

**Arizona Game and Fish  
Commission 2011  
Five-Year-Review Report  
TITLE 12. NATURAL RESOURCES  
CHAPTER 4. GAME AND FISH COMMISSION  
ARTICLE 3. TAKING AND HANDLING OF WILDLIFE**

**Prepared for the**

**Governor's Regulatory Review Council**



**ARIZONA GAME AND FISH COMMISSION**  
**II. INTRODUCTION**

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (G.R.R.C.).

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 3, Taking and Handling of Wildlife, are scheduled to be reviewed by March 2012.

The Arizona Game and Fish Department tasked a team of employees to review the rules contained within Article 3. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff as well as comments received from the public. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

The Department anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by August 2013. However, if the current rulemaking moratorium is extended the rulemaking may be delayed.

In addition to the actions proposed in this report, the Department also proposes to amend all rules to ensure conformity with the Arizona Administrative Procedures Act and the Secretary of State's and G.R.R.C.'s rulemaking format and style requirements.

<b>Current Article 3 Structure</b>	<b>Proposed Article 3 Structure</b>
R12-4-301. Restrictions for Taking Wildlife in Maricopa County Parks	R12-4-301. Definitions
R12-4-302. Use of Tags	R12-4-302. Use of Tags
R12-4-303. Unlawful Devices and Ammunition	R12-4-303. Unlawful Devices and Ammunition
R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles	R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles
R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife	R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife
R12-4-306. Buffalo Hunt Requirements	R12-1-306. Buffalo Hunt Requirements
R12-4-307. Trapping Regulations: Licensing; Methods; Tagging of Bobcat Pelts	R12-4-307. Trapping Regulations: Licensing; Methods; Tagging of Bobcat Pelts
R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks	R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks
R12-4-309. Authorization for Use of Drugs on Wildlife	R12-4-309. Authorization for Use of Drugs on Wildlife
R12-4-310. Fishing Permits	R12-4-310. Fishing Permits
R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License While Taking Wildlife	R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License While Taking Wildlife
R12-4-312. Special Use Permits and Stamps for Fishing on Waters with Shared Jurisdiction	R12-4-312. Special Use Permits and Stamps for Fishing on Waters with Shared Jurisdiction
R12-4-313. Lawful Methods of Taking Aquatic Wildlife	R12-4-313. Lawful Methods of Taking Aquatic Wildlife
R12-4-315. Possession of Live Fish; Unattended Live Boxes and Stringers	R12-4-315. Possession of Live Fish; Unattended Live Boxes and Stringers
R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs	R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs
R12-4-317. Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles	R12-4-317. Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles
R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles	R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles
R12-4-319. Use of Aircraft to Take Wildlife	R12-4-319. Use of Aircraft to Take Wildlife
R12-4-320. Harassment of Wildlife	R12-4-320. Harassment of Wildlife
	R12-4-321. Restrictions for Taking Wildlife in City Parks, City Preserves, County Parks, and County Preserves

## **R12-4-301. RESTRICTIONS FOR TAKING WILDLIFE IN MARICOPA COUNTY PARKS**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)  
Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-234, and 17-301(D)

### **2. Objective of the rule.**

The objective of the rule is to establish restrictions for hunting in Maricopa County Parks in conjunction with the Maricopa County Park Services Department. The Maricopa County Parks and Recreation Commission and the Arizona Game and Fish Commission entered into an agreement in 1976 with the following stated objective:

“To recognize hunting, fishing and trapping as practical methods for harvesting wildlife resources and to limit restrictions on such methods of harvest to recreational facilities and other developments where people are congregated and require safety precautions.”

The agreement further specifies restrictions necessary to meet the objectives of the agreement. Because the restrictions affect the public and are more restrictive than methods commonly prescribed under R12-4-304, R12-4-313, R12-4-317, and R12-4-318, they are appropriately established within this rule as well as within the agreement. The agreement remains in effect to date without change.

### **3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the**

**authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department received the following written criticism from three individuals:

**Written Comment: December 7, 13, and 14 2007.** The way the rule reads now it appears as though falconry is not permitted on Maricopa County Parks. I am convinced that this is an oversight, given that the rule appears to have been written to add to a sense of safety for park participants. Falconry is not a sport for which human safety has been an issue of concern. For the most part when falconry is used other users of the same land are unaware of our presence. Therefore, I request that the rule be modified to state, "Raptors including hawks, falcons, eagles, and owls." There is no safety reason to disallow the use of raptors within ¼ mile of any area. Please modify to make it legal to use raptors within ¼ mile of the defined areas. Please modify the rule to allow raptor trapping in Maricopa County Parks.

**Agency Response:** The Department has a Cooperative Agreement with the Maricopa County Parks and Recreation Service (MCPRS). Under the agreement, MCPRS has the authority to place restrictions on methods of harvest where people are known to congregate. The Department contacted MCPRS regarding your request. At this time, MCPRS will continue to prohibit hunting within ¼ mile of places where people congregate as established under R12-4-301(D). MCPRS proposed to conduct an internal review of this issue and elevate their recommendations to their Commission, but did not provide a specific time-frame for completing this action.

**9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department completed the previous five-year review report. G.R.R.C. approved the report at the July 10, 2007 Council Meeting and the Department did not propose a course of action for this rule.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule simply establishes restrictions for the take of wildlife in Maricopa County Parks. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-301 by:

- Creating a new rule that provides definitions for terms used within Article 3. This is proposed to ensure compliance with Secretary of State rule formatting recommendations. Whenever an agency amends an Article, agencies are directed to transfer all definitions to the first rule within the Article. Definitions provided throughout Article 3 were transferred to R12-4-301. Definitions for “cervid” and “dip net” were added.
- Reflecting recent statutory amendments to A.R.S. §§ 13-3107 and 13-3108, which prohibits political subdivisions from enacting any ordinance or regulation limiting the lawful take of wildlife during open season established by the Game and Fish Commission.
- Renumbering the current rule to R12-4-321.
- Capitalizing “Order” in “Commission Order.”

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-301. Restrictions for Taking Wildlife in Maricopa County Parks Definitions**

- ~~A. Lands and water within the boundaries of all Maricopa County parks are open to hunting and trapping when a Commission order establishes an open season. Individuals may use only the following methods of take:~~
- ~~1. Archery hunting, when lawful for the wildlife taken under R12-4-304.~~
  - ~~2. Shotguns shooting shot, when taking small game, predatory, furbearing, and nongame animals during quail season in Lake Pleasant, White Tank Mountains, McDowell Mountain, and Estrella Mountain regional park Regional Park, subject to subsection (F).~~
- ~~B. An individual is prohibited from using rifled firearms within all Maricopa County parks except to take deer during deer seasons established by Commission order with concurrence of the Maricopa County Recreation Services Department.~~
- ~~C. An individual shall not trap within any Maricopa County park except under the provisions of A.R.S. § 17-239, or when the Maricopa County Recreation Services Department and the Arizona Game and Fish Department determine that wildlife numbers need to be reduced in a park area because of a danger to the public or other wildlife.~~
- ~~D. An individual shall not hunt within 1/4 mile of any developed picnic area, boat ramp, shooting range, golf course, or other recreational area developed for public use.~~
- ~~E. Individuals entering any Maricopa County park for the purpose of hunting shall declare their intention of hunting and pay any fees required by Maricopa County Recreation Services Department at an entry station when entering the park, if the park has an entry station in operation.~~

~~F. This rule does not authorize an individual to use a method of take that is prohibited by a city ordinance.~~

In addition to the definitions provided under A.R.S. §§ 17-101, the following definitions apply to this Article unless otherwise specified:

“Administer” means to pursue, capture, or otherwise restrain wildlife in order to apply directly a drug to wildlife by injection, inhalation, ingestion or any other means.

“Aircraft” means any contrivance used for flight in the air or any lighter-than-air contrivance.

“Body-gripping trap” means a device designed to capture an animal by gripping the animal's body.

“Cervid” means any member of the deer family, which includes caribou, elk, moose, mule deer, reindeer, wapiti, and whitetail deer.

“Confinement trap” means a device designed to capture wildlife alive and hold it without harm.

“Dip net” means any net, excluding the handle, that is no greater than three feet in the greatest dimension that is hand-held, non-motorized, and the motion of the net is caused by the physical effort of the individual.

“Drug” means any chemical substance, other than food or mineral supplements, which affects the structure or biological function of any wildlife under the jurisdiction of the state.

“Evidence of legality” means the wildlife is identifiable as the “legal wildlife” prescribed by Commission Order, which may include evidence of species, gender, antler or horn growth, maturity and size; and the wildlife is accompanied by the applicable license, tag, stamp, or permit required by law.

“Foothold trap” means a device designed to capture an animal by the leg or foot.

“Instant kill trap” means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.

“Land set” means any trap used on land rather than in water.

“Paste-type bait” means a partially liquefied substance intended for use as a lure for animals.

“Personal protection handgun” means a handgun with a barrel length of six inches or less that does not have a scope or any type of electronic sight.

“Person” means any individual, corporation, partnership, limited liability company, non-governmental organization or club, licensed animal shelter, government entity other than the Department, and any officer, employee, volunteer, member or agent of a person.

“Sight-exposed bait” means a carcass or parts of a carcass lying openly on the ground or suspended in a manner so that it can be seen from above by a bird. This does not include dried or bleached bones with no attached tissue or less than two ounces of paste-type baits or trap flags.

“Trap flag” means an attractant made from materials other than animal parts that is suspended at least three feet above the ground.

“Water set” means any trap used and anchored in water rather than on land.

**R12-4-321. Restrictions for Taking Wildlife in City Parks, City Preserves, County Parks, and County Preserves**

**A.** All city and county parks and preserves are closed to hunting, unless authorized by Commission Order.

**B.** Unless otherwise provided under Commission Order or rule, a city or county may:

1. Prohibit an individual from taking wildlife within 1/4 mile of any:
  - a. Developed picnic area,
  - b. Developed campground,
  - c. Boat ramp,
  - d. Shooting range,
  - e. Occupied structure, or
  - f. Golf course.
2. Require an individual entering a city or county park or preserve, for the purpose of hunting, to declare the individual's intent to hunt when entering the park, if the park has an entry station in operation.
3. Require any individual to pay any required fees at an entry station when entering the park, if the park has an entry station in operation.
4. Allow an individual to take wildlife in a city park only during the posted city park hours.

## R12-4-302. USE OF TAGS

### 1. General and specific statutes authorizing the rule.

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-234, 17-301, 17-309, 17-331, and 17-332(D)

### 2. Objective of the rule.

The objective of the rule is to establish requirements for the possession and use of tags issued by the Department.

### 3. Effectiveness of the rule in achieving its objective.

The rule is effective in achieving the previously stated objective.

### 4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

### 6. Agency views regarding the current wisdom of the rule.

The Department views this rule as wise and necessary to achieve the previously stated objective.

### 7. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable.

### 8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

The Department received a petition requesting an amendment to the rule:

**Petition:** December 2, 2010. The Department received a petition from Mr. James Schoppmann of Kingman, Arizona, requesting that the Commission consider and vote to revise rule R12-4-302(F) to allow the Department to issue a replacement tag to an individual who unintentionally kills wildlife and self reports the incident.

**Agency Response:** The Department recognizes that accidents or unintentional mistakes occur in the field. However, the Department does not believe that such mistakes or accidents should, in essence, be rewarded by providing an additional permit/tag to an individual. The Department already has procedures or law enforcement directives in place to lessen the severity regarding penalties for self-reported violations that occur as a result of such mistakes or accidents. The proposed amendment allows individuals to exceed the bag limit established by Commission Order for big game or other permitted species; Commission Orders are based on biological parameters. The proposed amendment has potential impact on other hunters. Using deer as an example, if the hunt success in a particular unit is 20 percent, each animal taken represents five permits issued or slightly more than five hunters in the field, depending upon participation rates. One of the Commission approved hunt guidelines for establishing permit numbers is the predicted harvest and the subsequent buck:doe ratio following the harvest. Issuing an additional permit to a hunter that has already taken a deer has the potential effect of reducing five permits for a future hunt. While one extra buck taken would probably not have a significant effect in most units, issuing extra permits after permit numbers have been set is not consistent with our game management practices. The proposed amendment may also be perceived as allowing or even encouraging careless hunter behavior, rather than discouraging or prohibiting such behavior. At the April 2011 Commission meeting, the Commission voted to deny Mr. Schoppmann's petition.

**9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 7, 2006.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes the restrictions and requirements for the possession and use of tags, authorizing an individual to take certain wildlife. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-302 by:

- Describing the current Carcass/Transportation/Shipping Permit. This is proposed to reflect changes made to the actual tag, which does not have a perforated line, making the current language inaccurate.
- Clarifying the proper use for the Transportation and Shipping Permit. This is proposed to reflect the current practice because a permit is no longer considered valid for taking wildlife when either portion of the permit is sealed, mutilated, signed, or filled out.
- Rewording rule language. This is proposed to make the rule clearer and more concise.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-302. Use of Tags**

- A. In addition to meeting the requirements ~~of~~ prescribed under A.R.S. § 17-331, an individual who takes wildlife shall have in possession any tag required for the particular season or hunt area.
- B. A tag obtained in violation of statute or rule is invalid and shall not be used to take, transport, or possess wildlife.
- C. An individual who takes wildlife shall not:
  - 1. ~~possess~~ Possess a tag issued to anyone else, except as provided ~~in this Section and~~ under R12-4-305 ~~and this Section;~~ or
  - 2. ~~attach~~ Attach to wildlife a tag issued to anyone else, except as provided ~~in~~ under R12-4-217.
- D. An individual shall not allow a tag issued to that individual to be attached to wildlife killed by anyone else, except as provided ~~in~~ under R12-4-217.
- E. An individual shall not attach a tag issued to that individual to wildlife killed by anyone else, except as provided ~~in~~ under R12-4-217.
- F. An individual shall take and tag only the wildlife identified on the tag.
- G. An individual shall use a tag only in the season and hunt area for which the tag is valid.
- H. An individual who lawfully possesses both a nonpermit-tag and a hunt permit-tag shall not take a genus or species in excess of the bag limit established by Commission Order for that genus or species.
- I. Immediately after an individual kills wildlife, ~~unless exempted under R12-4-217 or the individual who took the wildlife wishes to divide the carcass under R12-4-305,~~ the individual shall attach ~~his or her~~ a valid tag issued to that individual to the wildlife carcass in the following manner:
  - 1. Remove all of the detachable paper covering from the adhesive back of the tag;
  - 2. Seal the exposed adhesive portions of the tag around the wildlife so the tag cannot be removed or reused and all printing on the face of the tag is visible, ~~and~~ in the following manner:

- a. ~~For a~~ Around the antler or horn or through the gambrel of a hind leg for deer, elk, or antelope, ~~seal the tag around the antler or horn, or through the gambrel of a hind leg;~~
  - b. ~~For a~~ Through the gambrel of a hind leg for javelina, bighorn sheep, mountain lion, buffalo, or bear, seal the tag through the gambrel of a hind leg; and
  - c. ~~For a~~ Around the neck or a leg for turkey, sandhill crane, or pheasant, ~~seal the tag around the neck or a leg.~~
3. This subsection does not apply to an individual exempt under R12-4-217 or an individual who wishes to divide the carcass of lawfully taken wildlife as established under R12-4-305.
- ~~J.~~ An individual who lawfully takes wildlife under a tag and wishes to authorize another individual to possess, transport, or ship any portion of a carcass under R12-4-305 shall, at the time the portions are to be possessed, transported, or shipped independent from the original tag holder:
- 1. ~~Tear and separate the tag portions along the perforated line,~~
  - 2. ~~Legibly complete and sign the Carcass/Transportation/Shipping Permit portion in accordance with R12-4-305(D) and~~
  - 3. ~~Provide to the individual who will possess and transport the portions of the carcass the completed Carcass/Transportation/Shipping permit.~~
- ~~K.~~ J. An individual who possesses lawfully takes wildlife with a valid tag and wishes to authorize another individual to possess, transports transport, or ships a ship the tagged portion of the carcass or any part of parts of a carcass and is not the original tag holder shall possess the completed complete the Carcass/Transportation/Shipping permit Transportation and Shipping Permit portion issued as part of the original permit tag authorizing the take of that animal.
- ~~L.~~ K. If a tag or a separated portion of a tag has been is sealed or mutilated, or the Carcass/Transportation/Shipping permit portion Transportation and Shipping Permit portion of the tag is signed or filled out, the tag is no longer valid invalid for taking the take of wildlife.

## **R12-4-303. UNLAWFUL DEVICES, METHODS, AND AMMUNITION**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)  
Specific: A.R.S. §§ 17-102, 17-231(A)(3), and 17-309

### **2. Objective of the rule.**

The objective of the rule is to establish those devices, methods, and ammunition that are unlawful for taking of any wildlife in Arizona.

### **3. Effectiveness of the rule in achieving its objective.**

Overall, the rule is effective in achieving the previously stated objective; however, the Department believes that part of the reason the rule exists is to prohibit those devices and methods that compromise the spirit of fair chase or significantly affect hunter success rates. Hunters that use primitive weapons are using attractants such as edible food blocks to such an extent that hunter success rates have increased beyond what the Department anticipated for these types of weapons. Consequently, the Department is offering fewer tags for those individuals hunting later in the season. In order to provide hunting opportunities for all seasons, the Department proposes to amend the rule to prohibit the use of edible or ingestible substances to aid in taking big game.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

Overall the rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include 50 CFR 20.21, Title 17 and A.A.C. Title 12, Chapter 4. However, the Department proposes to amend the rule to increase consistency between the rule and R12-4-208(I) in regards to the pursuit and take of bears and lions.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

Overall, the rule is enforced as written; however, a continuing concern is the occurrence of “will-call” hunts: one hunter will corner an animal or chase an animal into a tree during open season and call another hunter who has a permit tag for the species to make the kill. R12-4-208(I) clearly states that a guide “shall not pursue any wildlife or hold at bay any wildlife for the hunter unless the hunter is present during the pursuit to take the wildlife” and further states, “the hunter shall be continuously present during the entire pursuit of the specific target animal. The Department’s Law Enforcement Program suggests adding language that mirrors the language under R12-4-208(I) and would expand these requirements to all bear and lion hunters. The review team agrees and proposes to amend the rule accordingly.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

**7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

**8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The agency received the following written criticisms:

**Written Comment: June 5, 2009.** I would like to understand the proper process in which to petition AZGFD to allow the use of 8 gauge shotguns. These guns are a part of our great hunting heritage and have not been allowed to hunt migratory birds as well as AZ does not allow their use for hunting at all. I am sure that when the change was made to the Federal Migratory rules in 1936 this seemed like a good ruling for the time. Since then, time with the advent of the auto loader shot guns, this law seems to have lost much of its intent. The modern shotguns with 3 1/2" chambers and magnum loads well out perform the vintage 8 gauge single and side by side shotguns. I realize AZ cannot impact the Federal law governing the use of 8 gauges, but AZGFD does have the ability to change our state laws. The understanding by many people is that the 8 gauge is a proverbial hand held cannon. This is simply not the case and is more of an urban legend that has been passed down through the years. The fact is that both the 12 and 10 gauge shotguns are now chambered for 3 1/2" shells. The difference between the bore diameters of an 8 gauge and a 10 gauge is only .060, and the 12 gauge is .090. Both the 12 and 10 gauge magnum loads now carry a larger amount of shot than the vintage 8 gauge. These modern loads carry a much heavier payload, at higher pressures, and at a higher velocity. I, as well as others would love to have the ability to use their vintage black powder 8 gauges to harvest a turkey, big game, or predators.

