

LCB File No. R077-00

PROPOSED REGULATION OF THE BOARD OF WILDLIFE COMMISSIONERS

NOTICE OF INTENT TO ACT UPON A REGULATION Notice of Hearing for The Amendment of Regulations of The Nevada Board Of Wildlife Commissioners

The Board of Wildlife Commissioners will hold a public hearing at 9:00 a.m., on June 17, 2000, at the Churchill County Commissioners Chambers, 155 N. Taylor St., Suite 145, Fallon, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulation CGR 283 (LCB File R077-00) pertaining to Chapters 501 and 503 of the Nevada Administrative Code, specifically NAC 501.200, 501.210, 503.093, & 503.095.

1. The need for and purpose of the proposed regulation: The present regulation which establishes demerit values for wildlife convictions, NAC 501.200, contains inequities, irregularities, and incorrect references regarding appropriate criminal charges and charging language. The proposed regulation, if adopted, would reconcile the inequities, irregularities and language. The purpose, except in the area of illegal use of aircraft, is not to upgrade or downgrade demerit values except where inequities have been discovered. **Examples of current inequities.** Possessing an overlimit of fish but less than twice the legal limit is 6 demerits; possessing fish in excess of twice the legal limit is 9 demerits; but a person who has **exactly** twice the legal limit is only assessed 3 demerits. Fishing without having procured a license is 6 demerits, whereas fishing without a license in possession is 3 demerits. In the second violation circumstance, an individual has the opportunity, by statute, to present his license to the court. If, in fact, he didn't really have a license he would only be assessed 3 demerits - fishing without a license is still fishing without a license. Providing false information to obtain a permit is 12 demerits, providing false information to obtain a license is 6. The difference between a license and a permit is semantics at best, fraud is fraud and the points should be the same. In one section, importing a "prohibited" species is 12 points, the same crime in another section is 6 points. The terms "upland game" and "small game" are used numerous times throughout the existing regulation, yet the terms are not defined in statute or regulation. It is proposed to use terms which are defined, "game bird" and "game mammals," and therefore defensible in the event of a challenge.

The proposed amendment to NAC 501.210, based on 1999 amendments to statute, clarifies that a demerit-based suspension is limited to hunting, fishing & trappings licenses and permits and those privileges.

The amendment to NAC 503.093 proposes to include the act of "hunting" as a requirement to obtain a permit for that purpose - closing a loophole; and incorporating the statutory word "take" to replace "capture or kill." Take is more inclusive and prevents a loophole defense. The use of the two terms would cover virtually all potential acts involving protected species. Also defines "protected" so it is clear that the term and requirement for a permit applies to all categories of protected species - including sensitive, threatened and endangered. The proposed addition to NAC 503.095 would make it clear, in one easily found provision, that

collecting unprotected wildlife for commercial purposes, without a permit, is prohibited. Finding the appropriate charging language is difficult at best when the crime presents itself.

2. **Text of the proposed regulation:** Attached.

- 3A. **The estimated economic effect of the regulation on the business which it is to regulate:**
 - (a) Adverse effect - None.
 - (b) Beneficial effect - None.
 - (c) Immediate effect - None.
 - (d) Long-term effect - None.

- 3A. **The estimated economic effect of the regulation on the public which it is to regulate:**
 - (a) Adverse effect - None.
 - (b) Beneficial effect - None.
 - (c) Immediate effect - None.
 - (d) Long-term effect - None.

4. **Estimated cost to the Division of Wildlife for enforcement of the proposed regulation:** Cost would remain as is.

5. **Description of, and citation to, any regulations of other state or local government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.** There is no overlap.

6. **The regulation does no overlap or duplicate a federal regulation nor is it required by federal law.**

7. **If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions:** Not applicable.

