

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 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 injured, 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 without prior authorization from the department and medical treatment may be allowed by the department or its agents.

Reporting escapes and a recovery plan for 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, a disease threat to domestic swine herds, and are capable of causing significant damage to agricultural crops. 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 prevalent 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 wild or feral swine and 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 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.

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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 boarded 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)