**Agency Response:** R12-4-601. Petition for Rule or Review of Practice or Policy establishes the process by which an individual may petition the Commission for a rule change; the petition form and rule may be accessed via the Department Internet website at [www.azgfd.gov](http://www.azgfd.gov). However, the Department intends to amend the rule to remove the gauge specification.

**Written Comment: May 1, 2009.** I have been a licensed hunter in AZ for the last 23 consecutive years and am submitting this in response to AZGFD request for public input into the 2009 hunt guidelines for the 2010 – 2012 hunting season structures: 1: Please read and follow AZGFD mission statement: "To conserve, enhance, and restore Arizona's diverse wildlife resources and habitats through aggressive protection and management programs..." There is nothing in there about increasing revenue or meeting budgets. Every change and decision to the regulations and hunt guidelines should be viewed through this statement to see if it supports it or not. Anything that does not conserve, enhance or restore wildlife resources needs to go. That is what mission statements are for. AZGFD has had a history of increasing elk permits regardless of biological circumstances: When winter conditions have been adverse and calf recruitment low the answer has been to increase permits to decrease the herds to the level sustainable by the decreased habitat. When winter conditions have been good and calf recruitment high the answer has been the same – increase permits to reduce the burgeoning elk population. I submit that the elk population in this state has been neither conserved nor enhanced over the past 20 years. One could conclude that proposed permit numbers have had much more to do with revenue than the condition of the elk herd. 2: Do you really want to increase the number of hunters both engaged and in the field and not just increase revenue? Stop the absurd

cost increases for tags and licenses. I support moderate fee increases commensurate with cost increases (cost of living has risen ~3-4% annually). Unfortunately, in my case the 2006 fee changes (general license, elk, deer, turkey, javalina, lion, and bear) amounted to a 44% increase. That is neither moderate nor commensurate with cost increases. While you and I may be able to afford these prices, they are rapidly becoming out of the financial reach of most blue-collar workers who, I would guess, make up the bulk of your customers. 3: In regards to proposed changes to R12-4-303 related to the prohibition of baiting for all large game. I suggest that hunting over salt licks, whether left by ranchers or intentionally placed by hunters, be allowed. I understand from talking to other hunters that there have been altercations over baiting with corn, alfalfa, feeders, etc., so I can understand where AZGFD might want to prohibit this baiting activity. I am not aware of any problems hunting over salt licks. The use of salt benefits lots of wildlife for many years after being put in place and may or may not contribute to the harvest of an animal.

**Agency Response:** 1. Elk permits are adjusted annually according to Commission approved objectives established primarily through the hunt guidelines, but also including direction on population trajectory. The hunt guidelines direct the wildlife manager to recommend increases in bull permits when bull to cow ratios or calf to cow ratios from September surveys are above biologically and socially acceptable minimum, or if bull hunt success is above objectives. Bull to cow ratios tell the wildlife manager about the relative availability of bulls, whereas calf to cow ratios can tell the wildlife manager about the expected recruitment in the bull population in subsequent years. Hunt success is a measure of catch per unit effort, and is an index to population trend. So if the population is increasing, then more bulls will be available next year and more permits may be recommended. For antlerless permits, increases in calf to cow ratios or a desire to reduce the abundance of elk in a unit, often due to social or biological considerations, increases in permit numbers may be in order for antlerless animals. Conversely, if these barometers drop below another established guideline, then permit numbers decrease for bull or antlerless permits accordingly. Your perception that the Department has continued to increase permits is inaccurate, as permits in 2011 and for 2012 have both been decreased, and a smaller proportion of antlerless permits are being offered. This decrease in antlerless permits allows for population growth in some areas. 2. The Department is supported principally on the dedicated funds generated from the sale of these items as well as other sources. Over the past five years sales of licenses, tags, stamps, and permits have steadily decreased while operational costs and Department responsibilities have increased or expanded. These costs include, but are not limited to, increasing fuel prices, rising agency expenses, employee related expenses and turnover, public recreational access issues, and outdoor and wildlife programs. The Department does not receive money from the state general fund to address these costs. In 2006, it had been twelve years since a general fee increase was implemented. When you consider the cost of living generally increases 3-4% annually, an increase of 44% over a twelve year period is not so absurd. 3. The Department does not intend to prohibit hunting over salt.

**Written Comment: August 18, 2010.** How do I request a change to the rules concerning crossbows and their usage, currently limited to disabled hunters? I myself see the crossbow as a primitive weapon with a limited range - very similar to modern compound bows. So why keep anyone that wants to use a crossbow from having the opportunity?

**Agency Response:** R12-4-601. Petition for Rule or Review of Practice or Policy establishes the process by which an individual may petition the Commission for a rule change; the petition form and rule may be accessed via the Department Internet website at [www.azgfd.gov](http://www.azgfd.gov). However, at this time, crossbows may be used during general or handgun, archery, and muzzleloader (HAM) seasons for the take of big game, small game, predators, furbearers, and nongame. A permit is only required when a person wishes to use a crossbow permit during an archery-only hunt.

**Written Comment: October 10, 2010.** Isn't it illegal to use salt, "deercaine," and apples in buckets to attract deer? You cannot tell me AZGFD is not aware of all this. It is not hunting.

**Agency Response:** The Department agrees and proposes to amend the rule to restrict the use of edible and ingestible substances for the take of big game.

*The Department received four comments regarding the use of trail cameras.*

**Written Comment: October 7, 2010.** I am 66 and my brother, age 69, drew a tag for the early archery elk hunt in GU 23 South. At our age, we are somewhat limited in our ability to get around in the mountains anymore. We had been scouting for several weeks prior to this hunt and had decided to set up a tent blind on one pond. After we had been hunting there for several days, some guys came in and tied a game camera to a tree overlooking the pond. Each time the camera took a picture, either the flash or the sound of the camera shutter caused the elk to jump, leave the area, and not return for several hours or until the next day. We taped a note to the camera asking them to please remove it as it was hindering our hunt. A couple of days later, we went back to our blind and found the blind and our chairs thrown in the pond with a note saying, "@^&%# you, have a nice sit." We did not harm their camera; however, they felt it necessary to destroy our blind. We found that there were several guides in the area and each of them had 4-5 "runners" that installed cameras and were checking them every few days, looking for big elk. Prior to the hunt we talked to a guide who said he had 20 to 25 cameras; 4 other guys were helping him check the cameras. He said didn't even have a client; he was looking for a 400 class bull elk to try to sell to the governors tag holder. I strongly feel that something needs to be done about these cameras and the way people are using them; it has gotten out of control. If someone is not a good enough hunter to find his game, that's his problem, but don't interfere with some else's hunt. I would like to purpose that all cameras be removed prior to hunting season. Also that guides not be allowed to have these "runners." These runners have nothing to lose by ruining someone's hunt and act as if no one's hunt counts except the one they are working for. I would also like to suggest that the number of cameras per guide be limited and each camera must have the guides license number engraved on it. Any other person using cameras must have the camera identified with their name or ID number like is required on steel traps. I feel that if these people realize they will be identified, this will curb a number of these situations. My ultimate desire would be to completely ban cameras starting in August, a few days prior to hunting season, and not be allowed until after all hunting seasons have closed. I have found that in some states, cameras have already been banned. With 15 tags issued for this hunt, you should not even have seen another hunter. This is the second time we have had a tag for this hunt and both times we have had run-ins with guides.

**Written Comment: November 22, 2010.** I received a call this afternoon from Chris Denham, editor of Western Hunter Magazine. He expressed a strong interest in seeing some regulation in the use of trail cameras. I've heard a number of individuals within the agency complain about the number and frequency of these cameras encountered in the field, especially at water holes. Chris specifically noted concerns about the number of times during a day when hunters that use these would disturb cattle from drinking at waters and the potential for clashes with livestock producers. Since you are on the team and I'm not, I thought I'd share his comments and concerns with you. I believe they merit some degree of consideration.

**Written Comment: November 22, 2010.** Over the last 17 years of marriage I have tried to get my wife to big game hunt. She finally drew an archery bull in unit 8. We sat water in the evenings and on the second evening of her hunt we had a nice 5 point rag horn bull come in with no cows. As my wife started to draw her bow to make the 20 yard shot out of the tree stand a large flash went off. To say the least, the bull jumped 10 feet forward and then scrambled into the forest not giving us a chance. I would like to know who I could visit with about my opinion that these cameras need to be restricted

or done away with. My wife does not talk about the hunt to our friends except for the part where the huge flash went off. Thanks for your help. Looking forward to visiting with you soon.

**Written Comment: October 23, 2010.** I have been out a lot this year and it seems that every time I go to a water hole there is a camera mounted on a tree somewhere. I don't think this is right and is going too far. When I see a camera after hunting season has started, this is not fair chase. People should have to pull them out when hunting season starts. I know it's all about money for the guides, but I live here too and my scouting time is valuable also. Maybe I should buy a camera or two, but I don't think so.

**Agency Response:** The Department does not regulate the use of trail cameras, tree stands, blinds, or first come first serve as these issues fall under the heading of hunter ethics. The Department advocates an ethic of respect in all hunters for wildlife, land, and other users of wildlife to preserve all legitimate use options, and promote responsible, shared, and balanced use of natural resources, but does not have the authority to regulate this ethic. However, some government agencies have ordinances, policies, rules, or laws in place that prohibit the abandonment of property on land owned by that specific government agency. Please contact the appropriate agency for more information. In addition, intentional interference with an individual's hunt is prohibited under A.R.S. § 17-317.

**Petition: July 27, 2009.** The Department received a petition from Mr. Phil Carr of Tucson, Arizona, requesting that the Commission consider and vote to revise rule R12-4-303(A)(3) to include 8-gauge shotguns as lawful devices. Mr. Carr contends that the modern 10 gauge shotgun out performs the 8-gauge in almost every category and therefore the 8-gauge should be a legal device. Mr. Carr asked the Commission to approve this weapon for taking all wildlife that lists shotguns as a legal method of take with the exclusion of birds protected under the Migratory Bird Treaty Act. At the October 9, 2009 Commission meeting, the Commission voted to deny Mr. Carr's petition, but directed the Department to reconsider the petition at the time of the next rule review.

**Agency Response:** The Department benchmarked other states laws and rules and determined that more than 20 states do not specify the shotgun gauge. The Department will amend the rule to remove the gauge specification.

**Petition: November 18, 2010.** The Department received a petition from the Arizona State Rifle and Pistol Association (ASRPA). ASRPA requests the Commission consider and vote to revise rule R12-4-303(A)(3) to allow individuals to possess a semiautomatic centerfire rifle with a magazine carrying more than five rounds and full jacketed ammunition. The petition states that individuals should be allowed to possess these items as they are suitable and appropriate for self-defense. At the March 2011 Commission meeting, the Commission voted to deny the Arizona State Rifle and Pistol Association's petition, with the understanding that the Department would work with the Arizona State Rifle and Pistol Association to address the issue in the next rule review.

**Agency Response:** The Department agrees with the petitioner and is amending the rule to allow an individual to possess a semiautomatic centerfire rifle with a magazine carrying more than five rounds and full jacketed ammunition designed for military use for personal protection. It continues to be unlawful to use these items for the take of wildlife.

- 9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes those devices, methods, and ammunition that are unlawful for taking any wildlife in Arizona. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-303 by:

- Allowing individuals to possess a semiautomatic centerfire rifle with a magazine capacity of more than five rounds or full-jacketed ammunition. While an individual may possess these items, it is still unlawful to use them for the take of wildlife. This is proposed to allow individuals to possess these items for the purpose of personal protection.

Prohibiting the use of electronic night vision equipment, electronically enhanced light-gathering devices, or thermal imaging devices; this does not include devices such as laser range finders, scopes with self-illuminating reticles, and fiber optic sights for the take of wildlife. This is proposed to prevent the use of this type of equipment for the take of wildlife.

- Prohibiting the use of edible or ingestible substances to attract big game for the purposes of hunting. This is proposed to proactively address concerns that baiting places substances in the wild that contain toxic contaminants and also results in concentrations of wildlife that may facilitate the transmission of diseases among wildlife.
- Prohibiting the use of scent lures containing cervid urine. This is proposed to proactively address concerns that products containing cervid urine may facilitate the transmission of diseases among wildlife. Research has been published that confirms the transmission of chronic wasting disease to deer through oral administration of feces and urine from an infected animal, and to transgenic mice through nasal instillation of prions.

- Incorporating by reference the most recent edition of 50 CFR 20.21.
- Prohibiting an individual from using dogs to pursue or hold at bay any bear or lion for another hunter unless the hunter is present for the entire pursuit. This is proposed to more closely regulate the pursuit of bears and lions with dogs and increase consistency within Department rules.
- Prohibiting individuals from placing any substance, device, or object in, on, or near a water source to intentionally restrict wildlife from using the water source. This is proposed to ensure wildlife have adequate access to water sources.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-303. Unlawful Devices, Methods, and Ammunition**

**A.** In addition to the prohibitions prescribed ~~in~~ under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking any wildlife in this state. An individual shall not use or possess any of the following while taking wildlife:

1. Fully automatic firearms, including firearms capable of selective automatic fire;
2. Tracer, or armor-piercing, ~~or full jacketed~~ ammunition designed for military use;
3. Shotguns ~~larger than 10 gauge or shotguns~~ capable of holding more than five shells in the magazine, unless plugged with a one-piece filler that cannot be removed without disassembling the gun, and that limits the magazine capacity to five shells;
4. ~~Semiautomatic centerfire rifles with a magazine capacity of more than five cartridges, unless the magazine is modified with a filler or stop that cannot be removed without disassembling the magazine;~~
- ~~5-4.~~ Contrivances designed to silence, muffle, or minimize the report of a firearm;
- ~~6-5.~~ Poisoned projectiles, or projectiles that contain explosives; ~~or~~
- ~~7-6.~~ Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted ~~in~~ under A.R.S. § 17-239, or as allowed by a scientific collecting permit issued under A.R.S. § 17-238;
7. Any lure, attractant, or cover scent containing cervid urine; or
8. Electronic night vision equipment, electronically enhanced light-gathering devices, or thermal imaging devices; this does not include devices such as laser range finders, scopes with self-illuminating reticles, and fiber optic sights with self-illuminating sights or pins that do not project a visible light onto an animal.

**B.** An individual shall not use the following devices or ammunition to take wildlife:

1. A semiautomatic centerfire rifle with a magazine capacity of more than five cartridges, unless the magazine is modified with a filler or stop that cannot be removed without disassembling the magazine, or
2. Full-jacketed ammunition designed for military use.

**C** The use of edible or ingestible substances to aid in taking big game is unlawful when:

1. An individual places edible or ingestible substances for the purpose of attracting or taking big game.
2. An individual knowingly takes big game with the aid of edible or ingestible substances placed for the purpose of attracting wildlife to a specific location.
3. This subsection does not limit Department employees or Department agents in the performance of their official duties.
4. For the purposes of this subsection, edible or ingestible substances does not include:
  - a. Water.
  - b. Salt or salt-based materials produced and manufactured for the livestock industry, or
  - c. Nutritional supplements placed during the course of livestock or agricultural operations.

**B.D.** An individual shall not place any substance in a manner intended to attract bears.

**C.E.** An individual shall not use manual or powered jacking or prying devices to take reptiles or amphibians.

**D.F.** An individual shall not use live decoys, recorded bird calls, electronically amplified bird calls, or baits to take migratory game birds, as prohibited by 50 CFR 20.21, ~~revised June 14, 2004~~ published October 1, 2009. This material is incorporated by reference in this Section, ~~but~~ and does not include any later amendments or editions. ~~A copy~~ The incorporated material is available ~~from~~ at any Department office, online from the Government Printing Office web site [www.gpoaccess.gov](http://www.gpoaccess.gov), or ~~it~~ may be ordered from the Superintendent of Documents, U.S. Government Printing Office, 732 N. Capitol St. N.W., Washington, D.C. ~~20402~~ 20401.

**G.** An individual shall not use dogs to pursue or hold at bay any bear or lion for another hunter unless the hunter is present when the dogs are released on a specific target animal and continuously present for the entire pursuit. This subsection does not apply to any activity allowed under A.R.S. § 17-302.

**H.** An individual shall not place any substance, device, or object in, on, or by any water source in such a manner as to prevent wildlife from using that water source.

## **R12-4-304. LAWFUL METHODS FOR TAKING WILD MAMMALS, BIRDS, AND REPTILES**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)  
Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-235, and 17-301

### **2. Objective of the rule.**

The objective of the rule is to establish lawful devices and methods an individual may use to take wild mammals, birds, and reptiles during seasons established by Commission Order.

### **3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

Overall, the rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

Overall, the rule is enforced as written; however, the Department is aware of some confusion regarding the use of a crossbow. Current rule language unintentionally restricts take to people holding a crossbow permit, which is not required during the general season. The Department proposes to amend the rule to allow crossbows and bows drawn and held with an assisting device for the take of specific wildlife.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department received the following written criticisms:

**Written Comment: December 17, 2005.** It is very disheartening to hear someone tell the story of the big game he/she wounded but were unable to locate, so he/she went after another one. It is a waste of a valuable resource. An individual should be able to find a downed/wounded animal with the aid of a

dog. People who are willing to do this should have a registered kennel and a permit number, from AZGFD for a fee. Any person that would like assistance from one of these licensed individuals can pay for their assistance as they do with a guide. Each event would be documented. This could be another way for AZGFD to generate revenue and allow an individual to operate a business, like a guide.

**Agency Response:** This activity is prohibited under A.R.S. § 17-309(A)(6). A statutory amendment is required before the Department may implement this suggestion.

**Written Comment: December 7, 13, and 14 2007.** Throughout Article 3 a type of implement is used to describe method. For instance center-fire rifles, muzzleloading rifles, centerfire handguns, bows, etc. Falconry is not an implement, but a sport that uses the implement of a hawk, falcon, eagle, or owl. In addition, the rules concerning falconry were promulgated because of a need to protect AZ's wild populations of hawks, falcons, eagles, and owls and to be consistent with the Federal Migratory Bird Treaty Act rules and regulations. During the past few years, it has become commonplace to use "exotic" hawks, falcons, eagles, and owls in the sport of falconry. These exotic birds are neither covered by the Migratory Bird Treaty Act nor found wild in AZ. Therefore, I suggest that in the future falconers would like to open up the dialog with AZGFD concerning the need for a falconry license to use exotic raptors for falconry. In order to do this, a slight modification needs to occur in Article 3. I request that R-12-4-304(B)(1), (2), and (3) be modified and where the word falconry is used change it to read "raptors including hawks, falcons, eagles, and owls." Please add raptors (hawks, falcons, eagles, and owls) to the legal method to take turkeys and predatory and furbearing animals.