8. **The proposed regulation establishes a new fee or increases an existing fee:**
XXNo ___Yes

Persons wishing to comment upon the proposed action of the Board of Wildlife Commissioners may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Secretary, Board of Wildlife Commissioners, 1100 Valley Road, Reno, Nevada 89512. Written submissions must be received by the Secretary, Board of Wildlife Commissioners, at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board of Wildlife Commissioners may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library and Archives, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the regulations to be adopted will be available for inspection and may be copied at the following locations:

Nevada Division of Wildlife
1100 Valley Road
Reno, Nevada
(775) 688-1500

Western Region Office
380 W. "B" Street
Fallon, NV 89406
(775) 423-3171

Eastern Region Office
1375 Mt. City Highway
Elko, NV 89801
(775) 738-5332

Southern Region Office
4747 Vegas Dr.
Las Vegas, NV 89108
(702) 486-5127

The regulations will also be available for inspection at all county main public libraries. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

/s/ Terry R. Crawforth
Terry R. Crawforth, Secretary
Board of Wildlife Commissioners

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PROPOSED REGULATION OF THE BOARD OF WILDLIFE COMMISSIONERS

COMMISSION GENERAL REGULATION 283 LCB File No. R077-00

Authority: NRS 501.181, 501.1814, 501.1818

Notice of Intent: 2000

Workshop Date: 2000

Commission Approval:

EXPLANATION: The present regulation which establishes demerit values for wildlife convictions, NAC 501.200, contains inequities, irregularities, and incorrect references regarding appropriate criminal charges and charging language. The proposed regulation, if adopted, would reconcile the inequities, irregularities and language. The purpose, except in the area of illegal use of aircraft, is not to upgrade or downgrade demerit values except where inequities have been discovered. The proposed amendment to NAC 501.210, based on 1999 amendments to statute, clarifies that a demerit-based suspension is limited to hunting, fishing & trappings licenses and permits and those privileges.

The amendment to NAC 503.093 proposes to include the act of “hunting” as a requirement to obtain a permit for taking protected species – closing a loophole; also incorporating the statutory word “take” to replace “capture or kill”. Take is more inclusive and prevents a loophole defense. The use of the two terms would cover virtually all potential acts involving protected species. Also defines “protected” so it is clear that the term and requirement for a permit applies to all categories of protected species – including sensitive, threatened and endangered. The proposed addition to NAC 503.095 would make it clear, in one easily found provision, that collecting unprotected wildlife for commercial purposes, without a permit, is prohibited. Finding the appropriate charging language is difficult at best when the crime presents itself.

NOTE: Matter in *italics* is new; matter within brackets **H** is to be omitted.

Section 1. NAC 501.200 is hereby amended to read as follows:

501.200 1. A person who is convicted of a wildlife violation will be assessed demerit points pursuant to the following schedule:

HUNTING, *TAKING*

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
<i>Unlawfully hunting or harassing game mammal or game birds with aircraft, helicopter, motor-driven vehicle or boat</i>	503.010	-----	12
<i>Unlawfully killing or attempting to kill birds or animals from an aircraft</i>	503.005	-----	12
<i>Unlawfully locating or observing big game from from an aircraft for the purpose of hunting</i>	501.385	503.148	12
Hunting <i>or taking</i> an endangered species	501.065 503.385	503.090 503.093	12
Killing, destroying, wounding, trapping or injuring American eagles or golden eagles	503.610	503.090	12
Unlawfully hunting American eagles or golden eagles	503.620	503.090	12
Hunting <i>or taking</i> a threatened species	501.065 501.385	503.090 503.093	9
Hunting big game mammals during closed season	503.090	-----	6
Hunting fur-bearing mammals during closed season	501.015	-----	6
Hunting big game mammals in closed areas	501.385	504.340	6
Hunting fur-bearing mammals in closed areas	501.385	504.340	6

HUNTING, *TAKING*

Classification of Violations	NRS Section	NAC Section	Demerits
Unlawfully hunting in privately owned wildlife management area	504.140	-----	6
Unlawfully hunting in state-owned wildlife management area	504.143	-----	6
Hunting big game mammals during prohibited hours	503.140	-----	6
[Unlawfully hunting or harassing game mammals or game birds with aircraft, helicopter, motor driven vehicle or boat	503.010	-----	6
Unlawfully hunting birds or animals from an aircraft	503.005	-----	6]
Unlawfully hunting game birds or game mammals with aid of artificial light	503.150	-----	6
Hunting <i>or taking</i> a sensitive species	[501.065] <i>501.385</i>	[503.090] <i>503.093</i>	6
Hunt, <i>trap, possess or sell</i> birds of prey or raptors without a permit	503.582	[503.090] <i>503.205</i>	6
Hunting alternative livestock	503.242	-----	6

