

REQUEST FOR TECHNICAL CHANGE

AGENCY: Wildlife Resources Commission

RULE CITATION: All forms for temporary rules

DEADLINE FOR RECEIPT: Friday, February 13, 2015

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

All forms must be signed by the agency head. The Chairman is Jim Cogdell. Please have him sign a revised Temporary Rule-Making Findings of Need form for each rule.

If the reason for the temporary rule making action references a document, please attached the relevant portions of the document for each form. This is necessary for the review of the Rules Review Commission.

Several forms do not set forth an explanation in Box 6 for the temporary rule making action. Please note that G.S. 150B-21.1 requires the Rules Review Commission to review the finding of need for reaching a determination. Please complete the form so that the Rules Review Commission has sufficient information to reach a determination.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015

REQUEST FOR TECHNICAL CHANGE

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10B .0106

DEADLINE FOR RECEIPT: Friday, February 13, 2015

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 8, 24, and 29; page 2, lines 13, 14, 19, 23 and 35; page 3, lines 1, 16, 18, 21, and 24; page 4, lines 1, 3, 4, 6, and 8, replace "must" with "shall"

Line 10, add a comma after "wildlife"

Line 10, add punctuation after "apply"

Line 13, verify the citation. It may be to Rule .0105, instead of Rule .0103.

Line 23, add a comma after "sex"

Page 2, line 2, add a comma after "techniques"

Page 2, lines 11 through 12, consider listing these counties in a consistent order, including each place the counties are listed throughout this Rule. Consider alphabetical order.

Page 2, line 12, replace the commas after "Beaufort", "animals", and "bats" with semicolons

Page 2, line 12, add a comma after "threatened"

Page 2, line 20, add a comma after "laws"

Page 2, line 30, add a comma after "season"

Page 3, line 1, add a comma after "permit"

Page 3, line 17, delete "succeeding"

Abigail M. Hammond
Commission Counsel

Date submitted to agency: February 5, 2015

Page 4, line 9, add a comma after “bear”

Page 4, lines 13 and 14, move “bear” after the “alligator” so that the sentence reads as follows:

“alligator and bear, or coyote in the counties of ...”

Page 4, lines 13 and 14, again, consider listing these counties alphabetically and be consistent.

Page 4, line 29, insert a history note for this Rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

February 2, 2015

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Wildlife Resources Commission

2. Rule citation & name: 15A NCAC 10B .0106 Wildlife Taken for Depredations

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: December 11, 2014
- b. Proposed Temporary Rule published on the OAH website: December 18, 2014
- c. Public Hearing date: January 5, 2015
- d. Comment Period: December 18, 2014 to January 14, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 11, 2014
- f. Adoption by agency on: January 29, 2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☒ A recent court order.
Cite order: 2:13-cv-00060-BO
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

FILED
2015 FEB -2 PM 1:33
OFFICE OF
ADMIN HEARINGS

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Temporary rule-making was specifically ordered by the court. See attached court order.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Erica Garner

Phone: 919-707-0014

E-Mail: erica.garner@ncwildlife.org

Agency contact, if any: Kate Pipkin

Phone: 919-707-0065

E-Mail: kathryn.pipkin@ncwildlife.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gordon S. Myers

Title: Executive Director

E-Mail: gordon.myers@ncwildlife.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 10B .0106 Wildlife taken for depredations is amended under temporary procedures as follows:

3 **15A NCAC 10B .0106 WILDLIFE TAKEN FOR DEPREDATIONS**

4 (a) Depredation permits allow the take of undesirable or excess wildlife resources as described in Subparagraphs (1)
5 and (2) of this Paragraph. ~~The taking of depredating coyotes in the counties of Dare, Hyde, Washington, Tyrrell, and~~
6 ~~Beaufort, with or without a permit, is allowed only as described in Paragraph (g) of this Rule.~~ Only employees of
7 the Wildlife Resources Commission and Wildlife Damage Control Agents may issue depredation permits. Each
8 permit must be written on a form supplied by the Commission. No permit is needed for the owner or lessee of a
9 property to take wildlife while committing depredations on the property, however the manner of taking, disposition
10 of dead wildlife and reporting requirements as described in this Rule still apply

11 No permit shall be issued to take any endangered or threatened species of wildlife listed under 15A NCAC 10I,
12 except alligators, by reason of depredations to property. Only the Executive Director may issue depredation permits
13 for Special Concern species listed in 15A NCAC 10I .0103 and for alligators. An individual may take an
14 endangered or threatened species in immediate defense of his own life or of the lives of others without a permit.
15 Any endangered or threatened species that may constitute a demonstrable but non-immediate threat to human safety
16 shall be reported to a federal or state wildlife enforcement officer, who, upon verification of the report, may take or
17 remove the specimen as provided by 15A NCAC 10I .0102. Depredation permits for other species shall be issued
18 under the following conditions:

- 19 (1) for taking wildlife that is or has been damaging or destroying property provided there is evidence
20 of property damage. No permit may be issued for the taking of any migratory birds and other
21 federally protected animals unless a corresponding valid U.S. Fish and Wildlife Service
22 depredation permit, if required, has been issued. The permit shall name the species allowed to be
23 taken and may contain limitations as to age, sex or any other condition within the species so
24 named. The permit must be issued to a landholder or an authorized representative of a unit of local
25 government for depredations on public property. The permit shall be used only by individuals
26 named on the permit.
- 27 (2) for taking of wildlife resources in circumstances of overabundance or when the wildlife resources
28 present a danger to human safety. Cities as defined in G.S. 160A-1(2) seeking such a depredation
29 permit must apply to the Executive Director using a form supplied by the Commission requesting
30 the following information:
 - 31 (A) the name and location of the city;
 - 32 (B) the acreage of the affected property;
 - 33 (C) a map of the affected property;
 - 34 (D) the signature of an authorized city representative;
 - 35 (E) the nature of the overabundance or the threat to public safety; and
 - 36 (F) a description of previous actions taken by the city to ameliorate the problem.

(b) Wildlife Damage Control Agents: Upon completion of a training course designed for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques and demonstration of a knowledge of wildlife laws and safe, humane wildlife handling techniques, an individual with no record of wildlife law violations may apply to the Wildlife Resources Commission (Commission) to become a Wildlife Damage Control Agent (WDCA). Those persons who demonstrate knowledge of wildlife laws and safe, humane wildlife handling techniques by a passing score of at least 85 percent on a written examination provided by a representative of the Wildlife Resources Commission in cooperation with the training course provider shall be approved. Those persons failing to obtain a passing score shall be given one chance for re-testing without re-taking the course. Those persons approved as agents by the Commission may then issue depredation permits for depredation as defined in Subparagraph (a)(1) of this Rule to landholders and be listed as a second party to provide the control service. WDCAs may not issue depredation permits for coyotes in the counties of Dare, Hyde, Washington, Tyrrell, and Beaufort, big game animals, bats, or species listed as endangered, threatened or special concern under 15A NCAC 10I .0103, .0104 and .0105 of this Chapter. WDCAs must report to the Wildlife Resources Commission the number and disposition of animals taken, by county, annually. Records must be available for inspection by a Wildlife Enforcement officer at any time during normal business hours. Wildlife Damage Control Agent status shall be revoked at any time by the Executive Director when there is evidence of violations of wildlife laws, failure to report, or inhumane treatment of animals by the WDCA. A WDCA may not charge for the permit, but may charge for his or her investigations and control services. In order to maintain a knowledge of current laws, rules, and techniques, each WDCA must renew his or her agent status every three years by showing proof of having attended at least one training course provided for the purpose of reviewing and updating information on wildlife laws and safe, humane wildlife handling techniques within the previous 12 months.

(c) Each depredation permit shall have an expiration date or time after which the depredation permit is no longer valid. The depredation permit authorizes possession of any wildlife resources taken under the permit and must be retained as long as the wildlife resource is in the permittee's possession. All individuals taking wildlife resources under the authority of a depredation permit are obligated to the conditions written on the permit and the requirements specified in this Rule.

(d) Manner of Taking:

(1) Taking Without a Permit. Wildlife taken without a permit while committing depredations to property may, during the open season on the species, be taken by the landholder by any lawful method. During the closed season such depredating wildlife may be taken without a permit only by the use of firearms or archery equipment as defined in 15A NCAC 10B .0116.

(2) Taking With a Permit. Wildlife taken under a depredation permit may be taken only by the method or methods authorized by the permit. When trapping is authorized, in order to limit the taking to the intended purpose, the permit may specify a reasonable distance from the property sought to be protected, according to the particular circumstances, within which the traps must be set. The Executive Director or agent may also state in a permit authorizing trapping whether or not bait may be used and the type of bait, if any, that is authorized. In addition to any trapping

1 restrictions that may be contained in the permit the method of trapping must be in accordance with
2 the requirements and restrictions imposed by G.S. 113-291.6 and other local laws passed by the
3 General Assembly. No depredation permit shall authorize the use of poisons or pesticides in
4 taking wildlife except in accordance with the provisions of the North Carolina Pesticide Law of
5 1971, the Structural Pest Control Act of 1955, and G.S. 113, Article 22A. No depredation permit
6 shall authorize the taking of wildlife by any method by any landholder upon the lands of another
7 except when the individual is listed as a second party on a depredation permit.

- 8 (3) Intentional Wounding. It is unlawful for any landholder, with or without a depredation permit,
9 intentionally to wound a wild animal in a manner so as not to cause its immediate death as
10 suddenly and humanely as the circumstances permit.

11 (e) Disposition of Wildlife Taken:

- 12 (1) Generally. Except as provided by the succeeding Subparagraphs of this Paragraph, any wildlife
13 killed without a permit while committing depredations shall be buried or otherwise disposed of in
14 a safe and sanitary manner on the property. Wildlife killed under a depredation permit may be
15 transported to an alternate disposal site if desired. Anyone in possession of carcasses of animals
16 being transported under a depredation permit must have the depredation permit in his or her
17 possession. Except as provided by the succeeding Subparagraphs of (d)(2) through (5) of this
18 Rule, all wildlife killed under a depredation permit must be buried or otherwise disposed of as
19 stated on the permit.
- 20 (2) Deer and feral swine. The edible portions of feral swine and deer may be retained by the
21 landholder for consumption but must not be transported from the property where the depredations
22 took place without a valid depredation permit. The landholder may give a second party the edible
23 portions of the feral swine and deer taken under the depredation permit. The receiver of the edible
24 portions must hold a copy of the depredation permit. The nonedible portions of any deer carcass,
25 including head, hide, feet, and antlers, shall be disposed of as specified in Subparagraph (1) of this
26 Paragraph or turned over to a wildlife enforcement officer for disposition.
- 27 (3) Fox. Any fox killed under a depredation permit may be disposed of as described in Subparagraph
28 (1) of this Paragraph or, upon compliance with the fur tagging requirements of 15A NCAC 10B
29 .0400, the carcass or pelt thereof may be sold to a licensed fur dealer.
- 30 (4) Furbearing Animals. The carcass or pelt of any furbearing animal killed during the open season
31 for taking such furbearing animal for control of depredations to property, whether with or without
32 a permit, may be sold to a licensed fur dealer provided that the person offering such carcass or pelt
33 for sale has a valid hunting or trapping license, provided further that, bobcats and otters may only
34 be sold upon compliance with any required fur tagging requirement set forth in 15A NCAC 10B
35 .0400.
- 36 (5) Animals Taken Alive. Wild animals in the order Carnivora, armadillos, groundhogs, nutria, and
37 beaver shall be humanely euthanized either at the site of capture or at a facility designed to

1 humanely handle the euthanasia or released on the property where captured. Feral swine must be
2 euthanized while still in the trap in accordance with G.S. 113-291.12. For all other animals taken
3 alive, the animal must be euthanized or else released on property with permission of the
4 landowner. When the relocation site is public property, written permission must be obtained from
5 an appropriate local, state or federal official before any animal may be released. Animals
6 transported or held for euthanasia must be euthanized within 12 hours of capture. Anyone in
7 possession of live animals being transported for relocation or euthanasia under a depredation
8 permit must have the depredation permit in his or her possession.