**Agency Response:** A.R.S. § 17-101 defines falconry as the sport of hunting or taking quarry with a trained raptor. A.R.S. § 17-236 authorizes the Department to issue licenses permitting the possession and transportation of raptors listed under the Migratory Bird Treaty Act. The Department does not have the authority to address non-Migratory Bird Treaty Act (exotic) raptors. Raptors, as with other wildlife, are subject to listing and delisting under the Endangered Species Act (ESA). By classifying the method of take by the sport of falconry, instead of species, ensures the rule will not conflict with the ESA. Very few raptors are of sufficient size to take turkeys or predatory or fur bearing animals. In addition, the Department must consider the method of take for all species of wildlife and ensure that wildlife is taken in a humane manner.

**Written Comment: June 14, 2007.** Please have the agency consider that today dogs are trained for everything from police work, to assisting the handicapped, and locating termites and bedbugs for pest control exterminators, to painting abstract works of art. Why wouldn't you use a trained dog for hunting wild turkey? Today every turkey hunter should be required to have the assistance of a trained dog. They'll recover any bird accidentally wounded and prevent crippling losses. The wildlife biologists that we talked to have no problem with fall turkey hunters using dogs, they actually prefer hunters use dogs. <http://trkyhnr.home.att.net/aboutus.html>. We use a dog to hunt every other game bird there is. There is no reason we shouldn't be able to hunt turkey with a dog. We don't advocate running turkeys down with greyhounds, but then again that would be better than shooting them from across the canyon with a thirty ought six, or blowing them to bits with a shotgun slug. The agency is most welcome to review our website for additional information, or ask me anytime. Actually, fall turkey hunting with dogs is currently allowed in 28 out of 43 states. You will find very few hunters willing to invest the time to train a dog for turkey, but for every one that does learn how, AZ's turkeys will be that much better off for it.

**Agency Response:** This activity is prohibited under A.R.S. § 17-309(A)(6). A statutory amendment is required before the Department may implement this suggestion. However, the Department proposes

to amend the rule to allow an individual to use dogs to pursue cottontail rabbits, tree squirrels, upland game birds, and nongame birds.

**Written Comment: September 10, 2008.** It is currently not legal to night hunt predatory mammals in AZ. AZ is one of few states with a very large predatory mammal population that does not allow night hunting. Predatory animals are always fairly active; however, predatory animals become extremely active during the hours of darkness. The use of artificial light while hunting these animals would also assist in the taking of these animals. The result would be a more effective way to control the predatory animal population, benefiting agricultural areas as well other “big game” animals, deer, elk, etc. Being able to hunt these predatory animals in both daylight and the evening would give the hunters of this state the flexibility to hunt more often, and would also bring the state of Arizona in line with other states, like Texas and other states that allow night hunting of predatory animals.

**Agency Response:** The Department agrees and proposes to amend the rule to allow the take of coyote and mountain lion with the use of artificial light to allow individuals to assist the Department in reducing antelope, mule deer, and bighorn sheep predation in game management units where coyotes or mountain lions have had a significant impact on these populations.

*The Department received two comments asking the Department to expand the HAM (handgun, archery, muzzleloader) to include shotguns.*

**Written Comment: January 16, 2009.** I would like to make a comment on changing the javelina “HAM” hunt to a “HAMS” by including shotguns in the mix. Ranges on modern handguns, especially in the single shot category far outstrips the accurate ranges a slug loaded shotgun will consistently make. Modern muzzleloaders are more accurate down range than even 10 years ago. By adding shotguns with slugs during the “HAM” season would give hunters another option for taking javelina. I would use one myself but I like to hunt the HAM season. I feel a rifle is just a little overkill on an animal the size of javelina.

**Written Comment: January 18, 2009.** I would like to see shotguns add to the HAM season. This will be my first year hunting in the HAM season, and had to barrow a handgun. I have a shotgun, and think if it was shotgun you would get more hunters. I would stick to slug or buckshot for the shells.

**Agency Response:** Handgun, archery, and muzzleloader (HAM) seasons, permitted under in R12-4-318, are designed to provide a specific hunting opportunity for a substantial user group. R12-4-304 currently allows shotguns shooting slugs as a legal method of take for hunters participating in a general season hunt. Shotguns shooting shot are not permitted based on expected shot performance and due to the risk of shooting multiple javelina with a single shot as javelina are often in herds.

**Written Comment: July 6, 2010.** Due to serious tendinitis, I've had to give up the sport of archery hunting and have turned to Big Bore PCP Air Rifles for hunting. After scouring the pages of the regulations, I've found that there is very little information pertaining to hunting with Big Bore PCP Air Guns. If I am correct, such hunting implements are referred to as "Pneumatic Weapons." This means that in AZ, the only rabbits can legally be hunted with my air rifle. Has AZGFD considered/passed regulations concerning the use of large caliber Pneumatic Weapons? Certain Big Bore Air Rifles can easily bring down big game. My original intent was to hunt coyotes, and possibly deer, with my air rifle. Can you tell me how I can get the existing regulations changed to allow the take of big game with certain Pneumatic Weapons? Can I legally hunt coyotes with my Big Bore PCP Air Rifle?

**Agency Response:** R12-4-601. Petition for Rule or Review of Practice or Policy establishes the process by which an individual may petition the Commission for a rule change; the petition form and rule may be accessed via the Department Internet website at [www.azgfd.gov](http://www.azgfd.gov). At this time, pneumatic weapons may only be used for the take of upland game birds, Eurasian-collared doves, rabbits, and tree squirrels.

**Written Comment: August 18, 2010.** How do I begin the process to change the rules concerning crossbows and their usage limited to disabled hunters? I believe the crossbow is a primitive weapon with a limited range; very similar to modern compound bows. So, why keep anyone that wants to use a crossbow from having the opportunity to use one?

**Agency Response:** R12-4-601. Petition for Rule or Review of Practice or Policy establishes the process by which an individual may petition the Commission for a rule change; the petition form and rule may be accessed via the Department Internet website at [www.azgfd.gov](http://www.azgfd.gov). Any licensed hunter may use a crossbow during general season for the take of big game, small game, predators, furbearers, and nongame. However, the Department proposes to amend the rule to clarify the use of crossbows.

**9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The Commission amended R12-4-304 by way of the exempt rulemaking process as authorized under Laws 2011, First Regular Session, Chapter 113E, Section 5(B), on December 9, 2011.

The rule amendment mainly clarified regulations regarding lawful methods for taking wild mammals, birds and reptiles. The rule amendment will provide a benefit to the general hunting public through establishing clear guidelines for take, thereby reducing confusion and accidental violation of rule, and authorizing additional methods for taking certain species of wildlife. The addition of methods of take will allow greater opportunities to the public for use of the state's wildlife resources.

Amendments to R12-4-304 include: clarify the use of crossbows; allow crossbows and bows drawn and held with an assisting device for the take of specific wildlife; allow the take of mountain lion with a shotgun shooting shot; allow the take of upland game birds and Eurasian Collared doves, with a pneumatic weapon; allow the take of cottontail rabbits, tree squirrels, upland game birds, and Eurasian Collared doves with pneumatic weapons and hand-held projectiles; allow the take of coyotes and mountain lions with artificial light; clarify that pursuit with dogs for cottontail rabbits, tree squirrels, upland game birds, and birds is a lawful activity; allow an individual to use dogs as a lawful method to take predatory and furbearing animals, small game, and nongame mammals; refer to the Raymond Wildlife Area by providing the Game Management Units (GMU) instead of the Wildlife Area to reduce confusion regarding GMU boundaries; modify language to clarify the use of foothold traps; and defining the term "daylong."

The Commission believes the rule amendment resulted in an overall benefit to the general hunting public and sporting goods retailers. The Commission believes the rule amendment resulted in no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the

regular cost of rulemaking, there are no costs associated with the rulemaking. Therefore, the Commission determined that the benefits of the rulemaking outweighed any costs.

The Commission believes the rule amendment resulted in a benefit to the Department by clarifying lawful methods for take and in so ensuring the continued integrity and compliance of its rules.

The Commission believes the rule amendment resulted in no additional costs to businesses or affected payroll expenditures of employers.

The Commission believes the rule amendment resulted in no additional compliance requirements for small businesses.

The Commission believes the rule amendment had no effect on state revenue.

The Commission determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department completed the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department filed a Notice of Exempt Rulemaking, authorized under Laws 2011, First Regular Session, Chapter 113E, Section 5(B), on December 9, 2011.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes those devices, methods, and ammunition that are lawful for taking any wildlife in Arizona. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

No action; the Department has already engaged in an exempt rulemaking to amend R12-4-304 to affect proposed changes, see 17 A.A.R. 2629.

**R12-4-304. Lawful Methods for Taking Wild Mammals, Birds, and Reptiles**

A. An individual may only use the following methods to take big game, subject to the restrictions under R12-4-303 and R12-4-318.

1. To take antelope:
  - a. Centerfire rifles;

- b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs, only;
  - g. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
  - h. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(1)(g) to be drawn and held with an assisting device.
2. To take bear:
- a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs, only;
  - g. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(2)(g) to be drawn and held with an assisting device; and
  - i. Pursuit with dogs between August 1 and December 31, only.
3. To take bighorn sheep:
- a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs, only;
  - g. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
  - h. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(3)(g) to be drawn and held with an assisting device.
4. To take buffalo:
- a. State-wide, except for the game management units identified under subsection (A)(4)(b):

- i. Centerfire rifles;
    - ii. Muzzleloading rifles;
    - iii. All other rifles using black powder or synthetic black powder;
    - iv. Centerfire handguns no less than .41 Magnum or centerfire handguns with an overall cartridge length of no less than two inches;
    - v. Bows with a standard pull of 40 or more lbs, using arrows with broadheads of no less than 7/8 inch in width with metal cutting edges; and
    - vi. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(4)(a)(v) to be drawn and held with an assisting device.
  - b. In game management units 5A and 5B:
    - i. Centerfire rifles;
    - ii. Muzzleloading rifles; and
    - iii. All other rifles using black powder or synthetic black powder.
- 5. To take deer:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs, only;
  - g. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
  - h. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(5)(g) to be drawn and held with an assisting device.
- 6. To take elk:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs, only;
  - g. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges; and
  - h. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as

described in subsection (A)(6)(g) to be drawn and held with an assisting device.

7. To take javelina:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs, only;
  - g. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(7)(g) to be drawn and held with an assisting device;
  - i. .22 rimfire magnum rifles; and
  - j. 5 mm rimfire magnum rifles.
8. To take mountain lion:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;
  - f. Shotguns shooting slugs or shot;
  - g. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(8)(g) to be drawn and held with an assisting device;
  - i. Artificial light, during seasons with daylong hours, provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
  - j. Pursuit with dogs.
9. To take turkey:
  - a. Centerfire rifles;
  - b. Muzzleloading rifles;
  - c. All other rifles using black powder or synthetic black powder;
  - d. Centerfire handguns;
  - e. Handguns using black powder or synthetic black powder;

- f. Shotguns shooting slugs or shot;
  - g. Bows with a standard pull of 30 or more lbs, using arrows with broadheads no less than 7/8 inch in width with metal cutting edges;
  - h. Crossbows with a minimum draw weight of 125 lbs, using bolts with a minimum length of 16 inches and broadheads no less than 7/8 inch in width with metal cutting edges or bows as described in subsection (A)(9)(g) to be drawn and held with an assisting device;
  - i. .22 rimfire magnum rifles;
  - j. 5 mm rimfire magnum rifles; and
  - k. .17 rimfire magnum rifles.
- B.** An individual may only use the following methods to take small game, subject to the restrictions under R12-4-303 and R12-4-318.
1. To take cottontail rabbits and tree squirrels:
    - a. Firearms,
    - b. Bow and arrow,
    - c. Crossbow,
    - d. Pneumatic weapons,
    - e. Slingshots,
    - f. Hand-held projectiles,
    - g. Falconry, and
    - h. Dogs.
  2. To take all upland game birds and Eurasian Collared-doves:
    - a. Bow and arrow;
    - b. Falconry;
    - c. Pneumatic weapons;
    - d. Shotguns shooting shot, only;
    - e. Handguns shooting shot only;
    - f. Crossbow;
    - g. Hand-held projectiles; and
    - h. Dogs.
  3. To take migratory game birds, except Eurasian Collared-doves:
    - a. Bow and arrow;
    - b. Crossbow;
    - c. Falconry;
    - d. Shotguns shooting shot, except that lead shot shall not be used or possessed while taking ducks, geese, swans, mergansers, common moorhens, or coots;
    - e. Shotguns shooting shot and incapable of holding more than two shells in the magazine, unless plugged with a one-piece filler that cannot be removed without disassembling the gun that limits

the magazine capacity to two shells; and

- f. Dogs.
- C.** An individual may take waterfowl from a watercraft except a sinkbox, subject to the following conditions:
- 1. The motor, if any, is shut off, the sail, if any, is furled, and any progress from a motor or sail has ceased;
  - 2. The watercraft may be drifting as a result of current or wind action; may be beached, moored, or resting at anchor; or may be propelled by paddle, oars, or pole; and
  - 3. The individual may use the watercraft under power to retrieve dead or crippled waterfowl, but no shooting is permitted while the watercraft is underway.
- D.** An individual may take predatory and furbearing animals by using the following methods, subject to the restrictions under R12-4-303 and R12-4-318:
- 1. Firearms;
  - 2. Bow and arrow;
  - 3. Crossbow;
  - 4. Traps not prohibited under R12-4-307;
  - 5. Artificial light while taking raccoon provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
  - 6. Artificial light while taking coyote during seasons with daylong hours, provided the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail; and
  - 7. Dogs.
- E.** An individual may take nongame mammals and birds by any method not prohibited under R12-4-303 or R12-4-318, subject to the following restrictions. An individual:
- 1. Shall not take nongame mammals and birds using foothold traps;
  - 2. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
  - 3. Shall not use firearms at night; and
  - 4. May use artificial light while taking nongame mammals and birds, if the light is not attached to or operated from a motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.
- F.** An individual may take reptiles by any method not prohibited under R12-4-303 or R12-4-318 subject to the following restrictions. An individual:
- 1. Shall check pitfall traps of any size daily, release non-target species, remove pitfalls when no longer in use, and fill any holes;
  - 2. Shall not use firearms at night; and
  - 3. May use artificial light while taking reptiles provided the light is not attached to or operated from a

motor vehicle, motorized watercraft, watercraft under sail, or floating object towed by a motorized watercraft or a watercraft under sail.

- G.** For the purposes of Commission Orders authorized under this Section, “day-long” means the 24-hour period from midnight to midnight.

**R12-4-305. POSSESSING, TRANSPORTING, IMPORTING, EXPORTING,  
AND SELLING CARCASSES OR PARTS OF WILDLIFE**

**1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-307, 17-331, and 17-371

**2. Objective of the rule.**

The objective of the rule is to establish requirements for the lawful possession, transport, import, export, and sale of wildlife for the purpose of wildlife conservation.

**3. Effectiveness of the rule in achieving its objective.**

Overall, the rule is effective in achieving the previously stated objective; however, the Department proposes to amend the rule to create additional opportunities for the take and removal of crayfish to ensure the conservation of Arizona's native aquatic species. Non-native crayfish have a negative impact on the State's native aquatic wildlife population due to competition, predation, and disease vector. The Department proposes to amend the rule to allow individuals to collect, transport, and sell crayfish, provided the crayfish are not transported alive.

**4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

Overall, the rule is enforced as written; however, due to issues concerning when an individual may pick up wildlife remains, such as skulls, bones, antlers, etc., the Department proposes to adopt a new rule establishing requirements and restrictions for the picking up of wildlife parts and carcasses.

**6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

**7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

**8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

- 9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 7, 2006.

- 10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

- 11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

- 12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes requirements for the lawful possession, transport, import, export, and sale of wildlife for the purpose of wildlife conservation. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

- 13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-305 by:

- Transferring definitions to R12-4-301. This is proposed to ensure compliance with Secretary of State rule formatting recommendations.
- Clarifying the permit language to accurately describe the purpose and use of the Carcass/Transportation/Shipping Permit and the Transportation and Shipping Permit. This is proposed to ensure the rule reflects the current permit.
- Replacing the "bobcat permit tag" with the term "bobcat export tag." This is proposed to reflect amendments made to R12-4-307.
- Establishing requirements for the importation of cervid, taken in another state. This is proposed to prevent the introduction of chronic wasting disease into Arizona.
- Establishing requirements for the removal of a cervid, lawfully killed or slaughtered at a game

farm, from the game farm. This is also proposed to prevent the introduction of chronic wasting disease from nonnative cervids.

- Prohibiting the transport of live crayfish. This is proposed to aid in the conservation of native aquatic species.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

#### **R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife**

~~A.~~ For the purposes of this Section, “evidence of legality” means:

- ~~1. The wildlife is identifiable as the “legal wildlife” prescribed by Commission order, which may include evidence of species, gender, antler or horn growth, maturity and size; and~~
- ~~2. The wildlife is accompanied by the applicable license, tag, separated portion of a tag under R12-4-302, stamp, or permit required by law.~~

~~B.A.~~ An individual shall ensure that evidence of legality remains with the carcass or parts of a carcass of any wild mammal, bird, or reptile that the individual possesses or transports, until arrival at the individual's permanent abode, a commercial processing plant, or the place where the wildlife is to be consumed.

~~C.B.~~ In addition to the requirement in subsection ~~(B)~~ (A), an individual possessing or transporting the following wildlife shall also ensure that:

1. Big game, sandhill cranes, and pheasant each have the required valid tag attached as prescribed ~~in~~ under R12-4-302;
2. Migratory game birds, except sandhill cranes, each have one fully feathered wing attached;
3. Each sandhill crane has either the fully feathered head or one fully feathered wing attached; and
4. Each quail has attached a fully feathered head, or a fully feathered wing, or a leg with foot attached, if the current Commission ~~order~~ Order has established separate bag or possession limits for any species of quail.

~~D.C.~~ An individual who has lawfully taken wildlife that requires a valid tag when prescribed by the Commission, ~~such as big game, sandhill crane, or pheasant,~~ may authorize its transportation or shipment by completing and signing the ~~Transportation/Shipping Permit~~ portion of the valid tag for that animal. A separate ~~Transportation/Shipping Permit~~ Transportation and Shipping Permit issued by the Department is necessary to transport or ship to another state or country any big game taken with a resident license. Under A.R.S. § ~~17-372~~ 17-372(B), an individual may ship other lawfully taken wildlife by common carrier after obtaining a valid ~~Transportation/Shipping Permit~~ Transportation and Shipping Permit issued by the Department. The individual shall provide the following information on the permit form:

1. Number and description of the wildlife to be transported or shipped;
2. Name of the individual who took the wildlife and that individual's address, license number, license class, and tag number;
3. Name and address of the individual who receives a portion of the divided carcass of the wildlife as

authorized under subsection ~~(E)~~ (D), if applicable;

4. Address of destination where the wildlife is to be transported or shipped; and
5. Name and address of transporter or shipper.

