

SECTION: Protection of property

SUBSECTION: General guidelines

SUBJECT: Protection of property overview

POLICY: WilPo.3.1.1

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DEFINITIONS

In this policy,

- “*Act*” means the Fish and Wildlife Conservation Act (FWCA)
- “*animal*” as defined in the *Act* means a member of the class Mammalia (mammals), Aves (birds), Reptilia (reptiles), or Amphibia (amphibians) but does not include a human being.
- “*farmer*” as defined in the *Act* means a person whose chief occupation is farming and a) who is living upon and tilling his or her own land, or land in possession of which he or she is for the time being entitled to, or b) who is a settler engaged in clearing land for the purpose of bringing it to a state of cultivation.
- “*fish*” as defined in the *Act* has the same meaning as in the Fisheries Act.
- “*furbearing mammal*” as defined in the *Act* and section 1 of the Wildlife Schedules Regulation means a badger, beaver, bobcat, coyote, fisher, fox (Arctic, red, gray), lynx, marten, mink, muskrat, opossum, otter, polar bear, raccoon, striped skunk, red squirrel, weasel, (least, long-tailed, short-tailed or ermine), wolf and wolverine.
- “*game bird*” as defined in the *Act* means a member of a species set out in Schedule 3 of the *Act* or prescribed in the regulations as a species of game bird.
- “*wildlife*” as defined in the *Act* means an animal that belongs to a species wild by nature, and includes *game wildlife* and *specially protected wildlife*.
- “*VTEEE List*” means the list of “Vulnerable, Threatened, Endangered, Extirpated or Extinct Species of Ontario” as issued by the Ministry of Natural Resources. (available at MNR’s Web Site at <http://www.mnr.gov.on.ca/MNR/VTEE2000.html>). A modified version listing only fish and wildlife species can be found in FWBu.1.1.6. This version also includes the a listing of additional species

RATIONALE

Section 31 of the *Act* has the same general intent as Section 2 of the repealed Game and

Fish Act but places more controls on activities related to protection of property.

The *Act* permits property owners or their agents to harass, capture or kill *wildlife* in protection of their property subject to some controls outlined in the *Act* and regulations. This provides a balance between recognizing legitimate concerns of property owners, particularly the rural community, to protect property, crops and livestock from *wildlife* damage and the need to place necessary controls on how these activities are carried out to ensure humane treatment of wildlife, good conservation and *wildlife* management practices, and safety of the landowner and others.

This policy explains and provides further direction on protection of property.

PROGRAM DIRECTION

When and how may a person protect his/her property?

Under Section 31 of the Act,

- there must be “**reasonable grounds**” to believe that *wildlife* is damaging or about to damage the person’s property.
- control activities can only occur on the property owner’s own property.
- a person may not harass, capture or kill more *wildlife* than is necessary to protect the property or cause unnecessary suffering to the *wildlife*.

The regulations differentiate between *farmers* and other property owners in regards to authorization requirements for some activities. This is to ensure that some activities are not allowed in an urban environment due to increased safety concerns and potential conflicts with other individuals, pets, etc.

A “person” includes a corporation or the employees of that corporation acting in the course of their employment. For example, a rail company employee or municipal employee could conduct activities under Section 31 on the railway or municipal road land if approved by their employer to do so.

Use of indirect means such as destruction of nests or eggs are regulated under section 7 of the *Act*. (See WilPp.6.2.5 for authorization procedure). Destruction of dens and beaver dams are regulated under section 8 of the Act. (See WilPp.6.2.4 for authorization procedure).

What species can be harassed, captured or killed?

Property owners may harass, capture or kill for the purposes of property protection, any

wildlife species **except for the following:**

- moose, caribou, or elk
- white-tailed deer (unless specifically authorized by a deer removal authorization (see WilPp.3.2.3 for agricultural deer control authorization and WilPp.3.2.4 for an airport deer control authorization).
- endangered species protected by the Endangered Species Act (see section 2 of the Act). *Specially protected wildlife* that is **not** an endangered species may be harassed, captured or killed. The capture or killing of species at risk (i.e. *VTEEE List* species) is strongly discouraged (see Bulletin FWBu.1.1.6 regarding a list of Vulnerable, threatened, endangered, extirpated, or extinct species of Ontario).

The Act cannot alter federal law. Therefore the Migratory Birds Convention Act continues to apply. For instance, approval is required from Canadian Wildlife Service for control of any birds protected by the Migratory Birds Convention Act.