9 (f) Reporting Requirements. Any landholder who kills an alligator, deer, Canada goose, bear or wild turkey under a
10 valid depredation permit shall report such kill on the form provided with the permit and mail the form upon the
11 expiration date to the Wildlife Resources Commission. Any landowner who kills a coyote in the counties of Dare,
12 Washington, Beaufort, Tyrrell, and Hyde shall report such kill as directed on the form provided. The killing and
13 method of disposition of every ~~alligator~~ alligator, coyote in the counties of Dare, Washington, Beaufort, Tyrrell, and
14 Hyde, and bear taken without a permit shall be reported to the Wildlife Resources Commission within 24 hours
15 following the time of such killing.

16 ~~(g) In the counties of Dare, Hyde, Washington, Tyrrell, and Beaufort depredating coyotes may be taken subject to~~
17 ~~the following restrictions:~~

18 (1) ~~Taking coyotes without a permit. Depredating coyotes may be harassed by non-lethal means.~~
19 ~~Coyotes may be shot in defense of a person's safety or the safety of others, or if livestock or pets~~
20 ~~are threatened.~~

21 (2) ~~Taking coyotes with a permit. Only employees of the Commission shall issue depredation permits~~
22 ~~for the taking of coyotes in these counties. Commission employees shall only authorize trapping~~
23 ~~or other non-lethal manners of take in the permit.~~

24 (3) ~~Reporting and disposition. All coyotes taken under a depredation permit shall be reported to the~~
25 ~~Wildlife Resources Commission within 24 hours and disposed of as stated on the permit. All~~
26 ~~coyotes killed in accordance with Subparagraph (g)(1) of this Rule shall be reported to the~~
27 ~~Wildlife Resources Commission within 24 hours.~~

REQUEST FOR TECHNICAL CHANGE

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10B .0118

DEADLINE FOR RECEIPT: Friday, February 13, 2015

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The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 12, delete the period after "acquired"

Line 20, is there a rule that could be cross-referenced to indicate where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material, in accordance with [G.S. 150B-21.6](#).

Line 23, replace "must" with "shall"

Line 25, add a comma after "velvet"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

February 2, 2015

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Wildlife Resources Commission	
2. Rule citation & name: 15A NCAC 10B .0118 Sale of Wildlife	
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: December 11, 2014 b. Proposed Temporary Rule published on the OAH website: December 18, 2014 c. Public Hearing date: January 5, 2015 d. Comment Period: December 18, 2014 to January 14, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 11, 2014 f. Adoption by agency on: January 29, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2014-100 Effective date: August 7, 2014 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<p>Explain: The proposed changes to 15A NCAC 10B .0118 will allow captive cervid licensees to sell antlers, antler velvet and hides from captive populations of cervids</p> <p>Senate Bill 744 ratified in the 2014 session of the General Assembly contains six sections that direct the Commission to change how captive cervids are managed. Section 14.26 (e) reads as follows, “(a) The Wildlife Resources Commission shall regulate the transportation, including importation and exportation, and possession of cervids, including game carcasses and parts of game carcasses extracted by hunters. <u>The Commission shall allow the sale of antlers, antler velvet, or hides from captive populations of cervids.</u> The Commission shall adopt rules to implement this section, including requirements for captivity licenses, captivity permits, and transportation permits...”</p>	

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OFFICE OF
ADMIN HEARINGS

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

This recent act of the General Assembly compels the Commission to alter its rules. It is the agency's interpretation that the intent of the legislation is for the Commission to pursue rule-making as quickly as possible. The delay necessary to adhere with permanent rule-making notice and requirements is contrary to the interest of the regulated community.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Erica Garner

Phone: 919-707-0014

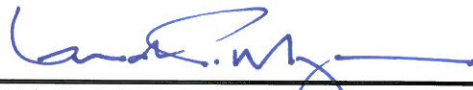
E-Mail: erica.garner@ncwildlife.org

Agency contact, if any: Kate Pipkin

Phone: 919-707-0065

E-Mail: kathryn.pipkin@ncwildlife.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gordon S. Myers

Title: Executive Director

E-Mail: gordon.myers@ncwildlife.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 10B .0118 Sale of wildlife is amended under temporary procedures as follows:

2
3 **15A NCAC 10B .0118 SALE OF WILDLIFE**

4 (a) The carcasses or pelts of bobcats, opossums, and raccoon that have been lawfully taken by any hunting method,
5 upon compliance with applicable fur tagging requirements set forth in 15A NCAC 10B .0400, may be sold to
6 licensed fur dealers. The sale of carcasses or pelts of bobcats, opossums, and raccoon killed accidentally or taken by
7 hunting for control of depredations is permitted under the conditions set forth in 15A NCAC 10B.0106(e)(4) and
8 15A NCAC 10B .0127.

9 (b) Except as otherwise provided in Paragraphs (a), (d), (e) and (f) ~~(a), (d), and (e)~~ of this Rule, the sale of game
10 birds and game animals or parts thereof is prohibited, except that processed products other than those made from
11 edible portions may be sold provided that no label or advertisement identifies the product as a game bird, game
12 animal, or part thereof and provided further that the game bird or game animal was lawfully acquired. and the
13 product is not readily identifiable as a game bird or game animal, or part thereof.

14 (c) The sale of edible portions or products of game birds and game animals is prohibited, except as may be
15 otherwise provided by statute.

16 (d) The pelt or feathers of deer, elk, fox, pheasant, quail, rabbit, or squirrel (fox and gray) may be bought or sold for
17 the purpose of making fishing flies provided that the source of these animals can be documented as being legally
18 obtained from out of state sources or from lawfully operated commercial breeding facilities. The buying and selling
19 of migratory game birds shall be in accordance with 50 C.F.R 20.91 which is hereby incorporated by reference,
20 including subsequent amendments and editions.

21 (e) The Executive Director or his designee may issue Trophy Wildlife Sale permits as authorized in G.S. 113-274
22 for the sale of lawfully taken and possessed individual dead wildlife specimens or their parts that are mounted,
23 stuffed, or otherwise permanently preserved that may be sold under G.S. 113-291.3. A copy of the permit must be
24 retained with the specimen.

25 (f) Antlers, antler velvet and hides from cervids held under a captivity license as authorized in 15A NCAC 10H
26 .0301 may be sold.

27
28 *History Note: Authority G.S. 113-134; 113-273; 113-274; 113-276.2; 113-291.3; 113-337; 50 C.F.R. 20.91;*
29 *Eff. November 9, 1980;*
30 *Amended Eff. May 1, 2014; August 1, 2002; April 1, 1991; February 1, 1990.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10B .0219

DEADLINE FOR RECEIPT: Friday, February 13, 2015

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 11, consider listing these counties in a consistent order. Consider alphabetical order.

Lines 26 and 29, replace "must" with "shall"

Line 26, delete "still"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

February 2, 2015

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Wildlife Resources Commission

2. Rule citation & name: 15A NCAC 10B .0219 Coyote

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: December 11, 2014
- b. Proposed Temporary Rule published on the OAH website: December 18, 2014
- c. Public Hearing date: January 5, 2015
- d. Comment Period: December 18, 2014 to January 14, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 11, 2014
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- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☒ A recent court order.
Cite order: 2:13-cv-00060-BO
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

FILED
2015 FEB -2 PM 1:33
OFFICE OF
ADMIN HEARINGS

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Temporary rule-making was specifically ordered by the court. See attached court order.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Erica Garner

Phone: 919-707-0014

E-Mail: erica.garner@ncwildlife.org

Agency contact, if any: Kate Pipkin

Phone: 919-707-0065

E-Mail: kathryn.pipkin@ncwildlife.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gordon S. Myers

Title: Executive Director

E-Mail: gordon.myers@ncwildlife.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 10B .0219 coyote is amended under temporary procedures as follows:

3 **15A NCAC 10B .0219 COYOTE**

4 (a) This Rule applies to hunting coyotes. In all counties of the State, except those counties specified in Paragraph

5 (b) of this Rule, the following apply:

6 (1) There is no closed season for taking coyotes.

7 (2) Coyotes may be taken on private lands anytime during the day or night.

8 (3) Coyotes may be taken on public lands without a permit from the hours of one-half hour before
9 sunrise until one-half hour after sunset, and from one-half hour after sunset to one-half hour before
10 sunrise by permit only.

11 (b) In the counties of Dare, Hyde, Washington, Tyrell and Beaufort, the following apply: coyote hunting is
12 prohibited.

13 (1) Coyote hunting on public lands is prohibited, except that coyotes may be taken on State-owned
14 game lands by the holder of a permit for a specific special hunt opportunity for coyotes authorized
15 by G.S. 113-264(d). Any special hunt for coyotes pursuant to G.S. 113-264(d) shall only allow
16 hunting from the hours of one-half hour before sunrise until one-half hour after sunset. Contests or
17 competition coyote hunts on public lands are prohibited. If, within a calendar year, two or more
18 red wolves are shot by one or more hunters with a valid special hunt permit for coyotes on State
19 game lands within the five counties identified in this Paragraph, all special hunts for coyotes on
20 State game lands within those five counties shall be suspended for one calendar year.

21 (2) There is no closed season for taking coyotes on private lands. Coyotes may be taken on private
22 lands from hours of one-half hour before sunrise until one-half hour after sunset only.

23 (3) Coyotes may be taken on private lands by permit only, and any take shall be reported within 24
24 hours to the Commission.

25 (4) Coyote hunting permits are in addition to hunting licenses. Individuals exempted from license
26 requirements under the provisions specified in G.S. 113-276 must still acquire the coyote hunting
27 permits to hunt coyotes in the counties specified in this Paragraph. Coyote hunting permits are
28 valid for one calendar year and subject to annual renewal. These permits are non-transferable.
29 Permit holders must submit their harvest reports in order to be eligible for permit renewal.

30 (c) There are no bag limit restrictions on coyotes.

31 (d) Manner of Take. Hunters may use electronic calls and artificial lights.

32
33 *History Note: Authority G.S. 113-134; 113-264; 113-291.1; 113-291.2;*
34 *Eff. July 1, 1993;*
35 *Temporary Amendment Eff. October 1, 2011;*
36 *Amended Eff. January 1, 2012;*
37 *Temporary Amendment Eff. August 1, 2012.*

1 *Amended Eff. July 26, 2013;*
2 *Temporary Amendment Eff. August 1, 2014 and shall remain in effect until amendments expire as*
3 *specified in G.S. 150B-21.1(d) or the United States District Court for the Eastern District of North*
4 *Carolina's court order number 2:13-CV-60-BOs signed on May 13, 2014 is rescinded, whichever*
5 *date is earlier. The court order is available at www.ncwildlife.org.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10H .0301

DEADLINE FOR RECEIPT: Friday, February 13, 2015

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 31 has added the clause "education exhibitions." Please clarify the need and purpose of this language, as it does not track G.S. 113.272.5. It seems unnecessary, as the statute allows captivity for "scientific, educational, exhibition, or other purposes."