UNLAWFUL POSSESSION

Classification of Violations	NRS Section	NAC Section	Demerits
[Possessing an endangered species	501.385		12
503.585			
Possessing live wildlife that may not be possessed			
—without a license— <i>Unlawfully possessing</i>			
<i>a prohibited species of wildlife</i>	504.295	503.110	12
Possessing twice the legal limit or more of big game			
mammals or fur-bearing mammals	501.385	-----	12
Unlawfully possessing big game mammals			
or fur-bearing mammals during closed season	503.030	-----	9
Possessing big game mammals or fur-bearing			
mammals in excess of legal limit but less than			
twice the legal limit	501.385	-----	9
[Possessing a threatened species	501.385		9]
Possessing [upland game or waterfowl in excess of]			
twice the legal limit <i>or more of game birds or</i>			
<i>game mammals, other than big game</i>	501.385	-----	9
Possessing [fish in excess of] twice the legal limit			
<i>or more of game fish</i>	501.385	-----	9

UNLAWFUL POSSESSION

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Possessing [upland game or waterfowl] <i>game birds</i> <i>or game mammals, other than big game</i> , during closed season	503.030	-----	6
Possessing fish during closed season	503.030	-----	6
Possessing [upland game or waterfowl] <i>game birds</i> <i>or game mammals, other than big game</i> , in excess of <i>the</i> legal limit but less than twice the legal limit	501.385	-----	6
Possessing <i>game</i> fish in excess of legal limit but less than twice the legal limit	501.385	-----	6
Possessing a [sensitive species or other] species that may not legally be possessed <i>without</i> <i>a license or permit</i>	501.385	-----	6
[Importing prohibited species of wildlife	503.597	503.110	6]
Possessing game mammal of a prohibited age or with prohibited physical characteristics	501.385	-----	6

TAGS AND SEALS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
[Furnishing false information to obtain any big game tag	502.060		12]

TAGS AND SEALS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Hunting big game or wild turkey without a tag	502.130	-----	9
Unlawfully transferring a tag, other than a swan tag, to another person	502.140	502.385	9
Possessing or using a tag, other than a swan tag, legally issued to another person	502.140	502.385	9
Obtaining tags, other than swan tags, in excess of legal limit	502.140	502.331	9
Possessing used tags or tags, other than swan tags in excess of legal limit	502.150	-----	9
Nonresident unlawfully using a tag	502.200	-----	9
Hunting swan without a swan tag	501.385	502.380	6
Transferring a swan tag	502.140	-----	6
Possessing or using a swan tag legally issued to another	502.140	-----	6
Obtaining swan tags in excess of legal limit	502.140	-----	6
Possessing used swan tags or swan tags in excess of legal limit	502.150	-----	6
Using a tag in improper area	502.160	502.385	6
Failure to punch a tag properly	502.160	502.390	6

TAGS AND SEALS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Hunting by an Indian off an Indian reservation			
without a tag	502.280	-----	6
Possessing fur-bearing mammals , <i>other than bobcat,</i>			
without a seal	501.385	502.347 ----	6
<i>Possessing a pelt of a bobcat without a seal</i>	<i>501.385</i>	<i>502.347</i>	<i>6</i>
Possessing <i>the hide of a</i> mountain lion without			
a seal	501.385	502.370	6
Possessing <i>horns of a</i> bighorn sheep without a			
seal <i>or brand</i>	501.385	502.345	6

PERMITS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Importation <i>Unlawful importation or transportation of a prohibited species of wildlife</i> that may not be possessed			
without a permit <i>or license</i>	503.597	503.110	12
Taking <i>Collecting</i> unprotected wildlife for commercial			
purposes without a permit	503.380 <i>501.385</i>	503.095	12
Taking <i>Collecting</i> live bait fish or live aquatic			
bait for commercial purposes without a permit 503.380 <i>501.385</i>	503.380 <i>501.385</i>	503.513	12

