



REVISED

AGENDA

**N.C. WILDLIFE RESOURCES COMMISSION
SPECIAL ELECTRONIC MEETING
Monday, December 12, 2011, 10:30 A.M.
1751 Varsity Drive
NCWRC Conference Room, 5th Floor
Raleigh, North Carolina**

CALL TO ORDER - *Chairman David W. Hoyle, Jr.*

ROLL CALL OF COMMISSIONERS PRESENT BY TELEPHONE CONFERENCE –
Betsy Foard, Executive Officer

ANNOUNCEMENT OF VISITORS AND STAFF PRESENT – *Betsy Foard*

ELECTRONIC MEETINGS – North Carolina General Statute 143-318.13 mandates that if a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A public body may not vote by secret or written ballot. The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon.
Chairman Hoyle

MANDATORY ETHICS INQUIRY – North Carolina General Statute 138A-15(e) mandates that the Commission Chair shall remind all Commissioners of their duty to avoid conflicts of interest and appearances of conflict under this Chapter, and that the chair also inquire as to whether there is any known conflict of interest or appearance of conflict with respect to any matters coming before the Commission at this time. It is the duty of each Commissioner who is aware of such personal conflict of interest or of an appearance of a conflict, to notify the Chair of the same. *Chairman Hoyle*

TEMPORARY RULEMAKING

Receive Public Comments - Receive a summary of public comments on proposed temporary rulemaking for trapping of feral swine received from the public hearing held in November and by correspondence - *Dr. David Cobb, Wildlife Management Division Chief (EXHIBIT A-1)*

Proposal for Temporary Rules – Consider adoption of temporary rules to allow trapping of feral swine – *David Cobb (EXHIBIT A-2)*

RULE REPEAL

Proposal for Rule Repeal – Consider action to repeal the rule governing wild boar, 15A NCAC 10B .0204, based on a recommendation by agency legal counsel – *Norman Young, Agency Legal Counsel (EXHIBIT B)*

COMMENTS BY THE CHAIRMAN – *Chairman David Hoyle, Jr.*

COMMENTS BY THE EXECUTIVE DIRECTOR – *Executive Director Gordon Myers*

ADJOURN

EXHIBIT A-1

December 12, 2011

Summary of Comments Received on Proposed Temporary Rules for Trapping Swine

Number of Comments Received via E-mail	Number of Comments received via U.S. mail	Number of Comments Received at Public Hearings	Total	Agree	Disagree
1	1	1	3	3	0

Public Comments:

- 1) *"I am all for the establishment of the no closed season and no limit on trapping Feral Swine. I also support the following as stated in SESSION LAW 2011-369 HOUSE BILL 432: "§ 113-291.12. Unlawful to remove live feral swine from traps. It is unlawful to remove feral swine from a trap while the swine is still alive or to transport the live swine after that removal."*

However, I am concerned about the portion of the rule that requires the trapper to obtain a no charge permit from the WRC. A hunting license or a trapping license should be all that is required to trap Feral Swine. And, the owner of the trap for Feral Swine should be identified by name and address tag like all other traps.

The no charge permit would add unnecessary cost to the WRC for the issue of and tracking of yet another set of numbers. With no reporting requirements, I fail to see the value in establishing and issuing a new permit."

- 2) *"Support"*
- 3) Letter on reverse.



October 26, 2011

Ms. Kate Pipkin
North Carolina Wildlife Resources Commission
1751 Varsity Drive
Raleigh, North Carolina 27606

Dear Ms. Pipkin:

The Camouflage Coalition is the program of the North Carolina Wildlife Federation, the mission of which is to represent the best interests of hunters and fishermen, the fish and wildlife resource, and protection of fish and wildlife habitats at all levels of government through science based management and regulation. In this capacity, we offer the following comments on the proposed rules to address trapping feral swine.

In response to your recent notice of proposed Rule Making to establish trapping conditions for feral swine, we would like to comment in favor the proposed Rule. These conditions will ensure that landowners can trap feral swine to control depredation on their lands subject to a minimum of necessary oversight by the Commission. It is important to outlaw transportation of live feral swine due to the danger of spreading disease to domestic stock and to prevent establishment of feral swine in new areas of the state where their feeding activity can destroy native plants and animals and cause water quality problems.

