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Fiscal Note for Proposed 15A NCAC 10A.1201, Emergency Powers

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Authority: G.S. 113-306(f)

Impact: State Government: Yes
Local Government: No
Substantial Impact: No
Federal Government: No
Small Businesses: No

GENERAL

North Carolina Wildlife Resources Commission (WRC) is proposing to adopt rule 15A NCAC 10A.1201 Emergency Powers (see proposed rule text in Appendix 1). Pursuant to G.S. 113-306(f), the General Assembly authorized WRC to pass rules outlining emergency powers for its Executive Director to employ in the event of a wildlife disease threat which could not otherwise be addressed by existing WRC authority. This emergency authority would require input from both Governor's Office and the State Veterinarian, and would be effective for no more than 90 days. If additional authority is required beyond 90 days, it would have to be obtained by the enactment of temporary or permanent rules as needed.

For reasons which will be detailed below, WRC believes that the necessary State funds for the implementation of the emergency powers under this rule would be available through WRC's Wildlife Fund, that there would be no direct local governmental impact, and that the potential economic impact is not expected to exceed \$3 million. Overall, WRC views this rule as being a significant rule change without a substantial economic impact.

BACKGROUND

The N.C. Wildlife Resources Commission is responsible for the conservation, management and wise use of over 1,000 native species of fish, birds, mammals, reptiles, amphibians and invertebrates in the state of North Carolina. Although most of this agency's wildlife resources management is directed at consumptive use and habitat conservation, the threat of wildlife disease is real and must be taken seriously.

Just as in the case of a human epidemic, the arrival of a contagious wildlife disease requires quick action and an executable plan to contain the disease and minimize the threat to the species across

the state. The current process for adopting permanent rules takes a minimum of 120 days. This timeframe is insufficient to amend or adopt rules needed in order to respond effectively to a wildlife disease outbreak. Thus, as noted above, the General Assembly amended G.S. 113-306(f) to authorize WRC to pass rules authorizing temporary emergency powers to deal with such threat.

WILDLIFE DISEASE

There are many potential wildlife diseases that, under the right conditions, could create an emergency situation in North Carolina which would require immediate action by WRC. Therefore, the determination of fiscal impact of a declaration pursuant to this rule is extremely difficult due to the many unknowns associated with a potential declaration. Among them:

- The disease could affect only a single species or several species.
- The disease could be due to an epidemic outbreak of a disease currently known to be within the indigenous population of the species, or it could originate from importation, whether accidental or intentional.
- Until the disease is identified, there can be no way of determining the severity of the threat posed by the outbreak, and thus the measures needed for control.
- The disease could arise in a single location or in multiple locations simultaneously. The emergency response would depend upon the specific scenario.

The invocation of this rule, by its very nature, presupposes an emergency situation that must be responded to promptly. However, before this power may be invoked, the General Assembly has mandated that the Executive Director consult with the full Commission, the State Veterinarian and the Governor.

Given the range of possibilities, it is conceivable that the emergency situation could have little or no budgetary impact if currently available resources may be utilized and the species is unimportant economically. It is also possible that an outbreak of a wildlife disease could have a significant effect on the economy if an economically or ecologically significant species is involved, and could also involve a significant unbudgeted public expenditure if resources are required to begin a depopulation effort.

When these factors are considered, there really is no way to determine the fiscal impact of an outbreak requiring emergency action without knowing the species involved, the nature of the disease, the threat to the species, and the human impact of the disease. One thing is clear, however. If the Executive Director is confronted by a disease threat recognized by the full Commission, the State Veterinarian, and the Governor, the fiscal impact of taking no action is almost certain to far outweigh the impact of an appropriate response. Nonetheless, WRC recognizes the need for some sort of cost estimate, and has developed an impact analysis for the most likely potential threat, and assumes this to be typical of what might be expected - although "typical" is speculative at best.

In developing this estimate, WRC assumes the following:

- Any work undertaken to address the problem will have to be accomplished using only currently available resources and personnel. While emergency funding sources may become available, for planning purposes, these are not assumed to be a factor.
- Because existing personnel will be utilized, there will be a temporary reallocation of work assignments within WRC to deal with the threat. Thus, Wildlife Enforcement Officers may be diverted from “routine” enforcement duties to oversee or assist in depopulation efforts, biologists may have to defer non-critical projects until after the emergency has been handled, and support staff will have to spend at least some of their time supporting the emergency mission.
- Although there will be a reallocation of personnel resources, there will be no net budgetary effect on the agency in terms of personnel costs for the 90 day period.

ONE POSSIBLE SCENARIO – CHRONIC WASTING DISEASE

The most foreseeable disease on the horizon, and the most significant one for which WRC has an approved response plan, is Chronic Wasting Disease (CWD). CWD is one of a family of transmissible spongiform encephalopathies caused by prions—mutant proteins that interfere with brain function. CWD naturally affects several deer species, as well as elk and moose, but has never been shown to transmit to human or to other animals, unless the prions are injected directly into the brain. It’s unknown exactly how CWD is transmitted between deer in the wild, but its effects are unambiguous. Once CWD is established in a herd it cannot be eradicated and recent test results from Wisconsin, Colorado and Wyoming indicate that the prevalence of the disease within a herd increases over time. Individual mortality of infected animals is 100%.

Of all known wildlife diseases, CWD presents the most obvious current risk due to its movement eastward over the last decade. At one time, the disease was confined to the western United States. However, the disease appeared in 2001 in the State of Wisconsin and has continued to move east over the last decade. Since its discovery in Wisconsin, CWD has also been found in deer in several other states east of the Mississippi: Illinois, Michigan, New York, West Virginia and Virginia.

The identification of CWD in white-tail deer in Wisconsin triggered a response throughout the eastern U.S. to the threat of a CWD outbreak. In North Carolina, this response included legislative enactments and rulemaking undertaken in concert with N.C. Department of Agriculture & Consumer Services, the State Veterinarian, and the North Carolina Deer Farmers Association, and culminated in a response plan to deal with a verified outbreak of CWD.

An analysis of WRC’s response plan presents one likely “worst case” scenario for the costs associated with an emergency response to such outbreak and represents WRC’s best estimate of the fiscal impact of a potential emergency declaration associated with that outbreak.

Responding to Chronic Wasting Disease

The goal of the CWD response plan is to contain the disease as much as possible in order to protect North Carolina’s wild white-tailed deer herd. Containment is achieved through testing (to detect the disease), reduction of the deer herd and elimination of human-facilitated pathways for disease spread. If a case of CWD is confirmed in a wild white-tailed deer, WRC will establish a 5-mile radius

Surveillance Area (SA). Within this SA WRC will do extensive sampling and also require deer hunters to take their deer to a mandatory check-in station so biological samples can be collected by Commission staff.

If additional cases are detected, WRC will establish a 5-mile radius CWD Management Area (CWDMA) around all positive animals. In addition to mandatory check-in of hunter-harvested deer, within the CWDMA WRC will:

- Prohibit the rehabilitation or transfer of fawns;
- Prohibit supplemental feeding and baiting of deer;
- Prohibit exportation of unapproved deer carcass parts; and
- Prohibit transportation of all captive cervids.

These steps are necessary to prohibit the human-facilitated movement of infected animals or parts of animals and prevent deer from gathering (such as over a bait pile) in order to reduce the natural transmission of the disease. In addition, WRC may increase deer bag limits and season length within the CWDMA in order to further reduce the size of the local deer herd.

Use of Emergency Powers and Fiscal Impact

Table 1 Potential Impact: worst-case scenario

Power Invoked	Impact on WRC	Source	Impact on the public	Source	Impact on Local govt.	Total
Mandatory check-in stations for harvested white-tailed deer (One check station close to the center of the SA. The SA is a circle around the infected animal with a 5 mile radius= 78.5 square miles).	Current staff will be reassigned at an estimated cost of \$43,815 (see source column immediately to the right). No overtime by non-exempt employees is anticipated. Supplies will cost \$20,000. Processing samples will cost \$15,000. An estimated \$16,000 will be spent on informational road signs.	One check station manned with two DWM staff for 12 hours a day for the entire firearms season (49 days)= 1,176 hours @\$22.60 per hour= \$26,577. Enforcement time estimated at 980 hours@ \$17.59 per hour=\$17,238.	Hunters will have to travel to a check station within the CWDMA, consuming an average of \$2 (see source column immediately to the right) in gas per harvested deer (estimated harvest = 504) for a total of = \$1,008.	Estimated harvest of deer in 78.5 square miles of Wilkes County is 504 deer. A 15 mpg truck driving roughly 10 miles to a check station with spend about \$2 in gas if gas is \$3/gal.	None.	<p style="text-align: right;">\$20,000 +\$15,000 +\$16,000 +\$26,577 +\$17,238 +\$1,008</p> <p style="text-align: right;">Subtotal = \$95,823</p>
Prohibit exportation of unapproved deer carcass parts.	None. See “source” column notes under the “Prohibit supplemental feeding and baiting of deer.”		Hunters who do not do their own butchering will have to pay a local processor before leaving the SA at an estimated rate of \$50 per deer. We estimated only 25% of hunters will choose to use a local processor for a total cost of \$6,300. Taxidermists will be unaffected since hunters will still be able to move mountable deer parts.		None.	\$6,300
Prohibit the rehabilitation or transfer of fawns (includes revoking fawn rehabilitator permits).	Staff time: \$180.	It is assumed that biologist can revoke all previously approved fawn permits in one day = 8 hours (@ \$22.60 per hour).	Fawn rehabilitators are volunteers who operate under a WRC-issued permit. WRC does not perform animal rehabilitation. There is potential for a small		None.	\$180.

Power Invoked	Impact on WRC	Source	Impact on the public	Source	Impact on Local govt.	Total
			inestimable savings.			
Prohibit supplemental feeding and baiting of deer.	Staff time: \$25,329	Enforcement time for this activity and monitoring the movement of unapproved carcasses is estimated at 1,440 hours@ \$17.59 per hour= \$25,329.	At approximately 604,800 pounds of corn at a cost of 10 cents per pound, we estimate a savings of up to \$60,480. Without the bait, less deer would be hunted, but it is hard to estimate the exact impact. Note that the lower demand for corn would constitute an indirect cost to local retailers.	A study done in the Coastal Plain of S.C. estimated that 1,200lbs of corn were purchased per deer harvested. Therefore 1,200lbsx504deer= 604,800 lbs of corn. Field plots seem to be more prevalent in SC than NC, so this may be an overestimate of the savings.	Indirect loss of up to \$9,374 (assuming a 7.75% tax rate) of tax on the deer corn to state and local gov't.	\$25,329 - \$60,480 Subtotal =-\$35,151
Prohibit transportation of all captive cervids	None. Staff would not spend additional time on enforcement since this task is already part of officers' assigned duties.		Unknown. Under current rules, captive cervids may only be transported for four reasons: export to a state that will accept cervids, between certified herds in North Carolina, for veterinary care and slaughter. Consequently few cervids are actually transported. In 2009, 6 transportation permits were issued. Average travel was 500 miles. At \$2.50 per gallon, gas savings would be \$7,500.			-\$7,500
Total Direct* Impact by Party	\$120,324		-\$60,672			\$ 59,652

* The direct impact includes the impact on the parties that are directly regulated in the proposed rule (e.g. WRC and hunters). Note the indirect impact of this particular scenario is estimated to be about \$130,000 in retail revenue loss and state and local sales tax loss.

NOTE: In the event that CWD is detected within a captive cervid facility, the State Veterinarian at the N.C. Department of Agriculture and Consumer Services will quarantine and depopulate that facility. The Wildlife Resources Commission has the authority to revoke an individual's license and confiscate the animals for testing under 15A NCAC 10H .0303 and will not need to invoke Emergency Powers.

If captive cervid facilities are located within the CWDMA, it may be necessary for the N.C. Wildlife Resources Commission to use Emergency Powers to quarantine and de-populate those herds. There are 50 licensed facilities in North Carolina. In a worst case scenario, if an outbreak happened in a precise location in Rowan County, three facilities would be impacted.

Table 2 Costs Related to Captive Cervid Facilities (worst-case scenario)

Power Invoked	Impact on WRC	Source	Impact on the public	Source	Impact on Local govt.	Total
Quarantine and de-populate	Cost for testing will be \$7,500. Cost for carcass incineration will be \$10,000. Staff time= \$4,822*	Cost of testing is based on 287 samples sent to SCDWS for testing. Cost of incineration based on NCDA&CS disposal fee of \$25.00 per deer and app. \$10 per deer for transport to disposal facility.	Loss of animals at 3 facilities=287 animals. Value 287 x \$3,000= \$861,000	9 CFR Ch. 1 The Administrator is authorized to pay for the purchase and destruction of CWD positive animals, CWD exposed animals, and CWD suspect animals. Subject to available funding, the amount of the Federal payment for any such animals will be 95 percent of the appraised value established in accordance with § 55.3 of this part, but the Federal payment shall not exceed \$3,000 per animal.	None.	\$7,500 +\$10,000 +\$4,822 + \$861,000
Total by Party Affected	\$22,322		\$861,000			\$883,322

*Estimate is based on 120 hours of Enforcement Division staff time at a rate of \$17.59 per hour and 120 hours of Wildlife Management Division staff time at a rate of \$22.60 per hour, again through reallocation of existing resources.

CONCLUSION:

Benefit of Responding To Chronic Wasting Disease

To date, all states faced with an outbreak of CWD responded. Even with response, the economic impact of letting CWD spread could be significant. The economic output of deer hunting in North Carolina is 322.3 million per year. These statistics were provided by a recent report published by Southwick Associates, Inc titled "The 2006 Economic Benefits of Hunting, Fishing, and Wildlife Watching in NORTH CAROLINA." The year CWD was discovered in Wisconsin, 10% of deer hunters in that state did not hunt deer. In North Carolina, that could equate to up to a 32 million dollar impact. However WRC believes that this is an overestimate of the benefits from avoiding a CWD outbreak since the vast majority of the economic output that North Carolina enjoys related to deer hunting would be diverted by our hunters to other activities. Those activities would also have a related economic impact to North Carolina and could include tourist related travel to the mountains or the coast, enjoying other outdoor activities such as boating, fishing or camping and attending the large selection of sporting events within North Carolina.

If the Wisconsin model of the effect on deer hunters is extrapolated to North Carolina, then we could expect up to a 10% drop in our annual sportsman and hunting licenses that could be avoided. This would mean up to a \$976,820 benefit to WRC of having these emergency powers. (This benefit was calculated utilizing a three year average of annual hunting and sportsmen license sales within NC with the final period being the fiscal year ending 6-30-2009.) At the same time, this would mean that hunters would pay up to the same amount in licenses that they probably would not during a CWD outbreak; however, this cost would be surely offset by the benefits hunters would derive from having a hunting license. A prompt response on behalf of the State could serve to isolate the threat and prevent or minimize such statewide impact, in addition to arresting the spread of the disease. Revenues collected from the sale of hunting and fishing licenses allow WRC to continue to fulfill its mission which is to conserve North Carolina's wildlife resources and their habitats and provide programs and opportunities that allow hunters, anglers, boaters and other outdoor enthusiasts to enjoy wildlife-associated recreation.

