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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2009-10

(session year)

### Joint

(Assembly, Senate or Joint)

### Committee for Review of Administrative Rules ...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)

**State of Wisconsin  
Department of Natural Resources**

**NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Board Order No.: WM-21-07

Clearinghouse Number: CR 09-052

Subject of Rules: Harmful Wild Animals. The Department recommends modifications to Chapters NR 12 and 16, Wis. Adm. Code, related to harmful wild animal designation of wild or feral swine, mute swans and wolf-dog hybrids.

Date of Transmittal: March 15, 2010

**Send a copy of any correspondence or notices pertaining to the rule to:**

**DNR Rules Coordinator  
Linda Haddix, DNR, GEF-2, LS/8, 101 South Webster  
linda.haddix@wisconsin.gov**

**An electronic copy of the proposed rules submittal may be obtained by contacting Linda Haddix at 608.266.1959**

## REPORT TO LEGISLATURE

NR 12 & 16 , Wis. Adm. Code  
Harmful Wild Animals

Board Order No. WM-21-07  
Clearinghouse Rule No. 09-052

Basis and Purpose of the Proposed Rule: 2007 ACT 119 requires that the department list by rule wild or feral hogs as harmful wild animals. In this rulemaking, the department also proposes listing wolf-dog hybrids and mute swans because those species can also be a threat to the environment, public health, the health of domestic animals, or are capable of inflicting severe physical harm to humans or domestic animals.

People who wish to possess these animals will need to obtain a Captive Wild Animal Farm License and meet minimum requirements for animal care, confinement, record keeping, and reporting of animals which are transferred or which escape.

Under this proposal only people who possessed wild or feral hogs prior to the effective date of the rule may continue to possess those animals and they may only be possessed for purposes of meat production. Wolf-dog hybrids are required to be sexually neutered. Mute swans were previously regulated under NR 16 and those regulations, which are not currently in effect because of modifications to Ch. 50 of the Federal Code of Regulations, are restored.

These regulations will apply to captive wild animals which are privately owned. These rules would not apply to a public zoo, veterinarians for the purpose of providing medical treatment, or people who possess wild animals for less than 10-days for the purpose of resale or slaughter.

Summary of the Rule: The department recommends modifications to chapters NR 12, and 16, Wis. Adm. Code, related to harmful wild animal designation of wild or feral swine, mute swans, and wolf-dog hybrids. Individual sections of this rule order do the following:

Section 1 prohibits live trapping and relocating any harmful wild animal. Under current rules some species, such as squirrels, rabbits and raccoons may be trapped and relocated without permission from the department. This provision clarifies that this ability does not extend to harmful wild animals.

Section 2 corrects a typographical error

Section 3 adds feral or wild swine, mute swans, and wolf-dog hybrids to the list of harmful wild animals and establishes definitions. With this designation, the following existing provisions of the Ch. NR 16 Admin. Code will be applicable:

- Licensing is required.
- Enclosures must be constructed of suitable materials, structurally sound, maintained in good repair, and double fencing is required (mute swans will be exempt from the double fence requirement).
- Animals must be provided adequate food and water, protected from injury, and be housed in enclosures free of trash and waste.
- Stocking animals into the wild and taking these species alive from the wild without department permission is prohibited.
- Quarterly reporting is required.

Section 4 creates an exemption from the requirement that animals be confined at all times so that wolf-dog hybrids can be actively controlled on a leash and not in an enclosure.

Section 5 requires that mute swans which are kept in open top pens be pinioned and clarifies that mute swans which are both pinioned and sexually sterilized may not be at large from the licensed property.

Section 6 allows only those people who possessed wild or feral swine on the effective date of this rule order to be licensed to possess those species under this section. Animals may not be killed on premises, except for

custom slaughter or mobile custom slaughter, and can only be transported directly to slaughter, animal market or a meat establishment as defined by the Department of Agriculture, Trade and Consumer Protection. This section also requires permanent identifying information on feral swine so that, if discovered in the wild, the department can easily verify the origin of the animal and identify the owner.

