

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS
WM-21-07

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.885(3)b., 169.11, 169.36(9)(b) and 227.11, Stats., interpreting ss. 29.014, 29.885(3)b., 169.11 and 169.36(9)(b) Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 12 and 16, Wis. Adm. Code relating to regulating feral or wild swine, wolf-dog hybrids and mute swans as captive wild animals.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will begin at 6:00 p.m. on the following dates and locations:

August 13, Thursday

West Bend Public Agency Center, room 1113 A and B, 333 E. Washington St., West Bend, 53095

August 18, Tuesday

Wausau Best Western Midway Hotel, 2901 Hummingbird Road, Wausau, 54401

August 18, Tuesday

Rhinelanders' James Williams Middle School, 915 Acacia Lane, Rhinelanders, 54501

August 19, Wednesday

La Crosse State Office Building, basement conference rooms, 3550 Mormon Coulee Road, La Crosse, 54601

August 19, Wednesday

Northeast Wisconsin Technical College, Room CB 213 A and B, 2740 W. Mason Street, Green Bay, 54307

August 27, Thursday

Northern Great Lakes Visitor Center, 29270 County Highway G, Ashland, 54806

August 31, Monday

Dunn County Fish and Game Association Clubhouse, 1600 Pine Ave E., Menomonie, 54751

NOTICE IS HEREBY FURTHER GIVEN that this hearing will be followed by a public hearing on Board Order WM-16-09 relating to deer management unit population goals. The hearing on WM-16-09 begins at 7:00 p.m. at the same location.

NOTICE IS HEREBY FURTHER GIVEN that the proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Scott Loomans, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 31, 2009. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Loomans.

Plain Language Rule Analysis: 2007 ACT 119 (ss. 169.11 Stats.) requires that the department designate wild or feral hogs as harmful wild animals. The same statute, ss. 169.11 Stats., also authorizes that any non-native animal that is a threat to the environment, public health or the health of domestic animals, or is capable of inflicting severe physical harm to humans or domestic animals may be designated a harmful wild animal. Specifically, these rule proposals:

Section 1 establishes that harmful wild animals may not be trapped and relocated without written permission of the department.

Section 2 adds wild or feral swine, mute swans and wolf dog hybrids to the list of species which are classified as harmful wild animals and establishes definitions.

Section 3 creates an exemption from the requirement that animals be confined at all times so that wolf-dog hybrids can be controlled by a leash.

Section 4 eliminates the option of keeping mute swans that are only sexually sterilized and not also pinioned in pens that are not covered and clarifies that mute swans which are both pinioned and sexually sterilized may not be at large from the property which is licensed.

Section 5 allows the possession of wild or feral swine only by certain people who are producing them for meat and slaughter off-site or by a custom meat processor and that feral or wild swine are permanently marked with identifying information.

Section 6 requires wolf-dog hybrids to be sexually neutered and permanently marked with identifying information.

Sections 7, 8 and 11 establish pen standards and allow that wolf-dog hybrids may utilize space that is intended for human occupancy.

Section 9 requires that enclosures for wild or feral swine include a section of fence or wall that is buried at least 30 inches.

Section 10 establishes that secondary, perimeter fences are not required for housing mute swans and that the perimeter fence standards are reduced for wolf-dog hybrids in rural areas.

Section 11 applies the existing pen space requirements for captive timber wolves that are held in pens with open tops to wolf-dog hybrids that are held in pens with open tops. This section also establishes that minimum pen size standards do not apply until January 1, 2014.

Section 12 establishes record keeping and reporting requirements for wild or feral swine, wolf-dog hybrids and mute swans.

Section 13 requires the owners of harmful wild animals to report escapes to the department within 24 hours of becoming aware of the escape. This section also clarifies that the department may dispose of an escaped harmful wild animal upon determining that the animal poses a risk to public safety or to the health of other domestic or wild animals.

Related Statute or Rule: There are no state rules or statutes currently under promulgation that directly relate to the provisions that are proposed in this administrative order.

Summary of, and Comparison with, Existing or Proposed Federal Regulations: Federal regulations allow states to manage wildlife resources and captive wild animals located within their boundaries provided they do not conflict with regulations established in the Federal Register.

As a result of rule making by the United States Fish & Wildlife Service that was completed in 2005, mute swans are no longer regulated by the Migratory Bird Treaty Act and are federally unprotected. Under ch. 169, Stats., the department has the authority to regulate migratory birds held in captivity and defines migratory birds by cross-referencing Ch. 50 part 10.13 of the Code of Federal Regulations. The department currently has regulations regarding the possession of mute swans that are held in captivity but, because that species is no longer listed under Ch. 50 part 10.13 CFR, those regulations are no longer in effect.

