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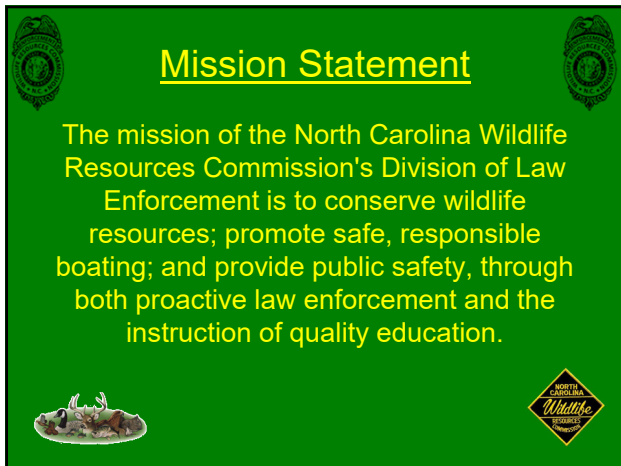
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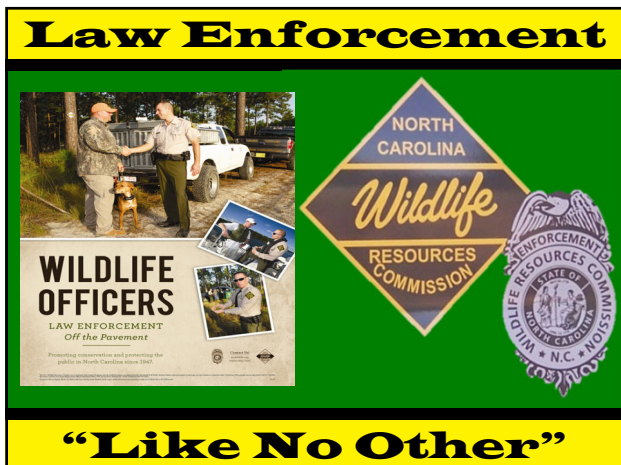
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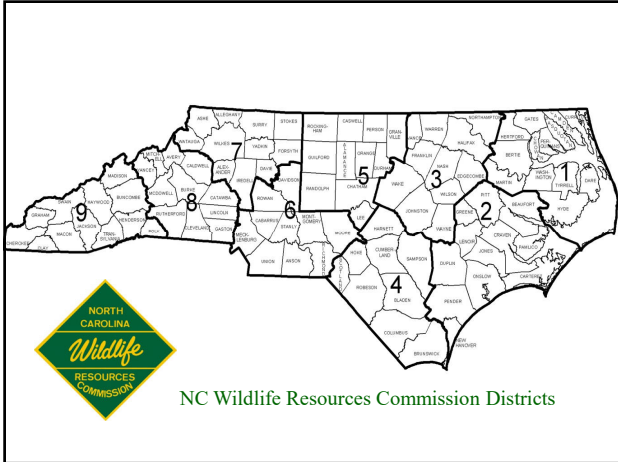
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### NC Wildlife Enforcement for 100 Counties

- 1 Colonel
- 2 Majors
- 10 Captains
  - 1 per District and 1 in the Raleigh Office
- 12 lieutenants
  - 1 per District and 3 in Raleigh Office
- 36 sergeants
  - 4 per district
- 2 pilots
- 4 Investigators
- Approximately 137 Wildlife Enforcement Officers

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### NC Justice Academy

- Basic Law Enforcement Training
- Wildlife Specific Training
- Boat Operation
- Wildlife Law
- SFST
- Seated SFST
- Intoximeter EC/IR II
- PBT

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## Our Office

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## Fish and Game Laws

- The North Carolina Wildlife Resources Commission (the Commission) is tasked with the conservation of wildlife resources. G.S. § 143-239.
- The Commission enforces fish, wildlife and boating laws and rules.
- Many enforcement actions are violations of rules promulgated by the Commission.

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## Fish and Game Laws

- Hunting, fishing and boating are highly regulated activities.
- Case law generally supports the notion that persons engaged in highly regulated activities are held to a higher level of understanding.
- Case law generally sanctions a higher level of scrutiny of these activities.
- This is key to understanding how enforcement of wildlife laws may differ from enforcement of other criminal laws.



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## Wildlife Charges

- Most are misdemeanors.
- Most are rule violations.
- Most are waivable.
- Most that do make it into court are pled out.
- Very few cases are tried, BUT
- Those that are tried are often hotly contested.