Section 7 requires wolf-dog hybrids to be sexually neutered. This section also requires permanent identifying information on wolf-dog hybrids so that, if discovered in the wild, the department can easily verify the origin of the animal and identify the owner.

Section 8 provides an exception for wolf-dog hybrids from the existing prohibition on housing captive wild animals in buildings devoted to human occupancy.

Section 9 applies the existing pen space requirements for captive timber wolves to wolf-dog hybrids when they are housed outdoors and not in a building devoted to human occupancy. Wolf-dog hybrid pens with a covered top shall be a minimum of 300 square feet where up to 2 wolf-dog hybrids are held. A minimum of 100 additional square feet are required for each additional hybrid. The pen height must be at least 6 feet. Enclosure size requirements apply beginning on January 1, 2014.

Section 10 requires that fences for feral or wild swine have at least 30 inches of fence material buried unless the floor is solid.

Section 11 exempts mute swans from the requirement that harmful wild animals be enclosed by both a primary fence and a perimeter fence. This section also establishes that a perimeter fence for wild or feral swine need only be 4 feet in height instead of 8.

Section 12 lowers the standard for a secondary fence for wolf-dog hybrids in a rural area when the secondary fence is posted against trespass. This section also allows owners of wolf-dog hybrids four years to construct enclosures that meet the established standards by exempting them until January 1, 2014.

Section 13 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. 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. This section also establishes that minimum pen size standards do not apply until January 1, 2014.

Sections 14 and 15 require quarterly reporting by the owners of feral or wild swine, mute swans or wolf dog hybrids. This reporting shall include information on all transactions occurring during that period.

Section 16 requires the owners of harmful wild animals to report escapes to the department within 24 hours of becoming aware of the escape. Owners of the animals are also required to tell the department what action they will take to recover the animals. 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.

These regulations will apply to captive wild animals which are privately owned. These rules would not apply to a public zoo, veterinarians for the purpose of providing medical treatment, or animal markets that possess wild animals for less than 10 days for the purpose of resale or slaughter.

#### Summary of Public Comments:

The department conducted seven hearings in late August, 2009. Hearing attendance and registrations are summarized in table 1. Hearings were held beginning at 6:00 p.m. and were followed at 7:00 p.m. by hearings on another rule order which proposed modifications to deer management unit overwinter goals. The dual nature of the hearings likely accounts for many of the people who registered on the captive wildlife rule but who did not speak or register support or opposition.

#### Comments received through public hearing process

Mary Popple of Chippewa Falls suggested that annual reporting would be sufficient for mute swans. Under Ch. 169.36(9)(b) Stats., quarterly reporting is required for all animals listed as harmful wild animals and department rules may not be less restrictive. Ms. Popple also requested that mute swans which are pinioned or neutered, rather than swans which are both pinioned and neutered, should be allowed to roam freely on the licensee's property. Ms. Popple suggested that older regulations allowed this. Because the main goal of this proposal is to prevent new introductions of mute swans in the wild, department staff prefer not to allow free roaming mute swans on a property unless they are both pinioned and sterilized because of the likelihood of escape. This has been a provision of mute swan regulations since they were first promulgated in 2003.

Doug Muericke, representing the Timber Wolf Alliance, suggested that wolf-dog hybridization has negative consequences for wolf populations. Mr. Muericke cited concerns about genetic consequences, negative and inaccurate perceptions of wild wolves caused by experience with hybrids, and that human ownership of hybrids encourages a romantic view of wolves rather than a realistic understanding of the role of wolves in natural ecological systems.

State Representative Lee Nerison, from Westby, cited concerns about crop damage, livestock disease, and environmental threats of feral or wild swine. Bill Gnatzig, representing the Wisconsin Pork Producers Association, was supportive of the proposal in general. Tom Bahti, of Sobieske, supported the rule in general and suggested that regulations are long overdue for all three species.

#### Written Comments

During the comment period the department received letters of support from the Wisconsin Pork Association, Wisconsin Farm Bureau and the Timber Wolf Alliance.

The Endangered Resources and Law Enforcement Committee of the Conservation Congress voted unanimously at its August 29, 2009 meeting to support these proposed rules.

