issued will be determined by the department of natural resources representative.

(3) Property inspections may be conducted under the direction and at the discretion of the authorized department of natural resources representative.

(4) A disease control permit shall not be valid except during the time period for which it is authorized.

(5) The permittee shall keep records as may be required by the director and present them for inspection at the request of a conservation officer or wildlife biologist.

(6) The permittee or authorized designee shall make a reasonable effort to retrieve all deer shot under the authority of a permit.

(7) The permittee or authorized designee shall have a copy of the permit and a valid unused tag on their person when taking or attempting to take deer.

(8) A person killing a deer shall immediately affix the tag to the gambrel or jaw of the deer. The permittee or authorized designee, upon killing a deer, shall notify the department as instructed on the permit.

(9) All deer killed under a disease control permit shall be disposed of as specified by the permit. If required, deer heads shall be submitted to the department by the permittee.

(10) The permit shall be valid within the ownership boundaries of the permittee or as stated on the permit.

(11) ~~Permits~~ **A permit** shall be valid for deer of either sex as noted in the permit. If the taking of an antlered deer is allowed by the permit, all antlers shall be submitted to the department.

(12) For failure to comply with this section or other requirements of the disease control permit, the department shall deny a permittee to be eligible to participate in the next calendar year.

5.79 ~~Disease control permit; revocation, suspension.~~ Repealed. Am 18, 2013, Eff. Oct 10, 2013.

~~Sec. 5.79 (1) Pursuant to section 40118 of part 401, wildlife conservation, Act No. 451 of the Public Acts of 1994, as amended, being section 324.40118 of the Michigan Compiled Laws, a conviction for a violation of the provisions of sections 5.76 to 5.78 of this order shall result in the revocation of a permit.~~

~~(2) A modification, suspension, or revocation of a permit is subject to the provisions of section 40114 of part 401, wildlife conservation, Act No. 451 of the Public Acts of 1994, as amended, being section 324.40114 of the Michigan Compiled Laws.~~

~~(3) Failure of the permittee or an authorized designee to comply with the permit provisions will make the permittee ineligible to receive disease control permits, deer damage control permits, or deer management assistance permits for the following calendar year.~~

5.250 Special permit regulations; violation.

Sec. 5.250 A permit issued under authority of section 40114 of the NREPA, 1994 PA 451, as amended, may be suspended, revoked, annulled, withdrawn, recalled, canceled, or amended pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the holder of a permit is convicted of violating the permit or section 40114, the permit or license may be revoked and any animal and the parts of any animal in his or her possession shall be disposed of in a manner approved by the department.

Issued on this 10th day of October, 2013.

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

J. R. Richardson, Chairman
Natural Resources Commission

Approved as to matters over which the Director has authority.

Keith Creagh
Director