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## Prevalent Wildlife Offenses

- Fishing W/O a License – Inf. – \$35 + Costs (Resident)
- Improperly Shotgun – Class 3 - \$35 + Costs
- Take Wild Bird W Bait – Class 2 - \$250 + Costs – License Revocation
- Hunter Orange – Inf. - \$25 – No Costs



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## License Revocation Offenses

Hotly Disputed (just a few examples)

- Bait – Migratory Birds, Turkey, Bear
- Night Deer Hunting
- License Fraud
- G.S. 113-276.3:
  - All G.S. Chapter 113 class 2 misdemeanor offenses are 1 year license revocations
  - Lists specific violations with longer license revocations



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## Replacement Cost

- Monetary cost assessed to resident species of wildlife resources that have been taken, injured, removed, harmfully altered, damaged, or destroyed.
- This is in addition to fines and court cost
- Completed on Restitution Worksheet
  - Form number: AOC-CR-611



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## Replacement Cost

\*May soon be updated

### • 15A NCAC 10B .0117

### • COMMON REPLACEMENT COST:

- **ENDANGERED SPECIES= \$4960**
- **BEAR= \$2232**
- **DEER= \$602**
- **DUCK= \$41**



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Please Remember Most Folks  
Do It Right!



The vast majority of hunters and  
anglers obey the law!



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For Those Who Don't, We Bring You  
Cases...



... And Some Of Our Cases Have  
Issues!



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# Prosecution Issues



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## Prosecution Issues - Inspections

- Wildlife Officers have statutory authority to check licenses, equipment, boats, and fish and game any time they “reasonably believe” a person is engaged in a regulated activity.
- This often raises search and seizure objections based constitutional grounds that you must answer.



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## Prosecution Issues - Trespass

- Many wildlife violations arise on privately owned lands.
- This occasionally raises trespass allegations by disgruntled defendants.



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## Relevant Definitions

- Wildlife definitions are found in:
  - G.S. § 113-128
  - G.S. § 113-129
  - G.S. § 113-130
- Boating definitions are found in
  - G.S. § 75A-2
- There are many, but three are particularly important.
  - Fish
  - Hunt
  - Take



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“To Fish” - G.S. § 113-130(5)

**“To take fish”**



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“To Hunt” - G.S. § 113-130(5a)

**“To take wild animals or wild birds”**



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“To Take” - G.S. § 113-130(7)

“All operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.”



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## Implications of To Take

- It is **not** necessary for an officer to directly observe a person “**pulling the trigger**” or “**reeling in a fish**” to establish that the person was engaged in hunting or fishing.
- Hunting and fishing include acts that are “**immediately preparatory**” and “**immediately subsequent to**” the actual act of reducing to possession.
- Also includes **attempts** to reduce to possession.
- Makes hunting and fishing violations much easier to prove.



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## Inspection Authority



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## Inspection Authority

- Unique to Wildlife Officers and Marine Fisheries Inspectors
- G.S. § 113-136(f), (g) & (l).
- Often misunderstood.
- Often confused with constitutional search and seizure issues.
- Can lead to motions to suppress that **should not** be granted.



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## Inspection Authority

### G.S. § 113-136(f)

“Inspectors and protectors are authorized to stop temporarily any persons they reasonably believe to be engaging in activity regulated by their respective agencies to determine whether such activity is being conducted within the requirements of the law, including license requirements...”



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## Inspection Authority

- Allows for license, equipment, and fish/game checks.
- Allows vessel checks.
- Does not require reasonable suspicion or probable cause.
- Instead, the standard is reasonable belief that a person is or recently has been engaged in a regulated activity.
- Purpose is to determine whether the person is in compliance with the law.



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## Inspection Authority

### G.S. § 113-136(g)

“Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission...”



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## Inspection Authority

- If the person is traveling on a primary highway...
- ... probably an NC, US or Interstate highway...
- ... the standard rises to "clear evidence" that they have been engaged in a regulated activity.
- Still does not require reasonable suspicion or probable cause that a violation has occurred.



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## Clear Evidence

- Example:
  - A Wildlife Enforcement Officer Stops a vehicle on Interstate 40 with a deer carcass in clear view on the back of the vehicle.



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## Inspection Authority - Limitations

- Does not allow for forced inspections.
- If a person does not allow the inspection, the only recourse is to charge for failure to permit an inspection pursuant to G.S. § 113-136(j).
- Person may be subject to arrest for that charge rather than being cited.



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## Inspection Authority - Limitations

- G.S. § 113-136(l)  
“(l) Nothing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures.”
- This authority recognizes constitutionally protected areas.
- Does not apply to the living quarters of a vessel or the curtilage of a dwelling.



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## Inspection Authority – Case Law

- The inspection authority has been upheld by the N.C. Court of Appeals.
- State v. Pike, 139 N.C. App. 96, 532 S.E.2d 543 (2000).



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## Inspection Authority – Case Law

- Officers patrolling Badin Lake at night, stopping every vessel to conduct safety inspections.
- Stopped a pontoon boat and began a safety check without boarding the vessel
- Developed PC for boating while impaired (BWI) and arrested the operator



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## Inspection Authority – Case Law

Relying on *Schenekl v. State*, 996 S.W.2d 305 (Tex. Ct. App. 1999), the court ruled...

- There was no 4<sup>th</sup> Amendment violation even though the vessel was stopped without RS
- The government's interest in maintaining safety on the waterways substantially outweighed the defendant's reasonable expectation of privacy in his vessel



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## Open Fields and Woods

- Where officers enter onto private lands that are not a part of a dwelling or curtilage, but are instead open fields or woods, the "Open Fields Doctrine" applies.



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## Open Fields and Woods

- Searches not protected by the Fourth Amendment in open fields or woods.
- *Oliver v. United States*, 466 U.S. 170, 104 S.Ct. 1735, 80 L.Ed.2d. 214 (1984).
- Entry and evidence gathering in these areas is not a violation of the Fourth Amendment. (outside of curtilage)



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## Open Fields and Woods

- State v. Ballance, N.C. App., 720 S.E.2d. 856 (2012)
- Wildlife case involving surveillance of a bear feeding site over a period of several months.
- "... We conclude that the property in question constituted an "open field," so that the investigating officers' entry onto the property and the observations that they made while they were there did not constitute a "search" for Fourth Amendment purposes."



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## What About Trespass?

- State v. Prevett, 43 N.C.App. 259 S.E.2d 595 (1979).
  - Officers lawfully on the premises to conduct a general inquiry or investigation are not trespassers.
- State v. Ellis, 241 N.C. 702, 86 S.E.2nd 272 (1955).
  - A wildlife officer checking fishing licenses on private land pursuant to statutory authority was not trespassing.
  - The specific statute relied on has since been repealed, but it was replaced by the considerably broader inspection authority discussed previously.



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## Authority 113-136 (d)

Authorized to arrest under the terms of 15A-401(b) for...

- felonies, for breaches of the peace, for assaults upon them or in their presence,
- and for other offenses evincing a flouting of their authority as enforcement officers or constituting a threat to public peace and order which would tend to subvert the authority of the State if ignored.
- In particular, they are authorized, subject to the direction of the administrative superiors, to arrest for violations of G.S. 14-223, 14-225, 14-269, and 14-277.



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- A protector has the authority to enforce criminal laws under the following circumstances (GS 113-136 (d1)):
  - When the protector has PC to believe that a person committed a criminal offense in his presence & at the time of the violation the protector is engaged in the enforcement of laws otherwise within his jurisdiction;
  - When asked to provide temporary assistance by the head of a State or local law enforcement agency & the request is within the scope of the agency's subject matter jurisdiction.
  - While acting pursuant to this subsection, a protector shall have the same powers invested in law enforcement officers by statute or common law.



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## A Few Success Stories In N.C.



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### WILD TURKEY



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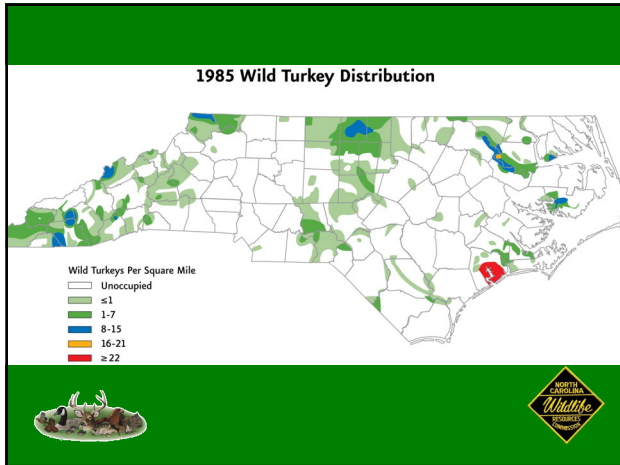
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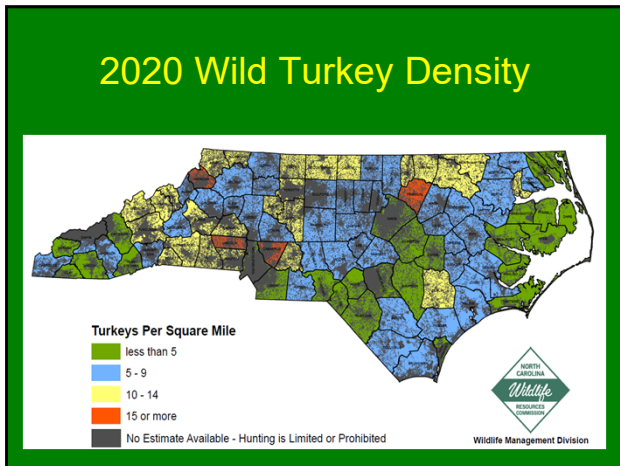
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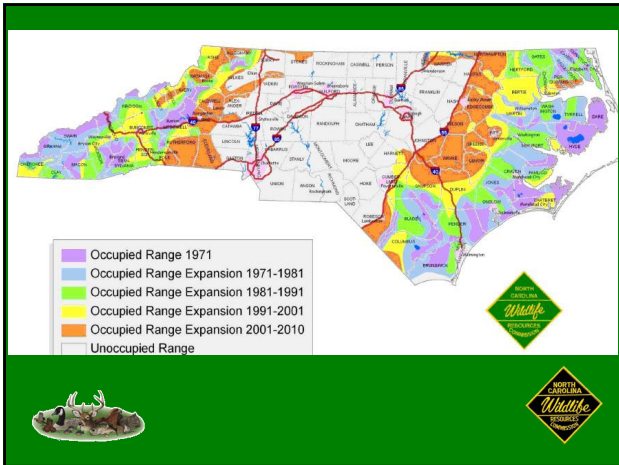
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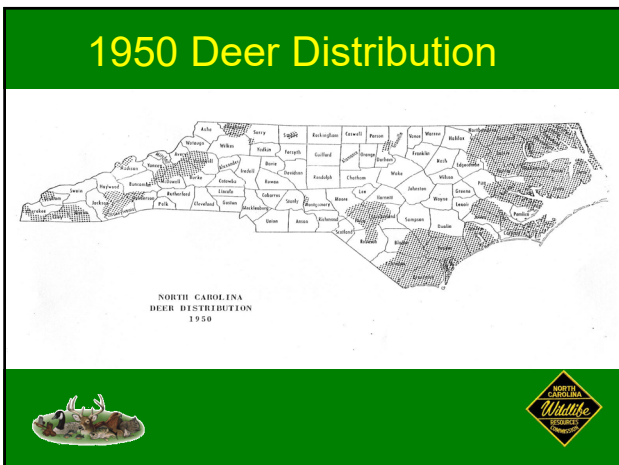
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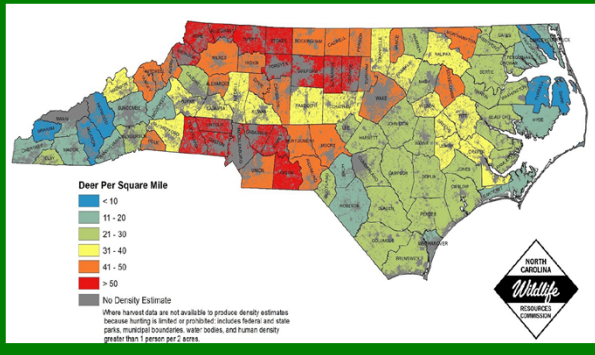
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## 2020 Deer Density



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## Boating Enforcement



GS 75A- Boating Water and Safety



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## Boating Stops

- Wildlife Officers are the primary enforcers of boating laws in State waters.
- They may use their inspection authority to do safety checks of vessels, as well as fish and game law compliance checks.
- Other officers may have jurisdiction to enforce boat laws as well.



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## Boating Stops

- All officers have a type of inspection authority that applies to vessel inspections, G.S. § 75A-17(a):
- “Every wildlife protector and every other law-enforcement officer of this State and its subdivisions shall have the authority to enforce the provisions of this Chapter and... have authority to stop any vessel subject to this Chapter. Wildlife protectors or other law enforcement officers of this State... shall have authority to board and inspect any vessel subject to this Chapter.”



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## Boating Stops

- Wildlife Officer inspection authority with respect to vessels was upheld in the Pike case.
- The 75A authority was not looked on with favor in one Federal case, Klutz v. Beam, 374 F. Supp. 1129 (W.D.N.C. 1973)
- The concern was probably cured by the limitation on their inspection authority not extending to the living quarters of a vessel. G.S. § 113-136(l)
- When the defense cites Klutz, you cite Pike.



