

## Ch. 3: Legal issues

Overall learning objectives for this chapter

- Know which federal and state agencies regulate aspects of the nuisance wildlife control industry.
- Understand the various state and federal laws about handling wildlife and using pesticides.
- Recognize which situations a NWCO can handle—and which are beyond your authority.
- Know when a state and/or federal permit is required.
- Realize that building codes, firearm ordinances, and other local regulations may apply to your work.
- Be aware of the requirements and procedures for attaining a state nuisance wildlife control operator license.

A number of local, state, and federal laws are designed to protect wildlife or to safeguard the public and the environment from the improper use of pesticides. You need to be aware of the current status of the laws at all levels because state and local laws are sometimes much more restrictive than federal regulations. Different laws apply to NWCOs, pesticide applicators, hunters, trappers, wildlife rehabilitators, and to those who control the populations of domestic animals such as dogs and cats. For example, if you want to use pesticides such as repellents, rodenticides, Avitrol® bait, or fumigants in your NWCO business, you will need a state commercial pesticide applicator license.

In certain situations, the landowners (or their agent) will need to obtain state and federal permits. You can help with this process and answer their questions, but you can't secure the permits for them.

**This chapter introduces the relevant federal and state laws and describes the types of local laws that may affect your business. If you have any questions, contact the regulatory agency or seek the assistance of a qualified legal advisor. Laws and regulations change, so stay up-to-date.**

### SECTION ONE: FEDERAL LAWS RELATED TO WILDLIFE CONTROL

Learning objectives

- 3.1 List the three federal agencies that regulate nuisance wildlife control.
- 3.2 Identify one way in which the Endangered Species Act might affect your business.
- 3.3 List the three groups of birds that aren't protected by the Migratory Bird Treaty Act.
- 3.4 FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) defines pesticides. Give three examples of pesticides used in nuisance wildlife control.
- 3.5 Identify two subject areas important to NWCOs that would be covered in depth on the OSHA website.

The major agencies involved in regulating the NWCO industry at the federal level are the U.S. Fish and Wildlife Service (US FWS), the U.S. Environmental Protection Agency (US EPA), and the Occupational Safety and Health Administration in the Department of Labor (OSHA). In special circumstances other federal agencies may have jurisdiction, such as the Federal Aviation Administration, which supervises wildlife control at airports.

The U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Division of Wildlife Services (USDA-APHIS-WS) provides federal leadership in addressing wildlife damage issues, but doesn't have a regulatory role. They help manage wildlife to reduce damage to agriculture and natural resources, to minimize risks to human health and safety, and to help protect endangered and threatened species.

Here are brief descriptions of the most pertinent federal laws affecting the NWCO industry. These laws, which are part of the U.S. Code, may be found online and at most public libraries. We've included the website addresses and the citation for the relevant section of the U.S. Code. Reference librarians can help you find the law in the books, especially if you present the citation, such as "16 U.S.C. 1531-1544, 87 Stat. 884."

#### Endangered Species Act

*Regulatory agencies:* US FWS, and each state's lead wildlife agency (in NY, that's the DEC)

*Applicable to:* All plants and animals on the federal endangered or threatened species lists

*Read the law:*

online—<http://laws.fws.gov/lawsdigest/esact.html>  
print—16 U.S.C. 1531-1544, 87 Stat. 884

This law protects endangered or threatened plant and animal species. What does it mean for you? It's simple: it means an endangered or threatened species should not be injured or harassed by your nuisance wildlife control activities. These species cannot be killed, harmed, or collected except under some carefully described circumstances, and then, only with permits.

If there are endangered or threatened species living in the areas where you work, you must take special precautions. This might affect how you set traps or apply pesticides, for example. One measure of a pest manager's professionalism is how diligently you try to protect other species from control activities, whether or not those "non-targeted species" are endangered.

### **Migratory Bird Treaty Act**

*Regulatory agencies:* US FWS, and each state's lead wildlife agency (again, in NY, that's the DEC)

*Applicable to:* all migratory birds (such as ducks, geese, songbirds, gulls, shorebirds, wading birds, birds of prey) with these exceptions:

- Three nonnative birds: the pigeon (now known officially as the "rock pigeon"), house sparrow (a.k.a. "English sparrow"), and European starling
- Upland game birds that don't migrate, and are managed by the DEC (such as turkey, quail, pheasant, and grouse)
- Certain blackbirds in certain agricultural situations (see below)

*Read the law:*

online—<http://laws.fws.gov/lawsdigest/migtrea.html>  
print—16 U.S.C. 703-712; Ch. 128; July 13 1918; 40 Stat. 755

This law protects all migratory birds, their feathers, nests, and eggs (with the few exceptions listed above). You may not take, possess, or transport a migratory bird without a special federal permit. Before you attempt to control a migratory bird, the landowners must obtain the 50 CFR Depredation Permit from the U.S. Fish and Wildlife Service. This permit allows the taking of migratory birds that have become a nuisance, are destructive to public or private property, or are a threat to public health or welfare. The permit spells

out the conditions under which the birds may be controlled and the methods that may be used. Permit holders may control migratory birds that are clearly shown to cause, or are about to cause, serious damage to crops, nursery stocks, or fish in hatcheries. (USDA-APHIS-WS staff can help you apply for this permit. There is a fee for the permit.)

That said, the Migratory Bird Treaty Act has a special provision about blackbirds: "A federal permit shall not be required to control yellow-headed, red-winged, rusty, and Brewer's blackbirds, cowbirds, all grackles, crows, and magpies when found committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance...."

State and local ordinances may further define control activities. For example, in New York, the Environmental Conservation Law states "Red-winged blackbirds, common grackles and cowbirds destroying any crop may be killed during the months of June, July, August, September and October by the owner of the crop or property on which it is growing or by any person in his employ."

Local laws may limit the types of treatments that can be used in controlling birds, for example, they may limit the use of pyrotechnics. Check local and state laws before attempting to control any bird species.

### **Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)**

*Regulatory agencies:* Responsibilities are split between the US EPA (federal level) and the state designated lead agency (in NY, that's the DEC).

*Applicable to:* All pesticides

*Read the law:*

online—[www.epa.gov/pesticides/fifra.htm](http://www.epa.gov/pesticides/fifra.htm)  
print—Title 7, U.S.C. Ch. 6

Sit up straight, because this one is complicated. FIFRA is the federal law that regulates pesticides. (A pesticide is any substance designed to prevent, destroy, repel, or mitigate any pest.) However, in most states, certain provisions of FIFRA are enforced at the state level through state pesticide regulations. We'll talk about those later.

Because of FIFRA:

- All pesticides, as well as each use of that pesticide, must be registered by the US EPA. The EPA must also approve the product label.
- The EPA also classifies pesticides as either “general use” or “restricted use.” (A “restricted use” pesticide is one that, even if used as directed, might possibly harm people or the environment.)
- A restricted use pesticide may only be used by, or under the direct supervision of, a certified applicator.
- The amount of pesticide residue allowed on food is described.
- There are regulations for storing and disposing of pesticides and their containers.
- The EPA provides standards for worker safety and re-entry into a pesticide-treated area.
- There are criminal or civil penalties for violations of FIFRA. Big ones. A commercial applicator could be fined up to \$25,000 or serve one year in prison, or both. NWCOs using pesticides on the job qualify as commercial applicators.
- States may set stricter standards but they can’t establish a more permissive one. That means that no state can allow the sale or use of a pesticide that is not permitted by federal law.

Each state has laws governing the sale, use, disposal, storage, and transportation of pesticides. Nearly every state controls the certification of pesticide applicators within its borders (in Colorado and Nebraska, federal programs handle this duty).

### **Avoid the “oops”**

FIFRA is probably the law that is most misunderstood by NWCOs. Why? Because in many cases, they don’t even realize they’re dealing with a pesticide.

Any substance that’s meant to prevent, destroy, or repel pests, or reduce their damage, is legally classified as a pesticide. Doesn’t matter if it’s a commercial product or a home remedy.

Chemical repellents are pesticides. So are fumigants, such as phosphine gas tablets or a carbon monoxide

gas cartridge used to control rodents in their burrows. Poison baits, such as rodenticides, are pesticides.

There’s an easy way to figure this all out. Read the product label. If it’s a legal pesticide, the label will include all the information you need.

And—the label is the law.

What about “home remedies”? That term covers concoctions such as Auntie Sue’s chipotle-garlic deer repellent and the novel use of a household product as a pesticide (for example, household ammonia used as a repellent to drive raccoons out of a chimney).

When a product hasn’t gone through the regulatory process, you lack vital information. What’s the recommended dose? Precisely how are you supposed to use and dispose of the product? That’s really important information. Ammonia is a legal product. It’s also toxic to people. With bad instructions, someone trying to use ammonia as a repellent could get hurt.

In certain cases, the restrictions may seem ludicrous. A raccoon is living in the home, peeing wherever it pleases, but I can’t apply a little bit of raccoon eviction fluid, a product that contains raccoon urine? Puuh-leeze. Can’t we use a little common sense?

How? Do you trust everyone? Not all manufacturers are honest or competent. They might purposefully or accidentally include a dangerous substance in the product. That’s why we rely on scientific studies and government regulatory processes. That’s how you know that the list of ingredients is complete and accurate. That’s how you know that a 2% solution is just that, not a 0.2% solution in this bottle and a 20% solution in that one.

Remember, too, that just because a pesticide is sold through a trade magazine or the internet, that doesn’t mean you can legally use it in New York State. (Legal pesticides are registered by the EPA and the DEC with an EPA registration number, or are in a special category, “25b minimum risk exemptions.”)

If you have any questions about pesticides, check the DEC website, or call your regional DEC office or the Compliance Section of the DEC’s Bureau of Pesticides Management at (518) 402-8781.

## Occupational Safety and Health Act (OSHA)

*Regulatory agency:* OSHA division of the U.S. Department of Labor

*Applicable to:* all employers who have more than ten employees

*Read the law:*

online—<http://www.osha.gov/comp-links.html>

print—Public Law 91-596, 91st Congress, S. 2193, Dec. 29, 1970

This law requires that all employers who have more than ten employees keep records of all work-related deaths, injuries, and illnesses, and report to OSHA periodically. It also requires the investigation of employee complaints that may be related to the use of pesticides. OSHA also sets standards to promote worker safety. For example, you have to tell your workers about job hazards, such as possible exposure to histoplasmosis from contact with pigeon droppings. Even if you don't have more than ten workers, the OSHA standards and training recommendations are worth reviewing, especially those concerning the safe use of ladders and respirators.

### Higher, deeper, further...

- Contact the DEC's Bureau of Wildlife for the most current lists of federally endangered and threatened species—and while you're at it, ask for the state lists, too. Learn how to identify those species that are found in your area. Know the habitats and habits of these species.
- Learn what you can legally do to deal with problems caused by Canada geese, gulls, and woodpeckers without the federal permit (see Appendix C).
- Check local and state laws to determine if there are additional restrictions on bird control.
- If you want to use pesticides in your nuisance wildlife control business, seek the proper training and obtain a commercial pesticide applicator license. Learn how to choose the least-toxic materials that provide effective results.
- Here's a directory of state agencies for structural pest control: <http://www.aspcro.org/directory.asp>
- Browse the OSHA website at [www.osha.gov](http://www.osha.gov) for safety tips.

## Summary

Before you answer the review questions, you may wish to think about the learning objectives for this section:

- 3.1 List the three federal agencies that regulate nuisance wildlife control.
- 3.2 Identify one way in which the Endangered Species Act might affect your business.
- 3.3 List the three groups of birds that aren't protected by the Migratory Bird Treaty Act.
- 3.4 FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) defines pesticides. Give three examples of pesticides used in nuisance wildlife control.
- 3.5 Identify two subject areas important to NWCOs that would be covered in depth on the OSHA website.

## Review questions

1. Some birds are not protected under the Migratory Bird Treaty Act. Check all of the ones that are NOT covered by this law.
  - Canada geese
  - house (English) sparrow
  - upland game birds
  - European starling
  - cowbirds & magpies (under certain circumstances)
  - pigeon
  - herring gull
  - woodpecker
2. A NWCO in the Midwest told you about a very effective raccoon repellent. You don't have a commercial pesticide applicator license. Can you use it at work?
  - a). yes
  - b). no
  - c). maybe, but only under the supervision of a veterinarian
3. If your business employs eight workers, you must offer them the chance to participate in OSHA training for the use of respirators. (Circle correct answer)      True      False

4. Which federal agencies have regulations that affect the NWCO industry? Check all that apply.

- Occupational Safety and Health Administration (OSHA)
- Federal Aviation Agency (FAA)
- US Fish and Wildlife Service (USFWS)
- US Dept. of Agriculture, Animal and Plant Health Inspection Service, Division of Wildlife Services (USDA-APHIS-WS)
- US Environmental Protection Agency (US EPA)

5. The same restrictions apply to homeowners and commercial pesticide applicators. (Circle correct answer)      True      False

6. If there's a threatened plant species near your work site, you must not:

- a). tell anyone.
- b). set any traps in that area.
- c). apply any pesticides in that area.
- d). injure it in any way.

7. It's illegal to apply a pesticide in a way that's not described on the label. (Circle correct answer)

True      False

*Answers:*

1—house sparrow, upland game birds, European starling, cowbirds and magpies (under certain circumstances), and the pigeon

2—b

3—false. OSHA kicks in when you have at least ten employees.

4—OSHA, FAA, USFWS, and the US EPA

5—false

6—d

7—true

## SECTION TWO: STATE LAWS RELATED TO WILDLIFE CONTROL

*Learning objectives:*

- 3.6 Name the three “rabies vector species” in New York, and the agency with the authority to decide what happens to a nuisance animal that’s a rabies vector species.
- 3.7 List two legal control techniques that may be used on a federally protected bird without obtaining special depredation permits.
- 3.8 Explain two options for dealing with a problem involving a game species.
- 3.9 Identify the laws that regulate the management of dogs and feral cats in New York.
- 3.10 In addition to your NWCO license, what other paperwork do you need to do your job?

### Environmental Conservation Law (ECL)

*Regulatory agency:* DEC

*Applicable to:* all New Yorkers. The sections that are most relevant to NWCOs are 11-0524, 11-0521, 11-0523, 11-0511, 11-0513, 11-0525, 11-0505, 11-0507, 11-0917, 11-1105 and 11-1101

*License required:* The NWCO license is required for certain activities (such as transporting wildlife) and to handle protected species.

*Read the law:*

online—<http://assembly.state.ny.us/leg/?cl=37>. Read the appropriate sections of Article 11, Titles 5, 9, 11 print—ECL Ch. 43-B of Consolidated Laws, Article 11 Titles 5, 9, 11

To check the legal status of a wildlife species in New York: [www.state.ny.us/website/dfwmr/wildlife/spplist.pdf](http://www.state.ny.us/website/dfwmr/wildlife/spplist.pdf)

The Environmental Conservation Law (ECL) is the primary state law that regulates the activities of NWCOs. (For your reference, the full text of the appropriate sections of the ECL are included at the end of this chapter.) On July 30, 2002 Governor Pataki signed a new law about nuisance wildlife control, ECL 11-0524, which gave the DEC the authority to set new regulations and license conditions.

### Getting and keeping a nuisance wildlife control license: the overview

To get a NWCO license, you must complete the application, pass the exam, and pay the license fee. The New York State nuisance wildlife control license authorizes you to act as an agent for a property owner or lessee. You must have a signed contract or written permission from that person stating that you have been hired to act as their agent to take nuisance wildlife on their property (this is a license condition).

When setting traps within 100 feet of a dwelling, school building, playground, or church, you must have the written consent of the owner or lessee of the property on which the trap is set. (This applies to anyone who’s trapping in those areas.)

You are allowed to take, temporarily possess, and transport any wildlife, except for those species detailed below, when that animal damages public or private property, or under conditions detailed in a permit issued by the DEC.

NWCOs in New York State shall NOT take, possess, or transport:

- any species listed federally or in New York State as endangered or threatened;
- any migratory birds (such as songbirds, waterfowl, birds of prey) without valid federal and state permits—with the few exceptions explained in the Migratory Bird Treaty Act section on pg. 3-2;
- any protected species unless it has caused damage or under conditions described in a DEC permit (except for nuisance crows on farms and nuisance skunks);
- any white-tailed deer, black bear, beaver, otter, muskrat, fisher, bobcat, mink, marten, and wild turkey, without a valid state permit.

You may take wildlife only by lawful means, and only in a lawful manner. NWCOs must also exercise due care to safeguard the public from any animal they capture, possess, or move to another location.

After you’ve captured the nuisance animal, you can then: 1) release it to the wild; 2) humanely kill it, then bury or cremate it; or 3) if the animal is distressed or injured, transfer it to a licensed wildlife rehabilitator. When appropriate, healthy wild animals may be

released on site, or they may be relocated, if you have permission from the owner of the property on which you'd like to release that animal. This is true whether the preferred release site is public or private land. You may not release an animal into another county without prior approval from that county's DEC Regional Wildlife Manager. Wildlife taken outside of New York State may not be brought into the state under this license.

If the animal appears to be diseased, it must be humanely killed and buried or cremated, or otherwise disposed of as directed by the DEC Regional Wildlife Manager or the local county health department.

NWCOs must follow the directives of their DEC permits and the local county health department concerning the handling and disposal of bats, raccoons, and skunks (rabies vector species), and any other directives about rabies.

Animals that are distressed or injured but are good candidates for rehabilitation, such as young that have been orphaned, may be transferred to a licensed wildlife rehabilitator. Bats, raccoons, and skunks may only be transferred to rehabbers who have special facilities and approval to accept these rabies vector species, unless the NWCO receives other guidance from the DEC or the Department of Health.

While you're working as a NWCO, you are required to carry a copy of your license (showing all of the license conditions) with you, on your person. You must present this license on request. You must also keep track of all of your NWCO jobs each day, using the log supplied by the DEC. These records, and any animals in your possession, must be available for inspection by a DEC Environmental Conservation Officer at any reasonable time.

The NWCO license is good for one year. (It expires on the date listed on the front of the license). It's issued to you, not to a company, so it cannot be transferred. The license may be renewed by sending a written request, your previous year's log, and the renewal fee to the DEC's Special Licenses Unit, 625 Broadway, Albany, NY 12233-4752, a month before your license expires (you can send the request any time during that month).

Whew! That's a lot of information. Now, we'll go over some of the points again, adding some details.

## **Which species can you handle?**

In New York State, all wild animal species have legal classifications that are described in the Environmental Conservation Law. Their legal status determines several aspects of control efforts. Most commonly, the question is, can a NWCO "take" this species in this situation?

Legally, "take" applies to the pursuit, capture, or killing of wildlife. This covers shooting, trapping, netting, "and all lesser acts such as disturbing, harrying, or worrying." It refers to any device commonly used to capture or kill that species. The taking must be by lawful means, and in a lawful manner. (See the definitions in ECL 11-0103 on page 3-28).

There are many wildlife species that a NWCO can legally handle in New York State, so it's actually easier to focus on the ones you *cannot handle* or *must obtain special permits to handle legally*.

## **It's not your job. Definitely.**

In New York State, you may not handle or take endangered or threatened species. This includes species that are endangered or threatened only within New York State, and those that are in trouble on a national basis, too.

The federal government maintains a list of federally threatened and endangered species. Each state tracks those species that are rare only within its borders. This means there are two lists you have to keep track of: the federal list, and the New York State list. To make this a little easier, we've included a chart at the end of this chapter which lists all of the wildlife species that are endangered or threatened in New York—and has columns to show whether those species are also federally listed. Contact the NYS DEC to find out if there have been any updates to the lists. The DEC keeps current lists of NYS endangered and threatened species and fact sheets about many of these species on its website at [www.dec.state.ny.us/website/dfwmr/wildlife/endspec/etsclist.html](http://www.dec.state.ny.us/website/dfwmr/wildlife/endspec/etsclist.html).

Perhaps—just perhaps—in one of those rare situations that are about as likely to happen as winning it big in the lottery, you might receive a special DEC permit that would allow specific nonlethal controls for a state threatened or endangered species. Your chances of securing a permit for a species on the federal list are even slimmer.

Another no-no for NWCOs in New York: you cannot capture or kill a pigeon if it's wearing a leg band.

### **It's not your job, but....**

Domestic animals, such as dogs and cats, are not covered by the Environmental Conservation Law because they're not wildlife species. They're regulated under NYS Agriculture and Markets regulations, Articles 26 and 7. Even if they're feral and behave like wild animals, they are still considered domestic species. Although every town is legally required to have a dog control officer the same isn't true for cats. In some areas, there may be inadequate services and customers may turn to you for help with feral cats, but there are thorny liability issues that make this a complicated and risky business. Some of these issues are addressed in Appendix C.

### **It is your job, but say hello to a new boss**

Special care is given to the handling of mammals that are most likely to be carrying rabies. Known as "rabies vector species," in New York State the ones to watch are bats, raccoons, and skunks.

Before you respond to a call about bats, raccoons, or skunks, call the local health authority. That's either the county health department or the district office of the state health department.

You are required by law to follow the health department's directions concerning the disposal of raccoons, skunks, and bats, no matter what the landowner requests. (Of course, you still have to follow DEC regulations, too). You are also legally required to follow any of the health department's other directions related to the control of rabies. (If anyone disputes this, just show your NWCO license. It's right there on the front page.)

The New York State Sanitary Code, which is enforced by the state health department, explains how to handle these situations in detail (see section 3 in this chapter).

### **Special jobs require special permits**

#### *Federally protected wildlife*

In some circumstances, the landowners may receive permission to capture or otherwise harm a federally protected species. This is handled on a case-by-case basis. The landowners need special depredation

permits from both the federal government and the state government. Federally protected wildlife include migratory birds and nationally endangered or threatened species, as described previously.

There are very few situations that justify the issuance of a special permit for an endangered or threatened species. You may not harm them in any way. You can't harass them or disturb their habitats. Of course, you're not likely to encounter them while on the job, either.

Chances are, you'll only get calls about a few federally protected species, most likely, Canada geese, woodpeckers, gulls, cormorants, and some birds of prey (usually hawks and owls). Most of them are protected by the Migratory Bird Treaty Act but not by the Endangered Species Act, so you may have some more options.

Try a combination of nonlethal control methods first. This may solve the problem and will save you the hassle of the paperwork. Because you don't need permits for most nonlethal control methods, you can probably deal with the situation right away, which may be appealing to your customer. Just remember that you can't destroy eggs or disturb their young, or disturb a nest if there are eggs or young in it, because those actions are classified as "taking."

You may be able to persuade the birds to leave by hazing them with dogs or frightening them with devices such as noisemakers and scarecrows. Or alter the conditions that make the site attractive to them, for example, by removing unnatural food sources such as garbage. Exclude them from the site by erecting fences. If that approach doesn't work, call the DEC regional wildlife office to discuss the situation and seek the proper permits.

One postscript: the management of mute swans has changed, so NWCOs who have been in the business for some time may be used to an old approach. Previously, NWCOs were required to either kill mute swans or transfer them to a rehabber who had a special mute swan permit. Now, mute swans are managed like other migratory birds, so you need a federal permit to control them.

#### *Game species*

State and federal agencies manage game species primarily by controlling hunting and trapping. Some

game species, such as muskrat, beaver, white-tailed deer, turkey, and black bear may become a nuisance on private property. What should you do if you're asked to take care of a problem with one of these species? Tell the landowner to call the regional DEC wildlife office. If appropriate, the DEC will issue a special state permit that will allow certain control efforts.

NWCOs may take bears on residential land if they've first proven to the DEC that the animal is damaging the property or threatening public health or safety. Under those conditions, the DEC may issue a special permit. If the bear is killing or worrying livestock or destroying an apiary on cultivated land, the landowner (or you, as that person's agent) may take the bear at any time. The landowner is then required to contact the DEC promptly, and to deliver the carcass to the DEC officer for disposal. If the landowner doesn't want to get the state permit, you may once again use nonlethal control techniques. If the problem happens during a legal season for that species, you could advise the landowners to invite hunters or trappers onto their land.

### **What's left: first, the species any New Yorker can handle, without a permit**

The remainder of New York's wildlife are either classified as "protected species" or "unprotected species." That distinction won't tell you which species you can handle and which you can't, but it's important to understand because the public has certain rights to take nuisance animals, mostly limited to the taking of unprotected species.

All New York State residents can take a member of an unprotected species, and of a few specified protected species, that's on their own property when the wildlife becomes destructive to public or private property. Nuisance animals of unprotected species may be taken at any time of the year and by any means *provided that other laws are not violated* (such as pesticide regulations, firearm discharge ordinances, or trespassing laws).

There's one important difference that applies to the public: even without a permit, they may capture nuisance animals of the species listed in sections 11-0523 (see next column), but cannot release them. Private citizens **must** kill the nuisance animal, and bury or cremate it. Your NWCO license gives you the additional option of transporting and releasing animals (with the permission of the owner of the release site).

### **ECL 11-0523 gives any New York State resident the right to capture:**

UNPROTECTED SPECIES, including

#### **Mammals:**

woodchuck, porcupine, eastern chipmunk, red squirrel, flying squirrels, moles, voles, mice, shrews, bats (except the Indiana bat), and rats (except the Allegheny woodrat)

#### **Birds:**

house sparrow, European starling, pigeon

#### **Reptiles:**

most snakes found in New York (except queen snake and rattlesnakes) and most turtles (except mud turtle; box turtles; bog turtle; Blanding's turtle; wood turtle, diamond-back terrapin; and sea turtles)

And in CERTAIN SITUATIONS, some protected species including

#### **Mammals:**

bears (damaging livestock or apiaries); skunks; raccoons; coyotes; foxes; black, gray, and fox squirrels; opossums; weasels; varying hares, cottontail rabbits, and European hares.

#### **Birds:**

red-winged blackbirds, crows, common grackles, and cowbirds (damaging crops in June through October).

### **BUT THEN WHAT?**

This section of law does NOT give a private citizen the right to release any of these animals. Even if you say "pretty please." A private citizen must either hire a NWCO for that service, or kill the nuisance animal and bury or cremate it.

## **With a NWCO license, you can do more**

You can handle any of the species listed in ECL sections 11-0521 and 11-0523 with your NWCO license (see the following charts).

For a NWCO, the critical parts of the ECL are sections 11-0524 (nuisance wildlife control operators), 11-0103 (definitions), 11-0521 (what you're allowed to take *with* the NWCO license), 11-0523 (what you're allowed to take *without* the license—this section applies to the public, too), 11-0507 (liberation of wildlife), 11-0511 and 11-0917 (transportation of wildlife), 11-0513 (protection of banded homing pigeons), 11-0525 (control of rabies in wildlife). These sections are included at the end of this chapter.

To do your work, you also need the landowners' written permission and must be on their property. If control activities would be more effective on neighboring land, you'd need to secure written permission from that landowner. And if you want to release an animal onto someone else's land, you must have their permission.

## **One other “protected” species**

As a NWCO, you are also required to act in a reasonable way that will protect the public from attack by the animals you're handling (under Article 26, section 370 of the NYS Agriculture and Markets Law). And you must not allow any physical contact between venomous snakes and the public. Here's the actual text of that law, excerpted from the Agriculture and Market regulations, Article 26 (Cruelty to Animals):

### **“370. Protection of the public from attack by wild animals and reptiles.**

Any person owning, possessing or harboring a wild animal or reptile capable of inflicting bodily harm upon a human being, who shall fail to exercise due care in safeguarding the public from attack by such wild animal or reptile, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than five hundred dollars, or by both. “Wild animal” within the meaning of this section, shall not include a dog or cat or other domestic animal. Previous attacks upon a human being by such wild animal or reptile, or knowledge of the vicious propensities of such wild animal or reptile, on the part of the possessor or harbinger thereof, shall not be required to be proven by the people upon a prosecution

hereunder; and neither the fact that such wild animal or reptile has not previously attacked a human being, nor lack of knowledge of the vicious propensities of such wild animal or reptile on the part of the owner, possessor or harbinger thereof shall constitute a defense to a prosecution hereunder.”

# Which species can licensed NWCOs handle or take in NY—and when?

## CAN DO! (Categories 1–4)

### 1: Anytime, without additional permits—

#### Mammals:

- Bats (except Indiana bat)
- Chipmunks
- European hare (with a valid hunting license)
- Flying squirrels and red squirrels
- Mice
- Moles
- Porcupine
- Rats (except Allegheny woodrat)
- Shrews
- Voles
- Woodchuck

#### Birds:

- Pigeon (unless it's banded)
- House (a.k.a. English) sparrow
- European starling

#### Reptiles:

- Snakes (except queen snake, timber rattlesnake, massasauga)
- Turtles (except mud, bog, box, Blanding's, wood, and sea turtles, and diamond-backed terrapin)

### 2: When the animal has damaged property, can take any animal from category 1, plus—

#### Mammals:

without any additional permits—

- Cottontail rabbit
- Coyote
- Red and gray foxes
- Snowshoe (a.k.a. varying) hare
- Opossum
- Raccoon
- Striped skunk
- Squirrels: black, gray, and fox squirrels
- Weasels

with a DEC permit—

- Beaver (landowner must request permit)
- Black bear
- Bobcat
- Deer
- Fisher
- Marten (a.k.a. pine marten)
- Mink
- Muskrat
- Otter

#### Reptiles (with a DEC permit):

- Turtles: mud turtle, box turtle, Blanding's turtle, wood turtle

#### Birds (with US FWS and DEC permits):

- Crow (no permits needed)
- Turkey (just need DEC permit)
- Most migratory birds (waterfowl, passerines) such as:
  - Canada goose and snow goose
  - Cormorants
  - Ducks

- Gulls
- Sparrows (other than the house sparrow)
- Swans
- Waterfowl

### 3: When it's simply a nuisance—

- Striped skunk
- Crow (if causing nuisance on cultivated land, no permit required)

#### Other species:

- The DEC may issue a permit, but this is less likely (better options will be discussed in chapter five).
- If you need permit(s) to take an animal when it's damaged property, you need the same permits to take it if it's just a nuisance.
- Those animals you could take *without* a permit when they damaged property? If any are just a nuisance, you'd need a DEC permit to take:
  - Cottontail rabbit
  - Coyote
  - Red and gray foxes
  - Snowshoe (a.k.a. varying) hare
  - Opossum
  - Raccoon
  - Squirrels: black, gray, and fox squirrels
  - Weasels

### 4: Special cases—

#### Mammals:

- Black bear: if destroying livestock or apiary, no permit needed

#### Birds:

If they're destroying crops from June through October, can also take these three species without permits: cowbirds, grackles, and red-winged blackbirds

#### When an animal threatens public health or welfare:

The DEC can issue a permit to anyone to take any wildlife (except federally endangered and threatened species) in this case.

## NO WAY, NO HOW:

- Take endangered and threatened species<sup>1</sup>
- Take Antwerp or homing pigeons that are wearing leg bands<sup>2</sup>
- Take cats and dogs, whether they're feral or domestic<sup>3</sup>

<sup>1</sup> Perhaps, in a rare situation, you'd secure the permits that would allow you to handle—but not take—such species. But during normal working NWCO life? No.

<sup>2</sup> Specified in New York State law, ECL 11-0513

<sup>3</sup> There be dragons. The NWCO license covers *wildlife*. Not domestic animals, such as cats and dogs. They're covered by Ag. & Market laws. This is risky, uncharted territory. As a NWCO, steer clear.

For a refresher on the definitions of “nuisance” vs. “property damage,” see page three of Chapter One and the species accounts.

# Which species can licensed NWCOs handle or take in NY—and when?

| Animal   | Anytime | Nuisance             |                     | In specific defined circumstances   |
|--|---------|----------------------|---------------------|---|
|  |         | It's just a nuisance | It damaged property |   |
| <b>Mammals that more commonly cause nuisances:</b> |         |                      |                     |   |
| Bats (except Indiana bat)                          | Yes     | Yes                  | Yes                 | N/A   |
| Beaver   | No      | Permit A             | Permit A            | Permit A  |
| Black bear   | No      | Permit A             | Permit A            | If destroying livestock or apiary, no permit needed. Otherwise, Permit A (public health/welfare threat) |
| Chipmunk   | Yes     | Yes                  | Yes                 | N/A   |
| Coyote   | No      | Permit A             | Yes                 | Permit A (public health/welfare threat)   |
| Deer (white-tailed)                                | No      | Permit A             | Permit A            | Permit A  |
| Foxes (red and gray)                               | No      | Permit A             | Yes                 | N/A   |
| Mice   | Yes     | Yes                  | Yes                 | N/A   |
| Moles  | Yes     | Yes                  | Yes                 | N/A   |
| Muskrat  | No      | Permit A             | Permit A            | N/A   |
| Rabbit (cottontail)                                | No      | Permit A             | Yes                 | N/A   |
| Raccoon  | No      | Permit A             | Yes                 | N/A   |
| Rats (except Allegheny woodrat)                    | Yes     | Yes                  | Yes                 | N/A   |
| Shrews   | Yes     | Yes                  | Yes                 | N/A   |
| Skunk (striped)                                    | No      | Yes                  | Yes                 | N/A   |
| Squirrels (flying and red)                         | Yes     | Yes                  | Yes                 | N/A   |
| Squirrels (gray, black, fox)                       | No      | Permit A             | Yes                 | N/A   |
| Voles  | Yes     | Yes                  | Yes                 | N/A   |
| Woodchuck  | Yes     | Yes                  | Yes                 | N/A   |
| <b>Mammals that may cause nuisances:</b>           |         |                      |                     |   |
| Bobcat   | No      | Permit A             | Permit A            | N/A   |
| Fisher   | No      | Permit A             | Permit A            | N/A   |
| European hare                                      | Yes     | Yes                  | Yes                 | N/A   |
| Snowshoe (a.k.a. varying) hare                     | No      | Permit A             | Yes                 | N/A   |
| Marten (a.k.a. pine marten)                        | No      | Permit A             | Permit A            | N/A   |
| Mink   | No      | Permit A             | Permit A            | N/A   |
| Opossum  | No      | Permit A             | Yes                 | N/A   |
| Otter (river otter)                                | No      | Permit A             | Permit A            | N/A   |
| Porcupine  | Yes     | Yes                  | Yes                 | N/A   |
| Weasels  | No      | Permit A             | Yes                 | N/A   |

**Permit A:** Unless specifically listed and allowed on your NWCO license, you would need an additional permit from the DEC to handle or take this species (or group of species) under this situation.

**Permit B:** ONLY with US FWS and additional DEC permits (not just your NWCO license).

**Permit C:** PERHAPS with US FWS and additional DEC permits (not just your NWCO license). For nonlethal controls of these federally endangered or threatened species.

**Permit D:** PERHAPS with additional DEC permits (not just your NWCO license). For nonlethal controls of these state endangered or threatened species.

| Animal   | Anytime | Nuisance                    |                     | In specific defined circumstances            |
|--|---------|-----------------------------|---------------------|--|
|  |         | It's just a nuisance        | It damaged property |  |
| <b>Reptiles:</b>   |         |                             |                     |  |
| Snakes (except queen snake, timber rattlesnake, massasauga)                                    | Yes     | Yes                         | Yes                 | N/A  |
| Turtles (except mud, bog, box, Blanding's, wood, and sea turtles, and diamond-backed terrapin) | Yes     | Yes                         | Yes                 | N/A  |
| Turtles: mud, box, Blanding's, and wood turtle   | No      | Permit A                    | Permit A            | Permit A                                     |
| <b>Birds:</b>  |         |                             |                     |  |
| Canada goose   | No      | Permit B                    | Permit B            | Permit B                                     |
| Red-winged blackbird   | No      | No                          | Special case >>>>   | Yes, when destroying crops from June–October |
| Cowbird  | No      | No                          | Special case >>>>   | Yes, when destroying crops from June–October |
| Crow   | No      | Yes, if on cultivated lands | Yes                 | N/A  |
| Ducks  | No      | Permit B                    | Permit B            | Permit B                                     |
| English sparrow (house sparrow)  | Yes     | Yes                         | Yes                 | N/A  |
| Grackle  | No      | No                          | Special case >>>>   | Yes, when destroying crops from June–October |
| Pigeon (if NOT wearing leg bands)  | Yes     | Yes                         | Yes                 | N/A  |
| European starling  | Yes     | Yes                         | Yes                 | N/A  |
| Swan   | No      | Permit B                    | Permit B            | Permit B                                     |
| Turkey   | No      | Permit A                    | Permit A            | N/A  |
| Migratory birds, in general (such as songbirds, birds of prey, waterfowl)                      | No      | Permit B                    | Permit B            | Permit B                                     |
| <b>NO WAY, NO HOW:</b>   |         |                             |                     |  |
| Cats and dogs (feral or domestic)  | No      | No                          | No                  | No   |
| Pigeons wearing leg bands  | No      | No                          | No                  | No   |
| Fed. endangered, threatened spp.   | No      | No                          | No                  | Permit C                                     |
| Indiana bat  | No      | No                          | No                  | Permit C                                     |
| Allegheny woodrat  | No      | No                          | No                  | Permit D                                     |
| Queen snake, massasauga, timber rattlesnake  | No      | No                          | No                  | Permit D                                     |

For a refresher on the definition of “nuisance” vs. “property damage,” see page three of Chapter One and the species accounts in Appendices B and C.

### Higher, deeper, further...

- Find out how your town manages stray dogs and cats. What are the policies of the nearest animal shelter? How might those policies affect your business?
- Read the Environmental Conservation Law and the NYS Sanitary Code (included at the end of this chapter).

### Summary

Before you answer the review questions, you may wish to think about the learning objectives for this section:

- 3.6 Name the three "rabies vector species" in New York, and the agency with the authority to decide what happens to a nuisance animal that's a rabies vector species.
- 3.7 List two legal control techniques that may be used on a federally protected bird without obtaining special depredation permits.
- 3.8 Explain two options for dealing with a problem involving a game species.
- 3.9 Identify the laws that regulate the management of dogs and feral cats in New York.
- 3.10 In addition to your NWCO license, what other paperwork do you need to do your job?

### Review questions:

I. Which of the following wildlife are considered "rabies vector species" in New York State? (Check all that apply)

- Bats
- Cats
- Foxes
- Raccoons
- Dogs
- Pigeons
- Skunks
- Rabbits

2. Deer have destroyed your customer's newly planted and expensive landscaping and he's fed up. What advice can you offer over the phone?

- a). Since it's deer season, he can invite hunters onto his property and that may solve the problem for free
- b). Offer to secure the special permit from the DEC that will allow you to deal with the deer
- c). Tell him to call the regional DEC wildlife office to request a permit; then you can help
- d). More than one answer is correct

3. The New York State laws that regulate the control of dogs and cats are

- a). Environmental Conservation Law
- b). Agriculture & Markets regulations, articles 7 and 26
- c). New York State Humane Activities Code
- d). Domestic Animals Act of New York State, article 6

4. Before you can begin work, you need

- a). the landowner's written permission
- b). approval from all of the neighbors
- c). to check in with the local animal control officer
- d). coffee, and lots of it.

5. Restaurant owners want you to deal with the gulls that are feeding at the dumpster and annoying the customers, but they don't want to wait. You suggest

- a). Read *Johnathan Livingston Seagull*, take a yoga class, and chill
- b). Even without the necessary permits, you can try to frighten them away by hazing them with dogs or using noisemakers
- c). Better trash management will make the site less attractive to the gulls. They should empty and clean the dumpster more often.
- d). You can show up tomorrow to capture the birds. Is that OK?
- e). b & c
- f). c & d

Answers:

- 1—bats, raccoons, and skunks
- 2—d (answers "a" and "c" are correct)
- 3—b
- 4—a
- 5—e

## SECTION THREE: OTHER PERTINENT STATE LAWS

### Learning objectives

- 3.11 Name the agency that regulates the licensing of commercial pesticide applicators in New York State.
- 3.12 List four things you are required to do by the New York State Sanitary Code.
- 3.13 Describe three scenarios of what might happen to an unvaccinated dog that's bitten a person, possibly exposing that person to rabies.
- 3.14 List three rules that apply to the use of firearms.
- 3.15 FIFRA and state pesticide regulations place four crucial restrictions on NWCO activity—name them.

### State pesticide laws and regulations

*Regulatory agency:* DEC

*Applicable to:* pesticide use (the handling, use, storage, transportation, sale, and disposal of pesticides)

*Commercial pesticide certification required:* for the use of restricted-use pesticides or for the commercial application of pesticides. The commercial pesticide certification is broken down into 28 categories and subcategories, each requiring its own certification.

*Read the laws and regulations:*

online suggested—[www.dec.state.ny.us/website/dshm/pesticid/pesticid.htm](http://www.dec.state.ny.us/website/dshm/pesticid/pesticid.htm)

(The DEC site includes links to the many laws and regulations related to pesticides, such as the pesticide control regulations [6 NYCRR parts 320–329], the relevant parts of the ECL [Article 33, parts of Articles 15 and 71], the pesticide reporting law and neighbor notification law).

Before we discussed the aspects of FIFRA, the federal pesticide law, that are managed by the US EPA. Now we'll discuss the DEC's role.

New York State law adds a few new wrinkles to the use of pesticides. Remember that according to FIFRA, anyone in the nation who wants to apply a restricted use pesticide must either be a certified applicator or working under the supervision of a certified applicator? Well, New York State regulations require that anyone who wants to apply ANY pesticide on someone else's property must have commercial pesticide certification. That might mean you.

Repeat: if you want to use pesticides in your NWCO business, you will need a state commercial pesticide

certification. Some NWCOs also seek this certification, especially if they expect to handle many rodent jobs or want the option of applying repellents or fumigating burrows.

The DEC's Bureau of Pesticide Management is in charge of this certification. You'll have to go through a separate training and take a different test. (Reinforce your bookcase, because there's another big manual involved). There are continuing education requirements, too. Contact the DEC or the Pesticide Management Education Program at Cornell University for more information.

There are a few crucial points to keep in mind concerning FIFRA and the state pesticide regulations:

- 1) In New York State, the minute you step onto someone else's property, the laws for the commercial application of pesticides come into play.
- 2) UNLESS you also have a commercial pesticide certification (and a pesticide business registration) you cannot apply any pesticides on someone else's property. No deer or snake repellents. No mothballs. No bird repellents. No poisonous mouse bait. No product that has an EPA registration number on its label. Got it?
- 3) You can advise landowners about using repellents or other general use pesticides as part of their control strategy, but you cannot provide the service unless you also have a commercial pesticide certification. (They can use these products themselves.)
- 4) ALWAYS read and follow the pesticide label instructions. The label is the law. Any use not listed on the label is prohibited.

But what if you're hired to exclude bats from an attic, and there's a huge wasp's nest under the eave so close to the bat's entry hole that you're afraid you'll be stung while you're up on the ladder installing the check-valve, and might fall? If nesting stinging insects present an immediate danger while you're trying to do your job, you may apply a general use pesticide such as a

wasp or hornet spray for your personal protection. This is considered an “emergency non-routine application,” not a commercial pesticide application.

You can’t spray to protect your customers, even if they ask you to take care of it while you’re up there. Best advice is: don’t go out of your way looking for stinging insects or their nests; don’t offer to control stinging insects for a customer; and if you do spray to protect yourself, don’t charge for it.

### **New York State Sanitary Code:**

*Regulatory agency:* NYS Dep’t. of Health

*Applicable to:* all New Yorkers

*License required:* N/A

*Read the law:*

online—[assembly.state.ny.us/leg/?cl=91&a=85](http://assembly.state.ny.us/leg/?cl=91&a=85)

print—Public Health Law Article 21 Title 4, sections 2140–2146 and Chapter 1, Title 10 Part 2, section 2.14

This law deals with the control of rabies, the reporting of potentially rabid animals and of human and animal exposures to a potentially rabid animal. It also specifies what happens to a potentially rabid animal (wild animals and domestic animals may be treated differently) and what happens to a domestic animal that was exposed to a known rabid animal. The law also calls for rabies vaccinations of cats under certain conditions.

The full text of the sanitary code is included at the end of this chapter. Here are the key points:

- If you suspect an animal is rabid, you must report it to the local health authority immediately. [“Rabies suspect” is defined in section 5 (e).]
- Bats and any animal other than a dog, cat, ferret, or domestic livestock suspected of being rabid shall be destroyed immediately and submitted for rabies testing, with the approval of the local health authority.
- Health care providers must report all cases of human exposure to rabies to the local health authority immediately. (“Exposure” is defined in (a) 2.)
- If a person has been potentially exposed to rabies by a dog, cat, ferret, or domestic livestock, the local health authority may have the animal confined for 10 days at the owner’s expense. With the owner’s approval, the health authority may have the animal destroyed immediately and submitted for rabies testing.

- If the owner cannot be determined, the costs fall to the person who asked for the confinement. In this case, if confinement isn’t possible or desirable, the animal may be destroyed immediately and submitted for testing.
- Should an animal develop signs of rabies during its isolation, it shall be destroyed and submitted for rabies testing.
- Any mammal that’s been in direct contact with a known rabid animal shall either be destroyed or quarantined for six months. The costs are paid by the owner. If the animal was vaccinated before the exposure, it may be isolated under the owner’s control if it receives a booster shot within five days of exposure. Any animal under such restrictions shall not be moved from one health district to another during the quarantine period except with the permission of the health authorities in both districts.
- Whenever rabies is confirmed in a county, all cats in that county who are over three months old must be vaccinated (this doesn’t apply to tourists staying less than 15 days, to animals in shelters, hospitals, research facilities, or breeding facilities).

### **Agriculture and Markets regulations, Article 26, Cruelty to Animals Law**

*Regulatory agencies:* Animal Industry Division of the NYS Department of Agriculture and Markets

*Applicable to:* cats and dogs and other domestic and farm animals

*Read the law:*

online—[www.agmkt.state.ny.us/AI/AI916.pdf](http://www.agmkt.state.ny.us/AI/AI916.pdf)

print—Agriculture and Markets Law Article 26 sections 350–378

For a NWCO, the key sections are:

Part 374: Humane destruction or other disposition of animals lost, strayed, homeless, abandoned or improperly confined or kept

Part 360: Poisoning or attempting to poison animals

Part 353-a: Aggravated cruelty to animals

Part 366: Dog stealing

Part 356: Failure to provide proper food and drink to an impounded animal

Part 377: Disposal of dead animals [refers to large domestic animals]

## **Agriculture and Markets regulations, Article 7, Licensing, Identification and Control of Dogs and Animal Population Control Program**

*Regulatory agencies:* Animal Industry Division of the NYS Department of Agriculture and Markets

*Applicable to:* dogs and cats

*Read the law:* [www.agmkt.state.ny.us/AI/Circ950.pdf](http://www.agmkt.state.ny.us/AI/Circ950.pdf) (primarily, this is Article 7, sections 106–126; but there are many excerpts from other laws, so it's easiest to download the circular)

For a NWCO, the key sections are:

Section 118: Seizure of dogs; redemption period; impoundment fees; adoption

Section 121: Dangerous dogs

Section 117-a: Animal population control program

Section 114: Dog control officers

Part 77, section 77.2: Standards for the care of seized dogs

Part 77, section 77.3: Euthanasia and disposal

Section 2140 (Public Health law, title IV, article 21): Rabies; prevention of the spread

Section 2142: Rabies; dogs at large; seizure and disposal; reports

Section 2145: Rabies; compulsory vaccination; violation; penalty

### **Firearm ordinances**

“Firearm” is defined in 6 NYCRR part 180.3A as “any gun or other instrument which by force of gunpowder or other explosive, or which by the force of a spring, air or other gas, expels a missile or projectile capable of killing, wounding or otherwise inflicting physical damage upon fish, wildlife or other animals.” This includes shotguns, rifles, air guns, and dart rifles. Under state law, bows (long bows and crossbows) are not considered firearms.

Unfortunately, it's not that simple. There are also local firearm regulations, and they may differ from state law. Some local laws are more restrictive. Some define other devices, such as bows, as “firearms.” You must obey both state and local regulations. To learn more, check the International Hunter Education Association website at [www.ihea.com](http://www.ihea.com) or consider attending the DEC's hunter education course or a firearms safety course sponsored by the National Rifle Association (NRA).

Here are a few points:

- shotguns and rifles must be unloaded when carried in a motor vehicle
- firearms can't be discharged across a public highway or maintained right-of-way
- rifles aren't allowed in the field on Long Island, or in Westchester County
- legal discharge distance for both firearms and long bows follows the 500 foot rule (unless you have permission from the owner of the building).

The last point explains how far you must be from a building in order to shoot legally. You must be more than 500 feet from

- a school, playground, or occupied factory or church
- occupied or used farm building or structure
- a home (unless you own it, lease it, are an immediate member of the family, an employee, or a guest who has the owner's consent).

How far is 500 feet? Most people are poor judges of distance. You may want to take a tape measure outdoors and actually pace off the distance a few times. Unfortunately, you have to stretch your vision even more because you have to consider 500 feet in all directions. That's 18 acres, or about as big as 16 football fields, just a bit smaller than the area covered by the White House.

### **Building codes**

Building codes are relevant if you offer repair or exclusion services, such as adding a cap to a chimney to keep raccoons out. These regulations vary across the state, and are updated regularly.

#### **Higher, deeper, further...**

- Check local building codes, firearms, and pest control ordinances. Would any influence your ability to control pigeons, repair a building and add exclusion devices, use firearms or traps?
- Attend a firearms safety course.

## Summary

Before you answer the review questions, you may wish to think about the learning objectives for this section:

- 3.11 Name the agency that regulates the licensing of commercial pesticide applicators in New York State.
- 3.12 List four things you are required to do by the New York State Sanitary Code.
- 3.13 Describe three scenarios of what might happen to an unvaccinated dog that's bitten a person, possibly exposing that person to rabies.
- 3.14 List three rules that apply to the use of firearms.
- 3.15 FIFRA and state pesticide regulations place four crucial restrictions on NWCO activity—name them.

## Review questions

1. You'd like to euthanize an opossum using a firearm. There's a summer home about 80 yards from your customer's property. Can you use this technique legally?
  - a). yes, no problem
  - b). no, because you're too close to the neighbor's summer home
  - c). yes, but only as a guest of the owners or renters of the summer home, and with their consent
  - d). do not have enough information to decide.
2. You're talking to a man on the phone, and he's frantic. A stray dog has bitten his child. He wants you to capture it and have it tested for rabies. When you get there, the child is screaming and doesn't want to let you near the dog if you're going to kill it. What do you do?
  - a). call the county health department
  - b). restrain and isolate the animal, then try to find out who owns the dog
  - c). explain that the dog doesn't have to be killed. It could be held in quarantine for ten days to determine if it's rabid, but if the owner can't be found, they'd have to pay for it.
  - d). all of the above

3. Who certifies commercial pesticide applicators in New York State?
  - a). US EPA
  - b). Pesticide Applicator Board, NYS Dept. of Agriculture and Markets
  - c). Bureau of Pesticide Management, NYS DEC
  - d). None of the above
4. The New York State Sanitary Code
  - a). requires you to report potentially rabid animals and cases when a person or animal may have been exposed to rabies.
  - b). regulates the operation of commercial kitchens in restaurants, schools, nursing homes, and hospitals
  - c). applies only when a person has been exposed to rabies
  - d). focuses on wildlife, not domestic animals

Answers:

- 1—c
- 2—d
- 3—c AND a
- 4—a

## SECTION FOUR: LOCAL LAWS (COUNTY, CITY, TOWN, VILLAGE)

There are a variety of local laws that may affect your NWCO business. Some address control techniques, such as trapping or the use of firearms or pesticides. Health codes or other regulations may restrict the transportation of wildlife; for example, trapped animals can't be removed from, or brought into, Long Island or New York City.

Building codes and fire codes dictate the design and construction of exclusion devices, such as chimney caps; there may even be specific regulations about electric fences. Certain species may receive added protection in some areas.

The first page in the resource section includes a form for your local contacts. Fill those in, so you have them handy when you need them.

### Chapter summary

These were the overall learning objectives for the chapter. How well do you feel you've mastered them?

- *Know which federal and state agencies regulate aspects of the nuisance wildlife control industry.*
- *Understand the various state and federal laws about handling wildlife and using pesticides.*
- *Recognize which situations a NWCO can handle—and which are beyond your authority.*
- *Know when a state and/or federal permit is required.*
- *Realize that building codes, firearm ordinances, and other local regulations may apply to your work.*
- *Be aware of the requirements and procedures for attaining a state nuisance wildlife control operator license.*

## Lists of Endangered and Threatened Wildlife

Please check these lists, last modified on July 2, 2001, against the most current lists of endangered and threatened species and species of special concern. These lists have been excerpted and include only mammals, birds, amphibians, and reptiles.

The DEC maintains current and complete lists on its website at:  
[www.dec.state.ny.us/website/dfwmr/wildlife/endspec/index.html](http://www.dec.state.ny.us/website/dfwmr/wildlife/endspec/index.html)

### Definitions

**Extinct:** Species is no longer living or existing.

**Extirpated:** Species is not extinct, but no longer occurring in a wild state within New York, or no longer exhibiting patterns of use traditional for that species in New York (e.g., historical breeders no longer breeding here).

**Endangered:** Any native species in imminent danger of extirpation or extinction in New York State.

**Threatened:** Any native species likely to become an endangered species within the foreseeable future in New York State.

**Special Concern:** Any native species for which a welfare concern or risk of endangerment has been documented in New York State.

Authority: Environmental Conservation Law of New York, Section 11-0535 and 6 NYCRR (New York Codes, Rules and Regulations) Part 182 - effective (last promulgated in state regulation) December 4, 1999. Here are the excerpts of the state laws referred to in this chapter that are most relevant to NWCOs. This is the way the laws actually read. Please note: Accurate at time of printing but readers should check for amendments and new laws and regulations.





## Wildlife species of special concern in New York

| Species  | Scientific name  |
|--|--|
| <p><b>Amphibians:</b><br/> Hellbender<br/> Marbled salamander<br/> Jefferson salamander<br/> Blue-spotted salamander<br/> Longtail salamander<br/> Eastern spadefoot toad<br/> Southern leopard frog</p> <p><b>Reptiles:</b><br/> Spotted turtle<br/> Wood turtle<br/> Eastern box turtle<br/> Eastern spiny softshell<br/> Eastern hognose snake<br/> Worm snake</p> <p><b>Birds:</b><br/> Common loon<br/> American bittern<br/> Osprey<br/> Sharp-shinned hawk<br/> Cooper's hawk<br/> Northern goshawk<br/> Red-shouldered hawk<br/> Black skimmer<br/> Common nighthawk<br/> Whip-poor-will<br/> Red-headed woodpecker<br/> Horned lark<br/> Bicknell's thrush<br/> Golden-winged warbler<br/> Cerulean warbler<br/> Yellow-breasted chat<br/> Vesper sparrow<br/> Grasshopper sparrow<br/> Seaside sparrow</p> <p><b>Mammals:</b><br/> Small-footed bat<br/> New England cottontail<br/> Harbor porpoise</p> <p>• See the DEC website for updates at: <a href="http://www.dec.state.ny.us/website/dfwmr/wildlife/endspec/etsclist.html">www.dec.state.ny.us/website/dfwmr/wildlife/endspec/etsclist.html</a></p> | <p><i>Cryptobranchus alleganiensis</i><br/> <i>Ambystoma opacum</i><br/> <i>Ambystoma jeffersonianum</i><br/> <i>Ambystoma laterale</i><br/> <i>Eurycea longicauda</i><br/> <i>Scaphiopus holbrookii</i><br/> <i>Rana sphenoccephala utricularius</i></p> <p><i>Clemmys guttata</i><br/> <i>Clemmys insculpta</i><br/> <i>Terrapene carolina</i><br/> <i>Apalone spinifera</i><br/> <i>Heterodon platyrhinos</i><br/> <i>Carphophis amoenus</i></p> <p><i>Gavia immer</i><br/> <i>Botaurus lentiginosus</i><br/> <i>Pandion haliaetus</i><br/> <i>Accipiter striatus</i><br/> <i>Accipiter cooperii</i><br/> <i>Accipiter gentilis</i><br/> <i>Buteo lineatus</i><br/> <i>Rynchops niger</i><br/> <i>Chordeiles minor</i><br/> <i>Caprimulgus vociferus</i><br/> <i>Melanerpes erythrocephalus</i><br/> <i>Eremophila alpestris</i><br/> <i>Catharus bicknelli</i><br/> <i>Vermivora chrysoptera</i><br/> <i>Dendroica cerulea</i><br/> <i>Icteria virens</i><br/> <i>Pooecetes gramineus</i><br/> <i>Ammodramus savannarum</i><br/> <i>Ammodramus maritimus</i></p> <p><i>Myotis leibii</i><br/> <i>Sylvilagus transitionalis</i><br/> <i>Phocoena phocoena</i></p> |

Here are the excerpts of the state laws referred to in this chapter that are most relevant to NWCOs. This is the way the laws actually read. Please note: Accurate at time of printing but readers should check for amendments and new laws and regulations.

## **Environmental Conservation Law**

The statutory authority for the nuisance wildlife control license is ECL 11-0524 and 6 NYCRR Part 175. Here are the most relevant sections of the ECL.

### **S 11-0524. Nuisance wildlife control operators.**

1. No person shall charge a fee to take, possess, transport or release wildlife whenever it becomes a nuisance pursuant to section 11-0505, 11-0507, 11-0521, or 11-0523 of this title unless such person has been issued a nuisance wildlife control operator license by the department.

2. No person shall be issued a license by the department under this section unless he or she provides evidence satisfactory to the department, that he or she has completed nuisance wildlife control training. In addition to any other requirements of the department, such training shall include training in site evaluation, methods of resolving common nuisance wildlife problems, including but not limited to, non-lethal methods; exclusion methods; habitat modification; and capture and handling techniques.

3. The department may issue a revocable nuisance wildlife control operator license and adopt regulations concerning the qualifications for such license and the terms and conditions of such license provided, however, that any such regulations, terms and conditions include training requirements consistent with subdivision two of this section.

4. The fee for a nuisance wildlife control operator license shall be fifty dollars paid annually to be deposited in the conservation fund established pursuant to section eighty-three of the state finance law.

5. Any person licensed pursuant to this section shall submit annually a report to the department which specifies each client's name and address, the date work was performed, the species controlled, the abatement method used, the disposition of the animal, and any other information as required by the department. The department shall annually update a list of nuisance wildlife control operators and make it available to the public in both printed and electronic formats.

### **S 11-0521. Destructive wildlife; taking pursuant to permit.**

1. The department may direct any environmental conservation officer, or issue a permit to any person, to take any wildlife at any time whenever it becomes a nuisance, destructive to public or private property or a threat to public health or welfare, provided, however, that where such wildlife is a bear, no such permit shall be issued except upon proof of damage to such property or threat to public health or safety presented to the department. Upon presentation of such proof, the department may issue a permit authorizing the use of trained tracking dogs pursuant to section 11-0928 of this article, and, if the department has determined that no other alternative is feasible, a separate permit to take the bear. Wildlife so taken shall be disposed of as the department may direct.

2. The department may, by permit issued to a landowner, permit such landowner, and any person he may designate in writing as his agent, to take beaver on lands owned by the permittee, during any specified period, in any specified number, and by any specified means, notwithstanding the provision contained in paragraph d of subdivision 3 of section 11-0901 or any other provision of the Fish and Wildlife Law. Beaver so taken shall be disposed of as the department may direct.

3. Nothing in this section shall be construed as requiring or obligating the department to issue a permit to take wildlife or to direct the taking of any wildlife when in its opinion the nuisance, destruction of property or threat to public health and welfare will not be effectively abated thereby.

### **S 11-0523. Destructive or menacing wildlife; taking without permit.**

1. Owners and lessees and members of their immediate families actually occupying or cultivating lands, and persons authorized in writing and actually employed by them in cultivating such lands, may take (a) unprotected wildlife other than birds and (b) starlings, common crows and, subject to section 11-0513, pigeons, when such wildlife is injuring their property or has become a nuisance thereon. Such taking may be done in any manner, notwithstanding any provision of the Fish and Wildlife Law, except section 11-0513, or the Penal Law or any other law.

2. Any bear killing or worrying livestock on land occupied or cultivated, or destroying an apiary thereon, may be taken or killed, at any time, by shooting or device to entrap or entice on such land, by the owner,

lessee or occupant thereof, or any member of the owner's, lessee's or occupant's immediate family or by any person employed by such owner, lessee or occupant. The owner or occupant of such lands shall promptly notify the nearest environmental conservation officer and deliver to such officer the carcass of any bear killed pursuant to this subdivision. The environmental conservation officer shall dispose of the carcass as the department may direct.

3. Red-winged blackbirds, common grackles and cowbirds destroying any crop may be killed during the months of June, July, August, September and October by the owner of the crop or property on which it is growing or by any person in his employ.

4. Varying hares, cottontail rabbits and European hares which are injuring property on occupied farms or lands may be taken thereon, at any time, in any manner, except by the use of ferrets, fitch-ferrets, or fitch by the owners or occupants of such farms or lands or by a person authorized in writing by them and actually employed by them in cultivating such farm lands.

5. Skunks injuring property or which have become a nuisance may be taken at any time in any manner.

6. Raccoons, coyotes or fox injuring private property may be taken by the owner, occupant or lessee thereof, or an employee or family member of such owner, occupant or lessee, at any time in any manner.

7. Whenever black, grey and fox squirrels, opossums or weasels are injuring property on occupied farms or lands or dwellings, they may be taken at any time in any manner, by the owners or occupants thereof or by a person authorized in writing by such owner or occupant.

8. No license or permit from the department is required for any taking authorized by this section.

9. Varying hares, cottontail rabbits, skunks, black, grey and fox squirrels, raccoons, opossums or weasels taken pursuant to this section in the closed season or in a manner not permitted by section 11-0901 shall be immediately buried or cremated. No person shall possess or traffic in such skunks or raccoons or the pelts thereof or in such varying hares or cottontail rabbits or the flesh thereof.

**S 11-0511. Possession and transportation of wildlife.**

No person shall, except under a license or permit first obtained from the department containing the prominent warning notice specified in subdivision nine of section 11-0917 of this article, possess, transport or cause to be transported, imported or exported any live

wolf, wolfdog, coyote, coydog, fox, skunk, venomous reptile or raccoon, endangered species designated pursuant to section 11-0535 hereof, species named in section 11-0536 or other species of native or non-native live wildlife or fish where the department finds that possession, transportation, importation or exportation of such species of wildlife or fish would present a danger to the health or welfare of the people of the state, an individual resident or indigenous fish or wildlife population. Environmental conservation officers, forest rangers and members of the state police may seize every such animal possessed without such license or permit. No action for damages shall lie for such seizure, and disposition of seized animals shall be at the discretion of the department.

**S 11-0513. Pigeons.**

1. No person shall at any time, by any means or in any manner capture, kill or attempt to capture or kill any Antwerp or homing pigeon, wearing a ring or seamless leg band with its registered number stamped thereon; nor shall any person remove such mark. No person except the lawful owner shall detain, possess, or transport Antwerp or homing pigeons wearing a ring or seamless leg band with the registered number thereon.

2. Notwithstanding any other law to the contrary, the local legislative body of any city, town or village, or in the city of New York the Department of Health may take or issue a permit to any person to take pigeons at any time and in any humane manner in such municipality, whenever such body or administration finds that pigeons within such municipality are or may become a menace to public health or a public nuisance; provided, however, that no pigeon may be taken in a manner which will endanger other animal life, persons or property.

**S 11-0505. Interference with fish and wildlife.**

1. a. Except as permitted by the department, no person shall obstruct the passage of fish in any stream or river by a screen or otherwise. The department may order such obstruction removed by the person erecting the same or by the owner of the land on which it is located. A copy of the order shall be served on such person or owner and failure to comply with its terms within ten days after service thereof shall be deemed a violation of this subdivision. This subdivision shall not apply to dams heretofore or hereafter erected.

b. Flumes or raceways in streams stocked with fish by the state shall be screened as the department may direct.

2. No person shall:

a. hold back or divert water in any stream which supplies a state hatchery so as to prevent the flow of sufficient water for hatchery purposes, or

b. take fish from the waters of any state hatchery operated by the department, except under the authority of the department.

3. No deer or bear traps shall be made, set or used upon land inhabited by deer or bear. No salt lick shall be made, set or used upon land inhabited by deer or bear, except that the department may do so on state wildlife refuges and wildlife management areas.

4. No person shall use any device which prevents frogs from having free access to and egress from water.

5. No person shall rob or wilfully destroy a nest of any protected birds unless a permit shall first be obtained from the department.

6. Except as permitted by the department, no person shall at any time disturb a beaver dam, house or den or a muskrat house or den or any structure constructed by a muskrat in which it can take shelter.

7. No person shall at any time disturb a nest box or any structure constructed for the purpose of harboring wild birds whether or not such structure is inhabited by wild birds, except for annual maintenance of such structure or when deemed necessary by the owner of the property whereupon such structure is located.

8. No person shall place, give, expose, deposit, distribute or scatter any substance with the intent to attract or entice deer to feed within three hundred feet of a public highway. Normal agricultural practice of planting, cultivating or harvesting and the feeding of deer held captive for agricultural purposes or the feeding of deer held captive in zoos and wildlife parks shall not be considered attracting or enticing deer to feed for the purposes of this section.

#### **S 11-0507. Liberation of fish, shellfish and wildlife.**

1. Fish or fish eggs shall not be placed in any waters of the state unless a permit is first obtained from the department; but no permit shall be required to place fish or fish eggs in an aquarium.

2. No person shall liberate or import or cause to be imported for the purpose of liberation within the state any European hare (*Lepus europaeus*), European or San Juan rabbit (*Oryctolagus cuniculus*), Texas or jack rabbit (*Lepus californicus*), gray fox (*Urocyon cinereoargenteus*), including captive bred gray fox, red fox (*Vulpes vulpes*), including captive bred red fox or nutria (*Myocastor coypus*), whether taken from within or without the state. Nutria may

be imported only by permit of the department for scientific, exhibition or for breeding purposes.

3. No person shall willfully liberate within the state any wildlife except under permit from the department. The department may issue such permit in its discretion, fix the terms thereof and revoke it at pleasure. These provisions do not apply to migratory game birds, importation of which is governed by regulation of the department.

4. No person shall intentionally liberate zebra mussels (*Dreissena polymorpha*) into any waters of the state. No person shall buy, sell, or offer to buy or sell, or intentionally possess or transport zebra mussels except under a license or permit issued pursuant to section 11-0515. Zebra mussels, except those lawfully held pursuant to a license or permit, may be destroyed by any person at any time.

#### **S 11-0525. Control of rabies in wildlife**

1. Whenever the disease rabies occurs in any area of the state and the infection of wild foxes or other wildlife populations is certified to exist therein by the joint determination of the Departments of Health, Agriculture and Markets and Environmental Conservation, and certification is made to the Commissioner of Environmental Conservation by the Commissioners of Health and of Agriculture and Markets that the health and welfare of the human population or the health and welfare of domestic livestock are in danger therefrom, the department is thereupon authorized and directed to undertake through the use of professional trappers or by other means such fox control or wildlife control measures in the certified area as in its judgment will eliminate, reduce or confine the disease.

2. Such control measures shall be continued until the Commissioners of Health, Agriculture and Markets and Environmental Conservation shall jointly determine that control measures should be terminated.

3. Necessary expenses for such control work shall be financed by moneys made available by appropriation or otherwise to the department out of moneys in the state treasury, in the general fund, to the credit of the state purpose fund not otherwise appropriated.

#### **S 11-1101. Prohibitions.**

1. Except as provided in title 5 or in sections 11-1901 or 11-1903, no wild bird shall be trapped, netted or snared, or if so taken, possessed.

2. Traps shall not be set for the taking of any protected wildlife except (a) in an open season as

provided in section 11-1103 for taking the species for which the trap is set; or (b) in accordance with a license or permit issued by the department pursuant to title 5; or (c) as provided in title 5 or title 19 with respect to rabies control and predatory, destructive or menacing wildlife; or (d) on a registered muskrat marsh as provided in section 11-1109. Protected wildlife taken or captured in a trap shall not be killed or possessed while captive unless it is a species of wildlife for which the trap was or might lawfully have been set at the time of capture.

3. In waters of the Southern Zone, as so defined, from December 5 through January 31, no person shall set, place or maintain a trap of any kind except (a) spring hole trap sets for the purpose of taking fox, or (b) water sets during any open season established for the taking of muskrat, otter and beaver, or (c) traps set on a registered muskrat marsh pursuant to permit, issued as provided in section 11-1109.

4. On the opening day of an open season for trapping, no person shall stake, set or place any trap or deadfall for the purpose of taking the species of game for which such open season is established or fixed, in the area for which such open season is established or fixed, before 7:00 A.M.

5. Except as provided in subdivision 1 or 2 of section 11-0523 with respect to destructive and menacing wildlife, no person shall (a) set or use a trap of the leg-gripping type having teeth in the jaws; (b) set a trap so that wildlife when caught is suspended; (c) use, locate or set a snare or a device consisting of a noose of any material whereby an animal may be taken.

6. a. No person shall set or use a trap of the leg-gripping type (a) having a spread of jaws exceeding  $7\frac{1}{4}$ " measured at right angles to the axis upon which the jaws operate and excluding the gripping surface of each jaw, when used under water during the open season for trapping beaver or otter, or (b) in any other case, except as provided in title 5 or in section 11-1109, having a spread of jaws exceeding  $5\frac{3}{4}$ " as so measured.

b. No person shall set or use a body gripping type trap with a dimension of more than  $7\frac{1}{2}$  inches except:

(a) when used in water during the open season for trapping beaver and otter; or

(b) as further permitted by the department by regulation.

c. Traps of the leg-gripping type having a spread of jaws exceeding 4" measured as described in paragraph a of this subdivision, when set on land (excluding traps originally set in water) (a) shall be covered at the time

the trap is set or visited; if the trap becomes uncovered after it is set the covering shall be replaced at the time the trap is visited; coverings shall include but not be limited to soil, sand, leaves, needles, other plant materials, and other substances as permitted by department regulation; such substances shall completely cover the jaws of the trap, and (b) shall be equipped with a pan tensioning device which shall include but not be limited to a bolt and nut, notches grooved in the pan and dog or lever, sheer pins, a spring under the pan or strip of band steel, or other devices or modifications as permitted by regulation of the department.

The dimension of the body gripping trap shall be ascertained when the trap is set in the extreme cocked position and shall be the maximum distance between pairs of contacting body gripping surfaces except for rectangular devices which shall be the maximum perpendicular distance between pairs of contacting body gripping surfaces.

7. Except as provided in section 11-1109, (a) no person shall take muskrat by the use of a box, wire or cage trap, except that they may be taken in such a trap of a construction incapable of taking any species of wildlife until wildlife previously taken therein has been released; (b) except as otherwise permitted by department regulation, no person shall set, stake or use a trap within a distance of five feet from a muskrat den or house or any structure constructed by a muskrat in which it can take shelter; (c) smoke, chemicals, gas or poison shall not be used on or near any trap used to take beaver, otter, fisher, bobcat, coyote, fox, mink, raccoon, muskrat or skunk.

8. Except as permitted by the department, no person shall set, stake or use a trap within a distance of fifteen feet from a beaver dam, den or house.

9. No person shall take, possess or remove from any legally set trap any lawfully trapped wildlife or shall wilfully disturb, destroy, take or possess, any legally set trap, without the permission of the owner of such trap.

10. Traps shall not be set or placed on a public highway.

11. Beaver, fisher and otter shall be taken only as permitted by the department.

12. No person shall trap wildlife within one hundred feet of a dwelling, school building, school playground or church without the written consent of the owner or lessee of the property where the trap is set.

**S 11-1105. Procedure.**

1. Traps set for taking wildlife shall bear the name and residence address of the operator legibly at all times. They shall be visited once in each twenty-four hours, except in the Northern Zone where they shall be visited once in each forty-eight hours or a shorter interval of no less than twenty-four hours as the department may, by regulation, require, and all wildlife held captive shall immediately be removed from the traps.

2. Wildlife lawfully taken alive in traps may be killed in any manner, except that where the taking is pursuant to a permit or special license, it may not be killed in violation of any term of such permit or license.

**S 11-0917. Possession, transportation and sale of wild game and other wildlife.**

1. Wild game and other wildlife, taken in this state, and parts thereof, may, if lawfully taken, be

a. possessed.  
b. transported within the state and from within to without the state, and  
c. bought and sold, as provided in this section and in the sections of the Fish and Wildlife Law and regulations of the department to which this section refers, and not otherwise. It shall not be possessed, transported, bought or sold unless lawfully taken, nor transported, bought or sold unless lawfully possessed. Nothing in this section applies to any game which is not wild game, as defined in subdivision 2 of section 11-0103.

2. Unprotected wildlife may be possessed, transported, bought and sold without restriction except as provided in subdivision 9 or subdivision 10.

3. Game for propagation purposes may be transported without restriction except as provided in subdivision 8 or subdivision 10.

4. The carcasses, flesh, head, hide, feet or fur of wildlife, except birds, may be bought and sold without restriction, except as provided in subdivisions 8, 9 or 10. The head, skin plumage, hide, feet or fur of wildlife may be possessed and transported without restriction except (a) as provided in section 11-0911 with respect to deer, (b) as provided in subdivision 9 with respect to birds, and (c) as provided in subdivision 8 or subdivision 10.

5. Game taken and possessed in one part of the state may be transported as provided in this section by the taker, or any person who acquires it lawfully from the taker, and possessed by the taker or by such person in any part of the state for the period during which it

may be possessed at the place where taken.

6. Skunk, bobcat, mink, raccoon and muskrat may be bought and sold alive during their respective open seasons.

8. Migratory game birds and beaver, fisher, otter, bobcat, coyote, fox, raccoon, skunk, muskrat and mink shall be possessed, transported and disposed of only as permitted by regulation of the department.

9. a. The flesh of cottontail rabbits, varying hares, European hares, squirrels, bear and deer shall not be bought or sold, except as provided in section 11-1713 with respect to bear.

b. Notwithstanding paragraph a of this subdivision, game legally taken may be possessed, prepared and served by a non-profit organization at any meeting for the members and guests provided that there is no charge for the meal.

c. Game legally taken may be donated to, and possessed, prepared and distributed by a charitable or not-for-profit organization which serves or distributes food without cost to the poor or needy. Game or packages of game donated pursuant to this paragraph shall, notwithstanding the requirements for tagging and labelling of game contained in paragraph b of subdivision 5 of section 11-0911 of this chapter, be tagged, labelled or marked "not for sale" and such tag, label or marking shall identify the type of meat, the license number of the taker, the name and address of the professional processor of the game and the date of processing. The department shall make available instructions for the safe and sanitary preparation of game, a list of professional processors where potential donors may take their game for preparation and packaging and a list of charitable or not-for-profit organizations which accept donations of game. Professional processors, charitable and not-for-profit organizations may notify the department of their intention to participate in such distribution, and the department shall include them in its lists unless good cause otherwise exists.

d. The dead bodies of birds belonging to all species or subspecies native to this state, defined in section 11-0103, subdivision 5 as protected wild birds, or belonging to any family of which any species or subspecies is native to this state, and is so defined in section 11-0103, subdivision 5 shall not be sold, offered for sale or possessed for sale, for food purposes.

e. The plumage, skin or body of any wild bird shall not be sold, possessed for sale or offered for sale except as permitted by section 11-1729 or 11-1731 of the Fish and Wildlife Law.

f. No live wolf, coyote, coydog, fox, skunk, venomous reptile or raccoon shall be possessed or transported, except under a license or permit issued by the department. Every such license or permit shall contain a prominent notice thereon warning the licensee or permittee of his or her duty to exercise due care in safeguarding the public from attack by such wild animal or venomous reptile and that failure to do so is a crime under section three hundred seventy of the agriculture and markets law. The provisions of the opening paragraph of section three hundred seventy of the agriculture and markets law except the last sentence thereof shall be set forth on such license or permit immediately following such warning notice.

10. No wildlife shall be possessed, transported or sold contrary to the terms of any statute, or regulation, permit or license of the department, pursuant to which it was taken or acquired.

### **S 11-0103. Definitions.**

As used in the Fish and Wildlife Law:

2. "Game" is classified as (a) game birds; (b) big game; (c) small game.

a. "Game birds" are classified as (1) migratory game birds and (2) upland game birds.

(1) "Migratory game birds" means the Anatidae or waterfowl, commonly known as geese, brant, swans and river and sea ducks; the Rallidae, commonly known as rails, American coots, mud hens and gallinules; the Limicolae or shorebirds, commonly known as woodcock, snipe, plover, surfbirds, sandpipers, tattlers and curlews; the Corvidae, commonly known as jays, crows and magpies.

(2) "Upland game birds" (Gallinae) means wild turkeys, grouse, pheasant, Hungarian or European gray-legged partridge and quail. Grouse means ruffed grouse and every member of the grouse family. Pheasant means the ring-necked, dark-necked and mutant pheasants and all species and subspecies of the genus Phasianus representing the true or game pheasants.

b. "Big game" means deer, bear, moose, elk, except captive bred and raised North American elk (*Cervus elaphus*), caribou and antelope.

c. "Small game" means black, gray and fox squirrels, European hares, varying hares, cottontail rabbits, frogs, land turtles, box and wood turtles and the bog turtle (*Clemmys muhlenbergi*), coyotes, red fox (*Vulpes vulpes*) and gray fox (*Urocyon cinereoargenteus*) except captive bred red fox or gray fox, raccoon, opossum, or weasel, skunk, bobcat, lynx, muskrat, mink, except mink born in captivity,

fisher, otter, beaver, sable and marten but does not include coydogs.

3. "Wild game" means all game, except (a) domestic game bird and domestic game animal as defined in subdivision 4; (b) carcasses of foreign game as defined in section 11-1717, imported from outside the United States and tagged as provided in section 11-1721; (c) game propagated or kept alive in captivity as provided in section 11-1907; (d) game imported alive pursuant to license of the department, or artificially propagated, until such game is liberated; and (e) game so imported or propagated when liberated for the purpose of a field trial and taken during the field trial for which it was liberated.

4. a. "Domestic game bird" means ducks, geese, brant, swans, pheasants, quail, wild turkey, ruffed grouse, Chukar partridge and Hungarian or European gray-legged partridge, propagated under a domestic game bird breeder's license pursuant to section 11-1901 or a shooting preserve license pursuant to section 11-1903, or propagated on a preserve or island outside the state under a law similar in principle to title 19 of this article.

b. "Domestic game animal" means white-tailed deer propagated under a domestic game animal breeder's license pursuant to section 11-1905 or propagated on a preserve or island outside the state under a law similar in principle to title 19 of this article.

c. To qualify as such domestic game bird or domestic game animal, (1) live game must be held in private ownership, on such licensed premises, and in the case of deer must be held on a preserve which is fenced, or is an island, as provided in section 11-1905, or must be held in confinement in course of transportation, and (2) the carcasses or flesh of such game coming from outside the state must originate on premises operated by the holder of a domestic game certificate as provided in section 11-1715.

5. a. "Unprotected wild birds" means the English sparrow and starling, and also includes pigeons and psittacine birds existing in a wild state, not domesticated.

b. "Protected birds" means all wild birds except those named in paragraph a of this subdivision.

6. a. "Wildlife" means wild game and all other animal life existing in a wild state, except fish, shellfish and crustacea.

b. "Wild bird" means birds which are "wildlife".

c. "Protected wildlife" means wild game, protected wild birds and endangered species of wildlife designated by the department pursuant to section 11-0535 hereof or species listed in section three hundred fifty-eight-a of the agriculture and markets law.

d. "Unprotected wildlife" means all wildlife which is not "protected wildlife".

7. "Protected insect" means any insect with respect to the taking of which restrictions are imposed by the Fish and Wildlife Law or regulations of the department pursuant thereto.

8. "Plumage" is defined in section 11-1729.

9. "Shellfish" means oysters, scallops, and all kinds of clams and mussels.

10. "Hunting" means pursuing, shooting, killing or capturing (other than trapping as defined in subdivision 11) wildlife, except wildlife which has been lawfully trapped or otherwise reduced to possession, and includes all lesser acts such as disturbing, harrying or worrying, whether they result in taking or not, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife.

11. "Trapping" means taking, killing and capturing wildlife with traps, deadfalls and other devices commonly used to take wildlife, and the shooting or killing of wildlife lawfully trapped, and includes all lesser acts such as placing, setting or staking such traps, deadfalls and other devices whether they result in taking or not, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife with traps, deadfalls or other devices.

12. a. "Fishing" means the taking, killing, netting, capturing or withdrawal of fish from the waters of the state by any means, including every attempt to take and every act of assistance to any other person in taking or attempting to take fish.

b. "Angling" means taking fish by hook and line. It includes bait and fly fishing, casting, trolling and also includes the use of landing nets in completing the catch of fish taken by hook and line. To constitute "angling" the taking must be in accordance with the following requirements: (1) the operator must be present and in immediate attendance when lines are in the water; (2) one person may operate not more than two lines, with or without rod; (3) each line shall have not exceeding fifteen single hooks, or seven double hooks, or five triple hooks, or any combination of such hooks, provided the total number of hook points thereof does not exceed fifteen. Angling does not include snatching or hooking or the use of tip-ups.

c. "Hooking" or "snatching" means taking fish not attracted to by bait or artificial lure, by snatching with hooks, gangs or similar devices, whether or not baited.

d. "Net" means a non-metallic fabric wrought or woven into meshes and includes the types known as seine, gill, pound, trap, scap, fyke, dip, scoop and stake net.

e. "Spear" means a hand-propelled single or multiple pronged pike, blade or harpoon, and does not include the mechanically propelled device commonly called a spear gun or underwater gun.

13. "Taking" and "take" include pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting fish, wildlife, game, shellfish, crustacea and protected insects, and all lesser acts such as disturbing, harrying or worrying, or placing, setting, drawing or using any net or other device commonly used to take any such animal. Whenever any provision of the Fish and Wildlife Law permits "taking", the taking permitted is a taking by lawful means and in a lawful manner.

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## **New York State Sanitary Code - Chapter 1, Title 10 (Health)**

Part 2 - Section 2.14 Reporting of suspected rabid animals and persons exposed to them.

\*\*\*Action to be taken by health authority.

(a) Definitions:

1. Health care provider shall mean any person or facility which gives primary or secondary medical care to humans.

2. Exposure shall mean introduction of the rabies virus into the body of a human or animal. Any penetration by mouth to the skin of humans or animals constitutes a bite exposure. A nonbite exposure is a scratch, abrasion, open wound, or contamination of mucous membranes with saliva or other potentially infectious material from a rabid animal.

3. Domestic livestock shall mean sheep, horses, cattle, goats and swine.

4. Current vaccination shall mean the administration of a rabies vaccine suitable to the species, which meets the standards prescribed by the United States Department of Agriculture for interstate sale and is administered according to the manufacturer's instructions under the direction of a duly licensed veterinarian not later than the expiration date on the package. Current vaccination shall begin 14 days following primary vaccination, and continue for the period stated in the manufacturer's instructions.

5. Approved vaccine shall mean any rabies vaccine which meets the standards prescribed by the United States Department of Agriculture for interstate sale.

(b) It shall be the duty of every health care provider to report immediately to the local health authority having jurisdiction the full name, age, address and telephone number of any person under his care or observation who has been exposed to any animal suspected by the health care provider of having rabies and all pertinent facts relating to such exposure. Such notification shall occur prior to starting rabies postexposure prophylaxis, except in those cases where prior notification would compromise the health of the patient.

(c) If no health care provider is in attendance and the person exposed is a child, it shall be the duty of the parent or guardian to make such report immediately. If the person exposed is an adult, such person shall himself make the report, or, if incapacitated, it shall be made by whomever is caring for such person.

(d) It shall be the duty of every health care provider who has cause to believe that contact has occurred with a rabid animal or animal suspected of being rabid by the health care provider which requires rabies prophylaxis subsequent to the exposure to report the initiation of such prophylaxis and all pertinent facts relating to any such bite, exposure or treatment to the local health authority.

(e) It shall be the duty of every person having knowledge of the existence of an animal exhibiting clinical signs suggestive of rabies to report immediately to the local health authority the existence of such animal, the place where seen, the owner's name, if known, and the signs of infection suggesting rabies.

(f) Whenever, in accordance with this section, the local health authority is notified of a person who has been exposed to any dog, cat, ferret or domestic livestock, vaccinated or not, the local health authority may cause the animal to be confined for 10 days. Any costs associated with this confinement shall be an expense of the animal's owner. Such health authority may, subject to the approval of the owner, if known, cause the animal to be destroyed immediately and have the animal's head submitted to a laboratory approved by the State Commissioner of Health for examination. The dog, cat, ferret or domestic livestock whose

ownership cannot be determined may be confined for 10 days, under the direction of the local health authority. Any costs associated with this confinement shall be an expense of the party seeking this confinement. Confinement of the animal, in any case, shall be subject to such conditions and instructions, and under the control of such persons, including the owner if ascertainable, that the local health authority determines will reasonably assure the continued confinement of the animal for the prescribed 10-day period. Should the confined animal develop signs of rabies within the 10-day period, it shall be destroyed under the direction of the local health authority and submitted to a laboratory approved by the State Commissioner of Health for examination. In the case of a dog, cat, ferret or domestic livestock whose ownership cannot be determined, if confinement is not possible or desirable, the animal may be destroyed immediately and an appropriate specimen shall be submitted to a laboratory approved by the State Commissioner of Health for examination.

(1) Bats and any animal other than a dog, cat, ferret or domestic livestock suspected of being rabid shall not be held for observation and shall be destroyed immediately, without injury to the head, and may be submitted upon approval of the local health authority to a laboratory approved by the State Commissioner of Health for examination.

(g) Except as hereinafter provided, any mammal which has been bitten by or in direct contact with a known rabid animal or animal suspected by the local health authority of being rabid shall be destroyed unless it shall be isolated for a period of six months either in a veterinary hospital approved by the local health authority, or in a locked enclosure approved by the local health authority as being so constructed and maintained that the animal cannot escape and cannot have contact with any other animal or human except, when absolutely necessary, with the person responsible for the care of the confined animal. Quarantine of the animal, in any case, shall be subject to such conditions and instructions, and under the control of such persons, including the owner if ascertainable, that the health authority determines will reasonably assure the continued quarantine of the animal for the prescribed six-month period. The expense of such isolation shall be borne by the owner. Any animal currently vaccinated as defined in this section, prior to exposure, may remain at large or under the owner's immediate

control as may be required by local ordinance provided a booster injection of such approved vaccine is given within five days of the date of exposure.

(h) An animal under such restrictions shall not be removed from one health district into another prior to the conclusion of the prescribed isolation period except with the permission of the health authority from whose district such animal is to be removed and the permission of the health authority to whose jurisdiction such animal is to be transferred. The former shall give permission only after securing the consent of the health authority to whose jurisdiction the animal is to be transferred, except that if removal is to be to New York City or into another state, he shall give permission only after securing the consent of the Commissioner of Health of the State of New York. Such removal shall be by private conveyance, in charge of a responsible person and conducted in such a manner as to prevent the escape of the animal or its coming in contact with other animals or persons.

(i) The local health authority shall report forthwith to the state district health office or county health office having jurisdiction the name, age and address of every person exposed to any animal suspected of having rabies, any incident which requires rabies prophylaxis and all the pertinent facts relating to any such bite, exposure or treatment.

(j) Whenever any animal that has or is suspected of having rabies dies, or is killed, the local health authority may, at his discretion, cause the head of such animal to be removed and sent immediately, properly packed, with a complete history of the case, to a laboratory approved for this purpose by the State Commissioner of Health for examination.

(k) Whenever the disease rabies is confirmed by the State Wadsworth Center for Laboratories and Research in a raccoon in any county of New York State, within 30 days of notice to the county of the confirmation, all cats residing in the county who are not then actively immunized as defined in this section must be vaccinated as outlined below. Such notice will be sent to the county's local health authority by the Commissioner of Health. Actively immunized shall mean injection of a rabies vaccine which meets the standards prescribed by the United States Department of Agriculture for interstate sale and administered according to the manufacturer's instructions under the direction of a duly licensed veterinarian. All cats in

the county, three months of age or over, are to be vaccinated to prevent rabies. This section shall not apply to cats owned by a non-resident, while passing through any town, city or village for a period not exceeding fifteen days, if entered in any exhibition at any cat show therein, and if confined and in immediate charge of the exhibitor, or to cats actually confined to the premises of incorporated societies, devoted to the care or hospital treatment of lost, strayed or homeless animals, or confined to the premises of public or private hospitals devoted to the treatment of sick animals, or confined for the purposes of research institutions, or to cats actually confined to the premises of a person, firm, or corporation actually engaged in the business of breeding or raising cats for profit and are so licensed as a class A dealer under the Federal Laboratory Animal Welfare Act, or if such vaccination would adversely affect the health of the cat as determined by a duly licensed veterinarian.

The veterinarian either administering the vaccine or responsible for supervising the vaccination shall give to the owner of the cat a signed statement. Such statement shall include the following information: name and address of the owner, date or dates of vaccination together with the type of vaccine injected and its duration of immunity, amount and manner of injection, name of manufacturer, lot number and expiration date of the vaccine. Or, if applicable, the veterinarian shall give the owner of the cat a signed statement verifying that the cat is exempt because such vaccination would adversely affect the health of the cat.

Compulsory vaccination shall remain in effect until the county presents evidence to the Commissioner that it has been one year since the last confirmed case of rabies in a terrestrial animal species.

Proof of rabies immunization must be shown by the owner to the local health authority whenever a cat bites a person. If the owner is unable to show such proof, the local health authority must follow the procedures outlined in subdivision (f) of this section. \*\*\* See Public Health Law, Sections 2140-2146; Agriculture and Markets Law, Sections 106-127. CHANGED EFFECTIVE AUGUST 30, 2000