~~E.D.~~ An individual shall not possess the horns of a bighorn sheep, taken by a hunter in this state, unless the horns are marked or sealed ~~prescribed in~~ as established under R12-4-308.

~~G.E.~~ An individual who sells, offers for sale, or exports the raw pelt of a bobcat taken in this state shall obtain a bobcat ~~permit export~~ tag available for a fee as ~~provided in~~ established under R12-4-102 at Department offices and other locations at those times and places as determined and published by the Department, and shall ensure that the bobcat ~~permit export~~ tag is locked through the mouth ~~or~~ and eye openings so that it cannot be removed.

~~H.F.~~ Unless an individual has taken the annual bag limit for bear or mountain lion, an individual who takes bear or mountain lion as authorized under A.R.S. § 17-302, if the season for bear or mountain lion is closed, may retain the carcass of the wildlife if the individual has a valid hunting license and the carcass is tagged with a nonpermit-tag as required ~~by~~ under R12-4-114 and R12-4-302. An animal retained shall count towards the annual bag limit for bear or mountain lion as authorized in Commission Order. The individual shall comply with the requirements established under R12-4-308.

~~G.~~ An individual may import or possess only the following portions of a cervid lawfully taken in another state:

1. Boneless portions of meat, or meat that has been cut and packaged;
2. Clean hides and capes with no skull or soft tissue attached, except as required for proof of legality;
3. Skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached;
4. Finished taxidermy mounts or products; and
5. Upper canine teeth with no meat or tissue attached.

~~I.H.~~ An individual may ~~import into this state carcasses or parts of carcasses of wildlife that have been lawfully taken in another state or country if accompanied by evidence of legality~~ transport or possess only the following parts of a cervid lawfully killed or slaughtered at a game farm authorized under R12-4-413:

1. Boneless portions of meat, or meat that has been cut and packaged;
2. Clean hides and capes with no skull or soft tissue attached;
3. Skulls with antlers, clean skull plates, or antlers with no meat or soft tissue attached;
4. Finished taxidermy mounts or products; and
5. Upper canine teeth with no meat or tissue attached.

~~J.I. Individuals~~ An individual who obtain ~~obtained~~ buffalo meat in the manner established under R12-4-306 may sell the meat.

~~K.J.~~ An individual may import into this state the carcasses or parts of wildlife, including aquatic wildlife, ~~that have been~~ lawfully taken in another state or country if accompanied by evidence of legality, and if transported and exported in accordance with the laws of the state or country of origin, except as established under ~~subsections (H) and (I)~~ subsection (G).

~~L.K.~~ An individual in possession of or transporting the carcasses of any freshwater fish that have been taken

within this state shall ensure that the head, tail, or skin is attached so that the species can be identified, numbers counted, and any required length determined.

**L.** An individual shall not transport live crayfish from the site where taken, except as permitted under R12-4-316.

**M.** An individual in possession of a carp (*Cyprinus carpio*) ~~or~~ buffalofish (*Ictiobus* spp.), or crayfish carcass taken under Commission ~~order~~ Order may sell the carcass.

## **R12-4-306. BUFFALO HUNT REQUIREMENTS**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)  
Specific: A.R.S. §§ 17-102 and 17-231(A)(3)

### **2. Objective of the rule.**

The objective of the rule is to establish rules of practice governing buffalo hunts, which are conducted by the Department to harvest buffalo appropriate to management objectives and land carrying capacity.

### **3. Effectiveness of the rule in achieving its objective.**

Overall, the rule is effective in achieving the previously stated objective; however, to enhance management capabilities, the Department proposes to amend the rule to allow the issuance of restricted non-permit tags for the harvesting of buffalo.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. However, the Department's regional personnel would like to have more control over when buffalo are harvested from the House Rock Wildlife Area herd. Regional personnel who oversee the House Rock Wildlife Area would like to designate the order in which hunts occur and which animals are harvested. This is especially important during population management hunts. In addition, the Department issues non-permit tags only for the Raymond Wildlife Area herd. The Department proposes to amend the rule accordingly.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

- 9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

- 10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

- 11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

- 12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes how the Department conducts buffalo hunts appropriate to buffalo management objectives. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

- 13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-306 by:

- Reformatting the rule to provide the information in logical order. This is proposed to make the rule more concise and easier to understand.
- Clarifying that the buffalo hunt applies to the wildlife area herd, not the wildlife area boundary. This is proposed to make the rule more concise and easier to understand.
- Clarifying that a successful buffalo hunter may report the take of a buffalo at either wildlife area in person or by phone. This is proposed to reflect current Department practices.
- Clarifying that a non-permit tag is required for the Raymond Wildlife Area herd. This is proposed to reflect current processes.

- Allowing the Department to prescribe the order of hunters who take buffalo and the ability to designate which animal can be taken during a supplemental hunt that targets population reduction efforts. This is proposed to provide additional direct oversight and control to make supplemental hunts more effective in achieving management objectives.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-306. Buffalo Hunt Requirements**

- A. When authorized by Commission ~~order~~ Order, the Department shall conduct a hunt to harvest buffalo from the state's buffalo herds.
- B. An unsuccessful hunter with a buffalo hunt permit-tag or restricted nonpermit tag for the House Rock Wildlife Area herd shall check out in person or by telephone ~~at either the Department's Flagstaff regional office or the House Rock Wildlife Area headquarters~~ within three days following the close of the season.
- C. A hunter with a restricted nonpermit tag participating in a supplemental hunt for the House Rock or Raymond Wildlife Area herd shall:
  - 1. Hunt in the order scheduled by the Department, and
  - 2. Be accompanied by an authorized Department employee who shall designate the animal to be harvested, when required by the Department.
- D. A successful ~~buffalo~~ hunter with a buffalo permit-tag or restricted nonpermit tag for the House Rock Wildlife Area herd shall ~~report information about the kill to the Department~~ check out in person or by telephone within five business days after ~~taking~~ killing the buffalo ~~either in person at the House Rock Wildlife Area headquarters or in person or by telephone at the Department's Flagstaff regional office. If the kill is reported by telephone, the~~
- E. The check out report shall be submitted to the Department's Flagstaff regional office either in person or by telephone. The report shall include at least all of the following information:
  - 1. ~~the~~ The name of the hunter;
  - 2. ~~the~~ The hunter's tag number;
  - 3. ~~the~~ The sex of the buffalo taken, when applicable;
  - 4. ~~the~~ The number of days hunted;~~and~~
  - 5. a The telephone number where the hunter can be reached for additional information; and
  - 6. Any other information required by the Department.
- ~~C. A hunter with a buffalo hunt permit tag for the Raymond Wildlife Area herd shall hunt in the order scheduled by the Department.~~
- ~~D. A hunter with buffalo hunt permit tag for the Raymond Wildlife Area herd shall be accompanied by an authorized Department employee who shall designate the animal to be harvested.~~

**R12-4-307. TRAPPING REGULATIONS: LICENSING; METHODS;  
TAGGING OF BOBCAT PELTS**

**1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-239, 17-301, 17-333(35), 17-333.02, 17-361, and 17-371

**2. Objective of the rule.**

The objective of the rule is to establish requirements and restrictions to regulate trapping in a fair manner with the utmost regard for wildlife management principles and safety; and trapping reporting requirements.

**3. Effectiveness of the rule in achieving its objective.**

Overall, the rule is effective; however, advances in trapping technology require the Department to establish regulations for powered cable devices. A powered cable trap uses a spring-loaded steel cable loop to trap an animal by the leg or foot. The large diameter of the cable and an available plastic sleeve keep the trap from closing to a small loop to avoid cutting off an animal's circulation. The Department proposes to amend the rule to allow the use of certain commercially manufactured powered cable devices. Because this trap qualifies as a snare trap, the Department will also amend the rule to state that these types of snare traps are lawful.

**4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

Overall, the rule is enforced as written; however, 15% of trapping licensees fail to comply with the reporting requirements in a timely manner. The Department proposes to amend the rule to state that a trapping license will not be renewed until the licensee has complied with reporting requirements.

**6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

**7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

**8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative**

**proceedings.**

The Department did not receive any written criticisms of the rule.

- 9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

- 10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

- 11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

- 12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

- 13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-307 by:

- Transferring definitions to R12-4-301. This is proposed to ensure compliance with Secretary of State rule formatting recommendations.
- Prescribing regulations for powered cable devices. This is proposed to address advances made in trapping technology and make the rule consistent with the Best Management Practices (BMP) for trapping as recommended by the Association of Fish and Wildlife Agencies (AFWA).
- Removing language referencing a commercially manufactured jawed trap that does not exceed 5 1/2 inches in diameter. This is proposed as these type of traps are no longer commercially available, causing the rule language to be obsolete.

- Allowing specific foot snares. This is proposed as today's foot snares are both humane and effective and make the rule consistent with the Best Management Practices (BMP) for trapping as recommended by the Association of Fish and Wildlife Agencies (AFWA).
- Stating that an individual using a confinement trap is not required to possess an additional restraint device. This is proposed as the confinement trap itself is a restraining device.
- Replacing the term "bobcat permit tag" with "bobcat export tag." This is proposed as the tag is not a permit tag, but an export tag, and the proposed amendment reflects this purpose.
- Clarifying the bobcat transportation tag requirements. This is proposed to reduce confusion regarding when a bobcat transportation tag must be attached to a bobcat carcass or pelt.
- Allowing the sale of the bobcat export tag year round. This is proposed as there is no longer a need to limit when these tags can be sold. Historically, these tags were issued by the Federal government on an annual basis and had the year stamped on the tag. These tags were changed and do not expire or contain a year of issuance on the tag.
- Removing references to the waiving of the April 10 deadline for pelts tagged under this section. This is proposed as the recommendation above makes this practice obsolete.
- Reformatting the rule to provide information in logical order. This is proposed to make the rule more concise and understandable.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-307. Trapping Regulations: Licensing; Methods; Tagging of Bobcat Pelts**

~~A.~~ For the purposes of this Section, the following definitions apply:

- ~~1. "Body gripping trap" means a device designed to capture an animal by gripping the animal's body.~~
- ~~2. "Confinement trap" means a device designed to capture wildlife alive and hold it without harm.~~
- ~~3. "Instant kill trap" means a device designed to render an animal unconscious and insensitive to pain quickly with inevitable subsidence into death without recovery of consciousness.~~
- ~~4. "Land set" means any trap used on land rather than in water.~~
- ~~5. "Leghold trap" means a device designed to capture an animal by the leg or foot.~~
- ~~6. "Paste type bait" means a partially liquefied substance intended for use as a lure for animals.~~
- ~~7. "Sight exposed bait" means a carcass or parts of a carcass lying openly on the ground or suspended in a manner so that it can be seen from above by a bird. This does not include dried or bleached bones with no attached tissue or less than two ounces of paste type baits or trap flags.~~
- ~~8. "Trap flag" means an attractant made from materials other than animal parts that is suspended at least three feet above the ground.~~
- ~~9. "Water set" means any trap used and anchored in water rather than on land.~~

~~B.A.~~ A valid trapping license is required for an individual 14 years of age or older for trapping predatory and fur-bearing animals.

**B.** An individual born on or after January 1, 1967 shall successfully complete a Department-approved trapping education course to obtain a trapping license. ~~Traps may be used to take predatory and fur-bearing animals only during the trapping season established by Commission order.~~

**C.** An individual shall apply for a trapping license on a form furnished by the Department. An individual under the age of 14 is not required to purchase a trapping license, but shall apply for a registration number on a form furnished by the Department. The form is available from any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). An individual shall provide all of the following information on the form:

1. Full name, address, and telephone number;
2. Date of birth and physical description;
3. The identification number assigned by the Department;
4. Category of license:
  - a. Resident;
  - b. Nonresident; or
  - c. Juvenile; and
5. The signature of the applicant.

**D.** The trapper registration number, issued at the time of purchase by the Department, is not transferable.

**E.** Traps may be used to take predatory and fur-bearing animals only during trapping seasons established by Commission Order.

**~~C.~~F.** All trappers shall inspect their traps daily and kill or release all predatory and fur-bearing animals. All trappers shall release without additional injury all animals that cannot lawfully be taken by trap. While in the field, all trappers, except those using confinement traps, shall possess a device that is designed or manufactured to restrain trapped animals so that a trapped animal can be removed from a trap when its release is required by this Section. All trappers, except those using confinement traps, in units designated by Commission ~~order~~ Order as javelina hunt units, shall possess a choke restraint device that enables the trapper to release a javelina from a trap.

**~~D.~~G.** An individual shall not:

1. Set a trap within 1/2 mile of any of the following areas developed for public use: a boat launching area, picnic area, camping area, or roadside rest area;
2. Set a trap, other than a confinement trap, within 1/2 mile of any occupied residence or building without permission of the owner or resident;
3. Set a trap, other than a confinement trap, within 100 yards of an interstate highway or any other highway maintained by the Arizona Department of Transportation, within 25 yards of any other road as defined ~~by~~ under A.R.S. § 17-101, or within 50 feet of any trail maintained for public use by a government agency;
4. Set a ~~leghold~~ fothold trap within 30 feet of a sight-exposed bait;
5. Bait a confinement trap with ~~live animals or portions of game mammals, big game, small game, upland game birds, migratory game birds, or game fish, or use bait with a confinement trap that is not wholly~~

~~contained within the confinement trap;~~

- a. A live animal.
  - b. Any edible parts of small game, big game, or game fish.
  - c. Any part of any game bird or nongame bird.
  - d. Bait that is not wholly contained within the confinement trap.
6. Use any trap with teeth;
  7. Use any snare, unless authorized under subsection (H);
  8. Use any trap with an open jaw spread that exceeds 6 1/2 inches for any land set;
  9. Use a body-gripping or other instant kill trap with an open jaw spread that exceeds five inches for any land set;
  10. Use a ~~leghold~~ foothold trap with an open jaw spread that exceeds 7 1/2 inches for any water set; or
  11. Use a body-gripping or other instant kill trap with an open jaw spread that exceeds 10 inches for any water set.

**E.H.** An individual who uses a ~~leghold~~ foothold trap to take wildlife with a land set shall use:

1. A commercially-manufactured, padded, or rubber-jawed trap, or an unpadded trap with jaws permanently offset to a minimum of 3/16 inch and a device to allow for pan tension adjustment;
- ~~2. A commercially manufactured jawed trap that does not exceed 5 1/2 inches, modified with a pan safety device that prevents capture of non-targeted wildlife or domestic animals and a separate device that allows for pan tension adjustment; or~~
- ~~3.2.~~ A commercially manufactured ~~leghold~~ foothold trap that captures wildlife by means of an enclosed bar or spring designed to prevent capture of non-targeted wildlife or domestic animals; or
3. A commercially manufactured powered cable device with inside width at frame hinge no wider than 6 inches, cable loop stop size of at least 2 inches in diameter to prevent capture of small non-target species, and a device to allow for a pan tension adjustment.

**F.I.** An individual who uses a ~~leghold~~ foothold trap to take wildlife with a land set shall ensure that the trap has an anchor chain with at least two swivels. Anchor chains that are 12 inches or less in length shall have a swivel attached at each end. Anchor chains that are greater than 12 inches shall have one swivel attached at the trap and one swivel attached within 12 inches of the trap. The anchor chain shall be equipped with a shock-absorbing spring that requires less than 40 pounds of force to extend or open the spring.

**G.** ~~Every licensed trapper shall file a complete written report as required by A.R.S. § 17-361(D) with the Phoenix Office of the Department by April 1 of each year on a form available from any Department office. The trapper shall file the report even if no trapping is done.~~

**H.** ~~Persons suffering property loss or damage due to wildlife and who take responsive measures as permitted under A.R.S. §§ 17-239 and 17-302 are exempt from this Section. Exemption under this Section does not authorize any form of trapping prohibited by A.R.S. § 17-301.~~

**I.J.** ~~All trappers shall ensure that their traps are plainly identified with the name and address or registered number of the owner as prescribed by under A.R.S. § 17-361(B). All trappers shall ensure that each of their~~

traps has the name and address or registered number of the owner ~~legibly~~ marked on a metal tag attached to the trap. The number assigned by the Department is the only acceptable registered number. For the purpose of this Section, "owner" means the ~~person~~ individual placing, setting, or using the trap.

~~J.~~ An individual who applies for a trapping license shall provide the following information on a form available from any Department office:

- ~~1. Full name, address, and telephone number;~~
- ~~2. Date of birth and physical description;~~
- ~~3. An identification number assigned by the Department;~~
- ~~4. Category of license: resident, nonresident, or juvenile; and~~
- ~~5. The signature of the applicant.~~

~~K.~~ The Department shall issue a registered number to a trapper and enter the number on the trapping license at the time the trapper purchases the license. A trapper under the age of 14 is not required to purchase a trapping license, but shall obtain a registration number from any Department office before taking wildlife with a trap. A trapper's registration number is not transferable.

~~L.~~K. All trappers shall ensure that the ~~unskinned carcass or pelt~~ of a bobcat that they have trapped in this state ~~or the pelt of any bobcat that they have trapped in this state~~ has a validated bobcat transportation tag attached to the carcass or pelt, ~~except for a~~ until the pelt is tagged for sale and export in the manner established under subsection (L).

- ~~1. Trappers shall provide the following information on the bobcat transportation tag: current trapping license number, game management unit where the bobcat was taken, sex of the bobcat, and method by which the bobcat was taken.~~ The Department shall provide transportation tags with each trapping license. A licensed trapper may obtain additional transportation tags from any Department office at no charge.
2. Trappers shall validate transportation tags immediately upon taking the bobcat by ~~legibly and completely filling in~~ providing all information required on the tag. Trappers shall provide the following information on the bobcat transportation tag:
  - a. Current trapping license number,
  - b. Game management unit where the bobcat was taken,
  - c. Sex of the bobcat, and
  - d. Method by which the bobcat was taken.