Richard B. Hamilton

1024 Washington Street
Raleigh, NC 27605

Cc: Tim Gestwicki
Executive Director
NCWF



EXHIBIT A-2

December 12, 2011

Temporary Rules

Staff recommends the Wildlife Resources Commission adopt the following temporary rules:

15A NCAC 10B .0303 OPEN SEASONS

(a) General. Following are the seasons for taking by trapping fur-bearing animals as defined in G.S. 113-129(7a), coyotes, armadillos, and groundhogs, all dates being inclusive:

- (1) November 1 through the last day of February except for that part of the state described in Subparagraph (2) of this Paragraph.
- (2) December 1 through the last day of February in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties.
- (3) Trapping coyotes is allowed during times and with methods described by local laws in counties where local laws have established fox trapping seasons even when those seasons fall outside the regular trapping seasons described above.
- (4) Nutria may be trapped east of I-77 at any time.

(b) Feral Swine. There is no closed season for trapping feral swine subject to the following restrictions:

- (1) In addition to a hunting or trapping license, a permit issued by the Wildlife Resources Commission is required to trap feral swine. Individuals exempted from license requirements under the provisions specified in G.S. 113-276 may trap feral swine without a hunting or trapping license, but must acquire the permit.
- (2) Feral swine may be live-trapped using only corral or box traps. Corral and box traps must be constructed in a manner such that a non-target animal can be easily released or can escape without harm. The permit number must be displayed on all traps.
- (3) Feral swine must be euthanized while in the trap and may not be removed alive from any trap.

Note: See 15A NCAC 10D .0102(f) for other trapping restrictions on game lands.

History Note: Authority G.S. 113-134; 113-291.1; 113-291.2;
Eff. February 1, 1976;
Amended Eff. July 1, 1996; July 1, 1984; July 1, 1983; August 1, 1982; August 1, 1981;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. June 1, 2003;
Amended Eff. August 1, 2010; May 1, 2009; November 1, 2008; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005; August 1, 2004;
Recodified from Rule 10B .0302 Eff. January 1, 2011.

15A NCAC 10B .0304 BAG LIMITS

There shall be no restrictions on bag limits of furbearers, coyotes, ~~or groundhogs.~~ groundhogs, and feral swine.

Note: Where local laws govern trapping, or are in conflict with these regulations, the local law shall prevail.

History Note: Authority G.S. 113-134; 113-291.2;
Eff. August 1, 1977;
Amended Eff. May 1, 2009; May 1, 2008; June 1, 2005; July 1, 1996; July 1, 1984;
Recodified from Rule 10B .0303 Eff. January 1, 2011.

EXHIBIT B

December 12, 2011

Proposed Repeal of 15A NCAC 10B .0204

Executive Summary

Commission legal counsel is recommending the repeal of the wild boar hunting rule, 15A NCAC 10B .0204, based on a formal objection by Rules Review Commission (RRC) legal staff to the adoption of 15A NCAC 10B .0223. The wild boar rule has already been made void and legally unenforceable by the repeal of the definition of “wild boar” by SL 2011-369, and repeal will have no legal effect on those who wish to hunt feral swine. It will, however, remove the staff objection to the permanent adoption of 15A NCAC 10B .0223.

Your authority to take this action is G.S. § 150B-21.5(b)(1).

Legal Basis for Action

As you are aware, Session Law 2011-369 made a number of changes that placed the regulation of feral swine under the jurisdiction of the Wildlife Resources Commission (WRC). As a result of these changes, you have previously adopted a temporary rule, 15A NCAC 10B .0223, that allowed for the hunting of feral swine after SL 2011-369 took effect on October 1, 2011. At your last meeting, you also voted to permanently adopt this rule, and it is pending review by RRC.¹

When RRC legal staff reviewed the adoption of 15A NCAC 10B .0223 subsequent to your last meeting, they filed a formal Staff Objection. The basis of this objection was what they viewed as ambiguity between this new rule and the existing wild boar rule, NCAC 10B .0204. The reason given for the ambiguity was that both rules use the same species classification name, *Sus scrofa*, for both “feral swine” and “wild boar”. The suggestion from staff counsel to eliminate the ambiguity and remove the RRC objection was to repeal the wild boar rule pursuant to G.S. § 150B-21.5(b)(1).