Individuals expressing support by letter included Jayne and Mike Belsky of Central Wisconsin Wolfdog Rescue in Necedah. They expressed support for the requirement that wolf-dog hybrids be neutered but did suggest that dig proofing pens could be an additional requirement of the rule.

Lori Fowler, ARF's German Shepherd Rescue, expressed support for the rule but concern that the pen standards for wolf-dog hybrids are stringent and expensive to meet. The department agrees that pen requirements will result in a significant investment for owners and established a 2014 compliance date in order to allow a generous amount of time for people to acquire materials and construct enclosures.

Richard Stoelb of Sheboygan expressed support. Sue Bowers (no address given) appreciated that the rule was not a complete prohibition of ownership of wolf-dog hybrids.

Department staff were made aware that the rule proposal was posted to at least one national social networking website devoted to the topic of wolf-dog hybrid ownership. This apparently did not generate more than one or two written comments to the department.

Modifications Made: Modifications made were in response to comments by the Legislative Council Clearinghouse comments.

## Appearances at the Public Hearing

Table 1. Summary of Public Hearing Attendance, Support and Opposition.

	Attendance	Testimony In Favor	Registered Support	Testimony In Opposition	Registered Opposition	As Interest May Appear or no position
West Bend	5					5
Wausau	15	1	2			12
Rhineland	2	1				1
La Crosse	1	1				
Green Bay	3	3				
Ashland	2					2
Menomonie	2	1				1

Changes to Rule Analysis and Fiscal Estimate: Minor language updates were made. The fiscal effect remains the same.

Response to Legislative Council Rules Clearinghouse Report: Comments the department received from the Legislative Council Clearinghouse have been incorporated.

Final Regulatory Flexibility Analysis: The revisions to Ch. NR 12 and 16, Wis. Admin. Code relating to harmful wild animal designation of feral or wild swine, mute swans, and wolf-dog hybrids are primarily applicable to a limited number of individual animal owners and will not have a significant economic impact on a substantial number of small businesses. Ownership of feral or wild swine will be prohibited by people who possess them for any reason other than meat production. A primary reason that some people have for possessing these swine, to provide game farm shooting opportunities, is already illegal. Business owners who possess wild or feral hogs, mute swans, or wolf-dog hybrid would be subject to the same compliance standards as individuals through a requirement that enclosures be of sufficient construction to contain those species. For wolf-dog hybrid owners, compliance with pen requirements 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. Therefore, under s. 227.19(3m) Stats., a final regulatory flexibility analysis is not required.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
RENUMBERING, AMENDING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes and order to amend ss. NR 12.10(1)(b)2., 16.11(1), 16.15(2)(a), 16.15(2)(e)1. and 2., 16.30(2)(a), 16.30(4)(a)2.d., 16.30(9)(b)(intro.), 16.30(9)(c)2., 16.50(1)(c)2.a., and to create ss. NR 16.11(3) to (5), 16.15(3)(title), 16.15(4)(title), 16.30(4)(a)2.g., 16.30(9)(b)3. and 4., 16.50(1)(c)2.e. and f., 16.50(1)(d)(title)1. and 2. relating to harmful wild animal designation for wild or feral hogs, mute swans, and wolf-dog hybrids.

WM-21-07

Analysis Prepared by the Department of Natural Resources

**Statutes Interpreted and Explanation of Agency Authority:** The department has interpreted the following statutes as providing the authority to establish regulations on the taking or removal of wild animals and requiring the department to promulgate rules designating certain animals as harmful wild animals; ss. 29.014, 29.885(3)b., and 169.11, 169.36(9)(b) Stats.

**Statutory Authority and Explanation of Agency Authority:** 2007 ACT 119 requires that the department designate wild or feral hogs as harmful wild animals. The same statute, s. 169.11 Stats., also authorizes that any non-native wild 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. Quarterly reporting of transactions is authorized under s. 169.36(9)(b) Stats. Authority to regulate the taking or removal of wild animals is derived from s. 29.014 and 29.885(3)b. The title to captive wild animals is established under ss. 169.02(1). All rules promulgated under this authority are subject to review under ch. 227, Stats.