Lines 35 and 36, how does a person "obtain[] a captivity license"? Is there is a rule that could be cross-referenced? Please clarify.

Page 2, lines 27 through 28; page 5, lines 4 through 7; page 9, lines 25 through 27; and page 10, lines 10 through 11, please incorporate in accordance with [G.S. 150B-21.6](#). See Page 4, lines 8 through 11.

Page 3, line 4, define or delete "structurally"

Page 3, line 4, define or delete "in good repair"

Page 3, line 4, replace "which" with "that"

Page 3, line 32, add a comma after "Study"

Page 3, line 34, add "the following" after "upon"

Page 5, line 3, delete "as needed"

Page 5, lines 9 through 11, please incorporate the outside authority in accordance with [G.S. 150B-21.6](#).

Page 5, lines 14, 15, and 16, replace "must" with "shall"

Page 7, line 5, replace "replaced" with "placed"

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015

Page 7, line 32, add a comma after "Transfer"

Page 8, lines 4, 13, 22, and 28, sometimes the term "members" is used and sometimes the term "species" is used.

Page 8, line 13, add a comma after "elk"

Page 8, line 13, delete the "or" at the end of the line

Page 9, line 15, add a comma after "county"

Page 9, line 32, add a comma after "address"

Page 10, line 17, add a comma after "address"

Page 11, lines 9 and 16, add a comma after "address"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

February 2, 2015

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Wildlife Resources Commission

2. Rule citation & name: 15A NCAC 10H .0301 General Requirements

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: December 11, 2014
- b. Proposed Temporary Rule published on the OAH website: December 18, 2014
- c. Public Hearing date: January 5, 2015
- d. Comment Period: December 18, 2014 to January 14, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 11, 2014
- f. Adoption by agency on: January 29, 2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: 2014-100
Effective date: August 7, 2014
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: The proposed changes to 15A NCAC 10H .0301 alters state program requirements for captive cervid licensees to align with the standards set in the USDA APHIS Herd Certification Program.

Senate Bill 744 ratified in the 2014 session of the General Assembly contains six sections that direct the Commission to change how captive cervids are managed. Section 14.26(d) reads as follows, "Except as further limited by subsection (a) of this section, or as modified by subsection (c) of this section, and notwithstanding any other provision of law or regulations adopted by the Commission to the contrary, the Commission shall follow the USDA Standards in carrying out its authority to regulate cervids."

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OFFICE OF
ADMIN HEARINGS

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

This recent act of the General Assembly compels the Commission to alter its rules. It is the agency's interpretation that the intent of the legislation is for the Commission to pursue rule-making as quickly as possible. The delay necessary to adhere with permanent rule-making notice and requirements is contrary to the interest of the regulated community.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Erica Garner

Phone: 919-707-0014

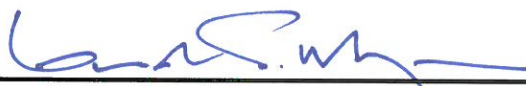
E-Mail: erica.garner@ncwildlife.org

Agency contact, if any: Kate Pipkin

Phone: 919-707-0065

E-Mail: kathryn.pipkin@ncwildlife.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gordon S. Myers

Title: Executive Director

E-Mail: gordon.myers@ncwildlife.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 10H .0301 General requirements is amended under temporary procedures as follows:

2
3 **15A NCAC 10H .0301 GENERAL REQUIREMENTS**

4 (a) Captivity Permit or License Required

5 (1) Requirement. The possession of any species of wild animal that is or once was native to this State
6 or any species of wild bird, native or migratory, that naturally occurs or historically occurred in
7 this State or any member of the family Cervidae is unlawful unless the institution or individual in
8 possession obtains from the North Carolina Wildlife Resources Commission (Commission) a
9 captivity permit or a captivity license as provided by this Rule.

10 (2) Injured, Crippled or Orphaned Wildlife. When an individual has taken possession of an injured,
11 crippled, or orphaned wild animal or wild bird, that individual shall contact the Commission
12 within 24 hours of taking possession in order to apply for a captivity permit, provided, however,
13 that under no circumstances shall an individual take possession of an injured, crippled, or
14 orphaned wild turkey, black bear, deer, elk, or any other member of the family Cervidae except as
15 described in Subparagraph (3) of this Paragraph.

16 (3) Rehabilitation of white-tailed deer fawns. An individual may apply to the Commission to become
17 a permitted white-tailed deer fawn rehabilitator for the State of North Carolina. Individuals
18 deemed to be qualified according to this Section to rehabilitate injured or orphaned fawns may
19 receive a captivity permit to possess fawns only for such a period of time as may be required for
20 the rehabilitation and release of the fawns to the wild. These captivity permits apply only to wild
21 white-tailed deer fawns and are available only to individuals recognized by the Commission as
22 white-tailed deer fawn rehabilitators.

23 (b) Captivity Permit. A captivity permit shall be requested by mail, phone, facsimile, or electronic transmission or
24 in person. A captivity permit authorizes possession of the animal or bird only for such period of time as may be
25 required for the rehabilitation and release of the animal or bird to the wild; or to obtain a captivity license as
26 provided by Paragraph (c) of this Rule, if such a license is authorized; or to make a proper disposition of the animal
27 or bird if the application for such license is denied, or when an existing captivity license is not renewed or is
28 terminated. Captivity permits shall not be issued for wild turkey or black bear.

29 (c) Captivity License.

30 (1) The purpose of captivity license is to provide humane treatment for wild animals or wild birds that
31 are unfit for release, or for possession of cervids, or for educational exhibition. ~~cervids.~~ For
32 purposes of this Rule, wild animals are considered "unfit" if they are incapacitated by injury or
33 otherwise; if they are a non-native species that poses a risk to the habitat or to other species in that
34 habitat; or if they have been rendered tame by proximity to humans to the extent that they cannot
35 feed or care for themselves without human assistance. Persons interested in obtaining a captivity
36 license shall contact the Commission for an application.

37 (2) Denial of captivity license. Circumstances or purposes for which a captivity license shall not be
38 issued include the following:

- 1 (A) For the purpose of holding a wild animal or wild bird that was acquired unlawfully.
- 2 (B) For the purpose of holding the wild animal or wild bird as a pet. For purposes of this
- 3 Rule, the term "pet" means an animal kept for amusement or companionship. The term
- 4 shall not be construed to include cervids held in captivity for breeding for sale to another
- 5 licensed operator.
- 6 (C) For the purpose of holding wild animals or wild birds for hunting in North Carolina.
- 7 (D) For the purpose of holding wild turkey or black bear.
- 8 (E) For the purpose of holding white-tailed deer (*Odocoileus virginianus*) or elk (*Cervus*
- 9 *elaphus* or *Cervus canadensis*) except licenses issued before December 1, 2014 that may
- 10 be renewed as specified in Subparagraph (6) of this Paragraph.
- 11 (3) Required Facilities. No captivity license shall be issued until the applicant has constructed or
- 12 acquired a facility for keeping the animal or bird in captivity that complies with the standards set
- 13 forth in Rule .0302 of this Section and the adequacy of such facility has been verified on
- 14 inspection by a representative of the Commission.
- 15 (4) Term of License
- 16 (A) Dependent Wildlife. If the wild animal or wild bird has been permanently rendered
- 17 incapable of subsisting in the wild, the license authorizing its retention in captivity shall
- 18 be an annual license terminating on December 31 of the year for which issued.
- 19 (B) Rehabilitable Wildlife. When the wild animal or wild bird is temporarily incapacitated,
- 20 and may be rehabilitated for release to the wild, any captivity license that is issued shall
- 21 be for a period less than one year as rehabilitation may require.
- 22 (C) Concurrent Federal Permit. No State captivity license for an endangered or threatened
- 23 species or a migratory bird, regardless of the term specified, shall operate to authorize
- 24 retention thereof for a longer period than is allowed by any concurrent federal permit that
- 25 may be required for retention of the bird or animal.
- 26 (5) Holders of Captivity License for cervids.
- 27 (A) Records. Each licensee shall maintain herd records as described in 9 CFR 55.23(b)(4)
- 28 available at [http://www.ecfr.gov/cgi-bin/text-](http://www.ecfr.gov/cgi-bin/text-idx?SID=940029f5dad7b72c54cd3985f1da490a&node=se9.1.55_123&rgn=div8)
- 29 [idx?SID=940029f5dad7b72c54cd3985f1da490a&node=se9.1.55_123&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=940029f5dad7b72c54cd3985f1da490a&node=se9.1.55_123&rgn=div8)
- 30 ~~(A)~~(B) Inspection of records. The licensee shall make all records pertaining to tags, licenses, or
- 31 permits issued by the Commission available for inspection by the Commission at any
- 32 time during normal business hours, or at any time an outbreak of Chronic Wasting
- 33 Disease (CWD) is suspected or confirmed within five miles of the facility or within the
- 34 facility itself.
- 35 ~~(B)~~(C) Inspection. The licensee shall make all enclosures at each licensed facility and the herd
- 36 records ~~record book(s) documenting required monitoring of the outer fence of the~~
- 37 ~~enclosure(s)~~ available for inspection by the Commission at any time during normal

business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.

(C)(D) Fence Monitoring Requirement. The fence surrounding the enclosure shall be structurally sound and maintained in good repair. Any damage to the fence which creates an opportunity for cervid ingress or egress shall be repaired upon discovery. ~~inspected by the licensee or licensee's agent once a week during normal weather conditions to verify its stability and to detect the existence of any conditions or activities that threaten its stability. In the event of severe weather or any other condition that presents potential for damage to the fence, inspection shall occur every three hours until cessation of the threatening condition, except that no inspection is required under circumstances that threaten the safety of the person conducting the inspection.~~

(D) ~~A record book shall be maintained to record the time and date of the inspection, the name of the person who performed the inspection, and the condition of the fence at time of inspection. The person who performs the inspection shall enter the date and time of detection and the location of any damage threatening the stability of the fence. If damage has caused the fence to be breachable, the licensee shall enter a description of measures taken to prevent ingress or egress by cervids. Each record book entry shall bear the signature or initials of the licensee attesting to the veracity of the entry. The record book shall be made available to inspection by a representative of the Commission upon request during normal business operating hours.~~

(E) ~~Maintenance. Any opening or passage through the enclosure fence that results from damage shall, within one hour of detection, be sealed or otherwise secured to prevent a cervid from escape. Any damage to the enclosure fence that threatens its stability shall be repaired within one week of detection.~~

(F)(E) Escape. When a licensee discovers the escape of any cervid from the facility, the licensee or designee shall report within 24 hours the escape ~~to the~~ by calling 1-800-662-7137. Commission. If possible, the escaped cervid shall be recaptured alive. If live recapture is not possible, the licensee shall request a wildlife take permit under G.S. 113-274 by contacting the Wildlife Management Division of the Commission at (919) 707-0050 and take the escaped cervid pursuant to the terms of the permit. A recaptured live cervid shall be submitted to the Commission for Chronic Wasting Disease (CWD) testing using a test recognized by the Southeastern Cooperative Wildlife Disease Study unless the executive director determines that the risk of CWD transmission as a result of this escape is negligible based upon:

- (i) amount of time the escaped cervid remained out of the facility;
- (ii) proximity of the escaped cervid to wild populations;
- (iii) known susceptibility of the escaped cervid species to CWD; and

