

Wildlife and Boating

Boating Education Legislation

Boating Safety Education

Effective May 1, 2010, S.L. 2009-282 (S 43) enacts new G.S. 75A-16.2 to require that a person under 26 years old receive a boater safety education course before operating a vessel with a motor ten horsepower or greater on public waters of the state. Current law does not require boating safety education or an operator's license for recreational boating for individuals of any age. Committee testimony in March 2009 from the National Transportation Safety Board (NTSB) highlighted growing concerns with boating safety by stating that approximately 70 percent of all boating fatalities occurred on vessels where the operator had not completed a safety education course. According to the NTSB, at least 36 other states have enacted boater safety education legislation. However, in response to opposition towards government regulation in this area, legislators removed an enforcement phase-in component from the original bill that would have required all operators to receive boater safety education, regardless of age, by July 2016.

The final version of the bill allows a person to satisfy the education requirement by taking a course offered by the Wildlife Resources Commission or approved by the National Association of State Boating Law Administrators (NASBL) and accepted by the Commission. The act also enumerates a list of equivalent standards and exceptions. The exceptions include allowing a person to operate a vessel if supervised by another individual who meets the requirements of the statute; providing a ninety day window for new owners of a boat or out-of-state operators who meet the safety requirements in their state; and allowing a person to take over operation of a boat because of the illness or physical impairment of the initial operator when returning the boat to shore. G.S. 75A-16.2 requires that an operator carry and present a boater safety certification card or proof of compliance to a law enforcement officer upon request. A violation of the education requirement is an infraction with no assignable penalties; however, a court may assess court costs to the individual. Additionally, the act preempts and prohibits local laws from regulating boater safety education.

S.L. 2009-282 also enacts G.S. 75A-13.3(c3) to require a vessel livery to provide the operator of a leased vessel with basic safety instruction before allowing operation of the leased vessel (an authorized operator who possesses a lease agreement from a vessel rental or leasing business is excepted from the boater safety education requirement in G.S. 75A-16.2). A vessel livery failing to provide this instruction is guilty of a Class 3 misdemeanor.

Wildlife Legislation

Hunting

S.L. 2009-25 (H 97) enacts new G.S. 113-276(12) to exempt state residents who are serving outside of the state as members of the US Armed Forces or as full-time active duty reservists from various hunting and fishing license requirements while on leave in North Carolina for 30 days or less. The member must carry a military identification card and a copy of the official authorized leave notice from the member's out-of-state duty station at all times during the person's fishing or hunting activity to be eligible for this exemption. The law specifies that exempt members must still comply with other hunting and fishing requirements, including purchasing any federal migratory waterfowl stamps because of waterfowl hunting activity.

S.L. 2009-214 (S 1008) enacts new G.S. 113-270.3(b)(2a) allowing the holder of a valid big game hunting license; a landowner, the landowner's spouse, or any dependents under eighteen years of age hunting on the landowner's property; or an individual under sixteen years of age hunting with a licensed adult, to obtain a bonus antlerless deer license entitling the holder to take two antlerless deer during seasons and by methods authorized by the Wildlife Resources Commission. The license cost \$10 and expires June 30th.

Effective October 1, 2009, S.L. 2009-248 (S 1009) amends G.S. 113-276(n) to expand the Wildlife Resources Commission's authority to adopt rules exempting individuals from licensing requirements while participating in organized events to include all hunting and fishing events that are consistent with the conservation objectives of the Commission. The Wildlife Resources Commission previously exempted individuals participating in organized fishing events held in inland or joint fishing waters from recreational fishing license requirements. The act also specifies that an exempt person must still comply with other applicable hunting and fishing laws and prescribed rules.

S.L. 2009-221 (S 1010) enacts G.S. 113-291.2(f) to authorize the Wildlife Resources Commission to issue proclamations that set seasons, shooting hours, bag limits, and possession limits that are compatible with the season framework established by the US Department of the Interior. The act also clarifies in G.S. 113-291.2(a) that proclamations under this provision apply to migratory game birds (current law requires that limits fixed by the US Department of Interior for migratory game birds must be followed unless modified by the rules of the Wildlife Resources Commission). Additionally, the act amends G.S. 113-291.1(f) (requiring state conformity with federal law) and enacts a new subsection (f1) authorizing the issuance of proclamations to allow the use of electronic calls or unplugged shotguns to achieve substantial conformity with applicable federal laws and rules established by the US Department of the Interior for the hunting of migratory game birds. Both statutory amendments provide for (1) the delegation of this authority to the Executive Director of the Wildlife Resources Commission, (2) the procedures required for the proclamation's enactment, and (3) reasonable efforts to issue notice to stakeholders.