SL 2011-369 deleted the definition of “wild boar” at G.S. § 113-129(15b), and added a new definition of “feral swine” at G.S. § 113-129(5c). The deletion of the definition of wild boar in this statute, as well as the deletion of wild boar in other Chapter 113 provisions effectively nullifies any rule of the Commission that purports to regulate wild boar from the date that SL 2011-369 became effective, October 1, 2011.

¹ As part of the changes brought about by SL 2011-369, you also previously proposed to amend 10B.0303 and .0304 by temporary rulemaking to allow for the trapping of swine, and are considering whether to adopt those two amendments as temporary rules at this telephonic meeting.

G.S. 150B-21.5(b)(1) provides that a rule may be repealed without notice or public hearing when the law on which it is based has been repealed. With the complete deletion of the statutory definition of “wild boar”, there is no legal basis for 15A NCAC 10B .0204, and the rule does need to be repealed. Both Commission counsel and RRC legal staff view the deletion of the definition as a repeal of the law under which the rule was adopted. Accordingly, pursuant to G.S. § 150B-21.5(b)(1), the rule may be repealed by Commission action without notice or public hearing.

Again, the repeal of this rule will have no effect on any member of the public based since it is no longer legally effective or enforceable as a matter of law. Repeal will permit the Commission to eliminate a rule that is no longer valid and will also remove the staff objection to the permanent adoption of 15A NCAC 10B .0223 based on perceived ambiguity.

Appendices Attached

- Appendix 1 – Text of Repeal in RRC format
- Appendix 2 – Copy of Session Law 2011-369
- Appendix 3 – Copy of Rules Review Commission Staff Objection
- Appendix 4 – Copy of Relevant Portion of G.S. § 150B-21.5

1 15A NCAC 10B .0204 is repealed pursuant to G.S. § 150B-21.5(b) as follows:

2

3 15A NCAC 10B .0204 WILD BOAR (BOTH SEXES)

4

5 *History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. May 1, 2009; May 1, 2007; July 1, 1999; July 1, 1995; July 1, 1993; July 1, 1987;*

8 *July 1, 1986.*

9 *Emergency Repeal Eff. January 1, 2012.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-369
HOUSE BILL 432

AN ACT TO PROHIBIT THE TRANSPORTATION OF LIVE SWINE UNLESS THE SWINE HAS AN OFFICIAL FORM OF IDENTIFICATION APPROVED BY THE STATE VETERINARIAN FOR THIS PURPOSE, TO CLASSIFY ALL FREE-RANGING MAMMALS OF THE SPECIES *SUS SCROFA* AS FERAL SWINE, TO PROVIDE FOR THE TAKING OF FERAL SWINE AS A NONGAME ANIMAL, AND TO PROHIBIT THE REMOVAL OF LIVE FERAL SWINE FROM TRAPS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"Article 66A.

"Transportation of Swine.

"§ 106-798. Identification required to transport swine.

(a) No live swine shall be transported on a public road within the State unless the swine has an official form of identification approved by the State Veterinarian for this purpose.

(b) Any live swine that is transported on a public road within this State without identification as required by this section is presumed to be a feral swine and is also subject to regulation by the Wildlife Resources Commission under Chapter 113 of the General Statutes. Any person transporting a swine without identification is subject to a civil penalty under this Article.

(c) Swine that do not leave the premises of the swine owner are not subject to the identification requirement under this section.

(d) The Board of Agriculture shall adopt rules to charge any swine owner a fee for the identification required under this section. The fee may not exceed the actual cost to the Department of Agriculture and Consumer Services for the identification approved by the State Veterinarian and any direct administrative costs associated with providing the identification to swine owners. The Board of Agriculture shall adopt any other rules necessary to implement this Article.

"§ 106-798.1. Penalty for unlawful transport of swine without identification.

Any person who fails to obtain identification as required under this Article shall be subject to a civil penalty of up to five thousand dollars (\$5,000) for each violation. Each swine that has no identification is a separate violation.

"§ 106-798.2. Penalty for misuse of identification.

Any person who misuses the identification required under this Article shall be subject to a civil penalty of one thousand dollars (\$1,000) for each occurrence. A person misuses identification required under this Article by knowingly providing it to other than the owner of the swine or by engaging in other activity that is in violation of this Article."

SECTION 2. G.S. 113-129 reads as rewritten:

"§ 113-129. Definitions relating to resources.