- 1 (iv) nature of the terrain in to which the cervid escaped.
- 2 ~~(G)~~(F) Chronic Wasting Disease (CWD)
- 3 (i) ~~Detection.~~ Each licensee shall notify the Commission immediatly, but within
- 4 24 hours if any cervid within the facility exhibits clinical symptoms of CWD,
- 5 and may include symptoms as provided in 9 C.F.R. 81.1 ~~9 C.F.R. 81.1, or if a~~
- 6 ~~quarantine is placed on the facility by the State Veterinarian. All captive cervids~~
- 7 ~~that exhibit symptoms of CWD shall be tested for CWD.~~ 9 C.F.R. 81.1 is
- 8 hereby incorporated by reference, shall include any later amendments and
- 9 editions of the incorporated material, and may be accessed free of cost at
- 10 [http://www.gpo.gov/fdsys/pkg/CFR-2012-title9-vol1/pdf/CFR-2012-title9-vol1-](http://www.gpo.gov/fdsys/pkg/CFR-2012-title9-vol1/pdf/CFR-2012-title9-vol1-sec81-1.pdf)
- 11 [sec81-1.pdf](http://www.gpo.gov/fdsys/pkg/CFR-2012-title9-vol1/pdf/CFR-2012-title9-vol1-sec81-1.pdf). Cervids that exhibit clinical symptoms of CWD shall not be
- 12 transported. Regardless of age, cervids that exhibit clinical symptoms of CWD
- 13 shall be made available for testing upon death.
- 14 (ii) ~~Cervid death.~~ Licensees shall inform the Commission at (919) 707-0050 during
- 15 normal business hours and 1-800-662-7137 outside business hours of the death
- 16 of any cervids 12 months or older within 12 hours of the death. The carcass of
- 17 any captive cervid that was 12 ~~six~~ months or older at time of death shall be
- 18 made available for testing. ~~transported and submitted by the licensee or his~~
- 19 ~~designee to a North Carolina Department of Agriculture diagnostic lab for CWD~~
- 20 ~~evaluation within 48 hours of the cervid's death, or by the end of the next~~
- 21 ~~business day, whichever is later.~~ Ear tags distributed by the Commission and
- 22 subsequently affixed to the cervids as required by this Rule, may not be removed
- 23 from the cervid's head prior to submitting the head for CWD evaluation.
- 24 (iii) ~~The Commission shall require testing or forfeiture of cervids from a facility~~
- 25 ~~holding cervids in this State should the following circumstances or conditions~~
- 26 ~~occur:~~
- 27 (I) ~~The facility has transferred a cervid that is received by a facility in~~
- 28 ~~which CWD is confirmed within five years of the cervid's transport~~
- 29 ~~date and that transferred cervid has tested positive for CWD or the test~~
- 30 ~~for CWD was inconclusive or the transferred cervid was no longer~~
- 31 ~~available for testing.~~
- 32 (II) ~~The facility has received a cervid that originated from a facility in~~
- 33 ~~which CWD has been confirmed within five years of the cervid's~~
- 34 ~~transport date and that received cervid has tested positive for CWD or~~
- 35 ~~the test for CWD was inconclusive or the received cervid was no longer~~
- 36 ~~available for testing.~~

(G) Herd Status. The Commission and the N.C. Department of Agriculture and Consumer Sciences shall designate herds as CWD-suspect, CWD-exposed, or CWD-positive as defined in 9 CFR 55.1 as needed available at: http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=940029f5dad7b72c54cd3985f1da490a&n=pt9.1.55&r=PART&ty=HTML#se9.1.55_11 No cervids shall move out from or into herds designated as CWD-suspect, CWD-exposed, or CWD-positive pending an epidemiological investigation. If the investigation determines a herd to be CWD-exposed or CWD-positive, movement shall resume only upon completion of a herd plan. The Commission shall follow herd planning guidelines set forth in the May 2014 edition or subsequent updates of the U.S. Department of Agriculture's Chronic Wasting Disease Program Standards Part B. Movement of cervids out from or into herds designated as CWD-suspect shall only resume after all suspected animals have been tested and no signs of CWD were detected in the submitted samples.

(H) Tagging Required. All cervids within a herd must be tagged with two separate tags as provided by the Commission. Cervids born within a facility must be tagged before 12 months of age. All cervids regardless of age must be tagged before being transported. Effective upon receipt of tags from the Commission, each licensee shall implement the tagging requirement using only the tags provided by the Commission as follows:

(i) All cervids born within a facility shall be tagged by March 1 following the birthing season each year.

(ii) All cervids transferred to a facility shall be tagged within five days of the cervid's arrival at the licensee's facility. However, no cervids shall be transported from one facility to another unless both sending and receiving herds are certified according to 15A NCAC 10H .0304, or the sending herd is a Certified herd and the receiving herd is a licensed facility. However, no cervids shall be transported from one facility to another unless both sending and receiving herds are certified according to 15A NCAC 10H .0304.

(I) Application for Tags.

- (i) Application for tags for calves and fawns. Application for tags for cervids born within a facility shall be made by the licensee by December 1 following the birthing season of each year. The licensee shall provide the following information, along with a statement and licensee's signature verifying that the information is accurate:
- (I) applicant name, mailing address, and telephone number;
 - (II) facility name and site address;
 - (III) captivity license number;
 - (IV) species of each cervid; and

- (V) birth year of each cervid.
- (ii) Application for tags for cervids that were not born at the facility site shall be made by written request for the appropriate number of tags along with the licensee's application for transportation of the cervid, along with a statement and licensee's signature verifying that the information is accurate. These tag applications shall not be processed unless accompanied by a completed application for transportation. However, no transportation permits shall be issued nor shall cervids be transported from one facility to another unless both sending and receiving herds are certified according to 15A NCAC 10H .0304, or the sending herd is a Certified Herd and the receiving herd is a licensed facility.
- (J) Placement of Tags.
- (i) A single button ear tag provided by the Commission shall be permanently affixed by the licensee onto either the right or left ear of each cervid, provided that the ear chosen to bear the button tag shall not also bear a bangle tag, so that each ear of the cervid bears only one tag.
- (ii) A single bangle ear tag provided by the Commission shall be permanently affixed by the licensee onto the right or left ear of each cervid except Muntjac deer, provided that the ear bearing the bangle tag does not also bear the button tag, so that each ear of the cervid bears only one tag. Muntjac deer shall not be tagged with the bangle tag.
- (iii) Once a tag is affixed in the manner required by this Rule, it shall not be removed.
- ~~(K) — Reporting Tags Requirement. For all cervids, except calves and fawns, the licensee shall submit a Cervidae Tagging Report within 30 days of receipt of the tags. Cervidae Tagging Reports for calves and fawns shall be submitted by March 1 following the birthing season each year. A Cervidae Tagging Report shall provide the following information and be accompanied by a statement and licensee's signature verifying that the information is accurate:~~
- ~~(i) — licensee name, mailing address, and telephone number;~~
- ~~(ii) — facility name and site address, including the County in which the site is located;~~
- ~~(iii) — captivity license number;~~
- ~~(iv) — species and sex of each cervid;~~
- ~~(v) — tag number(s) for each cervid; and~~
- ~~(vi) — birth year of each cervid.~~
- ~~(L)~~(K) Replacement of Tags. The Commission shall replace tags that are lost or unusable and shall extend the time within which a licensee shall tag cervids consistent with time required to issue a replacement.

- 1 (i) Lost Tags. The loss of a tag shall be reported to the Commission by the licensee
2 and application shall be made for a replacement upon discovery of the loss.
3 Application for a replacement shall include the information required by Part
4 (c)(5)(F) ~~Part (c)(5)(I)~~ of this Rule along with a statement and applicant's
5 signature verifying that the information is accurate. Lost tags shall be replaced
6 on the animal by the licensee within 30 days of receipt of the replacement tag.
- 7 (ii) Unusable Tags. Tags that cannot be properly affixed to the ear of a cervid or
8 that cannot be read because of malformation or damage to the tags or
9 obscurement of the tag numbers shall be returned to the Commission along with
10 an application for a replacement tag with a statement and applicant's signature
11 verifying that the information in the application is accurate.
- 12 (6) Renewal of captivity license for cervids. Existing captivity licenses for the possession of cervids
13 at existing facilities shall be renewed as long as the applicant for renewal continues to meet the
14 requirements of this Section for the license. Only licensees with Certified Herds, as defined in
15 15A NCAC 10H .0304, may request in their renewal applications to expand pen size or the
16 number of pens on the licensed facility to increase the holding capacity of that facility. A licensee
17 whose license has lapsed shall not be eligible to renew his or her license, but may apply for a new
18 license.
- 19 (7) Provision for licensing the possession of cervids in an existing facility. A captivity license shall
20 only be issued to an individual who is 18 years of age or older. If the licensee of an existing
21 facility voluntarily surrenders his or her captivity license, becomes incapacitated or mentally
22 incompetent, or dies, a person who has obtained lawful possession of the facility from the previous
23 licensee or that licensee's estate, may request that the existing captivity license be transferred to
24 him or her to operate the existing facility. Any license transferred under this provision shall be
25 subject to the same terms and conditions imposed on the original licensee at the time of his or her
26 surrender or death and shall be valid only for the purpose of holding the cervids of the existing
27 facility within that existing facility. In addition, any actions pending from complaint,
28 investigation, or other cause shall be continued notwithstanding the termination of the original
29 license.
- 30 (d) Nontransferable. No license or permit or tag issued pursuant to this Rule is transferable, either as to the holder or
31 the site of a holding facility, except as provided in Subparagraph (c)(7) of this Rule.
- 32 (e) Sale, Transfer or Release of Captive Wildlife.
- 33 (1) It is unlawful for any person to transfer or receive any wild animal or wild bird that is being held
34 under a captivity permit issued under Paragraph (b) of this Rule, except that any such animal or
35 bird may be surrendered to an agent of the Commission. This Subparagraph does not apply to
36 persons holding cervids under a captivity permit.

- 1 (2) It is unlawful for any person holding a captivity license issued under Paragraph (c) of this Rule to
2 sell or transfer the animal or bird held under such license, except that such animal or bird may be
3 surrendered to an agent of the Commission, and any such licensee may sell or transfer the animal
4 or bird (except members of the family Cervidae) to another person who has obtained a license to
5 hold it in captivity. For animals in the family Cervidae, sale or transfer of animals is allowed only
6 between Certified Herds, as defined in 15A NCAC 10H .0304, or from a Certified Herd to a
7 licensed facility, except facilities licensed or permitted on or after December 1, 2014 shall not take
8 possession of white-tailed deer (*Odocoileus virginianus*) or elk (*Cervus elaphus* or *Cervus*
9 *canadensis*). Upon such a sale or transfer, the seller or transferor shall obtain a receipt for the
10 animal or bird showing the name, address, and license number of the buyer or transferee, a copy of
11 which shall be provided to the Commission.
- 12 (3) It is unlawful for any person to release into the wild for any purpose or allow to range free:
13 (A) any species of deer, elk or other members of the family Cervidae, or
14 (B) any wolf, coyote, or other non-indigenous member of the family Canidae, or
15 (C) any member of the family Suidae.

16 (f) Transportation Permit.