~~M.~~L. Trappers shall ensure that pelts of bobcats that they have taken in this state that are sold, offered for sale, or exported from the state shall have bobcat ~~permit export~~ tags (~~export tags~~) locked through the mouth and an eye opening, or through both eye openings so that the ~~permit export~~ tag cannot be removed without being damaged. Trappers may obtain bobcat ~~permit export~~ tags as follows:

1. Bobcat ~~permit export~~ tags are available for a fee as provided ~~in~~ under R12-4-102 at Department offices and other locations at those times and places as determined and published by the Department.
2. When available, bobcat ~~permit export~~ tags are issued on a first-come, first-served basis ~~from November 1~~

~~through April 10 of each year.~~

3. Department personnel or authorized agents of the Department shall attach and lock bobcat ~~permit export~~ tags only to those pelts presented with validated transportation tags. Department personnel or authorized agents of the Department shall collect the transportation tags before attaching the bobcat ~~permit export~~ tags.
  4. ~~The April 10 deadline is waived for pelts consigned to licensed taxidermists for tanning or mounting.~~
  - 5.4. Department personnel shall attach bobcat ~~permit export~~ tags to bobcat pelts seized under ~~A.R.S. § 17-211(D)(4)~~ A.R.S. § 17-211(E)(4) before disposal by the Department. ~~The April 10 deadline is waived for pelts tagged under this subsection.~~
- M.** A licensed trapper shall file an annual report, as prescribed under A.R.S. § 17-361(D). A report is required even when trapping activities were not conducted. The form is available from any Department office and online at [www.azgfd.gov](http://www.azgfd.gov). The trapper shall submit the form to Arizona Game and Fish Department, Game Branch, 5000 W. Carefree Highway, Phoenix, AZ 85086 by April 1 of each year. The Department shall deny a trapping license to any trapper who failed to submit the report for the preceding year.
- N.** Persons suffering property loss or damage due to wildlife and who take responsive measures as permitted under A.R.S. §§ 17-239 and 17-302 are exempt from this Section. Exemption under this Section does not authorize any form of trapping prohibited under A.R.S. § 17-301.

## **R12-4-308. WILDLIFE INSPECTIONS, CHECK STATIONS, AND ROADBLOCKS**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-211(D), 17-211(E)(4), 17-231(A)(3), 17-231(A)(4), 17-250(A)(4), 17-307, and 17-331

### **2. Objective of the rule.**

The objective of the rule is to establish requirements for wildlife inspections, check stations, and roadblocks.

### **3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

Overall, the rule is consistent with, and is not in conflict with, statutes and rules; however, in 2008 A.R.S. § 17-211 was amended and a statutory reference is no longer accurate. The Department proposes to amend the rule to reflect the correct statutory citation. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

### **6. Agency views regarding the current wisdom of the rule.**

Overall, the Department views this rule as wise and necessary to achieve the previously stated objective; however, the Department has determined that the archery deer reporting requirements are no longer necessary as the harvest is managed through permitted hunts and is properly documented through mail-out questionnaires. The Department proposes to amend the rule to remove the archery deer hunt reporting requirements.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

- 9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 7, 2006.

- 10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

- 11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

- 12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes requirements and procedures for wildlife inspections, check stations, and roadblocks to ensure compliance with applicable wildlife laws. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

- 13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-308 by:

- Removing the requirement that an individual who takes deer, elk, antelope, or buffalo under a special big game permit to submit the skull or skullcap for inspection and photographing. This is proposed as the Department believes it is not biologically necessary.
- Granting the Department the authority to conduct inspections of all lawfully taken wildlife. This is proposed to allow the Department broad authority to check wildlife as necessary, not to limit authority to the types of wildlife listed.
- Allowing the establishment of harvest objectives for other species. This is proposed to improve flexibility for increasing hunter opportunities while regulating harvest and to allow an unlimited number of individuals to participate in a hunt.
- Capitalizing "Order" in "Commission Order." This is proposed to maintain consistency with other rules throughout Chapter 4.

- Removing the requirement that archery hunters report harvests. This is proposed as the Department has other methods for obtaining the data, thus archery reporting is no longer necessary.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks**

- A. The Department has the authority to establish mandatory wildlife check stations. The Department shall publish the location, check-in requirements, and check-out requirements for a season with the published Commission ~~order~~ Order establishing the season.
1. Hunters shall personally check in at a wildlife check station before hunting in a season with a published check-in requirement.
  2. The Department shall ensure that wildlife check stations with a published check-in requirement are open continuously from 8:00 a.m. the day before the season until 8:00 p.m. the first day of the season, and from 8:00 a.m. to 8:00 p.m. during each day of the season.
  3. Hunters shall personally check out after hunting in a season with a published check-out requirement, and shall present for inspection any wildlife taken and display any license, tag, or permit required for taking or transporting wildlife.
  4. The Department shall ensure that wildlife check stations with a published check-out requirement are open continuously from 8:00 a.m. to 8:00 p.m. during each day of the season and remain open until 12:00 noon on the day following the close of the season.
- B. The Department has the authority to conduct inspections ~~for bighorn sheep, archery deer, bear, mountain lion and special big game license tags (deer, elk, antelope, and buffalo)~~ of lawfully taken wildlife at the Department's Phoenix and regional offices or designated locations. Regional offices are open 8:00 a.m. to 5:00 p.m., Monday through Friday, except on legal state holidays.
1. All bighorn sheep hunters shall personally check out within three days after the close of the season. Each hunter who takes a bighorn sheep shall submit the intact horns and skull for inspection and photographing. The Department representative shall affix a mark or seal to one horn of each bighorn sheep lawfully taken under Commission ~~order~~ Order. The hunter shall not remove, alter, or obliterate the mark or seal.
  - ~~2. All special big game license tag hunters who tag a deer, elk, antelope, or buffalo shall submit the intact horns or antlers and skull or skullcap for inspection and photographing within three days after the close of the season.~~
  - ~~3. A successful non permit tag archery deer hunter shall report information about the kill to a Department office in person or by telephone within 10 days of taking the deer if the hunt area does not have a check station requirement.~~
  - ~~4.2.~~ A successful bear or mountain lion hunter shall:
    - a. ~~report~~ Report information about the kill in person or by telephone to the Department within 48

hours of taking the wildlife. The report shall include:

- ~~i. the~~ The name of the hunter,
- ~~ii. the~~ The hunter's hunting license number,
- ~~iii. the~~ The sex of the wildlife taken,
- ~~iv. the~~ The management unit where the wildlife was taken,
- ~~v. a~~ A telephone number where the hunter can be reached for additional information, and
- ~~vi. Any other information required by the Department.~~

~~b. Present the skull, hide, and attached proof of sex, to the Department for inspection. Within 10~~  
~~within ten~~ days of taking the wildlife, ~~each hunter who takes a bear or mountain lion shall present~~  
~~the skull, hide, and attached proof of sex for inspection.~~ If a hunter freezes the skull or hide before  
presenting it for inspection, the hunter shall prop the jaw open to allow access to the teeth and  
ensure that the attached proof of sex is identifiable and accessible.

3. For seasons other than bear and mountain lion, where a harvest objective is established, a successful  
license holder shall report information about the kill in person or by telephone within 48 hours of  
taking the wildlife. The report shall include:

- a. The name of the hunter,
- b. The hunter's hunting license number,
- c. The sex of the wildlife taken,
- d. The management unit where the wildlife was taken,
- e. A telephone number where the hunter can be reached for additional information, and
- f. Any other information required by the Department.

C. The Director ~~or Director's designee~~ may establish vehicle roadblocks at specific locations when necessary  
to ensure compliance with applicable wildlife laws. Any occupant of a vehicle at a roadblock shall, upon  
request, present for inspection all wildlife in possession, and produce and display any license, tag, stamp, or  
permit required for taking or transporting wildlife.

D. This Section does not limit the game ranger or wildlife manager's authority to conduct stops, searches, and  
inspections authorized under A.R.S. §§ ~~17-211(D)~~ 17-211(E), 17-250(A)(4), and 17-331, or to establish  
voluntary wildlife survey stations to gather biological information.

## **R12-4-309. AUTHORIZATION FOR USE OF DRUGS ON WILDLIFE**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-306, and 17-331(A)

### **2. Objective of the rule.**

The objective of the rule is to establish the restrictions, application, reporting, and exemption requirements for the authorization for use of drugs on wildlife.

### **3. Effectiveness of the rule in achieving its objective.**

The rule became effective September 11, 2010. At this time, the Department has not received any applications for authorization to use drugs on wildlife. As far as the Department is able to determine, the rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department received the following written criticism:

**Written Comment: March 13, 2010.** I strongly discourage the regulation of administering of drugs to wildlife due to over-regulation of an area where very few individuals are involved. If a bear needs to be sedated quickly or shot, I would hate to have some dumb red tape requiring a different person with an intellectual training certificate versus keeping these opportunities flexible and avoiding lethal

means of putting down an animal. Remember, as a practical matter, individuals possessing a dart gun are going to be knowledgeable about how to use them just by possessing it. If an occasional animal dies from too much medicine it may have happened with or without regulated red tape training! In the past, I trapped a mountain lion and would have preferred to use a drug rather than a chokehold to free such a dangerous animal. AZGFD may try to write some complex clause into such a misguided regulation, but whatever you write will not cover the varieties of scenarios that will warrant quick action without a dumb certification. Let people who manage from a desk fill out their own reports rather than make wildlife managers or outdoorsmen, with an out of control animal, have to deal with their paper forms.

**Agency Response:** The Department disagrees. If the administration of drugs on wildlife is not controlled by the Department, there is a potential that drug substances could be inadvertently introduced into the environment resulting in possible risk to public health and safety and Arizona's wildlife resources.

- 9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule became effective September 11, 2010. As far as the Department is able to determine, the rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on July 13, 2010.

- 10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

- 11. If applicable, that the agency completed the previous five-year review process.**

Not applicable as this rule was adopted September 11, 2010.

- 12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes restrictions, application, reporting, and exemption requirements for the authorization for use of drugs on wildlife to ensure the Department has the necessary proactive regulatory measures in place to address issues involving the use of drugs on wildlife including fertility drugs, growth hormones, and tranquilizers. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

- 13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-309 by:

- Transferring definitions to R12-4-301. This is proposed to ensure compliance with Secretary of State rule formatting recommendations.
- Clarifying that this Section does not apply to aquaculture facilities administered by the US Fish and Wildlife Service, commercial facilities operating under a valid license from the Department of Agriculture, and the use of supplements as part of conventional livestock operations. This is proposed to ensure that the rule does not negatively affect operations where the use of drugs on domestic animals or wildlife is regulated by another agency.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-309. Authorization for Use of Drugs on Wildlife**

~~A.~~ For the purposes of this Section:

- ~~1. "Administer" means to pursue, capture, or otherwise restrain wildlife in order to apply directly a drug to wildlife, whether by injection, inhalation, ingestion or any other means.~~
- ~~2. "Drug" means any chemical substance, other than food or mineral supplements, which affects the structure or biological function of any wildlife under the jurisdiction of the state.~~
- ~~3. "Person" means any individual, corporation, partnership, limited liability company, non-governmental organization or club, licensed animal shelter, government entity other than the Department, and any officer, employee, volunteer, member or agent of a person.~~

~~B.A.~~ A person shall not administer any drug to any wildlife under the jurisdiction of the state, including but not limited to drugs used for fertility control, disease prevention or treatment, immobilization, or growth stimulation without written authorization from the Department or as otherwise provided under subsection ~~(F)~~E.

~~C.B.~~ A person requesting written authorization for the use of drugs on wildlife shall submit the request in writing to the Department at least 120 days before the anticipated start date of the activity and provide all of the following:

1. A plan that includes:
  - a. The purpose and need for the proposed activity;
  - b. A clear statement of the objectives; for fertility control the statement shall include the target wildlife population goals or densities and the anticipated time-frame for meeting these objectives;
  - c. A description of the agent, drug, or method including federal approvals or permits obtained, as applicable, and any mandated labeling restrictions or limitations designed to reduce or minimize detrimental effects to wildlife and humans;
  - d. Required approvals, including, but not limited to, any federal or state agency approvals for specific use;
  - e. Citations of published scientific literature documenting field studies on the efficacy and safety for

both target and non-target species, including predators, scavengers, and humans;

- f. A description of the activity area;
  - g. A description of the target species population and current status;
  - h. A description of the field methodology for delivery ~~including timing, sex, and~~ that includes all of the following information:
    - i. Timing;
    - ii. Sex of the animals to be treated;
    - iii. ~~number~~ Number of animals to be treated;:
    - iv. ~~percentage~~ Percentage of the population to be treated;: and ~~if applicable, calculated~~
    - vi. Calculated population effect, when applicable; and
  - i. Short and ~~long-term~~ long-term monitoring and evaluation procedures.
2. Documentation regarding the experience and credentials of the applicant or the applicant's agents as it applies to the requested activity;
  3. Written endorsement from the agency or institution; required when the applicant is a government agency, university, or other institution; and
  4. Written permission from landowners or lessees in all locations where the drug will be administered.

**D.C.** The Department shall notify the applicant of the Department's decision to grant or deny the request within 90 days. The Department has the authority to place conditions on the written authorization regarding:

1. Locations and time-frames,
2. Drugs and methodology,
3. Limitations,
4. Reporting requirements, and
5. Any other conditions deemed necessary by the Department.

**E.D.** A person with authorization shall:

1. Carry written authorization while engaged in the activity and exhibit it upon request to any peace officer;
2. Allow Department personnel to be present to monitor activities for compliance, public safety, and proper treatment of animals;
3. Adhere to all drug label restrictions and precautions;
4. Provide an annual and final report;
  - a. The annual report must include: ~~the~~
    - i. The number of animals treated,
    - ii. ~~the~~ The level of treatment effect obtained to date, and
    - iii. ~~any~~ Any problems including mortalities or morbidities of target animals.
  - b. The final report must ~~include~~ provide the end results, ~~including~~ which includes:
    - i. ~~the~~ The number of wildlife treated, and

- ii. ~~treatment~~ Treatment effects on target and non-target wildlife, including mortalities, morbidities, and reproductive rate changes.

5. Comply with all conditions and requirements set forth in the written authorization.

~~F.E.~~ This Section does not prohibit the treatment of wildlife by a licensed veterinarian or holder of a special license in accordance with R12-4-407(A)(2), R12-4-407(A)(8) and R12-4-428(B)(13), activities as authorized under R12-4-418, R12-4-420, R12-4-421, and R12-4-423, an individual exempt from special licensing under R12-4-407(A)(4) and R12-4-407(A)(5), or reasonable lethal removal activities for wildlife control as authorized under A.R.S. § 17-239(A).

~~G.F.~~ This Section does not limit:

1. Department employees or Department agents in the performance of their official duties ~~related to wildlife management.~~
2. The practices of aquaculture facilities administered by the US Fish and Wildlife Service and commercial aquaculture facilities operating under a valid license from the Arizona Department of Agriculture, or
3. The use of supplements or drugs as a part of conventional livestock operations where those supplements may incidentally be consumed by wildlife.

~~H.G.~~ The Department shall take possession of and dispose of any remaining wildlife drugs administered in violation of this Section and any devices and paraphernalia used to administer those drugs, as authorized under A.R.S. §§ 17-211(E), 17-231(A), and 17-240(B).

## **R12-4-310. FISHING PERMITS**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-301, and 17-331

### **2. Objective of the rule.**

The objective of the rule is to establish requirements for the fishing permit available to governmental agencies and non-profit organizations that provide rehabilitation and treatment services for persons with disabilities. The permit allows these agencies to provide fishing opportunities to persons, with physical, developmental, or mental disabilities, without a fishing license.

### **3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

### **9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer**

**impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes requirements for the fishing permit available to governmental agencies and non-profit organizations to provide fishing opportunities to persons with physical, developmental, or mental disabilities. The information required, for both the application and report, is minimal. However, the Department proposes to remove the one-hour educational instruction requirement to reduce the regulatory burden. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-310 by:

- Capitalizing "Order" in "Commission Order." This is proposed to maintain consistency with other rules throughout Chapter 4.
- Changing "Fishing Permit" to reflect all lowercase letters. This is proposed to maintain consistency with other rules throughout Chapter 4.
- Replacing the term "permitee" with "permit holder." This is proposed to make the rule more understandable.
- Removing the time-frame for which an instructor shall provide instruction on fish identification. This is proposed as the time spent on instruction should be left to the judgment of the instructor as more or less time may be required depending on the individuals receiving the instruction.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

#### **R12-4-310. Fishing Permits**

- A.** The Department may issue a ~~Fishing Permit~~ fishing permit to state, county, or municipal agencies or departments and to nonprofit organizations licensed by or contracted with the Department of Economic Security or Department of Health Services, whose primary purpose is to provide physical or mental rehabilitation or training for individuals with physical, developmental, or mental disabilities. The permit will allow individuals with physical, developmental, or mental disabilities to fish without a fishing license. The permit will authorize this activity for up to 20 individuals for the two days specified on the permit upon any public waters except that fishing in the waters of the Colorado River is restricted to fishing from the Arizona shoreline only, unless the ~~persons~~ individuals fishing under the authority of the permit also possess a valid Colorado River stamp from the adjacent state. The individuals fishing under the authority of the permit shall comply with other relevant statutes, Commission ~~orders~~ Orders, and rules not contained in this Section.
- B.** An applicant for a ~~Fishing Permit~~ fishing permit shall provide the following to the Department:
1. A completed application form obtained from the Department that contains:
    - a. The name, address, and telephone number of the agency, department, or nonprofit organization requesting the permit;
    - b. The name, position title, and telephone number of the individual who will be responsible for supervising the individuals who will be fishing under the authority of the permit;
    - c. The total number of individuals who will be fishing under the authority of the permit;
    - d. The dates of the two days for which the permit will be valid; and
    - e. The location for which the permit will be valid.
  2. Nonprofit organizations shall also submit documentation that they are licensed by or have a contract with the Department of Economic Security or the Department of Health Services for the purpose of providing rehabilitation or treatment services to individuals or groups with physical, developmental, or mental disabilities.
- C.** The Department shall issue or deny the ~~Fishing Permit~~ fishing permit to an applicant within 30 calendar days of receiving an application.
- D.** The ~~Fishing Permit permittee~~ fishing permit holder shall provide ~~one hour of~~ instruction on fish identification, fishing ethics, safety, and techniques to the individuals who will be fishing under authority of the permit. The Department shall provide the lesson plan for this instruction to the ~~permittee~~ permit holder.
- E.** Each individual fishing without a license under the authority of the ~~Fishing Permit~~ fishing permit may take only one-half the regular bag limit established by Commission ~~order~~ Order for any species, unless the regular bag limit is one, in which case the permit authorizes the regular limit.

- F. The ~~permittee~~ permit holder shall submit a report to the Department not later than 30 days after the end of the authorized fishing dates. The Department may deny issuance of future ~~Fishing Permit~~ fishing permits to ~~permittees~~ permit holders who fail to submit the report. The ~~permittee~~ permit holder shall report on a form available from the Department:
1. The ~~Fishing Permit~~ fishing permit number and the information contained in the permit;
  2. The total number of individuals who fished and total hours fished;
  3. The total number of fish caught, kept, and released, by species.

**R12-4-311. EXEMPTIONS FROM REQUIREMENT TO POSSESS AN ARIZONA  
FISHING LICENSE WHILE TAKING AQUATIC WILDLIFE**

**1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), and 17-301, 17-331

**2. Objective of the rule.**

The objective of the rule is to establish circumstances for when a fishing license is not required.