**Related Rule or Statute:** Chapter s. 23.22 Stats., provides additional department authority to regulate species that are also invasive. Chapter NR 40, Wis. Adm. Code establishes that wild or feral swine are invasive species. The provisions of NR 40 do not contradict, pre-empt, or create requirements which are inconsistent with this rulemaking. Chapter ATCP 10.01(62), (97) and 10.02 establish that wild swine are not domestic animals.

**Plain Language Analysis:** The department has recommended modifications to chapters NR 12 and 16, Wis. Adm. Code. 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 corrects a typographical error.

Section 3 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 4 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 5 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 neutered may not be allowed to roam off of the property which is licensed.

Section 6 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 7 requires wolf-dog hybrids to be sexually neutered and permanently marked with identifying information.

Sections 8, 9 and 12 establish pen standards and allow that wolf-dog hybrids may utilize space that is intended for human occupancy.

Section 10 requires that enclosures for wild or feral swine include a section of fence or wall that is buried at least 30 inches unless flooring is concrete or similar material.

Section 11 exempts mute swans from the requirement that harmful wild animals be enclosed by both a primary fence and a perimeter fence. This section also establishes that a perimeter fence for wild or feral swine need only be 4 feet in height instead of 8.

Section 12 lowers the standard for a secondary fence for wolf-dog hybrids in a rural area when the secondary fence is posted against trespass. This section also allows owners of wolf-dog hybrids four years to construct enclosures that meet the established standards by exempting them until January 1, 2014.

Section 13 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 for wolf-dog hybrids do not apply until January 1, 2014.

Sections 14 and 15 establish record keeping and reporting requirements for wild or feral swine, wolf-dog hybrids and mute swans.

Section 16 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.

**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 except by the license holder or an employee.

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 of an open top primary enclosure 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

**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 except by the license holder or an employee.

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 of an open top primary enclosure 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

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 breaking 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 S. Webster St., PO Box 7921, Madison, WI 53707-7921. (608) 267-2452. [scott.loomans@wisconsin.gov](mailto:scott.loomans@wisconsin.gov)

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**Section 1. NR 12.10(1)(b)(2) is amended to read:**

NR 12.10(1)(b)2. Live-trap and relocate any wild animal, except white-tailed deer, elk, black bear or any wild animal classified as endangered or threatened under s. NR 27.03, or any animal classified as a harmful wild animal under s. NR 16.11, to open unenclosed lands not controlled by the department with the permission of the owner. Pursuit of animals released under this subdivision by dogs may not occur in an area where a wild animal has been released for a period of 2 hours after release of the animal, except dogs may be released to pursue raccoons at anytime after the raccoon has reached cover by climbing a tree or pole to a height of at least 10 feet.

**Section 2. NR 16.11(1) is amended to read:**

**NR 16.11 Harmful wild animals.** The following wild animals are designated as harmful wild animals:

- (1) URSIDAE. Members of the family ursidae commonly known known as bears.

**Section 3. NR 16.11(3) to (5) are created:**

(3) SUIDAE. Members of the family suidae including pure wild strains of swine commonly known by the name European, Eurasian, Russian or hybrids with domestic strains. Feral domestic strains include animals which are confined but which exhibit characteristics of being in an untamed state, and hybrids of wild or feral with domestic swine. Included in this definition are any swine which is captured in the wild or from an unconfined environment after it has existed in the wild or unconfined environment outside of an enclosure for more than 7 days, regardless of its physical characteristics, except that in emergency situations the department may designate a period of less than 7 days.

(4) ANATIDAE. The species *anserinae* Cygnus, commonly known as mute swans.

(5) CANIDAE. Hybrids of the species *Canis lupus*, *C. lycaon*, or *C. rufus* commonly known as wolves and the species *Canis familiaris*, domestic dogs, and subsequent generations from such matings. These animals are commonly called wolf-dog hybrids or wolf dogs.

(a) Canids may be presumed to be wolf-dog hybrids if they have some wolf-like physical characteristics and the owner presents such animals verbally or in writing to be a wolf-dog hybrid. Canids with very distinct wolf-like characteristics may be determined by the Department to be wolves or wolf-dog hybrids.