- 17 (1) Except as otherwise provided herein, no transportation permit is required to move any lawfully
18 held wild animal or wild bird within the State.
- 19 (2) No person shall transport black bear or Cervidae for any purpose without first obtaining a
20 transportation permit from the Commission.
- 21 (3) Except as provided in Subparagraph (f)(4) of this Rule, no transportation permits shall be issued
22 for deer, elk, or other species in the family Cervidae except:
23 (A) into and between Certified Herds as defined in 15A NCAC 10H .0304; or
24 (B) from a Certified Herd to a licensed facility, except no transportation permits shall be
25 issued for white-tailed deer (*Odocoileus virginianus*) or elk (*Cervus elaphus* or *Cervus*
26 *canadensis*) if the receiving facility was licensed or permitted on or after December 1,
27 2014.
- 28 (4) Cervid Transportation. A permit to transport deer, elk, or other species in the family Cervidae
29 may be issued by the Commission to an applicant for the purpose of transporting the animal or
30 animals for export out of state, to a slaughterhouse for slaughter, from a Certified Herd to another
31 Certified Herd as defined in 15A NCAC 10H .0304, from a Certified Herd to a licensed facility, or
32 to a veterinary medical facility for treatment provided that the animal for which the permit is
33 issued is not under movement restrictions as described in Part (c)(5)(H) of this Rule, is issued does
34 not exhibit clinical symptoms of Chronic Wasting Disease, except no transportation permits shall
35 be issued for white-tailed deer (*Odocoileus virginianus*) or elk (*Cervus elaphus* or *Cervus*
36 *canadensis*) if the receiving facility was licensed or permitted on or after December 1, 2014. No
37 person shall transport a cervid to slaughter or export out of state without bearing a copy of the

1 transportation permit issued by the Commission authorizing that transportation. No person shall
2 transport a cervid for veterinary treatment without having obtained approval from the Commission
3 as provided by Part (f)(4)(D) of this Rule. Any person transporting a cervid shall present the
4 transportation permit to any law enforcement officer or any representative of the Commission
5 upon request, except that a person transporting a cervid by verbal authorization for veterinary
6 treatment shall provide the name of the person who issued the approval to any law enforcement
7 officer or any representative of the Commission upon request. Transportation permits shall be
8 valid for 30 days.

9 (A) Slaughter. Application for a transportation permit for purpose of slaughter shall be
10 submitted in writing to the Commission and shall include the following information along
11 with a statement and applicant's signature verifying that the information is accurate:

- 12 (i) applicant name, mailing address, and telephone number;
- 13 (ii) facility site address;
- 14 (iii) captivity license number;
- 15 (iv) name, address, county and phone number of the slaughter house to which the
16 cervid will be transported;
- 17 (v) vehicle or trailer license plate number and state of issuance of the vehicle or
18 trailer used to transport the cervid;
- 19 (vi) name and location of the North Carolina Department of Agriculture Diagnostic
20 lab where the head of the cervid is to be submitted for CWD testing;
- 21 (vii) date of transportation;
- 22 (viii) species and sex of each cervid; and
- 23 (ix) tag number(s) for each cervid.

24 (B) Exportation. Only licensees with Certified herds may export cervids as defined in 9 CFR
25 55.1 (available at: [http://www.ecfr.gov/cgi-](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=940029f5dad7b72c54cd3985f1da490a&n=pt9.1.55&r=PART&ty=HTML#se9.1.55.11)
26 [bin/retrieveECFR?gp=&SID=940029f5dad7b72c54cd3985f1da490a&n=pt9.1.55&r=PA](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=940029f5dad7b72c54cd3985f1da490a&n=pt9.1.55&r=PART&ty=HTML#se9.1.55.11)
27 [RT&ty=HTML#se9.1.55.11](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=940029f5dad7b72c54cd3985f1da490a&n=pt9.1.55&r=PART&ty=HTML#se9.1.55.11)) out of state. ~~Nothing in this rule shall be construed to~~
28 ~~prohibit the lawful exportation of a member of the family Cervidae for sale out of state.~~
29 Application for a transportation permit for purpose of exportation out of state shall be
30 submitted in writing to the Commission and shall include the following information along
31 with a statement and applicant's signature verifying that the information is accurate:

- 32 (i) applicant's name, mailing address and telephone number;
- 33 (ii) facility site address;
- 34 (iii) captivity license number;
- 35 (iv) vehicle or trailer license plate number and state of issuance of the vehicle or
36 trailer used to transport the cervid;

- (v) name, site address, county, state and phone number of the destination facility to which the cervid is exported;
- (vi) a copy of the importation permit from the state of the destination facility that names the destination facility to which the animal is to be exported;
- (vii) date of departure;
- (viii) species and sex of each cervid; and
- (ix) tag number(s) for each cervid.

In addition to the state transportation permit, each cervid as defined in 9 CFR 55.1 exported shall have a federal certificate as described in 9 CFR 81.4 and available at: http://www.ecfr.gov/cgi-bin/text-idx?SID=72869bb3d0188a5a5f1e783845a988e5&node=se9.1.81_14&rgn=div8

- (C) Between herds. Application for a transportation permit for purpose of moving a cervid from one Certified Herd to another Certified Herd, as defined in 15A NCAC 10H .0304, or from a Certified Herd to a licensed facility, shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (i) applicant's name, mailing address and telephone number;
- (ii) facility site address;
- (iii) captivity license number;
- (iv) vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
- (v) name, site address, county, and phone number of the destination facility to which the cervid is moved;
- (vi) date of departure;
- (vii) species and sex of each cervid; and
- (viii) tag number(s) for each cervid.

- (D) Veterinary treatment. No approval shall be issued for transportation of a cervid to a veterinary clinic out of the state of North Carolina, or for transportation from a facility out of the state of North Carolina to a veterinary clinic in North Carolina. An applicant from a North Carolina facility seeking to transport a cervid for veterinary treatment to a facility within North Carolina shall contact the Wildlife Telecommunications Center at (800) 662-7137 or the Wildlife Management Division of the Commission at (919) 707-0050 to obtain verbal authorization to transport the cervid to a specified veterinary clinic and to return the cervid to the facility. Verbal approval to transport a cervid to a veterinary clinic shall authorize transport only to the specified veterinary clinic and directly back to the facility, and shall not be construed to permit intervening destinations. To obtain verbal authorization to transport, the applicant shall provide staff of the

Commission the applicant's name and phone number, applicant's facility name, site address and phone number, the cervid species, sex and tag numbers, and the name, address and phone number of the veterinary facility to which the cervid shall be transported. Within five days of transporting the cervid to the veterinary facility for treatment, the licensee shall provide the following information in writing to the Commission, along with a statement and applicant's signature verifying that the information is correct:

- (i) applicant's name, mailing address and telephone number;
- (ii) facility name and site address;
- (iii) captivity license number;
- (iv) vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
- (v) date of transportation;
- (vi) species and sex of each cervid;
- (vii) tag number(s) for each cervid;
- (viii) name, address and phone number of the veterinarian and clinic that treated the cervid;
- (ix) symptoms for which cervid received treatment; and
- (x) diagnosis of veterinarian who treated the cervid.

(g) Slaughter at cervid facility. Application for a permit for purpose of slaughter at the cervid facility shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (1) applicant name, mailing address, and telephone number;
- (2) facility site address;
- (3) captivity license number;
- (4) name, and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the cervid is to be submitted for CWD testing;
- (5) date of slaughter;
- (6) species and sex of each cervid; and
- (7) tag number(s) for each cervid.

Permits or authorization may not be sold or traded by the licensee to any individual for the hunting or collection of captive cervids. Only the licensee may kill a cervid within the cervid enclosure.

(h) As used in this Rule, "Certified Herd" means a captive cervid herd certified in North Carolina according to the procedure set forth in 15A NCAC 10H .0304 available to North Carolina licensees only.

History Note: Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-272.6; 113-274;
Eff. February 1, 1976;

1 *Amended Eff. April 1, 1991; September 1, 1990; June 1, 1990; July 1, 1988;*
2 *Temporary Amendment Eff. October 8, 2002; May 17, 2002 (this temporary rule replaced the*
3 *permanent rule approved by RRC on June 21, 2001 to become effective in July 2002); July 1,*
4 *2001;*
5 *Amended Eff. May 1, 2010; May 1, 2008; December 1, 2005; August 1, 2004;*
6 *Temporary Amendment Effective December 2, 2014.*
7

REQUEST FOR TECHNICAL CHANGE

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10H .0302

DEADLINE FOR RECEIPT: Friday, February 13, 2015

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 10, add a comma after "elk"

Line 10, as mentioned in the prior technical change request, should the term be "species" or "members"

Line 14, add a comma after "held"

Line 37, replace "in" with "for"

Page 2, lines 1 and 37; page 3, line 16; and page 4, line 28, replace "must" with "shall"

Page 2, lines 3 and 26; and page 5, line 33, is there a way to clarify what "could cause stress"?

Page 3, line 2; and page 4, line 10, what is a "scratch log"? Is this a defined term?

Page 3, line 12, add a comma after "tethers"

replace "must" with "shall"

Page 3, line 27, "Provision is made for" with "The area of confinement contains"

Page 4, line 21, add a comma after "tethers"

Page 5, line 12, replace "which" with "that"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

February 2, 2015

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Wildlife Resources Commission

2. Rule citation & name: 15A NCAC 10H .0302 Minimum standards

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: December 11, 2014
- b. Proposed Temporary Rule published on the OAH website: December 18, 2014
- c. Public Hearing date: January 5, 2015
- d. Comment Period: December 18, 2014 to January 14, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 11, 2014
- f. Adoption by agency on: January 29, 2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2014-100
Effective date: August 7, 2014
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

FILED
2015 FEB - 2 PM 1:34
OFFICE OF
ADMIN HEARINGS

Explain: The proposed changes to 15A NCAC 10H .0302 alters state program requirements for captive cervid licensees to align with the standards set in the USDA APHIS Herd Certification Program.

Senate Bill 744 ratified in the 2014 session of the General Assembly contains six sections that direct the Commission to change how captive cervids are managed. Section 14.26(d) reads as follows, "Except as further limited by subsection (a) of this section, or as modified by subsection (c) of this section, and notwithstanding any other provision of law or regulations adopted by the Commission to the contrary, the Commission shall follow the USDA Standards in carrying out its authority to regulate cervids."

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

This recent act of the General Assembly compels the Commission to alter its rules. It is the agency's interpretation that the intent of the legislation is for the Commission to pursue rule-making as quickly as possible. The delay necessary to adhere with permanent rule-making notice and requirements is contrary to the interest of the regulated community.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Erica Garner

Phone: 919-707-0014

E-Mail: erica.garner@ncwildlife.org

Agency contact, if any: Kate Pipkin

Phone: 919-707-0065

E-Mail: kathryn.pipkin@ncwildlife.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gordon S. Myers

Title: Executive Director

E-Mail: gordon.myers@ncwildlife.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 10H .0302 Minimum standards is amended under temporary procedures as follows:

3 **15A NCAC 10H .0302 MINIMUM STANDARDS**

4 (a) Exemptions. Publicly financed zoos, scientific and biological research facilities, and institutions of higher
5 education that were granted an exemption by the Commission from the standards of this Rule prior to December 1,
6 2005 are exempt from the standards set forth in this Rule for all birds and animals except the black bear so long as
7 the captivity license in effect on that date has not expired or been revoked.

8 (b) With the exception of those entities named in Paragraph (a) of this Rule who have received exemption from the
9 Commission, all holders of captivity licenses shall comply with the following requirements:

10 (1) Deer, Elk and other species of the family Cervidae

11 (A) Enclosure. The enclosure shall be on a well-drained site containing natural or manmade
12 shelter for shade. The minimum size of the enclosure for all cervids except Muntjac deer
13 shall be not less than one-half acre for the first three animals and an additional one-fourth
14 acre for each additional animal held provided that no more than 25 percent shall be
15 covered with water. At no time shall the number of cervids in the enclosure exceed the
16 number allowed by the captivity license, except that fawns and calves shall not count
17 towards the total number of cervids in a facility from the time they are born until March 1
18 of the following year. The enclosure shall be surrounded by a fence of sufficient strength
19 and design to prevent ingress or egress of cervids ~~contain the animal~~ under any
20 circumstances, at least eight feet high, high, and dog proof to a height of at least six feet.
21 For enclosures exclusively holding Muntjac deer, the minimum pen size shall be 800
22 square feet for the first three animals and 200 square feet for each additional animal. No
23 exposed barbed wire, nails, or other protrusions that may cause injury to the animal shall
24 be permitted within the enclosure. Captive cervids shall not be contained within or
25 allowed to enter a place of residence.