**3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

**4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

**7. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable; however, the Department proposes to amend the rule to clarify the meaning of private waters, specify the term ‘terrestrial’ only applies to mollusks, and expand the free fishing days in response to changes implemented by the Recreational Boating and Fishing Foundation, who determines the dates for National Fishing and Boating Week.

**8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

- 9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

- 10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

- 11. If applicable, that the agency completed the previous five-year review process.**

The Department completed the previous five-year review report. G.R.R.C. approved the report at the July 10, 2007 Council Meeting and the Department did not propose a course of action for this rule.

- 12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule simply establishes the circumstances for when a fishing license is not required. While other proposed amendments appear to make the rule more burdensome, the rule is only amended to reflect current Department practices. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

- 13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-311 by:

- Clarifying the meaning of private waters. This is proposed to ensure rule language is consistent with that outlined in statute.
- Clarifying live crustacean transportation limits. This is also proposed to aid in the conservation of native aquatic species.
- Expanding fishing license exemptions to include any Saturday during National Fishing and Boating Week. This is proposed in response to changes by the Recreational Boating and Fishing Foundation (RBFF), which determines the dates for National Fishing and Boating Week.
- Clarifying that free fishing opportunities do not apply to waters of the Colorado River and portions of Lake Powell. This is proposed to make the rule more concise and understandable.

- Establishing requirements for a sanctioned fishing program and authorized volunteer instructor. This is proposed to ensure fishing education programs are conducted in the manner approved by the Department.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-311. Exemptions from Requirement to Possess an Arizona Fishing License while Taking Aquatic Wildlife**

- A. A fishing license is not required to take aquatic wildlife from artificial ponds, tanks, and lakes contained entirely on private waters lands that are not open to the public and not managed by the Department.
- B. An individual may take crustaceans or terrestrial mollusks ~~or crustaceans~~ from private property without a fishing license. The possession and transportation of live crustaceans is subject to the limitations established under R12-4-305, R12-4-316, and R12-4-317.
- C. Any individual fishing in Arizona on ~~the designated~~ any Saturday occurring during National Fishing and Boating Week may fish without an Arizona fishing license if the individual's privilege to take aquatic wildlife has not been revoked by the Commission. The provisions of this subsection apply to all waters except the Colorado River ~~adjacent to~~ forming the common boundaries between Arizona and California, and Nevada, or Utah where fishing without a license is limited to the shoreline, unless the state with concurrent jurisdiction removes licensing requirements on the same day. The provisions of this subsection do not apply to Reservation lands except as authorized by tribal governments.
- D. An individual participating in ~~an introductory fishing clinic organized,~~ a fishing education program that is sanctioned, and sponsored by the Department may fish without a fishing license ~~while an authorized Department instructor is present~~ during scheduled program hours only. A sanctioned program must have a Department employee, sport fishing contractor, or authorized volunteer instructor present during scheduled program hours. For the purposes of this Section, "authorized volunteer instructor" means an individual who has successfully passed the Department's required background check and sport fishing education workshop.

**R12-4-312. SPECIAL USE PERMITS AND STAMPS FOR FISHING  
ON WATERS WITH SHARED JURISDICTION**

**1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(D), 17-232, 17-342, 17-343, and 17-344

**2. Objective of the rule.**

The objective of the rule is to establish requirements for lawful fishing on waters with shared jurisdiction.

**3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

**4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

**7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

**8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

**9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer**

**impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department completed the previous five-year review report. G.R.R.C. approved the report at the July 10, 2007 Council Meeting and the Department did not propose a course of action for this rule.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements for lawful fishing on waters with shared jurisdiction. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-312 only to ensure conformity with the Arizona Administrative Procedures Act, Secretary of State, and G.R.R.C. rulemaking format and style requirements.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-312. Special Use Permits and Stamps for Fishing on Waters with Shared Jurisdiction**

- A.** Any individual fishing from a watercraft or other floating device or object on the waters of Lake Mead, Lake Mohave, or that portion of the Colorado River that forms the mutual boundary between Arizona and Nevada, shall have in possession:
  - 1. A valid Arizona-Colorado River special use stamp affixed to a valid Arizona fishing license, or
  - 2. A valid Nevada-Colorado River special use stamp affixed to a valid Nevada fishing license.
- B.** Any individual fishing from the Arizona shorelines of the waters named in subsection (A), unless ~~exempted~~ by exempt under R12-4-310 or R12-4-311, shall have in possession either:
  - 1. A valid Arizona fishing license, unless ~~exempted~~ exempt under A.R.S. § 17-335; or
  - 2. A valid Nevada-Colorado River special use stamp affixed to a valid Nevada fishing license.
- C.** Any individual fishing in the waters of Mittry Lake or Topock Marsh, unless ~~exempted by~~ exempt under

R12-4-310 or R12-4-311, shall have in possession either:

1. A valid Arizona fishing license, unless ~~exempted~~ exempt under A.R.S. § 17-335; or
  2. A valid Arizona-Colorado River special use permit stamp affixed to a valid California fishing license.
- D.** Any individual fishing in the Arizona portion of Lake Powell, unless ~~exempted by~~ exempt under R12-4-310 or R12-4-311, shall have in possession either:
1. A valid Arizona fishing license, unless ~~exempted~~ exempt under A.R.S. § 17-335; or
  2. A valid Arizona-Lake Powell stamp affixed to a valid Utah resident fishing license.
- E.** The requirements of this Section are in addition to those ~~contained in~~ prescribed under A.R.S. §§ 17-342, 17-343, and 17-344.

## **R12-4-313. LAWFUL METHODS OF TAKING AQUATIC WILDLIFE**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(5), and 17-301

### **2. Objective of the rule.**

The objective of the rule is to establish lawful devices and methods an individual may use to take aquatic wildlife during seasons established by Commission Order.

### **3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

Overall, the rule is enforced as written; however, the Department proposes to amend the rule to maximize recreational opportunities.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable; however, the Department proposes to amend the rule to define “dip net” and clarify possession requirements.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

**Oral Comment: September 30, 2010.** <name redacted> contacted the Department to request that the rule be amended to allow the use of bow and arrow for the take of catfish. <Name redacted> originally petitioned the Commission to allow use of bow and arrow to take catfish, the Commission relegated it to normal Five-year Review process.

**Agency Response:** The Article 3 Five-year Review Team reviewed the petition, considered the implications of implementing the request, and recommended amending the rule to allow the take of catfish with a bow and arrow when authorized by Commission Order. The Department filed a Notice of Proposed Rulemaking amending the rule as recommended in the previous Article 3 Five-year Review Report; the notice was published in the *Arizona Administrative Register* on January 2, 2009. The Department anticipated completing the final rulemaking by fall 2009. However, January 22, 2009, the Governor's office issued an agency directive placing a hold on all rulemaking for a short timeframe. Since then, the legislature passed a statutory moratorium extending the moratorium to June 30, 2011. The original petition was submitted to the Department in February 2004 and was included in the 2007 Article 3 5YRR.

- 9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

- 10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

- 11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

- 12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes lawful devices and methods an individual may use to take aquatic wildlife during seasons established by Commission Order. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

- 13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-313 by:

- Allowing pneumatic weapons for the take of bullfrogs. This is proposed to address invasive aquatic species and to provide more opportunities for hunters and anglers.

- Allowing bow and arrow for the take of catfish, where designated by Commission Order. This is proposed to allow the Commission to open seasons that are limited to specific locations and specific times for the take of catfish with bow and arrow or crossbow.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-313. Lawful Methods of Taking Aquatic Wildlife**

- A. An individual may take aquatic wildlife as defined ~~in~~ under A.R.S. § 17-101, subject to the restrictions prescribed ~~in~~ under R12-4-303, R12-4-317, and this Section. Aquatic wildlife may be taken during the day or night and may be taken using artificial light as prescribed in A.R.S. § 17-301.
- B. The Commission may, through Commission ~~order~~ Order, prescribe legal sizes for possession of aquatic wildlife.
- C. An individual may take aquatic wildlife by angling or simultaneous fishing as defined ~~in~~ under R12-4-101 with any bait, artificial lure, or fly subject to the following restrictions. An individual:
  - 1. Shall not possess aquatic wildlife other than aquatic wildlife prescribed by Commission ~~order~~ Order;
  - 2. Shall not use the flesh of game fish, except sunfish of the genus *Lepomis*, as bait;
  - 3. May use live baitfish, as defined ~~in~~ under R12-4-101, only in areas designated by Commission ~~order~~ Order; and
  - 4. Shall not use waterdogs as live bait in that portion of Santa Cruz County lying east and south of State Highway 82 or that portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
- D. In addition to angling, an individual may also take the following aquatic wildlife using the following methods, subject to the restrictions ~~of~~ established under R12-4-303, R12-4-317, and this Section:
  - 1. Carp (*Cyprinus carpio*), buffalofish, mullet, tilapia, goldfish, and shad may also be taken by ~~bow and arrow, crossbow, snare, gig, spear, spear gun, or snagging~~:
    - a. Bow and arrow.
    - b. Crossbow.
    - c. Snare.
    - d. Gig.
    - e. Spear.
    - f. Spear gun, or
    - g. Snagging.
    - h. Except for snagging, an individual shall not practice any of these methods of take within 200 yards of any boat dock or designated swimming area.
  - 2. Striped bass may also be taken by spear or spear gun in waters designated by Commission ~~order~~ Order.
  - 3. Live baitfish may also be taken for personal use as bait by:
    - a. A cast net not to exceed a radius of four feet measured from the horn to the headline;
    - b. A minnow trap, as defined ~~in~~ under R12-4-101;

- c. A seine net not to exceed 10 feet in length and four feet in width; or
  - d. A dip net as defined under R12-4-301.
4. Catfish may also be taken by bow and arrow or crossbow in waters designated by Commission Order.
- 4.5. Amphibians, ~~soft-shelled~~ softshell turtles, mollusks, and crustaceans may also be taken by minnow trap, crayfish net, hand, or with any:
- a. Minnow trap;
  - b. Crayfish net;
  - c. Hand; or
  - d. Any hand-held, non-motorized implement that does not discharge a projectile, unless otherwise permitted by this Section.
- 5.6. In addition to the methods described ~~in~~ under subsection ~~(D)(4)~~ (D)(5) of this Section, bullfrogs may also be taken by: ~~bow and arrow, crossbow, or slingshot~~
- a. Bow and arrow,
  - b. Crossbow,
  - c. Slingshot, or
  - d. Pneumatic weapon.
- 6.7. In addition to the methods described ~~in~~ under subsection ~~(D)(4)~~ (D)(5) of this Section, crayfish may also be taken with the following devices:
- a. A trap not more than three feet in the greatest dimension; ~~or,~~
  - b. A dip net as defined under R12-4-301, or
  - c. A seine net not larger than ten feet in length and four feet in width.
- E. An individual using a crayfish and minnow trap shall raise and empty the trap daily. An individual who uses a crayfish and minnow trap shall attach a water-resistant identification tag to the trap if it is unattended. ~~The tag shall include the legible name, address, and fishing license number of the individual using the trap. An individual using a crayfish and minnow trap shall raise and empty the trap daily. The tag shall include the individual's:~~
- a. Name,
  - b. Address, and
  - c. Fishing license number.

## **R12-4-315. POSSESSION OF LIVE FISH; UNATTENDED LIVE BOXES AND STRINGERS**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)  
Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-301, and 17-306

### **2. Objective of the rule.**

The objective of the rule is to establish requirements for the necessary, temporary possession of live fish.

### **3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

### **9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes requirements for the temporary possession of live fish. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-315 is amended to clarify possession of live fish requirements.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-315. Possession of Live Fish; Unattended Live Boxes and Stringers**

- A. An individual may possess fish taken alive as provided under R12-4-313 on the waters where taken, except when the take or possession is expressly prohibited ~~by the provisions of~~ under R12-4-313 or R12-4-317; ~~but the~~ An individual shall not transport the fish alive from the waters where taken, except as ~~allowed in~~ authorized under R12-4-316 or otherwise allowed by the Department.
- B. An individual ~~who places~~ shall attach water resistant identification to any unattended live boxes or stringers holding fish ~~shall attach water resistant.~~ The identification legibly bearing shall bear the individual's name, ~~address, and fishing license number of the individual using and holding fish in the live box or stringer;~~
- a. Name
  - b. Address, and
  - c. Fishing license number.

**R12-4-316. POSSESSION, TRANSPORTATION, OR IMPORTATION  
OF LIVE BAITFISH, CRAYFISH, OR WATERDOGS**

**1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-301, and 17-306

**2. Objective of the rule.**

The objective of the rule is to establish restrictions designed to control the introduction of undesirable species and to reduce the likelihood that baitfish, crayfish, and waterdogs (larval salamanders) may be released in waters where they could establish populations that compete with existing and native aquatic wildlife.

**3. Effectiveness of the rule in achieving its objective.**

Overall, the rule is effective in achieving the previously stated objective; however, research indicates that crayfish, now widespread in canals, streams, ponds, and lakes, have caused significant habitat damage and negatively impacted other aquatic biota. The rule was amended in 2001 to lessen the probability of existing and new crayfish species being released in waters where they could establish populations that compete with existing sportfish and native aquatic wildlife. Although crayfish continue to be a wildlife concern, the Department is continuously working to address the situation. Amendments to R12-4-305 were developed specifically to remove crayfish. In addition, research indicates that red shiners have a negative impact on native fish and it is beneficial to restrict the use of red shiners to only those bodies of water where they are captured.

**4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

**7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

**8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the**

**authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

- 9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

- 10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

- 11. If applicable, that the agency completed the previous five-year review process.**

The Department completed the previous five-year review report. G.R.R.C. approved the report at the July 10, 2007 Council Meeting and the Department did not propose a course of action for this rule.

- 12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes restrictions designed to control the introduction of undesirable species that compete with existing and native aquatic wildlife. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

- 13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-316 by:

- Removing the exemption that allowed an angler to import nonnative live baitfish without accompanying documentation certifying the baitfish are free of Furunculosis. This is proposed to prevent the spread of disease to native fish.
- Removing "red shiner" from the list of live bait minnows that can be lawfully possessed, transported, or imported by licensed anglers. This is proposed to address emerging concerns about the interactions between red shiner, which is currently a legal baitfish, and native aquatic wildlife. These concerns suggest it would be beneficial to restrict the use of red shiner to minimize impacts on aquatic wildlife.
- Allowing anglers to collect red shiner in the wild to possess and use them as bait only on the body of water where they are captured. This is also proposed to aid in the conservation of native aquatic species.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-316. Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs**

- A.** An individual may possess live baitfish, crayfish, or waterdogs for use as live bait only ~~in accordance with as established under R12-4-317 and this Section and R12-4-317.~~
- B.** An individual may possess or transport the following live baitfish for personal use as live bait ~~in accordance with as established under R12-4-317. An individual who possesses a valid Arizona fishing license may import these live baitfish from California or Nevada without accompanying documentation certifying the fish are free of disease, or may import these live baitfish from any other state with accompanying documentation certifying that the fish are free of Furunculosis.:~~
1. Fathead minnows (*Pimephales promelas*);<sub>2</sub>
  2. Mosquitofish (*Gambusia affinis*);<sub>2</sub>
  - ~~3. Red shiner (*Cyprinella lutrensis*);~~
  - ~~4.3.~~ Threadfin shad (*Dorosoma petenense*);<sub>2</sub>
  - ~~5.4.~~ Golden shiners (*Notemigonus crysoleucas*);<sub>2</sub> and
  - ~~6.5.~~ Goldfish (*Carassius auratus*).
- C.** An individual who possesses a valid Arizona fishing license may import ~~these~~ live baitfish listed in subsection (B) from California or Nevada without accompanying documentation certifying the fish are free of disease, or may import these live baitfish from any other state with accompanying documentation certifying that the fish are free of Furunculosis.
- D.** An individual who possesses a valid Arizona fishing license may import, transport, or possess live waterdogs for personal use as bait, except in the portion of Santa Cruz County lying east and south of State Highway 82 or the portion of Cochise County lying west of the San Pedro River and south of State Highway 82.
- ~~D.E.~~** An individual shall not import, transport, move between waters, or possess live crayfish for personal use as live bait except as allowed ~~in~~ under 12 A.A.C. 4, Article 4, and except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico.
- ~~E.F.~~** An individual may trap or capture live crayfish as provided ~~in~~ under R12-4-313. ~~A person~~ An individual may use live crayfish as bait only in the body of water where trapped or captured, not in an adjacent body of water, except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the Southern international boundary with Mexico.
- ~~F.G.~~** An individual shall not transport crayfish alive from the site where taken except for the portion of La Paz County west of Highway 95 and south of Interstate 10, Yuma County, and on the Colorado River from the Palo Verde Diversion Dam downstream to the southern international boundary with Mexico.

**H.** An individual shall not import, transport, move between waters, or possess live red shiner (*Cyprinella lutrensis*) for personal use as live bait except that an individual may capture, possess, and use red shiner in the body of water where captured as established under R12-4-313(D) as live bait when permitted by Commission Order, but shall not transport live red shiner from that body of water.

**R12-4-317. SEASONS FOR LAWFULLY TAKING FISH, MOLLUSKS,  
CRUSTACEANS, AMPHIBIANS, AND AQUATIC REPTILES**

**1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)  
Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-234, and 17-301

**2. Objective of the rule.**

The objective of the rule is to establish special restrictions and requirements for various seasons to allow the Department to achieve management plans and goals for the preservation and harvest of aquatic wildlife, while providing maximum wildlife oriented recreational opportunities for the public.

**3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

**4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

**5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

**6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

**7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

**8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

**9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer**

**impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department completed the previous five-year review report. G.R.R.C. approved the report at the July 10, 2007 Council Meeting and the Department did not propose a course of action for this rule.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes restrictions and requirements that allow Department to achieve management plans for aquatic wildlife, while providing wildlife oriented recreational opportunities for the public. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-317 by:

- Capitalizing "Order" in "Commission Order."
- Allowing the Commission to open seasons that are limited to specific locations and specific times for the take of catfish with bow and arrow or crossbow. This is proposed to provide the Commission with the authority and flexibility to effectively manage state resources.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-317. Seasons for Lawfully Taking Fish, Mollusks, Crustaceans, Amphibians, and Aquatic Reptiles**

- A.** Methods of lawfully taking aquatic wildlife during seasons designated by Commission ~~order~~ Order as "general" seasons are designated ~~in~~ under R12-4-313.
- B.** Other seasons designated by Commission ~~order~~ Order have specific requirements and lawful methods of take more restrictive than those for general seasons, as prescribed in this Section. While taking aquatic wildlife under

1. An individual participating in an "artificial lures and flies only" season shall use only artificial lures and flies as defined ~~in~~ under R12-4-101. The Commission may further restrict "artificial lures and flies only" season to the use of barbless or single barbless hooks. A barbless hook is any fishhook manufactured without barbs or on which barbs have been completely closed or removed.
  2. An individual participating in a "live baitfish" season shall not use any species of fish as live bait, or possess any species of fish for use as live bait at, in, or upon any waters unless that species is specified as a live baitfish for those waters by Commission ~~order~~ Order. Live baitfish shall not be transported from the waters where taken except as allowed ~~in~~ under R12-4-316.
  3. An individual participating in an "immediate kill or release" season shall kill and retain the designated species as part of the bag limit or immediately release the wildlife. Further fishing is prohibited after the legal bag limit is killed.
  4. An individual participating in a "catch and immediate release" season shall immediately release the designated species.
  5. An individual participating in an "immediate kill" season shall immediately kill and retain the designated species as part of the bag limit.
  6. An individual participating in a "snagging" season shall use this method only at times and locations designated by Commission ~~order~~ Order.
  7. An individual participating in a "spear or spear gun" season shall use this method only at times and locations designated by Commission ~~order~~ Order.
  8. An individual participating in a bow fishing season, other than general season described under R12-4-313, shall use the methods only at times and locations designated by Commission Order.
- C. A "special" season may be designated by Commission ~~order~~ Order to allow fish to be taken by hand, or by any hand-held, non-motorized implement that does not discharge a projectile. The "special" season may apply to any waters where a fish die-off is imminent due either to poor or low water conditions or Department fish renovation activities, or as designated by Commission ~~order~~ Order.