(b) An owner may challenge such a determination by providing the department with genetic testing results. The department will be responsible for the costs of testing if the animal is determined to have only the DNA of domestic dogs.

**Section 4. NR 16.15(2)(a) is amended to read:**

NR 16.15(2)(a) *Confinement*. No person subject to ch. 169, Stats., may possess captive wild animals unless the animals held in captivity are confined at all times to appropriate pens except wolf-dog hybrids which are under the immediate control of a person with a leash. Wolf-dog hybrids are not allowed in a dog park or similar area which is open to the public. Pens shall meet meeting the specifications of ss. NR 16.30 to 16.38 except as otherwise authorized by this chapter.

**Section 5. NR 16.15(2)(e)1. and 2. are amended to read:**

NR 16.15(2)(e) *Mute swans*. All mute swans held on a captive wild animal farm shall be confined within a covered pen except as follows:

1. Mute swans that are pinioned ~~or sexually neutered~~ by 4 weeks of age shall be confined but do not require a covered pen.
2. Mute swans that are both sexually neutered and pinioned by 4 weeks of age need not be confined in a pen but shall be confined to the owner's property and not allowed to roam freely on waters of the state unless those waters are entirely bordered by lands owned or leased by the owner of the mute swans.

**Section 6. NR 16.15(3)(title) is created to read:**

NR 16.15(3) WILD OR FERAL SWINE AND THEIR HYBRIDS. (a) Only individuals who possessed wild or feral swine on the effective date of this subsection (**LRB inserts date**) may be licensed under s. 169.15, Stats. to possess wild or feral swine. Licenses shall be applied for within 90 days of the effective date of this subsection (**LRB inserts date**). Animals must be held in strict confinement and possessed for the purpose of producing food for humans. Except as provided in ss. 169.02(1) and 169.15(2)(b), Stats, and for custom slaughter or mobile custom slaughter as defined by the Department of Agriculture, Trade and Consumer Protection, animals may not be killed on premises. Animals may only be transported live directly to facilities licensed for wild or feral under ch. 169, Stats., or to a slaughter establishment as defined by the Department of Agriculture, Trade and Consumer Protection.

(b) Wild or feral swine must have an official individual identification as defined by s. ATCP10.01(70).

(c) An individual who possesses wild or feral swine under this rule must keep herd inventory records which include the age, sex and official individual identification of the animals. These records must be available to the department upon request.

**Note:** Animal markets, slaughter and meat establishments that meet the requirements of s. NR 16.15(3) are defined and regulated by the Department of Agriculture, Trade, and Consumer Protection in ss. ATCP 10.01(90) and 55.

**Note:** A person who is licensed under s. 169.15, Stats., to possess wild or feral swine may also need a permit under ch. NR 40, Wis. Adm. Code. Section NR 40.04(2)(f)2. and 3., identifies live *Sus domestica* (feral domestic swine), *Sus scrofa* (Russian boar), and other wild swine, including their hybrids, as "prohibited invasive species". With certain exceptions, under s. NR 40.04(3), no person may possess, transport, transfer or introduce prohibited invasive species unless the person has a permit issued under s. NR 40.06.

**Section 7. NR 16.15(4)(title) is created to read:**

NR 16.15(4) WOLF-DOG HYBRIDS. (a) A person who owns a wolf-dog hybrid shall have the animal sexually neutered by six months of age.

(b) A person who owns a wolf-dog hybrid shall have the animal individually tattooed, implanted with a microchip, or otherwise permanently marked with information identifying the owner.

**Section 8. NR 16.30(2)(a) is amended to read:**

NR 16.30(2)(a) Structure; construction. Facilities for captive wild animals shall be designed and constructed so that they are structurally sound. They shall be kept in good repair, protect the captive wild animals from injury, contain the animals securely and restrict other animals from entering. Portions of buildings devoted to human occupancy may not be used as the primary enclosure or primary housing facility for captive wild animals listed in sub. (4). Possession of captive wild animals listed in sub. (4) in portions of buildings devoted to human occupancy shall be limited to temporary health care, treatment or special handling needs except that wolf-dog hybrids kept as pets may share indoor housing which is intended for human occupancy.

