

NOTICE OF PROPOSED RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
R12-4-402 Amend

- 2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8),17-240, 17-250(A), 17-250(B), and 17-306

- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 22 A.A.R. 2569, September 16, 2016

- 4. The agency’s contact person who can answer questions about the rulemaking:**
Name: Celeste Cook, Rules and Policy Manager
Address: Arizona Game and Fish Department
 5000 W. Carefree Highway
 Phoenix, AZ 85086
Telephone: (623) 236-7390
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E-mail: CCook@azgfd.gov
Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.

- 5. An agency’s justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

 An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor’s Office, in an email dated August 15, 2016.

 The Game and Fish Commission (Commission) proposes to amend its rules that authorize the release of wildlife in Arizona without a state permit, provided the release is accompanied by a federal permit. The Commission is concerned the current rule language could be construed as authorizing a federal agency to release or reintroduce threatened or endangered species in Arizona without first obtaining a state permit. The Commission intends to clarify this rule to make it inapplicable to federal agencies.

 Federal regulations require agencies within the Department of the Interior to comply with state permit requirements in connection with the release or reintroduction of wildlife, except when the Secretary of Interior

determines compliance will prevent an agency from carrying out its statutory responsibilities; see 43 C.F.R. Part 24. The federal regulation requiring state permits recognizes that the effective conservation of wildlife resources requires cooperation among the states and the federal government, and that states have broad trustee responsibilities for fish and wildlife with primary authority for wildlife management on federal lands.

The issue of state permits has become more significant in response to a recent lawsuit in New Mexico where the New Mexico Game and Fish Department obtained a preliminary injunction prohibiting the Service from releasing Mexican wolves in New Mexico without first obtaining state permits. Previously, the Service obtained permits in New Mexico and Arizona to release wolves. The situation in New Mexico, however, may indicate a shift in the federal position on state permits, and Arizona Game and Fish has also found agencies other than the Service refusing to cooperate with the State prior to the reintroducing or removing wildlife.

The Commission expects federal agencies to obtain state permits to release wildlife, and wants to eliminate any ambiguity in its regulations that a federal agency may bypass state permit requirements if federal law authorizes release of wildlife. Due to concerns that federal agencies may become more resistant to cooperating with the states, the Commission proposes to strengthen its rules to avoid any unintended outcome that a federal agency can avoid state permits before releasing or removing wildlife.

The rule is amended to clearly state that a permit or license issued by the Department or the Department of Agriculture is required when conducting any activity listed under R12-4-402(A) with live wildlife to ensure the Department maintains sovereignty over Arizona's wildlife and wildlife habitat.

6. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not rely on any study in its evaluation of or justification for the rules.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The Commission's rule protects native wildlife in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

The Commission anticipates the rulemaking will benefit the Department by ensuring the Commission maintains sovereignty over Arizona's wildlife.

The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has 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 has determined that

the benefits of the rulemaking outweigh any costs.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

See item #4.

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: December 2, 2016

Time: 8:00 a.m. to 5:00 p.m.

Location: 5000 W. Carefree Highway
Phoenix, AZ 850861

Close of record: December 2, 2016

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

The rule does not require a general permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 4. LIVE WILDLIFE

Section

R12-4-402. Live Wildlife; Unlawful Acts

ARTICLE 4. LIVE WILDLIFE

R12-4-402. Live Wildlife: Unlawful Acts

- A.** A person shall not perform any of the following activities with live wildlife unless authorized by a federal license or permit, this Chapter, or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
 2. Export any live wildlife from the state;
 3. Conduct any of the following activities with live wildlife within the state:
 - a. Display,
 - b. Exhibit,
 - c. Give away,
 - d. Lease,
 - e. Offer for sale,
 - f. Possess,
 - g. Propagate,
 - h. Purchase,
 - i. Release,
 - j. Rent,
 - k. Sell,
 - l. Sell as live bait,
 - m. Stock,
 - n. Trade,
 - o. Transport; or
 4. Kill any captive live wildlife.
- B.** The Department may seize, quarantine, hold, or euthanize any lawfully possessed wildlife held in a manner that poses an actual or potential threat to the wildlife, other wildlife, or the safety, health, or welfare of the public. The Department shall make reasonable efforts to find suitable placement for any animal prior to euthanizing it.
- C.** A person who does not lawfully possess wildlife in accordance with this Article shall be responsible for all costs associated with the care and keeping of the wildlife.
- D.** Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.