

SAVE

# WILDLIFE AND THE NORTH DAKOTA FARMER

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A JOINT AGRICULTURAL LAW/ECONOMICS RESEARCH PROGRAM REPORT

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## TABLE OF CONTENTS

	<u>Page</u>
Classification of Wildlife and Licensing . . . . .	1
Wild Birds . . . . .	1
Wildlife . . . . .	2
Landowner's and Tenant's Preferences . . . . .	3
Dangerous or Harmful Animals . . . . .	3
Rabid Animals . . . . .	4
Animals Hit by Motor Vehicles . . . . .	4
Posting . . . . .	5
Farmer Liabilities to Hunters . . . . .	5
Wildlife Domestication and Propagation . . . . .	6
Granting of Interests in Land to State or Federal Government . . . . .	6
Conclusion . . . . .	6

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## Wildlife and the North Dakota Farmer

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North Dakota has a wide variety of wildlife, and it is a primary goal of the state to assure continued propagation of wildlife for the benefit and enjoyment of future generations. In furtherance of this goal, the legislature created the Game and Fish Department to manage the state's wildlife resources. Common law holds that all resident fish, wild birds, and wild animals are owned by the state.

This report examines specific wildlife management laws enacted by the North Dakota Legislature in the past 10 years which may be of interest to farmers. Farmers conduct much of their business outdoors, so their management practices greatly affect wildlife. Conversely, laws relating to wildlife affect farmers. The interdependent relationship between wildlife management and farm management brings the focus of this report on the effects wildlife laws have upon farmers.

### Classification of Wildlife and Licensing

Laws relating to wildlife management vary with the type of wildlife being considered. North Dakota law classifies wildlife into several broad categories.

#### Wild Birds

North Dakota statutes place wild birds in three categories: 1) game birds, 2) harmful wild birds, and 3) harmless wild birds.

Game birds include geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sagehens, pheasants, Hungarian partridge, quail, partridge, cranes, rails, coots, wild turkeys, crows, and mourning doves.

The governor issues an annual proclamation setting hunting seasons, daily hours, bag limits, and other regulations relating to specific game birds based on the recommendations of the Game and Fish Commissioner. Game birds not specifically declared open for hunting may not be hunted. A small-game hunting license, a general stamp, and a small-game stamp are required to hunt upland game. Also, one must purchase a federal waterfowl stamp to hunt ducks or geese. A special permit for hunting sandhill cranes is available free from the Game and Fish Department. Small game, waterfowl, and furbearing animal guides should always be consulted for detailed information. They can be

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obtained from the State Game and Fish Department in Bismarck, from county auditors, or from many sporting goods stores.

Harmful wild birds include blackbirds, magpies, English sparrows, and starlings. State law provides that these birds may be killed during daylight hours. However, for blackbirds, state law has been superceded by federal law. Blackbirds may be killed only with permission of the U.S. Fish and Wildlife Service when they are depredeating crops or spreading disease.

Harmless wild birds include all birds not defined as harmful wild birds or game birds. It is illegal to kill, capture, or have possession of these birds.

The destruction of or interference with nests or eggs of any game or harmless bird without a permit issued by the Commissioner is prohibited. Also, specific federal statutes protect bald and golden eagles and other endangered or threatened species.

### Wildlife

North Dakota divides terrestrial wildlife into four categories: 1) small game, 2) big game, 3) furbearers, and 4) non-game.

- 1) Small game includes all game birds presented above and tree squirrels.
- 2) Big game refers to deer, moose, elk, bighorn sheep, mountain goats, and American pronghorn (antelope).
- 3) Furbearers include mink, muskrat, weasel, wolverine, otter, marten, fishers, and kit or swift foxes. By proclamation, the Governor may designate beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, and red or grey foxes as furbearers.
- 4) Non-game refers to all other wildlife species.

Residents must purchase proper licenses to trap or hunt furbearers, big game, or small game within North Dakota. Violation of this law is a class B misdemeanor, which carries a maximum penalty of 30 days in jail, a \$500 fine, or both. Licenses are not necessary to hunt non-game species such as rabbits, ground squirrels, prairie dogs, skunks, woodchucks, and gophers.

Licenses may be obtained from the county auditor, the Commissioner, deputy commissioner, and others designated to sell licenses.

Persons born after December 31, 1961, must complete a course on firearm safety and hunting responsibility before being issued a hunting license. A certificate of completion from another state or Canada will be honored in North Dakota. Exceptions to this rule are children under 12 years of age who hunt with their parents, persons who hunt only with a bow, and those who only hunt on land they own or operate.