PERMITS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
[-Taking] Collecting unprotected fish for commercial purposes without a permit	[503.380] 501.385	503.545	12
[-Furnishing false information to obtain a permit]	502.060		12
Capturing an endangered species without a permit	503.585		12
Capturing threatened species without a permit	501.385		9]
Selling live bait without a permit	[503.310] 501.379	[--- 503.513	6
Conducting a field trial without a permit	503.200	503.610	6
Conducting a dredging operation without a permit	503.425	-----	6
Possessing a raptor without a permit	503.582	503.205	6
[-Capturing sensitive species without a permit]	501.385		6]
Furnishing false information to obtain a permit	502.060	-----	6

FISHING

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Fishing at a fish hatchery or other closed area	503.360	-----	6

MISCELLANEOUS FISH AND GAME

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Obstructing, hindering or otherwise interfering with an officer, employee or agent of the division	501.385	-----	12

MISCELLANEOUS FISH AND GAME

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Unlawfully selling big game mammals	501.379	-----	12
Unlawfully selling an endangered species	501.379	-----	12
Needless waste of big game mammals	503.050	-----	12
[Refusal to exhibit wildlife	502.120	-----	12]
Needless waste of [waterfowl, upland game or —small] game <i>birds or game mammals other than</i> <i>big game</i>	503.050	-----	9
Unlawfully selling a threatened species	501.379	-----	9
Unlawfully selling game other than big game mammals	501.379	-----	6
Unlawfully selling a sensitive <i>or protected</i> species	501.379	-----	6
Unlawfully selling game fish	501.381	-----	6
Needless waste of game fish	503.050	-----	6
Unlawfully carrying a loaded gun in vehicle	503.165	-----	6
Unlawfully discharging a gun	503.175	-----	6
Failing to retain cape, antlers or horns of wildlife	501.385	503.173	6
Destroying or mutilating signs of the division	501.383	-----	6
Polluting water	503.430	-----	6

MISCELLANEOUS FISH AND GAME

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Removing, altering or tampering with a tag placed on wildlife or on seized equipment...	501.377	-----	6
Commercial taking of crayfish	501.385	503.540	6
Interfering with person lawfully hunting or trapping	503.015	-----	6
Hunting or trapping on private property without permission	503.240	-----	6

GROSS MISDEMEANORS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Killing or possessing certain big game mammals with an otherwise valid tag but when season not open	501.376	-----	12
Killing or possessing certain big game mammals without a valid tag	501.376	-----	12
Killing or possessing certain big game mammals outside of area specified on tag	501.376	-----	12
Killing or possessing certain big game mammals with a tag obtained by fraud	501.376	-----	12
Killing or possessing certain big game mammals with another persons tag	501.376	-----	12

GROSS MISDEMEANORS

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Killing or possessing certain big game			
mammals outside of hours set for lawful hunting	501.376	----	12
Acting as a guide without a license	504.395	----	12
<i>Furnishing false information to obtain any big game tag</i>	<i>502.060</i>	<i>----</i>	<i>12</i>

TRAPPING

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Trapping <i>or killing</i> fur-bearing			
mammals during closed season	503.440	----	6
Trapping birds of prey or raptors without a permit			
or by unlawful means	503.582	503.205	6

LICENSES

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Refusing to exhibit a license, <i>wildlife, weapon, ammunition, device or apparatus</i>	502.120	----	12
Hunting without <i>having procured</i> a license	502.010	----	6

LICENSES

	NRS	NAC	Demerits
Classification of Violations	Section	Section	
Fishing without <i>having procured</i> a license	502.010	-----	6
<i>Hunting without a license in possession</i>	502.120	-----	6
<i>Fishing without a license in possession</i>	502.120	-----	6
Furnishing false information to obtain a license	502.060	-----	6
Furnishing of false information by person serving in Armed Forces of United States to obtain a license	502.290	502.220	6
Unlawfully transferring a license to another person	502.100	-----	6
Unlawfully using a license of another person	502.100	-----	6
Obtaining more than one license of each class	502.110	-----	6
Altering a license	502.105	-----	6
Practicing falconry without a license	503.583	503.235	6
Operating as a fur dealer without a license	505.010	-----	6
Trapping without a license	502.010	-----	6
<i>Taking fur-bearing mammals, taking unprotected animals by trapping or selling raw furs for profit without having procured a trapping license</i>	503.454	-----	6
<i>Trapping without a license in possession</i>	502.120	-----	6
Operating a shooting preserve without a license	504.310	-----	6

LICENSES

	NRS	NAC	
Classification of Violations	Section	Section	Demerits
Performing taxidermal services without a license	502.370	502.435	6
Obtaining a hunting license without obtaining certification as a responsible hunter	502.360	-----	6

2. A person who is convicted of committing a wildlife violation that does not appear in the schedule set forth in subsection 1 will be assessed 3 demerit points.