26 (B) Sanitation and Care. Licensees shall provide an ample supply of clear water and salt at
27 all times. Food shall be placed in the enclosure as needed, but not less than three times
28 weekly. An effective program for the control of insects, ectoparasites, disease, and odor
29 shall be established and maintained. The animal(s) shall be protected against fright or
30 harm from other animals.

31 (2) Wild Boars

32 (A) Enclosure. The enclosure shall be on a site containing trees or brush for shade. The
33 minimum size of the enclosure shall be not less than one-half acre for the first three
34 animals and an additional one-fourth acre for each additional animal held. The enclosure
35 shall be surrounded by a fence at least five feet high and of sufficient strength to contain
36 the animals. No exposed barbed wire or protruding nails shall be permitted within the
37 enclosure. A roofed building large enough to provide shelter in both a standing or a lying

position for each boar must be provided. This building shall be closed on three sides. A pool of water for wallowing or a sprinkler system shall be provided on days when heat could cause stress to the animal(s).

- (B) Sanitation and Care. Licensees shall provide an ample supply of clear water at all times. Food shall be placed in the enclosure as needed, but in any case, not less than three times weekly. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

(3) Wild Birds

- (A) Enclosure. The enclosure shall be large enough for the bird or birds to assume all natural postures. The enclosure shall be designed in such a way that the birds cannot injure themselves and are able to maintain a natural plumage. Protection from sun, weather, and predators shall also be provided.

- (B) Sanitation and Care. The cage shall be kept clean, dry, and free from molded or damp feed. Ample food and clean water shall be available at all times.

(4) Alligators

- (A) Enclosure. The enclosure shall be surrounded by a fence of sufficient strength to contain the animals and that shall prevent contact between the observer and alligator. The enclosure shall contain a pool of water large enough for the animal to completely submerge itself. If more than one animal is kept, the pool must be large enough for all animals to be able to submerge themselves at the same time. A land area with both horizontal dimensions at least as long as the animal shall also be provided. In case of more than one animal, the land area shall have both horizontal dimensions at least as long as the longest animals to occupy the land area at the same time without overlap.

- (B) Sanitation and Care. The water area shall be kept clean and food adequate to maintain good health provided. Protection shall be provided at all times from extremes in temperature that could cause stress to the animal.

(5) Black Bear

- (A) Educational Institutions and Zoos Operated or Established by Governmental Agencies

- (i) Enclosure. A permanent, stationary metal cage, at least eight feet wide by 12 feet long by six feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor in which a drainable pool one and one-half feet deep and not less than four by five feet has been constructed. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage must contain a den at least five feet long by five

1 feet wide by four feet high and so constructed as to be easily cleaned. A
2 "scratch log" shall be placed inside the cage. The cage shall be equipped with a
3 removable food trough. Running water shall be provided for flushing the floor
4 and changing the pool.

- 5 (ii) Sanitation and Care. Food adequate to maintain good health shall be provided
6 daily; and clean, clear drinking water shall be available at all times. The floor of
7 the cage and the food trough shall be flushed with water and the water in the
8 pool changed daily. The den shall be flushed and cleaned at least once each
9 week in hot weather. An effective program for the control of insects,
10 ectoparasites, disease, and odor shall be established and maintained. Brush,
11 canvas, or other material shall be placed over the cage to provide additional
12 shade when necessary for the health of the animal. The use of collars, tethers or
13 stakes to restrain the bear is prohibited, except as a temporary safety device.

- 14 (B) Conditions Simulating Natural Habitat. Black bears held in captivity by other than
15 educational institutions or governmental zoos shall be held without caging under
16 conditions simulating a natural habitat. All of the following conditions must exist to
17 simulate a natural habitat in a holding facility:

- 18 (i) The method of confinement is by chain link fence, wall, moat, or a combination
19 of such, without the use of chains or tethers.
- 20 (ii) The area of confinement is at least one acre in extent for one or two bears and an
21 additional one-eighth acre for each additional bear.
- 22 (iii) Bears are free, under normal conditions, to move throughout such area.
- 23 (iv) At least one-half of the area of confinement is wooded with living trees, shrubs
24 and other perennial vegetation capable of providing shelter from sun and wind.
- 25 (v) The area of confinement contains a pool not less than one and one-half feet deep
26 and not less than four by five feet in size.
- 27 (vi) Provision is made for a den for each bear to which the bear may retire for rest,
28 shelter from the elements, or respite from public observation.
- 29 (vii) The area of confinement presents an overall appearance of a natural habitat and
30 affords the bears protection from harassment or annoyance.
- 31 (viii) Provisions are made for food and water that are adequate to maintain good
32 health and for maintenance of sanitation.
- 33 (ix) The applicant shall document that the applicant owns or has a lease of the real
34 property upon which the holding facility is located, provided that if the applicant
35 is a lessee, the lease is for a duration of at least five years from the point of
36 stocking the facility.

- 37 (6) Cougar

- 1 (A) Educational or scientific research institutions and zoos supported by public funds.
- 2 (i) Enclosure. A permanent, stationary metal cage, at least nine feet wide by 18
- 3 feet long by nine feet high and located in the shade or where shaded during the
- 4 afternoon hours of summer, is required. The cage shall have a concrete floor.
- 5 The bars of the cage shall be of iron or steel at least one-fourth inch in diameter,
- 6 or heavy gauge steel chain link fencing may be used. The gate shall be equipped
- 7 with a lock or safety catch, and guard rails shall be placed outside the cage so as
- 8 to prevent contact between the observer and the caged animal. The cage shall
- 9 contain a den at least five feet long by five feet wide by four feet high and so
- 10 constructed as to be easily cleaned. A "scratch log" shall be placed inside the
- 11 cage. The cage shall be equipped with a removable food trough. Running water
- 12 shall be provided for flushing the floor and changing the pool.
- 13 (ii) Sanitation and Care. Food adequate to maintain good health shall be provided
- 14 daily; and clean, clear drinking water shall be available at all times. The floor of
- 15 the cage and the food trough shall be flushed with water and the water in the
- 16 pool changed as necessary to maintain good health of the animal. The den shall
- 17 be flushed and cleaned at least once each week. An effective program for the
- 18 control of insects, ectoparasites, disease, and odor shall be established and
- 19 maintained. Brush, canvas, or other material shall be readily available to be
- 20 placed over the cage to provide additional shade when necessary. The use of
- 21 collars, tethers or stakes to restrain the cougar is prohibited, except as a
- 22 temporary safety device.
- 23 (B) Cougars held in captivity by other than educational or scientific institutions or publicly
- 24 supported zoos shall be held without caging under conditions simulating a natural habitat.
- 25 Applicants for a captivity license to hold cougar shall apply to the Commission on forms
- 26 provided by the Commission, and shall provide plans that describe how the applicant's
- 27 facility will comply with the requirement to simulate a natural habitat. All of the
- 28 following conditions must exist to simulate a natural habitat in a holding facility.
- 29 (i) The method of confinement is by chain link fence, without the use of chains or
- 30 tethers, provided that:
- 31 (I) Nine gauge chain link fencing shall be at least 12 feet in height with a
- 32 four foot fence overhang at a 45 degree angle on the inside of the pen to
- 33 prevent escape from climbing and jumping.
- 34 (II) Fence posts and at least six inches of the fence skirt shall be imbedded
- 35 in a six inch wide by one foot deep concrete footer to prevent escape by
- 36 digging.

- 1 (ii) The area of confinement shall be at least one acre for two cougars with an
2 additional one-eighth acre for each additional cougar. If, following a site
3 evaluation, the Commission determines that terrain and topographical features
4 offer sufficient escape, cover and refuge, and meet all other specifications, and
5 that the safety and health of the animal(s) will not be compromised, smaller areas
6 shall be permitted.
- 7 (iii) Cougars shall be free under normal conditions to move throughout the area of
8 confinement.
- 9 (iv) At least one-half of the area of confinement shall be wooded with living trees,
10 shrubs and other perennial vegetation capable of providing shelter from sun and
11 wind; and a 20 foot wide strip along the inside of the fence shall be maintained
12 free of trees, shrubs and any other obstructions which could provide a base from
13 which escape through leaping could occur.
- 14 (v) The area of confinement shall contain a pool not less than one and one-half feet
15 deep and not less than four by five feet in size.
- 16 (vi) Each cougar shall be provided a den to which the cougar may retire for rest,
17 shelter from the elements, or respite from public observation. Each den shall be
18 four feet wide by four feet high by four feet deep. Each den shall be enclosed
19 entirely within at least an eight feet wide by ten feet deep by 12 feet high
20 security cage. The security cage shall be completely within the confines of the
21 facility, cement-floored, shall have nine gauge fencing on all sides and the top,
22 and shall have a four foot, 45 degree fence overhang around the outside top edge
23 to prevent cougar access to the top of the security cage.
- 24 (vii) The area of confinement shall protect the cougar from harassment or annoyance.
- 25 (C) Provisions shall be made for maintenance of sanitation and for food and water adequate
26 to maintain good health of the animal(s).
- 27 (D) The applicant shall document that the applicant owns or has a lease of the real property
28 upon which the holding facility is located, provided that if the applicant is a lessee, the
29 lease is for a duration of at least five years from the point of stocking the facility.
- 30 (7) Other Wild Animal Enclosures.
- 31 (A) General Enclosure Requirements.
- 32 (i) The enclosure shall provide protection from free ranging animals and from sun
33 or weather that could cause stress to the animals.
- 34 (ii) A den area in which the animal can escape from view and large enough for the
35 animal to turn around and lie down shall be provided for each animal within the
36 enclosure.
- 37 (iii) No tethers or chains shall be used to restrain the animal.

- (iv) Either a tree limb, exercise device, or shelf large enough to accommodate the animal shall be provided to allow for exercise and climbing.
- (v) Sanitation and Care. Fresh food shall be provided daily, and clean water shall be available at all times.
- (vi) An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

(B) Single Animal Enclosures for certain animals. The single-animal enclosure for the animals listed in this Subparagraph shall be a cage with the following minimum dimensions and horizontal areas:

Dimensions in Feet

Animal	Length	Width	Height	Per Animal
Bobcat, Otter	10	5	5	50
Raccoon, Fox, Woodchuck	8	4	4	32
Opossum, Skunk, Rabbit	6	3	3	18
Squirrel	4	2	2	8

- (C) Single Enclosure Requirements for animals not mentioned elsewhere in this Rule. For animals not listed above or mentioned elsewhere in this Rule, single animal enclosures shall be a cage with one horizontal dimension being at least four times the nose-rump length of the animal and the other horizontal dimension being at least twice the nose-rump length of the animal. The vertical dimensions shall be at least twice the nose-rump length of the animal. Under no circumstances shall a cage be less than four feet by two feet by two feet.
- (D) Multiple Animal Enclosures. The minimum area of horizontal space shall be determined by multiplying the required square footage for a single animal by a factor of 1.5 for one additional animal and the result by the same factor, successively, for each additional animal. The vertical dimension for multiple animal enclosures shall remain the same as for single animal enclosures.
- (E) Young animals. The young of any animal may be kept with the parent in a single-animal enclosure only until weaning. After weaning, if the animals are kept together, the requirements for multiple-animal enclosures apply.