Use of agents

a) Classes of agents

The property owner may use an agent to act on his or her behalf to assist with or carry out *wildlife* control. The agent must have the authority of the Minister or belong to a class of agents prescribed by the regulations. **An agent may charge a fee for services rendered.**

Most people who act as agents will be able to do so as a result of being a member of a class that has historically engaged in nuisance wildlife control. These are people who often carry out these activities for a living and are trained to do so, so a class authorization with minimal regulation is appropriate.

Individual authorizations as described below, are appropriate for more sensitive situations such as live trapping of bear or to provide flexibility for individuals who are not exempted by regulation or to address specific protection of property situations which tend not to be recurring in nature.

Section 133 of the Hunting Regulation prescribes the following classes of agents as persons who can protect property for a landowner:

- Licensed trappers (a **current licence** is required).
- Employees or agents of a member of the Ontario Society for the Prevention of Cruelty to Animals under the Ontario Society for the Prevention of Cruelty to Animals Act.
- Members of a landowner's immediate family acting on behalf of the landowner on the landowner's own land.
- Persons whose business is primarily the business of removing nuisance wildlife **if they capture and release it** if it is capable of being released.
- Municipal employees or agents of a municipality who have specific responsibilities related to *wildlife* control.

Under the Hunting Regulation, a humane society employee or member of a landowner's immediate family may use a firearm **if the person is qualified to obtain a hunting outdoors card**. A **current** hunting licence is not required.

Agents whose business is primarily removing nuisance wildlife will be restricted to live capture techniques unless they have a separate individual Ministry authorization to use a firearm. To qualify for the class exemption, these persons must be employed by a nuisance animal business or who are self employed and **who derive the majority of their income from pest control related work**. It is not intended to cover individuals who do this as a part time job or on a contract basis.

Class agents are not authorized under this exemption to conduct live trapping of nuisance bears unless separately authorized (see below).

b) Individual authorizations

An agent may be individually authorized by the Ministry to protect property for a landowner. Ministry **individual authorizations** include:

- authorization of agents to live trap black bears (see WilPp.3.2.2).
- issuance of deer control authorizations for airports and agricultural damage (see WilPp.3.2.3 and WilPp.3.2.4).
- issuance of a written individual (Form FW2009) or term authorization (Form FW2008) where conditions apply or some additional degree of control is warranted (see WilPp.3.2.1).
- entry into a ministry "protection of property agent authorization log" (Form FW2010) documenting the circumstances and name of individual authorized (see WilPp.3.2.1).

Although it is best to issue an authorization to an individual, the written entry into a log is suggested to deal with routine or urgent problems where mailing or pick up of a written authorization is not practical. **Every effort should be made to facilitate use of an agent under these circumstances and not create a barrier to resolving an immediate problem.**

c) Cancellation of authority to act as an agent

The Minister may cancel a person's authorization by notifying him or her in writing. Cancellation may apply to an individually authorized agent or a class agent prescribed by the regulations. Reasons for cancellation would include where there has been a demonstrated problem with the activities of the agent (e.g. taking wildlife in an inhumane manner, failing to follow regulations, etc.). Cancellation will be in the form of a registered letter, signed by the Area Supervisor.

Sections of the Act that DO NOT apply (to a person protecting property)

Property owners or agents acting for them, are **exempted** from a number of sections in

the *Act* and regulations to allow for more effective *wildlife* control. In some cases additional authorization is required. See the appropriate section of the *Act* or regulation **for exact wording** if clarification is required.

The sections of the *Act* **which DO NOT apply to a person protecting their property are summarized below:**