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## Boating Equipment Violations

- Infraction - \$50.00 and no court costs



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**Boating While Impaired**



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**Driving While Impaired**  
Driving While Impaired – G.S. § 20-138.1

"(a) Offense. -- A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within this State:

(1) While under the influence of an impairing substance;

OR

(2) After having consumed sufficient alcohol that he has, at any relevant time after the driving, an alcohol concentration of 0.08 or more. The results of a chemical analysis shall be deemed sufficient evidence to prove a person's alcohol concentration..."



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**Boating While Impaired (BWI)**



G.S. § 75A-10(b1)

(b1) No person shall operate any vessel while underway on the waters of this State:

(1) While under the influence of an impairing substance,

OR

(2) After having consumed sufficient alcohol that the person has, at any relevant time after the boating, an alcohol concentration of 0.08 or more.



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## Boating While Impaired

- Elements of the two offenses are very similar.
- A case may be made by showing either:
  - Appreciable impairment
  - BAC of .08 or greater



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## Boating While Impaired

- Class 2 Misdemeanor - \$250.00 fine
- BWI does not carry any mandatory revocation of any privilege.
- Punishment is often no more than just a fine – even for repeat offenders.
- A judge *could* order no operation of a vessel as a condition of probation.



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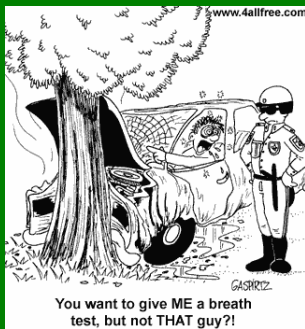
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## BWI – Chemical Testing



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## BWI – Chemical Testing

- DWI has very stringent rules for administering chemical tests of breath or blood.
- Requirement to test stems from implied consent laws.
- Defendants do have some “rights.”



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## Boating While Impaired – Chemical Testing

- Definitions of G.S. § 20-4.01 apply to BWI.
- However, there is no implied consent.
- Neither are there any statutory or regulatory “rights” connected with chemical testing.
- Finally, there are no statutory or regulatory procedures for chemical testing.



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## BWI – Prosecution Issues

- Issue may arise when the primary evidence of impairment is a chemical test.
- Chemical test procedure is not nearly as detailed as for driving while impaired charges.
- This may lead to challenges of the test results.



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## Standing Standardized Field Sobriety Test

- Horizontal Gaze Nystagmus
- Walk and Turn
- One Leg Stand

1998 San Diego Study – 91% Correct Arrest Decisions Using Three Test Battery



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## Seated SFSTs

- Horizontal Gaze Nystagmus
- Modified Finger to Nose
- Palm Pat
- Hand Coordination Test

91% correct arrest decisions using the four test battery according to the original validation study



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## Not Designed To Replace The Standing SFST Battery!!

Useful for:

- Unsuitable conditions for standing tests
- People with leg, hip or back problems
- Standing tests not validated for those more than 50 lbs. overweight or over 65 years



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## Defense Challenges?



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## Judicial Outreach Video Link

- <https://vimeo.com/40948416>

Additional resources for prosecutors and judges available at [www.nasbla.org](http://www.nasbla.org)



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## Death or serious injury by impaired boating

Found in G.S. 75A-10.3, mimics 20-141.4

- Death by Impaired Boating, Class D
- Serious Injury by Impaired Boating, Class F
- Aggravated Serious Injury by Impaired Boating, Class E
- Aggravated Death by Impaired Boating, Class D
- Repeat Death by Impaired Boating, Class B2



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**On the road, on the water  
Don't drink and drive.**



**On the road, on the water  
Don't drink and drive.**

A multi-agency initiative designed to combine law enforcement resources to ensure that everyone can safely travel on highways and waterways during the summer months.

Be a Part of the Team. Be Responsible.





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**Why Does It Matter?**





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## Why Does It Matter?



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## Why Does It Matter?



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## Why Does it Matter?



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## Why Does it Matter?



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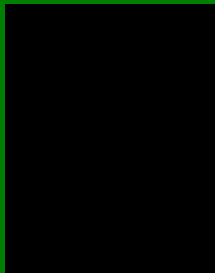
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## Why Does it Matter?



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## Please Help Us!



We can investigate...



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## Please Help Us!



And Gather Evidence...



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## But We Need You!

- Without you, the criminal justice process is not complete.
- Individually, these cases may not seem to amount to much, but collectively they can have a tremendous impact on wildlife and the environment.
- Not to mention the impact on the vast majority of hunters and anglers who do it right!



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## Thank You for What You Do!



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## Contact Information

**Lieutenant Kyle van Althuis**

District 2

(252) 639-1118

[kyle.vanalthuis@ncwildlife.org](mailto:kyle.vanalthuis@ncwildlife.org)



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