History Note: Authority G.S. 19A-11; 106-549.97(b); 113-134; 113-272.5, 113-272.6; Eff. February 1, 1976;

1 *Amended Eff. December 1, 1990; June 1, 1990; July 1, 1988; November 9, 1980;*
2 *Temporary Amendment Eff. October 8, 2002;*
3 *Amended Eff. May 1, 2010; December 1, 2005; August 1, 2004.*
4

REQUEST FOR TECHNICAL CHANGE

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10H .0304

DEADLINE FOR RECEIPT: Friday, February 13, 2015

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 2, lines 8 through 10; please incorporate in accordance with [G.S. 150B-21.6](#).

Page 2, line 34, replace "is" with "shall be"

Page 2, line 34, add a comma after "handling"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

February 2, 2015

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Wildlife Resources Commission

2. Rule citation & name: 15A NCAC 10H .0304 Captive cervid herd certification program

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: December 11, 2014
- b. Proposed Temporary Rule published on the OAH website: December 18, 2014
- c. Public Hearing date: January 5, 2015
- d. Comment Period: December 18, 2014 to January 14, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 11, 2014
- f. Adoption by agency on: January 29, 2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2014-100
Effective date: August 7, 2014
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

FILED
2015 FEB -2 PM 1:34
OFFICE OF
ADMIN HEARINGS

Explain: The proposed changes to 15A NCAC 10H .0304 alters state program requirements for captive cervid licensees to align with the standards set in the USDA APHIS Herd Certification Program.

Senate Bill 744 ratified in the 2014 session of the General Assembly contains six sections that direct the Commission to change how captive cervids are managed. Section 14.26(d) reads as follows, "Except as further limited by subsection (a) of this section, or as modified by subsection (c) of this section, and notwithstanding any other provision of law or regulations adopted by the Commission to the contrary, the Commission shall follow the USDA Standards in carrying out its authority to regulate cervids."

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

This recent act of the General Assembly compels the Commission to alter its rules. It is the agency's interpretation that the intent of the legislation is for the Commission to pursue rule-making as quickly as possible. The delay necessary to adhere with permanent rule-making notice and requirements is contrary to the interest of the regulated community.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Erica Garner

Phone: 919-707-0014

E-Mail: erica.garner@ncwildlife.org

Agency contact, if any: Kate Pipkin

Phone: 919-707-0065

E-Mail: kathryn.pipkin@ncwildlife.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gordon S. Myers

Title: Executive Director

E-Mail: gordon.myers@ncwildlife.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 10H .0304 Captive cervid herd certification program is amended under temporary procedures as
2 follows:

3
4 **15A NCAC 10H .0304 CAPTIVE CERVID HERD CERTIFICATION PROGRAM**

5 (a) ~~The Wildlife Resources Commission has established this Captive Cervid Herd Certification Program in order to~~
6 ~~prevent the introduction of Chronic Wasting Disease (CWD) into North Carolina and reduce the potential for spread~~
7 ~~of CWD while allowing transportation of cervids from herds in which CWD has not been detected for at least five~~
8 ~~years, in accordance with the requirements in this Section.~~ Only licensees with Certified Herds as defined in
9 Paragraph (e) of this Rule may request to expand their pen size to accommodate additional cervids, ~~cervids and~~
10 ~~export cervids outside of North Carolina, and~~ transport cervids within North Carolina for purposes other than those
11 specified in 15A NCAC10H .0301(f)(4). ~~Licensees with Certified Herds may also import cervids from a herd in~~
12 ~~which CWD has not been detected for at least five years and has been managed using standards equivalent to, or~~
13 ~~more stringent than, the criteria specified in 15A NCAC 10H .0301 and 15A NCAC 10H .0302.~~ The individual U.S.
14 ~~or Mexican state or territory, Canadian province or other country of origin must have CWD monitoring requirements~~
15 ~~that are at least as stringent as those described in this Section.~~ The originating individual U.S. or Mexican state's or
16 ~~territory's, Canadian province's or other country's CWD monitoring program must be jointly reviewed by Wildlife~~
17 ~~Resources Commission and Department of Agriculture and Consumer Services personnel before approval of any~~
18 ~~importation of cervids into North Carolina.~~ There shall be no importation from individual U.S or Mexican states or
19 ~~territories, Canadian provinces or other countries in which CWD has been detected, either in a wild or captive herd.~~
20 (b) ~~Enrollment qualifications.~~ Only captive cervid herds held under a valid captivity license are eligible for
21 ~~enrollment in the Captive Cervid Herd Certification Program.~~ Licensees shall comply with all captivity license
22 ~~requirements outlined in this Section and the rules and laws regulating possession, transportation and importation of~~
23 ~~cervids in order to remain in the Captive Cervid Herd Certification Program.~~
24 (c) ~~Enrollment application.~~ Each individual holding a current and valid Captivity License for cervids may apply to
25 ~~be enrolled in the Captive Cervid Herd Certification Program.~~ All applications shall be in writing on a form
26 ~~supplied by the Commission.~~ The Commission shall deny an application if:

27 (1) ~~the licensee has not complied with all the requirements under the captivity license statutes and all~~
28 ~~rules pertaining to the holding of cervids in captivity and the transportation or importation of~~
29 ~~cervids resulting in a failed inspection report for the licensee's most recent inspection; or a pending~~
30 ~~citation;~~

31 (2) ~~the licensee has provided false information; or~~

32 (3) ~~CWD has been confirmed in a cervid at the licensee's facility.~~

33 (d)(b) Enrollment dates. The enrollment date is:

34 (1) the first date upon official inspection, documented by Wildlife Resources Commission and
35 Department of Agriculture and Consumer Services personnel, on which the licensee has complied
36 with all captivity rules and statutes that pertain to cervids, including tagging, provided that the
37 licensee has continued to comply with these regulations; or

- (2) the date on which a waiver was issued by the Wildlife Resources Commission Executive Director under the conditions set forth in 15A NCAC 10A .1101(a) that brought the licensee into compliance assuming that there were no other compliance actions pending, provided that the licensee has continued to comply with the captive cervid regulations.

This date may be retroactive but may extend back no earlier than the date Wildlife Resources Commission and Department of Agriculture and Consumer Services personnel documented that the licensee came into compliance with all captivity rules and statutes related to holding cervids in captivity, including tagging of all cervids.

(c) Herd status shall be as defined in 9 CFR 55.24(a). Loss or suspension of herd status shall be as defined in 9 CFR 55.24 (b) available at http://www.ecfr.gov/cgi-bin/text-idx?SID=18c86a6244f627571204af3e86bf01fc&node=se9.1.55_124&rgn=div8

~~(e) Certified herd. When a herd is enrolled in the Captive Cervid Herd Certification Program, it shall be placed in First Year status. If the herd continues to meet the requirements of the Captive Cervid Herd Certification Program, each year on the anniversary of the enrollment date the herd status shall be upgraded by one year. One year from the date a herd is placed in Fifth Year status, the herd status shall be changed to Certified, and the herd shall remain in Certified status as long as it is enrolled in the Captive Cervid Herd Certification Program, provided its status is not lost or suspended without reinstatement as described in Paragraph (f).~~

~~(f) Herd status~~

- ~~(1) — A Certified Herd or any herd enrolled in the program shall have its status suspended or reduced if:~~

- ~~(A) — the licensee fails to comply with any of the ongoing requirements for captive cervid licenses as identified in 15A NCAC 10H .0301;~~
- ~~(B) — the licensee violates any other North Carolina law or rule related to captive cervids;~~
- ~~(C) — an animal in the herd exhibits clinical signs of CWD;~~
- ~~(D) — an animal in the herd can be traced back to a herd with an animal exhibiting clinical signs of CWD; or~~
- ~~(E) — the herd is quarantined by the State Veterinarian.~~

- ~~(2) — A Certified Herd or any herd enrolled in the program shall lose its status if:~~

- ~~(A) — an animal in the herd can be traced back to a herd in which CWD has been detected;~~
- ~~(B) — CWD is detected in an animal in the herd; or~~
- ~~(C) — the licensee loses his or her license.~~

~~The Wildlife Resources Commission shall review cases of suspended status upon request. A Certified Herd with suspended status may regain its status if the licensee corrects within 30 days the deficiency under which the status was suspended or, in the case of suspected CWD, the disease was not detected in the suspect animal.~~

~~(g)(d) Inspection. If an inspection of the captive cervids is needed as a part of certification, including reinstating a suspended status, the licensee is responsible for assembling, handling and restraining the captive cervids and all costs incurred to present the animals for inspection.~~

History Note: Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-272.6; 113-274; 113-292;

1

Eff. May 1, 2010.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10I .0102

DEADLINE FOR RECEIPT: Friday, February 13, 2015

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9, identify "such species" Is the reference to the animals in Rules .0103, .0104 of this Section?

Lines 13, 17, 21, and 25, uncapitalize the first word of the clause

Line 19, add a comma after "specimens"

Line 23, replace "ninety" with "90"

Line 33, add a comma after "diseased"

Page 2, line 2, define or delete "reasonably"

Page 2, line 5, add a comma after "regulations"

Page 2, line 10, add a comma after "bought"

Page 2, line 16, add a comma after "bartered"

Page 2, lines 16 through 17; and page 2, lines 18 through 19; please incorporate in accordance with [G.S. 150B-21.6](#).

Page 2, line 20, add a comma after "transportation"

Page 2, line 21, replace "is" with "shall be"

Page 2, line 28, add a comma after possession

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

February 2, 2015

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Wildlife Resources Commission	
2. Rule citation & name: 15A NCAC 10I .0102 Protection of Endangered/Threatened/Special Concern	
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: December 11, 2014 b. Proposed Temporary Rule published on the OAH website: December 18, 2014 c. Public Hearing date: January 5, 2015 d. Comment Period: December 18, 2014 to January 14, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 11, 2014 f. Adoption by agency on: January 29, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Effective date: <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input checked="" type="checkbox"/> A recent court order. Cite order: 2:13-cv-00060-BO <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other: Explain:	

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2015 FEB -2 PM 1:34
OFFICE OF
ADMIN HEARINGS

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Temporary rule-making was specifically ordered by the court. See attached court order.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Erica Garner

Phone: 919-707-0014

E-Mail: erica.garner@ncwildlife.org

Agency contact, if any: Kate Pipkin

Phone: 919-707-0065

E-Mail: kathryn.pipkin@ncwildlife.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gordon S. Myers

Title: Executive Director

E-Mail: gordon.myers@ncwildlife.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 10I .0102 Protection of endangered /threatened /special concern is proposed as a temporary rule as
2 follows:

3
4 **15A NCAC 10I .0102 PROTECTION OF ENDANGERED/THREATENED/SPECIAL CONCERN**

5 (a) No Open Season. There is no open season for taking any of the species listed as endangered in Rule .0103, or
6 threatened in Rule .0104 of this Section, except for the American alligator (*Alligator mississippiensis*) as set forth in
7 the rules of this Chapter. Unless otherwise provided in North Carolina General Statutes or the rules of this Chapter,
8 there is no open season for taking any of the species listed as special concern in Rule .0105 of this Section. Except
9 as provided in Paragraphs (b), (c) and (e) of this Rule, it is unlawful to take or possess any of such species at any
10 time.