State Impact Analysis: Based on the foregoing analysis, WRC concludes that the "worst case scenario" for Chronic Wasting Disease would cost WRC approximately \$143,000 during the 90 day period (see table 1 and 2 above). Funds for supplies not otherwise previously budgeted would be drawn from existing agency resources. While these amounts are not currently budgeted, for planning purposes, the cost will have to be absorbed by temporary reallocation of personnel and by Commission's Wildlife Fund, assuming there are no State or Federal emergency funds available for this response. The state government could also experience an indirect effect of this rule through the loss of sale tax revenue.

Local Impact Analysis: Under the above scenario, there would be no requirement for funds to be expended by local government, although there could be a potential estimated loss of revenue to local government through lost sales tax.

Significant Economic Impact Analysis: Under this scenario, the total cost to all parties involved could amount to just under \$950,000 while the benefits could run in excess of \$1 million.

Given that there is no precise way to estimate the exact benefit to the hunting population from this rule change, that a CWD outbreak is only one possible scenario, and that the probability of the use of emergency power is low, the economic impact of this fiscal note is not considered to be substantial.

WRC does not assume that there will be State or Federal funds available to compensate for losses due to depopulation efforts of privately held animals. Accordingly, WRC believes (1) that it has the resources available for allocation to cover the State costs if necessary, (2) that there are no direct expenditures required of local government, although there are minor potential revenue losses, and (3) that the economic impact, while not trivial, if the low probability of a disease outbreak is factored in would not meet the \$3 million threshold of G.S. § 150B-21.4(b1). Thus, WRC believes that the implementation of this rule would have a significant, but not a substantial, impact in any given year, given the overall cost estimates.

In addition, the probability of the need to exercise this power would be relatively low in any given year, although that is not to say that the probability of the need to invoke this power is non-existent. If it were, there would be no need to seek this rule. If such powers are revoked in a “worst case” scenario as outlined above, there would be significant costs and some losses as indicated.

APPENDIX 1

15A NCAC 10A .1201 EMERGENCY POWERS is proposed for adoption as follows:

15A NCAC 10A .1201 EMERGENCY POWERS

(a) Upon a finding by the Wildlife Resources Commission that a wildlife disease threatens irreparable injury to wildlife or to the public, the Executive Director shall develop an emergency response plan in consultation with the Governor's office and the State Veterinarian. The plan may prescribe one or more of the following actions:

- (1) shorten or lengthen harvest seasons;
- (2) prohibit transport of wildlife resources or parts thereof;
- (3) prohibit possession of wildlife resources;
- (4) confiscate wildlife resources;
- (5) revoke licenses or permits;
- (6) expand or restrict daily bag limits, daily creel limits, and possession limits;
- (7) establish mandatory wildlife check stations;
- (8) restrict public access to game lands;
- (9) charge a laboratory processing fee to the public for volunteer samples;
- (10) prohibit supplemental feeding/baiting of wildlife;
- (11) prohibit any other activities that aid in the transmission or movement of the disease as determined by the best available science regarding the disease threat;
- (12) implement any other activities necessary to reduce infection opportunities; and
- (13) implement any other requirements necessary to assist in the detection and isolation of the disease.

(b) The Commission shall inform the public of the actions in the response plan through press releases, postings on the Wildlife Commission web site, letters sent to representatives of sportsmen's groups or others constituents likely to be directly affected, and by employee outreach.

(c) The emergency response plan shall not extend for more than 90 days after the Commission's determination that a disease outbreak has occurred, unless a temporary rule is adopted by the Commission in accordance with G.S. 150B-21.1 to replace the emergency powers contained therein. If a temporary rule is adopted prior to the expiration of the 90 days, the emergency powers invoked in the emergency response plan shall continue in effect until either a permanent rule to replace the temporary rule becomes effective or the temporary rule expires as provided by G.S. 150B-21.1(d).

History Note: Authority G.S. 113-134; 113-306(f)

Eff. January 1, 2011