



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

FROM: David L. Lovell, Senior Analyst

RE: Transport of Game Taken in Another State or on an Indian Reservation

DATE: September 17, 2012

At its July 18, 2012, meeting in Keshena, the Special Committee on State-Tribal Relations was briefed by staff of the Department of Natural Resources (DNR) and by Walter Cox, Director of the Conservation Department of the Menominee Indian Tribe of Wisconsin, regarding the transport within this state of game taken by a tribal member on the reservation or trust land of that member's tribe. Mr. Cox noted that state law imposes more stringent requirements for the transport of game taken on a reservation than for the transport into this state of game taken in another state. He questioned the rationale for the different treatment and suggested that the two circumstances should be treated in the same manner. Quinn Williams, Natural Resources Section Chief of the Bureau of Legal Services, DNR, articulated a policy option to accomplish what Mr. Cox had suggested. You directed the committee staff, in preparation for the next committee meeting, to communicate with interested parties (principally, DNR staff and tribal conservation personnel) to determine whether there was general agreement among them in favor of the option articulated by Mr. Williams.

The committee staff established an online discussion for the interested parties, provided them with background information and a description of the policy option articulated at the July 18 meeting, and invited their comments. Only two individuals commented, but their comments were sufficient to make clear that there is not a consensus around the proposed policy. To more fully discuss the topic, staff then organized a meeting of the interested parties, in hopes of developing a consensus in advance of the next meeting of the Special Committee. That meeting will take place on September 24, 2012, at the offices of the Great Lakes Fish and Wildlife Commission, in Odanah, Wisconsin. Staff and participants in that meeting will brief the Special Committee on the results of that meeting when the Special Committee meets the next day at Red Cliff, Wisconsin.

This Memo describes current law regarding the transport in this state of game taken in another state and of game taken on an Indian reservation. The Memo then summarizes the policy option

articulated at the July 18 meeting and briefly describes two alternative policies. Bill drafts implementing these options (WLC: 0002/1, WLC: 0003/1, and WLC: 0004/1) are being distributed with this Memo.

CURRENT LAW

Game Taken in Another State

The transport in Wisconsin of game taken in another state is regulated under s. 29.047 (1), Stats. (See Attachment 1.) That statute provides as follows:

1. It is illegal to transport into or through this state game taken in another state in violation of the laws of the other state relating to the transport of the game.
2. To legally transport, possess, or control any game that was taken in another state at a time or in a manner that would be a violation of this state's conservation laws if it had been taken in this state, all of the following must apply:
 - a. The game must have been taken legally in the other state.
 - b. The person transporting, possessing, or controlling the game must hold a license issued by the other state authorizing him or her to transport, possess, or control the game.
 - c. If the game is a cervid (member of the family that includes deer), the person transports, possesses, or controls the cervid in compliance with rules promulgated by the DNR.

The statute includes certain exceptions, which are not pertinent to the present subject.

Game Taken on an Indian Reservation or Off-Reservation Trust Land

The removal of game from an Indian reservation is regulated under s. NR 19.12, Wis. Adm. Code. (See Attachment 2.) This section applies when:

1. A protected wild animal, bird, or fish¹;
2. Is taken by an authorized person (undefined);
3. On an Indian reservation, under provisions of the reservation's treaty rights;

¹ Defined as any species for which a closed season, bag limit, size limit, or possession limit has been provided by statute or administrative rule, any nongame species unless specifically designated as unprotected by the department, any game fish, game animals, game birds, or fur bearing animals during closed seasons, and any listed endangered and threatened species.

4. During the off-reservation closed season for that game species (the closed season applicable in the rest of the state).

To comply with the rule under current law, a tribe may either participate in the DNR's tagging system or operate its own tagging system under a memorandum of understanding with the DNR. Note that, under either option, all game must be tagged, regardless of whether the species is subject to tagging requirements when taken off-reservation according to state regulations.

Participation in the DNR's Tagging System

If a tribe participates in the DNR's tagging system, a person who has taken game on the tribe's reservation must exhibit it to a DNR conservation warden or a tribal member authorized by the tribe and designated by the DNR before he or she may remove it from the reservation. The rule directs the warden or designated tribal member to inspect the carcass and attach and lock a lettered and numbered tag to the carcass or to each carcass piece and to maintain a record book containing the following information for each tagged carcass:

1. The date.
2. The reservation.
3. The name and address of the person being issued the tag.
4. The species and description of the wild animal, bird, or fish being tagged.
5. The destination.
6. The name and address of the person issuing the tag.

A tribal member designated for this function is required to exhibit these records to the DNR upon reasonable request. Failure to maintain the records and exhibit them on demand is grounds for revocation of the tribal member's designation, which the DNR secretary may do without a hearing.

The rule specifies that the DNR is to distribute tags to its wardens or to a designated tribal member at such times and in such numbers as it deems appropriate. It is illegal to remove game from a reservation during the off-reservation closed season without a tag, to remove a tag prior to consumption of the game, or to tag an endangered species. No person other than a DNR warden or a designated tribal member may possess unused tags.