### Landowner's and Tenant's Preference

Landowners or tenants (or a family member) may hunt small game or trap furbearers on their own or rented land without a North Dakota hunting license. This provision does not apply to big game. Resident landowners must have a big-game hunting license to hunt deer or antelope on their land, but it is issued without charge to qualified people. Landowner and tenant permits for other big game are not issued on a preferential or gratis basis. Landowners or tenants must own or lease a minimum of one quarter section (160 acres) located in a zone of the state open for deer or antelope hunting to qualify for a license. Only one person per farm unit may obtain a preferential or gratis license. If the landowner applies for the farm unit's gratis permit, the tenant may not. Land owned by two or more in joint tenancy, tenancy in common, or partnership is limited to one gratis license for each quarter section jointly owned.

Except as discussed below, a farmer who is not required to obtain a license to hunt or trap on his own land is still subject to all other laws regulating wildlife. For example, a farmer who hunts on his own land without a license must obey all bag limits, shooting times, and seasons set by the North Dakota Century Code or by governor's proclamation. A farmer who wishes to hunt on land other than his own must obtain a regular hunting license.

### Dangerous or Harmful Animals

A farmer may have problems with dangerous or harmful animals which destroy livestock or crops. Various statutes allow him to protect his real estate, crops, and livestock. For example, a farmer is permitted to harass, shoot at, and kill furbearing animals that prey on his poultry or domestic animals. But a farmer may not molest or destroy the natural burrow, den, or retreat of any furbearer currently protected under the North Dakota Century Code or governor's proclamation. The farmer should check with the local game warden to determine if the furbearer is currently protected before destroying any den or burrow.

Any animal not classified as protected by state statute or governor's proclamation may be killed at any time. However, if furbearers are killed during a closed season, the landowner or tenant cannot use or commercially sell the pelt or any part of the carcass.

Besides protecting his livestock or poultry from furbearers such as fox or coyotes, a farmer may protect his property from dogs. A dog discovered in the act of killing, chasing, worrying, or damaging any livestock or poultry may be killed. The farmer is not liable to the owner of any domesticated dog or other animal, but the animal owner is liable to the farmer for damages done to his livestock.

Federal law requires a person (over 16 years of age) who hunts migratory waterfowl to possess a federal migratory-bird hunting stamp. But, a resident owner or tenant may shoot at or harass migratory waterfowl to protect crops on his property in compliance with a depredation order signed by a U.S. Game Management Agent. Landowners or tenants suffering damage from depredation should notify their nearest game warden or U.S. Game Management

Agent. A course of action is formulated when depredation has been confirmed by investigation. Scaring devices are usually used and are often successful. However, one cannot use a scaring device, such as a propane exploder, within 160 rods of another person's dwelling between sunset and sunrise. "Squawk" boxes may frighten blackbirds, ducks, and geese from growing crops. A squawk box is an electronic device that emits either the sound of a dying blackbird, which allegedly scares other blackbirds away, or the sound of a predatory animal or bird that preys upon these birds. A farmer should contact the county extension agent or a game warden for information on practices which are successful.

The Commissioner of the Game and Fish Department, in cooperation with the Commissioner of Agriculture and the U.S. Fish and Wildlife Service, has the authority to establish rules and regulations necessary for the control and destruction of predatory animals, destructive birds, and injurious field rodents which are committing crop depredation or causing substantial economic loss.

### Rabid Animals

Rabies is a virus which is usually transmitted by bite but can also be transmitted through an injury which has perforated the skin or through mucus membranes. Because rabies is a serious and highly contagious disease common to wild animals and domestic animals as well as to man, it is sensible for farmers to regularly vaccinate domestic animals against the disease and to be aware of symptoms characterizing rabies. Although signs of rabies vary, some common symptoms are restlessness, viciousness, nervousness, aggressiveness, lack of fear, strange sounds, paralysis, and inability to swallow accompanied by continuous salivation. All physical contact with an animal suspected of being rabid should be avoided. Wildlife suspected of being rabid should be reported to the Game and Fish Department. Domestic animals showing symptoms of rabies should be isolated and examined by a veterinarian. Any person bitten by an animal suspected of being rabid should consult a physician immediately.

A detailed discussion of rabies in domestic animals and wildlife may be obtained from the Cooperative Extension Service at North Dakota State University, Fargo, North Dakota 58105.

### Animals Hit by Motor Vehicles

Many deer and other animals are hit by motor vehicles on public highways and roadways. A motor vehicle driver who hits a big game or furbearing animal should promptly notify the Game and Fish Department of the animal's location. The Department may either dispose of it, or for a fee the driver may dispose of or process the animal. The fee may be paid to any authorized representative of the Department, such as a game warden, who will issue a receipt which authorizes possession of the animal.

### Posting

While the state owns all resident wild birds, fish, and wild animals, a farmer may control hunting on land which he owns or rents. Generally, permission to hunt on the land of another is presumed in North Dakota unless the land is legally posted. There are certain standards to be met before land is considered legally posted, and a farmer must post his land legally if he does not want hunters to enter. Permission to trap is not presumed. A person wishing to trap on the land of another must get specific written permission.

Legally posted land has signs giving notice to hunters that no trespassing or hunting (or fishing) is permitted or that hunting (or fishing) is allowed only by express permission. Only the owner or tenant of the land may post it, and each sign must bear the legible signature of that owner or tenant, along with his address and date of posting. Signs must be readable from outside the posted land and must be conspicuously placed no more than 880 yards apart. Land entirely enclosed by a fence or other enclosure may be legally posted by placing signs at all entrances or gates. A farmer who owns or rents legally posted land on both sides of a roadway has effectively posted the roadway in between.

Unharvested cereal crops and sunflower are excepted from the rule that land must be posted to prevent hunting. It is unlawful to hunt or pursue game in unharvested cereal crops, sunflower, alfalfa, clover, and other grasses grown for seed without first getting the permission of the owner or tenant.

Although a hunter may not enter upon legally posted land to hunt wild game, he may enter posted land to retrieve any game wounded on land which was not posted should that game go onto or fall onto posted land. The hunter, however, may not shoot from unposted land onto posted land or into airspace above posted land. The game must be on unposted land or in unposted airspace at the time it is first wounded.

### Farmer Liabilities to Hunters

Since farmers frequently allow the public free use of their land for recreational purposes, special legislation has been passed protecting farmers from liability. These laws have the effect of limiting the duty of care a farmer owes to a hunter, thus encouraging farmers to allow their property to be used for recreational purposes without charge.

As a general rule, landowners owe certain "duties and standards of care" to others who enter their land, including hunters and fishermen. The degree of care required varies with the legal status of the hunter (or fisherman). The legal status of a hunter is determined by such things as whether (1) the land was posted, (2) the farmer consented to let the land be hunted, (3) the farmer is aware that people are hunting on the land but does nothing, or (4) the farmer charged a fee to hunt or fish on his land.

A farmer owes no duty of care to keep his premises safe for the use of others if he has not charged a fee allowing others the use of his premises for recreational purposes. He also has no duty to give warning of dangerous conditions or activities existing on his land to parties entering without

charge. (This does not include willful or malicious failure to warn against dangerous conditions.) In fact a person using a landowner's premises for the purpose of recreation has an obligation to exercise due care in his use of the land and in his activities while on the land. This would apply in cases where a farmer consented to others hunting on his land or where he was aware that people were hunting there but did nothing.

Anyone entering posted land without consent of the owner is a trespasser to whom the farm operator owes no duty of care other than to refrain from harming him in a willful and wanton manner.

If, however, a landowner receives economic benefit by charging a fee to come on his land, he has a duty to make the premises safe or to post signs pointing out potential hazards. This is consistent with general law on the duty of care that a landowner owes an entrant. Special statutory law, enacted in North Dakota, limits a landowner's liability where no charge is made.

### Wildlife Domestication and Propagation

Any resident of the state, including a partnership, association, or corporation, who wishes to possess, propagate, or domesticate any protected animal or game bird must be properly licensed. Licenses are issued by the Commissioner of the Game and Fish Department. Each permit expires on December 31 of the year of issue but can be renewed. One permit may include several species of animals, but a separate and distinct permit is required for the breeding of game birds. Every holder of a permit to raise protected animals or game birds must file an annual report by December 31 to the Commissioner regarding the increase or decrease in the number of game birds or animals occurring during the year for which the permit was issued. The Commissioner retains regulatory power after a permit is issued. His written permission is required for sale or shipment of animals or birds held under a permit. All animals or birds which are appropriated as food must be properly identified by a tag or seal furnished by the Commissioner.

### Granting of Interests in Land to State or Federal Government

A farmer may sell or give land or interests in land to the state or to the federal government for wildlife conservation purposes under a variety of state and federal programs. For further information pertaining to such programs, an interested farmer should contact the State Game and Fish Department or the U.S. Fish and Wildlife Service.

### Conclusion

Further questions on fish and wildlife law can be answered by attorneys, the Game and Fish Department, and the U.S. Fish and Wildlife Service. This publication offers a general overview of laws that affect farmers. The address of the State Game and Fish Department is 2121 Lovett Avenue, Bismarck, North Dakota 58505; the telephone number is (701) 224-2180. The address of the U.S. Fish and Wildlife Service is 1500 Capitol Avenue, Bismarck, North Dakota 58501; the telephone number is (701) 255-4011.