3. A person who is convicted of committing a wildlife violation within 60 months after a conviction for the same violation will be assessed double the amount of demerit points listed in the schedule set forth in subsection 1.

4. A person who is convicted of committing any four wildlife violations within a 60-month period will be assessed an extra 12 demerit points.

Sec. 2. NAC 501.210 is hereby amended to read as follows:

501.210 The division will suspend *or revoke* the ~~[license or permit]~~ *hunting, fishing and trapping licenses or permits and privileges issued pursuant to Title 45* of a person who accumulates 12 or more demerit points:

1. Within a 42-month period, for 3 years after the date of the person’s most recent conviction.

2. Within a 60-month period, for 2 years after the date of the person’s most recent conviction.

Sec. 3. NAC 503.093 is hereby amended to read as follows:

503.093 1. Except as otherwise provided in subsection 2, a person shall not ~~capture or kill~~ *hunt or take* any wildlife which is classified as protected, or possess any part thereof, without first obtaining the appropriate license, permit or written authorization from the division.

2. Such a license, permit or authorization is not required for:

(a) The possession of a desert tortoise which:

(1) Was held in captivity on or before August 4, 1989; or

(2) Is acquired through an adoption program approved by the United States Fish and

Wildlife Service.

(b) The possession of any species of wildlife which is:

(1) Classified as protected in Nevada;

(2) Lawfully killed in another state and imported to Nevada; and

(3) Possessed under the authority of the other state's appropriate license, tag,

permit or other authorization.

3. As used in this section, "protected" includes protected wildlife which has been further classified as sensitive, threatened or endangered.

Sec. 4. NAC 503.095 is hereby amended to read as follows:

503.095 1. *It is prohibited for a person to collect unprotected wildlife for commercial purposes with a permit.*

~~1.~~ 2. Except as otherwise provided in NAC 503.513 and 503.545, the division will issue a permit authorizing a natural person to collect unprotected wildlife for commercial purposes with a seine, net, noose, trap or other device if, after an investigation is conducted, it is proved to the

division that the collecting will not be detrimental to wildlife or the habitat of the wildlife. The annual fee for a permit issued pursuant to this section is \$100.

~~[2-]~~ 3. An application for a permit issued pursuant to this section must be submitted on a form furnished by the division or a facsimile of the form.

~~[3-]~~ 4. An applicant for a permit issued pursuant to this section must include on the application:

- (a) The name of the applicant;
- (b) The physical and mailing addresses of the applicant's residence and place of employment;
- (c) The telephone numbers of the applicant's residence and place of employment;
- (d) The driver's license number of the applicant, if he has been issued a driver's license;
- (e) The date of birth of the applicant;
- (f) The methods and equipment to be used in the collection of the wildlife;
- (g) The location, by county or region, at which the wildlife is to be collected;
- (h) The address of the location at which the wildlife will be held while it is in the possession of the applicant;
- (i) If the applicant has been convicted of violating the laws or regulations of any state or the United States Fish and Wildlife Service relating to the commercialization of wildlife within the 5 years immediately preceding the date of the application, a description of each violation, a description of the penalty imposed for each violation and the name of the state in which each conviction occurred; and
- (j) The applicant's signature and the date on which the application is signed.

~~[4.]~~ 5. Such a permit is not transferable and may be canceled by the division for a violation of its conditions or if operation of the permit is found to be detrimental to wildlife.

~~[5.]~~ 6. Within 30 days after the expiration of a permit for the collection of unprotected wildlife, the division may require the person to whom it was issued to report to the division the number and disposition of the unprotected species he has taken. Any failure to submit the report is a cause for denial of a future application for a similar permit.