**Section 9. NR 16.30(4)(a)2.d. is amended to read:**

NR 16.30(4)(a)2.d. Timber wolf and wolf-dog hybrid pens with a covered top shall be a minimum of 300 square feet. No more than 2 wolves or wolf-dog hybrids may be held in a 300 square foot pen. A minimum of at least 100 additional square feet is required for each additional wolf or wolf dog hybrid. The pen height shall be a minimum of 6 feet. This section applies to owners of wolf-dog hybrids beginning on January 1, 2014.

**Section 10. NR 16.30(4)(a)2.g. is created to read:**

NR 16.30(4)(a)2.g. Wild or feral swine primary enclosures shall include a portion of fence or wall which is buried at least 30 inches unless the floor is a solid, impervious material such as concrete.

**Section 11. NR 16.30(9)(b)(intro.) is amended to read:**

NR 16.30(9)(b) *Perimeter fence*. An outdoor housing facility for harmful wild animals other than mute swans and wild or feral swine shall be enclosed by a perimeter fence that is at least 8 feet high. Fences less than 8 feet high may be approved by the department. An outdoor housing facility for wild or feral swine shall be enclosed by a perimeter fence that is at least 4 feet high not including any portion of the fence that is buried. The fence shall be constructed so that it protects the enclosed species by restricting unauthorized humans from having contact with the

enclosed species. It shall be of sufficient distance from the outside wall or fence of the primary enclosure to prevent physical contact with captive wild animals inside the enclosure. Fences less than 3 feet in distance from the primary enclosure may be used if approved by the department. A perimeter fence is not required if any of the following apply:

**Section 12. NR 16.30(9)(b)3. and 4. are created to read:**

NR 16.30(9)(b)3. The primary enclosure for wolf-dog hybrids is located outside the boundaries of a city or village, and the primary enclosure is located at least 100 yards from a perimeter fence of at least 4 feet in height and posted with notices which indicate that trespassing is not allowed.

4. This paragraph applies to owners of wolf-dog hybrids beginning on January 1, 2014.

**Section 13. NR 16.30(9)(c)2. is amended to read:**

NR 16.30(9)(c)2. Cougar, bobcat, lynx, timber wolf, wolf-dog hybrid, and coyote 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. This section applies to owners of wolf-dog hybrids beginning on January 1, 2014.

**Section 14. NR 16.50(1)(c)2.a. is amended to read:**

NR 16.50(1)(c)2. Records to be included in the quarterly report shall consist of complete records of all transactions or activity involving any captive wild animals of the families:

a. Canidae (coyotes, foxes, wolves and wolf-dog hybrids).

**Section 15. NR 16.50(1)(c)2.e. and f. are created to read:**

NR 16.50(1)(c)2.e. Suidae (wild or feral swine)  
f. Anatidae (mute swans)

**Section 16. NR 16.50(1)(d)(title)1. and 2. are created to read:**

NR 16.50(1)(d) *Reporting and disposition of escaped harmful wild animals.* 1. Any time a harmful wild animal escapes, the licensee shall notify the department of the escape. The notification shall take place immediately if possible but not later than 24 hours after the person is aware the escape has occurred and shall include what action will be taken by the licensee.

**Note:** Notification of fence failures or escapes should be made to the local conservation warden or wildlife manager in the county the fence failure or escape occurs, or by calling the department's hotline at 1-800-847-9367.

2. If a harmful wild animal has escaped from land owned by a person who is licensed under or subject to Ch. 169, Stats. and has not been recovered by the owner within 24 hours of the discovery of the escape, the department may dispose of the animal immediately upon determining that the animal poses a risk to public safety or to the health of other domestic or wild animals.

**Note:** Under s. 169.02(1), legal title to a live captive wild animal or the carcass of a captive wild animal is vested in the person who owns the wild animal if the person is in compliance with Ch. 169 Stats., and the rules promulgated under that chapter. Legal title to an animal or animal's carcass can be assumed by the department when the animal or carcass is possessed in violation of Ch. 169 Stats., or this chapter.