The United States Fish & Wildlife Service has regulated gray or timber wolves by designating them as threatened or endangered species. The service does not regulate captive wolves or wolves that are hybrids with domestic dogs or coyotes.

States are responsible for the regulation of wild or feral hogs both in the wild and in captivity and none of these rule changes violate or conflict with the provisions established in the Code of Federal Regulations.

Comparison with rules in Adjacent States: These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management of wild animals and the regulation of certain captive wild animals.

Iowa regulates as a "Dangerous wild animal" swine which are members of the species *Sus scrofa linnaeus* including, but not limited to, swine commonly known as Russian boar or European boar of either sex. Possession is generally prohibited except for certain shooting preserves. Minnesota regulates Eurasian wild pigs and their hybrids (*Sus scrofa* subspecies and *Sus scrofa* hybrids), excluding domestic hogs (*S. scrofa domesticus*) and European wild boars as a "restricted species" of invasive animal. Possession is prohibited in most cases. Illinois and Michigan have regulations that are primarily animal health related.

Illinois prohibits the possession of wolves and wolf hybrids under the Illinois Dangerous Animals Act. Minnesota explicitly prohibits the release or introduction of wolf-dog hybrids into the wild. Michigan's Dog Cross Act of 2000 established significant restrictions on the ownership, possession, and care of certain wolf-dog crosses; prohibits the ownership and possession of certain wolf-dog crosses and establishes fees. Iowa does not have significant regulations for wolf-dog crosses. Nationally, many states regulate or prohibit the possession of wolf-dog crosses. The state of Washington is considering a prohibition through legislation being worked on in spring, 2009.

Mute swans held in captivity in Michigan require a department permit and must be pinioned. In Minnesota, mute swans are regulated as an invasive species and a game farm permit and fencing are required for legal possession. Iowa discourages allowing the free-flight of mute swans but does not regulate them. They are present in the wild in Iowa and considered a challenge to their trumpeter swan restoration effort. Illinois does not regulate captive mute swans. Mute swans are common in the wild in Illinois.

Summary of Factual Data and Analytical Methodologies: The rule changes included in this order do not deviate from current department policy on the management of wildlife, captive wildlife, and the regulation of animals which are listed as harmful wild animals. As required by ch. 169, Stats., consultation with the Department of Agriculture, Trade and Consumer Protection and the Department of Health and Family Services has occurred.

Only persons who possessed wild or feral swine, prior to the effective date of this rule, for the purpose of producing meat could be licensed to possess that species. Animals may only be killed at or transported to licensed meat facilities.

Designation as a harmful wild animal requires a license for the possession, transportation, sales, transfer, import, and exhibition. People who are in possession of a wild or feral hog, mute swan, or wolf-dog hybrid must possess their license and display it to the department upon request and carcasses must be accompanied by information such as a receipt indicating where and when the carcasses were acquired.

Pen standards are established for all three species. Feral and wild hogs and wolf-dog hybrids must be housed in enclosures constructed of suitable materials, structurally sound, and kept in good repair. Wolf-dog hybrids must be housed in closed top pens that are a minimum of 300 square feet. There may be no more than two wolf-dog hybrids per 300 square foot pen and at least 100 additional square feet for each additional hybrid. The pen height shall be a minimum of six feet. Wolf-dog hybrid pens with open tops shall be a minimum of 1000 square feet. The walls shall be a minimum of 10 feet in height with an additional 4 feet at the top slanted in at a 30° to 45° angle. In order to allow time for owners of wolf dog hybrids to modify and improve facilities, new pen standards would not be effective until January 1, 2014. A second perimeter fence is required for feral and wild hogs and wolf-dog hybrids. Housing standards for all harmful wild animals require that animals are provided with adequate food and water, facilities that are in good repair, protected from injury, and free of trash and accumulation of waste. Housing must provide shelter from the elements and adequate space. Animals may be confined in a different manner on a temporary basis to provide health care or for transportation.

Record keeping and quarterly reporting is required for harmful wild animals and shall include records of all transactions, deaths, and harvesting of animals on the licensed premises. Reports must be submitted

to the department on the last day of the months of January, April, July and October. All records must be kept by the owner for three years and displayed to the department upon request.