The following definitions and their cognates apply in the description of the various marine and estuarine and wildlife resources:

...
(1b) Big Game. – Bear, ~~wild bear~~, wild turkey, and white-tailed deer.

...
(5c) Feral Swine. – Free-ranging mammals of the species *Sus scrofa*.

...



(7c) Game Animals. – Bear, fox, rabbit, squirrel, ~~wild bear,~~ white-tailed deer, and, except when trapped in accordance with provisions relating to fur-bearing animals, bobcat, opossum, and raccoon.

...
(15) Wild Animals. – Game animals; fur-bearing animals; feral swine; and all other wild mammals except marine mammals found in coastal fishing waters. In addition, this definition includes members of the following groups which are on the federal list of endangered or threatened species: wild amphibians, wild reptiles except sea turtles inhabiting and depending upon coastal fishing waters, and wild invertebrates except invertebrates declared to be pests under the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. Nothing in this definition is intended to abrogate G.S. 113-132(c), confer jurisdiction upon the Wildlife Resources Commission as to any subject exclusively regulated by any other agency, or to authorize the Wildlife Resources Commission by its regulations to supersede valid provision of law or regulation administered by any other agency.

...
(15b) ~~Wild Boar. – Free ranging mammals of the species Sus scrofa that occur in counties identified in the rules of the Wildlife Resources Commission.~~

..."
..."
SECTION 3. G.S. 113-270.3(b)(1a) reads as rewritten:

"(1a) Nonresident ~~Bear/Wild Boar~~Bear Hunting License – \$125.00. This license is valid for use only by an individual within the State and must be procured before taking any bear ~~or wild bear~~ within the State. Notwithstanding any other provision of law, a nonresident individual may not take any bear ~~or wild bear~~ within the State without procuring this license; provided, that those persons who have a nonresident lifetime sportsman combination license purchased prior to May 24, 1994, shall not have to purchase this license."

SECTION 4. G.S. 113-291.1 reads as rewritten:

"§ 113-291.1. Manner of taking wild animals and wild birds.

- ...
(b) No wild animals or wild birds may be taken:
- (1) From or with the use of any vehicle; vessel, other than one manually propelled; airplane; or other conveyance except that the use of vehicles and vessels is authorized:
 - a. As hunting stands, subject to the following limitations. No wild animal or wild bird may be taken from any vessel under sail, under power, or with the engine running or while still in motion from such propulsion. No wild animal or wild bird may be taken from any vehicle if it is in motion, the engine is running, or the passenger area of the vehicle is occupied. The prohibition of occupying the passenger area of a vehicle does not apply to a disabled individual whose mobility is restricted.
 - b. For transportation incidental to the taking.
 - (2) With the use or aid of any artificial light, net, trap, snare, electronic or recorded animal or bird call, or fire, except as may be otherwise provided by statute[;] provided, however, that ~~crows and coyotes may be taken with the aid of electronic calling devices~~the Wildlife Resources Commission may adopt rules prescribing seasons and the manner of taking of wild animals and wild birds with the use of artificial light and electronic calls. No wild birds may be taken with the use or aid of salt, grain, fruit, or other bait. No black bear ~~or wild bear~~ may be taken with the use or aid of any salt, salt lick, grain, fruit, honey, sugar-based material, animal parts or products, or other bait, and no wild turkey may be taken from an area in which bait has been placed until the expiration of 10 days after the bait has been consumed or otherwise removed. The taking of wild animals and wild birds with poisons,

drugs, explosives, and electricity is governed by G.S. 113-261, G.S. 113-262, and Article 22A of this Subchapter.

Upon finding that the placement of processed food products in areas frequented by black bears is detrimental to the health of individual black bears or is attracting and holding black bears in an area to the extent that the natural pattern of movement and distribution of black bears is disrupted and bears' vulnerability to mortality factors, including hunting, is increased to a level that causes concern for the population, the Wildlife Resources Commission may adopt rules to regulate, restrict, or prohibit the placement of those products and prescribe time limits during which hunting is prohibited in areas where those products have been placed.

Any person who is convicted of unlawfully taking bear ~~or wild bear~~ with the use or aid of any type of bait as provided by this subsection or by rules adopted pursuant to this subsection is punishable as provided by G.S. 113-294(c1).