11 (b) Permits. The executive director may issue permits to take or possess an endangered, threatened, or special
12 concern species:

- 13 (1) To an individual or institution with experience and training in handling, and caring for the wildlife
14 and in conducting a scientific study, for the purpose of scientific investigation relevant to
15 perpetuation or restoration of said species or as a part of a scientifically valid study or restoration
16 effort;
- 17 (2) To a public or private educator or exhibitor who demonstrates that he or she has lawfully obtained
18 the specimen or specimens in his or her possession, possesses the requisite equipment and
19 expertise to care for such specimen or specimens and abides by the caging requirements for the
20 species set forth in 15A NCAC 10H .0302;
- 21 (3) To a person who lawfully possessed any such species for more than 90 days immediately prior to
22 the date that such species was listed and who abides by the caging requirements for the species set
23 forth in 15A NCAC 10H .0302, provided however, that no permit shall be issued more than ninety
24 days after the effective date of the initial listing for that species; or
- 25 (4) To a person with demonstrable depredation from a Special Concern Species, or the American
26 alligator (*Alligator mississippiensis*).

27 (c) Taking Without a Permit:

- 28 (1) An individual may take an endangered, threatened, or special concern species in defense of his
29 own life or the lives of others.
- 30 (2) A state or federal conservation officer or employee who is designated by his agency to do so may,
31 when acting in the course of his official duties, take, possess, and transport endangered,
32 threatened, or special concern species if the action is necessary to:
- 33 (A) aid a sick, injured, diseased or orphaned specimen;
- 34 (B) dispose of a dead specimen;
- 35 (C) salvage a dead specimen that may be useful for scientific study; or
- 36 (D) remove specimens that constitute a demonstrable but nonimmediate threat to human
37 safety, provided the taking is done in a humane and noninjurious manner. The taking

1 may involve injuring or killing endangered, threatened, or special concern species only if
2 it is not reasonably possible to eliminate the threat by live-capturing and releasing the
3 specimen unharmed, in a habitat that is suitable for the survival of that species.

4 (d) Reporting. Any taking or possession of an endangered, threatened, or special concern species under Paragraphs
5 (b) and (c) of this Rule is subject to applicable reporting requirements of federal law and regulations and the
6 reporting requirements of the permit issued by the Executive Director or of 15A NCAC 10B .0106(e).

7 (e) Exceptions.

8 (1) Notwithstanding any other provisions of this Rule, processed meat and other parts of American
9 alligators, that have been lawfully taken in a state in which there is an open season for harvesting
10 alligators, may be possessed, bought and sold when such products are marketed in packages or
11 containers that are labeled to indicate the state in which they were taken and the identity, address,
12 and lawful authority of the processor or distributor.

13 (2) Raptors listed as special concern species in Rule .0105 of this Section may be taken from the wild
14 for falconry purposes and for falconry propagation, provided that a valid North Carolina
15 endangered species permit has been obtained as required in Paragraph (b) of this Rule.

16 (3) Captive-bred raptors listed as special concern species may be bought, sold, bartered or traded as
17 provided in 50 C.F.R. 21.30 when marked as required under those regulations.

18 (4) Red Wolves (Canis rufus) listed as threatened in Rule .0104 in this Section may be taken or
19 harassed pursuant to the conditions provided in 50 C.F.R. 17.84(c).

20 ~~(4)~~ (5) Importation, possession, sales, transportation and exportation of species listed as special concern
21 species in Rule .0105 of this Section is allowed under permit by retail and wholesale
22 establishments whose primary function is providing scientific supplies for research provided that:

23 (A) the specimens were lawfully obtained from captive or wild populations outside of North
24 Carolina;

25 (B) they are possessed in indoor facilities;

26 (C) all transportation of specimens provides safeguards adequate to prevent accidental
27 escape; and

28 (D) importation, possession and sale or transfer is permitted only as listed in Parts (e)(4)(A)
29 and (B) of this Rule.

30 (f) A written application to the Commission is required for a permit to authorize importation, and possession for the
31 purpose of retail or wholesale sale. The application shall identify the source of the specimens, and provide
32 documentation of lawful acquisition. Applications for permits shall include plans for holding, transportation,
33 advertisement, and sale in such detail as to allow a determination of the safeguards provided against accidental
34 escape and sales to unauthorized individuals.

35 (g) Purchase, importation, and possession of special concern species within North Carolina is allowed under permit
36 to state and federal governmental agencies, corporate research entities, and research institutions provided that:

37 (1) sales are permitted to out of state consumers;

- 1 (2) the specimens will be possessed in indoor facilities and safeguards adequate to prevent accidental
2 escape are provided during all transporation of the specimens;
3 (3) the agency's or institution's Animal Use and Care Committee has approved the research protocol
4 for this species; and
5 (4) no specimens may be stocked or released in the public or private waters or lands of North Carolina
6 and specimens may not be transferred to any private individual.
7

8 *History Note: Authority G.S. 113-134; 113-291.2; 113-291.3; 113-292; 113-333;*

9 *Eff. June 11, 1977;*

10 *Amended Eff. January 1, 2013; January 1, 2012; May 1, 2009; April 1, 2003; April 1, 2001; April*
11 *1, 1997; February 1, 1994; September 1, 1989; March 1, 1981; March 17, 1978.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Wildlife Resources Commission

RULE CITATION: 15A NCAC 10I .0104

DEADLINE FOR RECEIPT: Friday, February 13, 2015

NOTE WELL: *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 9, 16, 22, 26; and page 2, lines 7 and 11, add an "and" at the end of the clause

Line 25, add a semicolon at the end of the clause

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: February 5, 2015



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

February 2, 2015

ORIGINAL

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: N.C. Wildlife Resources Commission

2. Rule citation & name: 15A NCAC 10I .0104 Threatened Species Listed

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: December 11, 2014
- b. Proposed Temporary Rule published on the OAH website: December 18, 2014
- c. Public Hearing date: January 5, 2015
- d. Comment Period: December 18, 2014 to January 14, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 11, 2014
- f. Adoption by agency on: January 29, 2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☒ A recent court order.
Cite order: 2:13-cv-00060-BO
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain:

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OFFICE OF
ADMIN HEARINGS

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Temporary rule-making was specifically ordered by the court. See attached court order.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Erica Garner

Phone: 919-707-0014

E-Mail: erica.garner@ncwildlife.org

Agency contact, if any: Kate Pipkin

Phone: 919-707-0065

E-Mail: kathryn.pipkin@ncwildlife.org

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Gordon S. Myers

Title: Executive Director

E-Mail: gordon.myers@ncwildlife.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 10I .0104 Threatened species listed is amended under temporary procedures as follows:

3 **15A NCAC 10I .0104 THREATENED SPECIES LISTED**

4 (a) The following species of resident wildlife are designated as federally-listed threatened species:

- 5 (1) Amphibians: None Listed At This Time.
- 6 (2) Birds: Piping plover (*Charadrius melodus melodus*).
- 7 (3) Crustacea: None Listed At This Time.
- 8 (4) Fish:
 - 9 (A) Spotfin chub (*Cyprinella monacha*);
 - 10 (B) Waccamaw silverside (*Menidia extensa*).
- 11 (5) Mammals: None Listed At This Time.
- 12 (6) Mollusks: Noonday globe (*Patera clarki nantahala*).
- 13 (7) Reptiles:
 - 14 (A) Bog turtle (*Glyptemys muhlenbergii*);
 - 15 (B) American alligator (*Alligator mississippiensis*);
 - 16 (C) Green sea turtle (*Chelonia mydas*);
 - 17 (D) Loggerhead sea turtle (*Caretta caretta*).

18 (b) The following species of resident wildlife are designated as state-listed threatened species:

- 19 (1) Amphibians:
 - 20 (A) Carolina gopher frog (*Rana capito capito*);
 - 21 (B) Eastern tiger salamander (*Ambystoma tigrinum tigrinum*);
 - 22 (C) Junaluska salamander (*Eurycea junaluska*);
 - 23 (D) Wehrle's salamander (*Plethodon wehrlei*).
- 24 (2) Birds:
 - 25 (A) Bald eagle (*Haliaeetus leucocephalus*)
 - 26 (B) Gull-billed tern (*Sterna nilotica aranea*);
 - 27 (C) Northern saw-whet owl (*Aegolius acadicus*).
- 28 (3) Crustacea: None Listed At This Time.
- 29 (4) Fish:
 - 30 (A) American brook lamprey (*Lampetra appendix*);
 - 31 (B) Banded sculpin (*Cottus carolinae*);
 - 32 (C) Bigeye jumprock (*Scartomyzon ariommus*);
 - 33 (D) Blackbanded darter (*Percina nigrofasciata*);
 - 34 (E) Carolina madtom (*Noturus furiosus*);
 - 35 (F) Carolina pygmy sunfish (*Elassoma boehlkei*);
 - 36 (G) Carolina redbreast (*Moxostoma* sp.) (Pee Dee River and its tributaries and Cape Fear
 - 37 River and its tributaries);

- 1 (H) Least brook lamprey (*Lampetra aepyptera*);
 2 (I) Logperch (*Percina caprodes*);
 3 (J) Rosyface chub (*Hybopsis rubrifrons*);
 4 (K) Sharphead darter (*Etheostoma acuticeps*);
 5 (L) Sicklefins redhorse (*Moxostoma* sp.) (Hiwassee River and its tributaries and Little
 6 Tennessee River and its tributaries);
 7 (M) Turquoise darter (*Etheostoma inscriptum*);
 8 (N) Waccamaw darter (*Etheostoma perlongum*).
 9 (5) Mammals:
 10 (A) Eastern woodrat (*Neotoma floridana floridana*);
 11 (B) Rafinesque's big-eared bat (*Corynorhinus rafinesquii* ~~rafinesquii~~ rafinesquii);
 12 (C) Red wolf (*Canis rufus*).
 13 (6) Mollusks:
 14 (A) Alewife floater (*Anodonta implicata*);
 15 (B) Big-tooth covert (*Fumonelix jonesiana*);
 16 (C) Cape Fear threetooth (*Triodopsis soelneri*);
 17 (D) Carolina fatmucket (*Lampsilis radiata conspicua*);
 18 (E) Clingman covert (*Fumonelix wheatleyi clingmanicus*);
 19 (F) Eastern lampmussel (*Lampsilis radiata radiata*);
 20 (G) Eastern pondmussel (*Ligumia nasuta*);
 21 (H) Engraved covert (*Fumonelix orestes*);
 22 (I) Mountain creekshell (*Villosa vanuxemensis*);
 23 (J) Roan supercoil (*Paravitrea varidens*);
 24 (K) Roanoke slabshell (*Elliptio roanokensis*);
 25 (L) Sculpted supercoil (*Paravitrea ternaria*);
 26 (M) Seep mudalia (*Leptoxis dilatata*);
 27 (N) Smoky Mountain covert (*Inflectarius ferrissi*);
 28 (O) Squawfoot (*Strophitus undulatus*);
 29 (P) Tidewater mucket (*Leptodea ochracea*);
 30 (Q) Triangle floater (*Alasmidonta undulata*);
 31 (R) Waccamaw ambersnail (*Catinella waccamawensis*);
 32 (S) Waccamaw fatmucket (*Lampsilis fullerikati*);
 33 (T) Waccamaw spike (*Elliptio waccamawensis*).
 34 (7) Reptiles: None Listed At This Time.
 35
 36 *History Note: Authority G.S. 113-134; 113-291.2; 113-292; 113-333;*
 37 *Eff. March 17, 1978;*

1 *Amended Eff. June 1, 2008; April 1, 2001; November 1, 1991; April 1, 1991; June 1, 1990;*
2 *September 1, 1989.*