## **R12-4-318. SEASONS FOR LAWFULLY TAKING WILD MAMMALS, BIRDS, AND REPTILES**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-235, 17-301, 17-305, 17-307, 17-333, 17-346, and 17-371(D)

### **2. Objective of the rule.**

The objective of the rule is to establish special restrictions and requirements for various hunt structures to allow the Department to achieve management plans and goals for the preservation and harvest of wildlife, while at the same time providing maximum wildlife oriented recreational opportunities for the public.

### **3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department received the following written criticisms:

**Written Comment: February 10, 2007.** While applying my daughter for the 6A Jr hunt via the internet, I was informed that she did not meet the age requirement. Her birthday is 10/28/89 and will still be 17 by the next Junior hunt season. By your policy she does not qualify. I am mad and feel she

has been cheated out of 2-years of Junior hunt opportunities. 1st year, because of her birthday, she wasn't old enough (by one week) and this year she was cheated out of the opportunity again. During her 17th year she was not even eligible. Can anything be done to help this frustrated Dad and daughter?

**Agency Response:** An individual may participate in a 'juniors-only hunt' up to and throughout the calendar year of the individual's 17th birthday, so she should have been eligible to participate this year. The Department proposes to amend the rule so that a youth hunter will be able to participate in Junior-Hunts throughout their 17th year and into their 18th year provided they meet specific criteria. Two ways to increase a young hunter's opportunity: successfully complete the hunter education course as soon as they are eligible and apply for hunts with good drawing odds that are not "juniors-only" as the junior's hunts are in greater demand than the general hunts.

**Written Comment: December 7, 13, and 14 2007.** In R-12-4-318(C)(6), please change "falconry" to "eagles, falcons, hawks, and owls." In R12-4-318(C)(10), please change it to read, "An individual participating in a "Raptor-only" season shall be licensed under R12-4-422, be exempted under R12-4-407, or be exempt by another rule or by statute and may only use a hawk, falcon, eagle, or owl.

**Agency Response:** A.R.S. § 17-101 defines falconry as the sport of hunting or taking quarry with a trained raptor. All wildlife is subject to listing and delisting under the Endangered Species Act (ESA). By classifying the method of take by the sport of falconry, instead of species, ensures the rule will not conflict with the ESA.

**Written Comment: August 20, 2008.** In November 2008, I put my son in for the fall 2008 javelina hunt. My son was born 12/24/1990, He is 17 years old right now and will be 17 years old at the time of this hunt. Well thanks to your discrimination, he is not able to hunt. He loses his whole entire 17th year to hunt as a youth because.. ? I just want to let you know how stupid this is and how we feel really discriminated against for being born in the wrong month and not be able to hunt with all his peers that are the same age. 17 years old is 17 years old.

**Agency Response:** The Department proposes to amend the rule so that a youth hunter will be able to participate in Junior-Hunts throughout their 17th year and into their 18th year provided they meet specific criteria.

**Written Comment: November 26, 2008.** For Pronghorn Antelope hunts in Unit 34B; I suggest that the tags not go to two archery tags only! The herd will support the taking of two bucks per fall (as per Jim H). Rather, for example some sort of hunting weapon type of rotation such as, in 2009 - 1 archery tag and 1 centerfire rifle tag, in 2010 - 1 archery tag and 1 muzzleloader tag, in 2011 - same as 2009, in 2012 - same as 2010, etc. This would all but guarantee at least one buck is taken every fall and in the years the archer is successful a maximum of two antelope bucks will be taken from the herd. This seems to me to be more equitable. I scouted the Unit extensively from April to September 5th, 2008, as I held the muzzle loader tag. I patterned at least 6 to 8 "shooter" bucks in the Unit and I bet I did not account for all animals available. Please do not make this an "archery only" hunt as that action is not warranted.

**Agency Response:** The rule addresses the methods of take that may be used during specific seasons authorized under Commission Order, but does not regulate the number of tags that may be issued for a specific game management unit, genus, or species. The Arizona Game and Fish Department follows a multi-tiered process for setting hunting season structures, hunting season dates, hunt permit allocations, and other controlling elements for regulating hunting of game animals. The Department's Game Branch is responsible for this task and their mission is to protect and manage game wildlife

populations and their habitats to maintain the natural diversity of Arizona, and to provide game wildlife oriented recreation opportunities for present and future generations. This is done by using science-based methods to assure wildlife is managed within the biological limits of each species, management strategies are also developed to consider social acceptability and responsibilities. This is a public process; hunter surveys, field, surveys, and public meetings are the methods used to involve the public. For more information on the public process, please visit the Department's website at [www.azgfd.gov/h\\_f/hunt\\_guidelines.shtml](http://www.azgfd.gov/h_f/hunt_guidelines.shtml).

**Written Comment: April 30, 2009.** I would like to see a CHAMP hunt for people with a pioneer license only and be any elk tag.

**Agency Response:** The Department believes the draw provides an equitable allocation of hunt permit-tags to all individuals, regardless of age. Thus, creating additional methods for issuing big game hunt permit-tags would be discriminatory, as well as inconsistent with the Department's hunter retention efforts. The agency is trying to encourage participation in a greater diversity of wildlife opportunities outside of big game hunting.

**Written Comment: April 30, 2009.** The whitetail hunt and mule deer hunt coincide in some units. I believe these should be separated due to the number of hunters that puts in the field at the same time and thus reduces the hunting experience when there are that many people in a unit at once. I am not privy to the reasons why this was done, and there may be good reasons, but in my experience it lessens the quality of the hunt with people on top of each other, and yes, I know that each species inhabits different areas within those units, but there is a lot of overlap as well with lots of hunters concentrated in certain areas of the unit. I like the idea that if a hunter gets drawn for a quality hunt such as Kaibab Deer or a an Early Bull or Regular Bull hunt, they could not put in for 1 or 2 years for those types of hunts. That would help to reduce the amount of applications for certain hunts and would give others the chance to get drawn for those hunts. You could still put in for a bonus point or could apply for a Cow Elk hunt or Deer Hunt in other units during the years you could not apply for the quality hunt. Just a thought as I know UT uses this within their regulations and it makes sense in high demand hunt units. Since you have a computer database of the each hunter's information, I think this could work even with the paper application process. I still really like the paper application process as this tends to weed out the true hunters who are serious about getting drawn in AZ and makes them include their fees up front, and this includes the out of state hunters as well.

**Agency Response:** The rule addresses the methods of take that may be used during specific seasons authorized under Commission Order, but does not regulate the number of tags that may be issued for a specific game management unit, genus, or species. The Arizona Game and Fish Department follows a multi-tiered process for setting hunting season structures, hunting season dates, hunt permit allocations, and other controlling elements for regulating hunting of game animals. The Department's Game Branch is responsible for this task and their mission is to protect and manage game wildlife populations and their habitats to maintain the natural diversity of Arizona, and to provide game wildlife oriented recreation opportunities for present and future generations. This is done by using science-based methods to assure wildlife is managed within the biological limits of each species, management strategies are also developed to consider social acceptability and responsibilities. This is a public process; hunter surveys, field, surveys, and public meetings are the methods used to involve the public. For more information on the public process, please visit the Department's website at [www.azgfd.gov/h\\_f/hunt\\_guidelines.shtml](http://www.azgfd.gov/h_f/hunt_guidelines.shtml). Forcing successful hunters to defer from application after they have drawn tags offers little or no benefit for hunters who remain in the draw. This is because highly desirable tags, such as early bull elk and pronghorn, have very large numbers of applicants for the number of tags offered. Excluding the few drawn for tags does not significantly affect those odds. For example, the percentage of early bull elk applicants receiving tags would change from 1.12%

currently to 1.15%, 2 years later if this rule was adopted. For some hunts, such as antlerless elk, the draw success would change from 65% currently to not having enough applicants to fill the hunts 2 years later. In addition, these suggestions would inadvertently constitute a waiting period, which was rejected in favor of the bonus point system by the Commission through a public process.

**Written Comment: April 30, 2009.** Last year I sent a letter to the Arizona Game and Fish Commission requesting consideration for a "seniors only" elk hunt for those persons holding a "Pioneer" license and meeting some other (as yet to be determined) criteria. I received a response from Chairman McLean stating that he had forwarded my letter to the Rules and Risk Section. As such, will my recommendation be considered during the current open season for making rules recommendation, which closes May 31, 2009?

**Agency Response:** On January 22, 2009, the Governor issued a directive placing a hold on all formal and informal rulemaking activities. In 2010, the legislature enacted a statutory moratorium on all rulemaking; it will be in effect until June 30, 2011, provided the legislature does not extend the moratorium further. Even without the moratorium, the Department would not have been able to implement your suggestion in such a short amount of time. The Department's rules are reviewed and amended by a cyclical process. Rules are reviewed in accordance with the schedule determined by the Governor's Regulatory Review Council (G.R.R.C.). Typically, the Department will pursue rulemaking approximately two years after the review report is approved by G.R.R.C. In general, the rulemaking process can take up to two years to complete.

**Written Comment: May 6, 2009.** I and my two sons are archery javelina hunters. My boys are in school and so we are limited to the weekends to hunt. Javelina archery used to be the entire month of Jan, now it is only 3 weeks. Please give us back that 4th weekend so I can enjoy the hunt longer with my two sons. You don't have to worry about over kill with us. My son has never even taken a shot at a pig in the whole 3 years he has hunted. (In fact he is so frustrated, he wants to quit!) I have only killed 1 in 10 years of hunting pig. My other son has killed 3. I am sure the pig population won't suffer by adding one more weekend. Please don't take away the little opportunity we have to hunt javelina. Give us a full month of archery javelina.

**Agency Response:** The rule addresses the methods of take that may be used during specific seasons authorized under Commission Order, but does not regulate the number of tags that may be issued for a specific game management unit, genus, or species. The Arizona Game and Fish Department follows a multi-tiered process for setting hunting season structures, hunting season dates, hunt permit allocations, and other controlling elements for regulating hunting of game animals. The Department's Game Branch is responsible for this task and their mission is to protect and manage game wildlife populations and their habitats to maintain the natural diversity of Arizona, and to provide game wildlife oriented recreation opportunities for present and future generations. This is done by using science-based methods to assure wildlife is managed within the biological limits of each species, management strategies are also developed to consider social acceptability and responsibilities. This is a public process; hunter surveys, field, surveys, and public meetings are the methods used to involve the public. For more information on the public process, please visit the Department's website at [www.azgfd.gov/h\\_f/hunt\\_guidelines.shtml](http://www.azgfd.gov/h_f/hunt_guidelines.shtml).

**Written Comment: May 12, 2009.** I do not think we need to strive to increase hunter participation, besides reaching out to junior hunters. I commend AZGFD for increasing the junior hunts the past couple years and think that the over-the-counter turkey tags are awesome! My little cousin has had an awesome time with these hunts! I would recommend extending the age for junior hunts to 18. I believe AZGFD has done a good thing by going to the draw for some of the archery deer hunts, but there is one little thing AZGFD should look into. Last year I drew a Nov deer tag, but was not able to

purchase a leftover archery deer tag for unit 7. The leftover deer tags never sold out and AZGFD missed out on my extra \$42.50 I would have been totally willing to pay the additional fees to have been able to hunt the archery season as well. I understand that the bag limit is only 1 deer per year and I am totally fine with that, but I really missed being able to get out in the woods early in the year in some of my favorite stomping grounds! I would like to see a reduction in regular season deer tags on the Southern Kaibab for at least a few years. I'm in the woods a lot and see the genetic potential for some really quality deer hunting, but there are entirely too many hunters in the woods. Personally, I have always said that for example in unit 7, I would like to see the unit closed to all hunters except for juniors and possibly seniors over the age of 70 for 3-5 years to let the herd rebuild. Although I did think there were too many hunters on an Oct deer hunt last year with my fiancé in 12A west, there were enough deer up there to support a quality experience. Maybe AZGFD performs these management strategies to one unit at a time to ensure that there is not a total loss of revenue, but I believe the loss of revenue for a few years to re-build our deer herds would totally make up for and surpass any short term losses.

**Agency Response:** The Department proposes to amend the rule to allow an individual whose 18th birthday occurs during a “juniors-only” hunt for which the individual has a valid permit tag to participate for the duration of that hunt. The rule addresses the methods of take that may be used during specific seasons authorized under Commission Order, but does not regulate the number of tags that may be issued for a specific game management unit, genus, or species. The Arizona Game and Fish Department follows a multi-tiered process for setting hunting season structures, hunting season dates, hunt permit allocations, and other controlling elements for regulating hunting of game animals. The Department's Game Branch is responsible for this task and their mission is to protect and manage game wildlife populations and their habitats to maintain the natural diversity of Arizona, and to provide game wildlife oriented recreation opportunities for present and future generations. This is done by using science-based methods to assure wildlife is managed within the biological limits of each species, management strategies are also developed to consider social acceptability and responsibilities. This is a public process; hunter surveys, field, surveys, and public meetings are the methods used to involve the public. For more information on the public process, please visit the Department’s website at [www.azgfd.gov/h\\_f/hunt\\_guidelines.shtml](http://www.azgfd.gov/h_f/hunt_guidelines.shtml).

**Written Comment: October 9, 2009.** There are different hunts for muzzleloader and rifle and I have to ask AZGFD doesn't do the same thing for archery season? Having different hunts for compound and traditional bows (recurve and long bow). It seems to me that compounds have significant advantages over traditional bows as do rifles over muzzleloaders.

**Agency Response:** Currently, the Department carefully balances demand among antlerless and bull archery, muzzleloader, and general seasons (six categories). If we add a “primitive archery” season (e.g., only recurve bows) and we would easily wind up with 10 or more categories to balance demand and harvest among. Frankly, the number of seasons would be very problematic to squeeze into the calendar. Pragmatically, hunters already have seasons delineated in which the various weapon types may be used and individuals may choose which type of weapon type they prefer.

*The agency received 2 comments regarding the HAM hunt.*

**Written Comment: January 16, 2009.** I would like to make a comment on changing the javelina “HAM” hunt to a “HAMS” by including shotguns in the mix. Ranges on modern handguns, especially in the single shot category far outstrips the accurate ranges a slug loaded shotgun will consistently make. Modern muzzleloaders are more accurate down range than even 10 years ago. By adding shotguns with slugs during the “HAM” season would give hunters another option for taking javelina. I would use one myself but I like to hunt the HAM season. I feel a rifle is just a little overkill

on an animal the size of javelina.

**Written Comment: January 18, 2009.** I would like to see shotguns add to the HAM season. This will be my first year hunting in the HAM season, and had to borrow a handgun. I have a shotgun, and think if it was shotgun you would get more hunters. I would stick to slug or buckshot for the shells.

**Agency Response:** Handgun, archery, and muzzleloader (HAM) seasons, permitted under in R12-4-318, are designed to provide a specific hunting opportunity for a substantial user group. R12-4-304 currently allows shotguns shooting slugs as a legal method of take for hunters participating in a general season hunt. Shotguns shooting shot are not permitted based on expected shot performance and due to the risk of shooting multiple javelina with a single shot, as javelina are often in herds,. However, shotguns shooting slugs are permitted during general seasons.

**Written Comment: October 30, 2008.** I would like to see a primitive season established that would limit the use of modern muzzle loading firearms (in line and/or scoped). I also don't think it was right to be able to use any centerfire pistol for hunting elk. AZGFD should limit use by muzzle velocity, foot pounds, or some other more quantitative measure rather than allowing 9 mm pistols to be used to hunt elk.

**Agency Response:** Limiting the ability to use telescopic sights has been challenged in court within other states, and the courts have determined that limiting this ability is exclusionary to those with poor eyesight and have rejected the regulations associated with it. Further, instituting a new limitation on the type of muzzleloader that may be used further stratifies the myriad of hunts that the Department currently offers. Currently, the Department carefully balances demand among antlerless and bull archery, muzzleloader, and general seasons (6 categories). If we add "primitive muzzleloaders," the Department would probably also need to consider "primitive archery" (e.g., only recurve bows) and we would easily wind up with 10 or more categories to balance demand and harvest among. Frankly, the number of seasons would be very problematic to squeeze into the calendar. Pragmatically, hunters already have seasons delineated in which the various weapon types may be used and individuals may choose which type of weapon type they prefer. Bullet placement is far more important when it comes to the use of handguns. Handguns generate more than adequate energy to humanely harvest an elk, so long as the appropriate shot placement is made. The Department has not detected any issues with the currently lawful methods of take for elk.

**Written Comment: May 11, 2009.** I would like AZGFD to re think the subject of nighttime predator hunting with an open mind. I know that this has been discussed before and I have heard most of the reasons why AZGFD does not like it. I have talked to Mr. Ordway and others. I have heard their reasons for not doing it, but, I believe that if we really think this hunting opportunity through with an open mind then a safe enjoyable hunt could be a benefit to sportsman young and old. Let's look to see if it is a "can-do" rather than "can't-do." I believe other states do it. Ideas: Shotguns shooting shot only and even small shot - safety, a red flashing light on top of every hat - safety, require hunter safety course graduation - safety, a separate permit - revenue, a notice hanging from the mirror of the vehicle indicating the activity in progress - law enforcement, seasons - eliminating clashes with other hunts - have a very short season to start. Of course, all other rules and regulations would stay in place. If Border issues are a concern then don't allow it in those areas of concern. What a great opportunity for young hunters to get started hunting and see some action. Sure, somebody will break the law or cause problems, but that happens in every endeavor, if we are going to be afraid of "what might happen" then progress will not happen. I hope that you give it some thought, kick it around, work it out. I think that something valuable could be accomplished.

**Agency Response:** The Department agrees and proposes to amend the rule to allow the take of coyote and mountain lion with the use of artificial light to allow individuals to assist the Department in reducing antelope, mule deer, and bighorn sheep predation in game management units where coyotes or mountain lions have had a significant impact on these populations. However, it is important to note, the use of artificial light to take wildlife on public lands in Arizona is prohibited by federal regulation on tribal lands (28%), Bureau of Land Management (17%), Forest Service (15%), refuges (3%), monuments (5%), and military reserves (7%) in Arizona, representing approximately 75% of all the land in Arizona.

**9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on July 13, 2010.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department did not complete the previous five-year review process. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; the Secretary of State's Office published the Notice of Docket Opening and Notice of Proposed rulemaking on January 2, 2009. However, as prescribed under A.R.S. § 41-1021(A)(4), the proposed rulemaking expired January 2, 2010 because of the rulemaking moratorium.

However, the Governor's office approved the Department's request to pursue rulemaking to allow individuals participating in archery-only or muzzleloader-only seasons to possess a non-hunting handgun for personal protection on November 30, 2009. This is the only proposed action the Department was able to complete for this rule; G.R.R.C. approved the Notice of Final Rulemaking at the July 13, 2010 Council Meeting.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule establishes special restrictions and requirements for various hunt structures that allows the Department to achieve management plans and goals for the preservation and harvest of wildlife, while providing maximum wildlife oriented recreational opportunities for the public. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-318 by:

- Capitalizing “Order” in “Commission Order.” This is proposed to maintain consistency with other rules throughout Chapter 4.
- Including falconry as a method of take during an archery-only season. This request has been asked for by the public during hunt guideline discussions.
- Exempting falconers hunting with exotic raptors from falconry license established under R12-4-422. This is proposed to bring the rule into alignment with recent statutory changes to A.R.S. § 17-236.
- Replacing “foot-hold” with “foothold.” This is proposed to maintain consistency with other rules throughout Chapter 4.
- Expanding the authorization to possess a personal protection handgun for personal protection to individuals participating in limited weapon, limited weapon rimfire, limited weapon shotgun, limited weapon shotgun shooting shot, pneumatic weapon, limited weapon hand or hand-held, falconry-only, and restricted seasons. This is proposed to increase consistency between archery-only, muzzleloader-only, and other limited weapon seasons within the rule.
- Establishing a “pneumatic weapon” season in which an individual may only use a pneumatic weapon discharging a single projectile .22 caliber or smaller for the take of wildlife, when prescribed under R12-4-304 as lawful for the species hunted. This is proposed to allow an individual to take small game and reptiles in a city or county park or preserve.
- Establishing a “restricted” season in which an individual may use any approved method or device authorized under R12-4-304, except pursuit with dogs. This is proposed to ensure harvest objectives for bear and mountain lion are not exceeded.
- Clarifying Junior-only hunt age requirements. This is proposed to increase opportunity for those hunters nearing their 18th birthday and reduce the confusion regarding Junior-only hunts.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

#### **R12-4-318. Seasons for Lawfully Taking Wild Mammals, Birds, and Reptiles**

- A. Methods of lawfully taking wild mammals and birds during seasons designated by Commission ~~order~~ Order as “general” seasons are designated ~~in~~ under R12-4-304. Restrictions designated in subsection (C) do not apply to general seasons.
- B. Methods of lawfully taking big game during seasons designated by Commission ~~order~~ Order as “special” are designated ~~in~~ under R12-4-304. “Special” seasons are open only to individuals who possess special big game license tags ~~issued~~ authorized under A.R.S. § 17-346 and R12-4-120.
- C. When designated by Commission ~~order~~ Order, the following seasons have specific requirements and lawful methods of take more restrictive than those for general and special seasons, as prescribed in this Section. Individuals participating in seasons designated under subsections (C)(1) through (C)(10) may possess a

personal protection handgun, as defined under R12-4-301, for personal protection. Except as authorized under A.R.S. Section 17-301.01, it is unlawful to take any wildlife with this handgun. While taking the species authorized by the season:

1. An individual participating in a “muzzleloader” season shall not use or possess any firearm other than muzzle-loading rifles or muzzle-loading handguns, as defined under R12-4-101. ~~Individuals participating in a “muzzleloader” season may possess a non hunting handgun for personal protection. It is unlawful to take any wildlife with this handgun while participating in a “muzzleloader” season. For the purposes of this Section, a non hunting handgun is defined as a handgun with a barrel length of six inches or less that does not have a scope or any type of electronic sight.~~
2. An individual participating in an “archery-only” season may only use or possess a bow and arrow as prescribed under R12-4-304 and shall not use or possess any other weapons, including crossbows or bows with a device that holds the bow in a drawn position except as authorized under R12-4-216. ~~Individuals participating in an “archery only” season may possess a non hunting handgun for personal protection. It is unlawful to take any wildlife with this handgun while participating in an “archery-only” season. For the purposes of this Section, a non hunting handgun is defined as a handgun with a barrel length of six inches or less that does not have a scope or any type of electronic sight.~~
3. An individual participating in a “limited weapon” season may only use or possess the following methods or devices for taking wildlife, when authorized under R12-4-304 as lawful for the species hunted:
  - a. Any trap except foothold traps,
  - b. Bow and arrow,
  - c. Capture by hand,
  - d. Crossbow,
  - e. Falconry,
  - f. Hand-propelled projectiles,
  - g. Nets,
  - h. Pneumatic weapons, or
  - i. Slingshots.
4. An individual participating in a “limited weapon-rimfire” season may only use or possess the following methods or devices for taking wildlife, when authorized under R12-4-304 as lawful for the species hunted:
  - a. Any trap except foothold traps,
  - b. Bow and arrow,
  - c. Capture by hand,
  - d. Crossbow,
  - e. Falconry,
  - f. Hand-propelled projectiles,

- g. Nets.
  - h. Pneumatic weapons.
  - i. Rifled firearms using rimfire cartridges.
  - j. Shotgun shooting shot or slug, or
  - k. Slingshots.
5. An individual participating in a “limited weapon-shotgun” season may only use or possess the following methods or devices for taking wildlife, when authorized under R12-4-304 as lawful for the species hunted:
- a. Any trap except foothold traps.
  - b. Bow and arrow.
  - c. Capture by hand.
  - d. Crossbow.
  - e. Falconry.
  - f. Hand-propelled projectiles.
  - g. Nets.
  - h. Pneumatic weapons.
  - i. Shotgun shooting shot or slug, or
  - j. Slingshots.
6. An individual participating in a “limited weapon-shotgun shooting shot” season may only use or possess the following methods or devices for taking wildlife, when authorized under R12-4-304 as lawful for the species hunted:
- a. Any trap except foothold traps.
  - b. Bow and arrow.
  - c. Capture by hand.
  - d. Crossbow.
  - e. Falconry.
  - f. Hand-propelled projectiles.
  - g. Nets.
  - h. Pneumatic weapons.
  - i. Shotgun shooting shot, or
  - j. Slingshots.
7. An individual participating in a “pneumatic weapon” season may only use a pneumatic weapon discharging a single projectile .22 caliber or smaller for the take of wildlife, when prescribed under R12-4-304 as lawful for the species hunted.
8. An individual participating in a “limited weapon hand or hand-held implement” season may only use the following methods or devices for taking wildlife, when prescribed under R12-4-304 as lawful for the species hunted:

- a. Catch-pole.
  - b. Hand.
  - c. Snake hook, or
  - d. Snake tongs.
9. An individual participating in a “falconry-only” season shall be a falconer licensed under R12-4-422 unless exempt under A.R.S. § 17-236(C) or R12-4-407. A falconer participating in a “falconry-only” season shall use no other method of take except falconry.
10. An individual participating in a “restricted season” may use any lawful method authorized under R12-4-304, except dogs may not be used to pursue the wildlife for which the season was established.
- ~~3-11.~~ An individual participating in a “handgun, archery, and muzzleloader (HAM)” season may only use or possess any or all of the following:
- a. ~~handguns~~ Handguns,
  - b. ~~muzzle loading~~ Muzzle-loading rifles as defined ~~in~~ under R12-4-101,
  - c. ~~crossbows~~ Crossbows, and
  - d. ~~bows~~ Bows and arrows as prescribed ~~in~~ under R12-4-304.
- 4-12. An individual who possesses a valid tag for a bear season between January 1 and July 31 shall not use dogs to take bear.
- 5-13. An individual participating in a “pursuit-only” season may use dogs to pursue bears, mountain lions, or raccoons as designated by Commission ~~order~~ Order, but shall not kill or capture the quarry. An individual participating in a “pursuit-only” season shall possess and, at the request of Department personnel, produce a valid hunting license and any required tag for taking the animal pursued, even though there shall be no kill.
6. ~~An individual participating in a “limited weapon” season may only use or possess the following methods or devices for taking wildlife, when authorized under R12 4 304 as lawful for the species hunted:~~
- a. ~~Any trap except foothold steel traps,~~
  - b. ~~Bow and arrow,~~
  - c. ~~Capture by hand,~~
  - d. ~~Crossbow,~~
  - e. ~~Falconry,~~
  - f. ~~Hand propelled projectiles,~~
  - g. ~~Nets,~~
  - h. ~~Pneumatic weapons, or~~
  - i. ~~Slingshots.~~
7. ~~An individual participating in a “limited weapon shotgun” season may only use or possess the following methods or devices for taking wildlife, when authorized under R12 4 304 as lawful for the species hunted:~~

- a. ~~Any trap except foothold steel traps,~~
  - b. ~~Bow and arrow,~~
  - e. ~~Capture by hand,~~
  - d. ~~Crossbow,~~
  - e. ~~Falconry,~~
  - f. ~~Hand propelled projectiles,~~
  - g. ~~Nets,~~
  - h. ~~Pneumatic weapons,~~
  - i. ~~Shotgun shooting shot or slug, or~~
  - j. ~~Slingshots.~~
8. ~~An individual participating in a “limited weapon shotgun shooting shot” season may only use or possess the following methods or devices for taking wildlife, when authorized under R12 4 304 as lawful for the species hunted:~~
- a. ~~Any trap except foothold steel traps,~~
  - b. ~~Bow and arrow,~~
  - e. ~~Capture by hand,~~
  - d. ~~Crossbow,~~
  - e. ~~Falconry,~~
  - f. ~~Hand propelled projectiles,~~
  - g. ~~Nets,~~
  - h. ~~Pneumatic weapons,~~
  - i. ~~Shotgun shooting shot, or~~
  - j. ~~Slingshots.~~
9. ~~An individual participating in a “limited weapon rimfire” season may only use or possess the following methods or devices for taking wildlife, when authorized under R12 4 304 as lawful for the species hunted:~~
- a. ~~Any trap except foothold steel traps,~~
  - b. ~~Bow and arrow,~~
  - e. ~~Capture by hand,~~
  - d. ~~Crossbow,~~
  - e. ~~Falconry,~~
  - f. ~~Hand propelled projectiles,~~
  - g. ~~Nets,~~
  - h. ~~Pneumatic weapons,~~
  - i. ~~Rifled firearms using rimfire cartridges,~~
  - j. ~~Shotgun shooting shot or slug, or~~
  - k. ~~Slingshots.~~

- ~~10.~~ An individual participating in a “falconry only” season shall be a falconer either licensed under R12-4-422 or exempted under R12-4-407, and use no method of take except falconry.
- ~~11.~~14. An individual under the age of 18 who meets the requirements prescribed under A.R.S. § 17-335 may participate in a “juniors-only ~~hunt~~ hunt” ~~up to and throughout the calendar year of the individual’s 17th birthday, provided the individual meets the requirements prescribed under A.R.S. § 17-335.~~ A youth hunter whose 18th birthday occurs during a “juniors-only hunt” for which they have a valid permit or tag may continue to participate for the duration of that “juniors-only hunt.”
- ~~12.~~15. An individual participating in a “CHAMP” season shall be a challenged hunter access/mobility ~~permittee~~ permit holder as established under R12-4-217.
- ~~13.~~16. An individual participating in a “raptor capture” season shall be a falconer licensed under R12-4-422 unless exempt under R12-4-407.

## **R12-4-319. USE OF AIRCRAFT TO TAKE WILDLIFE**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(4), and 17-301(B)

### **2. Objective of the rule.**

The objective of the rule is to prohibit the use of aircraft for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals.

### **3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department received the following written criticism:

**Written Comment: December 7, 13, and 14, 2007.** I would like there to be an exemption for finding lost raptors using an airplane. Many raptors have radio telemetry attached and a plane is needed to find them when they roam miles away.

**Agency Response:** The Department believes an exemption is not required. The rule does not prohibit the use of aircraft for tracking, locating, and recapturing an escaped raptor, provided requirements established under R12-4-422(U) are met.

**9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department completed the previous five-year review report. G.R.R.C. approved the report at the July 10, 2007 Council Meeting. The Department began the rulemaking portion of the process; however, based on public and stakeholder comments, the Commission directed the Department to leave the rule as is.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule prohibits the use of aircraft for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-319 by:

- Transferring definitions to R12-4-301. This is proposed to ensure compliance with Secretary of State rule formatting recommendations.
- Replacing the term "administer" with "manage." This is proposed to ensure that the term "administer" applies only to R12-4-309. Authorization for Use of Drugs on Wildlife.
- Replacing the term "administration" with "management." This is proposed to ensure that the term "administration" applies only to R12-4-309. Authorization for Use of Drugs on Wildlife.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by

August 2013.

**R12-4-319. Use of Aircraft to Take Wildlife**

- A. For the purposes of this Section, ~~the following definitions apply:~~ “locate” means any act or activity that does not take or harass wildlife and is directed at locating or finding wildlife in a hunt area.
1. ~~“Aircraft” means any contrivance used for flight in the air or any lighter than air contrivance.~~
  2. ~~“Locate” means any act or activity that does not take or harass wildlife and is directed at locating or finding wildlife in a hunt area.~~
- B. An individual shall not take or assist in taking wildlife from or with the aid of aircraft.
- C. Except in hunt units with Commission-ordered special seasons under R12-4-115 and R12-4-120 and hunt units with seasons only for mountain lion and no other concurrent big game season, an individual shall not locate or assist in locating wildlife from or with the aid of an aircraft in a hunt unit with an open big game season. This restriction begins 48 hours before the opening of a big game season in a hunt unit and extends until the close of the big game season for that hunt unit.
- D. An individual who possesses a special big game license tag for a special season under R12-4-115 or R12-4-120 or an individual who assists or will assist such a licensee shall not use an aircraft to locate wildlife beginning 48 hours before and during a Commission-ordered special season.
- E. This Section does not apply to any individual acting within the scope of official duties as an employee or authorized agent of the state or the United States to ~~administer~~ manage or protect or aid in the ~~administration~~ management or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.

## **R12-4-320. HARASSMENT OF WILDLIFE**

### **1. General and specific statutes authorizing the rule.**

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), and 17-236

### **2. Objective of the rule.**

The objective of the rule is to prohibit the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals.

### **3. Effectiveness of the rule in achieving its objective.**

The rule is effective in achieving the previously stated objective.

### **4. Consistency of the rule with state and federal statutes and rules; and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with, and is not in conflict with, statutes and rules. Statutes and rules used in determining consistency include Title 17 and A.A.C. Title 12, Chapter 4.

### **5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

### **6. Agency views regarding the current wisdom of the rule.**

The Department views this rule as wise and necessary to achieve the previously stated objective.

### **7. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable.

### **8. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, and written allegations made in litigation and administrative proceedings, which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The Department did not receive any written criticisms of the rule.

### **9. Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on February 3, 2004.

**10. Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states.**

The Department did not receive any analyses comparing the rules impact on this state's business competitiveness to the impact on businesses in other states.

**11. If applicable, that the agency completed the previous five-year review process.**

The Department completed the previous five-year review report. G.R.R.C. approved the report at the July 10, 2007 Council Meeting and the Department did not propose a course of action for this rule.

**12. A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.**

The rule prohibits the use of vehicles for the purpose of hunting or harassing wildlife to provide for fair chase and pursuit of game animals. The Department has determined that the rule imposes the least burden and cost necessary to achieve the underlying regulatory objective.

**13. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend, repeal, or make a rule.**

The Department proposes to amend R12-4-320 by:

- Replacing the term "administer" with "manage." This is proposed to ensure that the term "administer" applies only to R12-4-309. Authorization for Use of Drugs on Wildlife.
- Replacing the term "administration" with "management." This is proposed to ensure that the term "administration" applies only to R12-4-309. Authorization for Use of Drugs on Wildlife.

Subject to the evaluation of the economic, small business and consumer impact of any proposed amendments, the Department anticipates submitting a Notice of Final Rulemaking to the Council by August 2013.

**R12-4-320. Harassment of Wildlife**

- A.** In addition to the provisions ~~of~~ established under A.R.S. § 17-301, it is unlawful to harass, molest, chase, rally, concentrate, herd, intercept, torment, or drive wildlife with or from any aircraft as defined ~~in~~ under R12-4-319, or with or from any motorized terrestrial or aquatic vehicle.
- B.** This Section does not apply to individuals acting:
1. Under the provisions ~~of~~ established under A.R.S. § 17-239; or
  2. Within the scope of official duties as an employee or authorized agent of the state or the United States to ~~administer~~ manage or protect or aid in the ~~administration~~ management or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.

The Department received the following written criticism addressing multiple rules within Article 3; the comment is provided here in full rather than addressed separately under each applicable rule:

**Written Comment: May 21, 2009.** Please allow night-time predator hunting. Although there are fears of poaching, I would question that preventing night-time hunts doesn't prevent poaching. If anything, a light gazing across a field is an obvious indication that there is a hunter and that person is more likely to be watched by others in the field. How about allow night-time shotgun only as a test? I would like to see GPS coordinates given for all hunt units. I recently found myself on Indian reservation thinking I was on public lands. The drawn maps don't cut it and the written word can take a significant amount of time to figure out if I'm in an unfamiliar unit. This shouldn't be, given today's basic technologies. I would like AZGFD to increase patrolling fishing lakes. If they catch an unlicensed fisherman, take all their gear. The revenue from unlicensed fishing might not ever get collected, but the confiscated fishing gear will make them think twice. Free fish no more. A personal snivel, why do I have to pay to park at the Salt River lakes? Although that bothers me, why can't I buy an annual access pass?

**Agency Response: Agency Response:** R12-4-304 was recently amended to allow the take of coyote and mountain lion with the aid of artificial light. The Department agrees and proposes to amend the rule to allow the take of coyote and mountain lion with the use of artificial light during any daylong hunt identified in Commission Order. The Department believes the current boundary descriptions are more than adequate for the average hunter as most game management unit boundaries provided in rule are easily identifiable land marks. The Department's Law Enforcement Branch is responsible for determining enforcement goals and objectives. The law Enforcement Branch considers many factors when determining where to place their officers, such as safety concerns, increased violations, seasons, increased traffic, etc. The Department has no authority over the Salt River parking fees. Please forward your concerns to the appropriate agency or business.