...
(g) If a season is open permitting such method of taking for the species in question, a hunter may take rabbits, squirrels, opossum, raccoons, fur-bearing animals, and nongame animals and birds open to hunting with a ~~pistol of .22 caliber with a barrel not less than five and one half inches in length.~~ pistol. In addition, a hunter or trapper lawfully taking a wild animal or wild bird by another lawful method may use a knife, pistol, or other swift method of killing the animal or bird taken. The Wildlife Resources Commission may, however, restrict or prohibit the carrying of firearms during special seasons or in special areas reserved for the taking of wildlife with primitive weapons or other restricted methods.

...."

SECTION 5. G.S. 113-291.8(a) reads as rewritten:

"(a) Any person hunting game animals other than foxes, bobcats, raccoons, and opossum, or hunting upland game birds other than wild turkeys, or hunting feral swine, with the use of firearms, must wear a cap or hat on his head made of hunter orange material or an outer garment of hunter orange visible from all sides. Any person hunting deer during a deer firearms season shall wear hunter orange. Hunter orange material is a material that is a daylight fluorescent orange color.

This section does not apply to a landholder, his spouse, or children, who are hunting on land held by the landholder. This subsection shall be enforced by warning ticket only until October 1, 1992, with respect to those hunting rabbit, squirrel, grouse, pheasant, and quail."

SECTION 6.(a) Article 22 of Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-291.12. Unlawful to remove live feral swine from traps.

It is unlawful to remove feral swine from a trap while the swine is still alive or to transport the live swine after that removal."

SECTION 6.(b) G.S. 113-294 is amended by adding a new subsection to read:

"(s) Any person who violates the provisions of G.S. 113-291.12 by unlawfully removing feral swine from a trap while the swine is still alive or by transporting such swine after that removal is guilty of a Class 2 misdemeanor. The acts of removal from a trap and of transporting the swine after removal shall constitute separate offenses."

SECTION 7. G.S. 106-798A and G.S. 106-798B, as enacted by Section 1 of this act, become effective October 1, 2012. The remainder of this act becomes effective October 1, 2011. This act applies to acts that occur on or after the effective date.

In the General Assembly read three times and ratified this the 17th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 12:49 p.m. this 27th day of June, 2011

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: WILDLIFE RESOURCES COMMISSION

RULE CITATION: 15A NCAC 10B .0223

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
 - Lack of statutory authority
 - X Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
 - Extend the period of review

COMMENT:

This rule appears to conflict with 15A NCAC 10B .0204 regulating the taking of wild boar. It appears that both feral swine and wild boar are defined as "free ranging mammals of the species *Sus rofa*." It is not clear how to determine when each rule applies.

15A NCAC 10B .0204 WILD BOAR (BOTH SEXES)

(a) Open Seasons: The wild boar season for both sexes in Cherokee, Clay, Graham, Jackson, Macon, and Swain counties shall be the Monday on or nearest September 10 to the last day in February. Wild Boar may not be taken with the use of dogs on designated bear sanctuaries and may be taken in the deer bow and arrow season, deer muzzleloading season, deer gun season and any small game season using only weapons and manner of take prescribed for that hunting season. Wild boar may be hunted with dogs only during open bear season.

Free-ranging swine in all the other counties are considered to be feral and harvest and reporting of harvest are not regulated by the Commission except on game lands as described in 15A NCAC 10D .0103(i).

(b) Bag Limits: The daily bag limit for wild boar of both sexes is one; the possession limit is one; and the season limit is two.

(c) Kill Reports. The carcass of each wild boar shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2;

Eff. February 1, 1976;

Amended Eff. May 1, 2009; May 1, 2007; July 1, 1999; July 1, 1995; July 1, 1993; July 1, 1987; July 1, 1986.

ROBERT A. BRYAN, JR.
COMMISSION COUNSEL

§ 150B-21.5. Circumstances when notice and rule-making hearing not required

(a) Amendment. -- An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to amend a rule to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.

(2) Substitute one name for another when an organization or position is renamed.

(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.

(4) Change information that is readily available to the public, such as an address or a telephone number.

(5) Correct a typographical error in the North Carolina Administrative Code.

(6) Change a rule in response to a request or an objection by the Commission, unless the Commission determines that the change is substantial.

(b) Repeal. -- An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

(1) The law under which the rule was adopted is repealed.

(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.

(3) The rule is declared to be in excess of the agency's statutory authority.