S.L. 2009-120 (S 1011) amends G.S. 113-291.6 (regulation of trapping) effective October 1, 2009, modifying the current law limitation that only trap number 330 of the conibear type or size may be set in the water and in areas in which beaver and otter may be lawfully trapped under certain conditions. Instead, the act permits the use of any conibear type trap that has an inside jaw spread or opening (width or height) greater than seven and one-half inches and no larger than twenty-six inches in width and twelve inches in height under those same conditions. The act makes a conforming change to G.S. 113-291.9(c) to reflect the new parameters for traps that may be lawfully used in trapping during beaver season.

Wild Boar Hunting Season and Study of Imported Feral Hogs

Effective October 1, 2009, S.L. 2009-89 (H 1118) amends G.S. 113-129 (definitions relating to resources for the purposes of Subchapter IV, *Conservation of Marine and Estuarine and Wildlife Resources*, of G.S. Chapter 113) to define *wild boar* as free-ranging mammals of the

species *Sus scrofa* that occur in counties identified in the rules of the Wildlife Resources Commission. The term *wild boar* is also included in the current law definitions for *big game* and *game animals*. New Wildlife Resources Commission rules, published in the NC Inland Fishing, Hunting and Trapping Regulations Digest for 2009-10, limit wild boar hunting to a specified season length in Cherokee, Clay, Graham, Jackson, Macon, and Swain counties and state that unregulated hunting of feral hogs is allowed in the remaining 94 counties of the state. Wildlife Resources Commission rules also prohibit the use of dogs to hunt wild boar outside of the open bear season and limit the weapons that may be used to hunt wild boar to those legal during specified seasons. The act also amends GS 113-133.1(e) to repeal session laws affecting Burke, Caldwell, Jackson, and Mitchell counties, which locally regulated the hunting of European wild boar and feral hogs (Jackson County only).

Potential disease transmission between illegally imported feral hogs (possibly attributed to importation by sportsmen for hunting purposes) and commercial swine herds is a growing concern in the agricultural community. In response, S.L. 2009-89 also directs the Department of Agriculture and Consumer Services, in consultation with the Wildlife Resources Commission, the US Department of Agriculture's Animal and Plant Health Inspection Services, and interested agricultural organizations, to study issues related to the importation of feral swine. The Department of Agriculture and Consumer Services will report its findings to the chairs of the House Agriculture Committee and the Senate Agriculture, Environment, and Natural Resources Committee during the 2010 Regular Session.

Clarify Interstate Wildlife Violator Compact

In 2008, the General Assembly enacted the Interstate Wildlife Violator Compact (IWVC) (G.S. 113-300.5 through G.S. 113-300.8) directing the Governor to enter into the IWVC with at least two other states to establish reciprocity for handling violations of wildlife laws by residents and non-residents. The following legislation clarifies that the IWVC must also be administered to address marine fisheries violations.

Effective October 1, 2009, S.L. 2009-15 (H 105) amends Article II(15) of G.S. 113-300.6 to expand the act's definition of *wildlife* to include all species of animals that are protected or regulated by the Wildlife Resources Commission, the Marine Fisheries Commission, or the Division of Marine Fisheries in the Department of Environment and Natural Resources. The act amends G.S. 113-300.7 by adding that the Wildlife Resources Commission must appoint the Compact Administrator for the IWVC in consultation with the chair of the Marine Fisheries Commission and the Fisheries Director. The act also authorizes the Secretary of Environment and Natural Resources and the Division of Marine Fisheries to enforce the IWVC, in addition to the Wildlife Resources Commission, and directs the Marine Fisheries Division as well as the Wildlife Resources Commission to adopt rules to administer the IWVC as necessary.