Operation of a Tribal Tagging System, Under a Memorandum of Understanding

If a tribe does not participate in the DNR's tagging system, the DNR may waive the tagging requirements described above if the tribe has both:

1. A tagging system similar to the DNR's tagging system.
2. An approved memorandum of understanding with the DNR pertaining to the tribe's tagging system.

POLICY OPTIONS

The following options are by no means an exhaustive list of available options and committee members should raise any other options that may be preferred over these.

Option 1

The policy option articulated in the July 18 meeting is reflected in the bill draft WLC: 0002/1. Under this option:

1. The current statute relating to the transport of game into this state from another state is expanded to apply also to the transport within this state of game taken by a tribal member on the reservation or trust land of that member's tribe.
2. A provision is added to the current statute relating to those species for which the DNR has implemented a tagging program. Specifically, it would require that, to legally transport those species into or within this state, the state or tribe from whose territory the game is being transported must have a tagging program that is substantially similar to the DNR's tagging program and the game must be tagged according to that program.

Option 2

This option, reflected in the bill draft WLC: 0003/1, is a modification of Option 1. Under this option:

1. The transport of game taken in another state is treated the same as under current law.
2. The transport of game taken on an Indian reservation is treated as under Option 1.

Option 3

This option, reflected in WLC: 0004/1, is an alternative to the two preceding options. Under this option, the transport of game taken on an Indian reservation is treated essentially the same as the transport of game taken in another state is treated under current law.

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Attachments

Section 29.047, Stats.

29.047 Interstate transportation of game.

(1) (a) In this subsection:

1. "Transport" includes to cause to be transported, to deliver or offer to deliver for transportation and to receive or offer to receive for transportation.

2. "Game" means any wild animal, wild bird or game fish.

(b) No person in this state may transport into or through this state any game, or its carcass, from any other state in violation of any law of the other state.

(c) No person in this state may transport, possess or control in this state any game, or its carcass, that was taken in another state in violation of any restriction on open and closed seasons established under this chapter or of any bag, possession or size limit established under this chapter unless all of the following apply:

1. The game was lawfully taken in and lawfully transported from the other state.

2. The person holds a license issued by the other state that authorized the person to transport, possess or control the game or its carcass.

3. If the game is a cervid the person transports, possesses, delivers, receives, or controls the carcass of the cervid in compliance with rules promulgated by the department.

(1m) Unless prohibited by the laws of an adjoining state or a rule promulgated by the department under s. 29.063 (3) or (4), any person who has lawfully killed a cervid in this state may take the cervid or its carcass into the adjoining state and ship the cervid or carcass from any point in the adjoining state to any point in this state.

(2) Subsection (1) does not apply to any of the following:

(a) A person who has a valid taxidermist permit and who, in compliance with rules promulgated by the department under s. 29.063 (3) or (4), possesses, transports, causes to be transported, delivers or receives, or offers to deliver or receive, a wild animal carcass in connection with his or her business.

(b) The possession, transportation, delivery or receipt of farm-raised deer, farm-raised game birds, farm-raised fish, or wild animals that are subject to regulation under ch. 169.

Section NR 19.12, Wis. Adm. Code

NR 19.12 Tagging the carcasses of wild animals, birds and fish taken on Indian reservations.

NR 19.12 (1) (a) Each authorized person who has taken a protected wild animal, bird or fish on an Indian reservation, under provisions of the reservation's treaty rights during the off-reservation closed season for such game set by the department of natural resources, shall before removing the carcass or part thereof of such animal, bird or fish from the reservation, contact and exhibit it during ordinary working hours to a conservation warden of the department of natural resources or to any tribal member authorized by the particular tribe and designated by the department of natural resources.

(b) The conservation warden or designated tribal member shall inspect all such carcasses, attach and lock a special lettered and numbered tag to each carcass or part thereof, and maintain a record book containing the following information: the date, the reservation, the name and address of the person being issued the tag, the species and description of the wild animal, bird or fish being tagged, the destination, and the name and address of the person issuing the tag. Such record book shall be exhibited to the department of natural resources at reasonable hours for inspection and duplication. Failure to maintain and exhibit such a record book containing the above information shall be sufficient cause for the department of natural resources to revoke the authority of the official to issue any more tags. The secretary of the department of natural resources may take such revocation action without requiring that a hearing be held on the matter.

(c) The special lettered and numbered tag shall be distributed to the conservation warden or designated tribal member by the department of natural resources at such times and in such numbers as it deems appropriate. During the off-reservation closed season for such wild animal, bird or fish, no person shall remove any such carcass or part thereof from an Indian reservation without such a tag being attached and locked. No person shall remove the tag prior to consumption of the animal, bird or fish carcass tagged. No endangered species shall be tagged. No person other than a conservation warden or designated tribal member shall have unused tags in his or her possession.

(d) If a Wisconsin tribe has a tagging and registration system similar to the department's and an approved memorandum of understanding with the department pertaining to the system, tagging requirements under this section may be waived by the department. Tribal tags shall be validated and affixed to the carcass.