- Section 5 of the *Act* which means that *specially protected wildlife* may be harassed, killed, or captured. **Note**-*Specially protected wildlife* which are protected by the Endangered Species Act is **not** exempted.-see section above.
- Section 6 of the *Act* which means that a hunting or trapping licence is not required. (**Note**-trappers acting as class agents require a current trapping licence to qualify as a member of the trapper's class of agents in the regulations).
- Subsection 9 (1) hunting or trapping in a Crown Game Preserve (**Note** -on individual's own property only, within these areas).
- Clauses 11 (1) (a) to (d)- which allows an agent to hunt for hire or a landowner to pay an agent to address a damage problem. (**Note** - does not allow paying of a bounty).
- Section 20 which means that a person may protect his property at night (**Note** - that a deer removal authorization does not authorize night hunting for deer).
- Section 21 for an agent to trap black bear which means he/she can use a box culvert trap, to live trap black bear. (**Note** - only a black bear control agent is exempted from this section **subject to controls or type of equipment indicated in the authorization**).
- Clause 22 (2)(c) for a *farmer* which means he can use a body-gripping trap to trap *wildlife* other than a bird .
- Section 27 which means a raptor may be used to kill nuisance *wildlife*.
- Subsections 36 (1),(2) which means a person protecting property may allow *game wildlife* killed in defence of property, including the pelt of a *furbearing mammal*, to spoil (**Note** -a deer removal authorization (airport or agriculture) **does not** allow spoilage. Section 135 of the Hunting Regulation and Section 28 of the Trapping Regulation **allow** a hunter or trapper to dispose of a *pelt* which is of no value).
- Subsection 40 (1) which means that *game wildlife* or *specially protected wildlife* captured under section 31 of the *Act* may be kept in captivity if it is released as soon as possible in the immediate area (**Note** - see subsection 31(8) of the *Act* and clause 134(1)(a) of the Hunting Regulation).

Sections of the regulations that DO NOT apply (to a person protecting property)

Property owners or their agents are exempt from most provisions of the Hunting Regulation and a good part of the Trapping Regulation (i.e generally seasons, daily limits or quotas, method of harvest, etc.).

Provisions that relate to safety and humane treatment **still apply** and are summarized below:

1. Hunting

- calibre and shotgun gauge and shot size and archery equipment restrictions (Hunting Regulation Sections 75,82,83) for the harvest of bear or deer which may be taken in protection of property. (These are still required to ensure humane treatment of animals and human safety).

2. Trapping equipment and activities:

- equipment restrictions - use of a trap with a hook or sharpened device capable of impaling, a spring pole set except for a killing trap, a deadfall, a trap with teeth or serrations on its jaws, a suspended snare unless set for rabbits or red squirrel or having a snare lock or other device so that the noose is prevented from expanding, a number 110 Connibear or any other body gripping trap with equivalent or less killing power unless set for muskrat or mink (drowning set) or a body gripping trap with a jaw spread of greater than 21cms. set as a water set for beaver or otter in Ontario waters where allowed. (Trapping Regulation, Section 17).
- setting a leg-hold trap, except a foot snare, for a *furbearing mammal* other than fox, bobcat, coyote, lynx, or wolf. This Section does not apply to 1) a beaver, muskrat, otter or mink set if the set is set under the ice or as a drowning set or 2) a leg-hold set on land for red squirrel or weasel if the trap is enclosed and set so as to kill the animal immediately when the trap is sprung. (Trapping Regulation, Section 19).
- set a trap for a black bear except with a foot-snare, box or culvert trap. (Trapping Regulation, Section 20).
- trap black bear within 400 meters of a waste disposal site as defined in the Environmental Protection Act. (Trapping Regulation, Section 22).
- set a leg-hold trap in a tree, on a pole, or any where else so that the captured animal may be suspended in mid-air. (Trapping Regulation, Section 23).
- use a leg-hold trap with a jaw spread with a jaw spread greater than 17 cms. when set on land or 21 cms. when set in the water. **Note:** The District Manager may authorize the use of a leg-hold trap not exceeding 23 cms. (Trapping Regulation, Section 24).
- use a leg-hold on land with a trap chain whose length exceeds 31 cms. unless drags are used and inspect every live holding trap at least once a day (see area of applicability to inspections in regulation. (Trapping Regulation, Section 25).
- use a snare for any purpose - a) in parts of Ontario described in schedule A or b) in those parts of Ontario described in schedule B during the open season for deer. Does not include using a snare under water, a foot snare set in a horizontal position a snare used to catch varying hare north of the French / Mattawa Rivers. (Trapping Regulation, Section 26).
- controls on possession of body gripping traps (Trapping Regulation, Section 27).
- authority for a trapper or hunter to dispose of a *pelt* of no value (Trapping Regulation, Section 28 and hunting reg. section 135).
- requirement for a trapper to report furbearers and black bear taken in protection of property on their Trapper's Season-End Report. (Trapping Reg. section 13).

Use of poisons, adhesives

The *Act* prohibits the use of poison (Subsection 29(1)) and adhesives (Subsection 30(1)) unless prescribed by regulation. At present, there are no regulations under the *Act* which allow for their use. **Poisons or adhesives may not be used to kill, capture or injure *wildlife* including in protection of property situations.** The one **exception** to this is the use of licensed poisons (pesticides) which are authorized for use under the Pesticides Act for the control of pests such as mice and rats. In these situations, the Pesticides Act prevails.