Regulation of Ownership of Certain Reptiles

In the 2005 session of the General Assembly, lawmakers began to focus attention on the issue of regulating inherently dangerous animals to protect the public. Although a broad ban on ownership was originally proposed in that session, legislators agreed to instead direct the Department of Environment and Natural Resources to study regulation of inherently dangerous animals in the Studies Act of 2006 (Section 32.1 of S.L. 2006-248). The 2007 General Assembly continued to examine the issue by establishing the Joint Select Committee on Inherently Dangerous Animals. The committee considered subsequent legislation (S 1477), which would have regulated all inherently dangerous animals as defined in that act, including some reptiles and crocodylians, and conducted a public hearing for interested parties in the spring of 2008. However, significant opposition from stakeholders, including hobbyists and small zoos, prevented the legislation from moving forward at that time.

In the 2009 session, the General Assembly revisited the topic by narrowing proposed legislation to regulate the ownership of certain reptiles and crocodylians. Because of input by reptile owner interest groups concerned that a complete ban would create underground ownership activity, S.L. 2009-344 (S 307) attempts stricter regulation of reptiles posing a risk to the public. The act amends Article 55 of G.S. Chapter 14 to provide for housing standards for permanent enclosures and transportation containers, proper labeling of containers, and written safety and emergency protocols, including notification to local law enforcement of an animal's escape (early versions of the bill also included ownership registration). The act specifies that its provisions apply to venomous reptiles, large constricting snakes, and crocodylians, excluding the American alligator. The act also amends G.S. 14-418 to establish a broader prohibition on the intentional or negligent exposure, or inducement of another person to be exposed, to unsafe contact with a reptile regulated under the Article, but creates exceptions for safe and responsible animal husbandry, exhibition, transport, and education. Additional exemptions from the Article's provisions are listed in G.S. 14-421 to include veterinarians, zoos, serpentariums, and Wildlife Damage Control Agents in the course of approved work. S.L. 2009-344 amends G.S. 14-419 to raise the standard from reasonable suspicion to probable cause for an animal control officer or law enforcement officer to have the authority to seize animals and make procedural changes related to that seizure, including extending the time allowed for the return of the animal, if warranted, to fifteen days. Criminal penalties include making it a Class A1 misdemeanor, if a person, other than the owner's employees, agents, or immediate family, suffers a life threatening injury or is killed as a result of a violation of the Article (charged to the owner), with exceptions. It is also a Class A1 misdemeanor if a person intentionally releases a nonnative venomous reptile, large constricting snake, or crocodylian into the wild. Finally, the act provides that violations of the Article constitute wanton conduct under G.S. 1D-5(7) and allow punitive damages to be awarded in civil actions filed as a result of a violator's actions. S.L. 2009-344 is effective for offenses committed on or after December 1, 2009.

Bat Protection Act

S.L. 2009-219 (H 1419) amends G.S. 113-333 to authorize the Wildlife Resource Commission to develop a bat eviction and exclusion curriculum that may be taught by trade associations or wildlife conservation organizations for certification (the original content of bill made it a Class 1 misdemeanor for a person to kill, injure, or interfere with the roosting of bats, unless the person was a certified wildlife control agent). The act allows this training to be included as part of the Wildlife Damage Control Agent certification in best management practices for removing and evicting bats from structures and preventing reentrance.

Implementation of a Shellfish Fishery Management Plan

S.L. 2009-433 (S 107) implements the recommendations of the Marine Fisheries Oyster and Hard Clam Fishery Management Plans that were developed pursuant to the directive of the Fisheries Reform Act of 1997 to ensure long-term viability for all commercially and recreationally significant species or fisheries that comprise state marine or estuarine resources. First, the act amends G.S. 113-168.4(b) by permitting a person licensed under G.S. Chapter 113, Article 14A (Coastal and Estuarine Fishing Licenses), to sell oysters or clams from a hatchery or aquaculture operation to the holder of an Aquaculture Operation Permit, an Under Dock Culture Permit, or a shellfish cultivation lease for further grow out. The act also amends G.S. 113-169.2 by prohibiting the taking of shellfish by mechanical means or as part of a commercial fishing operation without a shellfish license or a shellfish endorsement of a Standard Commercial Fishing License (SCFL). An individual was prohibited from taking shellfish from public or private grounds of the state by mechanical means or in quantities greater than the prescribed personal use limits set forth in GS 113-169.2(i) without a license or endorsement. The act deletes the specific quantity thresholds listed for taking shellfish without a license for personal use entirely. Instead, the Marine Fisheries Commission (Commission) must establish such personal use thresholds in its rules.

Second, the act expands the authority of the Commission, created in G.S. 113-201, to allow the Commission to limit the number of acres in any area that are granted for shellfish cultivation leases so that some waters remain free from shellfish cultivation activities. The Commission rules are also required to prescribe training requirements for a person acquiring a shellfish cultivation lease by transfer, unless that person holds one or more cultivation leases and all of those leases meet the shellfish production requirements established by the Commission at the time of that transfer. An amendment to G.S. 113-202 also clarifies that the number of acres of leases held by a corporation in which a person holds an interest must be included in determining the maximum acquisition allowed of public bottoms under shellfish cultivation leases for one person. Additionally, the act reduces the length of shellfish cultivation leases from ten to five years.

Third, S.L. 2009-433 amends G.S. 113-203 by eliminating permission to transplant oysters from public beds managed by the state to private beds for the production of seed oysters and removing an exception for transplantation by dealers under specific conditions. The act does allow permitted transplanting of oysters taken from natural or managed public beds, designated as seed oyster management areas by the Commission, to private beds. The Commission may require a permittee to pay the Department of Environment and Natural Resources (Department) an amount for taking oysters to reimburse the Department for the costs of seed oyster management operations. Finally, the act deletes provisions in G.S. 113-207(a) and (b) that prohibit the taking of clams from oyster rocks posted by the Department by use of rakes or tongs or in a manner that will disturb or damage the oysters.

Wildlife Resources Budget Changes

Section 13.10 of the 2009 appropriations act amends G.S. 113-291.10(f) to require that at least \$349,000 each fiscal year of the biennium be paid from funds available to the Wildlife Resources Commission to provide the state share necessary to support the Beaver Damage Control Program, if at least \$25,000 is available each fiscal year in federal funds to provide the federal share.

Section 13.11 of the 2009 appropriations act limits the amount, during 2009-10 and 2010-11, that the Secretary of Revenue may transfer quarterly in state sales and use tax net collections to the State Treasurer for the Wildlife Resources Fund under G.S. 105-164.44B to a maximum of \$21.5 million. Originally, this section of the state budget repealed G.S. 105-164.44B entirely and required that the Wildlife Resources Commission receive an appropriation from the General Fund to fund its operating budget. In a subsequent version of the budget, any transfer of funds under G.S. 105-164.44B was suspended for the fiscal biennium and each odd-numbered year, the House and Senate Appropriations Subcommittees on Natural and Economic Resources would be required to review the amount of the funds to be transferred during the upcoming biennium. However, after negotiations, the final budget contains this compromise provision, which continues current funding methods, but with the \$21.5 million cap on the available amount.

Wildlife Studies

Section 2.57 of S.L. 2009-574 (H 945), the 2009 studies act, authorizes the Legislative Research Commission to study the development of a coyote nuisance removal program aimed at diminishing the threat of the state's coyote population. This directive evolved from legislation originally proposed in H 1631, which authorized the Wildlife Resources Commission to develop and implement a coyote nuisance removal program to reduce the coyote population as quickly as possible. The act allows the Legislative Research Commission to report to the General Assembly upon the convening of the 2010 Regular Session.

Additionally, Section 38.1 of the studies act allows the Marine Fisheries Commission to study the current rules for suspension, revocation, and reissue of marine resources licenses and permits issued under Articles 14A (Coastal and Estuarine Commercial Fishing Licenses), 14B (Coastal Recreational Fishing Licenses) and 25A (Unified Licenses) of G.S. Chapter 113. This study was

first proposed in S 105, which did not become law, requiring that the Marine Fisheries Commission adopt rules for the suspension, revocation, and reissue of marine resources licenses and permits under those Articles. S 105 also amended G.S. 113-171 to include suspension or revocation of all licenses for marine resources licensees that had been convicted of a criminal offense within the jurisdiction of the Department of Environment and Natural Resources. S 105 removed consideration by the Secretary of the Department of Environment and Natural Resources of the number of convictions by a licensee when determining the licensee's suspension or revocation period.

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