**Section 17. Effective dates.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

**Section 18. Board adoption.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on February 24, 2010.

Dated at Madison, Wisconsin \_\_\_\_\_.

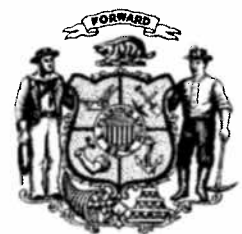
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Matthew J. Frank, Secretary

(SEAL)



# WISCONSIN STATE LEGISLATURE







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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **09-052**

AN ORDER to amend NR 12.10 (1) (b) 2., 16.11, 16.15 (2) (a) and (e), 16.30 (2) (a) and (4) (a) 2. d., (9) (b) (title) and (c) 2., and 16.50 (1) (c) 2.; and to create NR 16.15 (3) (title), and (4) (title), 16.30 (4) (a) 2. g., and 16.50 (1) (d) (title) and (e), relating to harmful wild animal designation for wild or feral hogs, mute swans, and wolf-dog hybrids.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

07-15-2009 RECEIVED BY LEGISLATIVE COUNCIL.

08-07-2009 REPORT SENT TO AGENCY.

RNS:DLI

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached            YES             NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached            YES             NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached            YES             NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached            YES             NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached            YES             NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached            YES             NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached            YES             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 09-052

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]**

#### **2. Form, Style and Placement in Administrative Code**

a. SECTION 2 of the rule should be broken into two SECTIONS: the first SECTION would amend s. NR 16.11 (1); the second SECTION would create s. NR 16.11 (3) to (5). The text of s. NR 16.11 (2), which is not affected by the rule, should not be shown. Similarly, SECTION 4 of the rule should treat only s. NR 16.15 (2) (e) 1. and 2., not all of par. (e); SECTION 10 should be two SECTIONS, one to amend s. NR 16.30 (9) (b) (intro.) and one to create s. NR 16.30 (9) (b) 3.; and SECTION 12 should be two SECTIONS, one to amend s. NR 16.50 (1) (c) 2. a. and one to create s. NR 16.50 (1) (c) 2. e. and f.

b. In s. NR 16.11 (1), “knows known” should replace “knowsn”.

c. Because the rule designates all swine as harmful wild animals, s. NR 16.11 (3) should read, simply:

(3) SUIDAE. Members of the family suidae.

All of the remaining language in that provision is explanatory or illustrative, and should be moved to a note.

d. Section NR 16.11 (5) goes beyond designation of wolf-dog hybrids as harmful wild animals. While the information regarding what is a wolf-dog hybrid is pertinent to the designation, the procedural provisions regarding determination by the department that an animal

is a wolf-dog hybrid and a challenge to such a determination by the animal's owner more properly belong in a separate provision.

e. In s. NR 16.15 (4) (a) and (b), the word "must" should be replaced with the word "shall." Also, those provisions should be written in the active voice, i.e., "A person that owns a wolf-dog hybrid shall ...". Finally, the term "wolf dog" should be hyphenated.

f. In s. NR 16.15 (3) (a), the notation "... (LRB inserts date)" should be inserted after "the effective date of this subsection".

g. Section NR 16.50 (1) (d) and (e) should be numbered s. NR 16.50 (1) (d) 1. and 2.

##### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Because s. NR 16.11 (3) designates all swine as harmful wild animals, domestic swine in captivity are included in that designation. Is this intentional, and does it create any problems for the administration or enforcement of s. 169.11, Stats., and s. NR 16.11?

b. Section NR 16.50 (1) (c) 2. f. seems to suggest that mute swans are the only wild animals of the family anatidae ("...any captive wild animals of the [following] families:"), which of course is not the case. If the intent is to require the specified reporting only for captive mute swans, this provision should be reworded to say that specifically. Otherwise, "mute swans" should be replaced with something more comprehensive, such as "ducks, geese, and swans" or simply "waterfowl". Similarly, though not affected by this rule, note that there are more types of mustelids in Wisconsin than identified in s. NR 16.50 (1) (c) 2. c. If the intent is to require reporting only for the types listed, that provision should be reworded also.