Taking of all three species alive from the wild without department authorization is currently prohibited under Ch. NR 10.08(5) Wis. Admin. Code except when the person is the owner of the animal or acting on behalf of the owner. The department would continue to allow taking animals from the wild in situations such as when an individual or organization, devoted to the rescue of unwanted or escaped wolf-dog hybrids, acts as an agent of the department. The department could also allow activities by a local unit of government with responsibility for controlling nuisance or dangerous animals. Stocking any of these species into the wild is prohibited. Propagation is allowed by license except that mute swans which are not kept in pens must be sexually neutered and pinioned and wolf-dog hybrids must be sexually neutered. Rehabilitation of harmful wild animals is not allowed but medical treatment may be allowed by the department or its agents.

Reporting escapes of all three species to the department within 24 hours of discovery of the escape is required in order to facilitate recovery efforts.

The possession of harmful wild animals must be consistent with ordinances established by local units of government.

This rule making is designed to reduce the possibility of feral or wild hogs, which are held in captivity, escaping to the wild. Feral hogs, also known as wild boars, are a threat to native ecosystems and are disease threats to domestic swine herds. Pseudorabies and swine brucellosis are among several livestock diseases for which the US Department of Agriculture's Animal and Plant Health Inspection Service has established national eradication programs with a goal of elimination of the diseases from all livestock in the United States. One of the most serious challenges to achieving this goal is the widespread and growing occurrence of feral swine. Feral swine can harbor and transmit these diseases, and in some areas may serve as the most important wildlife host. A state's status with the US Department of Agriculture, in terms of being considered brucellosis-free, may depend partly on whether disease is found in the population of free roaming swine. Feral and wild swine are deemed unprotected animals in the wild and for the purposes of the proposed rules would be considered harmful when held in captivity. Any swine that has existed in the wild for seven days can be considered a harmful wild animal.

This rule is designed to reduce the occurrence of wolf-dog hybrids escaping into the wild or posing a threat to human health. Wolves which share genetic material with domestic dogs have been documented in packs of wild wolves on three occasions in Wisconsin and alone in significantly more instances. Experience has shown that wolves which have some domestic heritage are more likely than wild wolves to interact with humans and domestic animals in negative ways. These actions, including depredation of domestic animals, pose a threat to the management of wild wolves and a threat to the genetics of wild wolves. Wolf-dog hybrids are responsible for fatal attacks on humans in neighboring states and have attacked people in Wisconsin. Improper care and containment of wolf-dog crosses can be a significant risk of physical harm to people.

This rule is designed to reduce the likelihood of mute swans escaping from captivity and becoming established in the wild where they compete with native waterfowl, including trumpeter swans, for breeding, feeding, and living space. Mute swans have shown that they are extremely well adapted to surviving in the wild in Wisconsin. Existing rules already require that swans which are not pinioned and neutered must be housed in covered enclosures. These regulations are not currently in effect but are restored in this rule by eliminating the need to cross-reference federal regulations. A new provision of this proposal is that mute swan escapes shall be reported to the department within 24 hours of becoming aware of the escape.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses. These rules will allow the possession, propagation, and sale of mute swans in a manner which is identical

to regulations which were in effect prior to a change to the Code of Federal Regulations which invalidated state regulations by eliminating a cross reference in code language.

The possession and sale of wolf-dog hybrids would continue to be allowed under this rule proposal with certain conditions. Propagation would not be allowed under this proposal. Propagation for sale in Wisconsin is believed to be a limited activity that would have limited to no effect on small businesses. Likewise, the possession and propagation of feral swine would continue to be allowed by certain people for the purposes of meat production. People who possess wild or feral swine for other purposes are not believed to be benefitting economically and there would be no business effect.

Effects on Small Businesses: In most cases these rules are applicable to individual animal owners. Business owners who possess wild or feral hogs, mute swans, or wolf-dog hybrids would be subject to compliance standards through a requirement that enclosures be of sufficient construction to contain those species. For wolf-dog hybrid owners, compliance with pen standards would not be required until 2014. Permanent marking of wild or feral swine and wolf-dog hybrids would be required. Wolf-dog hybrids would need to be sexually neutered. Annual reporting of animals acquired and sold or which die would be required. Additionally, business owners would be required to report events of animal escape to the department within 24 hours of becoming aware of the escape.

Agency Contact Person: Scott Loomans, 101 South Webster St., PO BOX 7921, Madison, WI 53707-7921. (608) 267-2452, scott.loomans@wisconsin.gov

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rules will have a significant economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Scott Loomans at (608) 267-2452 with specific information on your request at least 10 days before the date of the scheduled hearing.

Dated at Madison, Wisconsin _____
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary