

LCB File No. R170-01

**NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Amendment of
Regulations of the Nevada Board of Wildlife Commissioners**

The Board of Wildlife Commissioners will hold a public hearing at TBD a.m., on February 9, 2002, at address TBD, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulations that pertain to chapter 503 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment. Aerial scouting for big game mammals for the purpose of hunting is virtually prohibited on a year around basis because mountain lions, which are classified as big game mammals, have a year around hunting season. The proposed amendment of NAC 503.148 would exclude certain segments of an open mountain lion season from being considered as a "big game season" when applying and enforcing the provisions of subsection 1 of the existing regulation. Further, language describing certain flight characteristics which could be used as evidence of illegal aerial scouting would be included in the section to provide the public, prosecutors and courts with a clearer understanding of prohibited activity and to aid in prosecution. Lastly, there is a concern that legitimate, official job functions and duties which are required of state, local and federal employees, involving the use of aircraft, could be misconstrued and thus jeopardize those employees with criminal prosecution. Limited exclusionary language from the intended purpose of NAC 503.148 is being proposed.

2. The text of the proposed regulation: Attached.

3A. The estimated economic effect of the regulation on the business which it is to regulate:

- (a) Adverse effects: None.
- (b) Beneficial effects: None.
- (c) Immediate effects: None.
- (d) Long-term effects: None.

3B. The estimated economic effect of the regulation on the public which it is to regulate:

- (a) Adverse effects: None.
- (b) Beneficial effects: None.
- (c) Immediate effects: None.
- (d) Long-term effects: None.

4. The estimated cost to the agency for enforcement of the proposed regulation. \$ Cost would remain the same.

5. (a) A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates: None
- (b) The duplication or overlapping is necessary because Not applicable.
- (c) Yes. No. The proposed regulation overlaps or duplicates a federal regulation.
- (d) If "Yes," the name of the regulating federal agency is Not applicable
6. Yes. No. This regulation is required pursuant to federal law. If "Yes," the citation and description of the federal law is NA

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7. Yes. No. This regulation includes provisions which are more stringent than a federal regulation that regulates the same activity. If "Yes," the following is a summary of such provisions
 NA
8. Yes. No. The proposed regulation establishes a new fee or increases an existing fee.

Persons wishing to comment upon the proposed action of Board of Wildlife Commissioners may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Secretary, Board of Wildlife Commissioners, 1100 Valley Road, Reno, Nevada, 89512. Written submissions must be received by the Secretary, Board of Wildlife Commissioners, at least 5 days before the scheduled public hearing which is February 9, 2002. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board of Wildlife Commissioners may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at

Nevada Division of Wildlife, Headquarters 1100 Valley Road Reno, NV 89512 Nevada Division of Wildlife Western Region 380 W. "B" St. Fallon, NV 89406
 Nevada Division of Wildlife Eastern Region 1375 Mountain City Highway Elko, NV 89801
 Nevada Division of Wildlife Southern Region 4747 Vegas Dr. Las Vegas, NV 89108

and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before

adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the above locations.

Terry R. Crawforth, Secretary
Board of Wildlife Commissioners

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PROPOSED REGULATION OF THE BOARD OF WILDLIFE COMMISSIONERS COMMISSION GENERAL REGULATION 299

Authority: NRS 501.105, 501.181 & 503.010.

Notice of Intent: January , 2002.

Workshop Date: February 8, 2002.

Commission Approval: , 2002.

EXPLANATION: The first proposed change would modify the influence of mountain lion seasons on a person's ability to legally scout for big game mammals from the air. Since a mountain lion is a big game mammal, its hunting season must be considered when attempting to comply with or enforce the existing regulation. As the regulation is currently written, lawful aerial scouting for big game, for the purpose of hunting, is virtually impossible due to the 'year around' season established for the hunting of mountain lions. Unlike seasons for other big game mammals, a mountain lion season in a given unit does close once the 'harvest objective' has been reached in that unit, potentially providing an opportunity for a person to legally scout from aircraft, however this rarely occurs. Presently, legal aerial scouting may only take place in a given management unit when the mountain lion season and all other big game seasons are closed, and prior to the 48 hours before a big game season begins. If adopted, the new language would allow aerial scouting for big game mammals, for the purpose of hunting, as long as it occurred before the start of the 48-hour cutoff period preceding the opening of a hunting season for any other classification of big game, and it occurred after the close of all such big game seasons in that unit – even with an open mountain lion season in effect in that unit. It is also proposed to add language (subsection 3) which describes certain flight characteristics which could be used as evidence to substantiate illegal scouting activity – similar to regulatory language adopted by the State of Utah. Lastly, a provision is proposed (subsection 4) to ensure that employees, agents and permittees of the State, as well as employees of the federal government, are able to fly, without legal consequences or impacting their ability to use a big game tag, so long as the person is acting fully within the scope of their official duties or permitted activities as prescribed by law, regardless of the time of year – similar to language adopted by Arizona. For example, a Division big-game biologist may be required to fly in his assigned area of responsibility for the purpose of conducting a bighorn sheep survey in an area or unit during an open deer season, and where he may hold a deer tag. From the Division's standpoint the employee is flying for the purpose of determining the herd health and status of bighorn sheep, he is not flying to locate deer for his hunt. The alternatives would require the use of biologists from other areas – which incurs additional costs, or prohibiting the biologist from hunting big game in his area of responsibility. In another instance, an employee with USDA/Wildlife Services may be killing depredating coyotes from aircraft in compliance with federal and state laws. During the course of these official duties he may jump a buck from its bed and risk possible prosecution if he had a tag in that same area. He is not scouting for the purpose of hunting. Any activities which indicate deviation from 'official duties' would be investigated and handled as for the general public. Official

duties include wildlife management (e.g., wildlife survey & inventory, habitat assessment, law enforcement), wildlife depredation control, range management, livestock protection, law enforcement and public safety (search & rescue).

NOTE: Matter in *italics* is new; matter within brackets ~~⌈~~ is to be omitted.

Section 1. NAC 503.148 is hereby amended to read as follows:

503.148 1. Except as otherwise provided in ~~⌈subsection 2⌋~~ *subsections 2, 4 and 5*, a person shall not, for the purpose of hunting, locate or observe, or assist a person in locating or observing, any big game mammal in a management unit described in NAC 504.210 during the period beginning 48 hours

before a big game hunting season opens until the close of the season in that management unit with the use of:

- (a) An aircraft, including any device that is used for navigation of, or flight in, the air;
- (b) A hot air balloon or any other device that is lighter than air; or
- (c) A satellite or any other device that orbits the earth and is equipped to produce images.

2. For the purposes of complying with or enforcing the provisions of subsection 1, a mountain lion season which is open in a management unit will not be considered a big game season, within the context of the meaning of subsection 1, during the period of time which occurs prior to the 48 hours before the opening of a season established for the hunting of any other big game species in that management unit and after all seasons for all other species of big game have closed in that unit.

3. Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland, or rangeland where a big game mammal is likely to be found may be used as evidence of violating subsection 1.

4. This provisions of this section do not apply to any person who is:

- a. an employee or authorized agent of the state,*
- b. an employee of a municipal or county government of this state, or*
- c. an employee of the United States*

when acting within the scope of their official duties; or

d. holding and operating in full compliance with the authorizations and conditions of a scientific or aerial depredation permit issued by the Division.

~~2.~~ 5. The provisions of this section do not authorize any act that is prohibited by NRS 503.010.