Disposal of captured or killed wildlife.

a) Live wildlife

Section 134 of the Hunting Regulation specifies that a person who captures but does not kill *wildlife* shall, not later than 24 hours after capture,:

- release into the area of close proximity to the capture site unless otherwise directed by the Ministry.
- if injured or unable to fend on its own, deliver to a wildlife custodian authorized under Section 44 of the *Act*

Injured *wildlife* may also be taken to a veterinarian for **temporary** treatment if the individual is prepared to cover the cost, if any.

Close proximity is generally considered to be **as close as possible to the capture site and in similar habitat wherever possible.** If released on private property, the owner's permission is required. Relocation distances for black bears is an exception to this rule and is covered under the policy WilPo.3.1.2, Management of nuisance bears.

Property owners or their agents may dispatch captured wildlife if they do not cause unnecessary suffering.

b) Dead wildlife

Section 130 of the Hunting Regulation requires that a person who kills a bear under section 31 of the *Act* in protection of property and does not report its acquisition under section 2 of the Hunting Regulation (Certificate of reporting) shall immediately report the fact by phone or in person to a Ministry office. The Ministry staff member will record this information in a Ministry log (Form FW4015).

Dead wildlife may be disposed of subject to the specific exceptions for deer or *pelts* noted above under Subsections 36 (1), (2) of "*Act Exemptions*". A property owner or agent who decides to keep a dead black bear, *fur-bearing mammal* or *specially protected raptor* shall comply with the requirement for a Certificate of Reporting/Licence to Possess a Pelt (see WilPp.6.2.3 on issuing procedure) unless the specimen has been taken under the legal authority of a licence.

Environmental Assessment Act considerations

Exemption Order MNR-14 provides EA Act coverage for the “control of nuisance species of plants and animals, including fish, birds, and insects, by chemicals, transplanting, habitat alteration, shooting, or trapping,” as was carried out by MNR in 1978. Substantially different activities (i.e. different in frequency, significance, or extent of control than those mentioned above) or species control carried out as part of lake reclamation or forest management work **are not** exempt. This exemption applies to private individuals who carry out these activities on behalf of MNR, **but not to individuals doing so in the interests of protecting life or personal property**. For more specific information, staff should refer to MNR-14 and Procedural Directive CPPS 4.02.19, and consult their office EA contact.

REFERENCES

Legal references

- Fish and Wildlife Conservation Act
 - Section 29 - prohibition of use of poisons
 - Section 30 - prohibition of use of adhesives
 - Subsection 31(1) - authority to harass, kill, capture wildlife in protection of property.
 - Subsection 31(2) - authorization to use agents.
 - Subsection 31(3) - exemption of specific wildlife from section 31(1).
 - Subsection 31(7) - authorization to hunt at night.
 - Subsection 31(8) - exemption from a need for authorization to keep in captivity and release.
 - Subsection 31(9) - authorization of agent to trap black bear
 - Subsection 31(10) - controls on disposition of white-tailed deer.
 - Section 36 - spoilage of meat, pelts, exemptions
- Environmental Assessment Act/MNR exemption order MNR-14
- Pesticides Act
 - Section 53- Pesticides Act prevails when in conflict with other legislation.
- Hunting Regulation
 - Section 130-reporting of black bear killed in protection of property.
 - Section 131 - Act and regulation exemptions.
 - Section 133 - class exemptions of agents.
 - Section 134 - disposal of captured wildlife.
 - Section 135 - authority for a hunter to abandon a pelt of no value.

- Trapping Regulation
Section 28 - authority for trapper to abandon a pelt of no value.

Related references

- Policy and procedures
 - FWBu.1.1.6 - Vulnerable, threatened, endangered, extirpated, or extinct species of Ontario
 - WilPo.3.1.2 - Management of nuisance bears.
 - WilPp.3.2.1 - Authorization of individual agents.
 - WilPp.3.2.2 - Authorization of agents to live trap nuisance black bears.
 - WilPp.3.2.4 - Issuance of deer removal authorizations for airports.
 - WilPp.3.2.5 - Issuance of deer removal authorizations for agricultural damage.
 - WilPp.6.2.3 - Report of acquisition requirements/issuance of a Certificate of Reporting
 - WilPp.6.2.4 - Authorization of destruction of a beaver dam, black bear or furbearer den.
 - WilPp.6.2.5 - Authorization of destruction/possession of nests or eggs.
 - CPPS 4.02.19 - Exemptions for nuisance animal control